Draft Order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994, for approval by resolution of each House of Parliament.
This draft Order replaces the Contracting Out (Highway Functions) Order 2008 laid in draft before Parliament on the 11th December 2008 and is being issued free of charge to all known recipients of that Order.

DRAFT STATUTORY INSTRUMENTS

2009 No. 000

CONTRACTING OUT

The Contracting Out (Highway Functions) Order 2009

Made - - - -	*2009*
Coming into force - -	*2009*

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by sections 69, 70 and 77(1) of the Deregulation and Contracting Out Act 1994(**1**).

In relation to the exercise of powers under section 70 of that Act, the Secretary of State has, as required by section 70(3), consulted with such representatives of local government as the Secretary of State considered appropriate.

In accordance with section 77(2) of that Act, a draft of this Order was laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. This Order may be cited as the Contracting Out (Highway Functions) Order 2009 and shall come into force on the tenth day after the day on which it is made.

Interpretation

2.—(1) In this Order—

(**1**) 1994 c.40. Section 70 is applied in relation to functions of a best value authority by section 18 of the Local Government Act 1999 (c.27). Section 70(1) was amended, and subsections (1ZA) and (1ZB) were inserted, by the Local Government and Public Involvement in Health Act 2007 (c.28) ("the 2007 Act"), section 239(1). Subsection (1) is prospectively amended by the Greater London Authority Act 1999 (c.29) ("the 1999 Act"), section 423 and Schedule 34, Part IX. Subsection (6) was inserted by the 1999 Act, section 40(1) and (3). Subsections (1A) and (7) were inserted in relation to England by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and other Provisions) (England) Order 2001 (S.I. 2001/2273), articles 2(o) and 29(a) and (b). They were inserted in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and other Provisions) (Wales) Order 2002 (S.I. 2002/808), articles 2(n) and 28(a) and (b). Section 79(1) contains definitions of "Minister" and "local authority". The definition of the latter was amended, and sections 79A, 79B and 79C were inserted, by the 2007 Act, section 239(2) and (3). Section 79(2) is prospectively repealed by the 2007 Act, section 241 and Schedule 18, Part 19. Section 79(3)(a) and (b) were substituted, and section 79(4) was amended, by the Charities Act 2006 (c.50), section 75(1) and Schedule 8, paragraphs 179(1), (2) and (3).

"the 1980 Act" means the Highways Act 1980(**2**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**3**);

"the 1995 Order" means the Contracting Out (Highway Functions) Order 1995(**4**);

"the 1999 Order" means the Local Authorities (Contracting Out of Highway Functions) Order 1999(**5**);

"the 2001 Order" means the Local Authorities (Contracting Out of Highway Functions) (England) Order 2001(**6**);

"highway" has the meaning given in section 328 of the 1980 Act;

"highway authority" has the meaning given in section 1(**7**) of the 1980 Act;

"highway connected land" means land which does not form part of a highway but which has been acquired by the Secretary of State or a local highway authority, in connection with a highway, under section 239(1) or (4) or section 246 of the 1980 Act or otherwise;

"local highway authority" has the meaning given in section 329(1) of the 1980 Act; and

"street works" has the meaning given in section 48(3) of the 1991 Act.

(2) In Schedule 1, any expression used in a reference to a provision of the 1980 Act has the same meaning as it has in that Act.

(3) In Schedule 2, any expression used in a reference to a provision of the 1991 Act has the same meaning as it has in that Act.

Contracting out of functions

3.—(1) Any function of the Secretary of State which is listed in Schedule 1, 2 or 3 may be exercised by, or by employees of, such person (if any) as may be authorised to do so by the Secretary of State.

(2) Any function of a local authority which is listed in any of those Schedules may be exercised by, or by employees of, such person (if any) as may be authorised to do so by the authority whose function it is.

(**2**) 1980 c.66. All functions of a Minister of the Crown under this Act ("the 1980 Act"), except the Treasury function under section 327(4), functions exercisable by the Secretary of State under section 329(5) and functions exercisable by the Secretary of State in relation to that part of the M4 Motorway in Wales which comprises "the New Toll Plaza area" and "the New Bridge", as defined in the Severn Bridges Act 1992 (c.3), section 39(1), 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), article 2 and Schedule 1. Following the repeal of the Government of Wales Act 1998 (c.38), sections 22 and 155(2), that Order has effect as if made under the Government of Wales Act 2006 (c.32) ("the 2006 Act"), sections 58 and 158(3), by virtue of Schedule 11, paragraph 26(1) and (3), to that Act. The functions of the National Assembly for Wales under the 1980 Act are transferred to the Welsh Ministers by virtue of the 2006 Act, schedule 11, paragraph 30.

