



Mutual Exchange Policy

Ref: 318

1. Policy Aim

The policy explains who can apply and how to register for an exchange. The policy also explains the type of tenancy needed to exchange and what process should be followed dependant on that tenancy type. The policy explains what principles will be considered to enhance the chances of an exchange being granted, and on what grounds an exchange may be refused.

2. Scope

This policy applies to tenants who wish to exchange properties, non-Pioneer Group tenants who wish to exchange with Pioneer Group tenants and staff who use the policy to guide decision making in respect of mutual exchange requests.

3. Compliance

3.1 Regulatory Compliance

The policy complies with Regulator of Social Housing's regulatory framework issued in April 2012 where registered providers are required to provide an online mutual exchange service. We direct our tenants to House Exchange portal <https://www.houseexchange.org.uk>

The Policy anticipates the implementation of the Government Direction to the Regulator in June 2023 in relation to the Mutual Exchanges, and also the proposed change to the Tenancy Standard. These are reflected in Section 7 below.

3.2 Legal Compliance

The Housing (Preservation of Right to Buy) Regulations 2003 allow tenants to keep their Right to Buy as they move from one home to another with the same landlord. Assured Tenants without the preserved right to buy cannot acquire this right through a mutual exchange.

The Assured and Assured Short hold Tenancy Agreement gives tenants the right to exchange. Discretion on consent is noted in Section 5 of this policy with intention of increasing the chances for tenants to be able to exchange.

Effect of the Localism Act 2011

The Localism Act 2011 introduced a new mechanism for mutual exchanges for certain types of tenancy. These must be carried out by surrender (of the old tenancy) and re-grant of the new tenancy and not by Deeds of Assignment.

The Localism Act applies to exchanges between (1) an assured or secure tenant, whose tenancy began before 1 April 2012, and either a tenant with (2) a flexible local authority tenancy or a fixed term assured shorthold tenancy for 2 years or more, which began after 1 April 2012 which is not on an affordable rent.

Due to the introduction of fixed term tenancies the Localism Act 2011 provides some safeguards for Secure and Assured tenants ("lifetime" tenants) to protect their security of tenure.

For the Secure or Assured tenant whose tenancy began before 1st April 2012 and who want to exchange with a Local Authority flexible tenant or a fixed term assured shorthold tenant, the "lifetime" tenant's security of tenure is protected. Therefore we must offer the "lifetime"

tenant a new assured periodic tenancy to sign (not an assured shorthold and not a fixed term tenancy).

This protection does not apply where a lifetime tenant exchanges with a fixed term tenant whose property is let on an Affordable Rent.

Assured tenants need to check with us to see if they have a protected Assured Tenancy which was previously a secure tenancy with the Housing Action Trust (HAT) under the Housing Act 1985, when applying to exchange. This will ensure rights are protected

We do not operate fixed term tenancies, but it is possible exchanges may take place with tenants from other landlords who have a fixed term tenancy.

4. Background/Context

Tenants can exchange with a tenant from another landlord as long as consent is given by their landlords, and those who are exchanging have a tenancy type of one of the following:

- Secure Tenancy – by right in law
- Protected Assured Tenancy – by right in law which is protected (this applies to ex HAT tenants who had a secure tenancy and transferred to The Pioneer Group to an assured tenancy with us)
- Assured Tenancy – noted in the tenancy agreement
- Assured Shorthold starter tenancy – noted in the tenancy agreement
- Flexible Tenancy – noted as a new circumstance to exchange in the Localism Act 2011

Tenants who have a Market Rent Tenancy are not able to exchange.

5. Policy Detail

Applying for a Mutual Exchange

5.1 Registration

The Pioneer Group holds a mutual exchange register, which is held at 11 High Street, Castle Vale, Birmingham, B35 7PR. Our tenants will be registered automatically by completing a registration form. The register can be browsed from a paper copy, which will be provided in other formats on request.

5.2 Online Mutual Exchange Services

We will inform tenants who wish to exchange how to register with House Exchange, through their web site <https://www.houseexchange.org.uk/> (or any such successor service) which provides online matching and viewing services regionally and nationally. We may from time to time review the use of this portal and replace it with a similar one to ensure we continue to comply with the regulatory requirements.

5.3 Once an exchange partner has been found

To exchange, tenants must complete an application form, which we will acknowledge within 5 working days. Consent by landlords must be given in writing before an exchange takes place and within 42 days of the completed application being received. Where we fail to provide a decision within this timescale the consent is automatically granted in law.

