



MUTUAL EXCHANGE POLICY

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MUTUAL EXCHANGE POLICY

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1.0 Statement

- 1.1 As a Social Landlord, Radcliffe Housing Society (RHS) recognises that a mutual exchange is a useful way of satisfying needs and aspirations. It is important that exchanges are conducted fairly and in line with regulation and legislation. This policy should be considered in conjunction with our Tenancy Policy.
- 1.2 Legislation gives secure tenants the right to exchange with secure or assured tenants of another housing association, Local Authority, or trust. We extend this right to assured tenants and fixed term tenants in their tenancy agreements, under the same terms as secure tenants.
- 1.3 Tenants must seek consent from RHS before an exchange can take place. RHS may withhold consent until a condition is satisfied may refuse the exchange where permitted by law.
- 1.4 There will be no cost to RHS due to any exchange.
- 1.5 If there is any variance between this Policy and individual tenancy agreements, we'll follow the tenancy agreement.

2.0 Aims

Radcliffe aims to promote mutual exchange through a system of regular tenancy reviews.

- A mutual exchange is when residents in social housing obtain written consent from their landlord to swap homes with other social housing residents.
- Mutual exchanges can take place between two or more properties and can be between the same or different landlords.
- Applicants take on the responsibilities and any issues from the resident they're exchanging with.

3.0 Objectives

- To provide tenants with the support and information needed to complete applications for mutual exchange.
- To provide clear advice on the implications of mutual exchange.

4.0 Who has the right to a mutual exchange?

- 4.1 If you have a secure tenancy, you have a statutory right to a mutual exchange.
- 4.2 If you have one of the following agreements, you have a contractual right to a mutual exchange if it's written into the terms of your tenancy agreement:
- Assured tenancy
 - Fixed term assured shorthold tenancy, with an initial fixed term of more than two years.
- 4.3 If an applicant occupies any of the following forms of agreement, you do not have the right to exchange:
- Starter tenancy, including extension periods

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- Fixed term assured shorthold tenancy where the initial fixed term was less than two years
- Periodic assured shorthold tenancy
- Demoted tenancy
- Market rent tenancy
- Temporary (decant) tenancy (although tenants may have the right to exchange at their permanent address)
- Licence agreement

4.4 If you're employed or there is a close connection to an RHS employee, consent will be needed from our Chief Executive, in line with our staff management and relevant HR policies.

5.0 Conducting a Mutual Exchange

5.1 Tenants wishing to swap homes are advised to register with www.homeswapper.co.uk to find someone willing to agree a mutual exchange.

5.2 You are responsible for finding someone to exchange with. Both exchange partners must obtain our consent to the exchange. Once they have found another tenant willing to exchange, both applicants will need to complete a Mutual Exchange Application Form, in order to request consent (Appendix 1).

5.3 All parties will be made aware that any party can withdraw from a potential mutual exchange at any stage with no recourse to the other party. However, once parties have signed the assignment or the new tenancy agreement, then the mutual exchange must proceed.

5.4 If a mutual exchange takes place without our written consent, the exchange will be unlawful. All parties must return to their respective properties immediately or we'll treat occupants as unauthorised and take legal action to repossess the property/ies.

5.5 If you're moving into one of our properties, you must provide supporting documentation to prove your identity and we will carry out financial assessments.

5.6 Mutual exchanges involving joint tenancies require signed consent from all joint tenants.

5.7 We'll notify all parties applying for an exchange of our decision within 42 days from when we receive their full applications, including all supporting documentation.

6.0 Considerations

6.1 To exchange your home, you must:

- Have no breaches of the current tenancy conditions
- Not have rent arrears equivalent to more than one month's rent, unless there are exceptional circumstances. We may make it a condition of our approval that you clear any arrears by a specific date before the exchange takes place.
- Meet any criteria for the type of home you're exchanging into (e.g. age-restricted homes, adapted homes)
- Move to a home that's a suitable size for your family. If you're downsizing, you may under occupy by one bedroom in your new home

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- Rectify any resident responsibility repairs or alterations

6.2 Sometimes, we may not be able to agree an exchange because of restrictions such as:

- Covenants
- Planning obligations
- Section 106 agreements
- Other legal grounds for refusal.

