

S.I. No. 208 of 2004

EUROPEAN COMMUNITIES (MILK QUOTA)(AMENDMENT)
REGULATIONS 2004

I, Joe Walsh, Minister for Agriculture and Food, 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 effect to Council Regulation (EC) No. 1788/2003 of the 29 September 2003¹ and Commission Regulation (EC) No. 595/2004 of the 30 March 2004², hereby make the following Regulations:

1. These Regulations may be cited as the European Communities (Milk Quota)(Amendment) Regulations 2004.
2. In these Regulations “Principal Regulations” means the European Communities (Milk Quota) Regulations 2000 (S.I. No. 94 of 2000).
3. Regulation 2(1) of the Principal Regulations (as amended by Regulation 3 of the European Communities (Milk Quota)(Amendment) Regulations 2002 (S.I. No 97 of 2002) are amended by –

(a) inserting the following after “date of transfer” –

“‘delivery’ means any delivery of milk, not including any other milk products, by a producer to a purchaser, however so transported, and is considered to have taken place at the moment the milk leaves the producer’s holding;”,

(b) substituting for the definition of “delivery quota” the following –

“‘delivery quota’ means the quantity of milk which may be delivered by a producer to a purchaser from his or her holding, in accordance with these Regulations, in a milk quota year without the producer being liable to pay levy;”, and

(c) substituting for the definition of “producer” the following –

“‘producer’ means a person or a group of persons with a holding located within the State who produces and markets milk during the course of a milk quota year or who is preparing to do so within 6 weeks of the end of that year;”.

¹ OJ No. L270, 21.10.2003, p.123.

² OJ No. L94, 31.3.2004, p.22.

4. Regulation 7 of the Principal Regulations is amended by substituting for the following –

“7.(1) Notwithstanding paragraph (1) of Regulation 5, and in the case of a sale subject to paragraph (8) of Regulation 26, where a person, or where the person is deceased, his or her legal personal representative, proposes to transfer by way of sale or gift, or in the case of inheritance to vest, a holding, or part thereof, to which a milk quota attaches, the said person may before the proposed transfer or vesting has been made apply to the Minister for a Certificate (in the form set out in the First Schedule and referred to in these Regulations as “Certificate of Entitlement to Transfer Milk Quota”) that the milk quota attached to that holding or part thereof proposed to be transferred shall, in the event of such transfer, be transferred to the transferee.

(2) Paragraph (1) shall not apply to the transfer of land and quota by way of sale, gift or inheritance, where such a transaction comes under Regulation 6.

(3) On receipt of an application under paragraph (1), the Minister may grant a Certificate of Entitlement to Transfer Milk Quota where –

- (a) the applicant submits, before the date of the proposed transfer, an application to the Minister in the form set out in the Second Schedule;
- (b) the holding, or part thereof, to be so transferred shall be owned in freehold or under a lesser assurance where at least 50 years of the term still remains;
- (c) that the applicant provides the Minister with a map showing the following:
 - (i) the entire of the holding,
 - (ii) the lands to which the entire milk quota attaches, and
 - (iii) that area of the holding, whether all or part, which it is proposed to transfer;
- (d) in cases where the applicant seeks a certificate to entitle him or her to transfer lands to which more than 5000 litres of milk quota is claimed to attach per acre, the applicant submits a statutory declaration concerning the lands used for milk production and any other information sought by the Minister in relation to the person’s agricultural activities.

(4) Where a Certificate of Entitlement to Transfer Milk Quota is granted, such a certificate shall be valid for a period of 6 months from the date of that certificate.

(5) Notwithstanding paragraph (4), the Minister may, on an application being made in writing to him or her during the period referred to in paragraph (4) or within 3 months following the end of that period, by the person to whom it was granted, extend the validity of a Certificate of Entitlement to Transfer Milk Quota where failure to transfer the quota referred to in such a certificate is due to some reasonable cause.

(6) Quota transferred in accordance with paragraph (1) shall be subject to paragraphs (3) and (4) of Regulation 5.

(7) The Minister may determine an appropriate fee which shall accompany any application for a Certificate of Entitlement to Transfer Milk Quota under paragraph (1).

(8) A determination under paragraph (7) shall be made by way of a notice published in a newspaper published and circulating in the State.”.

