

# Overview of Handback Provisions in P3 Agreements: Lessons Learned from UK Projects

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Public-Private Partnerships (P3s) are an increasingly common method of delivering public infrastructure. When structured properly, P3s allow governments to leverage private-sector expertise and resources to deliver essential infrastructure projects in a more efficient manner. One critical provision of a P3 agreement relates to what is known as the “handback” phase of the project. The handback is the transfer of the project from the private sector to the public sector at the end of the P3 agreement. Due to the lifespan of P3 agreements (99 years is not an uncommon term), the individuals negotiating the P3 agreement will not be the same individuals dealing with the handback. Moreover, owing to the relatively recent resurgence of P3s in the United States, there is very little domestic handback experience that negotiators can draw upon. However, we can look to the experiences of other countries for insights. In the United Kingdom, several projects are now approaching the end of their term. The experience of the UK in managing this process can provide valuable lessons for future P3 agreements in the United States.

## Understanding Handback in P3 Projects

The handback is a crucial phase in a P3 project as it marks the transition from private-sector control to public-sector ownership and operation. The handback involves transferring assets, responsibilities, and contractual obligations from the private partner to the public entity. The handback process aims to ensure a smooth transfer of operations, maintenance, and management, preserving the value and functionality of the infrastructure. Without strong handback provisions, the private operator could have an incentive to reduce maintenance and other investments in the asset towards the end of the term because there is often a misalignment of incentives when the party responsible for long-term investments in an asset has only a short-term interest in that asset. This is of course not an issue for the majority of the term, when the private operator has sufficient years remaining to realize the benefits of its investments. But in the waning years of the term, the handback provisions are essential to ensure that the asset is operated and maintained in a manner that ensures its long-term functionality.

## Key Considerations for Successful Handback

Based on some of the initial lessons learned from UK projects nearing the end of their term, several key considerations can contribute to a successful handback in future P3 agreements. At a very high level, these considerations include:

### 1. Clear Handback Provisions in Contracts

It may be tempting to pay less attention to provisions that necessarily will not matter for decades to come than to the provisions governing how the project is designed, financed, etc., but the handback provisions deserve just as much thought. To ensure a smooth handback, P3 agreements should include clear provisions outlining the responsibilities, obligations, and expectations of both parties. These provisions should cover asset transfer, maintenance standards, documentation requirements, and dispute resolution mechanisms, among others.

### 2. Regular Inspections and Maintenance

Regular inspections and maintenance throughout the project's lifespan are crucial for identifying potential issues and addressing them promptly. This proactive approach not only ensures the infrastructure's optimal condition but also streamlines the handback process by minimizing surprises and unexpected challenges.

### 3. Effective Communication and Collaboration

Open and transparent communication between the private and public sectors is vital for a successful handback. Regular meetings, joint working groups, and knowledge transfer sessions can foster a collaborative spirit and facilitate a smooth transition. Additionally, involving key stakeholders, including lenders and regulatory bodies, ensures a comprehensive and coordinated approach.

### 4. Long-Term Planning and Sustainability

Considering the long-term sustainability and maintenance of the infrastructure beyond the contract term is crucial. Public entities should develop strategic plans for asset management, operations, and maintenance to ensure the infrastructure's continued functionality and value. This includes budgeting for ongoing maintenance and capital improvements after the handback.

### 5. Dispute Resolution Mechanisms

Including effective dispute-resolution mechanisms in P3 agreements can help prevent conflicts and facilitate timely resolution if disputes arise during the handback process. Clear procedures for addressing disagreements and enforcing contractual obligations provide a framework for productive dialogue and minimize disruptions.

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