



STATUTORY INSTRUMENTS

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EUROPEAN COMMUNITIES (MILK QUOTA) REGULATIONS 2008

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EUROPEAN COMMUNITIES (MILK QUOTA) REGULATIONS 2008

I, BRENDAN SMITH, Minister for Agriculture, Fisheries 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 full effect to Chapter III of Title I of Part II of Council Regulation (EC) No. 1234/2007 of 22 October 2007¹ so far as it relates to milk, Council Regulation (EC) No. 248/2008 of 17 March 2008², Commission Regulation (EC) No. 595/2004 of 30 March 2004³, Commission Regulation (EC) No. 1468/2006 of 4 October 2006⁴ and Commission Regulation (EC) No. 1913/2006 of 20 December 2006⁵, hereby make the following Regulations:

Commencement and citation

1. These Regulations may be cited as the European Communities (Milk Quota) Regulations 2008 and, other than Regulation 43, are deemed to have come into operation on 1 April 2008.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person appointed under Regulation 33,
- (b) a person who immediately before the coming into operation of these Regulations was an authorised officer under the Regulations revoked by Regulation 44,
- (c) a member of the *Gárda Síochána*, or
- (d) an officer of Customs and Excise;

“collection area” of a milk purchaser means the holdings from which deliveries are collected by a milk purchaser or on his or her behalf

“Commission Regulation” means Commission Regulation (EC) No. 595/2004 of 30 March 2004 as amended by Commission Regulation (EC) No.1468/2006 and Commission Regulation (EC) No. 1913/2006;

“Council Regulation” means Chapter III of Title I of Part II of Council Regulation (EC) No. 1234/2007 of 22 October 2007 so far as it relates to milk as amended by Council Regulation (EC) No. 248/2008 of 17 March 2008;

¹O.J. No. L 299 of 16.11.2007, p. 1.

²O.J. No. L 76 of 19.3.2008, p. 6.

³O.J. No. L 94 of 31.3.2004, p. 22.

⁴O.J. No. L 274 of 5.10.2006, p.6.

⁵O.J. No. L 365 of 21.12.2006, p. 52.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 4th July, 2008.

“delivery quota” means the quantity of milk which may be delivered by a producer to a milk purchaser, in accordance with these Regulations in a milk quota year without the producer being liable to pay surplus levy;

“direct sales quota” means the quantity of milk or other milk products which may be sold or supplied for direct consumption by a producer, in accordance with these Regulations, in a milk quota year without the producer being liable to pay surplus levy;

“direct seller” means a person who is producing milk or other milk products, which may be sold or transferred free for direct consumption as milk or other milk products.

“Industrial and Provident Society” means a Society registered under the Industrial and Provident Societies Acts 1893 to 1978;

“land used for milk production” means, for the purposes of sale, inheritance or lease, all the areas used during the quota year in which at least 90% of the milk quota was last utilised, whether the land is used solely or in common for the purpose of maintaining a milk production enterprise, including land used as pasture for cows producing milk and replacement heifers and land used for forage production for feeding to such animals;

“milk production partnership” means a partnership which—

- (a) operates in accordance with the Partnership Act 1890 (53 & 54 Vict. Cap 39),
- (b) is operative for a period of no less than 5 years,
- (c) is entered in the register of milk production partnerships, and
- (d) consists of at least one producer and one other person, as provided for in detailed rules made under Regulation 41;

“milking facilities” means premises where milking is performed and where the milk is stored and cooled;

“milk quota year” means a 12-month period beginning on 1 April and ending on 31 March following;

“milk quota” means, except in relation to a quota allotted to a milk purchaser, a delivery or a direct sales quota or both;

“Minister” means Minister for Agriculture, Fisheries and Food;

“premises” includes land (including land under water) with or without buildings;

“qualified relative” means a person’s parent, grandparent, spouse, sibling, child, grandchild, uncle, aunt, nephew or niece or a person related within the same degree to his or her spouse;

“Scheme of Early Retirement from Farming” means a Community aid scheme for early retirement from farming;

“sell” includes offer, expose or keep for sale, invite an offer to buy, or distribute (whether for reward or not);

“supply” means to give without reward.

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation or the Commission Regulation shall, in these Regulations, have the same meaning as in the Council Regulation or the Commission Regulation.

Sale or supply of milk

3. (1) A producer shall not sell or supply milk unless a delivery quota or a direct sales quota attaches to land used by him or her for milk production.

(2) A producer shall not sell or supply milk unless the person to whom the milk is sold or supplied is the holder of a milk purchaser’s approval.

(3) A producer shall not sell or supply milk that has not been produced by his or her cows on a premises operated by him or her.

(4) A person shall not acquire milk produced, sold or supplied in contravention of paragraph (1).

(5) A person who contravenes or aids and abets a contravention of paragraph (3) is liable to surplus levy on all milk delivered by him or her during the quota year.

Allocation of milk quota

4. (1) The fact that a milk quota has been allocated to a producer or allotted to a milk purchaser does not confer a property right on that person.

(2) The Minister may, subject to Article 67 of the Council Regulation, allocate quota to a producer.

Purchaser

5. (1) A producer shall allot the milk quota allocated to him or her to one or more milk purchasers.

