**MUTUAL EXCHANGE POLICY AND PROCEDURE**

**Aim of Policy and Procedure**

The ability to exchange tenancies is recognised by Winchester City Council as an important means for many tenants to be able to find a home more suitable for their needs.

Winchester City Council participates fully in local opportunities facilitated by choice based lettings and procedures are in place to support tenants in their search for suitable exchange partners and to facilitate a speedy and smooth exchange of properties where authorised.

**Background Legislation and Definitions of a Mutual Exchange**

This procedure outlines the process where secure tenants have the statutory right to exchange tenancies with tenants of other Local Authorities and Housing Associations, under the Housing Act 1985 Schedule 3. This process is also called an assignment and essentially involves the tenants of two properties ‘swapping’ homes. There is no void process involved.

**Requirements before an Exchange**

The following conditions must be met before an exchange may proceed

but they are not grounds for refusing consent:

* Rent must be fully paid by the date of the proposed exchange
* Any other obligation under the tenancy that has not been met, or a breach of the tenancy, must be remedied by the date of the proposed exchange

**Secure Tenancies**

In relation to secure tenancies, an application for an exchange can only be refused on one of the grounds in the Housing Act 1985 Schedule 3, the most relevant of which are summarised below.

Either of the tenant’s has an outstanding possession order against them or a Notice of Seeking Possession is in force on one of the following grounds:

* Breach of tenancy conditions or rent arrears
* Nuisance or annoyance to neighbours
* False information provide with the application for housing
* Is an Introductory tenant
* The incoming tenant would substantially under-occupy the property, currently one additional bedroom is permitted

**Exchanges Under S158 Localism Act 2011**

Where the circumstances of a proposed exchange are such that they are covered by the provisions of the Localism Act 2011, consideration will be given to the application in the same manner however with attention given to the differing grounds for refusal as set out in Schedule 14 of the Localism Act.

This applies where:

* At least one of the tenant’s involved must have a periodic secure or assured tenancy (i.e. a lifetime tenancy, one that is not for a fixed term)
* At least one must have a flexible tenancy (i.e. secure tenancy for a fixed term) or fixed term assured shorthold tenancy with a private registered provider of social housing
* At least one of the tenants with the periodic secure or assured tenancy must have a tenancy which started before this provision of the Act came into force on the 1st April 2012

**Investigation Process**

During the initial process, an inspection of the property is carried out by an Area Property Surveyor. If the mutual exchange request involves tenants of another landlord, as well as Winchester City Council tenants, the Tenancy Housing Officer should complete a tenancy reference for other landlord. This will take into account thorough checks to ensure the current tenancy has been conducted satisfactory.

If the Tenancy Team refuses an application then it must give the tenant notice of the refusal with the reason (grounds and particulars) within 42 days or 6 weeks of the date that the application is received.

It is important to remember that the landlord of the properties consider if the mutual exchange can go ahead. Tenant’s must not swap properties without notifying the landlord, getting their permission and waiting until all the documentation has been completed.

**Successful Mutual Exchange Requests**

The exchange is completed by a deed of assignment signed by the incoming and outgoing tenant, and Winchester City Council formally gives its consent in a licence to assign. The incoming tenant takes over the tenancy agreement of the outgoing tenant.