



# Guidance on Secondment to Tenant Management Organisations

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Office of the  
Deputy Prime Minister

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Creating sustainable communities

# Guidance on Secondment for Tenant Management Organisations

July 2005

Office of the Deputy Prime Minister: London

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# Acknowledgements

The ODPM commissioned this good practice guidance as part of the package of guidance on the Right to Manage.

This guidance is based on work carried out to develop new arrangements for secondment by PEP Ltd and Partners in Change, working with a number of pilot TMOs and councils. Particular thanks are due to the TMOs, councils and development agents who agreed to act as pilots for the new arrangements.

# SECTION A

## Introduction

### 1. Background to secondment of council staff

There is a long tradition amongst tenant co-operatives for directly employing staff to manage and repair their homes. Most co-operatives manage fewer than one hundred properties and often employ generic managers and/or caretakers, many on a part-time basis. When Tenant Management Organisations (TMOs) were developing in the 1980s on larger and more complex housing estates many decided to work with staff seconded from their council rather than employ a team of housing staff direct. The introduction of the statutory Right to Manage in 1994 meant that new TMOs developing under the terms of the Right to Manage could no longer work with seconded council staff.

Although tenants acknowledged the potential benefits of greater independent control over staff many TMOs were disappointed to lose secondment as an employment option.

As new groups began to work through the Right to Manage procedures evidence also began to emerge that the absence of secondment as an option was having an effect on some projects. For example:

- i. During the development period, a good working relationship between the developing TMO and the council is very important. There was evidence that in some cases, councils and their staff saw direct employment as threatening the security of employment locally and this in turn undermined a good working relationship. Secondment, it was thought, could help overcome this.
- ii. When a TMO takes over the management of an estate, the transitional period is often difficult as the new organisation comes to terms with systems and procedures – many of which are linked to the council . This transition, it was thought, could be made easier if the TMO had been able to work with seconded staff who were experienced and skilled in those systems and procedures.

In 1997, Ministers gave a commitment to re-introduce secondment. The ODPM commissioned PEP Ltd and Partners in Change to work with a number of pilot TMOs and councils to develop new arrangements which would give a clearer definition of respective roles and responsibilities and genuine control to TMOs.

The main conclusions of this research were:

- i. Many of the TMOs and councils studied had experienced advantages in working with seconded staff including those described above.

- ii. A significant number of TMOs – whilst appreciating the potential advantages of secondment – felt that the actual arrangements in place were not working well. Staff sometimes, it was felt, considered themselves part of the council rather than working for the TMO.
- iii. There were examples of TMOs with seconded staff that were working effectively and where the TMO felt fully in control of their staff.
- iv. Secondment of council staff to TMOs should be allowed as an option **but** that this should be based on TMOs and councils having arrangements for secondment based on good practice. These arrangements should be built into the Modular Management Agreement.
- v. Neither a TMO nor a council should be able to insist on secondment. All parties (including staff) should have to enter into a secondment arrangement voluntarily.

This good practice guidance was developed in consultation with the pilot councils, tenants' groups and their development agents.

## 2. About this document

The guidance sets out good practice and a step by step approach to looking at secondment as an option, developing the secondment arrangements and then managing those arrangements. The steps covered in the guidance are as follows:

- **Step 1 – Being clear about what secondment means.**  
Making sure all parties know what secondment will involve.
- **Step 2 – Choosing the right employment option**  
Secondment, direct employment, contracting out or combinations of the three.
- **Step 3 – Setting the organisational structure and job descriptions.**  
Agreeing numbers and roles of staff and job descriptions.
- **Step 4 – Agreeing the period of secondment and how it will end.**  
Agreeing the length of the secondment and arrangements for ending it.
- **Step 5 – Agreeing management and supervision arrangements.**  
Management and supervision arrangements for seconded staff and also grievance and disciplinary procedures.
- **Step 6 – Supporting the seconded staff.**  
Agreeing how seconded staff will be supported over the secondment period and the continuing role of the council.
- **Step 7 – Recruiting the seconded staff**  
Agreeing arrangements for recruiting staff to seconded posts.
- **Step 8 – Managing the transition from TMO to Council Employment**  
Issues for seconded staff during the period when the TMO goes live.

- **Step 9 – Changing the staffing structure.**  
Agreeing changes to the staffing structure once the TMO is up and running.
- **Step 10 – Reviewing the secondment arrangements.**  
Reviewing the arrangements and managing the end of the agreement.

Although this is step by step guidance, and the steps are roughly in sequence, in practice some steps will need to be dealt with at the same time. This document includes a ‘timeline’ of events to show how secondment arrangements might be developed within a typical TMO development programme (**Section C**).

## **OTHER EMPLOYMENT ISSUES**

Before deciding whether secondment is an option which the TMO and the council wish to explore, it is important for both parties to be aware of and to consider the implications of the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) for staff currently employed by the council.