(2) The quota allotted to a purchaser at 1 April 2008 is the amount of milk that was available to the purchaser as delivery quota during the quota year commencing on 1 April 2007 adjusted to take account of any allotment of milk quota to or from the purchaser in that quota year.

Report of milk quota

6. (1) The Minister may issue a report detailing the total delivery quota allotted to a milk purchaser on a particular day, for a particular period or for a quota year.

(2) A report under paragraph (1) shall include any revision, whether by a reduction or increase, in milk quota allotted to the milk purchaser if the Minister is satisfied that a particular delivery quota or part thereof should or should not be regarded as being allotted to the milk purchaser.

(3) A milk purchaser aggrieved by a report under paragraph (1) may, within 21 days, make representations to the Minister and the Minister shall consider any representations made and confirm, amend or annul the report.

(4) If representations are not made within 21 days of the date of a report under paragraph (1) or, following representations, the report is confirmed or amended, the milk quota stated in the report or report as amended is the definitive milk quota allotted to that purchaser.

(5) A milk purchaser must reconcile the total quota established by the Minister against his or her own records and confirm that both agree.

Attachment of milk quota to land

7. (1) Subject to Article 74 of the Council Regulation and paragraphs (2) and (3) a milk quota attaches to land used for milk production by a producer.

(2) If a producer sells or otherwise disposes of all or part of the land used for milk production by him or her, the milk quota may be retained by him or her.

(3) If a milk quota is sold or leased, prior to the transfer of land, it no longer attaches to that land.

Allocation of quota by holder

8. (1) A producer shall not allocate a delivery quota or a direct sales quota to another producer other than in accordance with the Council Regulation, the Commission Regulation and these Regulations.

(2) A purported allocation of a milk quota other than in accordance with the Council Regulation, the Commission Regulation and these Regulations is null and of no effect.

(3) The maximum amount of delivery quota that a producer may allocate to another person is the amount of quota attached to land used by him or her for milk production less the amount of milk delivered by him or her in the quota year, adjusted to reflect the difference between the real fat content and the reference fat content.

(4) A person shall not sell land to which milk quota is attached if the amount of milk quota exceeds a ratio of 12,500 litres per hectare, except with the consent of the Minister.

(5) The Minister may consent to a sale under paragraph (4), attach conditions to the consent or refuse an application.

Lease of land and quota

9. (1) A person may only lease land with milk quota attached to—

- (a) a qualified relative,
- (b) a company, in which he or she holds a majority shareholding, or
- (c) a company in which milk producers hold a majority shareholding.

(2) A person who inherits land with milk quota attached may lease it to a qualified relative of the deceased person.

(3) A person shall not assign a lease of land with milk quota attached and any such purported assignment is null and of no effect.

(4) A lease to which paragraph (1) or (2) refers does not have effect until the lessee gives notice-

- (a) to the lessee's and lessor's milk purchaser, and
- (b) if he or she intends to deliver milk to a different milk purchaser than the lessor, to that milk purchaser and to the Minister.

(5) If a lease is determined on any date other than 31 March, the amount of quota reverting to the lessor for the remainder of that milk quota year is reduced by the percentage arrived at when the lessee's total milk deliveries in that milk quota year are expressed as a percentage of the lessee's total milk quota entitlement in that milk quota year.

Purchase of milk quota by lessee

10. (1) A person who—

- (a) leases land and the quota attached to that land for at least 12 months,
- (b) inherits the lessee's interest in the lease within the previous 12 months, or
- (c) was assigned a lease of land to which quota is attached by the lessee before 1 April 2000,

may, on determination of the lease, purchase the milk quota (or part thereof) with or without purchasing the land.

(2) A purchase to which paragraph (1) refers does not have effect until the purchaser gives notice-

- (a) to the milk purchaser to whom the quota is allotted, and
- (b) if he or she intends to deliver milk to a different milk purchaser, to that milk purchaser and to the Minister.

Family transactions

11. (1) A producer may acquire milk quota from a qualified relative.

(2) A transaction to which paragraph (1) refers does not have effect until the producer gives notice—

(a) to the milk purchaser to whom the quota is allotted, and

(b) if he or she intends to deliver milk to a different milk purchaser, to that milk purchaser and to the Minister.

(3) If the milk purchaser does not receive notice under paragraph (2) by 31 January in the year of transfer, the milk purchaser shall not record that quota as being available to the producer until the beginning of the quota year following that date.

(4) In paragraph (1), “producer” includes a company to which Regulation 9(1)(b) or (c) refers.

Early retirement from farming

12. (1) If a lease of land and quota, approved under a scheme of early retirement from farming, is determined and—

(a) in the case of a lease that was operative before 1 April 2000, a new lease is signed within 6 months whether or not the lessee is the same, or

(b) in the case of a lease operative on or after 1 April 2000, a new lease is signed within 6 months and the lessee is the same or is a qualified relative of the lessor,

a person may apply to the Minister for consent to the allocation of the quota to the lessee.

(2) The Minister may consent to the allocation of quota under paragraph (1), attach conditions to the consent or refuse the application.

