



STATUTORY INSTRUMENTS.

**S.I. No. 193 of 2015**

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EUROPEAN COMMUNITIES (AWARD OF CONTRACTS BY UTILITY  
UNDERTAKINGS) (REVIEW PROCEDURES) (AMENDMENT)  
REGULATIONS 2015

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I, BRENDAN HOWLIN, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 92/13/EEC<sup>1</sup>, as amended by Directive 2007/66/EC<sup>2</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) (Amendment) Regulations 2015.

*Definition*

2. In these Regulations the “Principal Regulations” means the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 (S.I. No. 131 of 2010).

*Application of Regulations*

3. Subject to Regulations 6(4) and 7(2), the amendments effected by these Regulations, in so far as they relate (in any respect) to, or operate in consequence of, an application under Regulation 8 of the Principal Regulations, shall apply irrespective of whether the particular application under that Regulation was made on or before, or is made after, the date of the making of these Regulations.

*Amendment of Regulation 2 of the Principal Regulations*

4. Regulation 2 of the Principal Regulations is amended, in paragraph (4), by substituting “in accordance with Regulation 6” for “in accordance with paragraphs (2) and (3) of Regulation 7”.

*Amendment of Regulation 5 of the Principal Regulations*

5. Regulation 5 of the Principal Regulations is amended by inserting the following after paragraph (4):

“(5) For the avoidance of doubt, nothing in the subsequent provisions of these Regulations enables a Court to make an order permitting a reviewable contract to be concluded during the period specified in paragraph (1).”.

<sup>1</sup>OJ No. L076, 23.03.1992, p.14.

<sup>2</sup>OJ No. L335, 20.12.2007, p.31.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 15th May, 2015.*

*Amendment of Regulation 8 of the Principal Regulations*

6. (1) Regulation 8 of the Principal Regulations is amended, in paragraph (1)(a), by substituting “an order to correct an alleged infringement or prevent further damage” for “interlocutory orders with the aim of correcting an alleged infringement or preventing further damage”.

(2) Regulation 8 of the Principal Regulations is further amended by substituting the following for paragraph (2):

“(2) If a person applies to the Court under paragraph (1), the contracting entity shall not conclude the contract until—

- (a) the Court has determined the matter, or
- (b) the Court gives leave to lift any suspension of a procedure, or
- (c) the proceedings are discontinued or otherwise disposed of,

but this is subject to paragraph (2A).

(2A) Notwithstanding that—

- (a) an application has been made under paragraph (1), and
- (b) the matter concerned has not been determined by the Court,

the contracting entity may conclude the contract if, on application to the Court under Regulation 8A, the Court so orders.”.

(3) Regulation 8 of the Principal Regulations is further amended, in paragraph (6), by inserting “or the contracting entity” after “eligible person”.

(4) The amendment effected by paragraph (2) shall not apply in relation to the awarding of a contract leave to apply for judicial review in respect of which was granted by the High Court on 21 March 2014.

*Exception to prohibition in Regulation 8(2) of the Principal Regulations*

7. (1) The Principal Regulations are amended by inserting the following after Regulation 8:

*“Exception to prohibition in Regulation 8(2)*

8A. (1) On application made to it under this Regulation by the contracting entity, the Court may, notwithstanding the matters referred to in Regulation 8 (2A)(a) and (b), make an order permitting the contracting entity to conclude the contract referred to in Regulation 8(1).

(2) When deciding whether to make an order under this Regulation—

- (a) the Court shall consider whether, if Regulation 8(2)(a) were not applicable, it would be appropriate to grant an injunction restraining the contracting entity from entering into the contract, and

(b) only if the Court considers that it would not be appropriate to grant such an injunction may it make an order under this Regulation.

(3) The Court may, if it considers just to do so, specify in the order it makes under this Regulation that the order shall operate subject to there being satisfied one, or more than one, condition that it determines to be appropriate and specifies in the order.

(4) A person who has applied to the Court under this Regulation shall give the eligible person concerned notice of the application by serving a copy of the originating motion on the eligible person as soon as reasonably practicable”.

(2) The amendment effected by paragraph (1) shall not apply in relation to the awarding of a contract leave to apply for judicial review in respect of which was granted by the High Court on 21 March 2014.

*Amendment of Regulation 11 of the Principal Regulations*

8. Regulation 11 of the Principal Regulations is amended by inserting the following after paragraph (1):

“(1A) The reference in paragraph (1)(b)(ii) to the contracting entity having concluded the contract (the ‘relevant act’) before the Court has made its decision does not include a reference to either of the following cases—

- (a) a case in which the Court has made an order under Regulation 8A permitting the relevant act, or
- (b) if such an order has been made but is specified to operate subject to one, or more than one, condition being satisfied, a case in which the relevant act complies with that condition or those conditions.”.



GIVEN under my Official Seal,  
30 April 2015.

BRENDAN HOWLIN,  
Minister for Public Expenditure.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations amend the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 (S.I. 131 of 2010).

These Regulations allow the Court jurisdiction to lift the automatic suspension of the procedure for the award of a contract in certain cases.

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