

DÁIL ÉIREANN

ROGHCHOISTE UM SHLÁINTE

SELECT COMMITTEE ON HEALTH

Dé Céadaoin, 30 Meitheamh 2021

Wednesday, 30 June 2021

Tháinig an Roghchoiste le chéile ag 9.30 a.m.

The Select Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Colm Burke,	
Mary Butler (Minister of State at the Department of Health),	
Cathal Crowe,	
David Cullinane,	
Bernard J. Durkan,	
Gino Kenny,	
Róisín Shortall.	

I láthair / In attendance: Deputies Seán Canney, Danny Healy-Rae, Denis Naughten and Matt Shanahan.

Teachta / Deputy Seán Crowe sa Chathaoir / in the Chair.

Nursing Homes Support Scheme (Amendment) Bill 2021: Committee Stage

Chairman: Members are reminded of the long-standing practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable. I remind members that they are not allowed to participate in the meeting unless they are physically located on the Leinster House complex. In this regard I call on all members prior to making their contributions to the meeting to confirm they are in the grounds of the Leinster House campus.

Today's meeting is being convened to consider the Nursing Homes Support Scheme (Amendment) Bill 2021. I welcome the Minister of State with responsibility for mental health and older people, Deputy Butler. I remind all members that should a division be called, committee members must physically come to the committee room to vote. A total of ten amendments have been tabled, six of which are out of order. We will now proceed to consideration of the Bill. The Minister of State wishes to make some remarks.

Deputy Mary Butler: I thank members of the committee for considering the Nursing Homes Support Scheme (Amendment) Bill and for tabling amendments. I look forward to discussing the amendments with members today. I wish to advise the committee that I will bring several Government amendments on Report Stage. Many of these are technical in nature but some are more substantive. I referred to these amendments on Second Stage and I will flag them as we move through the sections.

Sections 1 and 2 agreed to.

SECTION 3

Chairman: Amendment No. 1 is out of order because of a potential charge on the Revenue.

Amendments Nos. 1 and 2 not moved.

Question proposed: "That section 3 stand part of the Bill."

Deputy Mary Butler: I wish to flag that I will be bringing an amendment on Report Stage.

Deputy Danny Healy-Rae: The amendment I proposed is one I have felt strongly about since I came up here in 2016. I do not believe it is fair that the family farm is taken into consideration as part of the application for the fair deal scheme. It is not fair on the person taking over the farm and trying to run the business. That asset is a tool for gaining an income for the family but it is taken into the assessment while the family home is the only thing considered in every other scenario. I have no objection to the family home but I have a serious objection to the family farm being assessed. It could mean that the wife, son or daughter could be landed with a loan that eventually the person could not pay back and the person could eventually lose the farm. I do not believe it is fair at all.

I am sorry that this amendment has been ruled out of order. I believe what we are doing is undemocratic with the insistence that the farm is assessed. The rate of 7.5% each year for three years on a €500,000 farm could mean a sizable bill - a farmer would not have much of a farm at that.

Deputy Róisín Shortall: On a point of order, what amendment are we discussing now?

Chairman: We are on section 3. Amendment No. 1 is out of order.

Deputy Róisín Shortall: My understanding is that we have not agreed section 3. The Minister of State indicated her intention to move an amendment. Can she provide a brief summary of what that amendment will entail?

Chairman: I was trying to let members in and then I was going to let the Minister of State respond.

Deputy Róisín Shortall: The decision is whether to agree section 3.

Chairman: That is right.

Deputy Róisín Shortall: The Minister of State indicated something there and I ask her to expand on it.

Deputy Mary Butler: Will I speak to Deputy Healy-Rae's point first? As the amendment has been ruled out of order, is there any need to do so?

Deputy Róisín Shortall: There is no need at this point.

Chairman: It is not really necessary.

Deputy Mary Butler: I thank Deputy Shortall for giving me the opportunity. The amendment relates to the application for appointment of a family successor to the farm or relevant business. Several new provisions will be required to describe the process that will apply when the second member of a couple applies for relief under the Bill. In most cases a couple will have the same family successor. This will mean that if the family successor is found to be non-compliant with the conditions of the scheme in respect of one member of a couple, the non-compliance will also apply in respect of the second member.

Deputy Róisín Shortall: That is grand. I was looking for a brief idea of what it entailed.

Chairman: Deputy Burke also has indicated.

Deputy Colm Burke: I have the clarification I needed.

Question put and agreed to.

NEW SECTION

Deputy Denis Naughten: I move amendment No. 3:

In page 9, between lines 31 and 32, to insert the following:

"4. The Principal Act is amended by the insertion of the following section after section 14A (inserted by *section 3*):

"14B. Where an interview is held under this Act with the Executive the interviewee shall have the right to have another person present to support them and/or to advocate on their behalf."."

This is a technical amendment but I believe it helps to strengthen the legislation. This is something to which Deputy Durkan in particular will be able to relate.

That is as follows. Where a person is being interviewed by the HSE, they should have a legal right enshrined in this legislation that they are entitled to have someone present with them at that hearing.

If people go to a social welfare hearing at the moment, they have the right to have an advocate present with them when going before the appeals board and the appeals office. That could be another family member or a public representative but they are entitled to have someone with them. We are asking people to go in before this office to be interviewed by the HSE, which has major financial implications for them and their families, and we are not giving them a legal right to have someone else present with them. I am asking that a clear provision be put in place so that when people are being interviewed, they have the right to have someone else present with them, just as is the case in the Department of Social Protection when people are before the appeals office.

Deputy Bernard J. Durkan: I thank Deputy Naughten for his deference to me on this vital issue, although I am not so sure I am the expert on it. I would be anxious to hear the Minister of State's response. We all attend social welfare hearings, with good and necessary effect in many cases, in order to ensure that the procedures are followed in the manner in which they were intended. That is one point. I will be led by the Minister of State's response to that.

I mention farms and small businesses. The survivors often are not in the position to make the best case on their own behalf and may not necessarily look far enough forward into the future to be able to determine the impact whatever arrangements will be made are likely to have on their businesses, be they big or small. I have represented countless people at various hearings in the HSE and the social welfare offices, as other members have I am sure. There is a similarity between the two scenarios. We attend these hearings in order that people know what they are doing and that they have a reasonable grounding in the response they will make to the various issues that have been raised. I await the Minister of State's response.

