

Local choice, local control

**Statutory guidance on tenant management for local  
authorities and local authority tenants**



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Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 020 7944 4400  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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PO Box 236  
Wetherby  
West Yorkshire  
LS23 7NB  
Tel: 08701 226 236  
Fax: 08701 226 237  
Textphone: 08701 207 405  
Email: [communities@capita.co.uk](mailto:communities@capita.co.uk)  
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# Chapter 1

## The framework for local authority tenants to control their local housing services

### Introduction: using this guidance

Under Section 27AB of the 1985 Housing Act, local housing authorities must pass their responsibilities for housing management to tenant management organisations (TMOs), provided that the appropriate regulations and guidance have been followed.

In line with the Housing Act, the Secretary of State may issue regulations that give TMOs a **right** to control housing management. The law also states that a local housing authority must follow these regulations when it gives responsibilities to a TMO.

The regulations issued by the Secretary of State are now the Housing (Right to Manage) (England) Regulations 2008 (SI 2008/2361). Under Regulation 18, anyone who carries out a duty under the regulations must consider any guidance the Secretary of State has issued (known as 'statutory guidance'). This document is 'statutory guidance', and local housing authorities, tenant organisations, and people who represent and support tenant management organisations should take it into account.

You should read this guidance with the following statutory and non-statutory guidance.

#### **Statutory guidance**

Volume 1: 'Modular Management Agreement for Tenant Management Organisations' (issued 2005)

Volume 2: 'Guidance on Schedules' (this includes both statutory and non-statutory guidance) (issued 2005)

Volume 3: 'Calculating Allowances' (issued 2005)

Volume 4: 'Guidance on start-up costs' (issued 2005)

#### **Non-statutory guidance**

Volume 5: 'Guidance on secondment' (issued 2005)

Volume 6: 'Model code of governance for TMOs and guidance on a code of confidentiality' (issued 2005)

'Residents' Choice' (issued 2008)

The following guidance is now withdrawn.

Volume 7: 'Guide to the Right to Manage' (issued 2005) – replaced by the non-statutory guidance, 'Residents' Choice'

Volume 8: 'Preparing to Manage' (issued 2005) – replaced by this guide.

**In summary**, all organisations involved with controlling local housing services – including local authorities, arm's-length management organisations, interested tenant groups and their advisors – **must** take account of the following.

- The regulations
- The guidance set out in this guide
- The 'Modular Management Agreement'
- 'Guidance on Schedules'
- 'Calculating Allowances'
- 'Guidance on start-up costs'

## Giving control to tenants: how the policy has developed

In 1976, Parliament authorised local authorities to pass control of housing management services to tenant co-operatives. In 1987, Parliament extended this power to allow local authorities to pass control to **any** person or organisation, as long as this met the requirements of the Secretary of State's consent under section 27 of the 1985 Housing Act ('section 27 consent'). The same law gave tenants more power to ask for control of housing management services to pass to them, and provided a source of Government funding for initiatives which were led by tenants. In 1993, Parliament inserted section 27AB to give tenants a 'Right to Manage'.

Under the current laws:

- local authorities can pass control of housing management to any organisation, as long as there is 'section 27 consent'; and
- there is a special condition which states that local authorities **must** pass control to a tenant organisation if properly asked to do so, but can **only** pass control to a tenant management organisation in this case.

In 2007, the Government consulted on changes which aimed to make it quicker and less complicated for tenants to control their local housing services. These changes are set out in the revised 2008 regulations and in guidance. The main changes are as follows:

- Promoting voluntary agreements, as well as keeping the option to use the 'Right to Manage'.
- Allowing tenants to use a single ballot, decided on a simple majority vote, to decide whether responsibility for managing housing services should pass to an organisation they control. This would bring tenant management into line with other options for passing on control of local services.
- Authorising simple, low-risk local agreements which tenants can enter into quickly to take control of a limited range of services, operations or budgets.

The Government wants to encourage more tenants to have the opportunity to develop tenant management.

## The legal duty to support TMOs

Under the legal framework for tenant management, a local authority **must** do the following two things.

- Provide support and co-operation to a 'tenant management organisation' after that organisation serves a valid notice **proposing** to enter into a management agreement.
- Enter into an agreement with that organisation once it has become a 'registered' TMO.

A local authority **cannot** enter into a management agreement with a 'tenant management organisation' except as allowed under the 2008 Right to Manage regulations and this guidance.

To **serve a proposal notice**, a TMO must be an organisation which meets the following conditions.

- It has a constitution (a set of rules which explain how the organisation is run).
- Its constitution defines an area of benefit (the area the TMO will cover).
- All tenants of a local authority within the area have a right to join the organisation.
- Its constitution gives it a duty not to illegally discriminate against anyone.
- It is run either by a general meeting (a meeting all members of the TMO are invited to attend) or a management committee.

We deal with proposal notices in more detail in the second chapter, under 'initiating the process.'



To enter into a management agreement, a TMO must be 'registered'. This means that it must be recognised as an organisation by law, and have the capacity to handle budgets and staff and take responsibility for public services.

Under this guidance, a **registered** TMO is an organisation which is set up as a company or an industrial and provident society, with rules that include the following conditions.

- All tenants of homes managed by the registered TMO are entitled to become members of the organisation. (Other people may also become members if the governing instrument allows this.)
- A majority of the directors are elected by the members, who each have a single vote. (The governing instrument may also allow other directors to be appointed by other people or by invitation.)

Also, to enter into an agreement, the organisation must be assessed as competent by an approved assessor appointed on the behalf of the Secretary of State.

