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STATUTORY INSTRUMENTS

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**2009 No. 721**

**The Contracting Out (Highway Functions) Order 2009**

**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—

“the 1980 Act” means the Highways Act 1980(1);

“the 1991 Act” means the New Roads and Street Works Act 1991(2);

“the 1995 Order” means the Contracting Out (Highway Functions) Order 1995(3);

“the 1999 Order” means the Local Authorities (Contracting Out of Highway Functions) Order 1999(4);

“the 2001 Order” means the Local Authorities (Contracting Out of Highway Functions) (England) Order 2001(5);

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

“highway authority” has the meaning given in section 1(6) 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.

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- (1) 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.
- (2) 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 (b) on page 1 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.
- (3) S.I. 1995/1986.
- (4) S.I. 1999/2106.
- (5) S.I. 2001/4061.
- (6) 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).

(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.

### **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(7), 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(8).

(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(l) 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(9).

(8) The 2001 Order is revoked.

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(7) 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”.

(8) 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)).

(9) See footnote (b).

(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(10) 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.

Signed by authority of the Secretary of State for Transport

14th March 2009

*Paul Clark*  
Parliamentary Under Secretary of State  
Department for Transport

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(10) *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.