

The Moray Council
Environmental Services Department
Mutual Exchanges Policy

1. Scope of Policy

- 1.1 This policy describes the activities and responsibilities involved in facilitating the exchange of properties between tenants on a mutual agreement.
- 1.2 Mutual Exchanges are defined in this policy as exchanges, which have been requested between two or more tenants.
- 1.3 The Council will ensure that no individual is discriminated against on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or other personal attributes, including beliefs, or opinions, such as religious beliefs or political opinions. The Council will ensure the promotion of equal opportunities by publishing information and documentation in different languages and other formats such as large print, tape and Braille as required.

2. Local Housing Strategy/Corporate Plan/Service Plan

- 2.1 The Mutual Exchange Policy will assist the Council to meet the aims and priorities of its Local Housing Strategy, Corporate Development Plan and Service Improvement Plan. In particular it will assist the Council to achieve its strategic objective to widen and facilitate access to housing in Moray. The Mutual Exchange Policy will also assist the Council in the achievement of the objectives to make the best use of the housing stock.

3. Legal Framework

- 3.1 The Housing (Scotland) Act 2001 (Section 33) provides every Scottish secure tenant with the right to exchange their home with another Scottish secure tenant (whether or not the landlord is the same), with the landlord(s) written consent. Landlords may only refuse such requests if there are reasonable grounds for refusal.
- 3.2 Short Scottish secure tenants are provided with the right to a mutual exchange in the Housing (Scotland) Act 2001 (Section 34(6)). However the Council has discretion in granting consent where it is satisfied that the grounds still exist to enforce the SSST under the Housing (Scotland) Act 2001 Section 34 and Schedule 6.

3.3 The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (Section 6) prohibits mutual exchanges with the matrimonial home which affect the rights of occupation of the 'non-entitled' spouse without the consent of the non-entitled spouse.

4. Objectives And Principles Of The Policy

4.1 The overall aim of the Mutual Exchange Policy is to contribute to meeting housing needs in Moray.

4.2 The specific objectives of the Mutual Exchange Policy are:

- to maximise the effective use of the Council's housing stock;
- to promote choice;
- to achieve high standards of customer care and satisfaction; and
- to provide a service which reflects the Council's commitment to equality of access to the housing stock for all tenants and in particular, to take account of individual tenants' aspirations and needs.

4.2 The principles underpinning the Mutual Exchange Policy are:

- the policy should provide a clear statement of the level of service and standards to which the Council will work;
- these should be supported by detailed procedures and agreed practices applied uniformly across the service;
- training for staff should be provided to ensure that staff are equipped to carry out the roles expected of them; and
- communication with tenants should be in 'plain language' and should make clear who the officer to contact is, in case of queries, etc.

5. Consent

5.1 The Council cannot reasonably withhold consent when two or more tenants request to exchange their properties.

5.2 Tenants wishing to exchange must apply to the Council in writing. If the exchange is between tenants of a Registered Social Housing landlord or other Local Authority and the Council, tenants must obtain their landlords written consent.

5.3 The Council will notify the tenant of its decision regarding the application to exchange within one month. If a decision is not given within this timescale, then consent is automatically deemed to have been given.

5.4 If the tenant applying for the mutual exchange is a joint tenant, the Council must obtain the consent of the other joint tenants.

- 5.5 If the property to be exchanged is the matrimonial home, the rights of occupation of the spouse will be affected by the mutual exchange therefore the Council must gain consent of the spouse.

6. Refusal Of Consent

- 6.1 The Council may refuse a request to exchange only if there are reasonable grounds for refusal. Examples of reasonable grounds specified in the housing legislation include:

- if a Notice of Proceedings to recover the tenancy has been served on the tenant;
- if an order for recovery of possession has been made against the tenant;
- that the house was provided by the landlord in connection with the tenant's employment; or
- if granting consent would result in statutory overcrowding as defined by legislation.

- 6.2 The grounds for refusal taken from legislation are not exhaustive. There is no definitive list of grounds for refusing consent and each case will be assessed on its own merits.

- 6.3 Where a mutual exchange would result in either overcrowding or underoccupation, consideration of the request will take into account the availability of accommodation in the area, the particular circumstances of the families concerned, and the extent to which the mutual exchange would address the existing issues of housing need.

- 6.4 Where a mutual exchange involves a property which has been designed or adapted for occupation by a person with special needs, consideration will be given in the light of:

- the particular circumstances of the disability which led to the adaptation; and
- the particular circumstances of the applicant involved.

- 6.5 Only in exceptional circumstances will the Moray Council grant a mutual exchange where:

- either party has a history of anti social behaviour which would affect the management of the tenancy to be exchanged; or
- either party has any outstanding liability such as rent arrears and no agreed arrangement has been made to pay the outstanding liability or an arrangement to pay the outstanding liability has been broken.

7. Appeals

- 7.1 If an application for a mutual exchange is refused the tenant may appeal in writing, in the first instance, to the Housing Services Manager who will review the original decision.

- 7.2 The Housing Services Manager will notify the tenant of the outcome of his review within 4 weeks of receiving the appeal.
- 7.3 If the tenant is not satisfied by the decision of the Housing Services Manager, the tenant has a right to raise a summary action in the Sheriff Court.
- 7.4 An appeal to the Sheriff Court must be made within twenty-one days of the decision of the Housing Services Manager.

8. Performance Monitoring

- 8.1 The Council will monitor mutual exchanges and report at least annually on the following performance indicators:
- Number of mutual exchange applications, numbers agreed and refused;
 - Reasons for refusal; and
 - Appeals to the Housing Services Manager and outcomes of appeals.

9. Review of policy

- 9.1 The Mutual Exchange Policy will be reviewed in 2012.