Grow Your TMO

Guidance for tenant management organisations thinking about expanding their area of benefit
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Note: Section 7 includes links to various documents and information referred to in this guide.
Foreward

From Nick Reynolds, Chair of the National Federation of Tenant Management Organisations (NFTMO)

We are all keen to see more TMOs and the number of homes managed by TMOs increased. Over the years the focus has been on developing new TMOs and in the last couple of years we have seen several new TMOs come on line. But we all know developing an embryo TMO is not an easy process, it takes time, energy and commitment and of course money. It’s not for everyone, indeed there are few tenants who want to make such a commitment.

But we believe that there are many tenants who do want to benefit from the excellent services and sense of community that TMOs provide. This is especially the case when they live on a neighbouring estate and can see the improvements to the estate environment and the excellent services that the TMO provides as well as the sense of community that prevails. They want to be a part of this. So what better way to achieve this than growing our existing high performance TMOs providing benefits for the new area and its residents. And for the existing TMO, it can deliver increased income (so important in our current environment), more economies of scale and a new pool of residents willing to get involved injecting new energy and ideas.

TMOs are community businesses and we have to operate in the current environment in a businesslike way. We must look and plan for the future, maximise our income, obtain value for money and because we are about community ensure as many local tenants as possible can benefit from our unique service.

That’s why I am keen as the chair of the NFTMO Executive to actively support this guide and the programme of workshops that we are carrying out across the country.

My thanks go to Liz Michael who wrote this guide, to Lee Page of Southwark Council for his incredible support and involvement and to the Department of Communities and Local Government for funding this publication and the ‘Grow Your TMO’ workshops through the Tenant Empowerment Programme.

Nick Reynolds
Chair of the NFTMO
Introduction

Tenant Management Organisations (TMOs) have proved themselves a successful model of housing management and community control in council housing over several decades which is supported by studies such as ‘Tenants Managing an Evaluation of Tenant Management Organisations in England’ published by the Office of the Deputy Prime Minister 2002 and Lessons for Localism Tenant Self Management published by Urban Forum 2012. Where TMOs have continued to exist after a stock transfer to housing association landlords, they have also proved successful. The statutory guidance issued by the Department for Communities and Local Government in 2013 states:

‘Tenant Management Organisations are proven models of community control that can improve service quality, secure better value for money, and boost satisfaction. Their members are unpaid volunteers who want to improve the quality of people’s lives by taking on more responsibility for local services.’

Successive governments have been keen to encourage the development of TMOs but the sometimes lengthy and demanding development process can be off putting for tenants setting out on the road to develop a TMO. While steps are being taken to address this, it is recognised that increasing the number of homes that are currently managed by existing TMOs with a good record of performance is a positive way to spread the benefits of tenant management.

The ongoing financial pressures on councils and housing associations will have implications for TMO allowances, the money the TMO receives to provide the services it is responsible for under the management agreement with the landlord. Since the principle behind the calculation of TMO allowances is that they are based on what it would cost the landlord to provide the same services, it follows that if landlords reduce their costs, the allowances will eventually be reduced. Indeed many TMOs have already experienced this situation. It can therefore make good financial sense for a TMO to expand its area of benefit, thereby increasing its income, in order to achieve economies of scale.

There are other benefits to TMOs which may be derived from increasing the number of homes that the TMO represents such as the potential for greater involvement and participation from new members. Long standing TMOs sometimes struggle to attract active members who are willing to contribute their time and experience not least because of their track record of delivering excellent, community driven services and initiatives. People
Section 1: About this Guide

see little need to get involved when things are going well! This can lead to stagnation in the organisation and has contributed to the closure of TMOs in the past. Introducing a new pool of potential members and activists who want to see change in the way their homes are managed and maintained can breathe much needed new life into TMOs.

And of course the other big winners are the TMO’s ‘new’ residents who have to be in favour of the arrangement for it to go ahead. Improved management, a cleaner and often greener environment, high standards of maintenance, a sense of community are some of the key drivers but also the opportunity to be a part of the achievements and improvements that the TMO can deliver, based on its performance to date.

Finally there are advantages to the landlord. If the TMO has a track record of high performance in service delivery, estate improvements and community development and it is a well run organisation in terms of governance, it is in the landlord’s interest to expand this housing management model. Communities that work make life easier for all agencies involved with them and TMOs can work exceptionally well.

Who is the guide for?

This guide is designed as a reference for TMOs and for landlords including local authorities and housing associations who may have some interest in growing TMOs. It may also be of interest to residents of properties neighbouring TMO managed homes who may want to share in the benefits they see being delivered without necessarily going through the TMO development process.

What does the guide aim to do?

The guide aims to inform all interested parties of the possible routes they may follow to increase the number of homes being managed by TMOs or to be a part of a TMO. It sets out the options for TMOs wishing to grow both in terms of expanding their TMO’s area of benefit and also a more ‘commercial’ arrangement of providing services to nearby landlord managed dwellings on a contractual basis.

It includes the various processes for TMOs and landlords whether through the statutory Right to Manage, through a voluntary agreement or through a commercial contracting arrangement.

It also intends to guide landlords on what they can and should reasonably expect a TMO to demonstrate in terms of competence to manage additional properties and to guide TMOs on how they should prepare a robust business case to their landlord for growing their TMO.
Section 1: About this Guide

How is the guide organised?

Section 2 sets out the legal framework in terms of the contract with the landlord (the management agreement) the Right to Manage Regulations 2012 and the TMO’s governing instrument (it’s registered rules or memorandum and articles).

Section 3 explains the voluntary route for a TMO wishing to expand its area of benefit and is applicable where the landlord is supportive of the proposal.