#### **Under this guidance:**

- a local authority must enter into a management agreement (in line with certain conditions) with a registered TMO to allow the TMO to manage the authority's homes in any area, as long as a valid proposal notice is in place for this area and the TMO that has served this notice has shown its support for the registered TMO to become the manager; and
- a local authority can choose to enter into a management agreement with a registered TMO, even if it has not yet been served with a proposal notice.

In either case, the arrangements leading to this type of agreement must follow what is set out in the regulations and this guidance.

The statutory framework and this guidance apply to:

- tenant management organisations that use the 'Right to Manage' (referred to as the 'Right to Manage route' throughout this guidance); and
- voluntary agreements where the Right to Manage is not applied but local authorities enter voluntarily into management agreements with tenant management organisations (referred to as the 'voluntary route' throughout this guidance).

## How tenant management happens: a step-by-step summary

### Framework

The new framework to set up and develop TMOs, created by the 2008 regulations, is summarised in the following table.

1 Tenants ask for advice on their options for taking more control over local services.	The local authority should help tenants to consider all their choices. Tenants, and the people advising them, should act openly, involve all sections of the community and respond to opportunities to work in partnership with the local authority and other agencies.	
2 Tenants decide that a TMO is the best way forward.	<b>Either</b> Tenants decide on the Right to Manage route. They set up a TMO to serve a Right to Manage notice on the local authority, after a vote from the tenants' organisation members (made up of at least 20 per cent of all tenants and 20 per cent of secure tenants).	<b>Or</b> Tenants and the local authority decide together to follow the voluntary route, with support from local tenants. They enter into an agreement to develop a TMO.
	<b>In both cases:</b> The local authority should actively co-operate with the project. Tenants should keep the local authority informed of their progress, and be sure that forming a TMO is the best way forward.	
3 Feasibility and development stage	The local authority and the TMO work together to prepare a feasibility study (including training) for the TMO. An approved assessor examines the content of the study and confirms that the tenants' group is working on its own initiative and that the study as proposed is likely to be successful. The local authority must provide support for the group, including providing premises and information at appropriate stages, advising on likely budgets and taking part in negotiations. The TMO must be committed to developing an effective board, which will work as a team to lead the organisation. It must work openly and make sure everyone has the opportunity to join. Towards the end of the study, the approved assessor assesses the competency of the TMO.	

4 Offer and ballot	The local authority prepares an offer for all tenants who are involved (as agreed with the TMO), including budgets and management arrangements for the new TMO. All tenants, including leaseholders, vote on whether to approve the offer.
5 Entering into the agreement	The registered TMO and the local authority enter into a management agreement. The TMO appoints staff and starts to manage services.

### The timetable

The regulations lay down the following maximum timescales for tenants who use the Right to Manage route.

From	To	Timescale (Right to Manage route only – can be changed if both sides agree)
Tenants serve the proposal notice	Local authority responds to the notice	28 days
Local authority respond to the notice	Tenants refer the local authority's response to an arbitrator	28 days
Local authority accepts the proposal notice	Approved assessor is appointed Feasibility study is published, including the approved assessor's report on the TMO's competence	3 months 15 months
Approved assessor's report says the TMO is not competent	TMO takes the action the approved assessor has recommended	Reasonable period for the action to be taken, plus 7 days to report to the assessor
Approved assessor receives the report on what action has been taken	Approved assessor reassesses the TMO and gives notice of the results	35 days
Approved assessor report says the TMO is competent	Local authority makes a written offer to tenants	3 months
Local authority makes a written offer to tenants	Ballot of tenants starts	3 months
Ballot of tenants is completed	Results are announced to tenants and the Secretary of State	14 days
Tenants vote to accept the local authority's offer	Local authority and registered TMO sign a management agreement	9 months

These timescales can be changed if both the local authority and the tenants group agree.

These timescales do **not** apply to the voluntary route, but can be used to give an idea of what can be reasonably expected in a successful and well organised process.

# Chapter 2

## Initiating the process

### Promotion

The Government wants to see an increase in the number of tenant organisations that take control of housing services. As a result, it has given local authorities more choices in offering support to this option.

It is clearly essential that tenants are aware of this choice. Under this guidance, local authorities and their agents in the housing market are expected to promote positive information for tenants and residents about the possibilities for taking control of some or more of their local services. **Local authorities should consider meeting this responsibility** in a range of ways, including the following.

- Making sure that all staff, agents, contractors and members who have contact with tenants can provide clear and positive information on the options tenants have to take control of local services.
- Monitoring complaints, feedback from meetings and other contact with tenants and organisations, and using this information to promote a positive message about the options tenants have to take control of local services.
- Using mystery shopping, focus groups, surveys and other feedback to check that tenants are receiving this message and applying it in ways that help increase their choices.
- Promoting positive messages, through all types of media (radio, local newspapers, leaflets and so on), about the options tenants have to take control of local services.
- Promoting relevant and useful examples of how responsibility for services has been transferred from local authorities to tenant management organisations.
- Recognising and managing the risks that are present in transferring responsibility for decisions and resources.
- Giving staff and agents the power to act as advocates for groups that are considering applying to take control of local services.

Local authorities and landlords should not see it as their job to 'set up' tenant management organisations, but should instead promote an environment where local control is an informed choice. It is for tenants and residents to take the initiative – it is for local authorities and their agents to respond.

## Giving a positive response

Once tenants and residents decide to look further into the option, the local authority should respond by offering to set up an appropriate meeting to explore how soon and how effectively the local authority can provide help, either by transferring control to the tenants or supporting groups that may need time, help and guidance to achieve their aims.

A senior officer (normally the Head of Housing or Assistant Director) should take an early interest and promote and support ways to provide a positive result. This support should include:

- providing advice and support to help the group to develop an action plan (see below)
- helping tenants to consider and assess all their choices
- telling tenants where to go for other sources of advice, training and funding
- working, at an early stage, to identify services that may be included in a local management agreement.