We will carry out tenancy checks and a property inspection in all cases. Advice will be provided to ensure the exchange can go ahead such as:

- Paying rent and arrears owed
- Complete any repairs exchanging tenants are responsible for
- The reasons we can refuse the exchange to determine if any apply

We will not unreasonably refuse a request for a tenant to complete a Mutual Exchange. A decision will be made based on whether a right to exchange exists in the particular tenancy agreement and also by referring to current governing legislation.

Where the Localism Act applies; we can only refuse an exchange on the grounds set out in Schedule 14 of the Localism Act 2011.

Where the tenancy agreement refers to Schedule 3 Housing Act 1985 applying, then we can only refuse an exchange or grant permission subject to one of the two permitted conditions (see Appendix 1) on the Grounds in Schedule 3.

Where neither applies, then we can refuse on the grounds set out in section 5.4 below.

5.4 Refusing an exchange.

In the absence of any specific clause in a tenant's tenancy agreement relating to the refusal of mutual exchange applications, or where the Localism Act does not apply, we may refuse on the following conditions:

5.4.1 Any of the grounds listed in Schedule 14 of the Localism Act 2001 (listed at Appendix 1);

5.4.2 The applicant does not meet our allocations criteria at the time of the application (although we will waive any requirement for a local connection to Castle Vale to ensure that social mobility is not restricted);

5.4.3 The exchange would place us in breach of any relevant planning agreements or local connection restrictions.

5.4.4 If it means that a perpetrator of domestic abuse, threatening or criminal behaviour is requesting a move into an area near to their victim. The time elapsed since the offence will be considered, however the decision will be based on the likelihood of further harm, whether mental or physical to the victim. In these circumstances, the Tenancy and Neighbourhoods Manager decision may override that of the Victim even if the Victim does not object to the exchange. This is to protect against potential undue influence from the perpetrator.

5.4.5 We believe that money has been passed between parties to enable the exchange.

5.4.6 The property would be overcrowded; or under occupied by more than one bedroom*.

In determining this, the following standard will be applied.

One bedroom will be allowed for each of the following:

- A single person
- A married or cohabiting couple
- An adult aged 16 years or over
- Two children of the same sex and under the age of 16 years old

- Two children under the age of 10 years old regardless of their sex
- Any other child
- A carer – who does not live in the property but is required to stay overnight in order to provide care.

* Where the outgoing and/or incoming tenant is on housing benefit and they are moving to another property where there will be a shortfall of housing benefit e.g. due to the spare room subsidy (“bedroom tax”), we may refuse the exchange. We may allow the exchange if evidence is produced that the prospective tenant can afford to pay the shortfall without assistance. The granting of such consent will not affect our ability to recover possession of the property based upon arrears of rent or other occupancy charges which accrue as a result of any such welfare reform occupancy penalty.

5.4.7 The property is let as accommodation for persons satisfying specific age criteria and if the exchange took place no such person would be living in the property.

5.4.8 We have not received a satisfactory reference or property condition report from the other landlord within the timescales required.

Once the circumstances have been considered and written consent is given by both landlords, the exchange may proceed as soon as the tenants wish to move. The Neighbourhood Officer will organise this with those who are moving.

5.5 Types of Exchanges

This section deals with the types of exchanges we will do and what principles we will consider when we receive an application between:

- Pioneer Group tenants
- Pioneer Group tenants and tenants from another landlord

The Tenancy and Neighbourhoods Manager (or equivalent) will review all applications for mutual exchanges following a recommendation by the Neighbourhood Officer to ensure that the required criteria is satisfied, or that the reasons for refusal are correct.

5.5 (i) Exchanges between Pioneer Group Tenants – exercising our discretion

Exchanges between Pioneer Group tenants will operate under broad principles around affordability and eligibility, with the intention of addressing housing issues and needs that assists tenants to sustain their tenancy.

This policy allows us to exercise our discretion in certain circumstances set out below where we will adopt the following principles:

- Those in rent arrears who have adhered to an arrangement for a minimum of 13 weeks who want to downsize through mutual exchange may be allowed to move. They will not be allowed any bedroom under occupancy, providing that they clear their arrears ahead of the exchange OR the incoming tenant is prepared to accept these arrears as their own (as they are assigned with the tenancy on exchange).
- This will not apply where a suspended possession or other court order is in place, which is a ground for refusal.

