

## Governance Information

<b>Applicable Legislation</b>	Housing Act 1985, Localism Act 2011
<b>Policy owner</b>	Director of Operations
<b>Approved by</b>	CMT
<b>Regulatory reference</b>	Tenancy Standard
<b>Date approved</b>	13th December 2023
<b>Review date</b>	12th December 2026
<b>Stakeholders consulted</b>	n/a
<b>Version</b>	V.1 drafted October 2023

## Contents

Governance Information	1
1. Policy Statement	2
2. Introduction	2
3. Scope	2
4. Applications	2
5. Legislation	2
6. Localism Act Exchanges	3
7. Grounds for refusal	3
8. Appeals	3
9. Related policies and procedures	3
10. Roles & Responsibilities	4
11. Policy Review & Update	4
Appendix A – Grounds for refusal of a Mutual Exchange	5
Appendix B – Table indicating examples of type of exchange to apply	9

## 1. Policy Statement

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We will grant the right to exchange in accordance with the provisions of our tenancy agreements and legislation.

Properties in IDS' ownership or management, which are party to a proposed exchange, will be inspected prior to the move taking place; this will include compliance checks. Any rechargeable repairs identified must be carried out prior to any party moving.

Exchanges will be by way of assignment, unless they fall under the Localism Act 2011 whereby the exchange will be completed by a surrender and re-grant.

IDS will subscribe to an online mutual exchange system, for which IDS residents can register for free when seeking a mutual exchange.

## 2. Introduction

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This policy sets out how IDS will ensure the rights to exchange are exercised in accordance with the tenancy agreement and legislation as well as comply with the Consumer Standards as prescribed by the Regulator of Social Housing.

This policy replaces the Mutual Exchange Policy approved in 2021.

## 3. Scope

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This policy applies to a tenant renting the whole of a property owned or managed by IDS who wants to exchange their home with another tenant living in a Council, IDS or other housing association property or any other property with rights to exchange. Those with secure, assured or fixed term tenancies have the right to exchange. Those on starter tenancies do not have the right to exchange.

This policy does not relate to other forms of assignment, or succession of tenancy as these are covered in the Tenancy Change Policy.

## 4. Applications

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It is the tenant's responsibility to find a suitable person to exchange their home with. IDS will assist tenants to do this by subscribing to and promoting an online national mutual exchange service.

All tenants of IDS must apply in writing for consent to the mutual exchange by completing an application form.

In accordance with legislation, a written decision following a request for consent to exchange will be issued within 42 calendar days.

## 5. Legislation

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In considering a mutual exchange, the nature of the tenancy will determine the legislation which we must follow as set out below:

Tenancy type	Legislation
Secure	S. 92 of the Housing Act 1985
Assured periodic	Tenancy agreement clause
Fixed Term	S. 158 Localism Act 2011

## 6. Localism Act Exchanges

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A Localism Act exchange applies when an assured or secure tenant with a tenancy that predates 1st April 2012 chooses to swap with a tenant on a fixed term tenancy. They will retain a similar tenure status at the new home they exchange into.

IDS will carry out these exchanges by surrender and re-grant. This means that each tenant will surrender their existing tenancy and be granted the new appropriate tenancy. The status of the other fixed term or flexible tenant is not protected by law. The new tenancy given to the fixed term or flexible tenant will be in accordance with our Allocations and Lettings Policy.

These provisions do not apply where:

- At least one tenant has a secure or assured (not shorthold) tenancy which began before 1st April 2012; and
- At least one tenant has a (local authority) flexible tenancy or fixed term assured shorthold agreement which is not less than 2 years and is not an intermediate, affordable or market rent; and neither landlord has refused.

In these circumstances, the Localism Act will not apply and any exchanges will be carried out by assignment. If the assured tenant is swapping with a fixed term tenancy, they will take on the remainder of the fixed term. If this is less than 2 years, IDS may consider granting a new 5 year fixed term tenancy.

## 7. Grounds for refusal

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IDS will not unreasonably withhold permission to exchange. There are 3 sets of grounds for refusing an application for a mutual exchange. These will vary dependent on the tenancy agreement type. As assured tenants do not have a statutory right to exchange laid out in legislation, we will apply similar grounds to that of secure tenants. The applicable grounds for refusal are set out in Appendix A and will be one of:

- Schedule 3 of the Housing Act 1985
- Schedule 14 of the Localism Act 2011
- IDS policy

## 8. Appeals

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Applicants may make an appeal about their mutual exchange decision. The appeal should be made in writing or over phone to a member of staff within 5 working days of the decision being made. A senior member of staff, usually the Head of Housing, will investigate the reasonableness of the refusal and advise the applicant of their findings in writing within 10 working days, unless agreed otherwise.

