

**Joint Committee on Health**  
**Wednesday 13th November 2019**  
**Opening Statement by**  
**Mr. Niall Redmond**  
**Principal Officer, Services for Older People, Department of Health**

**Introduction**

Good morning.

I thank the Chairman and members of the Committee for the opportunity to address them on this draft legislation. I am joined today by my colleagues Mr. Karl Duff, Assistant Principal, and Ms. Helen Simon, Administrative Officer, from the Services for Older People Unit in the Department.

I hope to provide this hearing with the background to the Government decision to approve and publish the General Scheme of the Nursing Homes Support Scheme (Amendment) Bill, and to briefly outline its main provisions.

The general scheme of the Nursing Homes Support Scheme (Amendment) Bill will create an additional legislative framework implementing a policy objective whereby family farms and family businesses will be better safeguarded for future generations.

**Background**

The Nursing Homes Support Scheme (NHSS) was developed in the late 2000s building on the existing Nursing Homes Subvention Scheme. There was an identified need to regularise such payments through legislative underpinning, and to remove financial hardship from many individuals and their families who, under the previous system of Nursing Home Subvention, had to sell or re-mortgage homes to pay for the cost of nursing home care.

The Nursing Homes Support Scheme has been very successful to date, supporting nearly 100,000 people to avail of nursing home care since its

commencement just 10 years ago. The Scheme has proven to be very robust and fair; the legislation has remained largely unchanged since its introduction.

When the Nursing Homes Support Scheme Act was developed and commenced in 2009 it was done so with the proviso that a review of the Scheme would be initiated following its first three years of operation. This review, published in 2015, examined a wide range of issues. A public consultation process was initially undertaken to inform the work of the review, with 61 submissions received from a range of individuals, nursing homes, statutory and private organisations, voluntary bodies and organisations representing the interests of older people, including the Irish Farmers' Association and Irish Creamery Milk Suppliers Association, amongst others. The recommendations received and the themes identified through this consultation informed the review.

A recommendation arising from the review was that consideration should be given to whether a cap should be applied to the charge for nursing home care based on non-residential productive assets which are passed on to a direct family member after the death of an NHSS participant, and where the new owner carries on the farm or business as their principal livelihood. The existing Programme for Partnership Government committed to introduce these changes to the assessment of family businesses and farms in the context of the financial assessment of means under the Nursing Homes Support Scheme.

### **Policy Objective**

Farms are traditionally passed down through family generations and it is recognised that it is important for rural communities that farms can continue to operate within the family unit and be maintained as sustainable productive assets. The same may also be said of businesses such as family businesses. Small farms, in particular, play an important role in supporting rural employment and maintaining the social fabric of rural areas and thus contribute to the objective of balanced territorial development. In a wider context the general scheme of the Bill proposes to help ensure the continued

viability of family-run farms and businesses, especially for those for whom early succession planning has not been possible. The General Scheme aims to give effect to the recommendation of the Fair Deal Review and to deliver on the programme for Government commitment in that regard.

It is also important that we are cognisant of the wider situation with regard to ageing in Ireland. Our population is living longer than ever before, and our older population is consistently growing in size. It is therefore important that, with any change to the NHSS, we ensure the longer term sustainability of the Scheme and ensuring continued and timely access for those who need it.

The Nursing Homes Support Scheme is a financial support Scheme that provides State support towards the cost of long-term residential care for adults in Ireland, irrespective of age. The amount of State support provided is dependent on the means of the applicant, where those with least means receive the most support and those who can afford to cover a greater share of the cost of their care, do so. This helps to ensure the sustainability of the Scheme, ensuring that finite resources are targeted at those most in need.

Having regard to that, the stated policy objective of this general scheme is to introduce further safeguards in the Nursing Homes Support Scheme to further protect the viability and sustainability of family farms and businesses which will be passed down to the next generation of the family to continue to work them as productive assets to provide for them their livelihood. Under existing conditions, applicants or participants to the Scheme who experienced a sudden illness or disability that necessitated long-term residential care, have their contribution based on their farm or business assets capped at 3 years in line with the treatment of the principal residence, subject to certain conditions. This General Scheme aims to broaden the application of this 3-year cap by removing the requirement to have suffered a sudden illness or disability resulting in the need for care and instead introducing revised criteria. This amendment will extend the application of the cap to family-run farms and

businesses that satisfy the prescribed criteria, thus extending the sense of certainty to all farm and business owners for whom a family successor will succeed the concern.

### **The General Scheme**

The general scheme of the Bill comprises two parts. Part 1 deals with standard provisions such as interpretation and commencement. Part 2 includes all other provisions of the amendment.

The criteria required to qualify for the cap on farm or business assets is set out in Head 4. This introduces the requirement that the farm or business was actively worked by either the NHSS participant or applicant or a qualifying family successor for a minimum period of three years in the five years prior to nursing home admission and that the farm or business will be actively worked, as per the requirements in the amendment, by a family successor for a period of not less than 6 years following nomination of the said family successor.

Given the complexity of the Scheme, a very significant amount of consideration has been given to how to amend existing provisions and introduce new provisions that will satisfy the policy objective in question. Where possible we have endeavoured to build on existing provisions. However, there is need for changes around the operation and administration of the Scheme, changes to the obligations on family successors in relation to their undertakings and associated reporting structures, and all other necessary changes to ensure that the policy objective is implemented equitably and that existing participants in the Scheme are not unnecessarily disadvantaged.

The general scheme provides for robust verification requirements in relation to the continued active working of the farm or business in question, as well as the introduction of obligations on the family successor to comply with the verifications required and other criteria, as set out, such as commitment to continue working the farm or business and engage with the HSE on the matter.

These requirements are included to ensure that the public policy objective is met as intended.

Heads 6, 7, 10, 12 and 13 set out obligations of both the NHSS participant and their family successor. It should be noted that a number of these provisions are already in operation in the existing Act but their application is being extended. I would like to draw the Committee's attention to Head 10 "special provisions" – this head has been included recognising that plans may not always work out as intended. In this instance, these "force majeure" style provisions recognise for example, that the family successor may not, through no fault of their own, be able to meet the requirement to work the farm or business for the required 6 years and, rather than an immediate obligation to repay the relief enjoyed arising from the cap, there is an opportunity to nominate a new family successor to meet the obligation.

The proposed Amendment will also require a change to how elements of the Scheme are operated, namely to include processes on nomination of family successor, to allow for application of a cap on contributions, to calculate the value of said cap, and to set out how the criteria associated with the cap may be satisfied. Heads 5, 8, 9, 11, 16, 17, 18 and 20 provide for the necessary changes in operations and powers of the Executive

The existing legislation provides for those who have experienced a sudden illness or disability and require long-term residential care as a result, as early succession planning may not have been feasible in such instances; participants who have entered the Scheme under this provision will not be required to adhere to the new conditions that are being introduced. Head 14 includes provisions for current participants to whom the sudden illness or disability clause may refer.

Where an NHSS participant or applicant is deemed to not have the capacity to make a decision in relation to certain matters under the 2009 Act, a Care

Representative may be appointed by the court to act on these matters. Head 15 proposes the introduction of an additional power for the Care Representative, to allow for the nomination of a family successor in the case where a participant, at the necessary time, does not have the capacity to make such a nomination.

I thank the Chairman and the committee for undertaking this pre-legislative scrutiny of the general scheme. We look forward to receiving the committee's report which will make a valuable contribution in the further development of the legislation.