

# **Mutual Exchanges Policy**



## **1.0 Introduction**

1.1 CHS Group is committed to offering mobility opportunities to its tenants who wish to move. Mutual exchanges provide them with an opportunity to 'swap' their home with other CHS tenants, or with tenants from other Registered Providers and local authorities. This policy applies to tenancies in CHS's General Needs housing service only.

1.2 Mutual exchanges are a contractual right for Assured tenants and a statutory right for Secure tenants. Mutual exchange is particularly useful to those who have low priority on Choice Based Lettings Schemes. The purpose of this policy is to provide clear guidance to tenants and staff when processing mutual exchanges, so that they take place lawfully and without unnecessary delay.

CHS Group aims to provide excellent customer service in respect of mutual exchanges. To achieve this, we will:

- Subscribe to and promote HomeSwapper (the web-based mutual exchange matching service) so that tenants may easily find exchange partners;
- Make it easy for tenants to apply for an exchange by providing clear information and a simple application process.
- Inspect properties for repairs that are the tenant's responsibility within two weeks of their application;
- Keep tenants and other landlords informed of progress;
- Give a decision on an exchange within 6 weeks of their written application; and
- Provide a summary of the exchange process in the Customer Handbook and on the CHS Group website.

## **2.0 Right to Exchange**

2.1 For CHS Assured Tenants the Right to Exchange is set out in Starter Tenancy Agreements as follows:

*The Tenant has the right to exchange this Tenancy by assignment with that of another assured periodic or secure tenant of a registered housing association or a local authority subject to the prior written consent of the Society, which shall only be withheld on one or more of the grounds specified at Schedule 3 to the Housing Act 1985 as may be amended from time to time, and as though that Act applied to this Agreement, or if the proposed exchange partner does not have a local connection where such a connection is required in order for the Society to fulfil any legal and/or other contractual obligations. The Tenant does not have the right to exchange during the starter period of this Tenancy.*

2.2 For Secure tenants (those holding a tenancy with CHS since before 1<sup>st</sup> January 1989) the right to exchange is provided by section 92 of the Housing Act 1985.

2.3 Most tenancy exchanges happen through what is known as an assignment – the tenancies are swapped and each tenant steps into the shoes of the other. There are however circumstances introduced by the Localism Act 2011 where each tenancy is surrendered and new tenancies granted. This is described in more detail in paragraphs 7.2 and 7.3.

2.4 There are certain grounds on which CHS would withhold consent for a mutual exchange and CHS will apply them equally to both Secure and Assured tenants. These are set out in Schedule 3 of the Housing Act 1985 and include:

- 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 tenant.
- Proceedings have begun for possession of the dwelling-house of which the tenant or the proposed assignee is the 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 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.
- The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.
- The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his/her family.
- The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.
- 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.
- 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. (This would include breach of s.106 Planning Agreements in relation to local connection, see paragraph 6.0)

The grounds listed above are in the legal format set out in the Housing Act 1985 and can be more simply described as:

- One of the tenants is involved in eviction or legal action by the landlord.
- The home one of the tenants wants to move to is much larger than required.
- The home one of the tenants wants to move to is too small for their household, and would be overcrowded.
- The occupation of the proposed new tenant would conflict with CHS's charitable objects.
- The home is adapted for a person with special needs and nobody in the new tenant's household has such needs.

2.5 The Housing Act 1985 provides that any landlord involved must give a decision in writing on whether a mutual exchange may be carried out within 42 days of receiving the application. CHS applies the same timescale for any request for a mutual exchange.

2.6 Schedule 14 of the Localism Act 2011 deals with the criteria upon which CHS may refuse to allow an exchange by surrender and re-grant. Many of the reasons for refusal mirror those in the Housing Act 1985. The Localism Act 2011

also provides that any landlord involved must give a decision in writing on whether a mutual exchange by surrender and re-grant may be carried out within 42 days of receiving the application.

- 2.7 Where there are rent arrears or some other breach of tenancy obligations CHS may approve the application subject to a condition requiring the tenant to pay the outstanding rent or remedy the breach of tenancy (e.g. damage / unauthorised alterations) being corrected prior to the exchange of tenancy taking place. A different agreement may be made by CHS to allow payment of rent arrears over an extended period after an exchange where they have arisen only as a result of the Housing Benefit Under-occupation deduction and the customer is moving to smaller accommodation to avoid this deduction being made in future.