Older leases

13. (1) If a lease of land and quota, assigned by the original lessee to a person before 1 April 2000, is determined, the assignee remains entitled to the benefit of the quota if he or she signs a new lease within 6 months of the determination of the original lease.

(2) On determination of a lease of land used for milk production, the quota reverts to the lessor unless Regulation 10 or 15 are availed of.

Notice of acquisition of quota

14. (1) If a person acquires a milk quota, other than in accordance with Regulations 9, 10 or 11, he or she shall within 3 months of the acquisition or before 31 December in that quota year, whichever is the earlier, give notice—

- (a) to the milk purchaser to whom that quota was allotted at time of acquisition, and
- (b) if he or she intends to deliver milk to a different milk purchaser, to that milk purchaser and to the Minister.

(2) Acquisition of a milk quota shall not be effective until the beginning of the following quota year unless notification under paragraph (1) is made no later than 31 December in a quota year.

(3) The time limits specified in paragraphs (1) and (2) do not apply where milk quota is acquired by inheritance or gift.

Reversion of quota

15. (1) A lessor is not entitled to any milk quota established independently of the lease.

(2) In anticipation of determination of a lease, the lessee may apply to the Minister for a declaration that he or she may retain the milk quota established independently of the lease.

(3) An application for a declaration under paragraph (2) shall be in a form, contain such information and be accompanied by such documents as the Minister may request.

(4) The Minister may grant a declaration under paragraph (2) in respect of the whole amount of a milk quota or part of a quota, attach conditions to a declaration or refuse an application.

Statement to producer

16. The statement referred to in Article 8(1) of the Commission Regulation shall include the milk quota available to the producer for delivery to the purchaser.

Statement of purchaser

17. (1) The statement referred to in Article 8(2) of the Commission Regulation shall include, for each producer, all the information outlined in the first and second subparagraphs of that paragraph.

(2) The statement referred to in paragraph (1) shall identify each producer with a milk quota allotted to the purchaser making the statement who—

- (a) did not deliver milk to, or
- (b) delivered less than 70 per cent of available quota,

to the purchaser during the quota year or the previous quota year.

(3) The statement referred to in paragraph (1) shall include the number of persons who made deliveries to the purchaser during the quota year.

(4) The statement referred to in Article 11(1) of the Commission Regulation shall include, where appropriate, the information specified in the second subparagraph of Article 11(2) of the Commission Regulation.

(5) The statements referred to in paragraphs (1) and (4) shall be signed by a person who exercises functions of management in relation to the person making the statement.

Surrender of milk quota

18. The Minister may accept the surrender of all or part of the milk quota allocated to a person into the national reserve.

Direct Sales Milk Quota Restructuring Scheme

19. (1) In accordance with Article 75 (1)(b) of the Council Regulation, the Minister may introduce a scheme, (“Direct Sales Milk Quota Restructuring Scheme”), for the surrender of direct sales milk quota at the end of each milk quota year and the reallocation of the surrendered quota at the beginning of the subsequent milk quota year.

(2) The Minister shall set the rate of payment for surrendered quota and the reallocation price.

(3) A person who surrenders all or part of his or her milk quota pursuant to a Direct Sales Milk Quota Restructuring Scheme is not entitled to benefit from a reallocation of quota under a Direct Sales Milk Quota Restructuring Scheme.

(4) In accordance with Article 75 of the Council Regulation, the Minister may determine priority categories of direct sellers who may obtain quota available for reallocation under a Direct Sales Milk Quota Restructuring Scheme.

(5) Milk quota purchased under this Regulation may not be allocated to another person.

Milk quota trading scheme

20. (1) The Minister may, in respect of each quota year, introduce a Milk Quota Trading Scheme, whereby producers may offer to purchase or sell delivery quota via an exchange-type system.

(2) The scheme shall comprise—

(a) a maximum price priority pool, and

(b) a market exchange.

(3) A specified percentage of each quota offered for sale will be sold to the maximum price priority pool, irrespective of whether the remainder of the quota offered for sale is sold on the market exchange.

(4) In accordance with Article 75 of the Council Regulation, the Minister shall determine the categories of producers who may be given priority to purchase quota from the maximum price priority pool.

(5) A Milk Quota Trading Scheme shall be managed by the Minister, subject to the detailed terms and conditions of the scheme as published from time to time.

(6) The Minister shall, when inviting applications under a Milk Quota Trading Scheme, publish a notice in a newspaper published and circulating in the State, outlining the main conditions of the scheme.

(7) An application to sell or purchase quota under a Milk Quota Trading Scheme shall be in a form, contain such information and be accompanied by such documents as the Minister may request.

Temporary leasing scheme

21. (1) The Minister may, in respect of each quota year, introduce a scheme under Article 73 of the Council Regulation for the temporary transfer of milk quota (“temporary leasing scheme”).

(2) The Minister will publish detailed rules for the operation of a temporary leasing scheme.

(3) A producer, who has utilised at least 20 per cent of the milk quota allocated to him or her, may, without prejudice to paragraph (4), offer for temporary transfer a part of a milk quota allocated to him or her.

(4) Notwithstanding paragraph (3), a person may, in a case of force majeure or in other duly justified circumstances, apply in writing to the Minister for approval to make a temporary transfer of 80 per cent or more of the milk quota allocated to him or her.