Section 4 sets out the statutory route to TMO expansion using either the variation clause in the existing management agreement or the Right to Manage Regulations and the TMO development process. These options would be applicable where a landlord prefers not to use the voluntary route. This may be for a number of reasons and not necessarily because the landlord does not want to see the TMO expand. For instance the TMO may be significantly increasing its size which may have major resource implications. The landlord may feel that in this instance a Right to Manage development study (including the independent assessment and final ballot) is more appropriate than a voluntary arrangement.

Section 5 includes other options which can be explored outside of the Right to Manage Regulations and the management agreement such as separate contracts and service level agreements.

Section 6 includes case studies of TMOs that have explored various routes to grow their TMOs.

Section 7 includes links to useful information referred to in this guide.
Section 1: About this Guide

Terms used in the guide

Most of the terminology used in this document is explained in the text where it occurs. An explanation of the abbreviations used is set out below:

Approved Assessor: An independent assessor of TMOs competence under the Right to Manage Regulations 2012
CAM: Common assessment model for assessing TMOs’ competence in accordance with the RTM Regulations and guidance
CIC: Community Interest Company
DCLG: Department of Communities and Local Government
HA: Housing Association
MMA: Modular Management Agreement for TMOs
NFTMO: National Federation of Tenant Management Organisations
Registered Society: A society registered under the Cooperative and Community Benefit Societies Act 2014 previously known as an Industrial and Provident Society
Regulations: Right to Manage Regulations 2012
RTM: Right to Manage
TMO: Tenant Management Organisation
TUPE: Transfer of Undertakings Protection of Employment Regulations
Section 2: The Legal Position

There are two key areas to consider. The first is the Management Agreement between the TMO and the landlord which enables the landlord (in most cases a local authority) to delegate functions to the TMO and includes within it clauses relating to variations to the agreement. Related to this is the Right to Manage statutory framework which supports the management agreement and applies to local authorities but not housing associations.

The second area to consider is the TMO’s legal status and its area of benefit set out in its registered rules or memorandum and articles depending on the type of legal entity the TMO is. While linked to the management agreement, it is not dependent upon it. For example if the management agreement ends, the TMO will continue to be a registered society (as the majority of TMOs are) or a limited company or a community interest company until such time as it deregisters. However if the society or company is no longer registered as a legal entity, the management agreement would come to an end since it is a requirement set out in the agreement that the TMO must have a legal status i.e. be incorporated.

Housing Association landlords

It should be noted that neither the Right to Manage Regulations nor any of the accompanying statutory guidance are binding on housing association landlords. Although, many housing associations with existing TMOs do try to comply broadly with the guidance e.g. using the modular management agreement as the basis for their version of the agreement and linking TMO allowances to their own housing management costs. But while the council may be required to use the regulations to enable it to enter an agreement, a housing association may enter a management agreement provided it complies with its own procurement policies including taking account of European Union procurement requirements. However the management agreement between the housing association and the TMO constitutes a legally binding contract between both parties in the same way as it does for local authority TMOs. So the wording of the clause in the agreement that sets out how variations can be made will be very important.

1 Previously known as Industrial and Provident Societies, refer to the Co-operative and Community Benefit Societies Act 2014
The Right to Manage Regulations 2012 – Voluntary Agreements

In the majority of cases to date where TMOs have expanded their area of benefit, councils and TMOs have used the voluntary agreement contained in the Right to Manage Regulations. This route is also commonly used when TMOs negotiate new management agreements based on later statutory models. The regulations state:

‘Agreements entered into voluntarily
21. An authority may enter into a TMO agreement otherwise than in accordance with these Regulations where that agreement satisfies the requirements of section 27’.

‘Otherwise than in accordance with these Regulations’ means without the need to go through the TMO development process set out in the regulations. Section 27 of the Housing Act 1985 as amended makes provision for local authorities to enter management agreements with TMOs in accordance with the Right to Manage Regulations. It is up to each individual authority to determine how it will comply with the legislative requirements and in particular consultation with tenants and leaseholders affected.

Depending on when the current management agreement was entered into the council may seek to use the opportunity to update the management agreement to the latest version available. This is not unreasonable and provides an opportunity for both parties to ensure that the agreement reflects current legislation and good practice.

The TMO will require approval from its members and residents to end the current management agreement with the council and to enter the new management agreement, which normally takes place on the same day. This would normally be the subject of a resolution put to a special general meeting.

Clearly, the council cannot be forced to enter a voluntary agreement, it is what it says ‘voluntary’ for both parties. Therefore the council must be in favour of the proposal and satisfied that it has been clearly thought through and planned, that it stacks up financially and resource wise, and that it has or will have majority community support. Hence the importance of the TMO producing a well prepared and robust business case supported by evidence.

Variation to the existing management agreement

There are two possibilities here (a) simply replacing schedules to the agreement or (b) using the variation clause for ‘additional management functions’, both of which are explained below.

a) The TMO and Council agree to replace schedule/s to the management agreement

While it’s likely that the TMO will be required to make changes to its rules or memorandum and articles to
incorporate new properties into its area of benefit, the only essential change with regards to the actual wording of the management agreement is to two key schedules to the agreement (assuming there is no change to actual functions carried out by the TMO other than they are delivered to additional properties). These are chapter 1 schedule 1 – the property to be managed by the TMO and chapter 5 schedule 1 - the calculation of allowances for the properties managed by the TMO. The Annex to chapter 1 - the rules or memorandum and articles may also need to be replaced with the updated version incorporating the new area of benefit.

While this may not have been the intention of the management agreement or the Right to Manage Regulations, in principle the parties to the agreement (the TMO and the landlord) could use the appropriate clause in the agreement to replace these schedules with updated versions reflecting the new properties and the allowances for the expanded TMO area. The council will want to reassure itself that this is an appropriate route to take, taking legal advice where necessary, and that it has fulfilled all necessary consultation requirements.

