

1. This policy sets out our approach to mutual exchanges. Social housing tenants with Secure and Assured Tenancies have the right to exchange their tenancy with another social housing tenant as long as they obtain permission from their landlord to do so. This right, and therefore this policy, does not apply to people on the following occupancy agreements: Starter Tenancies, Periodic Assured Shorthold Tenancies, and those on License agreements. In addition, the right to exchange does not apply to people living in market rent, mortgage rescue or leasehold properties.

The Guinness Policy

2. Our policy is that we will:
 - Provide a mutual exchange service that complies with all legal, regulatory, and contractual requirements
 - Promote the choice and flexibility mutual exchanges offer tenants in enabling them to live where they want to live and find a home more suitable for their needs, and
 - Promote mutual exchanges as a way to make the best use of our homes in order to help address overcrowding, under occupation and meet housing need.

Background

3. The policy complies with:
 - The Housing Act 1985 and the Housing Act 1988 which provide the legal basis for exchanges to occur.
 - The Localism Act 2011. The Localism Act introduced protection for lifetime tenants so that they did not lose their security of tenure when they exchanged with fixed term tenants
 - The Regulator of Social Housing's "Tenancy Standard". This requires Registered Providers to enable their tenants to gain access to opportunities to exchange their tenancy.
4. The policy supports the delivery of the following strategic objectives:
 - To be a customer service organisation, working continuously to improve our services
 - To meet our legal and regulatory requirements.
5. An explanation of technical terms in the policy is provided in Annex 1. The criteria we can use if necessary for refusing exchanges is in Annex 2. The criteria we use to determine whether a property is overcrowded or underoccupied is in Annex 3. The tenancies that will be granted during an exchange are in Annex 4. In this policy "mutual exchange" is referred to as an "exchange".

Further detail

6. We will subscribe to a free online service that enables our tenants to find other social housing tenants that want to exchange their home.
7. We will take reasonable steps to publicise the service we subscribe to. In addition, we will offer reasonable support to tenants who do not have access to the internet and are therefore unable to access the online service.

Applicant Responsibilities

8. The applicant is responsible for thoroughly inspecting the property before agreeing to the move. Before the exchange takes place, the applicant is required to ensure that they are satisfied with the condition of the property. This is because the incoming tenant accepts the property “as seen”.
9. Applicants must only go ahead with an exchange once they have received their landlord’s written permission to do so. Applicants must not go ahead if they do not receive a response from their landlord within 42 days giving them permission to exchange.

Guinness responsibilities

10. We will review applications from tenants wishing to exchange and carefully consider whether permission to exchange should be given in line with this policy. We will notify tenants in writing of our decision. If your application is refused, we will tell you the reason(s) why. In both cases we will let you know within 42 days of receiving your application.
11. We will advise our tenants that Guinness does not endorse or promote private agreements between exchanging tenants about personal items to be left in the property for the incoming tenant.
12. We will advise Guinness tenants to seek independent legal advice about any possible loss of legal rights as a result of a potential exchange with a tenant of another social landlord.
13. We will offer all tenants with an existing lifetime tenancy a further lifetime tenancy if they are exchanging with a Guinness fixed term tenancy.
14. We will treat tenants who have exchanged without their landlord’s permission as unauthorised occupiers. This may lead to legal action being pursued in order to enforce the removal of the unauthorised occupants.

Refusal reasons

15. Guinness will not unreasonably withhold permission to exchange, but we may do so if one of the “grounds for refusal” apply. The grounds for refusal we use depends upon the type of tenancy held by the Guinness tenant wishing to exchange. They are set out in Annex 2. The grounds we will use for Secure Tenants are referred to as “Secure Grounds”. These are statutory grounds set by the Government. If either of the tenants exchanging is on a Fixed Term Tenancy, or they are an Assured Tenant, the “Assured and Fixed Term Grounds” are used. These are the statutory grounds for exchanges involving Fixed Term tenancies.
16. We may withhold permission if any of the grounds for refusal applies. If there are changes in law affecting the statutory grounds (Secure and Fixed-Term tenants), we will rely on the new grounds.

Additional refusal reasons

17. In addition to the Grounds for refusal, we will usually refuse permission to exchange in the following circumstances. If:
 - Allowing the exchange would place Guinness in breach of a legal obligation. Examples include but are not limited to: Section 106 planning agreements, obligations under a head lease, or where it would restrict our ability to hand back a leased property with vacant possession. This might be avoided if the tenant is willing to accept a less secure form of tenancy, such as a Periodic Assured Shorthold Tenancy.

- We have reason to believe that any tenant involved in the exchange has been offered or has requested a financial incentive to complete the exchange.
- The incoming tenant wishes to move to an age specific scheme, and they do not meet the age criteria; or
- The exchange would place our customers, staff, contractors, or any member of the public at serious risk of harm. The decision to refuse permission to exchange in these circumstances would be made by a Director.