Where delegation of management functions to a TMO amounts to a transfer of an undertaking to which TUPE applies, contracts of employment (apart from terms relating to occupational pensions schemes) of relevant staff and all the council’s rights, powers, duties and liabilities under or in connection with those contracts will transfer to the TMO. Whether TUPE does apply must, in every case, depend on the individual facts and can ultimately be decided only by the courts.

Both the council and the TMO should also be aware of and take into account Cabinet Office *Guidance on Staff Transfers in the Public Sector*. This stipulates that, unless there are exceptional reasons for doing otherwise, transfers of public sector staff should be conducted on the basis that TUPE applies.

Further information on issues arising from TUPE, and the relationship of these with the secondment option, are set out under Step 2 of this guidance.



## SECTION B.

# A step by step approach to good practice

### STEP 1: BEING CLEAR ABOUT WHAT SECONDMENT MEANS

An important first step is for all parties – the TMO, the council and the staff – to be clear about what secondment means.

For the purpose of this document, secondment means the **temporary loan of council staff to the TMO for the TMO to manage**. This, therefore, means:

- i. Secondment will be for a fixed temporary period. Further secondment periods can be negotiated – see **Step 10**.
- ii. During the period of secondment, the management of the seconded staff will be the clear responsibility of the TMO. In many respects the situation will be as if the TMO was directly employing those staff.
- iii. Staff can generally expect to go back to working for the council at the end of the secondment period.
- iv. The council will still have responsibilities for the seconded staff in respect of a number of areas. This will include, for example, keeping in touch with seconded staff to make sure that they are kept up to date with what is happening in the council.

Point iii. above needs to be viewed with a degree of realism. Many councils are reviewing the future of their housing stock and their continued ownership or management of it. It may be that at the end of the secondment period the scope and scale of the council housing service will be quite different to the situation at the beginning of the period. The position may be further complicated in a case where the council has set up an Arms Length Management Organisation to manage its housing. In this situation it may be impossible for the council to guarantee that the seconded staff can go back to working in their original capacity for the council. Nevertheless, it is expected that when councils enter into secondment arrangements, they do so in good faith and will undertake to keep posts open to seconded staff as far as is reasonably possible. For example, if a stock transfer were to happen during the secondment period then the council would be expected to ensure that the new landlord continues to honour any undertakings made to seconded staff.

## The agreement

The secondment arrangements are now included as an option in the Modular Management Agreement for TMOs – an agreement that is legally binding on both sides. All parties, therefore, need to think carefully about whether secondment is the right thing for them.

There is no ‘right to second’. Neither the TMO nor the council can insist on secondment – it must be the subject of mutual agreement. The views of staff who may be affected by the secondment should also be taken into account. They should be involved in the discussions about employment options and the details of the proposed secondment arrangement.

Since the agreement is binding, once secondment has been chosen as the preferred option, both the council and the TMO must be committed to working through any difficulties in order to make the secondment arrangements effective. For example, the council must use its best efforts to find potential secondees and must not block the secondment of a member of staff where there has been a proper application for secondment and the TMO has selected that person.

The TMO, for its part, must accept a seconded member of staff where there has been a ‘bona fide’ application for secondment and the TMO is satisfied that the applicant meets the selection criteria – i.e. that person meets the person specification and is suitable for the post.

All these issues are dealt with in more detail in this guidance document.

<b>Step One – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Be clear about what secondment means	✓	✓
Be committed to making secondment work	✓	✓

## STEP 2: CHOOSING THE RIGHT EMPLOYMENT OPTION

There is no ‘right to second’ – both the TMO and the council have to agree that it is the right option for them. This stage looks at the issues all parties need to take into account when deciding whether to opt for secondment, direct employment, the use of a managing agent, or a combination of those options.

### **Impact of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)**

Before the council and the TMO decide whether to explore the secondment option in more detail, it is important, at an early stage in the TMO development programme, to clarify the position on whether TUPE applies to the delegation of housing management functions to the TMO.

Whether TUPE applies depends on the individual facts of the case but, where it applies, it could have a significant impact on a TMO proposal, particularly where a TMO is taking over the functions for a large number of dwellings.

Where TUPE applies, the contracts of employment for council housing staff affected by the TMO proposal will transfer to the TMO. However, even where TUPE applies, there may still be an opportunity for secondment arrangements to be negotiated with the degree of flexibility proposed in this secondment guidance. Alternatively, the TMO may still be able to recruit and employ its own staff.

The position on TUPE and the decision whether to pursue secondment or direct employment options will depend on some of the following factors:

- How does the TMO proposal affect staff currently employed by the council?
- Are those staff likely to transfer when the TMO goes live?
- Are there are likely to be vacancies which the TMO and the council agree in advance could be filled either by council staff seconding to the TMO, or the TMO recruiting its own staff?

The council and the TMO should explore the options based on the facts of the case. Secondment could provide an opportunity for the TMO to recruit from a wider pool of council staff while direct employment doesn't mean that the TMO will always recruit from outside the council. TMOs should always encourage applications for jobs from council staff.