The 2005 and 2013 versions of the management agreement include a clause in chapter 1 which states:

Clause 18.1 This Agreement may by varied in the following ways:

 c) by the Council and the Tenant Management Organisation agreeing to replace or amend a Schedule to this Agreement, provided that the new or amended Schedule satisfies the requirements that were satisfied by the Schedule being replaced or amended;

A deed of variation to the management agreement is not required when using this clause.

The 1994 version of the management agreement includes a similar clause in chapter 1:

Clause 17.1 This agreement may be varied in the following ways:

 c) by the Council and the TMO agreeing to replace or amend the appendices of this Agreement provided that the contents of the new or amended appendices conform to the checklists in the appendices of the Modular Management Agreement;

A deed of variation is required under the terms of the 1994 management agreement.

b) The TMO wishes to provide additional management functions

The management agreement between the council and the TMO will reflect the model in existence at the time it was entered into unless it has been updated which increasingly is the case. Therefore clauses concerning taking on additional services will vary. However since the regimes designed to evidence competence referred to in previous versions of the management agreement no longer exist it is reasonable to expect that the relevant clauses in the latest version, the 2013 management agreement would apply. This clause\(^2\) states:

Clause 18.1 This Agreement may by varied in the following ways:

 a) by the Tenant Management Organisation:

 i) obtaining certification by an Approved Assessor that, in relation to additional management functions that the TMO wishes to exercise which are included as options in the Modular

\(^2\) 2005 and 2013 MMA chapter 1 clause 18.1, 1994 chapter 1 clause 17.1 obsolete wording
Management Agreement, the TMO has the required level of competence; and
ii) then giving the Council at least four months written notice, or such other period as may be agreed, that it has decided by a simple majority vote at a general meeting to take on those management functions, in which case this Agreement will be varied by adopting the appropriate clauses of the Modular Management Agreement”.

Note that the clause refers to ‘additional management functions’. While it may seem reasonable to interpret additional management functions to include delivering the same functions to additional properties (i.e. the functions are included as options in the Management Agreement) ultimately it will be up to each council to determine whether this is the case.

If the council is of the view that the variation clause in the management agreement is not applicable to a TMO wanting to manage additional properties, the TMO would need to serve a Right to Manage Notice in accordance with the RTM Regulations.

Taking responsibility for additional services
If the TMO wants to take on additional functions for the properties that it currently manages (which correspond to options in the modular management agreement) rather than expand to include additional properties, then the variation clause in the management agreement will apply if the council is unwilling to enter a voluntary agreement.

The Right to Manage Regulations
statutory route

This is covered in detail in section 4 but it involves opting into the Right to Manage development process as set out in the Right To Manage Regulations 2012. Where a TMO has been operating successfully for some years and is likely to have the necessary systems and resources in place, then the TMO development process should be accelerated as far as possible.
The role of the Approved Assessor

The role of the Approved Assessor is set out in the Right to Manage Regulations 2012 and in the Right to Manage Statutory Guidance Part 1. It is expanded upon in the NFTMO Guide to the Common Assessment Model.

Basically it is an independent role designed to assess whether the TMO is competent to carry out the functions it proposes to undertake. The assessment is based on a common assessment model adapted, if necessary, for each set of circumstances. It follows four key areas:

- the TMO’s aims are realistic and viable;
- the TMO is in touch with its community;
- the TMO is well run and in control;
- the TMO is able to provide an effective housing service.

Approved Assessors are people with special expertise and experience within the TMO sector who have been approved by the Secretary of State under the Right to Manage regulations. They are independent and their assessment will be based on evidence. They can also offer useful guidance as to what should have been achieved at each stage of the development process.

Who pays?

Approved Assessors are managed and funded by the Approved Assessment Service which is currently managed by DCLG. TMOs requiring an assessment will not be expected to pay for this service. In most cases set out in this guide, an existing TMO wishing to expand will be expected to fund the development of the business case and associated activities from within its own resources as you would expect any community business wishing to expand to do. Given that operational TMOs have staff in place who have a detailed knowledge of the TMO, its past performance, its ambitions and plans and its resources, this is a reasonable expectation. There may be exceptional circumstances where this is not the case when DCLG will consider an application for tenant empowerment grant funding.
Section 2: The Legal Position

Do you want to expand your TMO to include more members and homes in management?

YES

Does the council actively support your proposal to expand?

NO

YES

You can use any of the following options if both parties agree:

Both parties agree to negotiate and enter a new MA using the voluntary clause in the RTM Regulations and to end existing MA

OPTIONS

Both parties agree to vary the existing MA by either of the following:

OPTIONS

Changing only key schedules to include the new properties

Using the variation clause in Chap 1 of the MA provided council interprets additional management functions to include more homes.

MA - Management Agreement
RTM - Right to Manage
Section 2: The Legal Position

No we just want to provide services to homes outside of the TMO

Does the council support your proposal?

NO

You cannot proceed unless you follow the RTM Regulations

YES

Agree and enter a separate contract with the council see Section 5

OPTIONS

You need to serve a RTM notice under the RTM Regulations and follow the RTM process

Serve a RTM notice for existing area and proposed new area combined.

Assist new residents to serve a RTM notice for new area.

‘How to Grow Your TMO’ Flowchart

Note: The Council may be supportive of your proposal to expand but may still want your TMO to proceed under the Right to Manage regulations for a number of reasons
Section 2: The Legal Position

Which path will the council take?

One of the most important factors that will influence the council’s decision as to how it will proceed will be the scale of the TMO’s expansion. For instance if a well established TMO wants to expand to include a small number of neighbouring properties, the council may be more inclined to use the voluntary agreement or the variation clause in the existing agreement. However if the TMO is doubling its size in terms of the number of properties managed, the landlord might reasonably expect the TMO together with the potential new area to go through the Right to Manage process laid down in the Regulations.

