
WELSH STATUTORY INSTRUMENTS

2011 No. 1713 (W.193)

CONSTRUCTION, WALES

The Construction Contracts (Wales) Exclusion Order 2011

Made - - - - - *12 July 2011*

Coming into force - - - - - *1 October 2011*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 106A(2) and 146(1) of the Housing Grants, Construction and Regeneration Act 1996(1) (“the Act”) now exercisable by them(2) make the following Order.

In accordance with section 106A(4)(b) of the Act, a draft of this Order was laid before the National Assembly for Wales and approved by a resolution of the National Assembly for Wales.

Title, application and commencement

1.—(1) The title of this Order is the Construction Contracts (Wales) Exclusion Order 2011. It comes into force on 1 October 2011.

(2) This Order applies in relation to a construction contract to the extent that it relates to the carrying out of construction operations in Wales.

Interpretation

2. In this Order—

“the Act” (“*y Ddeddf*”) means the Housing Grants, Construction and Regeneration Act 1996; and

the reference to a “relevant contract” (“*contract perthnasol*”) is to a contract excluded from the operation of Part 2 of the Act pursuant to article 4 of the Construction Contracts (England and Wales) Exclusion Order 1998(3).

(1) 1996 c. 53; section 106A(1) was inserted by section 138(3) of the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

(2) Functions of the Minister and Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672. The functions were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(3) S.I. 1998/648, to which there are amendments not relevant to this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Private finance initiative sub-contracts

3. A construction contract is excluded from the operation of section 110(1A) of the Act⁽⁴⁾ if it is a contract pursuant to which a party to a relevant contract has sub-contracted to a third party some or all of its obligations under that contract to carry out, or arrange that others carry out, construction operations.

12 July 2011

John Griffiths
Minister for Environment and Sustainable
Development, one of the Welsh Ministers

(4) Section 110(1A) was inserted by section 142(2) of the Local Democracy, Economic Development and Construction Act 2009.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 2 of the Housing Grants, Construction and Regeneration Act 1996 (“the Act”) makes provision as regards the terms of construction contracts. Section 106A confers power on the Welsh Ministers to exclude any description of construction contracts relating to the carrying out of construction operations in Wales from the operation of any or all of the provisions of Part 2 of the Act. This Order excludes a type of contract from the operation of one such provision.

The provision is section 110(1A) of the Act. Section 110(1) of the Act requires that contracts provide an adequate mechanism for establishing what payments become due and when they become due. Section 110(1A) provides that this requirement is not satisfied if payment is conditional on obligations being performed under another contract.

The type of contract excluded by this Order from the provisions of section 110(1A) is known as a “first tier pfi sub-contract”. This is a contract whereby the non-public body party to an agreement entered into under the private finance initiative, sub-contracts to a third party obligations under that agreement relating to the carrying out of construction work. Agreements entered into under the private finance initiative are themselves already excluded from the operation of the entirety of Part 2.

This Order will therefore mean that provisions in first tier pfi sub-contracts, which make payments in such contracts conditional upon obligations being performed in other contracts (obligations such as providing certificates), will be effective. Such provisions would otherwise be ineffective because they would not satisfy the requirement imposed by section 110(1A).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Environment, Sustainability and Housing, Welsh Government, Merthyr Tydfil Office, Rhydycar, Merthyr Tydfil, CF48 1UZ, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.