**Extracted from DCLG document: Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion dated Oct 15**

The Crichel Down Rules

Rules and procedures

1. This section sets out the revised non statutory arrangements (‘Crichel Down Rules’) under which surplus government land which was acquired by, or under a threat of, compulsion (see paragraph 7 and the annex to this section below) should be offered back to former owners, their successors, or to sitting tenants (see paragraphs 13, 14, 17 and 18 below). For the sake of brevity, in this section all bodies to whom any one or more of the Rules apply or are commended are referred to as ‘departments’, whether they are government departments, including Executive Agencies, other non- departmental public bodies, local authorities or other statutory bodies. See paragraphs 3 and 4 below. The annex provides further guidance on the Rules including a list of those bodies to which, in the opinion of the department, the Rules apply in a mandatory manner.
2. These Rules apply to land in England. They also apply to land in Wales acquired by and still owned by a UK government department. For other land in Wales, departments disposing of land should follow the procedures set out in ‘The Crichel Down Rules’ issued by the Department of the Environment and the Welsh Office on 30 October 1992. Departments disposing of land in Scotland should follow the procedures set out in ‘Scottish Planning Series: Planning Circular 5 2011: Disposal of Surplus Government Land – The Crichel Down Rules’ and in Northern Ireland they should follow ‘Disposal of Surplus Public Sector Property in Northern Ireland’ produced by the Central Advisory Unit of the Land and Property Services agency of the Department of Finance and Personnel.
3. General guidance on asset management, which includes land and buildings is set out in annex 4.15 of Managing Public Money (Asset Management).
4. So far as local authorities and statutory bodies in England are concerned, it is recommended that they follow the Rules. They are also recommended to those bodies in Wales who seek to dispose of land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State for land in Wales. The Rules are also commended to bodies in the private sector to which public land holdings have been transferred, for example on privatisation.
5. It is the view of the government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the transfer itself does not constitute a disposal for the purpose of the Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership projects do not fall within the Rules and the position of any land surplus once the project has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.
6. The Rules are not relevant to land transferred to the National Rivers Authority (now the Environment Agency) or to land acquired compulsorily by the Environment Agency or to the water and sewerage service companies in consequence of the Water Act 1989 or subsequently acquired by them compulsorily. Such land is governed by a special set



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of statutory restrictions on disposal under section 157 of the Water Resources Act 1991, as amended by the Environment Act 1995, and section 156 of the Water Industry Act 1991 and the consents or authorisations given by the Secretary of State for Environment, Food and Rural Affairs under those provisions.

The land to which the rules apply

1. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.
2. The Rules also apply to land acquired under the statutory blight provisions (currently set out in Chapter II in Part VI of, and schedule 13 to, the Town and Country Planning Act 1990). The Rules do not apply to land acquired by agreement in advance of any liability under these provisions.
3. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.

The general rules

10.Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have ‘materially changed’ where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

11.Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

12.Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.

13.In these Rules ‘former owner’ may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor. ‘Successor’ means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner’s will or intestacy; and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition.

 

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Time horizon for obligation to offer back 14.The general obligation to offer back will not apply to the following types of land:

* (1)  agricultural land acquired before 1 January 1935
* (2)  agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition
* (3)  non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

Exceptions from the obligation to offer back 15.The following are exceptions to the general obligation to offer back:

(1) (2)

(3) (4)

(5)

(i) (ii)

(iii)

Where it is decided on specific ministerial authority that the land is needed by another department (ie that it is not, in a wider sense, surplus to government requirements).

Where it is decided on specific ministerial authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership. Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose.

Where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile.

Where it would be mutually advantageous to the department and an adjoining owner to effect minor adjustments in boundaries through an exchange of land.

Where it would be inconsistent with the purpose of the original acquisition to offer the land back; as, for example, in the case of:

land acquired under sections 16, 84 or 85 of the Agriculture Act 1947

land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use

where dwellings are bought for onward sale to a private registered provider of social housing or Registered Social Landlord in Wales

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(iv) sites purchased for redevelopment by the former English Partnerships or former regional development agencies or the Homes and Communities Agency

(6) Where a disposal is in respect of either:

* (i)  a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or
* (ii)  a site which consists partly of land which has been materially changed in character and part which has not

and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (ie its market value). In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of his or her former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase the land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

(7) Where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the department’s professionally qualified valuer and specifically agreed by the responsible minister.

16.Where it is decided that a site does fall within any of the exceptions in Rule 15 or the general exception relating to material change (see rule 10) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in paragraphs 20-22 below.

17.In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See paragraph 18 below.

Dwelling tenancies

18.Where a dwelling, whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in Appendix A to this section ) at the time of the proposed disposal, the freehold should first be offered to the tenant. If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant’s continued occupation. This paragraph does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

 

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Procedures for disposal

19.Where it is decided that property to be disposed of is, by virtue of these Rules, subject to the obligation to offer back, departments should follow the appropriate procedures described in paragraphs 20-25 below.

Where former owner’s address is known

20.Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing department, inviting the former owner to buy the property at the valuation made by the department’s professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing department. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably be allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market.

Where address is unknown

21.Where the former owner is not readily traceable, the disposing department will contact the solicitor or agent who acted for him or her in the original transaction. If a present address is then ascertained, the procedure described in paragraph 20 above should be followed. If the address is not ascertained, however, the department will attempt to contact the former owner by advertisement, as set out in paragraph 22 below, informing the solicitor or agent that this has been done.

22.Advertisements inviting the former owner to contact the disposing department will be placed as follows:

* (a)  for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing department’s web site
* (b)  in addition, for agricultural land, advertisements will be placed in the Farmer’s Weekly

Site notices announcing the disposal of the land will be displayed on or near the site and owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

23.Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in paragraph 22 above, the land will be disposed of on the open market.

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24.Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, he or she will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in paragraph 20 above. If there is no agreement, the property will be disposed of on the open market.

Special procedures where boundaries of agricultural land have been obliterated

25.The procedures described in Appendix B to these Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

Terms of resale

26.Disposals to former owners under these arrangements will be at current market value, as determined by the disposing department’s professionally qualified valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Departments will, nonetheless, have regard to the terms set out in the Housing Act 1985, as amended, under which local authorities are obliged to sell dwelling-houses to tenants with the right to buy.

27.As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the government’s or public body’s obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

Recording of disposals

28.Disposing departments will maintain a central record or file of all transactions covered by the Rules, including those cases that fall within Rules 10 and 15.