



**Orkney Islands Council:
Housing Services**

Mutual Exchange Procedures

September 2018

Version Control

Document Reference.	Rev.	Issue date.	Reason for issue.	Reviewer.
HD POL 004.	1.	30 June 2004.	New procedure.	Project Officer.
HD POL 004.	2.	15 July 2009.	Reviewed.	Principal Housing Officer.
HD POL 004.	3.	28 February 2012.	Reviewed after restructure.	Senior Housing Officer – Housing Management.
HD POL 004.	4.	12 July 2012.	Minor review.	Head of Housing and Homelessness.
HD POL 004.	5.	25 September 2018.	Reviewed SSHC, HAS 2014, Prevent, Restructure, etc.	Head of Housing, Homelessness and Schoolcare Accommodation Services.

Contents

1.1. Policy Statement	4
1.2. Exchanges: Legal Provisions	4
1.3. Medical Factors	6
1.4. Particular Needs.....	6
1.5. Effects of the Exchange on the Tenant (and Tenant's Family).....	7
2.1. Application Procedures	7
Document 1: Letter to Housing Co-operative	9
Document 2: Exchange of Tenancy Standard Application Form	10
Document 3: Memo about Changes to Tenancy	14
Document 4: Acceptance of Mutual Exchange Application	15
Document 5: Refusal of Mutual Exchange Application.....	16

1.1. Policy Statement

Orkney Islands Council ensures that mutual exchange applications are processed in accordance with legal provisions and contractual terms contained within the tenancy agreement. We will also ensure the promotion of equalities by publishing mutual exchange information and documentation in different formats such as in large print, in braille or on compact disc. We will also produce documentation in appropriate languages as required.

This document has been produced by Housing Services and is intended to ensure that we:

- “Act in a manner which encourages equal opportunities and in particular the observance of the requirements of the law for the time being related to equal opportunities” (Housing (Scotland) Act 2010, Section 39).

In particular we strive to comply with the Scottish Social Housing Charter’s Standard on Equalities in that:

- Every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

This outcome describes what social landlords, by complying with equalities legislation, should achieve for all tenants and other customers regardless of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, or sexual orientation. It includes landlords’ responsibility for finding ways of understanding the rights and needs of different customers and delivering services that recognise and meet these.

We will also ensure the promotion of equal opportunities by publishing information on mutual exchanges in different languages, as required, and in other formats such as in large print, tape and braille.

In reviewing this policy we have taken into account the Counter Terrorism Act 2015 and related guidance and procedures. No specific measures are required in respect of our mutual exchanges policy.

1.2. Exchanges: Legal Provisions

Legal provisions exist that govern exchange requests by Scottish secure tenants. (Housing (Scotland) Act 2001, section 33(1)). In order to fulfil these legal obligations, it is necessary to implement detailed procedures to offer tenants quality services that meet their needs and preferences as far as possible.

Request for a Mutual Exchange

Scottish secure tenants have a legal right to exchange their tenancy with other Scottish secure tenants. This applies also where tenants are tenants of different landlords. This right of exchange is dependent on tenants first obtaining their

landlord(s) written consent. Consent may be refused only if there are reasonable grounds for refusal.

Tenants of public sector landlords who are not currently Scottish secure tenants may also apply to exchange houses with our tenants. Examples of such tenants would be tenants of English local authorities and English housing associations. Applications to exchange will be considered in line with the provisions that apply to exchanges involving Scottish secure tenants. Applications will only be refused where it is deemed to be reasonable to do so. Although non-Scottish secure tenants do not have a statutory right of appeal, we will let tenants appeal through our internal appeals system if their exchange applications are refused.

Grounds for Refusing Consent

There is no definitive list of grounds for refusing consent. Each case requires to be assessed on its merits. Specific reasons mentioned in the Act where it is deemed reasonable to refuse consent are now detailed followed by commentary on interpretation.

