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CYMRU

WELSH STATUTORY
INSTRUMENTS

2023 Rhif 475 (Cy. 71)

2023 No. 475 (W. 71)

ADEILADU, CYMRU

CONSTRUCTION, WALES

**Gorchymyn Contractau Adeiladu
(Eithrio) (Cymru) 2023**

**The Construction Contracts
(Exclusion) (Wales) Order 2023**

NODYN ESBONIADOL

EXPLANATORY NOTE

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

(This note is not part of the Order)

Mae Rhan 2 o Ddeddf Grantiau Tai, Adeiladu ac Adfywio 1996 ("y Ddeddf") yn gwneud darpariaeth o ran telerau contractau adeiladu a materion cysylltiedig. Mae adran 106A(2) o'r Ddeddf honno yn rhoi pwerau i Weinidogion Cymru i ddatgymhwyso, drwy orchymyn, unrhyw un neu bob un o'r darpariaethau yn Rhan 2 (i'r graddau y maent yn gymwys i Gymru a Lloegr) mewn perthynas ag unrhyw ddisgrifiad o gontractau adeiladu sy'n ymwneud ag ymgymryd â gweithrediadau adeiladu penodol yng Nghymru.

Part 2 of the Housing Grants, Construction and Regeneration Act 1996 ("the Act") makes provision as regards the terms of construction contracts and related matters. Section 106A(2) of that Act confers power on the Welsh Ministers to disapply, by order, any or all provisions of Part 2 (so far as extending to England and Wales) in relation to any description of construction contracts concerning the carrying out of specified construction operations in Wales.

Mae erthygl 3 yn datgymhwyso Rhan 2 o'r Ddeddf mewn perthynas â chontractau prosiectau seilwaith penodol yng Nghymru pan fo un o'r partiön i'r contract yn ymgymwrwr carthffosiaeth neu ddŵr, yn ddarostyngedig i'r gofynion a ganlyn. Rhaid i'r contract ymwneud â phrosiect a ddynodir gan yr Awdurdod Rheoleiddio Gwasanaethau Dŵr yn achos o gaffael uniongyrchol ar gyfer prosiect cwsmeriaid yn unol ag amodau penodi'r ymgymwrwr perthnasol. Rhaid i gontractau o'r fath hefyd gynnwys gwneud taliadau rheolaidd drwy gyfeirio at gostau gwirioneddol yr eir iddynt ac a ddaw yn ddyledus ar ôl i un neu ragor o'r rhannau o'r gweithrediadau adeiladu gael eu cwblhau ac y gellir cyflawni gwasanaeth carthffosiaeth neu ddŵr.

Article 3 disapplies Part 2 of the Act in relation to certain infrastructure project contracts in Wales where a party to the contract is a sewerage or water undertaker, subject to the following requirements. The contract must relate to a project designated by the Water Services Regulation Authority as a direct procurement for customers project in accordance with the conditions of the relevant undertaker's appointment. Such contracts must also involve the making of regular payments by reference to actual costs incurred and which become due after one or more parts of the construction operations are completed and can perform a sewerage or water service.

Mae erthygl 4 yn datgymhwyso adran 110(1A) o'r Ddeddf mewn perthynas â'r math o gontract y cyfeirir ato, uchod, pan fo parti i'r contract hwnnw yn ymrwymo i is-gontract. Mae adran 110(1A) o'r Ddeddf yn darparu nad yw'r gofyniad i gontractau ddarparu trefn ddigonol ar gyfer pennu pa daliadau sy'n dod yn ddyledus a phryd o dan y contract wedi ei fodloni os yw'r taliad yn amodol ar gyflawni rhwymedigaethau o dan gontract arall.

Article 4 disapplies section 110(1A) of the Act in relation to the kind of contract referred to, above, where a party to that contract enters into a sub-contract. Section 110(1A) of the Act provides that the requirement that contracts provide an adequate mechanism for establishing what payments become due and when under the contract is not met if payment is conditional on obligations being performed under another contract.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Gorchymyn hwn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn. Gellir cael copi oddi wrth: Y Gangen Ddŵr, Newid Hinsawdd a Materion Gwledig, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from Water Branch, Climate Change & Rural Affairs, Welsh Government, Cathays Park, CF10 3NQ.

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ADEILADU, CYMRU

CONSTRUCTION, WALES

**Gorchymyn Contractau Adeiladu
(Eithrio) (Cymru) 2023**

**The Construction Contracts
(Exclusion) (Wales) Order 2023**

Gwnaed 26 Ebrill 2023
Yn dod i rym 5 Mai 2023

Made 26 April 2023
Coming into force 5 May 2023

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adrannau 106A(2) a 146(1) o Ddeddf Grantiau Tai, Adeiladu ac Adfywio 1996(1), yn gwneud y Gorchymyn a ganlyn.

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

Yn unol ag adran 106A(4)(b) o'r Ddeddf honno, gosodwyd drafft o'r Gorchymyn hwn gerbron Senedd Cymru ac fe'i cymeradwywyd ganddi drwy benderfyniad.

In accordance with section 106A(4)(b) of that Act, a draft of this Order was laid before and approved by a resolution of Senedd Cymru.

Enwi, cymhwyso a chychwyn

Title, application and commencement

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Contractau Adeiladu (Eithrio) (Cymru) 2023.

1.—(1) The title of this Order is the Construction Contracts (Exclusion) (Wales) Order 2023.

(2) Mae'r Gorchymyn hwn yn gymwys mewn perthynas â chontract adeiladu i'r graddau y mae'n ymwneud â chynnal gweithrediadau adeiladu yng Nghymru.

(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.

