



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2011 Rhif 1713 (Cy.193)

2011 No. 1713 (W.193)

ADEILADU, CYMRU

CONSTRUCTION, WALES

Gorchymyn Hepgor Contractau
Adeiladu (Cymru) 2011

The Construction Contracts
(Wales) Exclusion Order 2011

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 ynglŷn â thelerau contractau adeiladu. Mae adran 106A yn rhoi pŵer i Weinidogion Cymru i hepgor unrhyw ddisgrifiad o gcontractau adeiladu sy'n ymwneud â gwneud gwaith adeiladu yng Nghymru o weithrediad unrhyw rai neu'r cyfan o ddarpariaethau Rhan 2 o'r Ddeddf. Mae'r Gorchymyn hwn yn hepgor un math o gcontract o weithrediad un ddarpariaeth o'r fath.

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.

Adran 110(1A) o'r Ddeddf yw'r ddarpariaeth honno. Mae adran 110(1) o'r Ddeddf yn ei gwneud yn ofynnol bod contractau'n darparu dull digonol i sefydlu pa daliadau sy'n dod yn ddyledus a pha bryd y maent yn ddyledus. Mae adran 110(1A) yn darparu nad yw'r gofyniad hwn wedi'i fodloni os yw'r taliad yn amodol ar gyflawni rhwymedigaethau o dan gcontract arall.

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.

Yr enw ar y math o gcontract sy'n cael ei hepgor gan y Gorchymyn hwn o ddarpariaethau adran 110(1A) yw "is-gcontract mcp haen gyntaf". Contract yw hwn lle bydd parti — nad yw'n gorff cyhoeddus — i gytundeb a wnaed o dan y fenter cyllid preifat yn is-gcontractio i drydydd parti rwymedigaethau o dan y cytundeb hwnnw sy'n ymwneud â gwneud gwaith adeiladu. Mae cytundebau a wneir o dan y fenter cyllid preifat eisoes wedi'u hepgor o weithrediad y cyfan o Ran 2.

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.

Bydd y Gorchymyn hwn felly yn golygu y bydd darpariaethau mewn is-gcontractau mcp haen gyntaf, sy'n peri bod taliadau mewn contractau o'r fath yn amodol ar gyflawni rhwymedigaethau mewn contractau eraill (rhwymedigaethau megis darparu tystysgrifau), yn effeithiol. Byddai darpariaethau o'r fath yn aneffeithiol fel arall am na fyddent yn bodloni'r gofyniad a osodir gan adran 110(1A).

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).

Mae asesiad effaith rheoleiddiol llawn o'r effaith a gaiff yr offeryn hwn ar gostau busnes a'r sector gwirfoddol ar gael oddi wrth Adran yr Amgylchedd, Cynaliadwyedd a Thai, Llywodraeth Cymru, Swyddfa Merthyr Tudful, Rhyd-y-car, Merthyr Tudful, CF48 1UZ, ac mae wedi'i atodi i'r Memorandwm Esboniadol sydd ar gael ochr yn ochr á'r offeryn yn www.legislation.gov.uk.

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.

2011 Rhif 1713 (Cy.193)

2011 No. 1713 (W.193)

ADEILADU, CYMRU

CONSTRUCTION, WALES

**Gorchymyn Hepgor Contractau
Adeiladu (Cymru) 2011**

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

Gwnaed 12 Gorffennaf 2011
Yn dod i rym 1 Hydref 2011

Made 12 July 2011
Coming into force 1 October 2011

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd i'r Ysgrifennydd Gwladol gan adrannau 106A(2) a 146(1) o Ddeddf Grantiau Tai, Adeiladu ac Adfywio 1996(1) ("y Ddeddf") sydd bellach yn arferadwy ganddynt hwy(2) yn gwneud y Gorchymyn a ganlyn.

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.

Yn unol ag adran 106A(4)(b) o'r Ddeddf, cafodd drafft o'r Gorchymyn hwn ei osod gerbron Cynulliad Cenedlaethol Cymru a'i gymeradwyo drwy gynnig gan Gynulliad Cenedlaethol Cymru.

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.

Enwi, cymhwyso a chychwyn

Title, application and commencement

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Hepgor Contractau Adeiladu (Cymru) 2011. Daw i rym ar 1 Hydref 2011.

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

(2) Mae'r Gorchymyn hwn yn gymwys o ran contract adeiladu i'r graddau y mae'n ymwneud â gwneud gwaith 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.

Dehongli

Interpretation

2. Yn y Gorchymyn hwn—

2. In this Order—

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

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

(1) 1996 p.53; mewnosodwyd adran 106A(1) gan adran 138(3) o Ddeddf Democratiaeth Leol, Datblygu Economaidd ac Adeiladu 2009 (p.20).

(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) Trosglwyddwyd swyddogaethau'r Gweinidog a'r Ysgrifennydd Gwladol, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999, O.S. 1999/672. Trosglwyddwyd y swyddogaethau i Weiniogion Cymru gan baragraff 30 o Atodlen II i Ddeddf Llywodraeth Cymru 2006 (p.32).

(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).

mae'r cyfeiriad at "contract perthnasol" ("*relevant contract*") yn gyfeiriad at gontract sydd wedi'i hepgor o weithrediad Rhan 2 o'r Ddeddf yn unol ag erthygl 4 o Orchymyn Hefgor Contractau Adeiladu (Cymru a Lloegr) 1998(1).

Is-gontractau'r fenter cyllid preifat

3. Mae contract adeiladu wedi'i hepgor o weithrediad adran 110(1A) o'r Ddeddf(2) os yw'n gontract y mae parti i gontract perthnasol wedi is-gontractio i drydydd parti rai neu'r cyfan o'i rwymedigaethau o dan y contract hwnnw i wneud gwaith adeiladu, neu drefnu bod eraill yn ei wneud yn unol ag ef.

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(1).

Private finance initiative sub-contracts

3. A construction contract is excluded from the operation of section 110(1A) of the Act(2) 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.

John Griffiths

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy, un o Weinidogion Cymru

12 Gorffennaf 2011

© Hawlfraint y Goron 2011

Argraffwyd a chyhoeddwyd yn y Deyrnas Unedig gan The Stationery Office Limited o dan awdurdod ac arolygiaeth Carol Tullo, Rheolwr Gwasg Ei Mawrhydi ac Argraffydd Deddfau Seneddol y Frenhines.

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

12 July 2011

© Crown copyright 2011

Printed and Published in the UK by the Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

(1) O.S. 1998/648, y ceir diwygiadau iddo nad ydynt yn berthnasol i'r Gorchymyn hwn.

(2) Mewnosodwyd adran 110(1A) gan adran 142(2) o Ddeddf Democratiaeth Leol, Datblygu Economaidd ac Adeiladu 2009.

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

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