

*Draft Order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**1999 No.**

# CONTRACTING OUT

## The Local Authorities (Contracting Out of Highway Functions) Order 1999

<i>Made</i>	-	-	-	-		<i>1999</i>
<i>Coming into force</i>	-	-				<i>1999</i>

Whereas a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994<sup>(1)</sup>;

Now, therefore, the Secretary of State for the Environment, Transport and the Regions, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred by sections 70(2) and 77(1) of that Act and of all other powers enabling them in that behalf, after consultation with such representatives of local government as they consider appropriate, hereby make the following Order:—

### Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Contracting Out of Highway Functions) Order 1999 and shall come into force on the day after the day on which it is made.

(2) In this Order, unless the context otherwise requires:

“the 1980 Act” means the Highways Act 1980<sup>(3)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(4)</sup>;

“highway” has the same meaning as it has in section 328 of the 1980 Act;

“highway authority” has the same meaning as it has in section 1<sup>(5)</sup> of the 1980 Act;

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(1) 1994 c. 40.

(2) Section 79(1) contains a definition of “local authority”.

(3) 1980 c. 66.

(4) 1991 c. 22.

(5) Section 1(2), (3) and (4) were amended by sections 8 and 102 of, and Schedules 4 and 17 to, the Local Government Act 1985 (c. 51). Section 1(3A) and (5) were inserted by section 22(1) of, and Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19).

“highway connected land” means land which does not form part of the highway but which has been acquired by a local highway authority in connection with a highway under section 239(1) or (4) or section 246 of the 1980 Act or otherwise; and

“local highway authority” has the meaning given in section 329(1) of the 1980 Act.

(3) In Schedule 1 to this Order, any expression used in the 1980 Act has the same meaning as it has in that Act unless the context otherwise requires.

(4) In Schedule 2 to this Order, any expression used in the 1991 Act has the same meaning as it has in that Act unless the context otherwise requires.

### **Contracting out of functions of local highway authorities**

2. Any function of a local highway authority which is conferred by or under any of the provisions described in Schedule 1, 2 or 3 to this Order may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the local highway authority whose function it is.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

1999

Parliamentary Under Secretary of State,  
Department of the Environment, Transport and  
the Regions

Signed by the authority of the Secretary of State for Wales

1999

Parliamentary Under Secretary of State, Welsh  
Office

## SCHEDULE 1

## Article 2

### FUNCTIONS CONFERRED BY THE HIGHWAYS ACT 1980 OR ANY REGULATIONS UNDER ANY PROVISION OF THAT ACT

1. Subject to paragraph 5 below, functions conferred on a local highway authority as highway authority<sup>(6)</sup> for a highway in relation to that highway or to highway connected land, by or under any of the following provisions of the 1980 Act:

- (a) section 41(1) (highway authority's duty to maintain highway maintainable at public expense);
- (b) section 62(7) (general power of improvement);
- (c) section 64(8) (dual carriageways and roundabouts);
- (d) section 66 (provision of footways and guard-rails etc. for publicly maintainable highways);
- (e) section 68 (refuges);
- (f) section 69(1) (highway authority's powers to construct, light, etc. subways);
- (g) section 70 (footbridges over highways);
- (h) section 71 (margins for horses and livestock);
- (i) section 75(1) and (2) (highway authority's powers to vary widths of carriageways and footways);
- (j) section 76 (levelling of highways);
- (k) section 77 (alteration of levels);
- (l) section 78 (cutting off of corners);
- (m) section 80(1), (2), and (3)(9) (power to fence highways);
- (n) section 81 (provision of highway boundary posts);
- (o) section 84 (maintenance of cattle-grids and by-passes);
- (p) section 90 (protection of bridges and railways);
- (q) section 90G(10) (traffic calming works);
- (r) section 92 (reconstruction of bridge maintainable at public expense);
- (s) section 96 (powers of highway and local authorities to plant trees, lay out grass verges etc.);
- (t) section 97 (lighting of highways);
- (u) section 99 (metalling of highways);
- (v) section 100(1), (2), (4), (5)(11) and (6)(12) (highway authority's powers and duties relating to drainage of highways) except insofar as they relate to the power to enter premises under section 168 of the Water Industry Act 1991(13) (entry for works purposes);

(6) A local highway authority is highway authority for certain highways by virtue of sections 1(2) to (5) and 329 of the 1980 Act.  
(7) Section 62(3) was amended by section 32, and Schedule 10 to, the Transport Act 1981 (c. 56) and by section 1 of the Traffic Calming Act 1992 (c. 30); section 62(5) was repealed by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51).