(3) Daw'r Gorchymyn hwn i rym ar 5 Mai 2023.

(3) This Order comes into force on 5 May 2023.

Dehongli

Interpretation

2. Yn y Gorchymyn hwn—

2. In this Order—

mae i "contract adeiladu" yr ystyr a roddir i "construction contract" yn adran 104 o'r Ddeddf;

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

ystyr "y Ddeddf" ("*the Act*") yw Deddf Grantiau Tai, Adeiladu ac Adfywio 1996;

"construction contract" ("*contract adeiladu*") has the meaning given in section 104 of the Act;

(1) 1996 p. 53; mewnosodwyd adran 106A gan adran 138(3) o Ddeddf Democratiaeth Leol, Datblygu Economaidd ac Adeiladu 2009 (p. 20). Mae'r cyfeiriad yn Neddf Grantiau Tai, Adeiladu ac Adfywio 1996 at Gynulliad Cenedlaethol Cymru bellach yn cael effaith fel cyfeiriad at Senedd Cymru yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006 (p. 32).

(1) 1996 c. 53; section 106A was inserted by section 138(3) of the Local Democracy, Economic Development and Construction Act 2009 (c. 20). The reference in the Housing Grants, Construction and Regeneration Act 1996 to the National Assembly for Wales now has effect as a reference to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

mae i “gweithrediadau adeiladu” yr ystyr a roddir i “construction operations” yn adran 105 o’r Ddeddf.

“construction operations” (“gweithrediadau adeiladu”) has the meaning given in section 105 of the Act.

Caffael uniongyrchol ar gyfer prosiectau cwsmeriaid

3.—(1) Nid yw Rhan 2 o’r Ddeddf yn gymwys i gontract adeiladu sy’n bodloni’r amodau a ganlyn—

- (a) mae’n cynnwys datganiad sy’n nodi ei fod yn gontract o’r fath;
- (b) mae un o’r partion i’r contract yn ymgwymerwr carthffosiaeth neu’n ymgwymerwr dŵr;
- (c) mae’r gweithrediadau adeiladu y mae’r contract yn ymwneud â hwy yn gysylltiedig â phrosiect seilwaith a ddynodir gan yr Awdurdod Rheoleiddio Gwasanaethau Dŵr yn achos o gaffael uniongyrchol ar gyfer prosiect cwsmeriaid yn unol ag amodau penodi’r ymgwymerwr carthffosiaeth neu’r ymgwymerwr dŵr;
- (d) mae’r gydnabyddiaeth sy’n ddyledus o dan y contract yn cynnwys, o leiaf yn rhannol, daliadau rheolaidd—
 - (i) sy’n cael eu pennu’n rhannol drwy gyfeirio at gostau gwirioneddol y gweithrediadau adeiladu y mae’r contract yn ymwneud â hwy, a
 - (ii) sy’n dod yn daladwy ar ôl i un rhan o leiaf o’r gweithrediadau adeiladu hynny gael ei chwblhau ac y gellir cyflawni gwasanaeth carthffosiaeth neu ddŵr.

(2) Ym mharagraff (1), ystyr “ymgymerwr carthffosiaeth” ac “ymgymerwr dŵr” yw ymgwymerwr carthffosiaeth neu ymgwymerwr dŵr, yn ôl y digwydd, a benodir o dan adran 6(1) o Ddeddf y Diwydiant Dŵr 1991(1)

Caffael uniongyrchol ar gyfer is-gontractau prosiectau cwsmeriaid

4.—(1) Mae contract adeiladu wedi ei eithrio rhag gweithrediad adran 110(1A) o’r Ddeddf os yw’n gontract yn unol ag ef y mae parti i gontract perthnasol wedi is-gontractio i berson arall rai neu bob un o’i rwymedigaethau o dan y contract hwnnw i gynnal gweithrediadau adeiladu, neu i drefnu i eraill gynnal gweithrediadau adeiladu.

Direct procurement for customers projects

3.—(1) Part 2 of the Act does not apply to a construction contract that fulfils the following conditions—

- (a) it contains a statement that it is such a contract;
- (b) one of the parties to the contract is a sewerage undertaker or a water undertaker;
- (c) the construction operations to which the contract relates concern an infrastructure project that is designated by the Water Services Regulation Authority as a direct procurement for customers’ project in accordance with the conditions of appointment of the sewerage undertaker or the water undertaker;
- (d) the consideration due under the contract consists, at least in part, of regular payments that—
 - (i) are determined in part by reference to the actual cost of the construction operations to which the contract relates, and
 - (ii) become payable after at least one part of those construction operations is completed and is capable of performing a sewerage or water service.

(2) In paragraph (1), “sewerage undertaker” and “water undertaker” mean a sewerage undertaker or water undertaker, as the case may be, appointed under section 6(1) of the Water Industry Act 1991(1).

Direct procurement for customers project sub-contracts

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

(1) 1991 p. 56.

(1) 1991 c. 56.

(2) Ym mharagraff (1), mae contract perthnasol yn contract sydd wedi ei eithrio rhag gweithrediad Rhan 2 o'r Ddeddf yn unol ag erthygl 3.

(2) In paragraph (1), a relevant contract is a contract excluded from the operation of Part 2 of the Act pursuant to article 3.

Julie James

Y Gweinidog Newid Hinsawdd, un o Weinidogion
Cymru
26 Ebrill 2023

Minister for Climate Change, one of the Welsh
Ministers
26 April 2023

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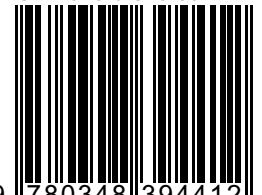
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