The future terms and conditions of employment for TMO staff, after transfer under TUPE, should be determined by the TMO in the light of local circumstances. However changes locally negotiated between TMOs and their staff should reasonably ensure that TMOs offer staff future terms and conditions that, overall, are no less favourable than those for equivalent posts in other similar housing management organisations.

If council staff transfer to a TMO under TUPE, TUPE may apply, for example, where a TMO subsequently hands back functions it is managing to the council. It may also apply where a TMO chooses to take over functions managed by an ALMO where council staff may have already transferred under TUPE.

It should be stressed that TUPE rules and interpretations are complex and subject to change as cases develop. It is recommended that specialist advice should always be sought in relation to TUPE.

### **Issues for the TMO to consider**

When deciding on which option to choose, TMOs should take into account the following issues:

- **The size of the TMO and its organisation.**

The key question for the TMO is: how likely is it that secondment will provide the TMO with the staff it needs? If the TMO covers only a small estate, it may well be that it only has one full-time member of staff and that person needs to cover a wide variety of tasks and have a range of skills – housing management, office management, organising repairs and servicing the tenant board. It may be that a person with the range of skills and experience that the TMO is looking for is unlikely to be found through secondment from the council.

On the other hand, the TMO may be taking over a large estate with an established local office. The TMO's proposed staffing structure may be very similar to that of the existing local housing team. In this situation the TMO may decide that they are likely to fill the posts successfully via secondment.

It could be that some of the posts in the TMO's proposed organisation are very similar to the council's, but others are quite different. In this situation the TMO may decide that some posts, such as mainstream housing officers and concierges, could be filled by secondment, but other posts, such as General Manager or Business Development Manager, could be directly employed.

- **The TMO's relationship with the existing staff team.**

It may well be that the developing TMO has developed a very good working relationship with the local team of council housing staff and that relationship may be damaged if the TMO opts for direct employment. In this case a secondment arrangement may help to guarantee a smooth and successful transitional period in the run up to the TMO going live. If the TMO opts to directly employ in those circumstances it may be that some or all of those valued local staff will not apply to work for the TMO. Consultation with staff at this stage is very important.

- **Using council systems and procedures.**

Where the TMO is proposing to use council computer systems, adopt many of the council procedures and use council contractors, there are real advantages in starting off with an experienced and skilled staff team who are familiar with those systems and procedures. It may be that the best way of building this team is through secondment.

On the other hand, the TMO may want to develop its 'stand alone' systems and employ its own contractors. In that case the advantages of secondment may not be so great.

- **Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)**

The issue of TUPE needs to be considered by the TMO and the council at an early stage in the development programme. It is also important to find out at an early stage which of the council staff affected wish to transfer to the TMO on TUPE terms, and whether there will be vacancies which could be filled either by seconding council staff to the TMO or by direct employment by the TMO.

### **Issues for the council to consider**

When looking at the options, the council will want to take into account the following:

- **What do staff think?**

It may be that the staff whose work will be taken over by the TMO are quite comfortable with the TMO directly employing. They would like to work for the tenant group and feel confident about their own position. On the other hand, they may want to carry on working with the tenants, but see direct employment as a threat; in this case secondment would be more suitable. Of course, staff may want to move off the area altogether – in this situation secondment provides no benefits.

- **How easy would it be to absorb displaced staff into the rest of the organisation?**

With a small TMO proposing to directly employ a small staff team, there may well not be a problem with absorbing staff currently carrying out the duties into the rest of the organisation. Most housing organisations could accommodate this within normal staff turnover.

- **“Letting Go”**

The council must ask itself if it has the will and the capability to set up the new relationship with staff in line with the new secondment framework. The council must be prepared, at all management levels, to pass day-to-day control of the staff to the TMO. If secondment is viewed as a means by which the council can retain control then it is not the right option for the council and certainly not the right option for the TMO.

- **Secondment and Stock Options**

The council will need to consider the implications of the secondment option within the bigger picture of any proposals to reorganise the housing service, including setting up an ALMO or entering into a PFI contract, or stock transfer to a new landlord. Proposed change will not necessarily mean that secondment has to be ruled out but it may well determine the detailed arrangements with staff for their return to the council at the end of the secondment period.

### **Issues for staff to consider**

When looking at the options, local staff will want to take into account a number of factors:

- **Do they want to work for the TMO?**

Working for a TMO can be quite different to working for a council.

- **Is direct employment an attractive package?**

Staff may see direct employment by the TMO as an attractive proposition – they may feel confident about gaining a post and see it as a useful career move from the council to voluntary sector. Alternatively they may feel uncomfortable about losing the security of being employed by the council.

- **What is the secondment package on offer?**

Staff will want to weigh up what is on offer by the TMO. Clearly, if the terms and conditions of the TMO posts are below the equivalent or similar to ones in the council, staff will be reluctant to apply for them whether they are seconded or directly employed posts. On the other hand, the terms and conditions may be better than those of the council or, if they have not yet been finalised, the staff could have the opportunity to participate in developing the TMO's organisation. The new responsibilities offered by the secondment may open up important new career opportunities for staff.