5. Regulation 8 of the Principal Regulations is amended by –

(a) substituting for subparagraph(c)(i) in the definition of “milk production partnership” contained paragraph (1) (as amended by European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I No 123 of 2003)) the following –

“(c)(i) comprises of not more than 3 producers where each producer consists only of one or more natural persons, all of whom consent to and form such partnership (referred to as a ‘Standard MPP’),”

(b) substituting for subparagraph (5)(a)(i) (as amended by European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I No 123 of 2003)) the following –

“(a) (i) in the case of a Standard MPP, not less than 2 and not more than 3 separate milk quotas and holdings, and”

(c) substituting for paragraph (7) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2002 (S.I. No. 97 of 2002)) the following –

“(7)(a) Subject to subparagraph (b), the partnership agreement shall be effective for a period of not less than 5 years.

(b) In the case of a new entrant/parent MPP where one partner has attained the age of 61 years but has not attained 66 years, the period that the partnership agreement shall be effective is from

the date of execution of the agreement until the partner attains 66 years.”,

- (d) substituting for paragraph (11)(a) and (b) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) the following –

“(a) No person may be a partner in a milk production partnership where -

(i) subject to subparagraphs (b), (c) and (d), he or she is aged 63 years or more at the date of execution of the partnership agreement, or

(ii) he or she has attained the age of 66 years.

(b) A former partner who is aged 63 years or more, but has not attained the age of 66 years, may apply to the Minister under subparagraph (c) for a certificate of exemption from the provisions of subparagraph (a)(i).”,

- (e) substituting for paragraph (12) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2002 (S.I. No. 97 of 2002)) the following –

“(12) (a) Subject to sub-paragraph (b), the boundary or any part of the boundary of lands provided by a partner where the said lands –

- (i) are contiguous, or
(ii) if not contiguous, the lands on which the partner’s milking facilities are located

shall not be more than 20 kilometres in distance from the boundary or any part of the boundary of the another partner’s or proposed partner’s lands where the said lands –

- (iii) are contiguous, or
(iv) if not contiguous, the lands on which the partner’s or the proposed partner’s milking facilities are located.

(b) The Minister may increase the distance set out in subparagraph (a) on application in writing from the partners or the proposed partners, where the Minister is satisfied that in all the circumstances it is proper to do so.

(c) The partners or the proposed partners shall provide such information and documentation that the Minister may reasonably request in order to be decided on an application made under subparagraph (b).”,

(f) substituting for paragraph (16) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) the following –

“16. In the case of a Standard MPP, the milk quota of one existing producer at the date of execution of the partnership agreement, shall not exceed the milk quota of an other existing producer by a ratio of more than 4 to 1.”,

(g) in paragraph 17(a)(i) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) by substituting “€24,000” for “€22,000”,

(h) substituting for paragraph 17(a)(ii) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) the following –

“In the case of a New Entrant Parent MPP, in the tax year immediately before the tax year in which the partnership agreement is executed the off-farm income of each partner who is an existing producer shall not exceed €22,000 and during each tax year that the partnership exists the off-farm income of each partner shall not exceed €22,000.”,

(i) deleting paragraph (23)(c),

(j) substituting for paragraph (27) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2002 (S.I. No. 97 of 2002)) the following –

“(27) In a case where one or more of the partners in a milk production partnership is or are due to attain the age of 66 years, within one year of the expiry of the existing Certificate of Compliance, Teagasc may issue a further Certificate of Compliance in respect of that partnership for a period which expires on the day before the partner in question reaches his or her 66th birthday.”,

(k) substituting for paragraph (34) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2002 (S.I. No. 97 of 2002)) the following –

“(34)(a) The Minister shall set the fees chargeable under this Regulation from time to time and publish such fees in a newspaper circulating in the State.

(b) Teagasc shall not consider an application under this Regulation unless it is accompanied by the appropriate fee.”,

- (l) substituting for paragraph (42) (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2002 (S.I. No. 97 of 2002)) the following –

“(42)(a) Subject to paragraph (b), where a partner dies the partner or partners shall notify Teagasc within 1 month of the partner’s death and Teagasc shall remove the partnership from the MPP Register.

