



MINISTRY OF DEFENCE

POLICY INSTRUCTION

Standard Conditions of Sale and Clawback – Review and Revision of Model Clause

Number: 08/11

Strategy & Policy Directorate Sponsor:
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Date of issue: 21 June 2011
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Contact if different from above Sponsor:

Who Should Read this:

All DIO Offices, Partnering Organisations and PPP/PFI Project Managers

When it takes effect: Immediately

When it is due to expire:
When rescinded

Estate Management

Equality And Diversity Impact Assessment

This policy has been Equality and Diversity Impact Assessed in accordance with the Department's Equality and Diversity Impact Assessment Tool against:

Part 1 Assessment Only (no diversity impact found)

The aim of this Instruction is to issue offices with the latest revision of the standard Conditions of Sale and Clawback clause (Version 6.0) for use in all cases where MOD land is sold subject to clawback.

1. A review of the MOD standard Conditions of Sale and Clawback provisions has now been completed in conjunction with solicitors Davitt Jones Bould.
2. Amendments from the previous version are not extensive with the most significant made not to the clawback and overage provisions but to the standard Conditions of Sale. Summary of the main changes are outlined below:

Revised Environmental Provisions

The environmental provisions under Condition 23 have been revised based on previous case precedents that will facilitate review of the clauses on a generic basis and give greater focus to transfer of environmental risk to the buyer. Emphasis is made of the fact cases are 'Sold with Information' and to the buyer being required to take out Environmental Impairment Liability Insurance if they consider it necessary to do so. Condition 23.4 also references various reports, all of which are expected to form part of the Sale Information Pack.

State of Repair and Condition of Property

Amendments have been made to this Condition (now Condition 21) to run in conjunction with the revised environmental provisions. Condition 21.1.2 has been expanded with alterations both in style and presentation.

Format Change

The contract generally has been put into a more modern format to facilitate the drafting in of additional clauses where this might become necessary in the future.

Perpetuity Period

Following repeal of the rule on perpetuities on enactment of the Perpetuities and Accumulations Act 2009, reference to the Perpetuity Period has been removed from the clawback and overage provisions.

3. Attached are the revised standard Conditions of Sale and Clawback Clause Version 6.0 (incorporating the full version of the Clawback and Overage Clauses) and the Land Registry Transfer TP1 (incorporating the shortened version of the Clawback clause) together with an update of the supporting Guide to the Clawback and Overage Clause Version 3.0. The Annexes of the Form CH1 and the Deed of Covenant, to be used where applicable in conjunction with these Clauses, are also provided. These forms must now be used in all future cases of MOD land sold subject to clawback and where completion or commencement of the sale will occur after the effective date of this Instruction.

4. This PI supersedes PI 02/09 which is hereby withdrawn.