



Empty Homes and Lettings

Mutual Exchange Policy

Regulation and Legislation	This policy links to the Housing Act 1985 s.92 and Schedule 3, Localism Act 2011 s.158,s.159 and schedule 14, Regulator of Social Housing (RSH) Tenancy Standard
Supporting documents	Lettings of Homes Policy, Allocations and Lettings Procedure, Mutual Exchange Procedure
Scope	This policy links to the Letting of Homes Policy and sets out the steps involved to ensure a consistent approach for managing the mutual exchange process.
Reference to “Orbit” means Orbit Group which consists of Orbit Group Limited, Orbit Housing Association Limited, Orbit Homes (2020) Limited, Orbit Treasury Limited and Orbit Capital Plc.	

1. Introduction

- 1.1 A mutual exchange is when two or more housing association or local authority tenants exchange (swap) their homes. Mutual exchanges encourage and supports tenant choice, mobility and making best use of housing stock.
- 1.2 This policy sits under the Letting of Homes Policy and relates to the Mutual Exchange procedure. It should be followed to ensure an effective and consistent service is provided for Orbit customers to mutually exchange properties. This is in line with legislation and the Regulator of Social Housing (RSH) Tenancy Standard.
- 1.3 This policy sets out Orbit’s position in relation to allowing our tenants to exchange homes.
- 1.4 This policy applies to tenants who hold a current assured, secure, or fixed term tenancy. All other tenure types do not have the right to exchange.

2. Policy Statement

- 2.1 We will support customers who wish to exchange and to provide a level of choice about where they live, ensuring we do our best to help them overcome any barriers. We will base our support on the needs of the individual customer.
- 2.2 Orbit offers all customers free access to the HomeSwapper website which can help find potential exchange partners. It is the customer’s responsibility to register on HomeSwapper or any other exchange website, to find a suitable exchange partner. We will provide reasonable support to customers who are unable to independently use a mutual exchange service.

2.3 Consent to exchange

- 2.3.1 Customers must seek permission for an exchange from their landlord.
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2.3.2 Orbit will not withhold consent without good reason.

2.3.3 Orbit may refuse consent where permitted by law, or may withhold consent until a condition is satisfied.

2.3.4 Orbit may take legal action to reverse an exchange if consent has not been granted from all landlords party to the exchange request.

2.4 Eligibility to exchange

2.4.4 A customer's right to exchange depends on the type of tenancy agreement held.

2.4.5 Customers who are eligible to exchange can do so only with another eligible Orbit customer, a customer of another registered non-profit social housing provider (housing association), or a customer of a local authority. Customers cannot exchange with tenants in the private rented sector.

2.4.3 The only Orbit tenure types eligible to exchange are:

- Affordable Rent 5 Year Review
- Assured Affordable
- Assured post 1989
- Assured Non-Shorthold
- Assured with Right to Buy Rights
- Bexley Protected without Right to Buy
- Bexley Unprotected with Right to Buy
- Bexley Unprotected without Right to Buy
- Fair Rent
- Protected Tenancy with Right to Buy
- Social Rent 5 Year Review

2.4.4 The following customers do not have any right to exchange:

- Customers with a starter tenancy
- Customers in a probationary period including any extension period
- Assured Shorthold Tenancies (periodic)
- Customers with a periodic Assured Shorthold Tenancy as a result of a break notice being served on a fixed term tenancy, or where they have failed to sign a new tenancy agreement at the end of the fixed term.
- Intermediate rent products including key worker or market rent tenants
- Rent to Homebuy tenancies
- Aspire to Buy tenancies
- London Living Rent tenancies
- Demoted tenancies
- Non assured/contractual tenancies
- Temporary (decant) tenancies (although tenants may have the right to exchange at their permanent address)
- Licensees
- Leaseholders
- Shared owners

2.5 Type of exchange

2.5.1 Secure & Assured tenants - Right to exchange by way of assignment

A secure or assured tenant has the right to exchange their tenancy by way of mutual exchange with:

- Another secure or assured tenant (not necessarily of the same landlord).
- An assured tenant, whose landlord is:
- the Regulator of Social Housing;
- a private registered provider of social housing;
- a registered social landlord; or
- a charitable housing trust.

