



**MILK QUOTA  
REGULATIONS  
2004**

**T**he Regulations currently governing Milk Quotas are as follows:-

1. European Communities (Milk Quota) Regulation 2000 (SI No.94/2000).
2. European Communities (Milk Quota) (Amendment) Regulations 2002 (SI No. 97/2002).
3. European Communities (Milk Quota) (Amendment) Regulations 2003 (SI No. 123/2003).
4. European Communities (Milk Quota) (Amendment) Regulations 2004 (SI No. 208/2004).

**Conveyancing Comment**

Regulation 4 of the 2004 regulations is now the main regulation dealing with the sale of Milk Quotas. (It replaces the original Regulation 7 in the 2000 Regulations.)

To transfer quota under this regulation, the Minister must issue a certificate in the form set out in the First Schedule of the Milk Quota Regulations. To apply for this certificate, application must be made in the form as set out in the Second Schedule of the Milk Quota Regulations.

In granting the certificate the Minister will be certifying the following:-

- (a) The amount of milk quota which the purchaser is acquiring.
- (b) The land to which this milk quota is attached.

As a result of this a purchaser has a guarantee from the Department of Agriculture in relation to the above two matters.

In drafting Contracts for Sale, solicitors for the parties need to be aware of the possibility that the Ministerial certificate may not correspond with what has been agreed between the parties as to the amount of milk quota attaching to the lands. There should be a special condition in the Contract for Sale to cover this eventuality.

However, it is still necessary to identify how much of the annual milk quota is available to the purchaser where the vendor has been producing milk quota during the current milk year.

The ring fencing of milk quotas still exists and therefore is a matter of pre-contract enquiry for the purchaser to ensure that he can “bring the milk quota home” after it has been purchased.



The protection given to a purchaser by the Ministerial Certificate of Entitlement to transfer Milk Quota applies only to transfers of Quota made pursuant to Regulation 4 of the 2004 Regulations. No such protection is afforded in other cases such as family transfers and Lessees purchasing land and quota. In these cases the purchaser's solicitor must be satisfied that the vendor has correctly identified his milk producing land and quota attached to that land. To deal with this, the Requisitions on Title have been broken up so as to cover the different possibilities.

#### **Family Transfers (Regulation 6 of the 2000 Regulations)**

In any case where the parties are in the relationship set out in this regulation land and quota may transfer together. Under this regulation all the transferor's milk quota passes to the transferee. This includes milk quota purchased under any restructuring scheme. Where there is a sale of land and milk quota any quota purchased under a restructuring scheme does not transfer.

So as to avoid land and quota being transferred by virtue of a chain to different relations, Paragraph 3 provides that the milk quota will not transfer with the land if there is a subsequent transfer within two years unless the Minister grants approval for the transfer.

Where a quota is transferred under this regulation it stays attached to the land until the 31<sup>st</sup> March, 2008 unless there is a subsequent transfer.

#### **Transfer of Land and Milk Quota (Regulation 4 of the 2004 Regulations) (Formerly Regulation 7 of the 2000 Regulations)**

Under this regulation, a quota holder may apply to the Minister for Agriculture for a certificate permitting the sale of land and milk quota (known as a "Certificate of Entitlement to transfer Milk Quota"). There are a number of conditions in the regulation which must be complied with before the Minister will grant the certificate. In framing a contract for sale, a vendor's Solicitor will need to be familiar with these conditions so as to ensure that the correct amount of milk quota is identified as going with the land in sale. A purchaser is less concerned about these items because he will be entitled to rely on the certificate issued by the Minister (see the first schedule of the regulations). However, the purchaser's solicitor will need to ensure that the contract provides for the eventuality where the milk quota as certified by the Minister is different from the milk quota as provided for in the contract for sale. This problem will not arise if the Ministerial certificate is obtained before the property is sold.

The second line of this regulation refers to paragraph 8 of Regulation 26 of the 2000 Regulations. Under that paragraph, any portion of a vendor's milk quota which has been purchased under a restructuring scheme is not available for transfer to a purchaser.

## **MILK QUOTA REGULATIONS 2004**

(Contd.)



**MILK QUOTA  
REGULATIONS  
2004**

(Contd.)

Paragraph 8 of Regulation 26 states “milk quota purchased under the provisions of this regulation shall not be transferred in the case of a transfer of land and milk quota by way of sale under Regulation 6 and 7”.

Regulation 4 of the 2004 Regulations applies to inheritances where the beneficiary is not a relation of the deceased owner. Such a beneficiary would not be entitled to retain ownership of the quota unless he is entitled to obtain the benefit of Regulation 4 of the 2004 Regulations.

In order to obtain the benefit of this Regulation, the applicant must apply before the transfer or assent is executed. This could be a pitfall for the unwary. (However, it would arise only in cases where the beneficiary is not related to the deceased quota owner.)