Deputy David Cullinane: I want to agree with the amendment and the two previous speakers. There probably would not be a difficulty in a person accompanying an individual to any of these hearings. That happens in practice anyway. We would see it happen when making housing representations or when making representations to the health board on other issues. However, it does not happen in all circumstances. If there is no legal right to representation then it could become problematic. If the Minister of State is not minded to accept the wording of this amendment, will she agree with the principle of it and could she come back with an amendment on Report Stage? That would be useful. It would be important to put this in legislation so I ask the Minister of State, if she was not minded to accept the wording of this amendment, is it possible to come back with one of her own?

Deputy Colm Burke: I refer to my experience in acting in a legal capacity. I have run into difficulties with the HSE where I have written to the HSE in a legal capacity to find the HSE corresponding directly back with a member of the family who has sought legal advice because he or she is not able to manage the matter. I found the HSE totally ignoring the legal letters and corresponding back to the spouse or the person who is in the nursing home, for example, and that spouse may not be that well. I found that on a number of occasions, letters were sent out four or five weeks before I was aware of them being sent out. I had to take this up at national level with the HSE because in a particular part of the country the HSE was ignoring letters that were being sent by solicitors on behalf of people in nursing homes and instead corresponding with the spouses. This is something that needs to be looked at.

Deputy Bernard J. Durkan: I would agree with Deputy Colm Burke in the following sense. I am not a lawyer but I am long enough around to have an understanding of some of the basic entitlements that people have under any democracy. It is not so evident at the present time or in recent years but I have had some battles previously, including where legal decisions were made by people who were not in a position to make legal decisions at all, which affected the lives of people who were elderly or of limited resources. To my mind, these decisions were not in accordance with the way the legislation was intended, which was supposed to help people and get some kind of recompense from an institution of the State for the care and attention that was given. However, that has changed a bit, hopefully for the better.

There is a certain abruptness about the decision taken and the length of time the people who are affected by it have to deal with it, having already dealt with the trauma of the death of a family member. They may not have too long to deal with that trauma. Things happen quickly and then suddenly the Revenue Commissioners are empowered to collect. That is attended to in the Bill, although I am not certain of that. It is the abruptness with which the whole thing happens that frightens the people concerned. Whether they have been running a small business such as a little shop on the corner, a small farm or any kind of business, all these things come at a time when the family is vulnerable. That is the point that is raised by members and I would hope the Minister of State could reassure us on that.

Deputy Danny Healy-Rae: I realised that in section 3-----

Chairman: Is the Deputy talking about section 4 and amendment No. 3?

Deputy Danny Healy-Rae: We skipped amendment No. 2, which mentions: “that the relevant person declares by way of declaration”. In other words, the amendment states that the-----

Chairman: That amendment has been ruled out of order. We have moved on to section 4.

Deputy Danny Healy-Rae: There was an interruption and I was thrown off my line. Amendment No. 2 was seeking that the person in charge of the farm could legally lease it. If there was a young family and the woman or man of the house did not have the wherewithal to run the farm, this amendment sought that she or he would be allowed to lease it out. That is not allowed and that is unfair.

Chairman: The proposal put forward has been ruled out of order because there is a potential charge to the Exchequer.

Deputy Danny Healy-Rae: I cannot understand where the charge is there. I appeal to the Minister of State to look at that.

Chairman: I am dealing with section 4. Does the Deputy want to comment on section 4?

Deputy Danny Healy-Rae: No.

Deputy Mary Butler: I thank Deputy Naughten for tabling this amendment. There is no impediment in the Act to another person being present to support a person in care in the context of an interview, as Deputy Cullinane said, or to support any other relevant person who is called for an interview. I am assured by the HSE that, in general, anyone interviewed under the scheme is free to have another person to join the interview. However, I recognise the concerns the potential vulnerability of older persons as they enter long-term care, and the need to make sure they feel comfortable and able to avail of the appropriate support as they go through the

process. Therefore, while I cannot accept the amendment precisely as drafted, I will aim to bring a Report Stage amendment that addresses this issue.

Chairman: We have lost the connection with the Minister of State.

Deputy Mary Butler: Can the committee hear me now?

Chairman: Yes. Will the Minister of State repeat what she was saying? She said she cannot accept the amendment.

Deputy Mary Butler: I cannot accept the amendment as it is currently drafted but I want to work with the committee on it. I want to bring forward on Report Stage an amendment that addresses the issue. There will be a need to distinguish clearly between the support that might be provided in an interview and the formal processes already established. My objection is only to the inclusion of the word “advocate” because such a person would not be able to sign the official document for the person concerned if capacity issues arise. I totally agree with the concept of the amendment. We have looked at it all week. I want to work with the committee and, as an advocate for older people, I think it is hugely important to have somebody present if that was the wish of the person concerned. If the Deputy would allow us to come up with a wording, we will work with him on an amendment, if that is okay. I thank all the Deputies who support this amendment because it is a common-sense approach.

Deputy Bernard J. Durkan: What is the case in the event of an advocate having powers of attorney, whether a solicitor or not? A third person with power of attorney has the entitlement, as far as I am concerned, because he or she has been delegated those powers by the person concerned at an earlier stage. Perhaps a lawyer could give some advice on that matter. I am looking for free legal advice.

Deputy Colm Burke: There is a situation such as an enduring power of attorney. There is a special process within the fair deal scheme whereby people can apply to the county registrar in their areas. People can be appointed under the scheme. That process is available and is used regularly when a person is no longer capable of giving instructions. Two medical reports are needed. Applications can be made to the county registrar to appoint people. Enduring power of attorney, once registered, is recognised under the scheme.

Deputy Mary Butler: I thank the Deputy for that contribution. It is assumed that persons in care have the full capacity to represent themselves during an interview unless a representative has been appointed to act on their behalf. A number of persons specified in section 47 of the principal Act may act on behalf of another person on any matter. However, in the context of ancillary State support, only the care representative, a registered enduring power of attorney or an appointed committee for a ward of court can officially represent a person in care.

Similarly, under this Bill, only a care representative or another officially appointed representative will be able to represent a person in making applications for relief, which include the placing of a charge on relevant assets. It is quite technical but the thrust of the amendment tabled by Deputy Naughten is being accepted. Somebody who is going before the HSE to appoint a successor can bring another person to support him or her. It is a traumatic and distressing time for some people, especially those who are business owners or small farmers, when they must make the decision to appoint a successor and move into a nursing home. I am supportive of any support such people can bring with them. I accept the general thrust of his amendment but we must work on the wording, if the Deputy is prepared to do that.