(8) Section 64(4) was repealed by section 102, and Schedule 17 to, the Local Government Act 1985 (c. 51); section 64(5) was repealed by section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(9) Section 80 is to be read with section 72(12) of the Wildlife and Countryside Act 1981 (c. 69); section 80(3) was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(10) Section 90G was inserted by section 1 of, and Schedule 1 to, the Traffic Calming Act 1992 (c. 30).

(11) Section 100(5), which confers certain powers of a sewerage authority under the Water Industry Act 1991 (c. 56) for the purposes of drainage on a highway authority, was amended by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15) and by section 2 of, and Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c. 60).

(12) Section 100(6) was amended by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15); by section 2 of, and Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c. 60) and by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51).

- (w) section 101(1), (3), (4), (5), and (6) (power to fill in roadside ditches etc.);
- (x) section 102(1) and (2) (provision of works for protecting highways against hazards of nature);
- (y) section 103 (provision of posts to indicate depth of flood water);
- (z) section 104 (mitigating nuisance of dust);
- (aa) section 105 (power to improve road-ferries);
- (bb) section 114(14) (provision of public conveniences by county council for users of roads for which they are the highway authority);
- (cc) section 115H(1)(15) (prohibition on exercise of certain of a council's powers without consent of the highway authority);
- (dd) section 133 (damage to footways of streets by excavations);
- (ee) section 139(1) and (2) (prohibition on deposit of builders' skips without permission of the highway authority);
- (ff) section 140(2) (removal of builders' skips);
- (gg) section 141(2) (highway authority's power by notice to require removal of tree or shrub in or near carriageway);
- (hh) section 150(1), (2) and (4) (highway authority's duty to remove snow, soil etc. from highway) except insofar as they relate to an obstruction in a highway which is the property of any person;
- (ii) section 167(2), (5) and (6) (consultation with highway authority and local authority's power to give notices in relation to retaining walls near streets);
- (jj) section 169(1), (2), (3) and (4)(16) (power of highway authority to license, and give directions in relation to, scaffolding or other structures obstructing the highway);
- (kk) section 171 (control of deposit of building materials and making of excavations in streets) except insofar as functions conferred by or under section 171(7) relate to the removal of property of any person;
- (ll) section 178(1) (prohibition on placing rails, beams etc. over highways without consent of the highway authority).

2. Subject to paragraph 5 below, functions conferred on a local highway authority by or under section 288 of the 1980 Act (power to require gas and water pipes to be moved) insofar as that provision applies to the exercise of any other function listed in this Schedule.

3. Subject to paragraph 5 below, functions conferred on a local highway authority as competent authority, by virtue of its being a highway authority for a highway, by or under any of the following provisions of the 1980 Act:

- (a) section 143(1)(17) (competent authority's power to give notice requiring removal of structures from highways); and

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(13) 1991 c. 56.

(14) Section 114(1), (2) and (3) were amended by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51); sections 114(2A) and (2B) were inserted by section 22(1) of, and Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19) and section 114(4) was amended by Schedule 7 to the Building Act 1984 (c. 55).

(15) Section 115H was inserted by section 20 of, and Schedule 5 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30). Section 115H(1) was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51) and by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(16) Section 169(4) was amended by section 109 of, and Schedule 4 to, the Telecommunications Act 1984 (c. 12); by section 190 of, and Schedule 25 to, the Water Act 1989 (c. 15); by section 13(1) of, and Schedule 4 to, the Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22); and by section 168(1) of, and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).

(17) Section 143(1)(a) was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985 (c. 51).