Although the group may want to get advice from other organisations, local authorities, landlords and agents should still take a leading role in advising tenants and giving them the opportunity to take control of local services.

If a group wants to look further at the options available to it, the local authority can provide support under five themes.

<b>Theme 1:</b> Developing the tenants' group and helping it to continue	<b>How the local authority can help</b> Providing community development support, help with drawing up a constitution, and guidance and training in the skills needed to work as officers and as part of a committee. Helping the TMO to appoint and use other suitable advisors, as well as the support provided by the local authority.
<b>Theme 2:</b> Looking at the local issues	Providing help with using plans, facts and figures to understand the strengths of the local neighbourhood and the problems within it. Considering how transferring control of local services can add value to neighbourhood action plans and so on. Helping the group to understand the strategic framework, including local strategic partnerships, local area agreements and community strategies. Providing access to appropriate forums.
<b>Theme 3:</b> Involving the whole community	Promoting information and getting the opinions of people in the local community.

<b>Theme 4:</b> Developing an action plan	Agreeing an action plan, with key partners, that reflects what local people want and tackles local issues. Making sure the plan is 'SMART' ('Specific, Measurable, Achievable, Realistic and Timed'), with achievable targets and continuing support.
<b>Theme 5:</b> Developing an option for transferring control of local services	Using a local management agreement (LMA) to offer control of a specific service, such as grounds maintenance, cleaning, minor repairs, or helping new tenants settle in. Offering local budgets for these services.  Providing guidance on options, such as a vote to proceed with a full management agreement. Helping to deliver these options, if necessary.  Putting in place an appropriate structure, such as a local forum, area committee and so on. Promoting community governance reviews and other ways of increasing community control as much as possible, if there is local support for this.

## Local management agreements

Local management agreements (LMAs) allow residents to take direct control of local housing and possibly other services the local authority currently provides. They are a new and quicker way of involving the community in providing services that work to meet the needs of residents.

LMAs are flexible and can be adapted for different services, in different settings. They also provide a 'stepping stone' to other types of control, such as a tenant management organisation.

With an LMA, residents can:

- choose to provide a housing service as a group
- choose one or more suitable people from the community to do it; or
- arrange for a contractor or supplier to do it.

Possible tasks to be considered for an LMA include:

- cleaning communal areas
- communal gardening or planting baskets and shrub beds
- cleaning windows
- security

- some repairs
- one-off tasks such as providing a green area or improving an entrance lobby; and
- being involved in tenancy management (for example, welcoming new tenants).

As with tenant management, LMA budgets will be based on the principle that if the local authority is happy with the proposed arrangements, it will pay the tenants' group whatever it currently costs to provide the service that the LMA will cover. In some cases, the money is not actually paid over, but the tenants' group manages the budget directly within the local authority's finances.

The arrangements are all set out in the local management agreement between the local authority and the tenants' group, including the minimum service standards needed to provide the service. The local authority should help with managing risk, including public liability insurance and health and safety issues.

The local authority will need to be satisfied that the local community gives its support for an LMA to be set up. This could be measured through a consultation process, or by carrying out a survey or ballot.

The local authority should provide the group with training, guidance and support in supervising work, managing risk and properly managing its affairs. The local authority should also help the group to draw up and manage a budget, and make sure the group has training on financial control if it is handling money directly.

For more information on local management agreements, go to [www.citywesthomes.co.uk](http://www.citywesthomes.co.uk) and click on 'local management agreements'.

Before entering into a LMA, the local authority should be satisfied that the agreement meets the European Union rules covering contracts and has 'section 27 consent' from the Secretary of State.

## Local governance structures and 'joined up' working

Often, the issues that tenants want to tackle through local control are things such as behaviour, environmental cleanliness, traffic, facilities for young people, and so on. Housing is usually one aspect of these issues, but not, on its own, the way to finding a solution. 'Street scene' services, the police and youth workers need to be brought together as a team to work with housing staff and perhaps other workers from health and education. Many local authorities have built up considerable experience in 'neighbourhood working' with oversight groups, resident involvement and multi-agency partnerships. Housing services should aim to find ways for tenants' groups to become involved in this kind of working and get results from it. If a tenant management organisation wants to



tackle this wider range of neighbourhood issues, the Government expects local authorities to respond by placing the TMO at the heart of effective, joined-up partnerships. Housing services can consider ways to respond to this, including the following.

- Promoting tenants' groups and tenant management organisations within their local authority and local strategic partnership as possible 'anchors' (multi-purpose organisations) for neighbourhood working.
- Giving staff the skills, experience and confidence they need to work in multi-agency teams, especially alongside the police, 'street scene' workers, and other front-line services.
- Promoting good practice in neighbourhood charters and models of neighbourhood governance, and recognising that housing resources such as staff, budgets and local networks can play a vital role in making sure these are effective.

## Moving on: taking full control

With Section 27 consent, suitable skills and appropriate support from their own communities, tenant management organisations (TMOs) can control large budgets and take full control of repairs, tenancy management, major work, rent and all related services, if they want to. The well developed and tested modular management agreement provides all the legal resources and protective measures necessary to achieve this. It is available online, and as a hard copy, and you do not need any special legal expertise to use it. These agreements have so far only been available through the Right to Manage route, but are now available to use for negotiating and finalising voluntary agreements. Section 27 consent is automatically granted when the agreements are used through either the Right to Manage route or the voluntary route.

To get to the point of being ready to take charge of housing services using the modular agreement (or a similar agreement), there will usually be a period of training which leads up to an assessment of the TMO's competency. To make sure that risks are properly considered and managed, the regulations lay down two further stages after 'initiating the process'.