Similarly if a TMO has experienced significant failures in the recent past perhaps in governance or service delivery, the council may think it is important that the TMO undertakes a Right to Manage development with all that this entails in order to ensure it will be competent to manage the new homes.

It is impossible to set a benchmark either in terms of size of expansion or competence for which route is appropriate as this will be up to the council to determine based on the local situation.

What options are there if the council doesn’t agree?

If a council is not agreeable to exploring a voluntary agreement or replacing the schedules, the TMO has little alternative other than to proceed down the Right to Manage route. There are two options here:

(a) using the variation clause in the existing management agreement between the TMO and the council relating to additional management functions (which will be dependent upon the council’s interpretation of ‘additional management functions’); or

(b) serving a Right to Manage notice in accordance with the Regulations (which would mean opting into the Right to Manage development process).
Section 3: The Voluntary Route

The most important point to consider and one which will determine the process to be followed is whether your landlord is supportive of the TMO’s proposal to expand its area of benefit and manage additional properties.

Voluntary in this context means that the landlord and the TMO agree to implement the proposal for the TMO to expand its area of benefit and the number of properties it manages. They also agree the method they will use to change the management agreement. There are two possible options under the voluntary route. These are:

1. **The TMO and Council agree to replace schedule/s to the management agreement**
   The council may agree to use this option which simply involves changes to the schedules or appendices to the management agreement dependent upon its own legal advice.

2. **The council and the TMO agreeing to enter a new voluntary management agreement**
   The council may be supportive of the TMO’s proposed expansion but feel that simply replacing schedules in the agreement is not appropriate and may have received legal advice to that effect. In that case, entering a voluntary management agreement under Regulation 21 of the Right to Manage Regulations 2012 is a potential option.

In both cases, the council will be required to consult the ‘new’ residents about the change of housing management and will still need to reassure itself of the TMO’s competence to manage the additional properties.

It is likely that the TMO will be required to make changes to its rules or memorandum and articles to incorporate new properties into its area of benefit. It will also need to consult its members and residents about changes to the management agreement.

**Housing Association landlords**
If your landlord is a housing association and you can demonstrate competence, it may well support your proposal to expand and be prepared to amend the existing management agreement. There is no statutory route open to housing association residents, therefore you must gain your landlords support and refer to the wording in your existing management agreement. Your housing association may well have amended this clause relating to variations when the agreement was negotiated so you will have to look at the exact wording to see whether there is any scope for your TMO to vary the agreement to expand to include additional properties. You should follow
Section 3: The Voluntary Route

the steps set out below.

What does the TMO need to do?

Step 1 - identify a potential area which may be a nearby block of flats, an estate or a number of houses. You will need to sound out those residents as to whether they want their homes to be managed by the TMO subject to the offer you put to them, and how they would like to get involved. If there is an existing resident association, you should contact them to discuss the proposal. In many cases, these residents may well have approached your TMO before, in which case you may know there is a groundswell of support.

Step 2 – discuss the proposal with your landlord to find out in principle whether they will be prepared to support your TMO and which route the council would prefer to use. Remember there are three possibilities:

(a) entering a new management agreement under Regulation 21 of the Right to Manage Regulations (an agreement entered into voluntarily) or agreeing to replace the schedules to the management agreement (the voluntary routes covered in this section)
(b) using the variation clause relating to additional management functions in the existing management agreement
(c) serving a Right to Manage notice to include the additional properties

Step 3 – it is important that you demonstrate to your landlord and new residents that you have thought through and researched the proposal in a business like way, i.e. that you have the necessary resources to deliver services to the additional properties (or can employ the additional resources required), that your TMO can meet the competence requirements, (evidence of your past record of service delivery will be important here), how you plan to consult and involve new and existing residents and of course the financial plan. You will need to prepare a robust business case (see below);

Step 4 - you will need to find out from your landlord how much your TMO will receive to manage the new properties. You should be able to arrive at a reasonable estimate by reference to your own TMO allowances. But you will need the final figure before any formal consultation takes place;

Step 5 – when completed, you should submit your TMO’s business case to your landlord who may require you to make changes e.g. consultation plans, staffing resources, financial plan etc. This should be a process of negotiation. Remember this is a voluntary arrangement so it requires the positive support of both parties;

Step 6 - when your landlord is satisfied, you should agree a plan of action with key dates agreed and which party is responsible. This will include TMO consultation with existing and new residents, landlord consultation with new residents, changing your rules or memorandum and articles, recruitment of new board members and residents, recruitment of additional staff or contractors if necessary, transfer of existing landlord staff if applicable (TUPE3), signing a new management agreement including general meeting approval, and the ‘live date’.

Step 7 – Implementation – when you put your plans into action.

3 TUPE Transfer of Undertakings, Protection of Employment Regulations 2006 as amended
What’s included in the Business Case?

A. Details of the proposal

Properties: You should include details of the additional properties you want to manage preferably with a map. You will need to establish the tenure of each property as this will impact upon the allowances you will receive as well as the level of service you will need to deliver. Don’t forget non residential properties such as garages, parking bays or pram sheds. You will also need to think about estate or community amenities such as children’s playgrounds, community halls: whether and how you will manage them.

Services: You should set out exactly which services you want to provide to the new properties. Generally your landlord will expect this to mirror your current management agreement. But if you plan to make any changes for instance extending your remit for repairs then you need to make this clear. If you intend to take responsibility for rent collection and arrears control, (if your TMO currently does this), then you will need to set out the arrangements including responsibility for arrears at the starting date and any changes to payment arrangements and how tenants will be informed.

