

**HOUSING
ASSIGNMENT
POLICY**

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Contents

Number	Section	Page
1	Introduction	2
2	Mutual Exchange	2
3	Succession	6
4	Court Ordered Assignments	7
5	Joint Tenancies	8
6	Implications of Assigning a Property without Permission	8
7	Equality	8
8	Complaints	9
9	Policy Review	9
Appendix A	Reasons for refusal of a mutual exchange	10

1. Introduction

An assignment is where a tenancy is transferred to another person. The incoming tenant (assignee) 'steps into the shoes' of the outgoing tenant (assignor) and occupies under the same terms¹, taking on the rights and responsibilities of the tenancy.

Section 91 of the 1985 Housing Act allows assignment under three main grounds, these are:

1. Assignment by way of exchange (mutual exchange)
2. Assignment to someone who would be qualified to succeed the tenant on the tenant's death; as set out in the Council's Tenancy Policy.
3. Where a court makes a Property Transfer Order in connection with matrimonial proceedings or civil partnership proceedings, or proceedings under the Children's Act 1989.

This document outlines the Council's policy and approach towards statutory (as above) and non-statutory assignments; in order that a fair and transparent service is provided to Dartford tenants.

2. Mutual exchange

2.1. Introduction

Mutual exchange is a right laid out in legislation under the Housing Act 1985 and the Localism Act 2011, for tenants of local authorities, registered social landlords and housing trusts. Tenants are required to obtain permission from their landlord for the mutual exchange and the legislation requires the Council to consider an application for permission within 6 weeks.

A mutual exchange is the exchange of properties between tenants who are in mutual agreement. It may happen between two tenants who decide to swap properties, or between three or more tenants who decide to move round in a 'chain.'

A mutual exchange allows one tenant to hand over their tenancy to another tenant, thus avoiding the creation of a new tenancy. It may happen between two tenants who decide to swap properties, or between three or more tenants who decide to move around in a 'chain.' A mutual exchange, where a tenant hold a flexible tenancy, may require the existing tenancy agreement to be "surrendered" and a new tenancy agreement entered into. Tenants involved with a proposed mutual exchange which involves a flexible tenant should contact the housing officer first.

Mutual exchange is beneficial for housing providers, as it allows more efficient use of the housing stock by meeting the needs and preferences of tenants. It also empowers tenants, giving them a choice over where to live and when to move. It is particularly useful for those who do not qualify for a transfer, because their home adequately meets their needs.

¹ 'The Housing Manual' (checked April 2008) <http://members.cih.org/hm/default.aspx?i=42021&ht=assignment>
Last reviewed April 2013

2.2. Eligibility

To participate in mutual exchange, persons must be social housing tenants either of a local authority, a Registered Social Landlord or a Housing Trust and must hold a secure, flexible or assured tenancy.

There are a number of grounds for refusing an exchange contained within Schedule 3 of the Housing Act 1985 and, for some mutual exchanges involving a flexible tenant, Schedule 14 of the Localism Act 2011 applies. Full details are provided in Appendix A to this Policy. In addition, Dartford Borough Council (DBC) will only allow tenants to exchange where they have complied with the tenancy conditions. The Council is entitled to require payment of any rent arrears and any breach of the tenancy conditions should be remedied before an exchange can take place.

2.3. Family Members

For a family member to count as a member of the household, the family member must have lived with the tenant at least 12 months leading up to the date of exchange and be able to demonstrate that it is their principle home (see Table 1).

2.4. Properties available for mutual exchange

Eligible tenants can exchange with other eligible tenants anywhere within the UK. However, because of changes to housing benefit regulations and to make best use of council stock, applicants for the scheme are only entitled to move to a property that adequately meets their housing needs (see Table 1).

Applicants are also restricted from moving to a property that would be too small to meet the needs of their household. However consideration may be given to granting a mutual exchange to a smaller property when the tenant is able to submit compelling grounds for the exchange.