- **How long is secondment for?**

If the secondment period is too long, staff may be more reluctant to make the change. In all cases the views of staff are important for both the council and the TMO. This is not just to help make a decision about what option to choose but to help plan for the secondment arrangements.

<b>Step Two – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Consider if TUPE may apply	✓	✓
Decide likely size and structure of staff		✓
Consider all employment options	✓	✓
Consider relationship with existing staff		✓
Consult staff	✓	✓
Consider implications of wider Organisational change	✓	

### **STEP 3: SETTING THE ORGANISATIONAL STRUCTURE AND JOB DESCRIPTIONS**

The TMO has full responsibility for delivering the service under the terms of the management agreement and it is important that the TMO has an organisation which is right for them. This means that it is up to the TMO to decide within the resources available to it:

- How many staff it needs.
- The management structure.
- What should be in the job descriptions.
- The right rate of pay for the job.

This is the case whether the TMO employs staff direct or works with seconded staff. Where the council and staff want to enter into a secondment arrangement, they cannot always expect TMOs to retain existing organisational structures or salary grades.

The organisational structure and job descriptions will form part of the secondment arrangements within the schedules to the Modular Management Agreement and in coming to an agreed position, the TMO and council may want to take into account a number of factors:

- **How likely they are to find suitable people for the posts via secondment?**

The type of jobs the TMO wants to create may be difficult to fill via secondment for a number of reasons – e.g. they require skills which are too specialised. In this situation, the TMO may want to create posts which are closer to those in the council.

- **How attractive the posts will be to staff wanting to be seconded?**

There is little point in a TMO opting for secondment and then grading the posts below the levels for equivalent or similar posts in the council. On the other hand, by offering enhanced terms and conditions, they may make secondment very attractive. Remember the staffing proposals must be affordable within the Management and Maintenance Allowances available for the functions that the TMO is to manage.

If both the TMO and council want secondment, it is up to them to negotiate an acceptable organisational structure which will bring about this aim. There is one clear requirement, however, of the Modular Management Agreement and that is that all staff must be either directly or indirectly (i.e. through line management) responsible to the tenant-led board for the duration of their secondment.

Where the TMO will be working with a combination of seconded and directly employed staff, it may want to make sure that there are not significant differences between the gradings of similar posts. There is no difficulty associated with a seconded member of staff being line managed by a TMO directly employed member of staff – this is usual with secondment arrangements in other fields

Remember – the TMO creates the posts and the council provides seconded staff to fill those posts. Secondment does **not** mean that job descriptions, staff structures and terms and conditions of employment must remain unchanged.

<b>Step Three – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Decide how many staff are needed		✓
Decide staffing structure		✓
Decide job descriptions		✓
Decide rates of pay		✓

#### **STEP 4: AGREEING THE PERIOD OF SECONDMENT AND HOW IT WILL END.**

Once secondment has been agreed in principle as the preferred option for all or part of the TMO’s staff team, the next stage is for the council and TMO to negotiate the period of secondment. It is also good practice at this stage for all parties to be clear about what can happen at the end of the secondment period.

#### **The secondment period**

Secondment is the temporary loan of staff from the council to the TMO. The secondment arrangement, therefore, should be for a fixed period. This prevents all

parties being committed indefinitely to secondment, but it also gives everyone a degree of certainty.

The length of the fixed period is up to the TMO and council to negotiate. They will need to bear in mind that too short a period (e.g. less than 2 years) will make it difficult for the TMO to create a settled team and plan for the future and too long a period (e.g. more than 5 years) would create too great a commitment for all parties.

### **Ending the arrangement**

The secondment arrangement will cease at the end of the secondment period. At this point, there are two options:

- The secondment arrangement can be renewed for another fixed period.
- The arrangement can cease and the TMO move to direct employment of staff or to using a managing agent (such as a housing association).

It is important that both the council and the TMO are well prepared for the situation at the end of the secondment period. For this reason the Modular Management Agreement requires both parties to give each other notice of their intentions at least 12 months before the end of the secondment arrangement, i.e. whether they propose to cease or renew the secondment arrangement. A shorter period of written notice may be given with the agreement of the other party. However it would be open to the parties to agree separately a period in which all seconded staff would be found alternative employment.

If one party wants to cease the arrangement and the other to renew it, there is no reason why one cannot try to persuade the other to opt for further secondment and come to an agreed position. Just like the initial agreement, however, secondment cannot be forced on either party – there has to be a mutual agreement.

In the event of a decision not to renew the secondment arrangement the 12 month notice period provides time for arrangements to be made including the return of staff to their mainstream posts and the putting in place by the TMO of their alternative staffing arrangements.

The council and TMO can also – by mutual agreement – cease the arrangement at any stage before the end of the fixed period. In addition the arrangement can be terminated by either party if there is a serious breach. There need to be procedures in both cases, however, which protect the interests of staff and ensure there is not an interruption to the TMO's services. Such procedures would need to cover:

- i Adequate notice by either party.
- ii Assistance by the council to the TMO over the transitional period.