### **3.0 Property Size**

- 3.1 On receiving an application to carry out a mutual exchange CHS will assess whether the size of the property would be suitable for the size of the household.
- 3.2 CHS will consider the property to be 'substantially more extensive than is reasonably required' if the household seeking to exchange into CHS property would be considered to be under-occupying the property under housing benefit rules by more than one bedroom (whether or not they are in receipt of housing benefit).
- 3.3 Where under-occupancy (under the housing benefit definition) by one bedroom would occur as a result of the exchange, CHS will advise the incoming tenant of the implication of such a move if they claim housing benefit now or in future, and that they must maintain any rent payments as a result. CHS will confirm the amount that could be deducted from any housing benefit claim based on the current rent charge; and where the under-occupation penalty is timebound (e.g. will no longer apply once children reach a certain age) CHS will advise on the length of time the deduction would continue.
- 3.4 Where another landlord is involved it may have its own policy on whether to allow any degree of under-occupation and must make its own decision on whether it will allow the exchange to proceed.
- 3.5 CHS will not agree the exchange if either tenant would become overcrowded as a result, using the number of recorded bedspaces as the guide.

### **4.0 Property Condition**

- 4.1 The standard of the property required on completion of the exchange is the same as that set out in the CHS Re-let Standard. An exchangee moving out of CHS property will be informed in writing exactly what they need to do to meet the Re-let Standard before the exchange proceeds, once CHS has carried out a full property inspection.
- 4.2 If the incoming customer wishes to take on responsibility for some minor items that do not meet the standard they must sign an explicit list of these items to accept responsibility prior to assignment of the tenancy. CHS will make it clear in writing that by accepting responsibility the customer will be required to meet the Re-let Standard when they give up the tenancy at a later date.

The incoming customer cannot take responsibility for the following:

- significant damage;
- sub-standard alterations;
- unauthorised structural work;
- electrical work (unless a certificate of electrical compliance has been provided by the outgoing customer, in which case the incoming customer will take responsibility for future maintenance);
- anything that is potentially a safety risk.

In these circumstances the outgoing customer would be required to fully resolve these issues before the exchange is authorised by CHS.

- 4.3 Where there are unauthorised alterations which are deemed safe and suitable, retrospective permission may be granted by CHS provided that the incoming customer accepts responsibility for these alterations, including on-going maintenance. CHS may require as a condition of the exchange that these alterations are removed and the property reinstated to its required standard at some time in the future.

## **5.0 Gas and electrical safety**

- 5.1 CHS has an obligation to carry out a gas safety check when a mutual exchange takes place. CHS will also carry out an electrical safety check at the same time. The incoming customer is obliged to provide access to their new home for contractors to carry out both a gas and electrical safety check on the same day the mutual exchange is formally completed.

## **6.0 Section 106 Planning Agreements**

- 6.1 Section 106 Agreements are made under Town and Country planning legislation, and make planning permission subject to certain conditions. These may restrict lettings to people with local connections with a particular village and its surrounding area. CHS must comply with Section 106 Agreements where relevant, and will have to refuse applications where the local connection requirements of the Section 106 Agreement would not be met. Where this causes difficulty for a customer who needs to move, CHS will ask the relevant local authority to consider giving higher priority to a Homelink application.

