



STATUTORY INSTRUMENTS.

**S.I. No. 234 of 2018**



RULES OF THE SUPERIOR COURTS (REVIEW OF THE AWARD OF  
PUBLIC CONTRACTS) 2018

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act, 1961 section 48), the Courts (Supplemental Provisions) Act 1961, section 14, and the European Communities (Rules of Court) Regulations 1972 (S.I. No. 320 of 1972) and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 16th day of November 2017.

Frank Clarke  
Sean Ryan  
Peter Kelly  
Elizabeth Dunne  
Mary Finlay Geoghegan  
Michael Peart

Anthony Barr  
Deirdre Murphy  
Stuart Gilhooly  
Michael Kavanagh  
Noel Rubotham  
John Mahon

I concur in the making of the following Rules of Court.

Dated this 3rd day of July 2018.

CHARLES FLANAGAN

Minister for Justice and Equality

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 6th July, 2018.*

S.I. No. 234 of 2018

RULES OF THE SUPERIOR COURTS (REVIEW OF THE AWARD OF  
PUBLIC CONTRACTS) 2018

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Review of the Award of Public Contracts) 2018, shall come into operation on the 3rd day of August 2018.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2018.

2. The Rules of the Superior Courts are amended by the substitution for Order 84A of the Order set out in the Schedule.

**SCHEDULE****“ORDER 84A  
REVIEW OF THE AWARD OF PUBLIC CONTRACTS**

1. (1) In this Order, unless the context or subject matter otherwise requires—

the “Directives” means and includes all or any of the following:

- (a) the Public Procurement Directive,
- (b) the Public Utilities Contracts Directive,
- (c) the Review Procedures Directives;

the “Public Procurement Directive” means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (O.J. L94 28/3/2014 p.65);

the “Public Utilities Contracts Directive” means Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (O.J. L 94 28/3/2014 p.243);

the “Review Procedures Directives” means Directive 89/665/EEC (O.J. L395 30/12/89 p.33) and Directive 92/13/EEC (O.J. L76 23/3/92 p.14),

each as amended by Directive 2007/66/EC (O.J. L335 20/12/2007 p.31);

the “Regulations” means and includes all or any of the following:

- (i) European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) (hereinafter in this Order, the “Public Procurement Regulations”);
- (ii) European Union (Award of Contracts by Utility Undertakings) Regulations 2016 (S.I. No. 286 of 2016) (hereinafter in this Order, the “Utilities Contracts Regulations”);
- (iii) European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010 (S.I. No. 130 of 2010) as amended by the European Communities (Public Authorities’ Contracts) (Review Procedures) (Amendment) Regulations 2015 (S.I. No. 192 of 2015) (hereinafter in this Order, the “Public Procurement Remedies Regulations”);
- (iv) European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 (S.I. No. 131 of 2010) as amended by the European Communities (Award of Contracts by Utility Undertakings) (Review

Procedures) (Amendment) Regulations 2015 (S.I. No. 193 of 2015)(hereinafter in this Order, the “Utilities Remedies Regulations”).

(2) Words and expressions in this Order shall have the same meanings as in the Directives or the Regulations, as the case may be.

2. An application to the Court pursuant to the Regulations for:

- (a) an order to correct an alleged infringement or prevent further damage to the applicant’s interests, including measures to suspend or to ensure the suspension of the procedure for the award of the public contract concerned or the implementation of any decision taken by the contracting authority or contracting entity,
- (b) the review of a decision of a contracting authority to award or the award of a contract within the scope of the Directives,
- (c) the review of a decision (including an interim decision) of a contracting authority or contracting entity taken under or in the course of a contract award procedure falling within the scope of the Public Procurement Regulations or the Utilities Contracts Regulations, or
- (d) a declaration that a contract is ineffective,

shall be made in accordance with the provisions of this Order.

3. (1) An application mentioned in rule 2 shall be made by Originating Notice of Motion grounded upon a statement containing—

- (i) the name, address and description of the applicant;
- (ii) the name, address and description of the contracting authority or contracting entity awarding the contract;
- (iii) a description of the contract;
- (iv) the alleged value of the contract;
- (v) the Regulations and Directive alleged to be applicable;
- (vi) the date of the award of the contract, date of the decision to award a contract or, as the case may be, the date of the decision referred to in rule 2(c) which is complained of;
- (vii) a description of the procedure adopted by the contracting authority or contracting entity;
- (viii) the alleged infringement of the Regulations or the Directives, as the case may be;

- (ix) the interest which the applicant has or had in obtaining the contract or, as the case may be, the harm or risk of harm to the applicant by the infringement;
- (x) the date of the notification to the applicant of the alleged infringement;
- (xi) the date of notification by the applicant to the contracting authority or contracting entity of the alleged infringement and of the applicant's intention to seek review;
- (xii) the relief sought (including any declaration that a contract is ineffective or other declaration; any injunction; any order setting aside any decision; any order affecting any invitation to tender, contract documents or other document relating to a contract award procedure, or damages), and specifying any interim measures sought;
- (xiii) the grounds upon which each relief is sought;
- (xiv) the name, address and description of any affected parties;
- (xv) the name and registered place of business of the applicant's solicitors (if any); and
- (xvi) the applicant's address for service.

(2) The statement grounding the application shall be verified by an affidavit sworn by or on behalf of the applicant which verifies all of the facts relied upon and shall exhibit the notification to the contracting authority or contracting entity of the infringement alleged by the applicant and of his intention to seek a review and the response of the contracting authority or contracting entity thereto (if any).

4. (1) Subject to sub-rule (2), an application mentioned in rule 2 shall be made:

- (i) in a case to which the Public Procurement Remedies Regulations apply, within the relevant period determined in accordance with Regulation 7 of those Regulations, or
- (ii) in a case to which the Utilities Remedies Regulations apply, within the relevant period determined in accordance with Regulation 7 of those Regulations.