- A feasibility and development stage, which results in a competent organisation that has an outline of a business plan and is ready to be formally approved by the community through a ballot.
- A stage when the TMO appoints staff, sets up systems and completes a full management agreement.

When tenants are ready to consider taking responsibility for large-scale management, the Government expects local authorities and their agents to provide support. This support may be provided alongside the other things previously considered, such as putting in place a short-term local management agreement and placing tenants at the heart of joined-up neighbourhood working.

Before considering full-scale management, the TMO will benefit from training and information on how the housing service works, and receiving practical information on, for example, contracts, the law on lettings or good practice in handling tenancy disputes. The local authority can help provide or promote this sort of training for a tenants' group that is considering whether to go ahead with a management agreement.

Local authorities may then support a tenant management organisation through one of two routes to get to the next stage.

**The voluntary route:** the local authority will negotiate a simple agreement, included in the local action plan. This agreement is a 'statement of intent' to go ahead with the modular management agreement (or whichever method is agreed) to transfer control of significant local services to the TMO. The 'statement of intent' says what money, time and resources the local authority and its agents and partners will provide. The agreement sets out the aims, including the commitment from the TMO to take part in training, negotiation and promotion to achieve a successful outcome

**The Right to Manage route:** the TMO can use its legal Right to Manage. To do this, it must:

- be proposing to manage at least 25 homes let on secure local authority tenancies in its area of benefit
- have a willing, named membership of at least 20 per cent of all tenants (including leaseholders), including at least 20 per cent of all secure tenants from within this area
- draft a Right to Manage proposal notice (see the appendix on page 33) to serve on the local authority
- tell the whole community about its plans – including putting a copy of the notice through the door of every home lived in by a local-authority tenant or leaseholder – and consult on its proposals; and
- vote to issue this notice. This vote can be passed at a general meeting, or agreed through a written ballot. These ballots can be collected door-to-door, as long as they remain confidential and are securely stored after they have been collected.

Once this vote is carried, the TMO can issue the notice (using the model letter at the back of this guide).

The local authority should help the group, whichever route it chooses. The TMO will need addresses and the number of tenants and leaseholders, and may welcome some help with organising, collecting and counting votes. It may also need advice and help in making sure that a general meeting is well chaired and in line with its rules.

The local authority can reject the notice but only for the following reasons.

- The above conditions for membership or consultation were not met, or there are problems with the TMO's constitution.
- At least half the houses included in the notice were included in another similar notice within the last two years, and that notice failed because the TMO failed to act after the notice was served.

Otherwise, the local authority must accept the notice. It has 28 days to respond.

If, at the end of the period, the local authority has not rejected the notice, two things will happen.

- **First**, the local authority has to tell the TMO about any other organisation that manages homes in the area of benefit on its behalf (this will normally mean an arm's-length management organisation, or ALMO). The local authority must also tell the ALMO about the TMO and the notice it has served. This should be a legal formality – in practice, the local authority should have already given this information to the ALMO and the ALMO should already be helping the TMO.
- **Second**, the TMO can ask the local authority for practical help. It can ask, in writing, for any support it reasonably needs to go ahead with the notice. What this involves will become clearer in the next chapter, but will include premises, training, some equipment and money to pay for advice in negotiating an agreement. The local authority has to consider this and respond. If the local authority does not agree to the notice, the matter will go through the disputes procedure included in this guidance, up to and including arbitration (see pages 28 and 29).

The local authority and the TMO then work together to develop a registered TMO. This involves going through the following steps.

- A feasibility and development stage
- A formal ballot by tenants
- An implementation stage during which a management agreement is signed

These steps are explained in the next section.

# Chapter 3

## Developing a registered tenant management organisation

### Producing a feasibility report

The local authority and the TMO need to work together to produce a feasibility study. This should take around 15 months, and must result in a report which sets out the following.

- The management duties the TMO plans to carry out.
- The funding or budget the local authority has set aside to allow the TMO to do this.
- The financial responsibility and control procedures to be put in place before management duties are transferred – these are usually covered by financial standing orders (rules agreed by the committee) and producing audited TMO accounts.
- The management and governance arrangements of the TMO. This should include the organisation's registration requirements, the role and responsibility of the committee or board of directors and their senior staff team, and other major issues relating to how the TMO will provide services.

The local authority and the tenants' group should start as soon as possible after the proposal notice to work together to develop the content of the study. This should include:

- what the training will involve, and a plan for carrying it out
- plans for the tenants' group to gain experience, build its membership and promote its involvement in the agreement
- the terms of the agreement between the local authority and the tenants' group on the procedures to follow during the study, including timescales for producing information and how often liaison meetings will take place; and
- plans for negotiations over the content of a management agreement.

### The approved assessor

Setting up a TMO is largely about developing an organisation that is competent and capable of doing the job. Before tenants vote on whether to accept an offer, an independent person from outside the organisation must be satisfied that the TMO is competent to deliver on the promises set out in that offer. This independent person is called the 'approved assessor'. He or she is appointed by the Approved Assessor Service, set up under the Right to Manage regulations.

No later than three months after a local authority has accepted a proposal notice, the TMO must ask the Approved Assessor Service to appoint an approved assessor. The approved assessor will ask to meet the TMO and the local authority (and any other advisors involved) soon after he or she has been appointed. At that first meeting, the approved assessor will expect to see an outline feasibility and development programme based on a careful training-needs assessment. At this stage, the assessor will want to see evidence that the TMO's committee or board is independent and has the competence to run the organisation, control its finances and involve the local community in a work programme which will lead to the local authority making an offer to tenants. The assessor will also want to be satisfied that the proposed work programme is fit for purpose. At this stage the assessor will be offering advice. The TMO, the local authority and any advisors should take note of the advice and respond appropriately.