Deputy Denis Naughten: I thank the Minister of State for her comments and am willing to accept whatever wording she will bring forward. I accept that I am not a parliamentary draftsman by any manner of means. Once the thrust of the amendment is accepted, I am willing to discuss the matter with the Minister of State. I accept there is no impediment. There will not be an issue in 99.9% of cases but all one needs is to encounter one difficult member of staff within the HSE and all of a sudden, a vulnerable person could be exploited. None of us wants that to happen. I propose a belt-and-braces approach. I thank the Minister of State for her comments and will withdraw the amendment on the basis of what she has said.

Deputy Mary Butler: That is much appreciated. Deputy Durkan raised an issue about timeframes. That will be dealt with later on through another amendment that has been tabled. We can discuss the matter then. I thank Deputy Naughten for his co-operation.

Amendment, by leave, withdrawn.

Section 4 agreed to.

SECTION 5

Chairman: Amendment No. 4 has been ruled out of order.

Amendment No. 4 not moved.

Question proposed: "That section 5 stand part of the Bill."

Deputy Denis Naughten: I want to speak to the section. My amendment has been ruled out of order because there is potential charge on the State. I listened quite intently to what the Minister of State said on Second Stage. She said she did not want to backdate it because it would create a precedent, but it would not. We have had numerous precedents, particularly relating to issues of compensation where payments have been backdated. Even as recently as last November, a statutory instrument was introduced that backdated provisions to the beginning of October. It is quite common in these cases.

There are many precedents whereby a Government brought in legislation that implemented provisions from the date of the relevant Government decision. The Government decision to address these particular anomalies within the fair deal scheme was taken three years ago. Only a handful of people would now be impacted by this particular provision but in those instances, some of them have substantial bills accruing against their family home and estate for someone who went into a nursing home more than three years ago. This issue needs to be addressed for those families. The issue will be addressed going forward. In cases where costs have accrued prior to the Government decision three years ago, the people concerned do not have a legitimate claim. However, the Government took a decision three years ago next month to exempt the family farm or business after three years. It has been a tortuous process to bring forward this legislation. It has taken three years. I accept that. However, should individuals be penalised and forced to sell the family farm or business because of the delay in implementing the Government decision by drafting this legislation? I suspect we are talking about a relatively small number of families and individuals. I plead with the Minister of State to consider this matter again in advance of Report Stage.

Deputy Mary Butler: I thank the Deputy. The relief is not automatic but is contingent on a family successor being appointed. Such a successor cannot be appointed until the amendment is enacted and commenced. That is the big problem. The condition that needs to be met under

the scheme means that a successor must be in place. That is the entire premise on which this scheme is being enacted. It needs to be made clear so that everybody understands that those who have been in care for more than three years prior to the Bill being commenced will be advised to appoint a family successor quickly, once the Bill has been commenced. If they do so, they will avail of the relief very quickly. Let us take the example of a person who has been in a nursing home for the past two years. If that person appoints a successor as soon as the Bill is enacted, those two years will stand as time served in the nursing home. We are trying to make it as workable as possible. Once a successor is appointed, any time that has been spent in a nursing home will be included. If a person has been in a nursing home for two years, he or she will only have to get through a third year to avail of the cap on the scheme.

For those who enter care after the enactment of the Bill, they will be advised, as I said, to appoint a family successor soon after entering care. The logic of the section is to avoid a situation where an argument can be made that the relief should be backdated to a date prior to the amendment being commenced specifically for persons who have spent more than three years in care. Unfortunately, the reason the Bills Office rejected this was the cost it would bring on the State. We are working to make sure any time served, once the successor is appointed, is recognised.

Deputy Denis Naughten: We will disagree on this and I will not dwell on it. I believe it is unfair. The Minister of State has given an example of someone who is two years in a nursing home. I am talking about people who are four or five years in a nursing home and have built up substantial arrears. While those people will not have to pay for the cost of the family farm or business going forward, where they have accrued these substantial arrears since the Government decision in July 2018, they will still be forced to sell the family farm or business or part thereof because of the delay in drafting this legislation. There are ample precedents where legislation has been backdated to the date of the Government decision. I ask that families who, in July 2018, had already accrued the three years or who accrued them between that date and now would be able to avail of the relief rather than having to pay a substantial debt to the nursing home or the HSE. It is wrong they are caught in that position.

Deputy Mary Butler: The premise of the new scheme is contingent on the family successor being appointed, which cannot happen until the amendment is enacted and commenced. It is a year since I was appointed to this role. It is a year today since I got the call from the Taoiseach. One of my priorities was to get this Bill through. We will have Report Stage before the summer recess. A huge amount of work has been done in the past six months to get this over the line but, unfortunately, there will be no refunds for contributions to cost of care for those who have already spent in excess of three years.

The scheme as it stands costs €1.4 billion per year while income from the scheme is €350 million. It is costing the State in excess of €1 billion. The amendment that will be moved at Report Stage on the cap on the sale of the house will be a further cost to the State. It was ruled out of order by the Bills Office because of the cost. We all know people in nursing homes for three, four or five years. Thankfully, there are not that many. Some 37% of people who enter nursing homes are in them for six months. A small minority are there for a long time but if they appoint a successor as soon as the Bill is enacted, the time served will mean the cap will be implemented almost immediately.

Deputy Denis Naughten: In many cases, they have already legally appointed a successor. In many cases, that successor is operating the family farm or business and has a substantial debt hanging over him or her that is attached to this. While that may not under the terms of this legislation meet the technical appointment of successor, the people in question have in reality and,

in many cases, in legal terms already appointed a successor. That should suffice for what is, as the Minister of State admitted, a small number of families and people. It would be sad to see a farm or business left unviable and maybe jobs lost because we are not prepared to address this anomaly for a small number of people. I ask the Minister of State to think long and hard about this between now and Report Stage.

Deputy Mary Butler: To be a successor, a person has to be officially appointed under the Act. In addition, anybody in a nursing home can avail of the National Treatment Purchase Fund, NTPF, fair deal scheme, whether a farmer, a small business person or owner of a principal private residence. It is challenging but we are trying to fix the unintended consequence of the 2009 Act where farm families and small businesses were penalised after the three-year cap. That is the premise of what I am trying to do. We will have to agree to disagree but I know where the Deputy is coming from.

Deputy Bernard J. Durkan: In many cases, there may have been a prolonged period of ill-health or inaction on the part of the person in the nursing home which may have severely impacted on his or her ability to keep the capital resources intact or to expect that payments could be made in sufficient order to meet the requirements, given that the capacity of the farm or business may have diminished before a successor was appointed, making the situation more difficult. I am sure the Minister of State has already dealt with that but it needs to be borne in mind.