Resources: How do you plan to provide the services? This will very much depend upon the scale of the expansion you propose. If it is a small number of additional properties, there may be few resource implications but if it is a neighbouring estate, there will be many things to consider. Can you do this within your current staffing structure or will you need to employ more staff? How will go about employing additional staff and what is the time frame? How will the new staffing structure look? Are there any TUPE implications (i.e. landlord staff currently doing the job who may be transferred)? Will you need to employ more contractors or vary your existing contract/s? Will this involve a tendering process? Will your TMO office provide adequate space to serve the new residents, is it easily accessible or will you need to make any changes? If so, they will need to be costed at least in outline.

Systems and Admin: Will you need to make changes to your existing IT and support systems? If so, how will you go about this? If you are accessing landlord systems, then your landlord will need to incorporate the new properties into your field of access.

B. Finances

You should be able to make a reasonable estimate of the additional income your TMO will receive by reference to your existing allowances. It won’t be exact as it may not take into account any special circumstances pertaining to the new area but should be sufficient for the initial business case. You should set out how this additional income will be spent in a draft budget (either by incorporating it into your existing budget or separately). It is also important to set out any plans that you may have for improvements to the new area in the first few years and how you plan to fund these. This could be a big selling point to win new residents over. You will also need to consider items such as extending your insurance cover, increased audit costs, administration and support costs, changes to your website and communications costs, additional printing costs etc. You need to think about establishing a promotion and marketing budget from your existing resources which will be dependent upon the scale of the additional area you want to manage.
C. Competences

You need to demonstrate that your TMO has realistic and viable aims and a record of: being well run and in control (good governance); managing finances effectively; delivering effective, efficient services (meeting/exceeding most key performance targets); and consulting and involving residents. Of course your landlord should have a reasonable knowledge of how your TMO performs but it is important to set it out in the business case.

D. Consultation and involvement plan including changing the area of benefit in Rules/ Memorandum and Articles

What, if any, consultation has taken place to date? Have you tested the waters to see if there is support for the proposal amongst the residents of the new homes you propose to manage? Have you spoken to any existing residents organisations in the new area to get their views? You would not have carried out detailed consultation at this stage but it is important to show that there is some interest in your proposal.

How do you propose to consult with the residents on the proposal to include their homes within your TMO’s area of benefit. You may consider door knocking, social media, newsletters, events and meetings. You will also need to think about consulting residents about becoming members/shareholders of the TMO.

How do you plan to consult the TMO’s existing members and residents. This is crucial if a change to the TMO’s governing instrument is required which is likely to be the case if you plan to give new residents the opportunity to join the TMO. Your governing instrument is your Rules if you are a registered society (formerly known as an Industrial and Provident Society) or your Memorandum and Articles of Association if you are a limited company or a Community Interest Company (CIC). It is likely that you will need to hold a special general meeting and get the support of a significant majority of your members voting on the proposal to change the area you represent, (in the case of registered societies, this is likely to be a 75% vote in favour at a special general meeting).

How do you plan to recruit new members from the new properties and in particular how you will ensure their representation on the board or management committee. You should try and find out at this stage whether there is any interest in joining the board. If there is interest, and if your rules permit, it would make sense to co-opt one or two interested residents at an early stage to help you develop your business case. This would ensure that representative/s from the new area are actively involved in shaping the plans for the future of their homes.

The landlord will also want to carry out its own consultation to satisfy itself that the majority of residents are in favour of the proposal. It will be up to the landlord, in consultation with you, to determine how it will do this and the benchmark for a successful vote. It may be a secret ballot or a questionnaire or a special general meeting.

E. Risk Assessment

You will need to carry out a risk assessment to show that you have thought about what could go wrong and that you have contingency plans in place to deal with such risks. If you are planning to take over a significant number of properties, then it would also be wise to include a ‘what if’ plan (sensitivity analysis) as part of your financial plan. Social landlords are likely to be under financial pressure in the coming years. They may in turn look to reduce TMO allowances as they reduce their own housing management costs. You need to be prepared for such a scenario with adequate reserves in place. If there is no leeway in your finances, your landlord is unlikely to agree to enter a voluntary agreement.
Remember, it is up to your TMO to convince your landlord that your proposal to expand will work now and in the future on all fronts: service delivery; finances; organisation; governance and community.

The length and complexity of the business case you put to your landlord will depend upon the scale and complexity of the expansion. If your TMO is of a significant size and planning to expand to include a few properties with little or no impact upon existing resources, then it will be a relatively simple exercise. But if the expansion requires the employment of additional staff or the transfer of existing landlord staff, tendering contracts, office alterations, structural and governance changes then the business case will obviously need to be more comprehensive. It may be that on examination of your business case, your landlord decides that it would prefer your TMO to explore a statutory route, not least because of the degree of independent scrutiny involved. If you cannot convince them otherwise, then you will have to explore the options in Section 4.
Section 4: The Statutory Route

As mentioned before, there are two principle options set out in the Right to Manage Regulations 2012 or in statutory guidance i.e. the management agreement.

Using the variation clause in the management agreement

There was no statutory modular management agreement for TMOs in place prior to 1994 although some models do include a variation clause with wording similar to the current version. If your management agreement dates from this time and has not been updated you will need to check the exact wording to see what variations are possible and what conditions you must meet.

If your management agreement with the Council was signed after 1994, it is likely to be a version of the Right to Manage modular management agreement. You will find the variation to the agreement clause in Chapter 1 (clause 17.1 in the 1994 MMA, clause 18.1 in the 2005 and 2013 MMA). The wording is set out in Section 2.

If the council agrees that the term referred to in the variation clause ‘additional management functions’ (2005, 2013 models) includes the addition of new properties, then the clause can be used. You will need to prepare a detailed business case supported by evidence as set out in Section 3. The evidence is very important because this option involves an independent assessment of your TMO’s competence by an Approved Assessor who will expect to see all of the supporting documents and research used to compile the business case. You will also need to show how the business case for the expansion will impact upon your existing business plan.