6.3 We won't agree to exchanges where there would be a breach of the law. An example is if we allowed you to exchange into a home too small for your family.

6.4 There cannot be financial incentives offered or coercive behaviour to exchange with another person. We won't allow exchanges where this has occurred.

7.0 Types of exchange

Mutual exchanges are carried out in one of two ways:

- Through **assignment**
- Through **surrender and regrant** of tenancies.

7.1 The table below sets out whether an exchange by assignment or by surrender and regrant will take place.

Tenant 1	Tenant 2	Mutual exchange by	Exceptions
Flexible/Fixed	Flexible/Fixed	Assignment (swapping tenancies)	Internal exchanges between Radcliffe tenants: surrender & grant 5-year tenancies
Secure/Assured	Secure/Assured	Assignment (swapping tenancies)	
Secure/Assured	Flexible/Fixed	Surrender & Regrant (each tenant gets a new tenancy with the same/similar level of security as they currently have)	If the secure/assured commenced after April 2012: exchange by <u>assignment</u> . If the fixed term has an affordable rent: exchange by <u>assignment</u> .

7.2 Assignment

The swapping of tenancies at the same time as homes are exchanged. The incoming tenant will take on the rights and responsibilities of the tenant they have swapped with. This is used when those exchanging homes hold tenancies, with a similar security of tenure.

7.3 Surrender and regrant

Tenants surrender their current tenancy and re-sign a tenancy with a similar security of tenure for their new property. This is used when the parties exchanging hold tenancies with different security, and one of the parties has their security protected by law.

7.4 Exchange by assignment or surrender and regrant

Tenants who hold a lifetime (Secure or Assured) tenancy which was granted before April 1st 2012, have their security of tenure protected by law. Tenants who hold a secure

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or assured tenancy granted before this date therefore cannot swap tenancies, with a Fixed Term tenant, though there are exceptions. This legislative protection will not apply when a lifetime tenant chooses to exchange with a fixed term tenant on an affordable rent.

- 7.5 On completion of the mutual exchange, depending on the tenancy types, you'll either:
- Sign a Licence to Assign, taking over the outgoing resident's tenancy agreement
 - Surrender your existing tenancy and sign a new tenancy agreement
- 7.6 If you're moving to another social housing provider where your exchange partner has a fixed term tenancy, we'll check and inform you of the:
- Tenancy type they'll offer you
 - Term of the tenancy
 - Rent they'll charge.

You should seek independent legal advice on what this means.

8.0 Conditions

- 8.1 Tenants must obtain consent from us before carrying out a mutual exchange, and certain conditions will need to be met in order for consent to be granted.
- 8.2 Where the proposed exchange will be conducted by assignment, we may withhold consent until a single condition has been met. The condition will be one of the following:
- Rent arrears, or any other debts such as court costs, are cleared;
 - A breach of the tenancy agreement be remedied, for example:
 - Invalid gas safety certificate
 - Unauthorised alterations
 - Damage to property beyond wear and tear
- 8.3 The property must have a 'satisfactory' Electrical Installation Condition Report (EICR) within the last five years, before any exchange can take place.
- 8.4 If a tenant has an invalid gas safety certificate., consent will be withheld until a check has been carried out. Our heating contractor must return to the property to carry out a 'turn on and test' and produce a new Landlord Gas Safety Record (LGSR).
- 8.5 Incoming and outgoing residents are responsible for taking meter readings and notifying energy suppliers of the change of resident.
- 8.6 Residents are responsible for providing instructions to the incoming resident for any appliances or services in the property.