Deputy Colm Burke: The rule under the fair deal scheme is that, if a farm is transferred within five years of a person going into the nursing home, the farm is taken into account. I have come across many cases where the farm is already transferred when the person is in the nursing home. Is the Minister of State saying he or she will have to go through three years from the date of the appointment of the successor, even though the farm is already transferred in someone else's name and has been for some time?

Deputy Mary Butler: If it has been transferred in the past five years, that means the farm is no longer in their ownership. The whole premise of this-----

Deputy Colm Burke: No, that is not the question I am asking. Under the fair deal scheme, if a person transfers a farm any time within the five years before going into a nursing home, the farm is taken into account in calculating the payment. There is a charge of 7.5% per annum on the farm, even though it is already transferred. The Minister of State is saying the three years starts running from the appointment of someone as a successor, even in a case where the farm is already transferred.

Deputy Mary Butler: If the person has spent time in the nursing home and it is their home, the time spent in the nursing home will be taken into account from the moment a successor is appointed.

Deputy Colm Burke: That does not clarify my question. The Minister of State has referred to a successor appointed under the Bill or Act-----

Deputy Mary Butler: Yes

Deputy Colm Burke: My view is that where the farm is already in the name of another family member and has been for some time, he or she is caught under the fair deal scheme and still has to pay 7.5% per annum. If the person has not owned for farm for some time, how can the three years only run from the time a successor is appointed under the Act?

Deputy Mary Butler: If he or she does not own the farm, it does not come into it. That person will enter the nursing home and be calculated under his or her principal private residence. If that person no longer-----

Deputy Colm Burke: No. The five-year rule applies in relation to farms. If the farm was transferred within the previous five years, under the fair deal scheme, it is taken into account in calculating the contribution paid to the nursing home. I refer to where the farm is already in the name of a family member and the 7.5% is being taken into account even though the farm is no longer in the name of the person in the nursing home. The Minister of State is stating that under the legislation the three years only start running from the time the successor is appointed under the Act. That is now a very unfair system as the person in the nursing home is not getting the benefit of the farm and the family still have to pay 7.5% per annum.

Deputy Mary Butler: The time when the farm was transferred to another family member does not count.

Deputy Colm Burke: I am still a little unclear on this point. Will the three years run from the date the person is appointed as successor under the Act or will the three years from the time the farm was transferred be taken into account, even if it was between two and three years? The Minister of State may not have the answer to hand but we need clarification on this because I am not at all clear on it.

Deputy Mary Butler: My understanding is that the same premise applies. When an applicant retires or ceases working the farm or business prior to entering long-term care, it is expected that his or her partner or the family successor will have taken over the farm. The cap will first apply when the person has spent three years in a nursing home. This is the amendment we are introducing in respect of the sale of the home once a successor has been appointed. The most important aspect of the Bill is that an applicant must appoint a successor to avail of what we are trying to achieve. The premise of the Bill is to support small farm families and businesses to retain the farm or small business while a person is in a nursing home.

Previously, as Deputy Durkan has said, the individual might have been in a nursing home for five or six years. The cap that applies to people who are in a nursing home is the same as applies under the National Treatment Purchase Fund, NTPF, and relates to one's principal private residence. This will now apply to people who are small farm or business owners who will not be penalised after the three-year cap period.

Senator Colm Burke: I will look for clarity on this point before Report Stage as I am still not clear on this matter.

Deputy Mary Butler: I appreciate that and we can furnish information in writing to the Deputy on this question.

Deputy Danny Healy-Rae: I listened to the Minister of State's reply on the cost of the fair deal scheme. This Bill is about ensuring the scheme is a fair deal for the farming and business community. I appreciate the cap and it is good that it has been brought forward. I also appreciate the Minister of State's point that it will still cost a great deal. I strongly support Deputy Naughten's request to include people going back to the time when the Bill was first brought forward so that they can benefit from the fair deal scheme in the future. They should benefit from the new scheme, as Deputy Naughten said, because of the delay.

I am also unclear on the point raised by Deputy Burke. We appreciate the cap but it is unfair

if another family member has taken over the farm and the Department goes back to find that the farm has not been transferred for more than five years. That aspect is very unfair and the Minister of State needs to clarify the point. It is very unfair that the family farm is being assessed and that it cannot be leased out in order that the person would qualify for the scheme.

Those two aspects of the new Bill are very unfair and do not really address the problems the farming and business communities have. It is very unfair that more is being asked from farmers and businesses than from other applicants under the fair deal scheme. For others, it is only the family home and not the business of the farm that is covered. I reiterate my great concern that it is still not a fair deal or Bill for the farmers and the business community.

Deputy Seán Canney: Returning to Deputy Naughten's amendment, I strongly support the Deputy in that regard, no more than Deputy Healy-Rae. It is very important that nobody is over-burdened. The Minister of State said this would cost money but many people have been in nursing homes for perhaps six, seven or eight years and may not get anything in return. They have paid a great deal of money. Can we do anything for them because they have paid for more than three years? This is a significant burden and it has left many small family farms and businesses in debt. There was an expectation, legitimate or otherwise, that this Bill would help them as well.

Chairman: Before I ask the Minister of State to respond, Deputies Cathal Crowe and Naughten will first contribute.

Deputy Cathal Crowe: I confirm that I am in Leinster House. I thank the Minister of State for her engagement this morning. This is positive legislation. I have been following the discussion here in Leinster House and also remotely. The Minister of State is hearing from members about the need to shape this legislation in the right way. Overall, it is an excellent Bill.

On leasing and the point made by Deputy Healy-Rae, for many people leasing out is a transitional arrangement where a farm is handed over to somebody but the person may not be in a position to take it on immediately. This could be owing to a person's work, family circumstances, etc. There needs to be a degree of cognisance of that.

I have also seen an anomaly occur on a few occasions in County Clare. Land valuations have typically remained static over the past ten years or so. Agricultural land, by and large, is of a similar value to what it has been a decade ago. In the previous two Clare county development plans, the forward planning unit of the council has zoned large tracts of land without first getting the consent of the landowner. It is all done on the basis of town and village shaping. Normally, one would expect a person to be quite happy to see his or her land zoned and its value increase. However, I know of scenarios where people were not happy. They have seen the value of landholdings they had planned to farm or perhaps pass on to a younger generation of the family increase exponentially without their knowledge.

I do not know if the legislation can cater for all these scenarios but it is arising more and more often. Prior to 2009, county development plans were only based on the submissions received from individuals but I am now increasingly seeing planners make decisions in unison with councillors that may not always have the consent of the landowner. That is fine and dandy until people start looking at the fair deal scheme or something like that and suddenly find that the land they are sitting on has a very different value from what they or the people around them believed it to be.

