

Mutual Exchange Policy Housing Services

Policy:	Mutual Exchange
Scope:	This policy applies to social housing tenants where they wish to swap their homes and tenancies with another social housing tenant(s).
Original Date of Issue:	May 2020
Date Last Reviewed:	May 2025
Next Review Date:	January 2030 (or sooner if there are changes to legislation)
Version Number:	V6
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Statute:	<ul style="list-style-type: none"> • Housing Acts 1985, 1988, 1996, and 2004 • Localism Act 2011 • Equality Act 2010 • Homes (Fitness for Human Habitation) Act 2018 • Welfare Reform Act 2012
Related Policies:	<ul style="list-style-type: none"> • Succession Policy • Aids and Adaptations Policy • Housing Allocations Policy • Tenancy Strategy • Tenancy Agreement • Housing Repairs Handbook • Tenancy Policy • Housing Strategy • Assignment Policy

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1.0 Introduction

1.1 The terms 'we' and 'our' refer to St Albans City and District Council (SADC).

The term 'your' refers to any social housing tenant, from St Albans City and District Council, another local authority, or registered provider.

- 1.2 Any St Albans District Council tenant with a secure lifetime tenancy, or secure flexible tenancy for a self-contained dwelling has the right to apply for a mutual exchange with another local authority or registered provider.
- 1.3 Introductory Tenants, Demoted Tenants and non-secure tenants do not have the right to mutually exchange. This applies during the first year of the tenancy and any extended period. If an Introductory Tenant has a particular management reason for an exchange, this should be referred to the Housing Review Panel.

2.0 Aims of the policy

SADC is committed to providing a fair, consistent mutual exchange process for our tenants and future tenants. This will give tenants a choice in where they live.

The aims of the mutual exchange policy are to:

- Make the best use of our stock
- Encourage downsizing
- Ensure we are compliant with all legislation around mutual exchange
- Make the mutual exchange process as simple as possible for the tenants
- Ensure mutual exchanges are completed within the set timeframe

3.0 Policy Details

3.1 What is a Mutual Exchange

A mutual exchange is a process where two or more social housing tenants swap their homes and tenancies. A swap can be made with other tenants in the district, or with another council or registered provider (housing association) within the UK.

3.2 Types of Exchange

A mutual exchange can take place through assignment of a tenancy or by surrender and regrant. The type of exchange depends on the type of tenancy and when it was granted.

3.3 *Through assignment*

3.3.1 This is the transfer of tenancies when properties are exchanged. The incoming tenant takes on all rights and responsibilities of the outgoing tenant and both tenants will retain similar security of tenure. No new tenancy agreement is created. Each tenant will sign a 'Deed of Assignment'.

3.4 *Through surrender and re-grant*

3.4.1 This is used where a mutual exchange takes place between tenants where one holds a flexible fixed term tenancy. The tenancies are surrendered and re-granted to offer both tenants a secure lifetime tenancy.

3.4.2 This is used in circumstances where a mutual exchange application involves one social housing tenant with a tenancy that was granted before 1st April 2012 and one whose tenancy was granted on or after 1st April 2012 and the security of tenure is different. The tenancies are surrendered and re-granted to offer a similar security of tenure at the new property.

3.5 Localism Act 2011

In circumstances where a tenant has inherited their tenancy by succession or it has been legally transferred to them by way of assignment from a family member, the succession rights follow the tenant and do not remain with the tenancy i.e. a tenant who is a successor under the original tenancy will remain a successor in their 'new' tenancy following mutual exchange, whichever method of exchange is used.

Existing tenants will only be able to retain their current level of security once (not necessarily for subsequent exchanges) as any further tenancy would have commenced after 1st April 2012 and would not be bound by the same requirements under the Localism Act 2011.