During the feasibility and development programme, the approved assessor may ask to be kept informed of progress and may want to meet with the TMO and their advisor again.

When the TMO and their advisor are satisfied that enough progress has been made and that an offer can be put to tenants, the local authority will ask the approved assessor to consider whether the TMO has achieved the necessary levels of competence. The local authority cannot put an offer to tenants until the approved assessor agrees that the TMO is competent. To confirm this, the approved assessor will expect to see evidence and will want the opportunity to meet with TMO members, the lead advisor, the landlord, and other people who have an interest in the TMO's work.

If the approved assessor decides that the TMO is not competent, they will provide a report setting out what action the TMO needs to take to correct this. The TMO and the local authority will be expected to agree and take action in response to the assessor's report. The approved assessor will then carry out a further assessment – if they still decide that the TMO is not competent, the ballot will not take place and the process will end.

The detailed timescales for this work and the report are given in the timetable on page 10.

## Competence

The approved assessor will decide whether the TMO is competent to manage the functions that it would be responsible for under the management agreement. The approved assessor will give the TMO information about the standards and evidence that will be used during the assessment. This will be based on a model (available from the Approved Assessor Service) which includes examples to show what a competent organisation might look like. A TMO and its advisors should use this published model, together with the approved assessor's advice, to check the group's progress within the feasibility and development work programme and when preparing for the final assessment before the ballot.

The group will be considered competent if, at each stage of development, it can show evidence that it meets the appropriate conditions for that stage.

### **It is a well run organisation that is open to everyone**

- Its committee (or board) works together as a team. Its members take part in committee business and meet appropriate standards of conduct. The committee makes decisions in good time after considering advice, information and options.
- Meetings are effective and take place at least as often as necessary by law. They are suitably planned, organised and well attended. They are chaired effectively and the members who attend are given effective information and follow-up action.
- Its committee (or board) is in control of its business. The organisation works in line with its constitution and rules, and the important roles of chair, secretary and treasurer are carried out by people who have the right skills. Subgroups and committees are clear about their responsibilities and have appropriate standing orders.
- It plans and takes part in training using a variety of sources and methods, based on an understanding of its training needs and the opportunities to gain qualifications. It monitors the results of training.
- It offers relevant induction and training to committee members. Training is open to anyone else who may reasonably want to take part.
- It has strategies to attract new members to its committee, including members from relatively under-represented sections of the community.
- It has a good general membership and has strategies and plans to make this as wide as possible, to fully represent the community.

### **It involves the community**

- It has experience of offering and managing community activities, including reviewing the outcomes of these activities and whether they provide value for money.
- It informs its community, promotes involvement in its work and takes account of consultation in its decisions.
- It understands and applies the principles of equality and diversity and aims to involve all sections of the community, including the people who are considered to be 'harder to reach'.
- It communicates effectively.

### **It can control its finances responsibly**

- It has considered its possible allowances and budget and made realistic plans for managing these resources.
- In its activities as a community organisation, it shows acceptable standards of financial control. It has put in place suitable standards, including budgeting, reporting to its committee and members, and controlling cash and petty cash.

- It is able to identify risks in relation to its finances and resources. It acts openly and responsibly, and all its committee members have a duty to meet the appropriate standards.

### **It can organise itself to achieve its strategy**

- It understands the environment it plans to work in, and has considered the issues and priorities of the community and the local authority when developing its own policies and strategies.
- It has developed a realistic business plan.
- It has put in place plans to be an effective employer, including an outline staffing structure, job roles, and an awareness of the legal responsibilities of employers.
- It can negotiate sensibly and effectively, aiming to compromise rather than confront wherever possible.
- It is aware of the range of possible partners and looks for opportunities to work in partnerships for the benefit of the community and to help achieve its aims.

### **It has effective plans to provide the services it wants to manage**

- It has considered what it wants to include in the 'offer to tenants' it will agree with the local authority (see page 25). For each service it plans to manage, it has considered its options, the resources needed, the possible benefits of TMO management, and the risks. Members of the TMO board or committee can discuss how the proposals were decided, the factors taken into account, and the expected benefits and risks.
- It has appropriately set out proposals for how services will be provided (including service standards and performance targets and the resources it will use to provide these services).
- It can set and monitor its performance against plans and targets and can show how the board or committee plans to monitor and review customer satisfaction, performance and service quality.
- It understands the role of the local authority in monitoring and the role of regulation and audits.
- Its members recognise and can discuss their responsibilities as board members of an organisation that provides public and community services.
- If management proposals include TMO members carrying out some housing management duties directly (rather than employing professional staff and contractors), it can show appropriate competence for these tasks.

The approved assessor will keep the tenants' group and the local authority up to date with how he or she will make their assessment and with any concerns that he or she has.

## Management duties

Working with the local authority, the TMO will decide what range of management duties it wants to take responsibility for. TMOs can take as much or as little control as they want. For example, a TMO may take control of most repairs and tenancy management, but leave rent collection and arrears (debts) to the landlord. The modular management agreement (MMA) provides a good framework within which to consider these options. This agreement is available in paper form, as either a Word or PDF file ([www.communities.gov.uk/publications/housing/modularmanagement](http://www.communities.gov.uk/publications/housing/modularmanagement)) or as a toolkit ([www.nftmo.com/adapt.html](http://www.nftmo.com/adapt.html)).

At first, a TMO will not usually be helped by working line by line through the MMA. The TMO needs to start with its 'vision' and its understanding of the responsibilities involved. It will consider whether it wants to have control of all repairs, rent collection, tenancy enforcement and so on. This will need to take account of how it will manage – will it use the call centre or a neighbourhood-based office? Will it have a local repairs team or use the local authority's contractor? The major choices in the modular management agreement will then develop from this discussion. Once the TMO has received a calculation of its allowances, based on its likely budget, it can then decide what it wants to take on and make the detailed choices for the purposes of the agreement.