All other tenants seeking to exchange but who have rent arrears or owe any other debts with us, will be expected to clear the amount owed. Each application will be treated on a case by case basis and we will consider any exceptional circumstances.

We will inform the tenant the ground on which we refuse an exchange where it applies to them, (either a ground in appendix 1 and 2 or as listed above depending on which applies).

5.5 (ii) Exchanges between Pioneer Group tenants and tenants of another Landlord

The Tenancy and Neighbourhood Manager (or equivalent) will consider all applications ensuring we:

- issue the correct tenancy type
- take legal advice where necessary
- confirm consent or refusal in writing stating the ground for refusal that applies
- do not allow an exchange to contribute to the worsening of housing conditions
- follow the correct process for giving consent or refusal noted below and use the correct grounds for refusing an exchange.

6. Unauthorised Mutual Exchange

If a tenant moves without our knowledge or consent, we will treat the occupants as unauthorised occupants of the property. The tenants will be given an opportunity to move back to their old properties but if they fail to do so, legal action may be taken against them as unauthorised occupants.

If a Mutual Exchange completes, but the tenants do not move as agreed. The tenants will be given an opportunity to move to their new properties but if they fail to do so, legal action may be taken against them as unauthorised occupants.

In both circumstances above, we would work with the other registered providers and/or Local Authority involved and strongly suggest that they take this same approach.

7. Publicity and Support

We will publicise the availability of the Mutual Exchange Service on our website and in tenant-focused publications. We will provide support for all tenants to enable them to access the Mutual Exchange Service and we will always provide information about the implications for tenure, rent and service charges.

8. Equality and Diversity

The policy applies to anyone wishing to exchange and will be applied in an equal and fair way as far as the tenancy agreement and legislation allows. Consent will not be withheld unless a reason for refusal applies.

Mutual Exchanges will be considered as an alternative to address individual circumstances where housing need is most acute and the opportunity of a mutual exchange can meet the needs identified.

In exceptional circumstances, some aspects of the policy may be waived to meet those needs, which will be considered on a case by case basis. We will ensure support is available to any relevant tenants who might otherwise be unable to use them.

9. Appeal

All appeals in respect of decisions made under this policy will be dealt with through the Tenant Appeals Policy. A tenant may choose to seek their own judicial review where they believe the decision made in contrary to a point of law.

10. Data Protection Statement

The Pioneer Group manages all of the data referred to in this policy in accordance with the Data Protection Act 2018. Further information can be found in our privacy statement on our website - <https://pioneergroup.co.uk/privacy-policy>

APPENDIX 1

The Pioneer Group

Exchanges between Pioneer Group Tenants/Other Secure/Assured Tenants

Housing Act (1985)

Schedule 3

Grounds for Refusal

N.B. This is the exact wording of the grounds in Schedule 3. Words in (brackets) are a summary of the ground only and not part of Schedule 3. All references to 'secure' tenancy should be read as 'assured' tenancy for these purposes..

Ground 1 (Existing Possession Order)_

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling house of which he is the secure tenant.

Ground 2 (Pending possession proceedings on grounds 1 - 6)

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 [or 83ZA] (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Ground 2ZA (Pending ASB mandatory ground possession proceedings)

Proceedings have been begun for possession of the dwelling-house, of which the tenant or the proposed assignee is the secure tenant, under section 84A (absolute ground for possession for anti-social behaviour), or there has been served on the tenant or the proposed assignee a notice under section 83ZA (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour) which is still in force.

Ground 2A (Other ASB order pending or in place)

Either—

- (a) a relevant order, a suspended anti-social behaviour possession order or a suspended riot-related possession order is in force, or
- (b) an application is pending before any court for a relevant order, a demotion order, an anti-social behaviour possession order or a riot-related possession order to be made, in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A "relevant order" means—

- an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);
- an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);
- an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);
- an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998;
- an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003 [or section 27 of the Police and Justice Act 2006]
- [an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014;

- an order under section 22 of that Act.]

An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.

A “demotion order” means a demotion order under section 82A of this Act or section 6A of the Housing Act 1988.

A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to this Act or Ground 14ZA in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

Ground 2B (closure order or notice)

The dwelling-house is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 3 (Substantially larger than required)

The accommodation afforded by the dwelling house is substantially more extensive than is reasonably required by the proposed assignee.