The Variation clause - Applying to the Approved Assessor Service

An application should be made to appoint an Approved Assessor who will carry out one assessment when you have completed the business plan/case and you are ready to carry out the final formal consultation. The assessment will be commensurate to the services/increase in area that the TMO intends to take over. You should apply to the Tenant Empowerment team at the Department of Communities and Local Government at least 6 weeks before you are ready for the assessment so that an Assessor can be appointed.
You will need to provide the Approved Assessor with the business case and existing business plan with proposed changes to reflect the additional properties together with supporting evidence demonstrating your TMO’s competence. The Assessor will also want to see evidence of support for the proposal both in the new area and in your existing area of benefit. He or she may request further evidence or raise queries which will normally be done via email. The Assessor may want to meet with your TMO board or committee and also with the council to ascertain the council’s view. The Assessor will produce a report initially in draft form to give you and the council the opportunity to correct any factual inaccuracies. The report will then be finalised and will certify (or not as the case may be) that the TMO has the required competencies. If not, it will be back to the drawing board and perhaps your TMO should consider going through the Right to Manage development process. For more information on the Assessment process (although your assessment will be a scaled down version) see the Guide to the Common Assessment Model 2013.

If the Assessor certifies that the TMO has the required competencies then the TMO and the council should follow the requirements of their management agreement unless both parties agree otherwise. Normally a simple majority vote at a general meeting to take on the ‘additional management functions’ is required and then the TMO must give the council notice as set out in the agreement. However given that this variation will involve the TMO managing additional properties, the Assessor and the council will expect to see evidence of majority support from ‘new’ and existing residents. The council will also want to satisfy itself that all legal requirements are fully met. A deed of variation signed and sealed by both parties is required.

The Approved Assessor will normally be funded from tenant empowerment grant (currently managed by DCLG) and there will be no cost to the TMO for the assessment.

Serving a Right to Manage notice (RTM Development process)

There are two ways to proceed under the Right to Manage Regulations:

(a) to serve a RTM notice for the whole area including the existing TMO and the new proposed area combined; or
(b) to assist the residents in the new area to serve a notice for just the new area.

A. Serving notice for the whole area including the existing TMO

The RTM regulations provide for dwellings already included in an existing management agreement (i.e. the homes your TMO currently manages) to be included in a RTM proposal notice provided the TMO which serves the notice is party to the existing management agreement.

Regulation 9(4) A proposal notice must not contain a proposal relating to houses already included in an existing management agreement between a TMO and an authority unless — all of those houses are included in the proposal and the TMO which serves the notice is a party to that existing management agreement; or the number of houses which are the subject of the existing agreement is greater than 2500.

In order to meet the requirements of the Regulations, your TMO will need to amend its registered rules or memorandum and articles to include the new dwellings/area at the outset. You will need to make sure that your
Section 4: The Statutory Route

membership includes at least 20% of tenants and leaseholders including at least 20% of secure tenants living in the total area (the existing TMO area and the proposed new area). You will need to demonstrate that the majority of TMO members (existing and any new members) voted in favour of serving the proposal notice on the council either in a ballot or at a properly constituted general meeting (the much simpler option).

Once residents have voted in favour of the proposal, you will need to deliver a copy of the notice to every home in the existing TMO area and the proposed new area. Then you can serve the notice on your council together with evidence that your membership meets the 20% requirement referred to above and of the vote in favour of serving the notice. It is a good idea to discuss this beforehand with the council so that they are prepared.

Your council has 28 days to respond. It can only reject the notice if at least half of the total number of dwellings were included on a previous proposal notice within the last 2 years which was deemed to have been withdrawn or it believes your TMO has not met the conditions set out in the above paragraphs.

If the notice is accepted your TMO has 3 months to apply for the appointment of an Approved Assessor to report on the competence of the TMO to manage the area set out in the RTM notice (i.e. the complete area of benefit). This report must be completed within 15 months but in reality it is expected that this should be an accelerated process unless there are exceptional circumstances. Generally, operational TMOs should be able to resource the work needed in development and fund any additional support required, although there may be exceptions e.g. where a TMO’s new area of benefit is much larger than its existing area, it intends to provide a number of additional services, the council is particularly unsupportive or challenging. You should discuss your particular situation with the Tenant Empowerment Team at DCLG. The cost of the Approved Assessor will be met by DCLG through tenant empowerment funds.

The Approved Assessor will be in contact with your TMO and will require you to provide information and evidence at various stages. Although it is anticipated that the Assessor will only need to meet with you and with the council for the final assessment of competence, again unless there are exceptional circumstances. You should refer to the Guide to the Approved Assessor service for details of the information and evidence you will need to provide but the business case requirements set out in Section 3 are a good indicator.

When and if your TMO has been assessed as competent, the council will need to ballot all residents of the complete area of benefit i.e. your existing residents and the residents of the new area. You will need to secure a majority of residents (tenants and leaseholders) voting and a majority of secure tenants voting to be in favour of the proposal. If you succeed in this, then you can proceed to implementing your proposals. If you do not succeed, then your existing management agreement with the council will continue but the proposal for the new expanded area will come to an end. You may need to review your TMO ‘area of benefit’ in your rules or memorandum and articles, this time to exclude the new area and revert back to the original area of benefit.

