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WELSH STATUTORY INSTRUMENTS

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**2023 No. 475 (W. 71)**

**CONSTRUCTION, WALES**

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

*Made* - - - - - 26 April 2023

*Coming into force* - - - - - 5 May 2023

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.

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.

**Title, application and commencement**

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

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

**Interpretation**

2. In this Order—

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

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

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

**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;

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(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).

- (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(2).

**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.

(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*  
Minister for Climate Change, one of the Welsh  
Ministers

26 April 2023

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## 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 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.

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.

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.

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.