



**An Bille fán Scéim um Thacaíocht Tithe Banaltrais
(Leasú), 2021**
Nursing Homes Support Scheme (Amendment) Bill, 2021

Meabhrán Míniúcháin
Explanatory Memorandum



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EXPLANATORY MEMORANDUM

Background to, and purpose of, the Bill

The Nursing Homes Support Scheme Act, 2009, hereafter referred to as the Principal Act, enables eligible persons in receipt of nursing home care to apply for financial support to assist with the payment of their care through the Nursing Homes Support Scheme, commonly referred to as the *Fair Deal Scheme*. A financial assessment of applicants to the Scheme is conducted by the Health Service Executive (hereafter referred to as the Executive) at application stage, and successful applicants are required to pay a portion of their assessable income and a portion of the value of their assets towards their care. A three-year cap on contributions to the scheme in respect of the principal private residence of the applicant applies, but contributions in respect of other assets continue until the person in care leaves the Scheme, unless the applicant owns a farm or business asset and requires nursing home care due to sudden illness or disability. This can have a significant impact on the viability of family-owned and operated farms and businesses, as a large proportion of the asset's value would be owed to the State should the person in care remain within the Scheme for an extended period.

The purpose of this Bill is to amend the Principal Act by introducing changes to the Scheme with regard to the treatment of farm and business assets in the financial assessment of means of applicants to the Scheme. In effect, the Bill will extend the availability of the three-year cap to relevant family-owned and operated farm and/or business assets, in cases where a family successor commits to working the farm or business within the first three years of the applicant's time in care.

The policy intent of the Bill is to ensure that, in situations where the farm or business' productive income is being relied upon as a principal livelihood, and the farm or business is being handed down to the next generation, the viability and sustainability of such farms or businesses is protected as a result of having a degree of clarity surrounding the total cost of care.

Provisions of Bill

The provisions of the Bill may be summarised as follows:

Section 1: Definitions

This is a standard provision.

Section 2: Amendment of Section 3 of Principal Act

This amendment, under Section 3(1), provides definitions for certain terms used in the Bill.

Section 3: Application for appointment of family successor: farm or relevant business

This section, inserted after Section 14 of the Principal Act, allows for the appointment of a family successor to the farm(s) or business(es) which the person in care currently or previously owned, and to which a cap on the amount paid by the person in care towards the Scheme is being sought.

The Section details the eligibility criteria which the person in care must meet. In addition, it sets out the conditions that the family successor (or successors) must agree to undertake, including a commitment that a substantial part of their normal working time will be applied to running the family asset for a period of 6 years beginning on the date of their appointment. The role of the Executive in the application process is also established, together with the timelines within which relevant persons must provide requested information to the Executive, and the timelines within which the Executive must approve or reject the application.

Section 4: Charge against interest in chargeable land

This section, inserted after Section 14A of the Principal Act, provides for the creation of a charge on an asset or assets to which the three-year cap is to be applied. Increased State support in respect of chargeable assets will not be payable on behalf of the person until such a charge is in place, where applicable. This provision adopts the administrative procedures to facilitate the charging of assets from analogous procedures in the Principal Act relating to Ancillary State Support.

Section 5: Duty of Executive to determine whether paragraph 6B of Part 3 of Schedule 1 applies

This section, inserted after Section 14B of the Principal Act (itself inserted through Section 4 above), allows for the implementation of the three-year cap for relevant family-owned farm or business assets. Persons wishing to avail of relief under the Scheme must have been in care for 3 years and have appointed a family successor in respect of relevant assets. The Executive then determines whether the relevant person will qualify for the relief, the conditions for qualification being outlined in this section. The Executive will have the authority to request information from, and conduct interviews with, a number of relevant persons. The Section frames the timelines within which the relevant persons must provide requested information to the Executive, and the timelines within which the Executive must make its determination.

Section 6: Duties of Executive on determination under section 14C(2) (a)

This section, inserted after Section 14C of the Principal Act (itself inserted through Section 5 above), mandates the Executive to calculate the revised State Support that will be payable following a determination that the three-year cap applies under Section 14C. It also mandates the Executive to calculate and record the amounts of relief payable to the relevant person for the period during which the determination under section 14C(2)(a) applies.

Section 7: Review of compliance with conditions

This section, inserted after Section 14D of the Principal Act (itself inserted through Section 6 above), establishes a requirement on the Executive to conduct a minimum of one review during the period between the approval of the relief under the Scheme and the expiry of the timeframe referred to in the relevant section under which the family successor(s) is

being appointed. Where more than one family successor has been appointed in respect of a relevant person, the Executive will carry out a review in respect of each family successor.