Tenant 1	Tenant 2	Mutual Exchange by	Exceptions
Flexible/fixed term	Flexible/fixed term	Assignment	
Secure/assured	Secure/assured	Assignment	
Secure/assured pre 1 st April 2012	Flexible/fixed term	Surrender and re-grant	If fixed term has an affordable rent (by assignment)
Secure/assured post 1 st April 2012	Flexible/fixed term	Assignment	

4.0 Roles and Responsibilities

- 4.1** The Housing Team have responsibility for carrying out this policy.
- 4.2** There is a time limit of 42 calendar days from the date all documents are received, for St Albans City and District Council to decide whether consent to the exchange is to be granted or withheld.
- 4.3** If the landlord (SADC) fails to give a decision within 42 calendar days, it will be too late to refuse the exchange. These provisions would require the landlord (SADC) to allow the assignment or grant a new tenancy and this is enforceable by an injunction obtained against the landlord in the County Court.
- 4.4 The Surveyor/Maintenance Inspector will ensure that:**
- All properties will have a full property inspection before an exchange can take place.
 - All health and safety compliance work is carried out before the exchange.
 - Any additional non-council fixtures or fittings and unauthorised work are recorded, and any potentially problematic alterations are removed.
 - The tenant is informed of any work that has been done to the property that the surveyor/maintenance inspector may feel poses a health and safety risk. This must be resolved before the exchange takes place, and a follow up inspection arranged if necessary for the surveyor to check that these works are completed.

Approval will be decided after a successful property inspection.

4.5 Current and prospective SADC tenants are responsible for:

- Finding a mutual exchange partner. It is the tenant's responsibility to find someone to exchange with. This can be done via the HomeSwapper website and registering your interest. This can be accessed at: <https://www.homeswapper.co.uk/>
- Providing all necessary documentation to SADC, including appropriate ID and proof of address documentation.
- Ensuring that both the incoming and outgoing tenants have viewed their respective properties prior to the exchange.
- Any rechargeable outstanding repairs, deemed the tenant's responsibility, must be rectified at the tenant's cost before the exchange can take place.
- Ensuring their current property is maintained to an acceptable standard for the incoming tenant.
- Incoming tenants are responsible for any aesthetic damage or alterations made to the property by the outgoing tenant. They must accept the property in its existing condition.
- Outgoing tenants must agree with a surveyor/maintenance inspector regarding any outstanding repairs and must ensure the work is completed prior to the exchange taking place. They are responsible for engaging with the surveyor/maintenance inspector for the inspection of

their current property. This must take place prior to the exchange. A Neighbourhood Housing Officer or Maintenance Inspector may arrange a further home visit to check these works are completed.

- Tenants must not move until they have received written confirmation from each landlord and signed the necessary documents to complete the exchange. If tenants move without the landlord's consent and do not sign the required legal documents, we will treat the occupants as unauthorised occupiers and have the right to seek possession of our property.
- Making arrangements regarding items left in the property, for example the loft, garden, and storage areas, where applicable. It is the tenant's responsibility to clear the space of personal belongings.
- Allowing access for a gas and electric check to be completed.
- Arranging for a qualified gas/electric engineer to remove and reinstall a gas or electric cooker, where this is applicable.
- Ensuring all rent accounts and subaccounts are clear.

5.0 Grounds for Refusal

5.1 SADC will reasonably consider all mutual exchange applications.

5.2 Schedule 3 of the Housing Act (1985) and Schedule 14 of the Localism Act (2011) sets out the grounds where consent to assignment by way of mutual exchange may be withheld (see Appendix A).

5.3 Schedule 3 applies to secure tenants, with a tenancy that began prior to 1st April 2012.

5.4 Schedule 14 applies for all tenancies created on or after 1st April 2012.

5.5 SADC may refuse a mutual exchange on the grounds of but not limited to:

- The tenant is subject to existing rent arrears.
- The rent of the new property is not affordable.
- The tenant will be under occupying the property, if the new property is bigger than the household requires.
- The tenant will be overcrowded in the new property.
- The property has adaptations which the new tenant does not need.
- The tenant doesn't require sheltered or age restricted accommodation on offer.
- There have been any tenancy breaches (i.e. damage to the property, incomplete repairs) or anti-social behaviour.
- The tenant is a homeless applicant living in temporary accommodation.
- The tenant is an introductory tenant.
- The tenant has been served with a notice of seeking possession.
- The tenant is due to be evicted.