Table 1. Household size and housing need

Household size*	Number of Bedrooms	Max Number of bedrooms allowed through Mutual Exchange
Single person	1 or combined living and bedroom	1***
Couple with one child or single parent with one child	1	2
**Couple with two children or single parent with 2 children of the same sex under 21 years old	2/3	2
Couple with two children or single parent with 2 children of opposite sex under 10 years old	2/3	2
Couple with two children or single parent with 2 children of opposite sex where one or both are over the age of 10	3/4	3
Couple or single parent with two children or couple or single parent with one child over 21, a child between 10 and 21 and another child under 10	3/4/5	4

- * Household members must have lived in the home at least 12 months prior to the date of exchange
- **Children of the same sex are expected to share the same room until one reaches the age of 21.
- ***If a person is under the age of 35 and in receipt of housing benefit, they will only be entitled to the shared room accommodation rate

2.5. Implications of mutual exchange

Secure, flexible and assured tenancies

All applicants are advised to check the type of tenancy they will be receiving. Most housing associations offer assured or flexible tenancies, whereas Dartford Council offers secure or flexible tenancies. The type of tenancy may place restrictions on certain entitlements, such as the right to buy your home. Therefore the Council advises all tenants to check these details prior to exchange.

Succession rights

If a person receives a tenancy by succession, whether that be by the death of a tenant or assignment (see section 3 for more details), and later moves under mutual exchange, their status as a successor still stands and the tenancy cannot be passed on to another successor, since succession rights can only take place once.

Downsize for Cash, Decorating vouchers and removal costs

Tenants moving by mutual exchange do not qualify for the Downsize for Cash Scheme or decorating vouchers and all tenants that mutual exchange must pay their own removal costs and incidental expenses.

Compensation for improvements

Dartford Borough Council's secure tenants are eligible for compensation for improvements at the time of exchange; flexible tenants do not have this right. For more details, the Compensation for Improvements Policy can be found on the Council's Housing Policy and Strategy webpage:

<http://www.dartford.gov.uk/housing/HousingStrategiesandPolicies.htm>
or requested from a Housing Officer.

2.6. Mutual exchange procedure

- a) Those interested in Mutual Exchange should actively seek an appropriate exchange.

If tenants wish to remain in Dartford they can:

- Join DBC's Mutual Exchange Register. This register advertises properties for mutual exchange. Applicants can join the register on-line or by filling out a paper application. The register can be checked on-line at www.dartford.gov.uk/mutual_exchange/
- Advertise in local newspapers or shop windows
- Ask friends and relatives if they know of anybody interested in an exchange

If tenants wish to move outside of Dartford they can register on-line at www.exchangelocata.org.uk for moves within Kent, or there are a variety of websites available should you wish to move elsewhere within the United Kingdom.

Please note that inducements cannot be made in order to exchange a property

- b) When a suitable match is identified a tenant wishes to further their interest in the property, it will be the tenant's responsibility to contact the other tenant to progress the exchange.
The Council advises that all those taking part in a mutual exchange should visit the home before agreeing to an exchange. Tenants who exchange must accept the property in its present state and any damage caused by the outgoing tenant will become the responsibility of the incoming tenant and will need to be replaced at his/her expense. The Council will only carry out normal repairs for which it is responsible (specified in the Council's Repairs Policy).
- c) When an exchange has been agreed between the parties involved, they must contact their landlord for permission to carry out the exchange. Dartford Borough Council tenants and those they swap with are both required to fill out and return a mutual exchange application form. Forms can be collected from the council offices or sent by post on request. Help completing the application form can also be given.
- d) The tenant's landlord has a maximum of 6 weeks (42 days) in which to agree or refuse the exchange. During that time the Council will arrange an inspection of the property and will inform the tenant of repairs which are the tenant's responsibility that must be undertaken to the Council's approval before the exchange can take place, whilst also ensuring that the Council carries out repairs which are its responsibility. The Council will also make contact with the relevant agencies (if appropriate) if the applicant has mentioned an agency or safeguarding concern in their application form.
- e) The landlord will then send a written notification to the tenants to confirm whether the exchange can take place. All parties involved in the exchange must receive permission from their landlord before the exchange can progress (failure to obtain permission may lead to the loss of the tenant's property).
- f) Once the exchange has been agreed, the parties receiving a tenancy from Dartford Borough Council (DBC) or giving up a DBC tenancy must come to the Civic Centre to sign the Deed of Assignment or, where a flexible tenancy is involved, to sign a Surrender of the existing tenancy and a new tenancy agreement. After this the move can take place.