The purpose of this Section is to ascertain whether the family successor(s) continues to comply with the relevant conditions to which they have agreed. By conducting reviews, the Executive seeks to safeguard the primary policy objective, operation, and sustainability of the Scheme. This Section establishes the administrative and operational powers and processes to support this task.

Section 8: Death of person receiving care services following determination under section 14C(2)(a)

This section, inserted after Section 14E of the Principal Act (itself inserted through Section 7 above), applies when the person availing of care services dies before the expiry of the period to which the current family successor(s) had undertaken to work the relevant asset(s).

The Section sets out the specific scenarios which follow the death of the person in care, depending on whether the current family successor(s) is a lawful successor with regard to the relevant asset(s) or otherwise. In the event that the six-year period had not been completed, the Section allows for the retention of the existing family successor(s) or for their replacement by a new family successor under certain circumstances. The Section sets out the conditions that any new family successor (or successors) must agree to undertake, by way of a statutory declaration. The role of the Executive in the application process is also established, together with the timelines within which relevant persons must provide requested notifications or information to the Executive, and the timelines within which the Executive must approve or reject an application.

Section 9: Death or change in circumstances of family successor

This section, inserted after Section 14F of the Principal Act (itself inserted through Section 8 above), applies to a situation where the (or one of the) family successor(s) dies or is no longer able to comply with their obligations before the expiry of the period to which the family successor(s) had undertaken to work the relevant asset(s).

The Section sets out the specific scenarios which may occur, depending on the circumstances which led to the change in circumstances of the family successor(s). The Section sets out the persons who can be appointed as the new family successor, the conditions that any new family successor (or successors) must agree to undertake by way of a statutory declaration, and the role of the Executive in the application process.

Section 10: Change of family successor following transfer of particular family asset

This section, inserted after Section 14G of the Principal Act (itself inserted through Section 9 above), allows for a change in family successor in the event that an asset has been transferred by the person in care, or in the case of a transferred asset, by the current family successor, to an appropriate person. It also provides for when an asset to which the person in care had an interest is transferred after the person in care is deceased.

The purpose of this Section is to ensure that relief secured against family-owned assets that are transferred during the six-year period undertaken by the family successor, is not, under certain circumstances, subject to recoupment.

Section 11: Repayment of increase in State support

This section, inserted after Section 14H of the Principal Act (itself inserted through Section 10 above), applies to a situation where a repayment event occurs, caused by one or more of the circumstances listed in this Section.

The purpose of this Section is to allow the Executive to safeguard the primary policy objective, operation, and sustainability of the Scheme. This is done by providing for the cessation of the three-year cap and/or the recoupment of the total sum of relief already advanced in the event that the qualifying criteria for the three-year cap are not being met at any stage during the relevant period.

The relevant persons will be given the opportunity to make representations before a determination is made on a repayment event under this section.

Section 12: Recovery of sums due under section 14I

This section, inserted after Section 14I of the Principal Act (itself inserted through Section 11 above), allows the Executive, following a determination under Section 14I, to calculate the repayable amount that shall be a debt due and payable to the Executive, and sets out the administrative processes in relation to the recoupment of this debt. It also details the persons primarily accountable for the payment of the repayable amount to the Revenue Commissioners (the collection agent).

This provision adopts the administrative procedures to facilitate the recoupment of monies from analogous procedures in the Principal Act relating to Ancillary State Support.

Section 13: Offence of giving false or misleading information to Executive under certain provisions

This amendment, inserted after Section 14J of the Principal Act (itself inserted through Section 12 above), makes it an offence, liable to a fine or a conviction, for any relevant person to knowingly, or recklessly, give the Executive information which is false or misleading in respect of various provisions in the Bill.

Section 14: Amendment of section 21 of Principal Act

This amendment, inserted after Section 21(1)(a) of the Principal Act, extends the power of a care representative appointed in the event that a person in care does not have full capacity to make decisions regarding an application to the Scheme. The amendment enables a care representative to deal with the appointment of a family successor and to act on behalf of the person in care with regard to an application for relief under the Scheme.

Section 15: Amendment of section 24 of Principal Act

Section 24(1) of the Principal Act requires the person in care or their partner to provide written notice of a material change in circumstances of the person in care to the Executive. This amendment extends the responsibility of providing such written notice to the appointed family successor(s).

Section 16: Notification of material change in circumstances of family successor

This section, inserted after Section 24 of the Principal Act, requires that the person in care, their care representative (where applicable), or a person appointed to act as a family successor under the provisions of the Bill, informs the Executive of any material change in circumstances of any family successor or any change affecting the farm or business in relation to which the family successor was appointed.