- The tenancy is subject to a court order.
- There are joint tenancy issues.

5.5.1 Please refer to the Table in Appendix A for the detailed requirements.

6.0 The Mutual Exchange Application

- 6.1** A request from all tenants to exercise their right to exchange should be made by completing an application for a Mutual Exchange.
- 6.2** Social housing tenants should apply via HomeSwapper and SADC staff will process on SwapTracker.
- 6.3** Tenants must provide the appropriate ID and proof of address documentation.

Documents required from all applicants:

- Photo ID e.g. passport or driving licence (provisional licenses are valid)
 - Birth certificate(s) for all children
 - One proof of address document e.g. utility bill, bank statement, hospital, or NHS letter, driving license (if not used for photo ID), and benefit letter(s). We do not accept notifications from Council Tax.
- 6.4** For tenants exchanging from another registered provider, SADC will require landlord references.
- 6.5** A clear rent account and any sub accounts would be a condition of the mutual exchange proceeding. If there is a tenancy breach, conditional consent may be granted, with the exchange allowed to proceed once the breach has been resolved.

The tenant should be notified if there are arrears etc outstanding.

6.6 Bedroom Tax Criteria

- 6.6.1** Tenants must be aware that SADC will apply the Bedroom Tax Criteria (Welfare Reform Act 2012) when deciding whether a mutual exchange can proceed. We will not allow an exchange to cause under occupation or overcrowding, in line with this criterion. More information regarding the Bedroom Tax can be found in Appendix B.
- 6.6.2** This change has been made to align closer to SADC's Housing Allocations Policy, where households seeking approval for a mutual exchange will be allowed a number of bedrooms according to this policy. They are allowed a property with the number of bedrooms according to their needs.
- 6.6.3** The restrictions of exchanging to a property with a spare room applies to tenants of any age. We recognise that tenant's needs may change, and we will not unreasonably refuse a spare room if it is required and there is appropriate medical evidence to support this request.

7.0 Adaptations

If a tenant requires adaptation in their new home, they should first read our Aid and Adaptations Policy and discuss with their Neighbourhood Housing Officer. This will be managed on a case-by-case basis.

8.0 Gas and Electricity

Once a date has been agreed to exchange, gas and electric checks will be booked in with our contractors. It should be agreed with the incoming tenant that they must provide access and be available for safety checks to be carried out on the day of the exchange.

9.0 Assignment of Tenancy

Once a date for the assignment of the tenancy has been agreed between all parties and the conditions attached to the exchange have been met, the Neighbourhood Housing Officer must arrange for a date and time for the exchange partners to sign the deed of assignment. Any other landlords involved in the assignment should be made aware of the agreed date.

10.0 Deed of Assignment

10.1 The Deed should be signed at the sign-up, which will ideally be on a Thursday or Friday before the tenant moves homes.

10.2 Where assignment is taking place separately between two different landlords, the Neighbourhood Housing Officer must have confirmation that the deed of assignment will be effective from the other landlord for the same day.

10.3 A copy of the tenancy agreement will be attached to the deed.

11.0 Equality, Diversity, and Inclusion

11.1 An Equality Impact Assessment (EIA) has been completed during the review process of this policy to ensure that it does not unfairly disadvantage people with protected characteristics (age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation). The EIA highlighted that some potential impacts may arise, so we have outlined actions to mitigate these impacts.

11.2 Aligning our policy with the bedroom tax could affect tenant(s) with children over the age of ten, as same sex children will be required to continue to share until the age of sixteen, whereas previously they could apply for a spare room through a mutual exchange. This policy allows a child to be entitled a room from birth, rather than from age two, as stated in the Housing Allocations policy. Tenant(s) will be potentially able to exchange to a bigger house (once a child is born), rather than waiting in line with housing allocations rules on the housing

register. The change in policy will allow more tenants to exchange to more suitable sized accommodation for their household needs and will help to reduce under occupation in SADC properties.