As a general rule, contracts entered into by or on behalf of the local authority should contain 'break clauses'. These are conditions which allow the contracts to be cancelled once a tenant management organisation has been set up. An exception is partnering contracts for major repair work, which cannot be cancelled or replaced by the modular management agreement. The local authority's service level agreement with an ALMO must include break clauses. In relation to response repairs and other day-to-day contracts and service level agreements, existing arrangements should not prevent a TMO from being developed and should allow a TMO to carry out the work it manages in line with its management agreement.

If the tenants' group chooses the voluntary route, the local authority may want to offer a TMO a 'package' of choices that can be effectively delivered within its management structures. This is acceptable but the TMO must be aware that it can use its Right to Manage and have its full choice of the MMA.

For TMOs that use the voluntary route, the existing MMA is considered to be fit for purpose and guarantees section 27 consent. The MMA can be changed, but if the changes you want to make are not already included by clauses in the MMA these changes must be approved by the Secretary of State.



## Funding and budget

The ‘Statutory Guidance on Calculating Allowances’ sets out a formula which the local authority should follow when making the allowance calculation for the TMO. The local authority must set aside time early in the process for a finance officer to apply the formula and produce allowances for the TMO. This should not be left until after the TMO has made its choices, as the TMO will not be able to make an informed choice without the financial information. If the TMO chooses to rule out some options, these can be excluded from the calculation but, otherwise, the local authority should produce a full calculation giving a breakdown for all parts of the allowance. The local authority should provide this calculation no later than half way through the feasibility and development stage (that is, within about seven months of the notice being accepted).

The Statutory Guidance also includes start-up costs (see ‘Guidance on Start up Costs’), which are the costs to set up a local office for the TMO to run its service as defined in the MMA. These costs do not need to be worked out or agreed during the feasibility and development period – it is a legal entitlement to follow a successful ballot. For TMOs that have chosen the voluntary route, the local authority may consider a ‘package’ offer (for example, using existing facilities), which may give the TMO a fast and effective route to control at less cost to the local authority.

## Financial control, management and governance

The local authority should work with the TMO to develop suitable financial arrangements. During the feasibility and development stage, a TMO is expected to gain some experience of controlling finances and budgets and have a set of financial regulations to match its responsibility. Looking ahead to managing larger budgets, the principles and a suitable set of procedures should be understood and agreed.

The TMO should agree how it will be incorporated (registered), and may decide to register at this stage, although it is not strictly necessary until after the ballot. It should develop internal control procedures and consider the roles of committee members, elections, succession strategies and so on. It should understand, agree and put in place an appropriate code of governance.

The TMO should agree a staffing plan in line with the allowances and the management tasks and discuss this with the local authority as early as possible. This should be a provisional outline plan showing the likely number of staff, where they are used within the organisation, and the role and outline job specification for the chief officer. The TMO and the local authority should consider the following issues.

- Is the local authority prepared to temporarily transfer some of its employees to posts within the TMO (known as ‘secondment’)?

- If the TMO is considering direct employment, will the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) apply? If so, who will meet the costs of any future redundancies and other transferred rights?

If the TMO is a large one, it is likely, at this stage, that trade unions will probably take an interest. The local authority should make sure that its HR team is made aware of future developments and risks and that senior management is clear about what may be on offer, so they can brief their staff.

## Offer to tenants – formal consultation and ballot

Once the approved assessor has decided that the tenant group is competent to take on its management responsibilities, the local authority must prepare an 'offer to tenants'. This should set out a summary of the feasibility study, and the approved assessor's confirmation of the TMO's competence. The terms of the offer should be carefully considered and agreed with the tenants' group. The tenants' group should approve the final wording and presentation.

When preparing the offer, the local authority and the TMO are not expected to have agreed the final text of the modular management agreement, including the annexes and schedules containing essential policies and procedures. The ballot will authorise the detailed work to finalise the agreement. At the time of the offer, however, the local authority and the TMO must have worked through the agreement and agreed enough detail to allow tenants and residents to vote on whether they want the TMO to manage the estate, as set out in the management agreement.

The offer to tenants, agreed between the local authority and the TMO, must include the following.

- The management duties the TMO will take over, and the duties the local authority will continue to be responsible for. The list of duties should be based on the options in the modular management agreement.
- How the TMO and the local authority will carry out their duties.
- The allowances the TMO will be paid.
- An outline staffing structure for the TMO, including an idea of the numbers of staff who will be employed and the purpose of each post.
- Recruitment procedures, including any agreed arrangements for secondment, and the rights of existing employees to transfer with protected terms and conditions.
- Plans for providing a head office for the TMO.
- Arrangements for using contractors, including whether the TMO will have its own lists of contractors.

- Customer care, including arrangements for dealing with neighbour disputes, alleged antisocial behaviour and complaints about the TMO and its service.
- Arrangements for how the TMO will manage performance and how the landlord will monitor the TMO.

The offer should highlight any major changes the TMO plans to make to how it will provide services, including the expected benefits and risks involved in making the changes.

The following policies (referred to by the schedule numbering in the modular management agreement) must be agreed in full at the time of the offer. The offer should describe these and say where the full document can be inspected.

- Chapter 1, schedule 2 – ‘Equal opportunities policy’
- Chapter 5, schedule 1 – ‘Calculation and payment of allowances’
- Chapter 6, schedule 2 – ‘Selection of tenants policy and procedure (if applicable)’
- Chapter 6, schedule 4 – ‘Tenancy Agreement changes procedure’

The offer should also set out the TMO’s membership and how the organisation will be run. This must include the following.