(**3**) 1991 c.22. All functions of a Minister of the Crown under this Act ("the 1991 Act"), except section 167(3), 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), article 2 and Schedule 1. That Order has effect as set out in footnote **(a)** and the functions of the National Assembly for Wales under the 1991 Act are transferred to the Welsh Ministers in the same manner as set out in that footnote.

(**4**) S.I. 1995/1986.

(**5**) S.I. 1999/2106.

(**6**) S.I. 2001/4061.

(**7**) Section 1(1)(aa) was inserted by the New Roads and Street Works Act 1991 (c.22), section 21(2). Section 1(2), (3) and (4) were amended by the Local Government Act 1985 (c.51), sections 8 and 102 and Schedule 4, Part I, paragraph 1(a), (b) and (c) and Schedule 17. Subsection (3) was also amended by the Greater London Authority Act 1999 (c.29) ("the 1999 Act"), section 259(1) and (3). Subsection (2A) was inserted by the 1999 Act, section 259(1) and (2) and subsection (3A) was inserted by the Local Government (Wales) Act 1994 (c.19) ("the 1994 Act"), section 22(1), and Schedule 7, Part I, paragraph 1(1) and (2). Subsection (5) was inserted by the 1994 Act, section 22(1) and Schedule 7, Part I, paragraph 1(1) and (3).

Revocation and transitional provisions

4.—(1) Subject to paragraphs (3) and (4), the provisions of the 1995 Order, other than those mentioned in paragraph (2), are revoked.

(2) The provisions referred to in paragraph (1) are—

(a) article 1(1);

(b) the definition of "the 1980 Act" in article 1(2); and

(c) article 3.

(3) This paragraph applies in relation to any street works of which notice has been given to the Secretary of State, as the street authority for a street(**8**), under section 54(1), 55(1) or 57 of the 1991 Act before 1st April 2008.

(4) Where paragraph (3) applies—

(a) paragraphs 1(o), 11 and 12 of Schedule 2 (and article 3(1) insofar as it relates to them) have no effect; and

(b) paragraphs 1(l) and 10 of Schedule 2 to the 1995 Order (and article 2 of that Order insofar as it relates to them) shall continue to have effect(**9**).

(5) Subject to paragraphs (6) and (7), the 1999 Order is revoked.

(6) This paragraph applies in relation to any street works of which notice has been given to a local highway authority, as the street authority for a street, under section 54(1), 55(1) or 57 of the 1991 Act before 1st April 2008.

(7) Where paragraph (6) applies—

(a) paragraphs 1(o), 11 and 12 of Schedule 2 (and article 3(2) insofar as it relates to them) have no effect; and

(b) paragraphs 1(1) and 10 of Schedule 2 to the 1999 Order (and article 2 of that Order insofar as it relates to them) shall continue to have effect(**10**).

(8) The 2001 Order is revoked.

(9) Subject to paragraph (10), article 3 (contracting out of highway functions) of the Transport for London (Best Value) (Contracting Out of Investment and Highway Functions) Order 2006(**11**) is revoked.

(10) Notwithstanding the revocation of article 3 of that Order, anything done, or having effect as if done, under that article shall continue to have effect.

(**8**) Section 48(1) of the New Roads and Street Works Act 1991 (c.22) contains a definition of "street" and section 49(1) contains a definition of "street authority".

(**9**) See regulation 19 (transitional arrangements) of both the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951) and the Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008 (S.I. 2008/101 (W.14)) and article 8 (duty to notify street authority of reinstatement) of the Traffic Management Act 2004 (Commencement No.4 and Transitional Provisions) (England) Order 2007 (S.I. 2007/1890 (C.71)) and article 9 of the Traffic Management Act 2004 (Commencement No.2 and Transitional Provisions) (Wales) Order 2007 (S.I. 2007/3174 (W.279) (C.130)).

