*Draft Order laid before Parliament under section 106(4) of the Housing Grants, Construction and Regeneration Act 1996 for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 1998 No.

# CONSTRUCTION, ENGLAND AND WALES

## The Construction Contracts (England and Wales) Exclusion Order 1998

*Made - - - - 1998*

*Coming into force in accordance with article 1(1)*

The Secretary of State, in exercise of the powers conferred on him by sections 106(1)(b) and 146(1) of the Housing Grants, Construction and Regeneration Act 1996(**1**) and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before and approved by resolution of, each House of Parliament:

### Citation, commencement and extent

**1.**—(1) This Order may be cited as the Construction Contracts (England and Wales) Exclusion Order 1998 and shall come into force at the end of the period of 8 weeks beginning with the day on which it is made ("the commencement date").

(2) This Order shall extend to England and Wales only.

### Interpretation

**2.** In this Order, "Part II" means Part II of the Housing Grants, Construction and Regeneration Act 1996.

### Agreements under statute

**3.** A construction contract is excluded from the operation of Part II if it is—

(a) an agreement under section 38 (power of highway authorities to adopt by agreement) or section 278 (agreements as to execution of works) of the Highways Act 1980(**2**);

(**1**) 1996 c. 53.
(**2**) 1980 c. 66: section 38 was amended by and section 278 substituted by the New Roads and Street Works Act 1991 (c. 22) sections 22 and 23.

(b) an agreement under section 106 (planning obligations), 106A (modification or discharge of planning obligations) or 299A (Crown planning obligations) of the Town and Country Planning Act 1990(**3**);

(c) an agreement under section 104 of the Water Industry Act 1991(**4**) (agreements to adopt sewer, drain or sewage disposal works); or

(d) an externally financed development agreement within the meaning of section 1 of the National Health Service (Private Finance) Act 1997(**5**) (powers of NHS Trusts to enter into agreements).

**Private finance initiative**

**4.**—(1) A construction contract is excluded from the operation of Part II if it is a contract entered into under the private finance initiative, within the meaning given below.

(2) A contract is entered into under the private finance initiative if all the following conditions are fulfilled—

(a) it contains a statement that it is entered into under that initiative or, as the case may be, under a project applying similar principles;

(b) the consideration due under the contract is determined at least in part by reference to one or more of the following—

(i) the standards attained in the performance of a service, the provision of which is the principal purpose or one of the principal purposes for which the building or structure is constructed;

(ii) the extent, rate or intensity of use of all or any part of the building or structure in question; or

(iii) the right to operate any facility in connection with the building or structure in question; and

(c) one of the parties to the contract is—

(i) a Minister of the Crown;

(ii) a department in respect of which appropriation accounts are required to be prepared under the Exchequer and Audit Departments Act 1866(**6**);

(iii) any other authority or body whose accounts are required to be examined and certified by or are open to the inspection of the Comptroller and Auditor General by virtue of an agreement entered into before the commencement date or by virtue of any enactment;

(iv) any authority or body listed in Schedule 4 to the National Audit Act 1983(**7**) (nationalised industries and other public authorities);

(v) a body whose accounts are subject to audit by auditors appointed by the Audit Commission;

(vi) the governing body or trustees of a voluntary school within the meaning of section 31 of the Education Act 1996(**8**) (county schools and voluntary schools), or

(**3**) 1990 c. 8: section 106 was substituted and the other sections inserted by section 12 of the Planning and Compensation Act 1991 (c. 34).
(**4**) 1991 c. 56.
(**5**) 1997 c. 56.
(**6**) 1866 c. 39.
(**7**) 1983 c. 44: amended by the Telecommunication Act 1984, (c.12) Schedule 7, Part III; the Oil and Pipelines Act 1985 (c. 12) Schedule 4, Part II; the Broadcasting Act 1990, (c.42) Schedule 20, paragraph 36, S.I.1991/510, article 5(4) and the Coal Industry Act 1994, (c.21) Schedule 9, paragraph 29.
(**8**) 1996 c. 56.