(2) Notwithstanding sub-rule (1), the Court may grant leave, on the application of the intending applicant for that purpose, to make an application to which Regulation 7(2) of the Public Procurement Remedies Regulations or, as the case may be, Regulation 7(2) of the Utilities Remedies Regulations applies after the expiry of the time mentioned in sub-rule (1), where the Court considers that there is good reason to do so.

(3) An application under sub-rule (2) shall be by originating motion ex parte grounded upon an affidavit sworn by or on behalf of the intending applicant, but the Court may direct that such an application be made on notice to the contracting authority or contracting entity or any other affected party.

5. (1) Copies of the Originating Notice of Motion mentioned in rule 3, statement grounding the application and verifying affidavit shall be served on the contracting authority or contracting entity and on all other persons directly affected by the application and the Originating Notice of Motion shall be returnable for the first available motion day after the expiry of ten days from the date of service thereof unless the Court otherwise directs.

(2) In a case to which paragraph (a), (b) or (c) of rule 2 applies, the applicant shall notify the contracting authority or contracting entity (which notification may be by facsimile or electronic mail) of the issue of the Originating Notice of Motion immediately following its issue, and shall serve the documents referred to in sub-rule (1) on the contracting authority or contracting entity as soon as practicable thereafter.

6. (1) Any contracting authority, contracting entity or notice party who intends to oppose the application shall file in the Central Office a statement setting out concisely the grounds for such opposition and if any facts are relied on therein an affidavit verifying such facts. A copy of such statement and affidavit (if any) shall be served on all other parties not later than seven days from the date of service of the notice of motion or such other period as the Court may direct.

(2) Where a contracting authority, contracting entity or notice party opposes the application on the ground that the applicant is not an eligible person (within the meaning of Regulation 4 of the Public Procurement Remedies Regulations or, as the case may be, Regulation 4 of the Utilities Remedies Regulations), that contracting authority, contracting entity or notice party may apply to the Court for an order dismissing the application by motion on notice, grounded on an affidavit, in the proceedings commenced by Originating Notice of Motion, which motion may be made returnable for the return date of the Originating Notice of Motion.

(3) Where a contracting authority intends to apply under Regulation 8A of the Public Procurement Remedies Regulations for an order permitting the contracting authority to conclude the contract or a contracting entity intends to apply under Regulation 8A of the Utilities Remedies Regulations for an order permitting the contracting entity to conclude the contract, that contracting authority or contracting entity may apply to the Court for such order by motion on notice, grounded on an affidavit.

7. (1) An affidavit giving the names and addresses of all persons who have been served with an Originating Notice of Motion under this Order and the places and dates of such service must be filed before the Originating Notice of Motion is heard and if any person who ought to be served under

this Order has not been served the affidavit must state that fact and the reason for it and the affidavit shall be before the Court on the hearing of the Originating Notice of Motion.

(2) If, on the hearing of the Originating Notice of Motion the Court is of the opinion that any person who ought to have been served, whether under this rule or otherwise, has not been served the Court may adjourn the hearing on such terms (if any) as it may direct in order that notice may be served on that person and the Court may make such orders or give such directions pursuant to Order 10 or Order 11 as appear just and proper in the circumstances.

(3) The Court may, at any time it thinks fit, order that notification of an application mentioned in rule 2 or of any order that the Court has made be sent to such person, body or institution as may be appropriate or may direct that such application or order, as the case may be, be advertised in such manner, time and place as the Court thinks proper in the circumstances.

(4) The Court may, at any time and having regard to any of the issues raised in an application mentioned in rule 2, direct that the application or any specified issue in the application be determined by way of plenary hearing and may give such further directions as appear necessary in the circumstances.

8. (1) The Court may on the hearing of the Originating Notice of Motion in an application mentioned in rule 2 allow the applicant or any other party to amend his statement whether by specifying different or additional grounds of relief or opposition or otherwise on such terms if any as it thinks fit and may allow further affidavits to be filed if they deal with new matters referred to in an affidavit of any other party to the application.

(2) Where the applicant or any other party intends to apply for leave to amend his statement or to use further affidavits he shall give notice of his intention and of the proposed amendment to every other party.

9. At any time after the issue of the Originating Notice of Motion in an application mentioned in rule 2 an applicant for review may make an application to the Court for interim or interlocutory orders for interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned including measures to suspend or to ensure the suspension of the procedure for the award of the public contract concerned or the implementation of any decision taken by the contracting authority.

10. On the hearing of any Originating Notice of Motion or motion under this Order any person who desires to be heard in opposition to the motion and appears to the Court to be a proper person to be heard shall be heard notwithstanding that he has not been served with the Originating Notice of Motion or notice of the motion.



11. On the hearing of an Originating Notice of Motion or motion under this Order, the Court may make such order pursuant to the Directives and/or the Regulations as appears just and proper in the circumstances including an order providing for the costs of the proceedings or such further or other order as it thinks fit.”

EXPLANATORY NOTE

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

These rules substitute a new Order 84A for the existing Order 84A of the Rules of the Superior Courts to prescribe the procedure in respect of applications to the High Court under: the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016); the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 (S.I. No. 286 of 2016); the European Communities (Public Authorities Contracts) (Review Procedures) Regulations 2010 (S.I. No. 130 of 2010) as amended by the European Communities (Public Authorities Contracts) (Review Procedures) (Amendment) Regulations 2015 (S.I. No. 192 of 2015); and the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 (S.I. No. 131 of 2010) as amended by the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) (Amendment) Regulations 2015 (S.I. No. 193 of 2015).

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