(**10**) See footnote **(b).**

(**11**) S.I. 2006/91. This Order ("the 2006 Order") was made under section 70 of the Deregulation and Contracting Out Act 1994 (c.40) as applied by section 18 of the Local Government Act 1999 (c.27) to a best value authority. Transport for London was a best value authority for the purposes of Part 1 of that Act, by virtue of section 1. Article 6(6) of the Local Government and Public Involvement in Health Act 2007 (Commencement No.5 and Transitional, Saving and Transitory Provision) Order 2008 (S.I. 2008/917 (C.44)) provided that notwithstanding the coming into force of section 239 of the Act, the 2006 Order would continue to apply as if section 239(5) had not been commenced.

Signed by authority of the Secretary of State for Transport

Date Department for Transport

SCHEDULE 1

Article 3

FUNCTIONS CONFERRED BY OR UNDER THE 1980 ACT OR REGULATIONS MADE UNDER THAT ACT

1. Subject to paragraph 9 and except as provided in sub-paragraphs (d), (x), (jj) and (mm), functions conferred on the Secretary of State or a local highway authority, as the highway authority(**12**) for a highway, in relation to that highway or to highway connected land, by or under any of the following provisions of the 1980 Act—

(a) section 41(1) and (1A)(**13**) (duty to maintain highways maintainable at public expense);

(b) section 62(**14**) (general power of improvement);

(c) section 64(**15**) (dual carriageways and roundabouts);

(d) section 65 (cycle tracks), but not including the functions of a local highway authority;

(e) section 66(**16**) (footways and guard-rails etc for publicly maintainable highways);

(f) section 68 (refuges);

(g) section 69(1)(**17**) (subways);

(h) section 70 (footbridges over highways);

(i) section 71 (margins for horses and livestock);

(j) section 75(1) and (2) (variation of widths of carriageways and footways);

(k) section 76 (levelling of highways);

(l) section 77 (alteration of levels);

(m) section 78 (cutting off of corners);

(n) section 80(1), (2), and (3)(**18**) (power to fence highways);

(o) section 81 (provision of highway boundary posts);

(p) section 84 (maintenance of cattle-grids and by-passes);

(q) section 90 (protection of bridges and railways);

(r) section 90G(**19**) (powers to carry out traffic calming works);

(s) section 90GA(2) and (3)(**20**) (special procedure for certain traffic calming works in London);

(**12**) The Secretary of State is the highway authority for certain highways by virtue of the Highways Act 1980 (c.66), sections 1(1) and 329 and the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238), article 2. A local highway authority is the highway authority for certain highways by virtue of sections 1(2) to (5) and 329 of that Act.

(**13**) Section 41(1A) was inserted by the Railways and Transport Safety Act 2003 (c.20), section 111.

(**14**) Section 62(3)(ff) was inserted by the Transport Act 1981 (c.56), section 32(1) and Schedule 10, Part I, paragraph 1, and section 62(3)(fg) was inserted by the Traffic Calming Act 1992 (c.30), section 1(1). Sub-section (5) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17.

(**15**) Section 64(4) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17, and section 64(5) was repealed by the New Roads and Street Works Act 1991 (c.22), section 168(2) and Schedule 9.

(**16**) Section 66(3) was amended by the Countryside and Rights of Way Act 2000 (c.37), section 70(1), and section 66(6) was amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 17.

(**17**) Section 69(2)(b) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17, and section 69(3) was amended by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 7.

(**18**) Section 80 is to be read with section 72(12) of the Wildlife and Countryside Act 1981 (c.69). Subsection (3)(c) was amended by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 45(4), and subsection (4) was amended by the Local Government Act 1985 (c.51), sections 8 and 102 and Schedule 4, Part I, paragraph 19 and Schedule 17.

(**19**) Section 90G was inserted by the Traffic Calming Act 1992 (c.30), section 1(2) and Schedule 1. Subsections (1) and (2) were amended by the Greater London Authority Act 1999 (c.29), section 269(1), (2) and (3). Section 90G is to be read with section 90GA.

(**20**) Section 90GA was inserted by the Greater London Authority Act 1999 (c.29), section 269(1) and (4). Section 90GA(1)(b) was amended, and section 90GA(4) inserted, by the Greater London Authority (Miscellaneous Amendments) Order 2000 (S.I. 2000/1435), article 2 and the Schedule, Part I, paragraphs 1 and 7(1) to (4).