Other factors

18. We may refuse an application if the property has been significantly adapted for a disability and neither the incoming tenant nor members of their household have a requirement for the adaptations.
19. We may give conditional permission for the exchange if there are minor tenancy breaches e.g. rent arrears. We will advise tenants if this is the case and agree timescales for the tenancy breach to be put right. If the tenancy breach is not rectified by the agreed date, then permission will be refused subject to a relevant refusal ground being applicable.
20. Tenants are required to work with us to resolve outstanding tenancy issues before the exchange can be considered e.g. where there is an absent joint tenant.

Right to review

21. Guinness tenants may request a review of a decision to refuse permission to exchange. The request must be made in writing within 14 days of receiving the refusal letter. The review will be undertaken by a senior member of staff who was not involved in making the original decision.

Overcrowding and under occupying

22. We will use the English Housing Survey bedroom standard to determine whether the property will be underoccupied or overcrowded if the exchange were to go ahead. The standard is set out in Annex 3.
23. In exceptional circumstances, we may allow the property to be underoccupied by one bedroom. We will decide this on a case by case basis taking the needs of the household into account.
24. Similarly, we may allow a property to be overcrowded by one bedroom. However, we will only consider this if the exchange involves a household that requires 4 or more bedrooms.

Information sharing

25. We will handle applicants' personal data in line with data protection regulations. We will make tenants aware of why we need the information, how it will be used, who will have access to it, and what rights they have under data protection regulations.
26. We will require tenants to declare that the information they provide in relation to their application is true. It is an offence to fraudulently withhold information or provide false information.
27. We will request a reference from the landlord of the tenant our tenant wishes to exchange with.
28. We will only proceed with the exchange if all tenants involved have their landlord's written permission to do so.

Completing the exchange

29. We will arrange for exchanging parties to sign the relevant paperwork to legally exchange tenancies with each other. The legal methods we use are either “assignment” or “surrender and re-grant”. The method we use depends on whether any or both exchanging tenancies are Fixed Term or not. We will advise our tenant of the method we are legally required to use. The types of tenancy that will be granted following the exchange are given in Annex 4.
30. We will carry out gas and electrical safety checks on the property after the legal exchange documents have been signed. This is to ensure that the gas and electricity supplies in the property are safe for the incoming tenant. We will also provide a copy of the Energy Performance Certificate and gas safety records for the property if they are available.
31. Once the tenancies have been exchanged, the incoming tenant will be responsible for remedying any unresolved “tenant responsibility” repairs. Guinness will be responsible for all landlord responsibility repairs.
32. We may use our discretion to make exceptions to this policy or any associated practice, for example in order to fulfil our duty to make “reasonable adjustments” under the Equalities Act 2010. We will make our decision on the individual circumstances concerned, and within the intended spirit of this policy.

Period of review

33. Our review programme is driven by service improvement initiatives, changes to legislation, regulation, evolving good practice or feedback from customers and other key stakeholders. Typically, we review policies on a three-yearly cycle.

Key legal and regulatory references

- Housing Act 1985
- Housing Act 1996
- Equality Act 2010
- Localism Act 2011
- The Regulator of Social Housing consumer standards (Tenancy Standard) April 2012
- Anti-social Behaviour, Crime and Policing Act 2014
- Data Protection Act 2018.

Related policies

- Allocations Policy
- Anti-social Behaviour, Hate Crime and Hate Incidents Policy
- Arrears Policy
- Data Protection Policy
- Electrical Safety Policy
- Gas Management Policy
- Safeguarding Adults, Children and Young People Policy
- Tenancy Fraud Policy
- Tenancy Policy.

Version number	4.0	
Policy approved by	Trafford Wilson, Executive Director of Customer Services	
Policy approval date	28 th October 2021	
Policy effective from	12 th November 2021	
Policy review date	November 2024	
Equality analysis approval date	28 th October 2021	
Policy author	Louise Parker, Housing Policy Officer	
Lead director	John Cockerham, Director of Customer Services	
Policy owner	Trafford Wilson, Executive Director of Customer Services	
Version history		
Version number	Review trigger	Brief description of the main changes
3.0	Cyclical review	Localism Act refusal grounds added. Data protection information sharing requirements included. Non-statutory grounds for refusal added. Marion James, Housing Policy Manager
3.1	BAU	Addition of policy commitment set out in section 5 of further details. Clarified assignment and surrender/re-grant definitions as a result. Marion James, Housing Policy Manager
4.0	Cyclical review	Grounds for refusal combined into one table to make it clearer. Information given on when we will allow overcrowding. Right for tenants to request a review of our decision to refuse an exchange added in section 19. Information given on types of tenancies to be granted in Annex 4. Louise Parker, Housing Policy Officer

