STATUTORY RULES OF NORTHERN IRELAND

1999 No. 33

CONSTRUCTION

The Construction Contracts Exclusion Order (Northern Ireland) 1999

To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974

Made - - - -	*27th January 1999*
Coming into operation	*1st June 1999*

The Department of the Environment, in exercise of the powers conferred on it by Article 5(1)(*b*) of the Construction Contracts (Northern Ireland) Order 1997(**1**), and of every other power enabling it in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Construction Contracts Exclusion Order (Northern Ireland) 1999 and shall come into operation on 1st June 1999.

(2) In this Order, "the 1997 Order" means the Construction Contracts (Northern Ireland) Order 1997.

Agreements under statute

2. A construction contract is excluded from the operation of the 1997 Order if it is—

(a) an agreement under Article 3(4C) (works for the improvement of a public road joined by a private street) or Article 32 (agreement for carrying out street works in a private street) of the Private Streets (Northern Ireland) Order 1980(**2**);

(b) an agreement under Article 122 of the Roads (Northern Ireland) Order 1993(**3**) (execution of works by Department at expense of another);

(c) an agreement under Article 40 of the Planning (Northern Ireland) Order 1991(**4**) (agreements facilitating, regulating or restricting development or use of land);

(**1**) S.I.1997/274 (N.I. 1)
(**2**) S.I. 1980/1086 (N.I. 12) as amended by S.I. 1992/3203 (N.I. 19)
(**3**) S.I. 1993/3160 (N.I. 15)
(**4**) S.I. 1991/1220 (N.I. 11)

(d) an externally financed development agreement under Article 3 of the Health and Personal Social Services (Private Finance) (Northern Ireland) Order 1997(**5**) (powers of Health and Social Services trusts to enter into agreements); or

(e) an agreement under Article 17(4) of the Water and Sewerage Services (Northern Ireland) Order 1973(**6**) (applications for water or sewerage services).

Private finance initiative

3.—(1) A construction contract is excluded from the operation of the 1997 Order if it is a contract entered into under the private finance initiative.

(2) For the purposes of paragraph (1), 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;

(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 or the head of a Northern Ireland department;

(ii) a Northern Ireland department;

(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 for Northern Ireland by virtue of an agreement entered into before the coming into operation of this Order or by virtue of any statutory provision;

(iv) the Northern Ireland Transport Holding Company;

(v) a body whose accounts are subject to audit by auditors appointed under section 74 of the Local Government Act (Northern Ireland) 1972(**7**), or Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972(**8**);

(vi) the managers or trustees of a voluntary school or the managers or trustees of a grant-maintained integrated school within the meaning of the Education and Libraries (Northern Ireland) Order 1986(**9**);

(vii) a company wholly owned by any of the bodies described in heads (i) to (v).

Finance agreements

4.—(1) A construction contract is excluded from the operation of the 1997 Order if it is a finance agreement.

(**5**) S.I. 1997/2597 (N.I. 17)
(**6**) S.I. 1973/70 (N.I. 2) as substituted by S.I. 1993/3165 (N.I. 16) Article 7
(**7**) 1972 c. 9 (N.I.)
(**8**) S.I. 1972/1265 (N.I. 14)
(**9**) S.I. 1986/594 (N.I. 3) as amended by S.I. 1989/2406 (N.I. 20)