- A Notice of Proceedings has been served that specifies any of grounds 1 to 7 (Schedule 2).
- An order for recovery has been made against the tenant.
- The house occupied by the tenant has been provided by the landlord for employment purposes.
- The house has been designed/adapted for occupation by a person whose special needs require such accommodation and, following the exchange, no person with these special needs would occupy the house.
- The accommodation of the other house is either substantially larger than that required by the tenant and her/his family, or it is not suitable to the needs of the tenant and the tenant's family.
- The exchange would result in statutory overcrowding.
- Where the tenant is a tenant of a co-operative housing association, the tenant must also be a member of the housing association before consent is granted.

Commentary on Reasons for Refusal

It is stressed that there is no legal definition of reasonableness and each case must be assessed on its particular merits. Further, the above list is not definitive and other reasons may exist for refusing exchange applications, for instance, where a legal order such as an anti-social behaviour order has been taken against one of the tenants.

Notice of Proceedings in Force

It is clearly reasonable to refuse consent where we have served a Notice of Proceedings and are considering raising court action for recovery of possession where the tenant has breached the terms of let. However, staff should check the details of each case. A Notice may be in force, for example, for a breach that has been remedied, such as repayment of rent outstanding. In such cases, the Notice could be withdrawn and the exchange request could then proceed accordingly.

Order for Recovery of Possession

Where we have been granted an order for recovery of possession, no exchange request should be granted as we will be seeking to evict the tenant(s) by (or close to) the date specified in the extract decree.

Tied Accommodation

Where the tenant occupies accommodation as part of her/his contract of employment, exchange requests should be refused as this would have adverse effects upon the tenant's ability to fulfil work duties. One example of this situation would be wardens who reside within sheltered housing in order to carry out their duties more effectively.

Housing Designed/Adapted for Person with Particular Needs

This provision is intended to ensure that accommodation provided for people with particular needs continues to be reserved for this purpose. It is important to note that the Act does not specify that it must be the tenant who has particular needs. For example, the house could have been adapted for a member of the tenant's family with particular needs such as a wheelchair user. When considering requests, therefore, it is necessary to check if any members of the incoming tenant's household may have the particular needs requiring such accommodation.

Substantially Larger Accommodation

The legislation allows us to refuse applications where, as a result of the exchange, the accommodation being taken up would be substantially larger than that required by the tenant and the tenant's family. There is no definition of 'substantially larger' and each case must be assessed on its merits. For example, a single person who wishes to exchange into a 4 bedroom house would probably satisfy this criterion.

Accommodation Unsuitable to Tenant's (and Tenant's Family) Needs

This is not defined in statute and staff must assess each case on its merits. In carrying out this assessment, objective criteria should be applied as follows:

1.3. Medical Factors

House not suitable because of its location, for example, a member of the incoming tenant's household has serious medical problems and is unable to manage stairs.

1.4. Particular Needs

House not suitable because of its location and the person's particular needs, for instance, a wheelchair user unable to negotiate stairs. Remember, however, that landlords are legally required to make reasonable adjustments to premises to ensure that service provision does not discriminate on grounds of disability. Thus, in the case of a ground floor flat, provision of a ramp may enable the exchange to proceed. Before refusing applications on these grounds, therefore, staff must explore what

steps could be taken to make the accommodation suitable to the needs of the tenant and the tenant's family.

1.5. Effects of the Exchange on the Tenant (and Tenant's Family)

The tenant may require housing near a school for her/his children and this will not apply if the exchange proceeds. Implications should be discussed with the tenant prior to the exchange.

Overcrowding

The statutory overcrowding standard is laid down by the Housing (Scotland) Act 1987, sections 135-137. When applications to exchange are received, staff should assess household size to evaluate whether it fails to meet the legal standard. This standard has already been detailed in the assignation procedures.

Tenants of Co-operative Housing Associations

Where an exchange application is received from a tenant of a Co-operative Housing Association, confirmation from that organisation must be sought to confirm that the tenant is also a member of the Association (Document 1). Staff should also telephone the Association to obtain confirmation where this is necessary to expedite the application within the statutory time-scale.

2.1. Application Procedures

The Housing Management Section will deal with all requests for mutual exchange of tenancy.