Where a secure or assured tenant swaps with another secure or assured tenant and both tenancies were created before 1 April 2012, the tenancies will effectively be swapped between tenants, with the tenancy remaining with the property rather than the tenant.

2.5.2 Fixed Term tenants - Right to exchange by way of assignment or Surrender and Regrant

A tenant with a Fixed Term Tenancy also has the right to exchange their tenancy by way of mutual exchange with:

- Another secure tenant (not necessarily of the same landlord).
- An assured tenant, whose landlord is:
- the Regulator of Social Housing;
- a private registered provider of social housing;
- a registered social landlord; or
- a charitable housing trust.

2.5.3 Where tenant with a Fixed Term Tenancy swaps with an Assured or Secure tenant and one or both tenancies were created before 1 April 2012, the tenancies will effectively be swapped between tenants via Deed of Assignment or Surrender and Regrant. (See Appendix 2)

2.6 Applying for a mutual exchange

2.6.1 Once a tenant has found another tenant they wish to exchange with, they will need to complete and submit a mutual exchange application form, which is available on request.

2.6.2 Orbit will consider each application and provide a written decision within 42 days of receipt of the completed application form, otherwise consent is deemed to be granted.

2.6.3 During the 42 days from the date of application, Orbit will carry out necessary checks to ensure all parties in the mutual exchange are eligible and do not meet any grounds for refusal.

2.7 Grounds for refusing a mutual exchange

2.7.1 Written consent must be provided by all landlords involved for an exchange to be completed.

2.7.2 The grounds for refusing a mutual exchange vary depending on the tenancy type of each mutual exchange applicant.

- 2.7.3 Orbit may refuse a mutual exchange if the applicant has rent arrears. However conditional consent may be granted if it's been agreed that the applicant can clear the arrears within a reasonable timeframe. Where an applicant is granted conditional consent, Orbit will not permit the exchange to take place until the arrears are cleared in full.
- 2.7.4 Orbit may also refuse a mutual exchange where an obligation under one of the existing tenancies has been broken or not performed. This can include but is not limited to repairs outstanding which are the tenant's responsibility or other tenancy breaches. Where an applicant has agreed to complete outstanding repairs conditional consent to exchange may be granted. Orbit will not permit the exchange to take place until all outstanding repairs or highlighted breaches have been completed or remedied and inspected as being satisfactory by an Orbit member of staff.
- 2.7.5 We may rely on any of the statutory grounds stated in schedule 3 of the Housing Act 1985 to refuse an exchange for tenants that hold a periodic secure tenancy. Where our tenant holds a secure tenancy, we will make it a condition of granting permission for the exchange that any arrears are paid prior to the exchange taking place.
- 2.7.6 We may also rely on any of the statutory grounds stated in schedule 14 of the Localism Act 2011 to refuse an exchange in cases where either tenant holds an assured tenancy or an assured shorthold fixed term tenancy of 2 years or more (social or affordable rent). See Appendix 1
- 2.7.7 We will refuse any exchange that would result in our property becoming under-occupied by more than one bedroom. We will make it clear to customers who move into a property smaller than that required by our Lettings Policy standards that they must be sure that the property is suitable for their family's long-term needs, and that they should not expect to be able to transfer into a larger home in the foreseeable future, subject to any changes in circumstances.
- 2.7.8 We will refuse an exchange where we have reason to believe that any customer has offered or sought a financial incentive as a condition of the exchange.
- 2.7.9 We may withhold our consent where permitting the exchange would put us in breach of any covenant, restriction or planning obligation. This would apply in cases where the exchange would conflict with any relevant planning restrictions or the purpose for which the tenancy was initially granted. These include, but are not limited to, instances where:
- a local connection is required;
 - the incoming customer must meet the necessary criteria by completion of a risk and needs assessment for age designated schemes;
 - customers must have specific support needs in order to meet the intended purpose of the housing.
- 2.7.10 Where a tenant has broken any terms of tenancy, but not limited to non-payment of rent, other housing debt, unsatisfactory property condition, Orbit may at its own discretion grant conditional consent if the breach has been remedied.
- 2.7.11 We will give notice of our decision to approve or decline an application to exchange within 42 calendar days of receiving a completed application. Our decision will be given in writing and will state the reasons for withholding consent where an application is declined.