9.0 Inspection and Repairs

- 9.1 It is important for tenants undertaking a mutual exchange to understand that the incoming tenant takes responsibility for the property in its existing condition. This includes cleanliness, decorative state, improvement, alterations, and any repairs that are the tenant's responsibility.
- 9.2 The outgoing tenant is not eligible for compensation for improvements they have made to the property, as the tenancy is not coming to an end.

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- 9.3 RHS will carry out an inspection of our property and will complete the following:
- Order any repairs that are our responsibility
 - Require the outgoing tenant to remedy any issues raised at the inspection and agree any other repairs must be carried out, before exchange takes place
 - Advise the incoming tenant of any works required and advise that any works will become their responsibility following the mutual exchange, if they have not been completed
 - Ensure the gas and electric compliance are completed
 - Advise the incoming tenant of any material changes to their rights and obligations under their incoming tenancy compared to their outgoing tenancy eg not having the right to buy, affordable rent levels apply.
- 9.4 We retain the legal responsibility to maintain and repair installations that supply heating, water, gas, electricity including:
- Wash hand basins, baths, toilets, flushing system and waste pipes
 - Electrical wiring, gas and water pipes
 - Water heaters, fireplaces, fitted fires and central heating
- 9.5 Consent will not be withheld for rent arrears if the tenant is exchanging with another RHS tenant and wishes to downsize due to the bedroom tax subsidy. This will need approval from our Operations Director (OD).

10.0 Refusing a Mutual Exchange

- 10.1 Radcliffe may refuse an application for mutual exchange on different grounds depending on whether the exchange would happen by assignment or by surrender and re-grant.
- 10.2 Grounds for refusing exchange by Assignment are as follows:
- The tenant or other person applying for the exchange is under a court order to give up possession
 - Possession proceedings have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order
 - Where a court order is in force against a tenant or proposed tenant which is based on antisocial behaviour, eg a suspended possession order, an antisocial behaviour order
 - The accommodation would be too large for the prospective tenant, or otherwise not reasonably suitable to their needs
 - The property is designed for a physically disabled person, and if the proposed tenant moved in, there would be no such person in occupation
 - The landlord is a special needs housing association or trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
 - The accommodation is sheltered, and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation
 - It comes to the attention of RHS that money incentives were paid to any party
- 10.3 Grounds for refusing exchange by Surrender and Regrant:
- Any rent lawfully due from a tenant under of the existing tenancies has not been paid
 - An obligation under one of the existing tenancies has been broken or not performed
 - Any of the relevant tenants is subject to an order of the court for possession

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- Proceedings for possession have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order
- Where a court order is in force against a tenant of one of the existing tenancies which is based on anti-social behaviour, eg a suspended possession order, an antisocial behaviour order, an injunction or demotion order
- The accommodation proposed to be let on the tenancy would be too large for the existing tenant or tenants to whom the tenancy is proposed to be granted
- The accommodation proposed to be let on the new tenancy is not reasonably suitable to the needs of the existing tenant or tenants to whom the tenancy is proposed to be granted, or their family
- The property is designed for a physically disabled person and if the proposed tenant moved in there would be no such person in occupation
- The accommodation is sheltered, and as above, if the tenant moved in, there would be no one with the relevant need in occupation
- It comes to the attention of RHS that money incentives were paid to any party.

10.4 An exchange will be refused if it will result in under occupation or overcrowding. This will be calculated by the standard number of bedrooms required as follows:

- Two or more people over 10 years of age of different sex must not share a bedroom unless they are living as partners
- Every couple to share a double bedroom
- Every single adult must have their own single bedroom except that a single parent is to have a double bedroom
- Two children of the same sex may share a bedroom
- Two children of different sex, both under 10 years of age, may share a bedroom

Household	Bedrooms	Bedspaces
1 or 2 adults	Bedsit / 1 bedroom	1 or 2
With one child	2	2 or 4
With 2 same sex children both under 10 years of age	2	4
With 2 opposite sex children, either child 10+ years	3	4 or 5
With 3 children	3	5 or 6
With 4 children	3 or 4	5 or 6
With 4 children – 3 same sex, 1 opposite sex	4	6 or 7
With 5 children	4	7 or 8
With 6 children	4 or 5	8 or 9
With 7 +	5	9 or 10

10.5 In determining whether the property will be overcrowded, RHS will take into consideration any expected children, ie where there is an expectant mother moving into the property.