- The legal status of the TMO, including any plans for changing this in the future. This includes registering if the TMO is not registered (incorporated) at the time of the offer.
- The existing board (committee) membership and how members are elected, including any changes which are expected if the TMO registers in the future.
- An outline of plans for giving powers to staff and subcommittees.
- The number of members of the TMO at the time of preparing the offer, and future plans for recruitment.
- Members’ rights, including how often general meetings will take place.
- The plans for financial control, including an outline of the proposed financial control procedures, accounting and audit arrangements.

The local authority must then arrange for each secure tenant and long-term leaseholder to receive a copy of the ‘offer to tenants’. A secret ballot of tenants (including leaseholders) should start within three months of making the ‘offer to tenants’. The local authority should consult the TMO about how the secret ballot will be held and should keep to any reasonable requests. The local authority must tell both the TMO and the Secretary of State about the result within 14 days of completing the ballot.

It is acceptable for the TMO to campaign for a positive result. Ballots can be collected door-to-door, as long as the votes are kept confidential and secure. The ballot can be held over any reasonable period – two or three weeks should be suitable but a longer period can be considered if both the local authority and the TMO agree.

The ballot must show whether a majority of secure tenants and leaseholders who take part in the ballot have accepted or refused the 'offer to tenants'.

A TMO proposal can only go forward if a majority of tenants (including leaseholders) who vote, including a majority of secure tenants who vote, have voted in favour of it. Ballot papers can be colour-coded to show whether the people voting are secure tenants or otherwise.

Absent tenants (such as leaseholders who sublet their homes and live elsewhere) are entitled to vote, and the local authority should, at an early stage, consider any issues that this will create.

If the 'offer to tenants' is rejected, any Right to Manage proposal notice is considered to be withdrawn, and a new proposal notice for those homes cannot be put forward for at least two years.

## Entering into an agreement

If the ballot shows that tenants accept the local authority's 'offer to tenants', the local authority must enter into a management agreement with the registered TMO.

This stage aims to make the transfer of control as smooth as possible.

At this stage, the staffing arrangements will be finalised. The local authority will be heavily involved, especially if the TMO is a large one, in issues relating to transferring control and deciding where employees will be based. The TMO must have skilled HR advice to prepare job specifications, recruit effectively and legally and prepare its management and supervision arrangements.

The TMO should recruit its chief officer early in this stage and the local authority should help with recruiting and funding this post.

The chief officer will help in setting up the rest of the team and an office. The local authority should help identify suitable office premises. The local authority is responsible for paying start-up costs. Suitable IT systems should be agreed.

For the local authority to enter into a management agreement with a TMO, the TMO must become incorporated, either as a company registered under the Companies Act 2006 or an organisation registered under the Industrial and Provident Societies Act 1965. The modular management agreement includes appendices and schedules that cover all aspects of how the organisation should be run, including financial control and arrangements for competent management in line with good practice. It also includes procedures for monitoring, performance assessment and handling disputes.

The management agreement is a legally binding contract that sets up the TMO as an independent agent providing services on the local authority's behalf. The local authority and the TMO should take steps to make sure that all local-authority departments (and their agents) that are dealing with the TMO are aware of this status and treat the TMO accordingly. The local authority has a duty to monitor the TMO and take appropriate action if the TMO appears to be failing in its performance or in terms of how it is run. Both the local authority and the TMO should understand, respect and promote this role.

## Changing from the voluntary route to the Right to Manage route

If tenants choose the voluntary route, they still have (as local-authority tenants) their Right to Manage. This means they can serve a Right to Manage proposal notice at any stage, and switch to the Right to Manage route.

In this case, the tenants' organisation (as long as it keeps to the 'five tests' – see page 7) will serve the notice. If the local authority accepts the notice, it must then enter into a management agreement with a registered TMO. The local authority and tenants' group should expect this agreement to be signed in line with a timetable close to what would have been achieved if the TMO had gone ahead with the voluntary route. In other words, the process should continue from the point reached on the voluntary route and should not be significantly disrupted when the TMO serves a Right to Manage proposal notice. The 'offer' should be put to tenants in a ballot no more than 15 months after the notice has been served.

The TMO may decide to switch to the Right to manage route after a ballot on the voluntary route has taken place. In this case, if the proposed terms for a management agreement are the same as set out in the offer, the ballot on the offer should stand. This means that provided a majority of tenants who voted and a majority of secure tenants who voted, have voted in favour of the offer, the local authority will have a legal responsibility to enter into the agreement.

## Disputes

The following guidance applies if there is a dispute between the local authority and the tenants' group during the process of setting up a TMO. This guidance applies whether the process is on the Right to Manage route or the voluntary route. It applies to any dispute, including disputes about the content of a formal report issued as part of the process.

Step	
1	The local authority and the tenants' group should first hold one or more meetings to settle the matter in a way both sides are happy with. The focus should be on each side listening carefully to what the other has to say. A facilitator can help define each position and make sure that both sides clearly understand and agree the matters that are being disputed. If possible, the matter should be settled at this point by negotiating and coming to a compromise.
2	A senior officer and an elected member from the local authority should become familiar with the matter. Any independent advisors working with the tenants' group or TMO should also become involved. Another meeting should be held, involving these partners, and the local authority and the tenants' group should both make every effort to listen and, if possible, agree on a compromise.
3	Mediation should be considered, if possible. The local authority and tenants' group should also voluntarily use other procedures for settling disputes.
4	If the local authority and tenants' group cannot settle the matter by negotiating, and if the mediation process has failed to achieve a result both sides are happy with, the matter can be referred to arbitration using the scheme set out in the modular management agreement. This is the Chartered Institute of Arbitrators Arbitration scheme for Local Housing Authorities and Tenant Management Organisations, and is set out in schedule 6 of volume 2 of the 2005 guidance ('Guidance on Schedules'). Using this procedure costs £500 + VAT (if a decision can be made based on documents only) or £1000 + VAT if there is an oral hearing. (These are the costs as at the date of writing.) As part of their final decision, the arbitrator will decide how the costs should be shared.