Finally the arrangement would have to be ended in the event of the TMO ceasing its operations, for example, where members vote at a special meeting not to continue the Management Agreement.

Remember – if the TMO stopped carrying out a certain function – e.g. rent collection – then the secondment arrangement in relation to those staff carrying out that work would have to be ended as well.



<b>Step Four – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Agree length of secondment period	✓	✓
Agree procedures for ending secondment	✓	✓

## **STEP 5: AGREEING MANAGEMENT AND SUPERVISION ARRANGEMENTS**

A key part of the secondment arrangements is that the TMO must manage the seconded staff. There is no question of the council having any role in the day-to-day management of the seconded staff other than in the areas of disciplinary and grievance matters discussed below.

### **Grievance and disciplinary issues**

The council remains the employer of the staff and accordingly the council's grievance and disciplinary procedure will apply to seconded staff.

The TMO, however, is the line manager of its senior staff who are in turn the line managers of the rest of the seconded staff. It is essential that grievance and disciplinary procedures recognise the TMO's role in managing and supervising staff. Detailed arrangements for implementing grievance and disciplinary matters in relation to seconded staff must take proper account of the role of the TMO.

The TMO (or, where appropriate, senior staff acting on behalf of the TMO) must have the ability to request disciplinary action where this is necessary – whether this is informal or formal warnings or more drastic action. Such action against seconded staff should never be taken without the involvement of the TMO and the situation should never arise where action is taken against the seconded member of staff without the TMO being aware of the issues and having the opportunity to comment.

Likewise, where seconded staff wish to make use of the council's grievance procedure, as they have the right to do, the TMO should at the very least be aware of the grievance and should have the opportunity to be involved at an early stage in considering the matter. The TMO, if it so wishes, can negotiate with staff its own grievance procedure.

Detailed arrangements for implementing the council's discipline and grievance procedure in relation to seconded staff may include specific recognition of the TMO as supervisor. Local arrangements should be made for bringing together the TMO, relevant council officers and trade unions. Specific local agreements should be based on a sound understanding of the council's legal position as an employer as well as the TMO's role as manager and supervisor.

Such arrangements may give the TMO a formal role within the grievance and disciplinary procedures. Clearly, only the council can ever suspend or dismiss its employee, so where the TMO has grounds to suspect behaviour which potentially amounts to gross misconduct, the council must be brought in immediately with the expectation that it takes early and appropriate action, in close consultation with the TMO.

If grievance and disciplinary or performance issues arise, the TMO, having appointed the seconded staff, has a duty to work through problems with them in terms of managing performance or dealing with shortcomings and disputes. By the same token, staff should not be encouraged to expect to be 'air lifted' out of any difficulties as soon as they arise.

However, once all available avenues have been explored, if there are continuing serious problems, one or more of the parties may reasonably suggest an early return to the council of a seconded person, to be replaced by a new secondee. This may be a solution in some instances but it should only be used as a last resort.

<b>Step Five – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Responsibility for supervision and management		✓
Power to suspend or dismiss secondees	✓	
Agree disciplinary and grievance procedures	✓	✓
Consult Trade Unions	✓	

## **STEP 6: SUPPORTING THE SECONDED STAFF**

The council should not leave a seconded member of staff out of touch and isolated during the period of secondment. The secondee may return at the end of the secondment period and he or she will need to be keep up to date with changes within the council – new policies, new structures or new ways of working. There should be contact meetings between the council and the secondee at least every 3 months during the secondment period. The council should nominate an appropriate officer who will be responsible for maintaining links with the seconded staff.

As part of its continuing role in respect of seconded staff, the council will need to set up regular training sessions. The TMO should allow the secondees reasonable time to attend these training sessions.

The council must not instruct secondees to carry out duties or attend meetings on its own behalf without reference to the TMO. At best this is discourteous and at worst it fundamentally undermines the capacity of the TMO to manage their estate.

The council can ask the TMO if it can 'borrow back' seconded staff for a period or particular duties and a reasonable TMO will help if it does not damage their own service. A TMO may well see advantages in developing a reciprocal arrangement with the council. Any such arrangements will need to be clearly specified within the schedule to the Modular Management Agreement and monitored as part of the overall secondment arrangement.

For the purposes of recruiting to jobs within the council, seconded staff should be viewed as 'internal candidates'.

The appropriate Trade Unions should be consulted as part of setting up the secondment arrangements and procedures need to be agreed to make sure that seconded staff may continue to participate in and receive support from their union.

<b>Step Six – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Nominate Council Officer to support seconded staff	✓	
Set up 3 monthly meetings with seconded staff	✓	
Organise training for seconded staff	✓	✓
Agree reciprocal arrangements for cover	✓	✓
Establish role of Trade Unions	✓	

### **STEP 7: RECRUITING STAFF TO SECONDED POSTS**

A guiding principle behind the recruitment and selection of seconded staff is that it must be the TMO’s responsibility. The TMO has to deliver the service and to do this it must have the ability to decide who works for it. The council may and should give advice and guidance during the recruitment and selection process, but it cannot decide who is to be seconded. The TMO must, however, keep to the agreed equal opportunities policies during the recruitment and selection of seconded staff.