2.7. Refusals

If the request for a mutual exchange is refused, the Council will inform the outgoing and incoming tenant in writing. Only the tenant who has been refused permission will be given the reasons for the refusal. A refusal will not in any way affect a tenant's right to apply for another mutual exchange at any time in the future.

3. Succession

3.1. Introduction

A succession may occur after a tenant has died and where another individual may have the right to take over the tenancy. Rights of succession are contained in detail in the Housing Act 1985. The right of assignment to a succeeding tenant can only take place once. Therefore if a tenant is already a successor (has received a tenancy through succession or by certain assignments) the tenancy cannot be passed on again.

3.2. Eligibility to be a successor

This section sets out who is eligible to succeed to the tenancy (It should be noted that different rules apply for secure and flexible tenants). Where there is more than one person who is qualified to succeed, they will need to agree between them who will be the successor or the Council will otherwise select who the successor will be. In some instances the Council may allow the tenancy to be passed to someone who is not legally eligible for assignment (please see section 3.4 - Non statutory succession, for further details).

For flexible tenants

For flexible tenants, only the tenant's husband, wife, civil partner or partner can succeed to a tenancy where he or she was living with the tenant at the property in a relationship equivalent to that of wife and husband (this can include unmarried partners) or as if they were civil partners.

For existing secure tenants

A family member may have the right to succeed but the Council may seek possession of the property if it is under occupied. An alternative property would be offered by the Council. The family member must have lived with the tenant at least 12 months leading up to the date of assignment and be able to demonstrate that it is their principle home.² The family member must be over 18 years old, or 16 or over with a guarantor, for the tenancy to be granted in their name.

3.3. Downsize for Cash

In cases where the assignee's property does not meet their housing needs, e.g. it is under occupied, they may be asked to move to a smaller, more suitable property. Tenants who are releasing one or more bedrooms can benefit from the Council's Downsize for Cash scheme which offers a financial incentive of £500 for each bedroom released, plus help with moving costs. See <http://www.dartford.gov.uk/by-category/housing2/downsize-for-cash> for more information. This offer is NOT available to tenants who mutually exchange.

3.4 Non statutory succession

The Council will consider the needs of applicants who have been living with a tenant, who have no statutory right to succeed but where it would be appropriate to make them an offer of permanent accommodation.

² 1985 Housing Act, Section 87b
Last reviewed April 2013

The needs of such applicants will be considered on a case by case basis. The decision taken will take account of others in housing need who are registered for housing with the Council and may include the following:

- There is neither a spouse nor family member to succeed, but a friend or carer has lived in the home for at least 12 months leading up to the date of assignment and can demonstrate that it is their principle home.
- There are children under the age of 18 who wish to live with a guardian who has no alternative accommodation.
- The applicant is vulnerable, because of age or ill health.
- The right of succession has already been used but under certain circumstances the tenancy may be passed on again to a relative, such as the tenant's spouse.

Agreement to a non-statutory succession will create a new tenancy. The tenancy offered will be a flexible tenancy either of the property previously occupied by the deceased tenant, or another property suitable to their needs.

4. Court ordered assignment

4.1. Introduction

The court can make Property Adjustment Orders,(PDOs) which allow tenancy rights to be assigned to someone else. A summary of when courts can issue PDOs is provided below:

*The Matrimonial and Family Proceedings Act 1984*³ and the *Matrimonial Causes Act 1973*⁴ both state that a property adjustment order can be made when the court:

- Makes a decree nullifying a marriage
- Makes a decree of judicial separation
- Makes a decree of divorce.

The courts can also make PDOs for cohabiting couples and civil partners.

Under the *Children Act 1989*, the court can make PDOs in favour of children under 18, and allows a property to be assigned from one parent to another.

4.2. Procedure for obtaining a court ordered assignment

When the court has granted a PDO for a DBC tenancy, the assignee and the assignor must contact their Housing Officer. They will be asked to supply evidence of the court order, and sign the Deed of Assignment.

