

Mutual Exchange Policy

1.0 Policy Statement

- 1.1 This policy sets out how Stonewater will ensure that rights to mutual exchange by our tenants are exercised in accordance with the tenancy agreement and legislative and regulatory requirements and that all enquiries and applications for a mutual exchange are dealt with effectively, fairly and consistently.

2.0 Policy Scope and Objectives

- 2.1 This policy applies to any tenant of a home owned or managed by us, who wants to exchange their home with another tenant living in a Stonewater, other housing association, local authority property or any other property with rights to exchange. The policy does not relate to other forms of assignment of tenancy.
- 2.2 This policy aims to
- create opportunities for customers to exchange their home when it is no longer suitable for their circumstances or their needs.
 - make best use of our homes.
 - provide tenants with the support and information needed to complete applications for mutual exchange.
 - provide clear advice on the implications of mutual exchange.
 - ensure regulatory and legal compliance.

3.0 Regulatory and Legal Considerations

- Housing Act 1985
- Housing Act 2004
- Localism Act 2011
- Coronavirus Act 2020

4.0 Policy Details

- 4.1 Mutual exchange is the term used when two or more tenants decide to swap tenancies. Exchange partners must have the written consent and full approval of their landlord (s) prior to an exchange taking place.
- 4.2 Mutual Exchanges are carried out in one of two ways:
1. Through assignment
 2. Through **surrender and re-grant** of tenancies.

Assignment is 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.

Surrender and regrant is where 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 e.g. a tenant with an Assured tenancy which commenced prior to 1st April 2012 who swaps with a fixed term tenant (whose tenancy term is at least 2 years and is not covered by the exclusions set out at 5.31).

- 4.3 We will assist our tenants who are interested in mutually exchanging their properties by providing free access to HomeSwapper – www.homeswapper.co.uk (or its replacement service). In order to access this service, tenants will need to register on-line.
- 4.4 Tenants must apply in writing for our permission to the mutual exchange and complete an application form.
- 4.5 Properties in our ownership or management, which are party to a proposed exchange, will be inspected prior to the move to review the condition of the property and whether the tenancy conditions have been complied with. Stonewater may withhold consent to exchange until a condition is satisfied or may refuse the exchange where applicable (for example in accordance with our policies, tenancy terms and/or all legislation).
- 4.6 Where the Stonewater property has had major adaptations (e.g. level access shower, stairlift, through floor lift, etc.) the incoming assured tenant will be required to provide a report from an Occupational Therapist to confirm that they require the adaptations.
- 4.6 Stonewater shall have no responsibility for any contents left in the property by the outgoing tenant.
- 4.7 Stonewater may seek to pass on any reasonable costs in terms of facilitating the mutual exchange for example carrying out the required electrical and gas checks.
- 4.8 Where the incoming assured tenant has pets, permission for their keeping at the property must be sought prior to the exchange going ahead. Permission will not generally be given for dogs or cats if the property is a flat (unless it has its own enclosed garden or it is an assistance dog).
- 4.9 Tenants should, at an early stage in the process, seek their own legal advice so they are aware of any loss of rights or other implications resulting from a change in the status of their tenancies. Incoming tenants are responsible for making their own checks for any local issues or incidents of anti-social behaviour.
- 4.10 If a tenant carries out a mutual exchange prior to permission being received we may insist that the tenants move back or we may commence appropriate legal action.
- 4.11 In accordance with legislation, a written decision following a request for consent to exchange will be issued within 42 days

4.12 Refusing Mutual Exchanges

4.12.1 Assured periodic tenancies (without protected rights)

Unlike secure tenancies there is no statutory list of grounds for refusal in assured tenancy mutual exchanges. Stonewater will not unreasonably withhold its consent and will apply similar grounds to Schedule 3 Housing Act (1985) for refusing an exchange but there may be additional reasons why we may want or need to refuse an assured exchange. These include but are not limited to:

- The property is not at an acceptable condition for example there are unauthorised alterations and/or re-chargeable repairs outstanding and/or the garden is in poor condition.
- The property is too large or small in relation to the tenants needs (we would generally use the Department of Work & Pensions social size criteria as a basis for our consent).
- The incoming tenant(s) being unable to afford the property following an affordability check
- The property being identified for disposal after the current tenancy has ended
- The property is designated for a specific customer group (e.g. keyworkers, those with a support need etc.);
- The property is unsuitable for the proposed incoming tenant(s) for reasons other than those already covered by grounds in Schedule 3 Housing Act (1985);
- Stonewater have information about the incoming tenant or a member of their household causing anti social behaviour or being involved in unlawful activity or other significant breach of tenancy but where no Court order or Notice of Seek Possession has been issued on that tenant/member of the household;
- Stonewater (or any other housing provider) have previously had to evict or obtain an injunction or take other legal action against the proposed incoming tenant or a member of their household;
- Where Stonewater have reason to believe that one of the exchange parties does not intend to reside permanently in the exchange property;
- Where the incoming tenant or a member of his/her household owns or holds a tenancy of a property other than the property they are exchanging from;
- Where the Stonewater tenant has already exchanged property within the last 6 months
- Where it would conflict with a s106/planning restriction or agreement

4.12.2 *Tenancies with protected rights (Previous local authority tenants prior to stock transfer) and where previous Raglan tenancy terms apply .*

For these exchanges we will follow the process set out in Section 92 of the Housing Act 1985 and rely on the grounds set out in Schedule 3.

There may be circumstances in which we will approve the exchange but will only agree to it taking place if certain conditions are met such as:

- Clearing any rent arrears
- Carrying out repairs to make good damage or disrepair to property
- Where alterations have been carried out without our written consent (or consent has been given subject to the alteration being reverted back) the altered area must be reinstated back to its configuration and layout at the start of the tenancy
- Providing access, for example to carry out gas servicing
- Remediating a tenancy breach

4.12.3 *Fixed Term/Flexible Tenancies (where the Localism Act 2011 applies)*

For incoming tenants to a pre-Localism Act Assured or Secure tenancy who hold a Fixed Term/Flexible Tenancy (which was originally for 2 years or more and not excluded – see below) we will follow the grounds for refusal set out in Schedule 14 of the Localism Act.

The Localism Act Home Swap provisions do not apply to the following assured shorthold tenancies:

- Fixed term tenancies for less than 2 years
- A periodic Assured Shorthold tenancy
- An Assured tenancy where the rent payable under the tenancy is:
 - a. An affordable rent
 - b. An intermediate rent
 - c. A mortgage rescue rent
 - d. A shared ownership rent

Where the Localism Act provisions do not apply we will refer to the provisions of 5.1 of this policy when considering whether to refuse consent.

Where an incoming tenant immediately before exchange held a flexible or fixed term tenancy and the mutual exchange is carried out by way of Surrender and Re-grant, Stonewater will grant the incoming tenant an Assured Starter tenancy.

4.12.4 Starter Tenancies

Starter tenants do not have the right to exchange. A Starter Tenancy is the initial tenancy the tenant is placed on for the first year. During this period the agreement is classed as an Assured Shorthold and as such, tenants are not given the right to exchange. This includes any period in which the Starter Tenancy is extended

5.0 Service Standards

- 5.1 Mutual exchanges will be carried out in accordance with relevant legislation and regulatory requirements.
- 5.2 Tenants moving by way of mutual exchanges receive a positive customer experience. Measured through feedback survey.
- 5.3 Any issues concerning the property or tenancy are resolved prior to an exchange taking place.
- 5.4 In the event of a pandemic or other emergencies our procedures will be reviewed to reflect government guidance

6.0 Equality, Diversity and Inclusion

The Equality Act of 2010 makes it unlawful to discriminate against anyone on grounds of Age, Disability, Gender Reassignment, Race, Religion or Belief, Sex, Sexual Orientation, Marriage & Civil Partnership, Pregnancy & Maternity. Stonewater supports its principles and is committed to the values of equality of opportunity and non-discrimination

Author & Version

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Revision History

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1	27/11/2018	Ben Swiergon	Created
2	15/06/2020	Nicola Mason	Reviewed and updated onto new policy template. Updated with pandemic statement. Reviewed in line with new service model Reviewed to consider L&G Regulatory information added
3	25.6.20	Nicola Mason	Updated following feedback JG