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

DRAFT STATUTORY INSTRUMENTS

2011 No. XXXX

CONSTRUCTION, ENGLAND

The Construction Contracts (England) Exclusion Order 2011

Made - - - -	*xxx*
Coming into force - -	*1st October 2011*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 106A(1) and 146 of the Housing Grants, Construction and Regeneration Act 1996(**a**) ("the Act").

In accordance with section 106A(4)(a) of the Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and application

1.—(1) This Order may be cited as the Construction Contracts (England) Exclusion Order 2011 and comes into force on 1st October 2011.

(2) This Order does not apply to a construction contract to the extent that it relates to the carrying out of construction operations in Wales.

Interpretation

2. In this Order—

"the Act" means the Housing Grants, Construction and Regeneration Act 1996; and

the reference to a "relevant contract" 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(**b**).

Private finance initiative sub-contracts

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

(**a**) 1996 c.53; section 106A(1) was inserted by section 138(3) of the Local Democracy, Economic Development and Construction Act 2009 (c. 20).
(**b**) S.I. 1998/648, to which there are amendments not relevant to this Order.
(**c**) Section 110(1A) was inserted by section 142(2) of the Local Democracy, Economic Development and Construction Act 2009.

Name
Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

Date

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. Section 106A confers power to exclude descriptions of contracts from the operation of any or all of the provisions of Part 2 and this Order excludes a type of contract from the operation of one such provision.

The provision is section 110(1A) of the Act, pursuant to which 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 type of contract excluded is what 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.

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. (Obligations in other contracts in this context do not include obligations to pay money: a provision in a first tier pfi sub-contract to the effect that the party carrying out work will not be paid until the other party to the sub-contract has under the other contact, will, generally speaking, continue to be ineffective by virtue of section 113 of the Act.)

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 Construction Sector Unit, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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