A second guiding principle is that individual staff should have the right to choose not to be seconded. It is in everyone’s interests that staff actively want to work for the TMO.

It is not acceptable to force staff to be seconded, so it is important to make sure that staff are encouraged to apply for secondment. The TMO’s posts must be attractive and the opportunities for career development stressed. The posts must be well advertised and presented. Both the council and TMO need to play a very active role in this – a half-hearted approach by the council could be very damaging in the long run.

#### **How can council staff be encouraged to apply?**

Where there is an established local housing team, the best form of encouragement is for the council to ensure there is close working between the local staff and the TMO during the development phase. Tenants and staff will get to know each other and mutual trust should develop.

Empowering local tenants means empowering local staff. Moving to a TMO can be seen as an important career move and this should be stressed to staff. The benefits of secondment should be emphasised.

Finally, these are TMO posts and the TMO has a degree of freedom and flexibility not open to a large council. By imaginative use of its budget, a TMO could, for instance, offer some attractive fringe benefits such as extra leave or more flexible working hours. It can also be stressed that the posts offer the opportunity for

seconded staff to develop skills and act at responsibility levels not always possible in traditional council settings.

### **Can groups of staff be 'ring-fenced' as eligible for secondment?**

It may be that the TMO is taking over an estate managed from an existing local housing office. In this case, the council and/or the TMO may like to see the local office staff seconded to the TMO. There is nothing to stop the TMO and the council coming to an agreement that the TMO's posts be initially, 'ring-fenced' to the local office staff. No member of the local office staff, however, should be seconded to the TMO against his or her will. The council should agree to redeploy any member of staff who doesn't want to be seconded and a substitute secondee found from elsewhere in the organisation.

Whether to ring-fence or not depends on a number of factors. Clearly, if the TMO were taking on a large estate currently managed by 20-30 staff from a local office, then the council may have real problems having to redeploy people if secondment was opened up to everybody in the department. Often the TMO has built up good relations with the local staff team and here ring-fencing secondment would be a sensible thing to do. With a much smaller office, or no local office or team, then there is less justification for ring-fencing.

### **Once the TMO has entered into the agreement, does it have to recruit seconded staff only?**

Once the secondment agreement has been entered into, the TMO must not expect to 'cherry pick' its own particular favourite council staff. The key question for the TMO must be "do any of the candidates meet our person specification?".

TMOs therefore need to spend time thinking through and preparing a clear and well-written person specification. If there is no applicant who meets the person specification, however, then the TMO is not obliged to recruit on a seconded basis and it is free to go out and recruit direct.

There is a strong incentive for the council and TMO to ensure that the TMO posts are well advertised in advance and staff encouraged to apply.

### **Can the TMO recruit staff externally on a seconded basis?**

Two of the main benefits of secondment to TMOs are reducing the employment concerns of existing staff and ensuring the smooth transition of management responsibilities. Both of these benefits emphasise the importance of recruiting internally. The TMO and the council, however, may see benefits in recruiting externally if there are no suitable internal candidates. In other words, the council would recruit a new member of staff specifically to second that person to a TMO.

In this situation it is quite legitimate for the TMO and council to come to an agreement about the council recruiting externally and then seconding. The council will want to consider if and how it will absorb those people back into the department if and when the secondment arrangement comes to an end.

<b>Step Seven – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Advertise and promote posts	✓	✓
Decide person spec. and appoint staff		✓
Agree to ring fence posts	✓	✓

## **STEP 8: MANAGING THE TRANSITION FROM COUNCIL TO TMO MANAGEMENT**

**Section C** of this document looks at how the secondment of staff can be worked through within the timetable and regulatory framework of the TMO development period. The management and maintenance allowances will not normally become payable by the council to the TMO until the start date of the management agreement. This means that the TMO will not be funded through its allowances to employ its own staff before that time.

However the Right to Manage guidance “Getting Started” (ODPM 2005) makes it clear that the TMO will need assistance and resources from the council, as part of the TMO’s start-up costs, to recruit its staff team either by direct employment or secondment. This will include resources for the TMO to advertise for staff or, where the TMO will be working with seconded council staff, the council should assist the TMO in advertising posts internally.

A key stage in managing the handover period is the appointment of the TMO’s own manager who will be directly responsible to the TMO for formalising the arrangements and ensuring the smooth take over of functions under the terms of the management agreement. The council should make available the necessary financial resources to the TMO so that it can employ its manager in advance of receiving its allowances.

A potential advantage of using seconded staff is that this transitional period may be easier to manage. If the seconded staff are appointed well in advance of the start date it may be possible for the council to put those staff in place early so that they can be fully involved in the preparations and setting up the TMO systems. If during that preparatory period those staff manage the estate (albeit on behalf of the council at that stage prior to the start date of the management agreement) then the council will not incur the extra costs highlighted above.