2.8 Property inspection and safety checks

- 2.8.1 We will ensure our property has valid electrical certificates prior to approving the exchange and will arrange for the necessary checks to obtain them. We will not allow the mutual exchange to proceed until any required works have been completed and the valid electrical certificates are obtained. A gas safety check will be carried out with the incoming customer once the exchange has been completed; the new customer will be provided with a valid gas safety certificate.
- 2.8.2 We will conduct an inspection to assess the condition of the property, to identify any repairs that may be required and any damage or alterations that have been made. We will notify both the outgoing and incoming customer of any repairs that they will be responsible for or to be carried out after the move takes place.
- 2.8.3 We will maintain responsibility for any landlord repair obligations and will aim to complete any repairs that are our responsibility when they are reported to us.
- 2.8.4 Orbit will require the outgoing customer to repair any damage beyond fair wear and tear, neglect, or alterations that they, their household or their visitors have made to the property and to complete any repairs that we consider to be their responsibility. These should be completed prior to the exchange, as consent to the exchange may be withheld until the tenancy breaches have been remedied.
- 2.8.5 We may carry out repairs that are not our responsibility in exceptional circumstances – for example, where there is a health and safety risk and may recharge the outgoing customer for all costs of the work carried out.
- 2.8.6 Where an outgoing tenant has completed an exchange but left the former property in a poor condition, or left household items or rubbish, Orbit may recharge the outgoing tenant for remedial repairs or waste clearance.

2.9 Customers' responsibilities

- 2.9.1 Customers are responsible for finding an exchange partner, and for making an application to us when they have found someone they want to exchange with.
- 2.9.3 Incoming customers agree to accept the condition of the property they are exchanging to. Customers are responsible for carrying out their own inspection of the property prior to the exchange, and for making any agreements or arrangements regarding the condition of the property and gifted items with the outgoing tenant.
- 2.9.4 Following the exchange, incoming customers will assume responsibility for any cosmetic damage or alterations made to the property by the outgoing tenant, and for all repairs that we consider to be customer repair obligations that were not completed by the outgoing customer. A full list of tenant repair obligations is available on the Orbit's website.
- 2.9.5 Customers must not move until they have received written confirmation from each landlord and signed the necessary paperwork to complete the exchange. If customers move without our consent and without signing the required legal documents, we will treat the occupants as unauthorised occupiers and may seek possession of our property.

- 2.9.6 Once an exchange has been approved an electrical test (EICR) will be arranged. An EICR may fail due to the need of an isolator switch needing to be fitted by the customers utility provider.
- 2.9.7 Where a current Orbit customer arranges for the isolator switch to be replaced by their utility provider, Orbit will reimburse the cost of the switch replacement upon providing a receipt for the work and there is a satisfactory EICR certificate in place.
- 2.9.8 Once a satisfactory EICR is completed both incoming customers and current Orbit customers must give Orbit 14 days' notice of the preferred exchange date to allow time to prepare the necessary documents and arrange gas safety checks.

2.10 Right of appeal

- 2.10.1 If a customer is eligible to exchange i.e., there is a statutory or contractual right to exchange, and is unhappy with any decision made under this policy they have the right to ask for it to be reviewed.
- 2.10.2 They can do this by emailing (or posting) their reasons to Orbit within 10 working days of being informed of the decision. A review will be carried out by a manager who was not involved in the original decision and the outcome will be sent to the customer within 15 working days. A decision at review is a full and final decision.

3. Data retention

Any mutual exchange application that is cancelled will be held for 6 months after the application is cancelled, then deleted from the application folder. Any successful application will be uploaded to Orbit's Electronic Document Records Management system and retained in accordance with Orbit's data retention schedule and legal obligations.

4. Roles and Responsibilities

4.1

Role	Responsibility
Delivery and Monitoring of the policy	Director of Customer Operations
Delivery, monitoring and internal control of the policy	Head of Empty Homes and Lettings
Managing the mutual exchange process	Empty Homes and Lettings team
Property inspections	Void Delivery team
Property repairs	Responsive Repairs team
Compliance checks/certificates	Property Safety team

Tenancy action	Tenancy Services team
Tenancy action/arrears	Income Services

5. Performance Controls and Business Risk

- 5.1 Compliance with this policy will be monitored by the Head of Empty Homes and Lettings. The Head of Empty Homes and Lettings will monitor applications received and ensure that decisions are made within the timescales set by the Regulator of Social Housing (RSH) Standard supported by the Specialist Lettings Lead.
- 5.2 Orbit will carry out a fundamental review of this policy every three years subject to legal, regulatory changes or in accordance with the agreed Policy Review programme.