B. Serving a RTM notice for the new area only

This does present some challenges in that effectively this is a separate new TMO development. The residents of the new area will need to form an organisation (if one does not exist), adopt a constitution that complies with the regulations and secure the 20% membership requirement. They will need to hold a ballot or general meeting on whether to serve the notice. The process described above will apply but the assessment process may be more complex as this will be treated as a new developing TMO. Your TMO can assist and support the new residents’
organisation but it will require a significant degree of participation, commitment and involvement from the new resident members. Please refer to Section 7 Useful Information for Right to Manage guidance and the NFTMO toolkit. It is likely that in this scenario, tenant empowerment grant will be available to enable the ‘new’ TMO to appoint a lead advisor to guide the new group through the development process.

If the new TMO group is certified as competent and a successful ballot result achieved, the implementation stage should be used to plan and implement the effective merger of the new embryo TMO and the existing TMO. Your TMO will need to conduct a consultation exercise with regard to expanding its rules or memorandum and articles to include the new area and ending the existing management agreement and entering a new management to include the new area.

In both scenarios, there may be situations where the council strongly opposes the TMO’s proposal for its own internal reasons in which case the process may take longer and the assessment may be more complex since the Assessor will be required to evaluate the council’s reasons for its objections and whether they bear any relevance to the TMO’s competence. If the council refuses to co-operate with the existing TMO or the Assessor, then the TMO has recourse to the dispute resolution and ultimately the arbitration process set out in the management agreement and referred to in the Right to Manage Regulations 2012.
Section 5: Other Options

There are other alternatives for TMOs who simply want to deliver services to homes which are currently managed by their landlord or indeed other housing providers.

The key factor here is that the existing TMO simply wishes to deliver services rather than expand its area of benefit and include residents of the new area as members of the TMO.

**Entering a contract with your landlord**

The TMO can enter a contract, entirely separate from its management agreement, to deliver services on the landlord’s behalf to non TMO properties. Of course this will require the full co-operation of the landlord. There will need to be either a process of negotiation as to the terms (including the fee payable) of the contract and/or the landlord may want to conduct a tender/bidding process in accordance with its own procurement policy. The landlord may need to consult with residents of the new properties as to the change of provider, depending upon the service/s being delegated.

**Other housing providers**

The TMO may enter a similar arrangement with other housing providers which might find it expedient and in their interest to contract the TMO to provide services on its behalf to homes within the vicinity of the TMO. This may include housing associations and private landlords.

Both of these scenarios are contractual arrangements and will be subject to a negotiation and in some cases a tender/bidding process. In some high value contracts, EU procurement rules will apply which may make it difficult for the TMO to compete against other major providers.

**Working with other TMOs**

The TMO may also enter contractual or other arrangements with other TMOs, providing services on their behalf or jointly procuring a contract. This may be a complete housing service or elements such as cleaning, grounds maintenance or repairs. This option has been used by a number of TMOs delivering benefits and economies of scale to all parties. There are also examples where TMOs have ‘jointly’ employed member/s of staff and shared the cost and the benefits, with one TMO being ‘the employer’. This can work to the advantage of a number of TMOs sharing for example a Community Development worker or a Governance Officer.

The key to success with all of these arrangements is the ‘Agreement’ including clarity as to who does what, expectations, service outputs and standards, the financials, review and monitoring and non performance.
Service level agreements
In some cases, local authority landlords use service level agreements (SLAs) to delegate additional services to the TMO. Typically, SLAs are either used as agreements between internal departments within councils (which of course the TMO is not), or they specify the service outputs as part of a formal contract. Therefore their use (if assumed they replace a contractual arrangement) to delegate services which are entirely outside of the management agreement between the TMO and the Council could be questioned. However they could be seen as an extension to the management agreement. Ultimately this is a decision for the landlord and its legal advisers.

Community Right to Challenge
The Community Right to Challenge was introduced by the Localism Act 2011 and it aims to give communities more opportunities to shape and run local public services where they believe they can do so differently and better. The services may be at any scale of activity from very local and small to authority wide.

Community organisations, amongst others, can submit an expression of interest in running services on behalf of their local council. If the council accepts the expression of interest, it must run a procurement exercise for the service. The community group will need to compete with others who may also be interested in running the service. If the service is delivered as part of a statutory duty such as homelessness, the local council retains the statutory duty, even if they commission delivery of services externally. The definition of community organisations includes TMOs who are registered community benefit societies and co-operatives, community interest companies or limited companies whose objects state that they are working in the interests of the community rather than making a profit for shareholders.

Pre feasibility and feasibility grants might be available to help you prepare for a Community Right to Challenge.

Other community rights include:

- **Community Right to Bid**
  The Community Right to Bid gives community groups the right to prepare and bid to buy community buildings and facilities that are important to them.

- **Neighbourhood planning**
  New neighbourhood planning measures allow communities to shape new development by coming together to prepare neighbourhood plans.

- **Community Right to Build**
  The Community Right to Build allows local communities to propose small-scale, site-specific, community-led developments.

- **Community Right to Reclaim Land**
  The Community Right to Reclaim Land helps communities to improve their local area by giving them the right to ask that under-used or unused land owned by public bodies is brought back into beneficial use.

- **Our Place!**
  The Our Place! programme (formerly ‘neighbourhood community budgets’) gives communities the opportunity to take control of dealing with local issues in their area.

You can find more information and links in **Section 7 Useful Information**.
Section 6: Case Studies

Browning EMA

A TMO expanding its area of benefit using the voluntary agreement

Browning EMA in Southwark has gone through a voluntary process to increase its area of benefit by about 15%. The TMO did not serve a Right to Manage notice or access grant but worked closely with its supportive landlord, Southwark Council to negotiate the arrangement and reflect this in an amended voluntary management agreement. It took about 6 months in total including consultation with all residents affected. This is part of a phased process over a 12 to 18 month period reflected in the TMO’s business plan with the TMO aiming to expand its size by about 1000 homes. It currently manages 498 homes.