**Regulation 8 - Partnership**

The 2002 Regulations as amended by the 2004 Regulations deal with all aspects of Farm Partnerships so far as they relate to Milk Quotas.

**Purchase of Milk Quota by a Lessee**

Purchase of Milk Quota by a lessee is now governed by Regulation 6 of the 2004 Regulations which replaces the original Regulation 9 of the 2000 Regulations.

This provides that were a lessee has held land and quota for not less than twelve months he may, with the agreement of the lessor purchase all or part of the milk quota without purchasing the land.

**Renewal of Leases**

This is covered by Regulation 10 of the 2000 Regulations. It provides that if there is a lease in existence, that the parties may renew the lease so that the tenant can continue to get the benefit of the milk quota. Such leases must be renewed within six months of their expiry.

**Farm Retirement Leases**

Regulation 10 of the 2000 as amended by Regulation 2 of the 2003 Regulations provides that where a lessee of land and milk quota does not renew the lease after it expires (for example, the usual five year lease) the lessor may, with the consent of the Minister for Agriculture, lease the land and milk quota to another lessee qualified under the Farm Retirement Scheme.



## OTHER MATTERS

### 1. Attachment of Quota to Land until the 31<sup>st</sup> March, 2008

There are various instances under the regulations where the quota is deemed to attach to the land until 2008. Where quota so attaches then, for example, Regulation 19 (Certificates of Retention) and Regulation 20 (Certificate of Attachment) of the 2000 Regulations do not apply to such quotas.

### 2. Quota not attached to Land

Regulation 4(5) of the 2000 Regulations states “where the amount of milk deliveries or sales referred to in Paragraph (2) was achieved entirely or partly on land held by the producer under a lease or licence or other limited interest then, for the purpose of these regulations no quota shall be deemed to be attached to any land except in accordance with a Certificate of the Minister given under Paragraph (6).”

Because in the sale situation the Minister will be giving his certificate this paragraph should not be a problem. However, in theory, in the family transfer situation all the documentation could be invalid where the necessary Ministerial certificate has not been obtained and where the transferor has land leased which was used for the purpose of milk production.

### 3. Transfer of Quota Land with the Quota being retained by the Vendor (Regulation 18 of the 2000 Regulations)

This regulation continues the system whereby vendors may obtain certificates of retention and certificate of transfer in relation to milk quotas. A certificate of retention or a certificate of transfer may not be obtained under this regulation in any of the following cases namely:-

1. Land acquired under a family transfer after the 1<sup>st</sup> April, 2000.
2. Land acquired under a permanent transfer pursuant to Regulation 7 after the 1<sup>st</sup> April, 2000.
3. Land and quota purchase between the 13<sup>th</sup> October, 1999 and the 1<sup>st</sup> April, 2000.
4. Lands transferred under Regulation 5(3) of the 2000 Regulations but which subsequently had acquired a new owner.

One danger to watch out for is that a person may not buy land and subsequently sell on some of the land without losing the quota attached. In some cases the purchaser might be entitled to acquire the quota whereas in others, Regulation 5(4) of the 2000 Regulations may apply which provides that “the relevant quota shall be added to the national reserve”.

## MILK QUOTA REGULATIONS 2004

(Contd.)



**MILK QUOTA  
REGULATIONS  
2004**  
(Contd.)

Another danger was created by Regulations 11 and 12 of the 2004 Regulations. These Regulations provide that in all cases where quota is being removed from land, the proposed transferee must provide written consent for the application being made by the land owner. (There is nothing in the form in the Schedule to the Regulations to alert practitioners that the transferee must sign.)

**4. Sites**

Regulation 19(6) and (7) of the 2000 Regulations relate to sites. This regulation only applies to sites where, under some other regulation, the quota is not attached to the land until 2008 (or so it would seem). Further, it relates to “transfers by sale”. Therefore it would preclude a landowner giving a gift of a site to a family member. Therefore, in theory, where a farmer is giving a site to a child he would have to calculate the milk quota which attaches to that site and then apply to the Minister either for a Certificate of Retention of Milk Quota under Regulation 18 or for a Certificate of Temporary Retention of Milk Quota (also under Regulation 18) and in the latter case, on the 1<sup>st</sup> April in the following year sell it in to the Restructuring Scheme!

**General Comment**

Under the 2000 Regulations land and quota could only be sold together where the quota holder was producing milk. The requirement to be a milk producer was ended by the 2004 Regulations. Farmers who have been leasing their quotas to the Co-Op or leasing land and quota can now sell by obtaining from the Department the Certificate of Entitlement to Transfer.

Before becoming involved in milk quota transactions, practitioners should familiarise themselves with the Regulations.

*Thanks to Mr.Owen Binchy  
for the foregoing commentary  
received in September 2004.*