

2012 No. 366

CONSTRUCTION

**The Construction Contracts Exclusion Order (Northern Ireland)
2012**

Made - - - - - *20th September 2012*

Affirmed by resolution of the Assembly on *23rd October 2012*

Coming into operation - - - - - *14th November 2012*

The Department of Finance and Personnel makes the following Order in exercise of the powers conferred by Article 5(1A) of the Construction Contracts (Northern Ireland) Order 1997(a) (“the Order”) and now vested in it(b).

Citation and commencement

1. This Order may be cited as the Construction Contracts Exclusion Order (Northern Ireland) 2012 and comes into operation on 14th November 2012.

Interpretation

2. In this Order-

“the Order” means the Construction Contracts (Northern Ireland) Order 1997; and
the reference to a “relevant contract” is to a contract excluded from the operation of the Order pursuant to Article 3 of the Construction Contracts Exclusion Order (Northern Ireland) 1999(c).

Private finance initiative sub-contracts

3. A construction contract is excluded from the operation of Article 9(1A) of the Order(d) 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.

Amendments to The Construction Contracts Exclusion Order (Northern Ireland) 1999

4.—(1) The Construction Contracts Exclusion Order (Northern Ireland) 1999 shall be amended in accordance with paragraphs (2) and (3).

(a) SI 1997/274 (N.I. 1); Article 5(1A) was inserted by section 2(2) of 2011 (c. 4) (N.I.).
(b) By Article 6(b) of, and Schedule 4, Part 2 to SR 1999/481.
(c) SR 1999 No. 33.
(d) Article 9(1A) was inserted by section 5 of 2011 (c. 4)(N.I.).

(2) In article 2(e), for “Article 17(4) of the Water and Sewerage Services (Northern Ireland) Order 1973”(a), substitute “Article 161 of the Water and Sewerage Services (Northern Ireland) Order 2006”(b).

(3) In article 3(2)(c), omit head (v).

Sealed with the Official Seal of the Department of Finance and Personnel on 20th September 2012

David Carson

A senior officer of the Department of Finance and Personnel

(a) S.I. 1973/70 (N.I. 2).

(b) S.I. 2006/3336 (N.I. 21).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Construction Contracts (Northern Ireland) Order 1997 (“the Order”) makes provision as regards the terms of construction contracts. Article 5(1A) confers power to exclude descriptions of contracts from the operation of any or all of the provisions of the 1997 Order and this Order excludes a type of contract from the operation of one such provision.

The provision is Article 9(1A) of the Order, 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 the Order.

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 contract, will, generally speaking, continue to be ineffective by virtue of Article 12 of the Order.)

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector was included in the Department of Finance and Personnel consultation document on its proposals to amend the Construction Contracts (Northern Ireland) Order 1997 and the Scheme for Construction Contracts in Northern Ireland Regulations (Northern Ireland) 1999 : Improving Payment Practices in the Construction Industry in Northern Ireland: April 2009.

The changes proposed for the Scheme do not bring any additional costs or deliver any additional benefits beyond those which were included in that Impact Assessment.

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