Prior to an exchange being approved, tenants must receive the landlord's written consent. In the case of Orkney Islands Council tenants, both tenants should apply to exchange using the standard application form (Document 2).

After full consideration of the application, the Housing Officer (Housing Management) may either consent or refuse consent where it is reasonable to do so. The date the application is received should be noted in the mail book as failure to respond in writing within one month means that consent is deemed to have been granted.

In the case of a Council tenant seeking an exchange with a Scottish secure tenant of another landlord, the tenant will require to make written application to that landlord. This application will require to give details of the proposed exchange, including details of the other house such as size and type of house.

Where we grant permission, the existing tenancies are terminated and tenants will be required to sign a new tenancy agreement. The Housing Officer (Housing Management) should advise tenants of this in writing (Document 4). Other sections should be notified of the tenancy change when this is finalised (Document 3). It should be made clear to tenants at the time of both application and sign up that this process ends their current tenancy and the move must now go ahead.

Tenants may also be entitled to compensation on termination of tenancy if they have carried out certain types of improvements for which permission has been granted. Both tenants should be notified in the case of an application being successful (Document 4). Separate procedures exist in respect of Compensation for Improvements.

Where we refuse permission, reasons for the refusal must be notified in writing within one month of receipt of application (Document 5). Tenants must be advised of their appeal rights to the sheriff court in cases of refusal. This is in accordance with good practice by ensuring that tenants are encouraged to use appeal mechanisms available and ensure a right to a fair hearing. This is important under the Human Rights Act 1998, article 6 that provides for individuals with the right to a fair hearing.

Monitoring

In order to comply with its service commitments, it is important that we monitor the effects of exchange procedures. Areas to be monitored are as follows:

- Head of Housing, Homelessness and Schoolcare Accommodation Services / Service Manager (Housing and Homelessness) to audit 10% of exchanges to ensure procedures are being complied with.
- Exchanges to be monitored by number, area, type of property and size of property.
- Numbers of applications accepted and refused and by percentage (internal exchanges and exchanges involving other landlords).
- Numbers of disputes and outcomes, including monitoring of households by equalities group.

Document 1: Letter to Housing Co-operative

Education, Leisure and Housing.

Executive Director: James Wylie.

Council Offices, Kirkwall, Orkney, KW15 1NY.

Tel: 01856873535.

Website: www.orkney.gov.uk.

Fax: 01856870302.

Email: education.leisure@orkney.gov.uk



Our Ref:

Your Ref:

Date.

Address.

Dear (Housing Manager),

Re: Tenant's Name and Address.

(Tenant's name) has applied to exchange her/his tenancy with (name of tenant), who is a tenant of Orkney Islands Council. I should be grateful if you could complete and return the under-noted statement of confirmation.

Please contact me on 873535 if you have any queries regarding this matter.

Yours faithfully,

Housing Officer (Housing Management).

(Name of organisation) confirms that (tenant's name) of (tenant's address) is/is not* a member of the (name of organisation).

Signature:	
Job Designation:	
Date:	

*Delete as appropriate.

Document 2: Exchange of Tenancy Standard Application Form

1. Name(s) of person applying to exchange:

--

2. Property Address:

--

3. Property details:

Type of house.	
Size of house.	
Adaptations.	
Type of heating.	

4. Date tenancy started:

--

5. Details of other people living in the house:

Name.	Date of Birth.	Relationship to Applicant.

6. Is this house the matrimonial home?

Yes.	
No.	

If yes, has your spouse/civil partner consented to this transaction?

Yes.	
No.	

If no, the spouse's (or civil partner's) consent will be required to protect the spouse's etc occupancy rights. Discuss appropriate methods of contacting the spouse to seek consent to the transaction.

7. Name(s) of other person(s) applying to exchange:

--

8. Property address and landlord:

--

3. Property details:

Type of house.	
Size of house.	
Adaptations.	
Type of heating.	

4. Date tenancy started:

--

5. Details of other people moving with the tenant:

Name.	Date of Birth.	Relationship to Tenant.

6. Is this house the matrimonial home?

Yes.	
No.	

If yes, has your spouse/civil partner consented to this transaction?