(b) Teagasc may defer removal from the MPP Register until -

- (i) the expiry of the Certificate of Compliance, or
- (ii) until 6 months after the date of death of the partner have elapsed

whichever is the greater.

(c) Where Teagasc applies the provisions of paragraph (b)(ii), Teagasc shall extend the period of validity of the Certificate of Compliance to the date of removal from MPP Register.”,

- (m) substituting for paragraph (54)(c)(as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) the following –

“(54)(c) On an application made to the Minister under sub paragraph (b) the Minister shall certify the amount of milk quota to be transferred to the existing producer, the other partner and if he or she is satisfied that it is proper to do so in the circumstances of the removal from the MPP Register, the amount to be surrendered -

- (i) for sale into a Scheme operated under Regulation 26, or
- (ii) to the National Reserve.”.

6. Regulation 9 of the Principal Regulations (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) is amended by substituting for the following –

“9(1) Subject to paragraphs (2) and (3), on expiry or earlier determination of a lease of land and milk quota where at least 12 months of the lease has been exhausted, the lessee, being a producer, may purchase the milk quota attached to the said land in whole or in part with or without purchasing the land.

(2) The obligation in paragraph (1) that 12 months of the lease be exhausted shall not apply to a lease which has been renewed by the original lessee or a person who has become entitled to the lessee’s interest in the lease by way of inheritance, within in the previous 12 months.

(3) Paragraph (1) shall apply where a lessee is -

- (i) the original lessee,

- (ii) a person who has become entitled to the lessee's interest in the lease by way of inheritance, or
- (iii) a person who has been assigned a lease by the original lessee before 1 April 2000.”.

7. The Principal Regulations are amended by inserting after Regulation 11 the following Regulations –

“11A(1) Notwithstanding Regulation 5(1) and subject to paragraph (2) where a lease of land to which quota attaches was assigned by the original lessee to a person before 1 April 2000 and such lease expires or is subject to earlier determination, the quota shall be transferred to the said person where that person signs a new lease within 6 months of the expiry or early determination of the original lease.

(2) Regulation 16 shall apply to any lease agreement approved under paragraph (1).”.

8. The Principal Regulations are amended by deleting Regulation 13.

9. The Principal Regulations are amended by deleting Regulation 14.

10. Regulation 17(1) of the Principal Regulations (as amended by the European Communities (Milk Quota)(Amendment) Regulations 2002 (S.I No 97 of 2002) are amended by substituting “3 months” for “2 months”.

11. Regulation 19(1)(c) of the Principal Regulations are amended by –

(a) substituting the following for clause (iv) –

“(iv) the holding or part thereof to be so transferred shall be owned by the applicant in freehold or under a lesser assurance where at least 50 years of the term still remains,” and

(b) inserting after clause (ix) the following –

“(x) that the proposed transferee gives written consent to the application.”.

12. Regulation 21(2) is amended by inserting after sub-paragraph (c) the following

–
“(d) the proposed transferee provides written consent to the application.”.

13. Regulation 23 of the Principal Regulations (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) is amended by substituting for paragraphs (4), (5) and (6) the following

–
“(4) Where the Minister is satisfied that non production was due to *force majeure*, or in other duly justified cases, temporarily affecting the

production capacity of the producer in question, the Minister shall not add the quota to the national reserve.

- (5) The Minister shall notify the person concerned in writing whenever the makes an addition of that person's quota to the national reserve.
- (6) Where a person whose quota has been added to the national reserve under this Regulation resumes production of milk within two years of the addition of the quota to the Reserve, he or she shall be granted a quota no later than 1 April following the date of his or her application, in accordance with the provisions of Article 15 of Council Regulation No. 1788/2003 provided that such an application has been received by the Minister prior to the 1st day of the preceding January.”.

14. Regulation 24 of the Principal Regulations (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) is amended by substituting for paragraphs (4), (5) and (6) the following –

- “(4) Where the Minister is satisfied that non production was due to *force majeure*, or in other duly justified cases, temporarily affecting the production capacity of the producer in question, he or she shall not add the quota to the national reserve.
- (5) The Minister shall notify the person concerned in writing whenever the Minister makes an addition of part of that person's quota to the national reserve.
- (6) Where a producer, part of whose quota has been added to the national reserve under this Regulation, proposes to increase production of milk above the level of the quota available to the producer, he or she shall be reallocated that part of his or her quota which had been added to the Reserve no later than 1 April following the date of his or her application, in accordance with Regulation 5 of Council Regulation No. 1788/2003, but only where such an application has been received by the Minister prior to the 1st day of the preceding February.”.