If there is a gap between the recruitment of seconded staff and the TMO going live then clearly there are going to be advantages to joint training and development over this period. For example:

- Working for tenants rather than for the council means a big change to seconded staff and the gap between recruitment and going live should be used for training and development. Key issues to be covered include familiarity with the TMO’s policies and procedures as set out in the Modular Management Agreement, the role of Board members and the preparation of clear and relevant reports to the Board.

- TMO committee members need to become familiar with the way the local housing service is delivered and they will find talking to the staff team and shadowing their work extremely useful.

<b>Step Eight – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Have seconded staff in place early	✓	✓
Run joint tenant/staff training sessions	✓	✓
Develop TMO systems with seconded staff		✓

## **STEP 9: CHANGING THE TMO'S STAFFING STRUCTURE**

During the period of the secondment agreement, the TMO may decide that it wants to reorganise in order to meet changing demands on its service. This may mean changing job descriptions and salary grades of posts that are filled by seconded staff.

The council will naturally be concerned if any restructure led to an immediate return of seconded staff since there may not be the vacant posts to accommodate them. Any reorganisation, therefore, will need to be planned well in advance and discussed thoroughly with the council.

The council and TMO will need to ensure that they have discussed and involved staff in issues such as:

- posts which would be filled by slotting across existing secondees;
- posts which will be ring-fenced to seconded staff working for the TMO;
- posts which will be opened up to applicants from outside the TMO and whether these will be filled by secondment or by direct employment;
- any seconded staff who could potentially be displaced and how they will return to their original posts in line with the secondment arrangements.

Only once these issues have been resolved should the TMO progress with its reorganisation. The council should not unreasonably withhold support for reorganisation within TMOs.

<b>Step Nine – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Decisions about restructuring		✓
Adequate notice to be given to the council of any restructuring proposals		✓
Consultations about the implications of any restructuring	✓	✓
Implications for seconded staff who would be displaced by restructuring.	✓	

## **STEP 10: REVIEWING THE SECONDMENT ARRANGEMENTS.**

As stated in Step 4, the secondment agreement will be for a fixed period with the option of either continuing with or ceasing the arrangements at the end of the period. So that the council and TMO can be well prepared for the situation at the end of the secondment period, both parties should give each other 12 months notice of their intentions.

This means that the secondment arrangements should be reviewed towards the end of the penultimate year of the secondment period. When reviewing the effectiveness of the secondment arrangement the TMO may want to take into account:

- Has secondment given the TMO the necessary amount of control over its staff?
- Has the seconded staff team been flexible in its approach to changing circumstances?
- Have there been problems with seconded staff working with directly employed staff?
- Has the seconded staff team been happy and motivated in their relationship with the TMO?
- Has the council been able to provide the necessary support to the staff?
- Has it been possible to deal effectively with any staff management problems that have arisen?

If the TMO, for any reason, decides to end secondment, then it must give the council 12 months notice before the end of the secondment period (or such shorter period as agreed by the Council). At the beginning of the notice period the council, seconded staff and the TMO should agree a plan of how the transition between secondment and direct employment (or the use of a managing agent) should take place. This plan should include:

- Consultation with seconded staff about whether they would want to continue working for the TMO, but directly employed by the TMO.

- Discussion about the possible implications of TUPE.
- Consideration about how those staff that want to return to working for the council can do so. Over what period will this happen and what choices will staff will have?
- How and when the TMO will recruit directly employed staff to replace secondees that return to the council (or use a managing agent).

If the TMO and council decide they want to continue with a further period of secondment it is also good practice to plan ahead. In particular, they may need to ask:

- Which staff want to carry on being seconded for a further period and how will the TMO respond to those that want to stay?
- How many staff will return to working for the council and how they will be replaced by new secondees.
- Do any terms of secondment arrangement need to be revised in the light of experience?
- What will be the period of the new secondment arrangement?
- Is the negotiation of a new period of secondment an opportunity to implement any restructuring proposals that have been pending?

<b>Step Ten – Action Check List</b>		
	<b>COUNCIL</b>	<b>TMO</b>
Review secondment arrangements during penultimate year of period.	✓	✓
Give 12 months notice of intention to renew/not to renew secondment	✓	✓
Plan process of transition to new employment arrangements or Negotiate secondment arrangements for next period of secondment.	✓	✓



## SECTION C.

# How secondment fits into the development timetable

This section looks at how the negotiation and introduction of secondment arrangements might fit into the timetable of a typical TMO development programme.

TMOs are strongly advised to consider employment options as an early part of their Development training programme. This will involve a close look at the pros and cons of direct employment, secondment and the use of a managing agent (such as a housing association). Specifically this should take into account the likely impact of TUPE.

A decision about employment arrangements will need to be incorporated in the draft management agreement and the agent's development report.