Yes.	
No.	

If no, the spouse's consent will be required to protect the spouse's (or civil partner's) occupancy rights. Discuss appropriate methods of contacting the spouse to seek consent to the transaction.

Applicant Signature:	Date:
Applicant Signature:	Date:
Housing Officer Signature:	Date:

Standard Staff Checklist (to accompany the application form)

1. Is a Notice of Proceedings in force?

Yes.	
No.	

If yes, is it reasonable to refuse a sublet request?

Yes.	
No.	

If yes, specify reasons why:

--

2. Is an order for recovery of possession in force?

Yes.	
No.	

If yes, refuse request to sublet.

3. Is house provided by the Council for the tenant's employment?

Yes.	
No.	

If yes, refuse request to exchange.

4. Is house designed/adapted for occupation by person whose special needs require such accommodation?

Yes.	
No.	

If yes, refuse exchange unless person exchanging has special needs for which the house has been designed or adapted.

5. Is the house substantially larger than that required by the tenant and the tenant's family?

Yes.	
No.	

If yes, refuse exchange.

6. Is the accommodation unsuited to the tenant's needs, or the needs of the tenant's family?

Yes.	
No.	

If yes, refuse exchange.

7. Would consenting to the request result in statutory overcrowding?

Yes.	
No.	

8. If there is another landlord involved, check if it is a fully mutual co-operative association. In such cases, the tenant must be both a tenant and a member of the co-operative when the exchange takes place.

Date application approved:	
Date application refused:	

If application is refused, has applicant been advised of appeal rights?

Yes.	
No.	

Housing Officer Signature:	Date:
-----------------------------------	--------------

Document 3: Memo about Changes to Tenancy

Education, Leisure and Housing.

Executive Director: James Wylie.

Council Offices, Kirkwall, Orkney, KW15 1NY.

Tel: 01856873535.

Website: www.orkney.gov.uk.

Fax: 01856870302.

Email: education.leisure@orkney.gov.uk



Memorandum.

Re: Mutual Exchange at (property address(es)).

Please note that (tenant's name) has exchanged her/his tenancy at (address) from (date).

Please contact me on 873535 should you have any queries regarding this matter.

Document 4: Acceptance of Mutual Exchange Application

Education, Leisure and Housing.

Executive Director: James Wylie.

Council Offices, Kirkwall, Orkney, KW15 1NY.

Tel: 01856873535.

Website: www.orkney.gov.uk.

Fax: 01856870302.

Email: education.leisure@orkney.gov.uk



Our Ref:

Your Ref:

Date.

Address.

Dear (Name of tenant),

Re: Request to Exchange Scottish Secure Tenancy.

Further to your application to exchange your tenancy with (name of other tenant) at (address of property), I am pleased to advise you that your application has been successful.

Kindly contact me to arrange a meeting to terminate your existing tenancy and make arrangements to sign a new tenancy agreement.

If you have carried out certain types of improvements to your house for which you received formal written consent from the Council, you may also be entitled to compensation. Please advise me if this may apply in your case.

I look forward to your reply.

Yours sincerely,

Housing Officer (Housing Management).

Document 5: Refusal of Mutual Exchange Application

Education, Leisure and Housing.

Executive Director: James Wylie.

Council Offices, Kirkwall, Orkney, KW15 1NY.

Tel: 01856873535.

Website: www.orkney.gov.uk.

Fax: 01856870302.

Email: education.leisure@orkney.gov.uk



Our Ref:

Your Ref:

Date.

Address.

Dear (Name of tenant),

Re: Request to Exchange Scottish Secure Tenancy.

Further to your request to exchange your tenancy with (name of other tenant) at (address of property), I write to advise you that your application has been refused for the following reason(s):

- 1.
- 2.
- 3.

Please note that you have a legal right to appeal the decision through the Sheriff Court. If you wish to appeal, contact your solicitor or local advice centre for advice, for example, the Citizens' Advice Bureau. Alternatively, we will be willing to provide you with further details regarding how to appeal.

Yours sincerely,

Housing Officer (Housing Management).