(5) The Minister may determine, in accordance with the second paragraph of Article 73 of the Council Regulation, the categories of producers who may benefit from the quota made available by way of temporary transfer under the temporary leasing scheme.

(6) The Minister shall, when introducing a temporary leasing scheme, publish a notice in a newspaper published and circulating in the State, detailing the main conditions of the scheme.

Allocation of unused quotas

22. The Minister may specify the priority categories of producers determined in accordance with Article 16 of the Commission Regulation who shall benefit from Article 84 of the Council Regulation.

Permanent transfer between direct sales and deliveries

23. (1) A producer may convert quota from one reference quantity to the other with the permission of the Minister in accordance with this Regulation.

(2) The Minister may grant permission to convert quota from one reference quantity to the other or refuse an application.

(3) An application under paragraph (1) must be received by the Minister before the closing date and shall be in a form, be accompanied by such material and contain such particulars as the Minister requires.

(4) If the Minister proposes to refuse an application, he or she shall—

- (a) notify the producer in writing of the proposal and the reasons for the proposal and that he or she may make representations in relation to the proposal to the Minister within 14 days of the date of the notification,
- (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the producer of the decision and the reasons for the decision.

Approval of milk purchasers

24. (1) A person shall not operate as a milk purchaser other than in accordance with an approval granted for the purposes of Article 82 of the Council Regulation and Article 23 of the Commission Regulation (“milk purchaser’s approval”).

(2) The Minister may grant a milk purchaser’s approval, attach conditions to a milk purchaser’s approval, revoke or vary a condition, suspend or withdraw a milk purchaser’s approval or refuse an application.

(3) An application for a milk purchaser’s approval shall be made in a form, be accompanied by any material and contain any particulars that the Minister specifies.

(4) The Minister shall not consider an application for a milk purchaser’s approval if the application does not contain all the material and particulars sought by the Minister.

(5) Without prejudice to the generality of paragraph (2), the Minister may refuse an application or withdraw a milk purchaser’s approval if—

- (a) the applicant or person to whom a milk purchaser’s approval is granted has failed to comply with a condition attached to a milk purchaser’s approval,
- (b) the applicant or person to whom a milk purchaser’s approval is granted is not, in the opinion of the Minister, a fit and proper person for approval,
- (c) in relation to the application, information required has not been furnished or information that is, in the opinion of the Minister, false or misleading has been furnished, or
- (d) it is, in the opinion of the Minister—

- (i) necessary to prevent the risk or spread of animal or human disease,
 - (ii) necessary to eradicate animal or human disease, or
 - (iii) necessary, incidental, supplementary or consequential for the purposes of giving effect to an act of the institutions of the European Communities.
- (6) Other than in the case of paragraph (7), if the Minister proposes to suspend or withdraw a milk purchaser's approval, or to refuse an application, he or she shall—
- (a) notify the applicant or holder of the milk purchaser's approval in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to the Minister in relation to the proposal within 21 days of the notification,
 - (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
 - (c) notify the applicant or holder of the milk purchaser's approval of the decision and the reasons for the decision.
- (7) If the Minister is of the opinion that it is necessary to prevent the risk of disease or to give effect to an Act of an institution of the European Communities he or she may withdraw a milk purchaser's approval in accordance with paragraph (8).
- (8) If the Minister withdraws a milk purchaser's approval in accordance with this paragraph, he or she shall—
- (a) notify the holder of the milk purchaser's approval in writing of the decision and the reasons for the decision, and that he or she may make representations to the Minister in relation to the decision within 21 days of the date of the notification,
 - (b) consider a representation made, and
 - (c) confirm, modify or annul the decision and notify the former holder of the milk purchaser's approval of the decision and the reasons for the decision.
- (9) A person to whom a milk purchaser's approval is granted shall make such returns to the Minister as and when, and in such form as, the Minister may from time to time direct.
- (10) A person who, immediately before the revocation of the Regulations revoked by Regulation 44, was registered under Part VI of those Regulations is considered to be the holder of a milk purchaser's approval and may be dealt with as if approved under this Regulation.

(11) The Minister shall maintain and publish, in a manner that he or she considers appropriate, a list of approvals granted under this Regulation, divide the list into different classes and include such information as he or she considers appropriate on the list.

(12) If the Minister withdraws a milk purchaser's approval under this Regulation or the approval expires by effluxion of time, an entry on the list maintained under paragraph (11) ceases to have effect and the Minister shall, as soon as may be after withdrawing the approval remove details of the withdrawn approval from the list.

Register of direct sellers

25. (1) A person shall not operate as a direct seller unless he or she is entered in the Register of Direct Sellers.

(2) The Minister may grant registration in the Register of Direct Sellers, attach conditions to registration, revoke or vary a condition, suspend or withdraw registration or refuse an application.

(3) An application for registration in the Register of Direct Sellers shall be made in a form, be accompanied by any material and contain any particulars that the Minister specifies.

(4) The Minister shall not consider an application for registration in the Register of Direct Sellers if the application does not contain all the material and particulars sought by the Minister.