Ground 4 (Extent accommodation not suitable)

The extent of the accommodation afforded by the dwelling house is not reasonably suitable to the needs of the proposed assignee and his family.

Ground 5 (Part of landlord property or cemetery)

The dwelling house

- a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and
- b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being the employment of the landlord, a local authority, a development corporation, a housing action trust, a Mayoral Development corporation, an urban development corporation or the governors of an aided school

Ground 6 (Conflict with landlord’s charitable objects)

The landlord is a charity and the proposed assignee’s occupation of the dwelling house would conflict with the objects of the charity.

Ground 7 (Adapted property)

The dwelling house has features which are substantially different from those of ordinary dwelling houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling house and if the assignment were made there would no longer be such a person residing in the dwelling house.

Ground 8 (Specialist accommodation)

The landlord is a housing association or housing trust which lets dwelling houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling house.

Ground 9 (Group of special needs housing)

The dwelling house is one of a group of dwelling houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling house.

Ground 10 (Not a member of housing association)

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.

Reference to a management agreement includes a section 247 or 249 arrangement, as defined by section 250A(6) of the Housing and Regeneration Act 2008.

Conditional consent under s91 may only be given where

- rent lawfully due from the tenant has not been paid or
- an obligation of the tenancy has been broken or not performed,

The consent required may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.

APPENDIX 2

The Pioneer Group

Exchanges Governed by Localism Act 2011

Grounds for Refusal set out in Schedule 14 Localism Act 2011

N.B. This is the exact wording of the grounds in Schedule 14. Words in (brackets) are a summary of the ground only and not part of Schedule 14.

Ground 1 (Arrears)

This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2 (Breach Tenancy)

This ground is that an obligation under one of the existing tenancies has been broken or not performed.

Ground 3 (Existing Possession Order)_

This ground is that any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.

Ground 4 (Secure tenants – possession grounds 1-6)

(Note: this ground will not apply to Pioneer Group as it has no secure tenants.)

Ground 5 (Pending ASB possession proceedings – assured tenants)

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that:-
 - a. proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
 - b. possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)

- (3) The second condition is that:-

- a. a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
- b. the notice specifies one or more of those grounds and is still in force.

Ground 6 (Other ASB order pending or in place)

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that a relevant order or suspended Ground 2 or 14 possession order is in force in respect of a relevant tenant or a person residing with a relevant tenant.
- (3) The second condition is that an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made in respect of a relevant tenant or a person residing with a relevant tenant.
- (4) In this paragraph:-
 - a “relevant order” means—
 - a. an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
 - b. an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
 - c. an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),
 - d. an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998, or
 - e. an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003;
 - a “demotion order” means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988;
 - a “Ground 2 or 14 possession order” means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

Ground 7 (Substantially larger than required)

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

Ground 8 (Extent accommodation not suitable)

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of:-

- (1) the existing tenant or tenants to whom the tenancy is proposed to be granted, and
- (2) the family of that tenant or those tenants.

Ground 9 (Part of landlord property or cemetery)

- (1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.
- (2) The first condition is that the dwelling-house:-
 - a. forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord:-
 - i. is held mainly for purposes other than housing purposes, and
 - ii. consists mainly of accommodation other than housing accommodation, or
 - b. is situated in a cemetery.
- (3) The second condition is that the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of:-
 - a. the landlord under the tenancy,
 - b. a local authority,
 - c. a development corporation,
 - d. a housing action trust,
 - e. an urban development corporation, or
 - f. the governors of an aided school.

Ground 10 (Conflict with landlord's charitable objects)

This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

Ground 11 (Adapted property)

- (1). This ground is that both of the following conditions are met.

- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that:-
 - a. are substantially different from those of ordinary dwelling-houses, and
 - b. are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.
- (3) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

Ground 12 (Specialist accommodation)

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to meet their need for housing.
- (3) The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

Ground 13 (Group of special needs housing)

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs.
- (3) The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.
- (4) The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

Ground 14 (Not a member of housing association)

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that:-
 - a. the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and

- b. at least half the members of the association are tenants of dwelling-houses subject to the agreement.
- (3) The second condition is that at least half the tenants of the dwelling-houses are members of the association.
- (4) The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.
- (5) References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A(6) of the Housing and Regeneration Act 2008.