- 11.3** Tenants with disabilities who raise adaptations queries should refer to SADC's Aid and Adaptations policy, in relation to mutual exchange. Neighbourhood Housing Officers will then forward any adaptation queries to the adaptations team. We will work closely and liaise with our partners to provide support to our tenants who require adaptations.
- 11.4** For tenants who have difficulties completing the mutual exchange application, for example accessing the internet and searching and applying for an exchange online, SADC will support them throughout the process and help them with their mutual exchange application. Reasonable adjustments can be made to ensure everyone can access our policies and services.
- 11.5** SADC will be mindful of religious festivals that take place and will try to accommodate accordingly. Tenants can choose not to complete a mutual exchange during the period of a religious celebration they celebrate. Both parties must agree to delay the mutual exchange.

12.0 Communication and Consultation

- 12.1** Policies are held on our website along with details of the services we provide. Paper copies including an easy read version can be available upon request. Requests can also be made for responses in other formats.
- 12.2** Reasonable adjustments can be made to ensure everyone can access our policies and services.
- 12.3** This policy has been developed in consultation with our Tenant and Leaseholder Forum. It will also be shared at Community Engagement Days.
- 12.4** The policy will also be shared with local registered providers.
- 12.5** Neighbourhood Housing Officers can also contact those that they are aware are actively seeking an exchange.

Appendix A: Table of Grounds for Refusal

Schedule 3 of the Housing Act 1985 (prior to 2012)	Schedule 14 of the Localism Act 2011 (after 2012)	Grounds for refusing consent to the exchange
	Ground 1	Where any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
	Ground 2	This ground is 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 against the tenant or the proposed exchange partner.
Ground 2	Ground 4 and 5	The tenant or proposed exchange partner has outstanding possession proceedings against them, or a notice of seeking possession is still in force.
Ground 3	Ground 7	The property is substantially more extensive than is reasonably required by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the incoming tenant.
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. The second ground states that the property was let in connection with employment with the landlord, a local authority, a development corporation, a housing action trust, an urban development corporation, or the governors of an aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objectives of the charity.
Ground 7	Ground 11	The property has substantially different features from ordinary dwellings and is designed for the physically disabled. If the exchange took place, a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord lets its houses only to those whose circumstances (other than financial) make it difficult for them to find

		accommodation, and the proposed assignee would not fulfil these criteria.
Ground 9	Ground 13	The property is let to people with special needs, and a social service or special facility is provided for them, and if the mutual exchange was to take place, there would no longer be such a qualifying person living there.
Ground 10	Ground 14	The dwelling is 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	Any of the following are in force, or an application is pending either against the tenant, the proposed assignee or a person who resides with either of them: <ul style="list-style-type: none"> • An injunction order under section 152 of the Housing Act 1996 • An anti-social behaviour order • A Demotion Order or • A possession order under Ground 12 for secure tenancies or Ground 14 for assured tenancies

Appendix B: Bedroom Tax

The Bedroom Tax:

From April 2013, housing benefit is based on the number of people in the household and the size of the accommodation. This applies to all working-age tenants renting from a local authority, housing association or other registered provider. The rules were announced in the Welfare Reform Act 2012.

The rules allow one bedroom for:

- Every adult couple (married or unmarried)
- Each member of a couple, if they cannot share because of a disability or medical condition
- Any other adult aged 16 or over
- Any 2 children of the same sex aged under 16
- Any 2 children aged under 10
- Any other child (other than a foster child or child whose main home is elsewhere)
- Children who cannot share because of a disability or medical condition
- A carer (or team of carers) providing overnight care

One spare bedroom is allowed for:

- An approved foster carer who is between placements, but only for up to 52 weeks from the end of the last placement
- A newly approved foster carer for up to 52 weeks from the date of approval if no child is placed with them during that time

Rooms used by students and members of the armed or reserve forces do not count as 'spare' if they're away and intend to return home.