Cowley RMO

A TMO expanding its area of benefit using the voluntary agreement

Cowley RMO in Lambeth was in the process of negotiating a new management agreement. A nearby TMO voluntarily ended its management agreement with the council and moved to new management because of redevelopment which left some 60 or so sheltered properties having to return to council management. Cowley RMO prepared a business case and carried out extensive consultation with the new residents as did the council. Cowley RMO also consulted with its existing community and amended its rules to include the sheltered properties. Residents voted in favour of Cowley RMO which took over management of the properties. The voluntary agreement reflected the new properties.
Springfield Horseshoe Co-op

A TMO expanding its area of benefit by serving a Right to Manage notice

Springfield Horseshoe Co-op in Wolverhampton was set up in 1995. It served a Right to Manage notice in 2007 to manage an additional 200 properties increasing their area of benefit by over 140% and it eventually went live (with the new properties) in 2010. They did not consider the voluntary route and did not think the council would have been receptive at the time. While they were going through the development, the common assessment model was introduced and they underwent a stage 2 and stage 3 assessment.

Springfield Horseshoe Co-op reported that on the whole they found the process very beneficial and it gave them the opportunity to review service delivery, systems and policies and to negotiate a new management agreement although it did take several years until they eventually went live with the new properties. They did receive tenant empowerment grant funding.

Blenheim Gardens RMO (services)

TMO taking on more services using a voluntary agreement

Blenheim Gardens RMO in Lambeth was in the process of negotiating the new 2013 management agreement with the council to replace its current agreement. It decided that it wanted the use the opportunity to review its services and decided it wanted to take over leaseholder service charges billing and collection. The council asked it to submit a business case evidencing how it proposed to deliver the service including meeting the costs of additional labour. The TMO did so and the council gave approval for the additional service to be included. The council entered a voluntary agreement with the TMO.

PETRA TMO

TMO providing services to council properties through a service level agreement

PETRA TMO in Havering manages an estate of some 150 homes. There are also three sheltered blocks of flats on the estate that continue to be managed by the council. The TMO has for some years provided grounds maintenance services to the sheltered blocks. This has been the subject of a service level agreement between the council and the TMO. The TMO has sought to expand to include the sheltered homes with the support of local residents but the council has been reluctant because they have been carrying out a review of sheltered housing.
Section 6: Case Studies

Angell Town RMO

TMO providing services to a nearby housing association properties

When Angell Town estate in Brixton was redeveloped some years back, the new estate included a number of housing association properties. The TMO which has an estate based office and its own caretaker/cleaner team delivers communal cleaning services to all of the housing association blocks located on the estate for a fee. This is a contractual arrangement between the housing association and the TMO.

Five Southwark TMOs

Joint employment and training of a local resident to become a neighbourhood worker

Five TMOs in Southwark worked together to employ a TMO resident as a neighbourhood worker. The worker was employed for a year to carry out a variety of community engagement activities on each estate for an average of one day a week to encourage membership and participation and help the TMOs to identify residents’ concerns and become more inclusive organisations. The costs of the worker were shared amongst the TMOs although the largest TMO took responsibility for the actual employment and invoiced the partner TMOs for their proportion of the costs. The worker completed a year long course run by the Chartered Institute of Housing which provided a housing qualification to go alongside their work experience.

Halifax Opportunities Trust (HOT)

Community Right to Challenge (extracted and edited - from mycommunity.org.uk)

Halifax Opportunities Trust (HOT) is a well-established community owned enterprise working within a deprived neighbourhood of Halifax and in other areas across Calderdale. They have delivered high quality local Children’s Centre services for some years but were recently forced to tender to continue running these Centres. They were successful in this tender against stiff national competition and will now continue to deliver this service for the next three to five years.

HOT received a feasibility grant which enabled them to access specialist support in a range of areas to increase their chances of success. This included achieving quality standards ISO9001 and CHAS (health and safety) and accessing a range of support including HR, financial modelling, tender writing and impact recording. HOT submitted their response to the Council Pre Qualifying Questionnaire which was successful which then enabled them to participate in the second stage of the procurement process. HOT won the tender, worth more than £10m, with Locality’s help! They believe that their strong customer focus, relationship with local people and proven track record of a high quality delivery in a very challenging area, lifted them above the strongest competition. To find out more, see Section 7 Useful Information
There are several documents referred to in this guide which you may find helpful. The links are listed below:

**Right to Manage Guidance and Regulations**

There are four parts to the Right to Manage guidance (issued 17 December 2013):

- Right to Manage statutory guidance: part 1
- Right to Manage guidance: modular management agreement for tenant management organisations: part 2
- Right to Manage guidance: modular management agreement for tenant management organisations: guidance on the schedules: part 3
- Right to Manage guidance: calculating allowances for tenant management organisations: part 4


**Right to Manage Regulations 2012**


**Explanatory memorandum to the Right to Manage Regulations 2012**


**NFTMO Right to Manage Toolkit**

- Go to: [http://www.nftmo.com/content/content_toolbox_detail.nomo?id=15](http://www.nftmo.com/content/content_toolbox_detail.nomo?id=15)

**Tenants Guide to the Right to Manage**


**Approved Assessor Service and the Common Assessment Model**

**Guide to the Common Assessment Model**


**Common Assessment Standards 2012**

Section 7: Useful Information

Other relevant legislation

Co-operative and Community Benefit Societies Act 2014
- Go to: http://www.legislation.gov.uk/ukpga/2014/14/contents

Community Rights

- http://mycommunity.org.uk

Evaluation of Tenant Management

Tenants Managing an Evaluation of Tenant Management Organisations in England’ published by the Office of the Deputy Prime Minister 2002
- Go to: http://www.nftmo.com/numo_img/library/TMO_005.pdf

- Go to: https://www.york.ac.uk/media/chp/documents/2012/lessonsforlocalism.pdf