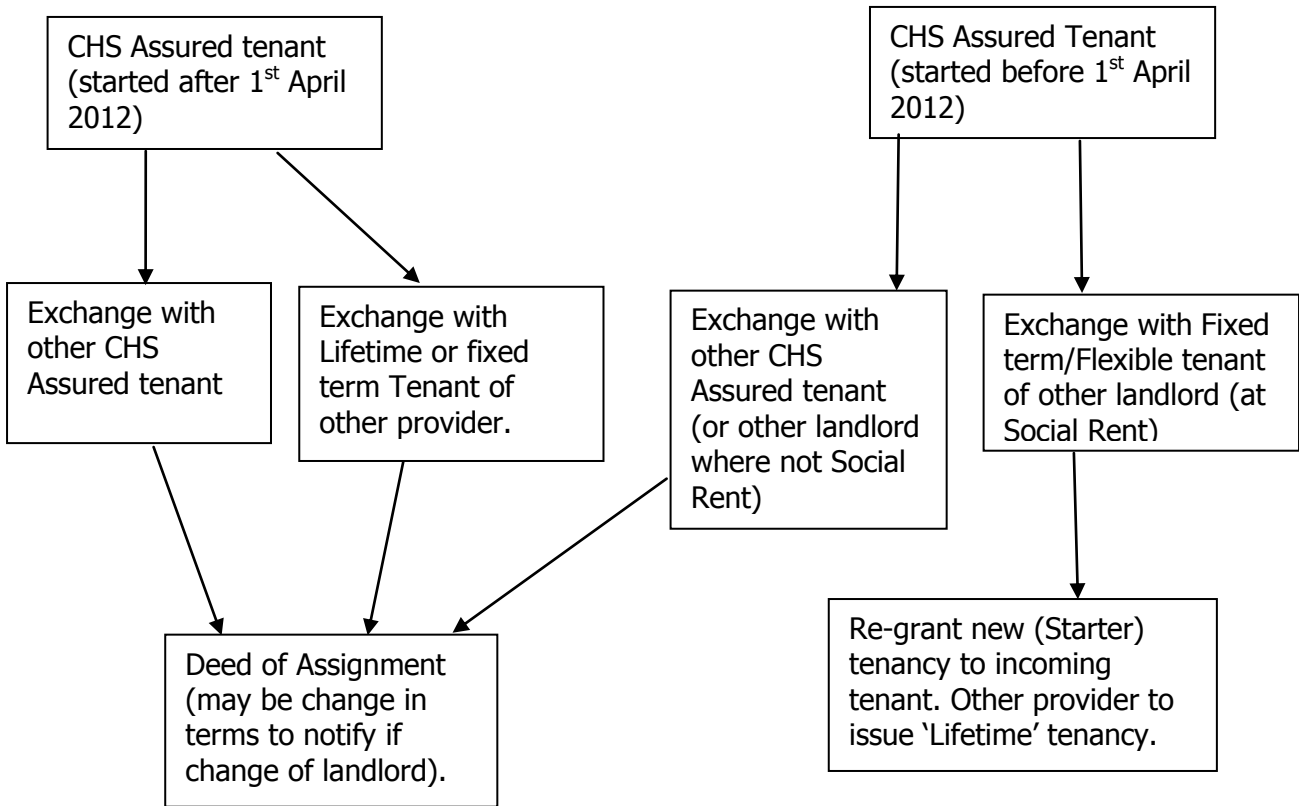
## **7.0 The Legal Process**

- 7.1 The legal requirements for completing a mutual exchange vary according to the nature of the tenancies being exchanged. Since the Localism Act 2011 these variations are greater and it is very important to inform customers of the different implications of the exchange in relation to rent levels, tenancy length and security, rights of succession, right to acquire etc. Exchanges are not permitted where tenants have yet to successfully complete the Starter period, or any extended Starter period, under their tenancy agreements.
- 7.2 Section 158 of the Localism Act 2011 provides that pre 1<sup>st</sup> April 2012 secure and assured tenants will usually keep their security regardless of exchange. Where both tenants are pre 1<sup>st</sup> April 2012 secure and assured tenants the exchange may still be undertaken by assignment. However in circumstances where a fully secure or fully assured tenant wishes to exchange with a fixed term tenant at a

social rent, the exchange will be carried out by surrender and re-grant of the tenancy, not by assignment. This will allow the assured or secure tenant to be granted a new assured or secure tenancy.