10.6 If a tenant wishing to conduct an exchange by way of surrender and regrant has arrears, consent will be refused unless the tenant is trying to downsize due to the benefit cap or bedroom tax and is exchanging with another RHS tenant. An Arrears Repayment Agreement must be completed and signed before the exchange can take place. This will be at the discretion of the OD.

10.7 RHS will ensure that the size of the property matches the size of the household as far as possible.

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10.8 If Radcliffe refuses a mutual exchange, the tenant will be sent a refusal letter which will quote the exact ground or grounds for refusal.

11.0 Appeal

11.1 Any applicant who has had a request for mutual exchange refused may request that the decision be reviewed through the formal complaints process (See Complaints Policy).

12.0 Legislation, Regulation & Guidance

12.1 Government legislation has an impact on how RHS can implement its Mutual Exchange policy. Listed below are the key Acts that have been acknowledged:

- Housing Act 1985
- Housing Act 1988
- Housing Act 2004
- Equality & Diversity Act 2010
- Localism Act 2011

13.0 Confidentiality

13.1 Under the Data Protection Act 1998 and the Human Rights Act 1998, all personal information, however received, is treated as confidential. This includes:

- Anything of a personal nature that is not a matter of public record about a resident, client, application, staff, or committee member.

13.2 Our staff will ensure that they only involve other agencies and share information with the consent of the resident concerned, unless:

- RHS is required to, by Law
- The information is necessary for the protection of children.

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14.0 Appendix I



Radcliffe Housing Society Ltd Mutual Exchange Application Form

Please use this form if you have found someone you want to exchange homes with and complete the form as fully as possible.

If you have any questions, I hope the enclosed "Exchanging Tenancies" will be useful. Alternatively, you are welcome to contact us. The address and telephone numbers are at the end of this form.

I. About You and Your Family

Please give details of all permanent members of the household

Last Name:	First Names:	Relationship to tenant:	Date of Birth:
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

If any of the above are not living with you at the moment, please say why and give details of where they are living.

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2. About Your Present Home

Please give details of your current accommodation:

Address:

Postcode:

Contact Numbers:

Home:

Mobile:

Type:

House

Flat or
Maisonette

Bungalow

Other

How many bedrooms are there in your present home?

How many living rooms are there in your present home?

Who is your landlord?

Please give your landlord's address and details if you are not presently a tenant of Radcliffe Housing Society

Address:

Postcode:

Other details:

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3. About the Mutual Exchange

Please give details of who you wish to exchange with

Address:

Postcode:

Contact Numbers:

Home:

Mobile:

Type:

House

Flat or
Maisonette

Bungalow

Other

Who is their landlord?

Please give their landlord's address and details if they are not presently a tenant of Radcliffe Housing Society

Address:

Postcode:

Other details:

(Please give details of why you want to exchange homes)

How did you find your exchange

(Please specify)

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4. Declaration

I understand that my application for exchange will be dealt with according to the Rights to Exchange provisions as contained in my tenancy agreement (tenants other than Radcliffe Housing Society – as applicable). I have read the attached leaflet “Exchanging Tenancies” and understand the housing association may:

- a. Agree to the exchange
- b. Refuse permission to exchange on one of nine grounds listed in “Exchanging Tenancies”
- c. Agree to the exchange on condition that:
 - i) Any outstanding rent is paid in full, and
 - ii) All tenancy conditions are complied with

Signature of tenant:

Date:

Signature of joint
tenant:

Date:

Please return this form to:

Radcliffe Housing Society,
Radcliffe House,
Homefield Road,
Sevenoaks,
Kent, TN13 2DU

Telephone: 01732 459 144

If you want advice or guidance, please contact the office on 01732 459 144.