Annex 1: Definitions

Term	Description
Mutual exchange	This is the term given to social housing tenants exchanging homes with each other with their landlord's permission. Mutual exchanges can take place between tenants of the same or different landlords. It is a statutory right for Secure Tenants, Assured Tenants, and Fixed Term Tenants. It is referred to as an "exchange" in this policy.
Assignment	This is the legal process for exchanging the tenancies at the same time the house exchange takes place. It is completed by signing a "Deed of assignment". The incoming tenant takes on the rights and responsibilities of the tenant they exchange with. This process is used for exchanges between two 'lifetime' tenants (i.e. Assured or Secure Tenants).
Statutory grounds	This is the term given to reasons for decisions that are set out in law. In the case of mutual exchanges, the law is set out in either the Housing Act 1985 or the Localism Act 2011
Surrender and re-grant	This is the legal process to exchange tenancies when one of the tenants holds an Assured or Secure 'lifetime' Tenancy and the other has a Fixed Term Tenancy. It is completed by each tenant voluntarily surrendering their tenancy. Then at Guinness, the lifetime tenant signs up to a new lifetime tenancy agreement for the property they are moving into, e.g. a Secure Tenant would sign a new Secure Tenancy Agreement, and an Assured Tenant would sign a new Assured Agreement. The lifetime tenant therefore retains the same level of security of tenure they had previously. The Fixed Term tenant will be signed up to a new tenancy in accordance with the relevant landlord's tenancy policy.
Lifetime tenancy	This term is used for both Secure and Assured (Non-Shorthold) Tenancies who have a week by week or month by month tenancy. Lifetime tenants have the highest level of security. It does not apply to Starter, Probationary or Assured Shorthold (Periodic or Fixed Term) Tenancies.
Tenant responsibility repairs	As per our tenancy agreements, certain repairs are the responsibility of the tenant to rectify. These include, but are not limited to: <ul style="list-style-type: none"> • Altering doors for carpets • Appliances, fixtures, fittings, extensions, shed, porch, conservatory or other additions (external or otherwise) – where installed by you with or without permission, unless formally adopted by us • Replacing lost or damaged keys • Filling small plaster cracks • Replacing without delay any cracked and broken panes of glass, where this damage is caused by you, a member of your household or someone visiting your home • TV aerials or satellite dishes (unless communal) and any damage to your property or neighbouring property caused by installing them • Clothes posts and lines (unless communal) • Plumbing in domestic appliances

	<ul style="list-style-type: none">• All front and back gates and fences (unless there is a main or busy road or some other danger on the other side of the fence, or a legal obligation for us to maintain it)• Toilet seat and cover• Light bulbs and fluorescent tubes including starter motors• Bath, basin and sink plugs• Internal decorations.
--	--

Annex 2: Grounds for Refusal

Secure Grounds	Assured and Fixed-term Grounds	Summary of Grounds for refusal
Housing Act 1985 sch 3	Localism Act 2011 Sch 14	
-	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 that the proposed

		assignee is not such a member nor is willing to become one.
Ground 2a (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.

Annex 3: English Housing Survey Bedroom Standard

The bedroom standard is used by the government as an indicator of occupational density. A standard number of bedrooms is calculated for each household in accordance with its age/sex/marital status composition and the relationship of the household members to one another. The standard is calculated as follows:

A separate bedroom is allowed for each married or co-habiting couple, any other person aged 21 or over, each pair of adolescents aged 10-20 of the same sex, and each pair of children under 10. Any unpaired person aged 10-20 is notionally paired, if possible, with a child under 10 of the same sex, or, if that is not possible, he or she is counted as requiring a separate bedroom, as is any unpaired child under 10.

Annex 4: Tenancies granted during an exchange

Tenancy before exchange		Tenancy after exchange		Method
Tenant A	Tenant B	Tenant A	Tenant B	Paperwork
Guinness Assured	Guinness Assured	Assured	Assured	Deed of assignment
Guinness Assured	External Assured	Assured	Assured	Deed of assignment
Guinness Secure	Guinness Secure	Secure	Secure	Deed of assignment
Guinness Assured	External Secure	Secure	Assured	Deed of assignment
Guinness Fixed Term	Guinness Fixed term	Assured	Assured	Surrender and re-grant
Guinness Fixed Term	External Fixed Term	External Fixed Term (at landlords' discretion)	Assured	Surrender and re-grant
Guinness Fixed Term	Guinness Assured tenant (social rent, pre 1 st April 2012)	Assured	Assured	Surrender and re-grant
Guinness Fixed Term	Guinness Assured	Assured	Assured	Surrender and re-grant
Guinness Fixed Term	External Assured social rent pre 1 st April 2012	Fixed Term (at landlords' discretion)	Assured	Surrender and re-grant
Guinness Fixed Term	External Assured affordable rent pre 1 st April 2012	Assured	Assured	Surrender and re-grant
Guinness Fixed Term	External Assured post 1 st April 2012	Assured	Assured	Surrender and re-grant
Guinness Assured	External Fixed Term	Assured	Assured	Surrender and re-grant