(5) Without prejudice to the generality of paragraph (2), the Minister may refuse an application or withdraw registration in the Register of Direct Sellers if—

- (a) the applicant or person to whom registration is granted has failed to comply with a condition attached to registration,
- (b) the applicant or person to whom registration is granted is not, in the opinion of the Minister, a fit and proper person for registration,
- (c) in relation to the application, information required has not been furnished or information that is, in the opinion of the Minister, false or misleading has been furnished, or
- (d) it is, in the opinion of the Minister—
 - (i) necessary to prevent the risk or spread of animal or human disease,
 - (ii) necessary to eradicate animal or human disease, or
 - (iii) necessary, incidental, supplementary or consequential for the purposes of giving effect to an act of the institutions of the European Communities.

(6) Other than in the case of paragraph (7), if the Minister proposes to suspend or withdraw registration in the Register of Direct Sellers, or to refuse an application, he or she shall—

- (a) notify the applicant or registered person in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to the Minister in relation to the proposal within 21 days of the notification,
- (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the applicant or registered person of the decision and the reasons for the decision.

(7) If the Minister is of the opinion that it is necessary to prevent the risk of disease or to give effect to an Act of an institution of the European Communities he or she may withdraw registration in the Register of Direct Sellers in accordance with paragraph (8).

(8) If the Minister withdraws registration in the Register of Direct Sellers in accordance with this paragraph, he or she shall—

- (a) notify the registered person in writing of the decision and the reasons for the decision, and that he or she may make representations to the Minister in relation to the decision within 21 days of the date of the notification,
- (b) consider a representation made, and
- (c) confirm, modify or annul the decision and notify the former registered person of the decision and the reasons for the decision.

(9) A person to whom registration in the Register of Direct Sellers is granted shall make such returns to the Minister as and when, and in such form as, the Minister may from time to time direct.

(10) A person who, immediately before the revocation of the Regulations revoked by Regulation 44, was a person to whom Regulations 53 and 54 of those Regulations applied is considered to be registered in the Register of Direct Sellers and may be dealt with as if registered under this Regulation.

(11) The Minister shall maintain and publish, in a manner that he or she considers appropriate, the Register of Direct Sellers, divide the list into different classes and include such information as he or she considers appropriate on the list.

(12) If the Minister withdraws registration in the Register of Direct Sellers, an entry on the list maintained under paragraph (11) ceases to have effect and the Minister shall, as soon as may be after withdrawing the registration remove details of the withdrawn registration from the list.

Allotment of quota to purchaser

26. (1) A person may allot a milk quota (or part of a milk quota) attached to his or her land to a milk purchaser only in accordance with this Regulation.

(2) An allotment of milk quota under paragraph (1) takes effect, on the quarter day that occurs three months after notice of the allotment is given (“effective date”).

(3) In this Regulation “quarter day” means 1 January, 1 April, 1 July or 1 October in any year.

(4) A person who wishes to allot a milk quota under paragraph (1) shall, not later than three months and one working day before the allotment is to have effect, send by registered post a notice of his or her intention to allot the delivery quota to his or her existing milk purchaser and to the proposed milk purchaser.

(5) An allotment purported to be made under this Regulation is null and of no effect if-

(a) prior to the effective date, the producer has delivered the total milk quota attached to his or her land to his or her existing milk purchaser,

(b) the effective date is other than 1 April, in respect of any part of the quota delivered since 1 April preceding (fat-adjusted in accordance with Article 10 (1) of the Commission Regulation), or

(c) the producer does not make a delivery to the proposed new milk purchaser within three months of the effective date.

(6) A milk purchaser to whom milk quota is allotted under this Regulation shall apply to the Minister for an adjustment of the milk quota allotted to that milk purchaser within 2 months of commencement of the supply of milk from such quota.

(7) The Minister shall give notice in writing to the milk purchaser to whom the quota was formerly allotted of an application referred to in paragraph (6).

(8) Notwithstanding paragraph (2), a producer may apply in writing to the Minister for approval for the allotment of the delivery quota allocated to him or her, in whole or in part from his or her existing milk purchaser to another milk purchaser with effect from a date other than a quarter day, if-

(a) he or she holds quota attached to both milk purchasers concerned and the allotment is for the remainder of that milk quota year only,

(b) he or she intends to supply milk to a newly approved milk purchaser,

(c) he or she buys milk quota previously leased by him or her under Regulation 10,

(d) he or she buys milk quota under Regulation 11,

(e) he or she acquires land to which quota is attached, or

(f) if the producer becomes a member of a milk production partnership.

(9) On receipt of an application under paragraph (8), the Minister shall give notice in writing to the relevant milk purchasers and shall give each of them an opportunity to state his or her views in writing before reaching a decision on whether to approve the application.

(10) If the Minister approves an application under paragraph (8), he or she may do so with effect from a date other than that specified in the application and may attach conditions in relation to the approval or in relation to the giving of notices to the existing and new milk purchaser.

Records

27. A person shall maintain for a period of three years records to be kept in accordance with the Council Regulation and the Commission Regulation and make them available on demand by an authorised officer.

Fat content

28. (1) A milk purchaser shall determine or cause to be determined the fat content of samples taken from milk delivered to him or her by each producer at such intervals as may be specified in a notice sent by the Minister to the milk purchaser.