Within 10 days the Council will send out a letter to both parties involved in the assignment to confirm that the assignment has taken place.

The new tenant (assignee) then takes on the rights and responsibilities of the original tenant (assignor).

³ The Matrimonial and Family Proceedings Act 1984 Section 17

⁴ Matrimonial Causes Act 1973 Section 23a +23b + 24.

5. Joint tenancies

- 5.1 Where a joint tenant wishes to transfer the tenancy to the joint tenancy partner, appropriate administrative and legal checks will be made before agreeing to such a request to ensure that there have been no previous successions or assignments. A deed of assignment will be required signed by both parties.
- 5.2 Where a sole tenant asks for a joint tenancy with a partner, this creates a new tenancy. Appropriate procedural and administrative checks will be made before this is agreed for instance to ensure there has been no previous succession or assignment as new succession rights would be created.
- 5.3 Only in exceptional circumstances will joint tenancies be allowed between more than two applicants and between family members rather than partners.

6. Implications of assigning a property without permission

6.1. Mutual exchange

Mutual exchange requires the written consent of the landlord (Housing Act 1985 c92:1). When an exchange takes place without permission the parties involved will be asked to quit their properties and, should they then reapply to be rehoused by a local authority, may be considered as intentionally homeless. It should also be noted that mutual exchanges can only take place where the properties are suitable for each household's needs (see Grounds 3 and 4 Housing Act 1985 Appendix A).

6.2. Other assignments

The Council's secure Tenancy Agreement provides that a tenant can apply to the Council for permission to pass the tenancy of the property to a family member (Spouse, civil partner or partner only for flexible tenants). However, some assignments do not need the Council's consent. If a tenancy is to be assigned following a court order or to a family member, the tenant should contact the Council to check whether the Council's consent is required. If the tenant does not obtain the Council's consent to an assignment where the Council's consent is required, possession proceedings might be taken by the Council.

7. Equality

Every effort will be made to make assignments accessible to a wide variety of people and groups. Dartford Borough Council has adopted a Comprehensive Equalities Policy and staff are required to respect cultural differences and carry out services which ensure equality of opportunity and without prejudice on the grounds of race, ethnic origin, nationality, religion, cultural background, gender, sexual orientation, domestic circumstances, disability, illness (such as HIV and AIDS) and age.

8. Complaints

If an applicant wishes to dispute a decision regarding an assignment, complaints are to be made through the Council's complaints procedure. Details of this procedure are available from Housing Officers, it can also be found at: <http://www.dartford.gov.uk/complaints/index.htm>.

9. Policy review

This policy will be reviewed regularly to ensure that it is in line with current legislation.

Appendix A

Reasons for refusal for mutual exchange as at the date of this policy.

From the 1985 Housing Act:

Requests for mutual exchanges for assured and secure tenants may only be reasonably refused on the grounds specified in section 91 Housing Act 1985 (Schedule 3) as detailed below.

Whilst it is not possible to refuse consent to a mutual exchange on the grounds of non-payment of rent or anti-social behaviour (except where a Notice Seeking Possession has been served), it is possible (under Part IV, S92 (5) of the Housing Act 1985 (Assignment in General)), to make consent to an exchange conditional on any breaches being remedied or obligations performed.

Ground 1: Either the incoming or outgoing tenant is or will be obliged by a court order to give up possession of the property

Ground 2: Either the incoming or outgoing tenant is the subject of a current notice of seeking possession, or possession proceedings have started, on one or more of the following grounds:

- a) Non-payment of rent or noncompliance with a tenancy condition
- b) Nuisance or annoyance to neighbour, or using the property for immoral or illegal purpose
- c) Neglect or “waste” of the property or common parts
- d) Ill treatment of landlord’s furniture
- e) Obtaining the tenancy by a false statement
- f) Participating in an exchange which has involved the payment of a premium

Ground 2a: Either of the properties have a possession or demotion order in place. Or if tenant, proposed assignee or household member has a relevant order such as an Injunction or anti-social behaviour order against them.

Ground 3: The home of the outgoing tenant is “substantially” more extensive than is reasonably required by the incoming tenant.