- 7.3 The protection provided to pre 1<sup>st</sup> April 2012 tenants does not apply where secure or assured tenants choose to exchange with a fixed term tenant who does not occupy at a social rent, so that pre or post 1<sup>st</sup> April 2012 tenants lose their existing security of tenure (and social rent status) if exchanging with a flexible or fixed term assured shorthold tenant (unless that tenant has a social rent). In these cases exchange continues to be achieved by deed of assignment.
- 7.4 While existing tenants with a tenancy starting before 1<sup>st</sup> April 2012 may retain the security of tenure enjoyed under their original tenancy before exchange by surrender and re-grant, they will only be able to retain this security once because should they ever exchange again they will fall outside the requirements of s158 in that the tenancy would have commenced after 1 April 2012. Further, existing assured or secure tenants whose exchange is achieved by assignment because they have chosen to exchange with another secure or assured tenant should also be made aware that if the tenancy which is assigned to them commenced after 1<sup>st</sup> April 2012, they will not enjoy the protection offered by s158 of the Localism Act should they choose to exchange again.
- 7.5 Where the original party to a joint tenancy is no longer resident and the remaining joint tenant wishes to exchange, CHS will advise them to resolve the issue by completing a 'Joint to Sole' assignment of the tenancy before proceeding with the exchange. If the former occupier cannot be contacted to complete the assignment, CHS will allow the remaining tenant to serve a Notice to Quit (which must be entirely valid) to formally end the joint tenancy, in which case a new tenancy would be granted to the incoming exchangee.
- 7.6 The flowchart below sets out the main circumstances that lead to either an assignment or a surrender and re-grant of a tenancy on mutual exchange.

## MUTUAL EXCHANGE TENURE FLOWCHART



### Information to provide:

- New landlord may charge 'Affordable' rent, landlord to confirm amount and annual review mechanism.
- Fixed term tenancy – confirm rent review mechanism as set out in tenancy agreement.
- Any change in Right to Acquire, Succession rights.
- Any future exchanges will not retain s.158 protection even where original tenancy pre-2012.

### Secure tenancies :

A Secure tenant exchanging within CHS – completed by Assignment and the Secure tenant acquires the other tenant's tenure.

A Secure tenant of CHS exchanging to another landlord to have implications explained (loss of rent registration, will acquire the other tenant's tenure).



## **Appendix**

### **National Housing Federation Tenure briefing June 2012:**

Although there is, as discussed below, a new mechanism for mutual exchanges created by s.158 of the Localism Act 2011, it must be stressed that the new arrangement is so much hedged about by conditions that it is likely to apply only in a very small minority of exchanges.

The right created by section 158 will apply in some (but not all) cases where a 'lifetime' tenant wishes to exchange with a fixed-term tenant. To avoid the loss of the 'lifetime' tenancy that this would involve if the exchange were effected by mutual assignment, this new right to exchange is achieved by issuing new tenancies: the 'lifetime' tenant gets a new 'lifetime;' tenancy of the new dwelling (secure periodic or full assured depending on the type of tenancy the receiving landlord can grant). The other tenant will also have to receive a new tenancy, but there is no particular provision regarding its status.

For s 158 to apply, however, all the following conditions must be met.

- 1) One of the tenancies must be 'lifetime' (i.e. full assured periodic or secure periodic) and the other must be a flexible or assured shorthold tenancy with a fixed term of at least two years.
- 2) The 'lifetime' tenant must have held that status since before 1<sup>st</sup> April 2012.
- 3) The 'non-lifetime' tenancy must be at a social rent (i.e. not Affordable, Intermediate etc)
- 4) The exchange must not fall within the grounds on which a landlord may refuse an exchange under s 158. This list is set out in Schedule 14 to the Localism Act 2011, and is closely based on the grounds on which consent may be refused to a mutual exchange between secure tenants.

The second of these conditions will be of little importance initially because virtually all 'lifetime' tenants will comply with it, but over time a higher and higher proportion of 'lifetime' tenancies will have been granted since April 2012. The protection granted by s 158 is thus transitional in nature; it will gradually (albeit very slowly) pass out of the system like fair rent entitlement or the preserved right to buy.

Any mutual exchange fulfilling the requirements of s 158 must be effected by the grant of fresh tenancies. Any other mutual exchange (and this will be the great majority) should be effected by reciprocal assignment of tenancy in the usual way. Where an exchange takes place by reciprocal assignment, the principle remains, as it has always been, that each tenant steps into the shoes of the other and this applies to all features of the tenancy, including its statutory type (secure or assured), its periodic or fixed term nature, and its rent level (social or affordable).

In all cases of mutual exchange, whatever the legal mechanism, landlords should ensure that the tenants are aware of the implications, including (where applicable) any change in secure or assured status, any change in rent level between social or affordable rent, and any gain or loss of fair rent entitlement or the right to buy, preserved right to buy, or right to acquire. As occupancy terms and rent levels become more varied, it will be even more important that tenants are fully informed.