If the applicant disputes this decision, there is a second right of appeal to the Director of Operations. This must be made in writing or by phone within 5 days of the initial appeal outcome. This decision will be final and made in writing within 10 working days of the request, unless agreed otherwise.

This appeals procedure does not interfere with the individual's right to make a complaint to the Independent Housing Ombudsman.

## 9. Related policies and procedures

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Tenancy Change Policy  
Allocations and Lettings Policy  
Mutual Exchange procedures

## 10. Roles & Responsibilities

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<b>Director of Operations</b>	Overall responsibility for this policy
<b>Head of Housing</b>	Responsible for reviewing and monitoring implementation of the policy and associated procedures.
<b>Housing Service Lead</b>	Effective day to day implementation of the policy.
<b>Housing Officers</b>	Effective day to day requests and coordination of other parties involved in the exchange.

## 11. Policy Review & Update

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This policy is due to be reviewed every three years, or if there are significant legislative or organisational changes which require a review. The next review date, subject to the above caveat, therefore, will be before December 2026.

## Appendix A – Grounds for refusal of a Mutual Exchange

Reason	Grounds in Schedule 3 of the Housing Act 1985	Grounds in Schedule 14 of the Localism Act 2011	IDS policy
Rent Arrears	No set ground, but ability to impose a condition that the rent is clear before the exchange takes place	<b>Ground 1</b> Any rent lawfully due from a tenant under one of the existing tenancies has not been paid.	Yes - Arrears must be cleared prior to exchange taking place. If, however, IDS have reason to believe there is a valid reason the applicant should move with arrears, there will be an addendum to sign e.g. an agreement to continue to make rent payments towards the former tenancy.
Breach of Tenancy e.g. outstanding repairs that are tenants responsibility	No set ground, but ability to impose a condition that the breach is resolved before the exchange takes place	<b>Ground 2</b> An obligation under one of the existing tenancies has been broken or not performed	Yes – IDS must be satisfied there are no on-going concerns regarding breach of tenancy agreement
Possession Order	<b>Ground 1</b> The tenant or the proposed assignee is subject to an order of the court for the dwelling-house of which they are the secure tenant	<b>Ground 3</b> 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	Yes
NOSP served or possession proceedings have commenced for secure tenancy under grounds 1 – 6	<b>Ground 2</b> Proceedings have begun for possession of the dwellinghouse of which the tenant or the proposed assignee is the secure tenant, or a notice has been served on the tenant or proposed assignee under S83 which specifies one or more of those grounds and still in force	<b>Ground 4</b> Either: a. proceedings have begun for possession let on an existing tenant which is a secure tenancy AND b. possession is sought on one or more grounds 1 – 6 in Part 1 of Schedule 2 to the Housing Act 1985  OR: a. notice has been served on a relevant tenant under S83 AND b. the notice specifies one or more of those grounds and is still in force.	Yes

Reason	Grounds in Schedule 3 of the Housing Act 1985	Grounds in Schedule 14 of the Localism Act 2011	IDS policy
NOSP served of possession proceedings have commenced for assured tenancy under grounds 9 – 17	No Ground	<p><b>Ground 5</b> Either:</p> <p>a. proceedings have begun for possession let on an existing tenant which is an assured tenancy AND</p> <p>b. possession is sought on one or more grounds in Part 2 of Schedule 2 to the Housing Act 1988</p> <p>Or:</p> <p>a. a notice has been served on a relevant tenant under S8 AND</p> <p>b. the notice specifies one or more of those grounds and still in force.</p>	Yes. If, however, IDS has reason to believe there is a valid reason the applicant should move with a NOSP in place, there will be an addendum to sign e.g. an agreement to continue to make rent payments.
<p>A relevant order is in force or an application for ASB of the tenant or a person residing with them, including:</p> <ul style="list-style-type: none"> <li>· Civil Injunction</li> <li>· Criminal behaviour order (CBO)</li> <li>· Demotion Order</li> <li>· Suspended</li> <li>· Possession Order (SPO) on grounds 2 (secure) or ground 14 (assured)</li> </ul>	<p><b>Ground 2A</b> Either a relevant order or suspended order is in force, or an application is pending before the court.</p>	<p><b>Ground 6</b> Either: A relevant order or suspended Ground 2 or 14 Possession order is in force in respect of a relevant tenant or person residing with this tenant OR An application is pending before the court for a demotion order or a Ground 2 or 14 possession order</p>	Yes
Under Occupation	<p><b>Ground 3</b> The accommodation afforded by the dwellinghouse is substantially more extensive than is reasonably required by the proposed assignee</p>	<p><b>Ground 7</b> The accommodation afforded by the dwellinghouse is substantially more extensive than is reasonably required by existing tenant or tenants whom the tenancy is proposed to be granted.</p>	<p>IDS see the following as acceptable regardless of the sex or age:</p> <ul style="list-style-type: none"> <li>· 1 Adult/couple: Bedsit or 1 bed</li> <li>· Parent/couple 1 child: 2 bed</li> <li>· Parent/couple 2 children: 2 or 3 bed</li> <li>· Parent/couple 3 children: 3 or 4 bed</li> </ul> <p>*Proof of pregnancy over 26 weeks will be classed as 1 child</p>