(2) A milk purchaser shall send to each producer, within 2 months, notice of determination of the fat content of milk delivered by the producer.

(3) A milk purchaser shall retain the primary record of any test and a record of all notifications made under paragraph (2) for a period of 3 years from the end of the milk quota year in which the test is performed or the notification is made.

(4) For the purposes of paragraph (1), the determination of fat content shall be made in accordance with the Gerber method as referred to in the publication of the Institute for Industrial Research and Standards entitled “Determination of the Percentage of Fat in Milk (I.S. 66: 1955)” or any other method specified by the Minister for the purpose in a notice in writing sent to a milk purchaser.

Collection of surplus levy

29. (1) A purchaser may recover surplus levy from a producer—

(a) by deducting the amount due from any sum payable or becoming payable to the producer, or

(b) as a simple contract debt in a court of competent jurisdiction.

(2) The Minister may recover surplus levy from a producer or purchaser—

(a) by deducting the amount due from any sum payable or becoming payable to the producer or purchaser, or

(b) as a simple contract debt in a court of competent jurisdiction.

Deduction of levy by milk purchaser

30. (1) In accordance with Article 80 of the Council Regulation, if, during a quota year, the quantities delivered by a producer exceed his or her available milk quota allotted to that milk purchaser, the milk purchaser may deduct from the sums owed to the producer, an amount of levy that would otherwise be payable by the producer.

(2) The milk purchaser shall pay all amounts deducted under paragraph (1) into a bank account kept by him or her for that purpose.

(3) A milk purchaser shall not use monies deducted under paragraph (1) other than to pay levy to the Minister or to refund the producer.

(4) If the amount deducted in respect of potential levy exceeds the amount of levy actually payable by an individual producer, the milk purchaser shall refund the overpayment and any interest pertaining thereto to the producer.

Certification of outstanding levy

31. In any proceedings for the recovery of an amount due in respect of levy, interest or a penalty imposed under these Regulations, the Council Regulation or the Commission Regulation, a certificate purporting to be signed by an officer of the Minister certifying that he or she has inspected the records of the Minister relating to a particular milk purchaser, producer or a direct seller, and that

- (a) the milk purchaser failed to recover an amount specified in the certificate from a producer or producers so specified, or
- (b) the milk purchaser, direct seller or producer is liable to pay to the Minister levy, interest or a penalty totalling the amount specified in the certificate,

is, without proof of the signature of that person, or that such person is an officer of the Minister, be evidence of the facts so certified until the contrary is shown.

Register of milk production partnerships

32. (1) A person shall not—

- (a) act as a partner in a milk production partnership,
- (b) sell or supply milk as a partner in a milk production partnership,

unless he or she and the partnership is entered in the register under paragraph (2) in respect of that milk production partnership (“register of milk production partnerships”).

(2) Teagasc shall maintain and publish, in a manner that it considers appropriate, the register of milk production partnerships, divide the register into different categories and include such information as it considers appropriate on the register.

(3) Teagasc may grant registration in the register of milk production partnerships, attach conditions to registration, revoke or vary a condition, suspend or withdraw registration or refuse an application.

(4) An application for registration in the register of milk production partnerships shall be made in a form, be accompanied by any material and contain any particulars that Teagasc specifies.

(5) Registration in the register of milk production partnerships is valid for one year unless determined at an earlier date.

(6) Teagasc shall not consider an application for registration in the register of milk production partnerships if the application does not contain all the material and particulars sought by Teagasc or is not accompanied by the fee set under Regulation 40 (if any).

(7) Without prejudice to the generality of paragraph (3), Teagasc may refuse an application or withdraw registration in the register of milk production partnerships if—

- (a) the applicant or person to whom registration is granted has failed to comply with a condition attached to registration,
- (b) the applicant or person to whom registration is granted is not, in the opinion of Teagasc, a fit and proper person for registration,
- (c) in relation to the application, information required has not been furnished or information that is, in the opinion of Teagasc, false or misleading has been furnished, or
- (d) it is, in the opinion of Teagasc—
 - (i) necessary to prevent the risk or spread of animal or human disease,
 - (ii) necessary to eradicate animal or human disease, or
 - (iii) necessary, incidental, supplementary or consequential for the purposes of giving effect to an act of the institutions of the European Communities.

(8) Other than in the case of paragraph (9), if Teagasc proposes to suspend or withdraw registration in the register of milk production partnerships, or to refuse an application, it shall—

- (a) notify the applicant or registered person in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to Teagasc in relation to the proposal within 21 days of the notification,

- (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the applicant or registered person of the decision and the reasons for the decision.

(9) If Teagasc is of the opinion that it is necessary to prevent the risk of disease or to give effect to an Act of an institution of the European Communities it may withdraw registration in the register of milk production partnerships in accordance with paragraph (10).

(10) If Teagasc withdraws registration in the register of milk production partnerships in accordance with this paragraph, it shall—

- (a) notify the registered person in writing of the decision and the reasons for the decision, and that he or she may make representations to Teagasc in relation to the decision within 21 days of the date of the notification,
- (b) consider a representation made, and
- (c) confirm, modify or annul the decision and notify the former registered person of the decision and the reasons for the decision.