In the vast majority of cases that I can recall, land is passed on to the next generation and the value it generates year on year in a beef scenario in County Clare would be from cattle sales and whatever comes in by way of EU grants and payments. Beyond that, there are outlays and the people hold on to the land for 40 years or so in the hope that a son or daughter, niece or nephew, as the case may be, will take it on. The land also needs to be gauged on that basis and for anything punitive to be factored in decimates the value and benefit of the farm for the generation coming afterwards.

Members should plough on with the legislation and I will tune in and make further contributions later.

Deputy Denis Naughten: I will put a scenario to the Minister of State. She may not be able to respond now but I would appreciate if she could come back to me before Report Stage. Let us take the example of John, a farmer who has been diagnosed with farmer's lung. Due to very poor health, in February 2010 he signed the farm in its totality - farm entitlements, the land, the whole lot - over to his son, Michael, who had completed his green certificate and who, since then, has been the legal farmer of those lands. John went into long-term nursing home care in January 2015 because he got pneumonia in Christmas 2014. Because the farm had not been signed over for the full five years in advance of John going into long-term nursing home care, Michael has had to pay the 7.5% per annum top-up that is required between that date and now. The Minister of State is now saying that John, in order to ensure that Michael gets the relief set out in this legislation, must declare Michael as the successor. However, Michael has been the successor and has been farming the land for the past 11 years. If this is enshrined in law, I think it will be open to legal challenge. This legislation could be struck down because it is unconstitutional that John is not in a position to declare anyone a legal successor because Michael has already been the legal successor of that holding for the past 11 years. This specific issue really needs to be looked at between now and Report Stage.

Deputy Colm Burke: I dealt with a very similar case to that which Deputy Denis Naughten has set out. It was a case in which a guy transferred a farm to his son. The farm was already in his son's name. Unfortunately, the son committed suicide and the farm reverted to the mother because the father had no remit. She did nothing with the farm; she did not have sufficient time to do anything. She transferred the farm to another son, who did not get the benefit of agricultural relief because he did not have the certificates. He had to pay a full round of tax on the farm. The mother ended up in a nursing home within 12 months of transferring the farm to the second son, and they have now been caught by the 7.5% per annum. She has been in a nursing home for some time now. The question arises, from when do the three years start running? I still do not have clarification on that question. It is very similar to what Deputy Denis Naughten said.

Deputy Mary Butler: There are quite a few complex issues there. The first response I will give is to Deputy Danny Healy-Rae. He raised his concerns on Second Stage and I have spoken to him in person. The Deputy's concern is that by including a farm or business asset in the financial assessment at all, it could challenge the future viability of the farm or business as a productive asset that could provide an income for future generations. The proposed amendment would fundamentally diverge from the fundamental principles of the legislation that has been in place since 2009. This change proposes that the family home should be included in the financial assessment of the scheme but that the farm and the business assets would not be assessed at all. It would introduce a clear unfairness that would make the scheme less equitable and more open to legal challenge. It is not accepted that the productive assets are a class of

assets that should receive unique treatment under the Act and that they should not be subject to any financial assessment for any period of time. If that were the case, we could have somebody who just lives in a principal private residence, who might have a pension, for example, and who might want that to be excluded. The whole premise of the fair deal scheme is to make access to nursing home as fair as possible. To put it simply: the more you have, the more you pay; the less you have, the less you pay. In this Bill, we are correcting the anomaly, in place since 2009, that anybody who has a small farm or a small business will be treated the same as somebody who just owns their own home, for example, or who has a private pension. This is to respond to that anomaly.

There is no prohibition on leasing arrangements in the Bill. However, assets that are leased will not be covered by the Bill, and both the value of these assets and the income derived from the leasing arrangements will be assessed as part of the financial assessment for the scheme on an ongoing basis. The whole premise of what we are trying to do is to protect farm families, keep them intact and make sure that farms stay within those families. What we have been told over many years - and what my officials were told - is that because the cap was not there, many farmers were afraid to enter nursing homes and were being treated differently from the people who avail of the scheme. Let us call it the original scheme. That is what we are trying to rectify. The policy intent of this amendment is to protect farm families and businesses that will remain within the family as a source of employment and income into the future. The policy would not be advanced if income from leasing arrangements were included in the cap. That is where we are in that regard.

Some Deputies raised the issue of the cost if the assets are there for three, four or five years. When a person's assets include land or property, the contribution based on such assets may be deferred. This is an optional benefit of the scheme. It is effectively a loan advance by the State which can be repaid at any time but which will ultimately fall due for repayment on the person's death. It is called the nursing home loan scheme. That is available to people as well.

As for the specifics raised by Deputies Naughten and Colm Burke, we will have to come back to them because there will always be individual cases that are not as straightforward. The case Deputy Colm Burke raised is the third one I have heard of today, and I am aware of some as well. If it is okay with the Deputies, we will refer back to them later. I know Deputy Colm Burke is unsure about one issue and I probably have not given him a very clear answer. If he leaves it with us, though, we will definitely come back to him on it if that is okay.

Deputy Colm Burke: I thank the Minister of State. I would appreciate that.

Deputy Denis Naughten: Will the Minister of State come back on one final point? If someone is in a nursing home now but has not applied for the fair deal, pending the passage and enactment of this legislation, presumably the three-year cap will apply from when that person applies for the fair deal after the enactment of this legislation. Would that be the case? In other words, let us say that someone is in a nursing home at the moment and has not applied for the fair deal scheme. The legislation is enacted and that person then applies for the fair deal scheme. Do the three years start from that point or is there any credit for the three years that person has already spent in the nursing home outside of the fair deal scheme?

Deputy Mary Butler: To be clear, the person is in a nursing home but is paying for it privately.

Deputy Denis Naughten: Yes.

Deputy Mary Butler: He or she has not applied for the fair deal scheme.

Deputy Denis Naughten: Yes.

Deputy Mary Butler: That person can apply from tomorrow or from when the scheme is enacted. He or she can appoint a successor and the time spent will count.

Deputy Denis Naughten: The time already spent will count.

Deputy Mary Butler: Absolutely. It is from the time the successor is appointed that any time served will count. Even though the person had not taken a place under the fair deal scheme, he or she can start taking part in it from when the Bill is enacted or even from tomorrow. That time will count, categorically.

Question put and agreed to.

Sections 6 to 15, inclusive, agreed to.