Section 17: Amendment of section 27 of Principal Act

This section amends section 27 of the Principal Act, which requires the submission of a schedule of assets to the Executive where a deceased person received financial support under the Scheme. Section 27(2)(b) allows the Executive to request that the assets of an estate are retained in order to repay any monies owing to the Executive. The amendment allows the Executive to make this request in respect of monies owed as a result of a repayment event under this Bill.

Section 18: Discharge of orders made under section 14B

This section, inserted after Section 28 of the Principal Act, sets out the administrative process in relation to the discharge or release of the charge made against an asset under Section 14B above. A discharge will occur when the Executive is satisfied that either no repayment event has occurred during the relevant timeframe or that a recoupment sought under Section 14J has been paid in full.

This provision adopts the administrative procedures to facilitate the release of charges against assets from analogous procedures in the Principal Act relating to Ancillary State Support.

Section 19: Amendment of section 29 of Principal Act

This section amends Sections 29(1) and 29(2) of the Principal Act, and refers to a charge or charges to be made under Section 14B against farm or business assets which are under joint ownership.

Section 20: Amendment of section 32 of Principal Act

This section amends Section 32(1) of the Principal Act, by extending the circumstances under which appeals against certain decisions of the Executive can be made.

Section 21: Amendment of section 36 of Principal Act

This section amends Section 36 of the Principal Act, and allows the Minister by regulations, in respect of any difficulty which arises during the period of 3 years from the commencement of the Act of 2021, to do anything which appears to be necessary or expedient to bring the amendments in the Principal Act into operation. The section also allows the Minister, with the consent of the Minister for Finance, to make regulations to confer powers on the Revenue Commissioners with respect to the collection and recovery of repayable amounts under section 14J of the Bill.

Section 22: Amendment of section 45 of Principal Act

This section amends Section 45 of the Principal Act, expanding the Executive's duties regarding the storage, retention and disposal of applications and notifications made under Sections 14A, 14F, 14G and 14H above. The section also tasks the Executive, as soon as practicable after the coming into operation of the Act of 2021, with preparing and publishing a revised code of practice for persons accessing and processing relevant personal data.

Section 23: Annual report concerning relief in relation to farm or relevant business

This section, inserted after Section 45 of the Principal Act, requires the Executive to keep records of information in relation to provisions introduced through this Bill and to prepare a report each year for the Minister detailing the effects of the new provisions on the Scheme, trends arising from these effects, and such other matters as may be specified by the Minister.

Section 24: Review of operation of amendments effected by Act of 2021

This section, inserted after Section 45A of the Principal Act (itself inserted through Section 23 above), commits the Minister to carrying out a review of the operation of the amendments to the Principal Act no later than five years after the 2021 Act comes into operation, in consultation with the Minister for Public Expenditure and Reform.

Following the conclusion of the review, the Minister shall, in consultation with the Minister for Public Expenditure and Reform, prepare a report setting out such findings as the Minister for Health considers appropriate, and have a copy of the report laid before each House of the Oireachtas.

Section 25: Amendment of Schedule 1 to Principal Act

This section repeals existing provisions within the Principal Act pertaining to the availability of the three-year cap to owners of farm or business assets who require nursing home care as a result of sudden illness or disability.

The Section adds additional provisions to paragraph 6 of Part 3 of Schedule 1 of the Primary Act to allow for relevant farm and business assets to be eligible for the 3-year cap following a determination under section 14C. It also outlines the maximum financial contribution that couples who both require care will be required to make in respect of their relevant assets when one member of the couple is deceased, and had appointed a family successor in respect of the relevant assets, and the second member qualifies for the relief under the new provisions

The Section also provides for amended definitions of family successor, relevant business, and transferred income.

Section 26: Transitional arrangements in relation to, and amendment of, certain paragraphs of Part 3 of Schedule 1

This section, inserted after Section 48 of the Primary Act, allows for individuals already availing of the three-year cap because of sudden illness or disability to continue to avail of the relief under the deleted provisions and disbars them from applying for the relief under the new provisions. For those already in care who could qualify for the relief under the deleted provisions, but have not yet sought to do so, they may also elect, in the specified form, within 6 months of the commencement of the 2021 Act, to do so.

The section details how couples are treated when paragraph 7-9 of Part 3 of Schedule 1 of the Principal Act applied in relation to one member of the couple and applies in relation the second member, whether before or after the commencement of the 2021 Act, and describes the maximum financial contribution of couples who have both qualified under the deleted provisions.

Section 27: Short title and commencement

This is a standard provision, dealing with the short title and commencement arrangements.

*An Roinn Sláinte
Bealtaine, 2021.*