(11) If Teagasc refuses an application or suspends or withdraws registration in the register of milk production partnerships, a person affected may, within 21 days, appeal the determination to the Minister.

(12) An appeal under paragraph (11) shall include a statement of the reasons, having regard to the reasons given by Teagasc for the determination, why the appeal should be allowed.

(13) The Minister may confirm a determination made by Teagasc or allow an appeal but, if an appeal is allowed against a determination made by Teagasc under paragraph (10), without prejudice to the operation of that paragraph pending the determination of the appeal.

(14) If the Minister allows an appeal under paragraph (11), he or she shall inform Teagasc which shall enter the name and details of the person affected in the register of milk production partnerships.

(15) A person to whom registration in the register of milk production partnerships is granted shall make such returns to Teagasc as and when, and in such form as, Teagasc may from time to time direct.

(16) A person who, immediately before the revocation of the Regulations revoked by Regulation 44, was registered under Regulation 8 of those Regulations is considered to be registered in the register of milk production partnerships and may be dealt with as if registered under this Regulation.

(17) If Teagasc withdraws registration in the register of milk production partnerships or it expires through effluxion of time, an entry on the register maintained under paragraph (2) ceases to have effect and Teagasc shall, as soon as may be after withdrawing the registration remove details of the withdrawn approval from the list.

(18) In any proceedings, a certificate purporting to be signed by an officer of Teagasc stating that on a specified day or days or during a specified period the name of a particular person or partnership was either-

- (a) entered on the register of milk production partnerships,
- (b) not entered on the register of milk production partnerships or
- (c) the name of a person or partnership was erased from the register of milk production partnerships on a specified date,

is, without proof of the signature of the person purporting to issue the certificate or that he or she is an officer of Teagasc, be evidence, unless the contrary is shown, of the matters stated in the certificate.

(19) A person may not be a partner in more than one milk production partnership.

(20) The register of milk production partnerships shall be open for inspection at such times as Teagasc may determine..

Appointment of authorised officer

33. (1) The Minister may appoint such and as many persons as he or she sees fit to be authorised officers for the purposes of some or all of these Regulations.

(2) An authorised officer shall be issued with a warrant of appointment and shall, when exercising or seeking to exercise any power under these Regulations, if requested by the person affected, produce the warrant to that person and a form of personal identification.

(3) An appointment as an authorised officer ceases-

- (a) if the Minister terminates the appointment, whether or not the appointment was for a fixed period,
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

Functions of authorised officer

34. (1) If an authorised officer has cause to suspect that—

- (a) milk or a milk product is present, has been present or may be present on a premises,
- (b) milk or a milk product is or has been processed, stored or otherwise dealt with on a premises,
- (c) a document relating to milk or a milk product is present, was present or may be present on a premises, or
- (d) an offence is being or has been committed under these Regulations,

the authorised officer may enter the premises and he or she may—

- (i) search the premises,
- (ii) stop a person, vehicle, vessel or container,
- (iii) board and search a vehicle, vessel or container,
- (iv) search a person, where the authorised officer considers it necessary,
- (v) examine milk or a milk product, a vehicle, vessel, container or other thing that may, consist of or contain milk or a milk product,
- (vi) take, without payment, samples of milk or a milk product or other thing or an article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as is necessary) any milk or a milk product, a vehicle or container,
- (viii) require the production of a document or thing relating to milk or a milk product, a vehicle, vessel or container,
- (ix) retain a document or thing (for so long as is necessary),
- (x) dispose of, or require the owner or person in charge of or in possession of, milk or a milk product to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, the milk or a milk product) in a manner that the authorised officer sees fit,
- (xi) give a direction to, or request information of, a person regarding milk or a milk product, or a premises as he or she considers necessary,

- (xii) require the name and address of a person and the name and address of any other relevant person including the person to whom milk or a milk product is being delivered or who is causing it to be delivered,
- (xiii) require of a person the ownership, identity and origin of milk or a milk product, or
- (xiv) mark or otherwise identify milk or a milk product or a specimen taken under subparagraph (vi).

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 35 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of milk or a milk product as may be specified by the authorised officer.

(7) Nothing in this Regulation operates to prejudice any power to search, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(9) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a power conferred on him or her by these Regulations.

Search warrant

35. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting-

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was milk or a milk product or equipment or other thing made or adapted for use (including manufacture and transport) in connection with milk or a milk product, or
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on the premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

(3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Assistance to authorised officer

36. A person shall give any assistance requested to an authorised officer or person who accompanies an authorised officer.

Obstruction, etc

37. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of his or her functions under Regulation 34,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 34,
- (c) in making an application under these Regulations in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 34—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular,
- (d) tamper or otherwise interfere with a sample taken under Regulation 34, or

- (e) aid or abet a contravention of an act of the institutions of the European Communities cited in the preamble to these Regulations or in these Regulations.

Forgery

38. (1) A person shall not forge or utter knowing it to be forged a Certificate or declaration issued under these Regulations or a record purporting to be kept and maintained under the Council Regulation, Commission Regulation, Council Regulation (EEC) No. 4045/89 or these Regulations or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as “a forged document”).