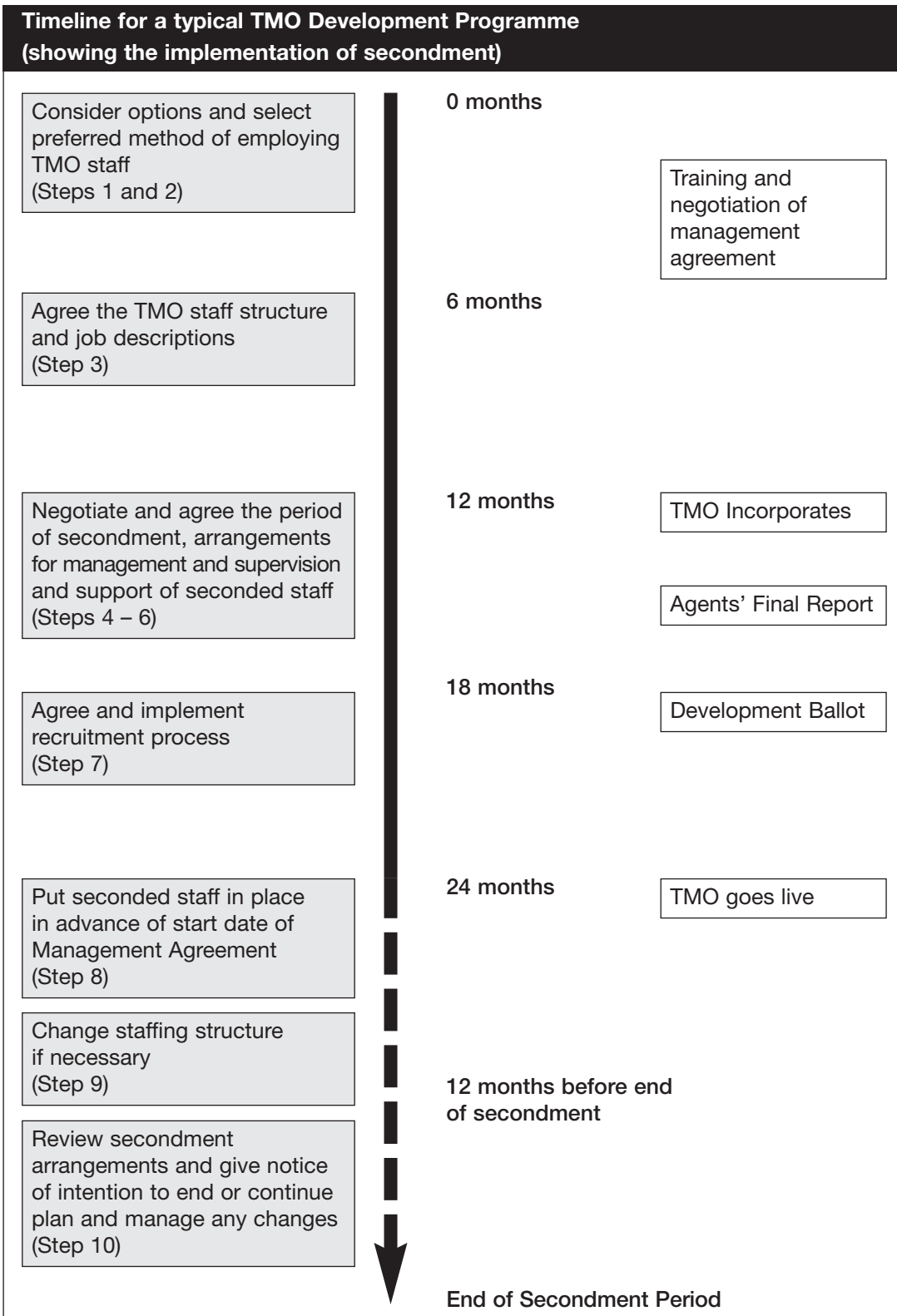
When the development ballot is arranged the tenants must be provided with a summary of the proposed management agreement. Tenants in the TMO area will certainly need to know how the TMO intends to employ housing staff before they cast their vote in that ballot.

Recruitment of TMO staff (whatever the chosen option) can not really start until after the result of the development ballot is known. Preparation for the recruitment process can and should start before the ballot.

The staff recruitment process should be planned to have staff in post a few weeks before the start date of the management agreement (see the Right to Manage guidance "Getting Started" ODPM 2005). A secondment arrangement may mean that the seconded staff can be put in place earlier to allow a smoother transition (see Step 8).

If a decision to second council staff is made early in the development period then a number of advantages may follow. For example:

- The council staff who are currently managing the estate may include staff who will later fill the seconded posts. This will provide greater continuity and will give those local staff a real incentive to contribute to the development of TMO policies and procedures in the pre-ballot training/negotiation period.
- The seconded staff can be more speedily appointed after a successful development ballot. They can then play a key role in setting up TMO systems. For example, even if a council officer from another section of the housing department is appointed as the manager of the seconded team, that officer might be released from their current post for a few hours each week to have an input into the TMO preparations.



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