

*Draft Order laid before the Scottish Parliament under section 106A(4)(c) of the Housing Grants, Construction and Regeneration Act 1996, for approval by the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. XXXX**

**CONSTRUCTION**

**The Construction Contracts (Scotland) Exclusion Order 2011**

*Made - - - - 2011*  
*Coming into force - - 1st November 2011*

The Scottish Ministers make the following Order in exercise of the power conferred by section 106A(3) of the Housing Grants, Construction and Regeneration Act 1996(1) and all other powers enabling them to do so.

In accordance with section 106A(4)(c)(2) of that Act, a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement, extent and interpretation**

1.—(1) This Order may be cited as the Construction Contracts (Scotland) Exclusion Order 2011 and comes into force on 1st November 2011.

(2) This Order extends to Scotland only.

(3) In this Order reference to a “relevant contract” is to a contract excluded from the operation of Part II of the Housing Grants, Construction and Regeneration Act 1996 pursuant to article 4 of the Construction Contracts (Scotland) Exclusion Order 1998(3).

**Private finance initiative sub-contracts**

2. A construction contract is excluded from the operation of section 110(1A) of the Housing Grants, Construction and Regeneration Act 1996(4) if it is a contract pursuant to which a party to a relevant contract has subcontracted to a third party some or all of its obligations under that contract to carry out, or arrange that others carry out, construction operations.

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(1) 1996 c.53; section 106A(3) was inserted by section 138(3) of the Local Democracy, Economic Development and Construction Act 2009 (c.20) (“the 2009 Act”).  
(2) Section 106A(4)(c) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).  
(3) S.I. 1998/686, as amended by S.S.I. 2006/513.  
(4) Section 110(1A) was inserted by section 142(2) of the 2009 Act.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish  
Statutory Instrument: The Construction Contracts (Scotland) Exclusion Order 2011 No. 370

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St Andrew's House,  
Edinburgh  
Date

A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Part II of the Housing Grants, Construction and Regeneration Act 1996 (“the Act”) makes provision in relation to the terms of construction contracts. Section 106A of the Act confers power on the Scottish Ministers to exclude descriptions of contracts from the operation of any or all of Part II. This Order excludes a type of contract from the operation of one such provision.

That provision is section 110(1A) of the Act, pursuant to which the requirement that contracts provide an adequate mechanism for establishing what payments become due and when under the contract is not satisfied if payment is conditional on obligations being performed under another contract. Agreements entered into under the private finance initiative are themselves already excluded from the operation of the entirety of Part II. Article 2 of this Order excludes first tier sub-contracts entered into under an excluded private finance initiative contract from the operation of section 110(1A) of the Act.

A Business and Regulatory Impact Assessment to the effect which this Order is likely to have on business costs has been carried out and is available on the Scottish Procurement and Commercial Directorate’s website at [www.scotland.gov.uk/procurement](http://www.scotland.gov.uk/procurement).