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered a certificate or declaration, commercial document, an approval or licence granted under the European Regulation or these Regulations or a record kept and maintained under the European Regulation or Council Regulation (EEC) No. 4045/89 or these Regulations or an extract therefrom (hereafter in this Regulation referred to as “an altered document”).

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Service

39. (1) A notification or communication under these Regulations (hereinafter in this Regulation referred to as a “notification”) shall, subject to paragraph (2), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address, or
- (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notification relates to a premises, by delivering it to some person over 16 years of age resident or employed on the premises or by affixing it in a conspicuous position on or near the premises.

(2) If a notification is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner or, as the case may require, the occupier.

(3) For the purposes of this Regulation, a company within the meaning of the Companies Acts 1963 to 1990, is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Fees

40. (1) Teagasc may from time to time set and charge a fee in respect of an application for entry onto the register of milk production partnerships.

(2) If Teagasc charges a fee in relation to an application under these Regulations, Teagasc shall not consider the application unless the fee accompanies the application.

(3) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a fee charged pursuant to this Regulation.

Detailed rules

41. (1) The Minister may make detailed rules relating to—

- (a) allocation of milk quota,
- (b) attachment of milk quota to land,
- (c) milk production partnerships,
- (d) appeals under Regulation 32(10),
- (e) a direct sales milk quota restructuring scheme,
- (f) a milk quota trading scheme, or
- (g) a temporary leasing scheme.

(2) The Minister may amend or revoke rules made under paragraph (1).

(3) Without prejudice to the generality of paragraph (1), rules under this Regulation may include provisions relating to-

- (a) the lease, purchase, gift, inheritance or sale of quota,
- (b) eligibility to participate in a scheme referred to in paragraph (1) or in a milk production partnership,
- (c) eligibility of persons to lease, purchase, inherit, acquire, gift or sell quota,
- (d) the price of quota,
- (e) categories of milk production partnerships,
- (f) conditions for different categories of partnerships,
- (g) off-farm income limits, or
- (h) any other matter that appears to the Minister to be supplementary, ancillary or necessary for the rules to have full effect.

(4) In any proceedings, evidence of detailed rules made under this Regulation may be given by producing a copy of the detailed rules which has endorsed on it a certificate purporting to be signed by an officer of the Minister stating that the copy is a true copy, which copy is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the detailed rules.

Form of notice, etc

42. (1) A consent under Regulation 8(5) or 12(2), a notice under Regulation 9(4), 10(2), 11(2), 14 or 26(10) a declaration under Regulation 15, an approval under Regulation 26(10), a statement under Regulation 16 or 17 or an appeal under Regulation 32(11) shall be in a form, contain such information and be accompanied by any document, as the Minister may require.

(2) If a person required to apply for a consent under Regulation 8(5) or 12(2), give notice under Regulation 9(4), 10(2), 11(2), 14 or 26(10) or make an application for a declaration under Regulation 15 or an approval under Regulation 26(10)—

- (a) fails to apply for the consent, give the notice or make the application, or
- (b) fails to apply for the consent, give the notice or make the application in the form required by the Minister,

the milk quota concerned reverts to the national reserve.

Offences, etc

43. (1) A person who, by act or omission, contravenes—

- (a) Article 8(1), (2), 11(1), (2) or 24 of the Commission Regulation,
- (b) Regulation 3, 7(5), 8(1), 17, 24(1), 25(1), 27, 28, 32(1) or (16), 37 or 38 of these Regulations,

commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or to both.

(2) An offence under these Regulations may be prosecuted by the Minister.

(3) If an offence under any of these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance of, or to be attributable to the wilful neglect on the part of any person being a director, manager, secretary or other officer of that body, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she was guilty of an offence.

(4) If the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with

the functions of management as if the member were a director or manager of the body corporate.

(5) In any proceedings, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(6) Paragraph (5) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Revocations and saver

44. (1) The following are revoked—

- (a) the European Communities (Milk Quota) (Amendment) Regulations 2000 (S. I. No. 94 of 2000),
- (b) the European Communities (Milk Quota) (Amendment) Regulations 2002 (S. I. No. 97 of 2002),
- (c) the European Communities (Milk Quota) (Teagasc) Regulations 2002 (S. I. No. 496 of 2002),
- (d) the European Communities (Milk Quota) (Amendment) Regulations 2003 (S. I. No. 123 of 2003),
- (e) the European Communities (Milk Quota) (Amendment) Regulations 2004 (S. I. No. 208 of 2004),
- (f) the European Communities (Milk Quota) (Amendment) Regulations 2005 (S. I. No. 177 of 2005),
- (g) the European Communities (Milk Quota) (Amendment) Regulations 2006 (S. I. No. 189 of 2006),
- (h) the European Communities (Milk Quota) (Amendment) (No. 2) Regulations 2006 (S. I. No. 284 of 2006), and
- (i) the European Communities (Milk Quota) (Amendment) (No. 3) Regulations 2006 (S. I. No. 508 of 2006).

(2) Notwithstanding paragraph (1), levy payable in respect of any milk quota year before 1 April 2008 may be certified and collected as if it was due in respect of surplus levy.



GIVEN under my Official Seal,
24 June 2008

BRENDAN SMITH.
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

These Regulations provide ancillary measures to facilitate the European milk quotas regime having full effect.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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