SECTION 16

Deputy Denis Naughten: I move amendment No. 5:

In page 34, line 26, to delete “10 working days” and substitute “30 working days”.

This is a technical amendment. Under the legislation as it stands, the person or person’s care representative who is subject to the fair deal application support scheme or is being provided with financial assistance shall give notice in writing to the executive, of any material change in circumstances, no later than ten working days after the material change in circumstances has come to the knowledge of that person. That window is insufficient.

In the example the successor is nominated by the older person and that successor is involved in a tragic farm accident and is left in a situation in which he or she is unable to farm or, even worse, has died, we are saying that within ten working days of that incident, there is a legal obligation to inform the HSE. Sadly, we have all dealt with tragic farm accidents and someone could be on a life support machine for a period. Surely, we cannot have people with this legal threat hanging over them. If someone dies in normal circumstances, there is a legal obligation that within three months - three months - the death is registered with the general registry office.

We are saying that you have three months to register a death but ten working days to inform the HSE with regard to the fair deal nursing home scheme alterations. I am looking for a reasonable period, in that there would be 30 days or one month from the date of anything happening, to informing the HSE. I also ask the Minister of State to look at a caveat being put in with regard to flexibility in unusual circumstances.

With regard to social welfare, a person has to apply within six months of reaching pension age. If you do not apply within six months, you may not get your payment backdated any further. However, there is flexibility in the legislation in that unusual circumstances, it can be backdated further than six months.

As a standard, people should have 30 days to inform the HSE of any change in circumstances but there should be a caveat or saver provision for some unusual circumstance which may come up. There could be a situation in which someone remains on a life support machine for more than 30 days and that saver provision should be put in. The principle here, which I hope

the Minister of State can accept, is ten days is insufficient to inform the HSE.

Deputy Mary Butler: I would like to work with the Deputies on this amendment. The new legislation provision mirrors section 24 of the principal Act, in terms of notification of material change in circumstance of persons provided with financial support. In this section, as Deputy Naughten said, the time span allowed is ten working days, which is two weeks. This section has not caused any problems for the HSE when operating the scheme and the time span of ten days is consistently used throughout the Act, at the period in which notifications are made to the executive of changes in circumstances of an individual in care or a care representative.

I used the same example as Deputy Naughten, in that if some tragic accident were to happen to the successor, this applies in the circumstances of the third party who is the successor and, as such, there may be additional delays in providing information to the executive.

I accept the principle and I will bring an amendment on Report Stage which lengthens this notification period to 20 working days, which is one month. If Deputy Naughten is happy to accept that, we will bring an amendment on Report Stage. I see exactly where Deputy Naughten is coming from and I had the exact same worries myself, with regard to a tragic accident. Trying to inform the executive and put your ducks in a row within two working weeks is too short. It is still one month but it is four working weeks, so if Deputy Naughten is happy for us to bring the amendment on Report Stage, that would state 20 working days. Can Deputy Naughten accept that? I fully accept the principle of what he seeks to do.

Deputy Denis Naughten: I am quite happy to accept the Minister of State's suggestion and will withdraw the amendment on that basis. However, can the Minister of State look at a saver provision in the case of very unusual circumstances? There is provision for that in social welfare law. Can the Minister of State give it consideration between now and Report Stage? There may be one case every five years which does not fit neatly into that 20 days. There should be some saver, rather than a black and white cliff edge, and some discretion with the HSE in extenuating circumstances or a *force majeure*-type situation. Can the Minister of State look at that as well for Report Stage?

Deputy Mary Butler: Once they notify the scheme within those 20 working days, they have six months to establish what needs to be done. Once they make a notification within the 20 working days, there is a six-month timeframe available to sort out the issues.

Deputy Denis Naughten: I accept that, but let us say there is a tragic accident with a power take-off, PTO, shaft, as a result of which someone has serious head injuries, is airlifted to Beaumont Hospital in Dublin and remains on life support machine for three or four weeks. We cannot expect the family, in that period of time, to be thinking about informing the HSE. I accept these circumstances will be very rare, but in those particular instances, there should be some flexibility in terms of those 20 days.

I will not dwell on it. I ask the Minister of State to think about it between now and Report Stage. I thank her for accepting the principle of what I am talking about here and ask her to dwell on it between now and Report Stage.

Deputy Mary Butler: We will certainly give it consideration.

Amendment, by leave, withdrawn.

Section 16 agreed to.

Sections 17 and 18 agreed to.

SECTION 19

Chairman: There are no amendments to section 19.

Question proposed: “That section 19 stand part of the Bill.”

Deputy Mary Butler: I wish to table an amendment on Report Stage.

Chairman: Will it be on section 19?

Deputy Mary Butler: Yes. I will give the committee a little bit of information. On Report Stage, a technical amendment will be required to section 19 of the Bill which amends section 29 of the 2009 Act. This section concerns when a charging order is placed in the context of ancillary State support on an asset under joint ownership. Section 29 has been updated to take into account the chartered provisions contained in the 2021 Bill. The Attorney General’s Office has proposed a technical amendment to this section to ensure consistency with other sections in the 2009 Act. We await the final draft of the amendment. The exact nature of the amendment can be explained in further detail on Report Stage.

Deputy Bernard J. Durkan: There are several different extraordinary situations one can deal with in these circumstances. One which comes within this proposal from the Minister of State is a situation whereby either the husband or the wife in a business or farm or whatever passes on, his or her property is transferred to the remaining partner and a family member subsequently marries. When assessments were made in the past, the HSE refused to take into account the existence of the new entrant, be it a husband or wife, into the family unit. I know they have an entitlement to the property by virtue of the fact that they contributed, in some cases for ten or 12 years, to the asset. I know of a recent case about which the HSE was adamant and about which I think it was wrong. The existence of a new entrant into a family unit must be taken into account in assessing the liability of the estate for charges.

Deputy Mary Butler: There are a number of inheritance scenarios which need be described and accounted for in the Bill, depending on the ownership model of assets that both members of a couple have an interest in. The goal at all times is to ensure fairness for the couple. To be clear, the Bill refers to a daughter or son who is married and takes into account people who have partners, which is very important in the context of modern-day arrangements. While the terms “son-in-law” and “daughter-in-law” are used, the Bill also refers to a person’s partner. The goal at all times is to ensure fairness for the couple.

Question put and agreed to.

Section 20 agreed to.

SECTION 21

Chairman: Amendment No. 6 has been ruled out of order as it falls outside the scope of the Bill.

Amendment No. 6 not moved.

Question proposed: “That section 21 stand part of the Bill.”