15. Regulation 25 of the Principal Regulations are amended by inserting after paragraph (3) the following –

- “(4) The Minister may on written application from a producer accept the surrender of all or part of the producer's milk quota into the national reserve.”.

16. The Principal Regulations is amended by substituting for Regulation 27 (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) the following –

“27. (1) The Minister may each year introduce a scheme under the provisions of Article 16.1 of Council Regulation No. 1788/2003 for the temporary transfer of milk quota, to be referred to in these Regulations as the “Temporary Leasing Scheme”, by a date to be determined by him or her.

(2) A producer may, subject to paragraphs (3) and (4), offer for temporary transfer any part of his or her milk quota he or she does not intend to use during that milk quota year, provided that the amount in question is not the entire quota.

(3) Notwithstanding (2) and subject to paragraph (4), a person may apply in writing to the Minister for a declaration in the form set out in the Thirteenth Schedule granting approval to make a temporary transfer for one year of his or her entire quota for that milk quota year.

(4) The Minister may on application under paragraph (3) make a declaration where he or she is satisfied that the applicant is unable to deliver milk or sell milk or milk products for direct consumption in the year of application due to *force majeure*, or in other duly justified cases, temporarily affecting the production capacity of the producer

(5) The Minister may determine in accordance with the second paragraph of Article 6.1 of Council Regulation No. 1788/2003 the categories of producers who may benefit from the quota made available by way of temporary transfer under the ‘Temporary Leasing Scheme’.”.

17. Regulation 38 of the Principal Regulations (as amended by the European Communities (Milk Quota)(Amendment) Regulations 2002 (S.I No. 97 of 2002) is amended by substituting for paragraph (11) the following –

“(11) Notwithstanding paragraph (3), a producer may apply in writing to the Minister for approval for the transfer of his or her delivery quota, in whole or in part from the existing purchaser to another purchaser with effect from a date specified in the application. Such application shall state the reason why it is being made and the Minister shall give notice in writing to the relevant purchasers of any such application and shall give each of them an opportunity to state his or her views in writing.”.

18. Regulation 48 of the Principal Regulations is amended by substituting for paragraph (4) the following –

“(4) The purchaser or his or her agent shall provide the producer with a record in respect of each delivery at the time of that delivery.

(5) A person who fails to comply with any of the provisions or who makes a record in purported compliance with this Regulation which is false or misleading in a material respect shall be guilty of an offence.

(6) (a) A producer or a person who was a producer shall maintain for a period of three years the documents regarding the quantity of milk delivered by him or her to the milk purchaser or milk purchasers.

(b) A person or who fails to comply with this paragraph or who maintains records which are false or misleading in a material sense shall be guilty of an offence.”.

19. Regulation 49 of the Principal Regulations are amended by inserting after paragraph (7) the following –

(8) (a) Subject to paragraph (b), milk purchaser who accepts deliveries from a person who does not have a milk quota attached to that milk purchaser shall be guilty of an offence.

(b) A milk purchaser may accept deliveries from producer in respect of whom they do not have quota attached where the purchaser has received the documentation referred to at Regulation 38 (5)(b) from that producer and the deliveries are made in compliance with the notice period provided for in Regulation 38(4).”.

20. Regulation 59 of the Principal Regulations (as amended by the European Communities (Milk Quota) (Amendment) Regulations 2003 (S.I. No. 123 of 2003)) is amended by –

(a) substituting “48(4)” for “48(5), 48(6),”, and

(b) inserting after 49(7) the following – “49(8),”.

Given under my Official Seal
May 2004

Joe Walsh
Minister for Agriculture and Food

Explanatory Note

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

These Regulations further amend the European Communities (Milk Quota) Regulations 2000, by modifying some of the definitions and some of the provisions relating to milk quota transfers, Milk Production Partnerships, dormancy, temporary transfers, milk purchaser obligations and producer records.