

Policy Name	Mutual Exchange Policy
Policy Category	Customer Services
Policy Number	TM015
Officer Responsible	Chief Executive
Application	Lochaber Housing Association
Scottish Housing Regulator Standard	Standards 1.3 & 2.4
Equality Impact Assessment Completed	Yes – 06/06/2021
Tenant Consultation	No - content is the same as previous policy
Date to Management Board	June 2024
Next Review Date	June 2029

1.0 Introduction

- 1.1 Under the terms of Scottish Secure Tenancy (SST) agreements and Short Scottish Secure Tenancy (SSST) agreements, tenants of Lochaber Housing Association Limited (the Association) may exchange their tenancy with another secure tenant. This is known as a “mutual exchange”. Certain conditions will apply, and the written consent of the Association must always be obtained before an exchange takes place.
- 1.2 Technically, a mutual exchange is a form of ‘Assignment’, with each tenancy being transferred to another person. However, in practice it will normally be arranged by a new tenancy agreement being set up for each tenant at the property they are exchanging into.
- 1.3 The broad policy provision for mutual exchanges is contained within the joint Allocations Policy of the Highland Housing Register (HHR) (Section 3 – Housing Options). HHR has a joint application form and procedure which applies to applications for exchanging with a tenant of any other landlord partner of the HHR. This policy refers to specific policy provisions for the Association.
- 1.4 Tenants of the Association can also apply to register with a national exchange scheme such as Home Swap.

2.0 Legislation

- 2.1 SSTs and SSSTs are governed by the Housing (Scotland) Act 2001 as amended (the Act). Section 33 of the 2001 Act prescribes the conditions under which a SST or SSST may be exchanged.

3.0 Information

- 3.1 The Association ensures that tenants are clearly advised of their rights and responsibilities when considering a mutual exchange. The through the following advice is available to tenants:
- a) Guidance from their Housing Officer when explaining the SST or SSST agreement prior to signing the document;
 - b) Clear information in the tenants' handbook;
 - c) Corresponding information in the Association's leaflet *Mutual Exchange*; copies of which are on display in the Association's office;
 - d) Information in the appropriate section in the Association's website.

4.0 Applying for a mutual exchange

- 4.1 Tenants who wish to mutually exchange their tenancy must apply to the Association in writing using the prescribed Mutual Exchange form. The Association must have received the written consent of **all** tenants involved in the exchange. This includes joint tenants and any person who has occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Tenants will be required to have resided in their property as their only or principal home for a period of no less than 12 months. The property must not have been recently allocated within a period of 4-6 weeks. The Housing Services Co-ordinator can review the period of no less than 12 months, but not where a property has recently been allocated. We may agree that exceptional circumstances apply, such as;
- overcrowding and the transfer will alleviate this;
 - the move would facilitate the tenant to provide or receive essential support (confirmation and details would be required in writing);
 - other known tenancy issues that would be resolved ensuring tenancy sustainment;
 - the transfer would ensure that the tenant was closer to their employment due to the inability to travel from their current location; or
 - other circumstances can be made in writing and considered but may not be upheld unless regarded as exceptional.
- 4.2 Tenants will be required to complete a Highland Housing Register (HHR) mutual exchange application form so that the Association can assess all the details relevant to the request. Forms are available to download or from the offices of any partner landlord of the HHR. A copy of this form is attached to the policy as **Appendix 1**.
- 4.3 Subject to all relevant information being received, a decision on an exchange will be made within 28 days of receipt of the completed application to exchange form.
- 4.4 If the tenant wishes to exchange with the tenant of another social landlord, LHA will be required to contact the other landlord for details

of the person, with whom the Association's tenant wishes to exchange. Where the other landlord is a partner of the HHR, the current shared procedures and tenancy reference pro-forma will apply.

- 4.5 The Association requires that an inspection of its tenant's property is carried out by a relevant member of staff, before any exchange request can be considered. This is to ensure that the property is in a good condition and that there are no outstanding repairs to be carried out.
- 4.6 Following the inspection, any permission to exchange may be conditional upon the outgoing tenant carrying out repairs that are their responsibility. Where a tenant fails to carry out repairs that are their responsibility, the mutual exchange may be refused.
- 4.7 Where the mutual exchange is between tenants of LHA, any credit balance on each tenant's rent account will automatically be transferred to their new rent account.
- 4.8 In order to finalise the Mutual Exchange process prospective tenants (including joint tenant(s)) will need to either attend the Association's offices or be present at the final inspection to meet with the Association's Maintenance and Housing Officers to review the agreed process. This is to ensure all parties are aware of what is agreed, ensure satisfaction with the exchange and awareness of the conditions placed on the process by the Association. Following the meeting, confirmation of what was agreed will be made in writing by the Association's Housing Officer within 3 working days. Including the final decision whether the exchange is approved.