Deputy Mary Butler: I wish to flag that I will be bringing an amendment forward at

Report Stage. This section amends section 36 of the principal Act and allows the Minister, in respect of any difficulty which arises during the period of three years from the commencement of the Act of 2021, by regulations to do anything which appears to be necessary or expedient for bringing the amendments in the 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 14(j). This provision will require a small technical amendment to section 21. I wish to flag this in advance of Report Stage, if that is okay with members.

Deputy Denis Naughten: Amendment No. 6 in my name has been ruled out of order as have amendments Nos. 8 and 9. I wish to speak to the principle of the three amendments in the context of section 21 because I do not want to come back in later and delay proceedings.

This is an issue about which I am very passionate. There are a substantial number of vacant properties around the country in circumstances where older people have gone into long-term nursing home care. I estimate that approximately 4,500 homes are left empty every year because people go into long-term nursing home care. In the region of 400 of those are rented out. This means that more than 4,000 homes are being left vacant each year. Once a home is vacant, by the time it has gone through the whole process, namely, probate and being sold and refurbished, there is, on average, a six-year timeline. As a result, up to 25,000 homes could potentially be locked out of the system at any one time. These are homes in established communities where broadband is available, they are close to schools and the necessary infrastructure is already in place. At the height of a housing crisis, it makes absolutely no sense whatsoever not to treat the rental income from a family home in these circumstances in the same way as it is treated by the Department of Social Protection.

There is a perverse system laid out in the existing legislation whereby if such a home is rented out, a person will pay for it three times. The capital value of that asset is paid for at 7.5% for the first three years. On top of that, the rental income is considered a source of income and 80% of that is calculated as means. If that rental income is lodged into the older person's bank account, that is considered capital on deposit and charged at 7.5% as well. People are paying three times for a single asset when that kind of property is rented out. The Department of Social Protection has a system for dealing with capital assets. It either takes the capital value of the asset or the income that is generated from that asset into account, but not both. In the situation to which I refer, both are taken into account. This acts as an artificial barrier to the renting out of the homes in question.

I listened intently to some of the comments made by the Minister of State. I have spoken to her privately on this matter and explained that I am not looking for special treatment. All I am seeking is equity in the context of the system. I know the argument has been made by some people in the Department of Health that an older person may be forced into a nursing home in the circumstances we are discussing because the family may want to rent out the property. There is no significant financial incentive for a family to do that. The incentive is that it ensures that the house will not require the substantial maintenance that would be required in the case of a vacant property. There are many families who would love to see their former family homes providing accommodation for, perhaps, some of their relatives or neighbours.

It is disingenuous to say that an older person could be forced into long-term nursing home care. As the Minister knows, under the fair deal scheme, a person can only be deemed eligible to require long-term nursing home care on the basis of an independent medical assessment. Unless the Minister is suggesting that an independent medical assessment is flawed, then that

safety net is already there. This is a safety net which, believe it or not, is not present in the social welfare system and this has not caused a problem up to now.

I am looking for equitable treatment in the context of the renting out of these properties. I am not seeking preferential treatment. I want the properties in questions to be treated in the same way as they would be by the Department of Social Protection. If the latter happens, there would no longer be a barrier to the renting out of these 25,000 or so family homes in established communities throughout the country at a time when we are in the midst of a housing crisis.

I raised this issue with the Taoiseach in the Dáil on 5 May. He informed me that the Departments of Health and Housing, Local Government and Heritage are working together on developing the policy on the treatment of rental income and have agreed a process that is in train. It seems that, in principle, the Government has accepted the argument I have been putting forward and that this committee put forward in the previous Dáil at pre-legislative scrutiny stage, when it clearly stated that this anomaly needed to be addressed. It seems, however, that we are not going to do it now and that we will do it at some point down the road. It took approximately three years to get the Government to decide to bring forward the Bill. It has taken a further three years for it to be published. If it takes six years for this anomaly to be addressed, there will be more than 150,000 homes locked out of the housing market while we consider a solution to this problem. That is not good enough. It is abhorrent when we are in the middle of a housing crisis. If the Minister of State cannot accept my amendments, I plead with and urge her to come back on Report Stage with a constructive amendment to deal equitably with this problem.

Chairman: Before I let the Minister of State respond, other members wish to contribute. I call Deputy Shortall.

Deputy Róisín Shortall: I am going to speak on my amendment now because there is no point having two debates on it. My amendment proposes that a report be produced on this issue and that it would come back to this committee at an early stage for a decision. Deputy Denis Naughten has made many of the points in this regard already. Some of us have been talking about this issue for years. Its impact is really brought home to us at election time when we are going door to door. We see many vacant houses where nobody is listed on the electoral register. It is possible to see all the signs, such as an access ramp or a handrail outside a house, and know that the person who did live there has gone into a nursing home. The result is a perfectly good house lying idle. It makes no sense whatsoever from anybody's perspective.

In the context of the housing crisis it is madness for us to leave thousands of good-quality houses vacant simply because the Department has not been able to find a way of dealing with this situation equitably and fairly. There are many ways this issue could be addressed and some suggestions have been made in this regard. Deputy O'Dea introduced a Private Members' Bill in the previous Dáil. It referred to the possibility of approved housing bodies, AHBs, taking over the management of houses in these circumstances. The hard line taken by the Department on rental income being assessed against a person in the context of the fair deal scheme, resulting in a euro-for-euro loss, is crazy. It is in nobody's interest to take that hard-line view of this situation.

We need some creative thinking in this regard. We cannot defend houses lying idle. They do not add anything to an area, because vacant houses can be broken into and there are also other issues regarding their management. The main aspect, though, is the length of the housing lists and the great demand from local authorities and the public to find accommodation while thousands of houses are lying idle. It is not possible to defend such a situation on any level.

My proposal, therefore, is that a report be produced and quickly brought back to this committee to enable us to examine how we will address this situation and what is the most effective way of doing it. There is something to be said for the proposal made by Deputy O'Dea in respect of having an agency involved that could take over the responsibility for the management and letting of properties in these circumstances.

There are different ways of looking at this issue, but it makes no sense to do what we are doing now. Strict rules across Europe apply to houses being left vacant. We should be doing that here as well in respect of all vacant houses. It should not be possible to leave houses lying vacant for any reason beyond six months. There are many houses in circumstances like that now. This is something the Minister of State can have direct control over. Taking such an approach makes absolute sense. In that context, I urge her as strongly as I possibly can to accede to this request from all of us.