# Chapter 4

## Working with existing TMOs

### Expanding existing TMOs to include neighbouring estates

In some cases, tenants may want their homes to be managed, not by a new registered TMO, but by an existing TMO (for example, a successful one that manages neighbouring homes or estates). If the existing TMO agrees to consider it, the tenants can go ahead with this as a voluntary change to the management agreement with the existing TMO. Or, tenants can use the Right to Manage route. In this case:

- the tenants of the 'new' area would set up a TMO and serve the local authority with a Right to Manage proposal notice; and
- the project would continue towards an agreement with the existing registered TMO.

Under this guidance, the local authority must enter into an agreement with the existing registered TMO, as long as the other requirements in the guidance are met. The following must also apply.

- The existing registered TMO must be competent to take on the new responsibilities.
- The offer must be made to the tenants of the new area and refer to the existing registered TMO as the proposed manager.
- The existing registered TMO must show that its own members support the proposal (for example, by holding a general meeting where the proposal, including the offer, is discussed as an item on the agenda after plenty of notice has been given).

### Changing agreements

An existing TMO also has the right to change its management agreement to take on more responsibilities in the modular management agreement. For example, a TMO may not manage rent arrears when it first starts, but after gaining experience may do so by changing its agreement. The procedure for doing this is set out in the modular management agreement.

## Contracts

In some cases, an existing TMO may take on extra responsibilities if it is not reasonable or sensible to consider this as a change to the existing management agreement for managing homes which are lived in by people who have a right to be members of the TMO. For example, a TMO may provide grounds maintenance services on land which is not managed as part of the housing service, or provide a support service for a residential care home. These types of arrangements can be reasonably considered as contracts that the local authority is entering into with the TMO as a suitable service provider. Under this guidance, the local authority can voluntarily enter into these contracts with a TMO, as long as it follows normal procurement procedures and receives the relevant consent.

## The Right to Manage in existing TMOs

If a tenant management organisation has been set up without using the Right to Manage, the tenants may decide to serve a Right to Manage notice. This may happen if the existing TMO wants to have extra powers or strengthen its position in negotiations, and finds it cannot achieve its aims by voluntary negotiation.

It may also happen if existing tenants in a large TMO want to form a separate TMO.

Under the regulations, the tenants can serve a Right to Manage proposal notice for homes that are currently included in a management agreement with a TMO, but only if:

- the existing TMO supports the notice; or
- the total number of homes covered by the existing agreement is more than 2500.

## Local-authority membership on TMO boards

A local authority may have one or more nominees on the board of a TMO. This may happen in a number of different ways.

- By being invited to join the board in the usual way.
- Under the terms of the management agreement, both sides may agree to include the option for the local authority to nominate a person to be invited onto the TMO's board and committees.
- The constitution of a registered TMO may give the local authority certain rights, including placing one or more nominees on the board (as long as a majority of board members at all times are elected by the members of the TMO).



In all cases, the local-authority nominees will be acting as members of the TMO board and have a duty to act in the best interests of the TMO. Once on the board, they must not act as representatives or supporters of the local authority or carry out any kind of monitoring.

If it is agreed that the local authority can make this kind of nomination, it should do so as part of its support for transferring management to the TMO. The nominee should be competent to play a valuable role on the boards they join. The nominee can be a member or officer of the local authority, but does not have to be. If a TMO asks for a nominee to be appointed under the terms of its management agreement, the local authority should make a suitable appointment in line with this guidance.

## Disputes and monitoring

If there is a dispute between the local authority and an existing TMO, the procedure set out above (pages 28 and 29) should be followed. This includes the arbitration scheme which forms part of the modular management agreement.

As mentioned earlier, the management agreement is a legally binding contract that sets up the TMO as an independent agent. It is important that the local authority understands and respects this status.

The local authority has a duty to monitor the TMO and take appropriate action if the TMO appears to be failing in its performance or in terms of how it is run. Both the local authority and the TMO should understand, respect and promote this role.

# Appendix

## Right to Manage proposal notice

**To the Director of Housing** *(or equivalent office):*

Date:

This letter gives notice that, in line with regulation 9(1) of the Housing (Right to Manage) (England) Regulations 2008, (name of your organisation) wants to use the Right to Manage in relation to the following households and land in its area.

(identify housing and land, perhaps by a map)

I have attached a copy of our constitution, which meets the conditions in regulation 4(1). A copy of the notice has been delivered to all the homes it refers to.

We have the necessary membership of the tenants of the housing this notice relates to, as set out below.

- Total number of tenants (including leaseholders) in the identified housing
- Total number of tenants (including leaseholders) in the identified housing who are members of (name of your organisation)
- Total number of secure tenants in the identified housing
- Total number of secure tenants in the identified housing who are members of (name of your organisation)

A vote of members was taken on this proposal on (dates), with the following results.

- Total number of tenants (including leaseholders) in the identified housing who are members of (name of your organisation) and who voted
- Total number of secure tenants in the identified housing who are members of (name of your organisation) and who voted
- Total number of tenants (including leaseholders) in the identified housing who are members of (name of your organisation) and who voted in favour of the Right to Manage proposal
- Total number of secure tenants in the identified housing who are members of (name of your organisation) and who voted in favour of the Right to Manage proposal

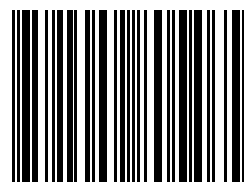
(Signatures)

Chairperson

Secretary

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