Reason	Grounds in Schedule 3 of the Housing Act 1985	Grounds in Schedule 14 of the Localism Act 2011	IDS policy
Suitability e.g. over occupation	<b>Ground 4</b> The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and family.	<b>Ground 8</b> The extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suited to the needs of the existing tenant or tenants to whom the tenancy is proposed to be granted and the family	Downsizers from within IDS stock will be allowed one additional bedroom to their need as above.  Discretion may be given to those who have had a physical medical assessment agreed by the local authority as moderate or major need as part of a transfer application.  Consideration also given to tenants who are overcrowded, but will benefit from smaller property ie affordability
Conflict of charitable objectives	<b>Ground 6</b> The Landlord is a charity and the proposed assignee's occupation of the dwellinghouse would conflict with the objectives of the charity	<b>Ground 10</b> The landlord is a charity and the occupation of the dwelling-house proposed to be let on a new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with objects of the charity.	Yes
Adapted property	<b>Ground 7</b> The dwelling-house has features which are substantially different from those of ordinary dwellinghouses and which are designed to make it more suitable for occupation by a physically disabled person who requires the accommodation of the kind provided by the dwellinghouse and if the assignment were made there would no longer be such a person living in the dwelling-house.	<b>Ground 11</b> <b>Both:</b> The dwelling-house proposed to be let on the new tenancy has features that are substantially different from those ordinary dwelling-houses and are designed to make it suitable for occupation by a physically disabled person AND If the new tenancy were granted there would no longer be such a person residing in the dwellinghouse	Disclaimers will be requested to be signed to accept the property with its current adaptations if the move is to go ahead

Reason	Grounds in Schedule 3 of the Housing Act 1985	Grounds in Schedule 14 of the Localism Act 2011	IDS policy
Property is let for those with special needs e.g. supported or sheltered housing	<b>Ground 8</b> The landlord is a housing association or housing trust which lets dwelling-houses only for occupation by persons whose circumstances make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person living in the dwellinghouse.	<b>Ground 12</b> Both: The landlord is a housing association or housing trust which lets dwellinghouses only for occupation by persons whose circumstances make it especially difficult for them to meet their need for housing AND if the new tenancy were granted, there would no longer be such a person residing in the dwellinghouse	Properties owned by IDS designated as sheltered accommodation for those aged over 60, unless otherwise agreed.
Apply conditions to the exchange			Proof of residency and pregnancy where applicable. Refusal to inspect the property
IDS would be in breach of another agreement	No	No	Yes By allowing the exchange IDS would be in breach of the following: <ul style="list-style-type: none"> <li>· Any planning agreement restrictions which affect the local allocations or lettings policy</li> <li>· Where there is a headlease with any covenants binding the tenancy</li> </ul>

## Appendix B – Table indicating examples of type of exchange to apply

Tenant 1 Current tenure	Secure (pre 1/4/12)	Secure (post 1/4/12)	Assured periodic tenant (pre 1/4/12)	Secure flexible (post 1/4/12)	Assured periodic (post 1/4/12 tenancies)	Fixed term AST Social Rent 2+ years
Tenant 2 Current tenure						
Secure (pre 1/4/12 tenancies)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Surrender & Regrant 2 retains full tenure 1 discrety tenure (a)	Deed of assignment Swap tenures	Surrender & Regrant 2 retains full tenure 1 discrety tenure (a)
Secure (post 1/4/12 tenancies)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures
Secure flexible (post 1/4/12)	Surrender & Regrant 1 retains full tenure 2 discrety tenure (a)	Deed of assignment Swap tenures	Surrender & Regrant 1 retains full tenure 2 discrety tenure(a)	Deed of assignment Swap (same) tenure	Deed of assignment Swap tenures	Deed of assignment Swap tenures
Assured periodic (pre 1/4/12)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Surrender & regrant 2 retains full tenure 1 discrety tenure (a)	Deed of assignment Swap (same) tenure	Surrender & Regrant 2 retains full tenure 1 discrety tenure (a)
Assured periodic (post 1/4/12)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap (same) tenure	Deed of assignment Swap tenures
Fixed term AST Social Rent 2+ years	Surrender & Regrant 1 retains full tenure 2 discrety tenure (a)	Deed of assignment Swap tenures	Surrender & Regrant 1 retains full tenure 2 discrety tenure(a)	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap (same) tenure
Fixed term AST or Affordable Rent	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures	Deed of assignment Swap tenures