5.0 Grounds for refusal of permission to exchange

5.1 The Association will not unreasonably refuse a request for a mutual exchange. The Association will normally grant permission under the following circumstances (with consideration given to HHR policy on rent arrears and recharges):

- Where both parties have a clear rent account;
- Where the Association's tenant does not owe any other debt to the Association (for example, rechargeable repairs);
- Where both parties have a satisfactory tenancy record, and are not subject to a current Notice of Proceedings by their landlord; and
- Where there are no outstanding repairs which are the responsibility of the tenant.

5.2 However, where any of the following applies, it is likely that permission will be refused unless the Associations Housing Services Co-ordinator agrees that exceptional circumstances apply:

- If any of the grounds for refusal set out in section 33(3) of the Housing (Scotland) Act 2001 (the 2001 Act) are met. In particular, if

- a) a notice of proceedings for possession has been served on the tenant specifying at least one of Grounds 1 to 7 specified in Schedule 2 to the 2001 Act;
 - b) an order for recovery of possession of the property which is the subject of the current tenancy has been made against the tenant under section 16(2) of the 2001 Act;
 - c) that property was provided by LHA in connection with the tenant's employment with it,
 - d) that property has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the property and, if the mutual exchange took place, there would no longer be a person with such special needs occupying the property;
 - e) the accommodation in the other property—
 - is substantially larger than that required by the tenant and the tenant's family, or
 - is not suitable to the needs of the tenant and the tenant's family, or
 - f) the mutual exchange would lead to overcrowding of the property in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act.
- Where there is an estranged spouse, civil partner or joint tenant who has not given their written permission for the exchange to take place;
 - Where repairs identified as the tenants responsibility have not been completed to the satisfaction of the Association. Within an agreed timescale;
 - Where the tenant has not occupied the property as their only or principal home for a period of no less than 12 months;
 - Where a proposed exchange involves a recently allocated property of the Association and the period is less than 6 weeks and the tenant has not occupied the property as their main and principle home;
 - Where prospective applicants fail to comply with any reasonable request made by the Association, including attendance by all applicants & tenants (including joint) at any meeting to progress or conclude the mutual exchange process; and
 - Where the exchange would breach other policies of the Association, such as the keeping of pet's policy.

5.3 A mutual exchange cannot proceed without the written consent of all landlords involved. If a tenant moves without that consent, they may be required to move back to their original property, or notice may be served to commence repossession proceedings.

5.4 It is important that prospective tenants intending to exchange into one of our properties do not accept the property without having actually

seen it, in situ. Consequently, any person considering exchanging into one of our properties **must** view it in person, first.

- 5.5 If one party does not complete the exchange, the Association will require the other party to return to their original property.

6.0 Monitoring

- 6.1 Ongoing monitoring will take place of all mutual exchanges. The Head of Housing and Corporate Services will report on mutual exchanges to the Board of Management or to the Scottish Housing Regulator as required.

7.0 Appeals

- 7.1 In the event of a refusal to exchange the tenancy, any tenant who feels their application has been unfairly dealt with or wishes to seek a review of the decision they can submit this in writing within 14 days stating the reason for the review. This should be made to the Housing Services Co-Ordinator (HSC). Where the HSC has made the decision, this should be reviewed by a member of the Senior Management Team. Any applicant who feels their application for sublet has been unfairly dealt with by a member of staff in term of the SPSO guidelines can also raise a customer complaint using the Association's complaints policy.

- 7.2 A tenant who is aggrieved by a refusal may raise proceedings by summary application to the sheriff court to appeal the Association's decision. The deadline for making an application is 21 days from the day that the Association notified the tenant of the decision to refuse consent.

8.0 General Data Protection Regulations

- 8.1 The organisation will treat personal data in line with our obligations under the current data protection regulations and our own data protection policy. Information regarding how personal data will be used and the basis for processing personal data is provided in the LHA Group's privacy notices.

This policy can be made available in other formats, for example in large print, audio format or Braille, the document may also be available in other languages, in full or summary form, as appropriate.

9. Equality, Diversity, and Inclusion

- 9.1 This policy reflects the Association's commitment to meeting our equality obligations in advancing equality, promoting good relations between protected characteristics, and eliminating discrimination in the way we provide our services.

It also aims to reflect our commitment to considering the Equalities and Human Rights impacts of what we do as an RSL.

- 9.2 The Association assesses and reviews where appropriate new and revised policies and procedures, and an Impact Assessment is available to support this policy.