6. Essential information

- 6.1 All Orbit policies and procedures are developed in line with our approach to the following, data protection statement, equality diversity and inclusion (EDI) approach, complaints policy and our regulatory and legal obligations to ensure we deliver services in a lawful manner and treat people equally and fairly. Orbit's privacy policy can be accessed on our website www.orbitcustomerhub.org.uk/publications/policies/

EA	Equality Analysis was completed in June 2024 and is available to view.
DPIA	A DPIA was completed against the supporting procedure and is available to view.
Consultation	Internal: Empty Homes and Lettings; Independent Living; Property Repairs; Property Management; Customer Experience
	External: Engaged customers were consulted in Feb 2024
Applies to	Business wide

Document control

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Uncontrolled if Printed

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Directorate Customer and Communities

Date

Approved by	Customer and Property Leadership team	June 2024
Next review		June 2027

Extension date	Extension reason	Approved by

Revision History

Version Number	Date	Comments / Reason for revision
v1.0	Sept 2024	Published

Appendix 1 – Grounds for refusal

Schedule 3 of the Housing Act 1985	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to the exchange
-	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
-	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	A court order for possession or a suspended possession order has been made for either property.
Ground 2	Grounds 4 & 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the proposed assignee and their household.
Ground 5	Ground 9	The property is part of or close to a building that is held for non-housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, housing action trust, an urban development corporation, or the governors of a grant-aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person, and if the assignment went ahead a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil these criteria.
Ground 9	Ground 13	The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with those special needs, and if the assignment was to go ahead no person with those special needs would be living there.
Ground 10	Ground 14	The dwelling is the subject of a management agreement where the manager is a housing association of which at least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the association, and also that the proposed assignee is not such a member nor is willing

		to become one.
Additional Ground (Housing Act 2004)	Ground 6	An injunction order under section 153 of the Housing Act 1996 or an anti-social behaviour order or a Demotion Order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.

Appendix 2

Tenancy before exchange		Tenancy after exchange		Method
Incoming customer	Outgoing customer	Incoming customer	Outgoing customer	
Secure	Secure	Secure	Secure	Assignment by Deed
Assured	Assured	Assured	Assured	Assignment by Deed
Secure	Assured	Assured	Secure	Assignment by Deed
Assured	Secure	Secure	Assured	Assignment by Deed
Fixed term	Fixed term	Fixed term (regardless of rent tenure)	Fixed term (regardless of rent tenure)	Assignment by Deed
Fixed term	Assured (which began before 1 April 2012)	Fixed term	Assured	Surrender and re-grant
Fixed term	Secure (which began before 1 April 2012)	Fixed term	Secure	Surrender and re-grant
Fixed term	Assured (which began after 1 April 2012)	Assured	Fixed Term	Assignment by Deed
Fixed term	Secure (which began after 1 April 2012)	Secure	Fixed Term	Assignment by Deed
Assured (which began before 1 April 2012)	Fixed Term	Assured	Fixed Term	Surrender and re-grant
Secure (which began before 1 April 2012)	Fixed Term	Assured	Fixed Term	Surrender and re-grant
Assured (which began after 1 April 2012)	Fixed Term	Fixed Term	Assured	Assignment by Deed
Secure (which began after 1 April 2012)	Fixed Term	Fixed Term	Secure	Assignment by Deed
Social Assured (irrespective of start date)	Affordable Assured	Affordable Assured	Social Assured	Assignment by Deed
Affordable Assured	Social Assured (irrespective of start date)	Social Assured	Affordable Assured	Assignment by Deed
Assured (irrespective of start date)	Affordable Fixed Term	Affordable Fixed Term	Social Assured	Assignment by Deed
Secure (irrespective of start date)	Affordable Fixed Term	Affordable Fixed Term	Secure	Assignment by Deed
Affordable Fixed Term	Assured (irrespective of start date)	Assured	Affordable Fixed Term	Assignment by Deed
Affordable Fixed Term	Secure (irrespective of start date)	Secure	Affordable Fixed Term	Assignment by Deed