Ground 4: The “extent” of the outgoing tenant’s home is not reasonably suitable to the needs of the incoming tenant.

Ground 5: The property forms part of a building which is held by the Landlord mainly for purposes other than housing purposes, is predominantly not used for housing or is situated in a cemetery, and was let to the tenant or his/her predecessor in consequence of his/her employment with the landlord.

Ground 6: The landlord is a charity, and the assignment of the incoming tenant would conflict with the objects of the charity.

Ground 7: The outgoing tenant's home has features which are designed to make it suitable for occupation by a physically disabled person, and if the exchange proceeded there would be no one living there who needed these features.

Ground 8: The landlord is a housing association or housing trust which lets its property to people who experience difficulty in meeting their own housing needs. If the exchange were to proceed there would be no one living in the property with these needs.

Ground 9: The outgoing tenant's home is one of a group provided for people with special needs, with a social service or special needs facility nearby to meet those needs. If the exchange were to proceed there would be no one living there who had these special requirements.

Ground 10: The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.

From the Localism Act 2011

Requests for mutual exchanges where one party has a 2 year plus fixed term assured shorthold tenancy at a social rent or a flexible tenancy may only be reasonably refused on the specified grounds contained in Schedule 14 of the Localism Act 2011 as detailed below.

The Localism Act does not allow for any conditions to be imposed to consent. However rent arrears, damage to property or anti-social behaviour/breach of tenancy, are instead grounds for refusal.

Ground 1: This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2: This ground is that an obligation under one of the existing tenancies has been broken or not performed.

Ground 3: This ground is that any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.

Ground 4:

(1) This ground is that either of the following conditions is met.

(2) The first condition is that—

- (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and
- (b) possession is sought on one or more of grounds 1 to 6 in Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation).

(3) The second condition is that—

- (a) a notice has been served on a relevant tenant under section 83 of that Act (notice of proceedings for possession), and
- (b) the notice specifies one or more of those grounds and is still in force.

Ground 5

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
 - (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
 - (b) possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)
- (3) The second condition is that—
 - (a) a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
 - (b) the notice specifies one or more of those grounds and is still in force.

Ground 6

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that a relevant order [, a suspended anti-social behaviour possession order or a suspended riot-related possession order] ¹ is in force in respect of a relevant tenant or a person residing with a relevant tenant.
- (3) The second condition is that an application is pending before any court for a relevant order, a demotion order [, an anti-social behaviour possession order or a riot-related possession order] ² to be made in respect of a relevant tenant or a person residing with a relevant tenant.
- (4) In this paragraph—
a “*relevant order*” means—
 - (a) an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
 - (b) an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
 - (c) an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),
 - (d) an anti-social behaviour order under section 1 of the Crime and

Disorder Act 1998, or

- (e) an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003;

Ground 7

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

Ground 8

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of—

- (a) the existing tenant or tenants to whom the tenancy is proposed to be granted, and
- (b) the family of that tenant or those tenants.

Ground 9

(1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.

(2) The first condition is that the dwelling-house—

- (a) forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord—
 - (i) is held mainly for purposes other than housing purposes, and
 - (ii) consists mainly of accommodation other than housing accommodation, or

(b) is situated in a cemetery.

(3) The second condition is that the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of—

- (a) the landlord under the tenancy,
- (b) a local authority,
- (c) a development corporation,
- (d) a housing action trust,
- (e) an urban development corporation, or
- (f) the governors of an aided school.

Ground 10

This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the

new tenancy is proposed to be granted would conflict with the objects of the charity.

Ground 11

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that—
 - (a) are substantially different from those of ordinary dwelling-houses, and
 - (b) are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.
- (3) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

Ground 12

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to meet their need for housing.
- (3) The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

Ground 13

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs.
- (3) The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.
- (4) The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

Ground 14

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that—
 - (a) the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and
 - (b) at least half the members of the association are tenants of dwelling

houses subject to the agreement.

- (3) The second condition is that at least half the tenants of the dwelling-houses are members of the association.
- (4) The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.
- (5) References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A(6) of the Housing and Regeneration Act 2008.