Deputy Seán Canney: I re-emphasise the double whammy that exists in this regard. This issue can be addressed when the financial assessment is being done under the auspices of the fair deal scheme. It is simple enough to do. We must find a way of doing it rather than stating we cannot do it. I put it as bluntly as that. In the cases of at least four vacant houses in rural areas of my parish, the families involved are paying the associated insurance costs, the standing charges for electricity supply and for oil to heat the houses. Family members go into those houses to light fires over the winter to keep them habitable. The houses in question are not being utilised, however. That is wrong. To describe what we are doing as an anomaly is being kind. These situations should not be treated in this way.

As Deputy Denis Naughten stated, when a property is being evaluated, it should be the case that a capped value is taken and a notional income devised in that regard or the rental income should be taken, but not both. In these cases, we are taking money from the most vulnerable. Returning to what Deputy Shortall said, this situation is resulting in many houses in towns and villages around the country being left empty. It is costing people money to keep them repaired and inhabitable, while at the same time we are foostering around trying to find a solution. The solution is very simple. When a financial assessment is made, the fair deal scheme criteria should accept either the capital or rental value, but not both.

Deputy Colm Burke: Following on from what the three previous speakers said, I have advised people in recent years in situations where a family wanted to sell a house and the person in the nursing home agreed that it should be sold. The 7.5% had already been deducted, however. If the house was sold in those circumstances and the money lodged into a bank account, there would then be a further reassessment. This means that there is a disincentive to sell houses and this must be examined. I ask that this aspect be considered in the context of the legislation. This situation is preventing families from selling houses in situations where they know that one member of the family will never use a house again. They do not want to sell the house until the person concerned has passed away because a further penalty will be applied if they do. This situation must be addressed to encourage people to sell off houses and ensure that people who do so are not penalised a second time.

Deputy Bernard J. Durkan: I speak in support of the general thrust of what has been said by previous speakers, including Deputy Colm Burke. There will of course be circumstances where families will not agree to sell a house, for various reasons. However, where families are in agreement that a house should be sold or leased, then that request should be honoured. No impediments should be placed in the way of families wishing to rent out a house for a good purpose. It would meet somebody else's housing requirements. I refer to a situation where there is

agreement among the members of a family, including the person in the nursing home. Circumstances may arise where the person in a nursing home may not agree to sell a house but might agree to lease it or *vice versa*. I strongly support addressing whatever issues may arise in this regard, insofar as we can, to allow the greatest possible utilisation of vacant houses, whether that concerns a house on a farm, one associated with a business or whatever.

Deputy Mary Butler: Deputy Denis Naughten's amendment was ruled out of order by the Bills Office. I did not have any part in that. I will address some of the Deputy's points and then will speak in general regarding Deputy Shortall's amendment, which will allow me to address almost all of the points that have been made. When an asset includes an inherent and-or sale value and generates an income, it would be inequitable not to include both the value and the income in the assessment. It is important to note that nursing homes support scheme contributions are not a tax. They are a payment toward the cost of care for the person paying. No one in the scheme will pay more than the cost of their own care and that situation must be recognised.

Turning to amendment No. 7 in the names of Deputies Shortall and Cian O'Callaghan, regarding an annual report concerning relief in respect of a farm or relevant business, I accept Deputy Shortall's contention that we need creative thinking in this regard. She is dead right. We have been doing much work in the Department on this aspect. I will be introducing an urgent amendment regarding this matter on Report Stage to remove the present disincentive in the scheme regarding the sale of a home in respect of the three-year cap. This amendment is being introduced in large part to address concerns about homes temporarily left vacant when their owners enter residential care. There are two issues here. They concern the sale of the home and the fact that if the home was sold while the person was in the nursing home, there was no cap and the 7.5% charge still applied. Regarding the cap at three years, that amendment is ready and is with the Attorney General. My team has been doing a significant amount of work on that.

As Deputy Naughten noted, this has been going on for three years. I was anxious to get this Bill through. We are working very closely on a second amendment, which will not be ready in time, regarding renting out homes. The Department is continuing to engage with the Department of Housing, Local Government and Heritage on an agreed plan to develop a definitive policy position relating to the treatment of rental income. It is a complex and intricate matter that requires considered analysis and research to avoid unintended consequences for residents. The two Departments have been working on this for many years and have not managed to crack the nut. I attended a meeting of a Cabinet sub-committee relating to this and how we can bring it forward. I have genuine concerns, which must be dealt with before we can move it forward. However, we are working really hard on it.

I have concerns relating to safeguarding, capacity issues and premature entry into nursing homes. Approximately 70% of people in nursing homes have dementia. The income of the average person in a nursing home is his or her State pension, which is €248.30 per week. We could say it is €1,000 per month but if the house is rented out, the rental income could be between €2,000 and €2,500 per month with current prices. Notwithstanding the safeguards that are in place, I am concerned that we could see people enter nursing homes prematurely. However, I recognise the urgent issues around housing supply. We all want to see people moving into empty houses.

As I said, 37% of people who enter nursing homes stay for only six weeks. The average length of stay in a nursing home is two and a half years. We also have a lot of houses that are caught up in probate and wills relating to a person who might have died in a nursing home. The Minister and I and as the Secretary General will have a high-level meeting next week. We re-

ally want to move this matter along but that particular aspect will not be ready. Otherwise this Bill, which we have been dealing with for three years, would be delayed for another six months.

In respect of the Deputy's amendment, he is asking for a report after 12 months. A report will be ready much sooner than that. I can give assurances that the work involving recommendations relating to rental income will be done. I expect it will be done well in advance of the timeline set out in the Deputy's amendment so I hope he will withdraw it. We have already given a commitment to the Department of Housing, Local Government and Heritage and to the Taoiseach that this will be done within a six-month timeframe.

Chairman: We have lost sound.

Deputy Mary Butler: Can the Chairman hear me?

Chairman: Yes.

Deputy Mary Butler: We are giving every consideration to Deputy O'Dea's Bill and have been interacting with him regarding approved housing bodies and rental. We are looking at every aspect of this issue. We need creative thinking to see how this can happen.

I do not accept that 150,000 homes could be locked out of the housing market. There are 21,000 people in the scheme. When someone ticks the box indicating whether he or she is single or married, those are the only two boxes that available. If someone was widowed and had an adult dependant living at home, this is not taken into account. From the data we have, my understanding is that we could be talking about 4,000 houses. Not everybody will want to rent out his or her home but there could still be a significant number of houses that could be used to accommodate people. We are hugely conscious of the housing issue and will continue to work on this. I would be interested in hearing what Deputy Shortall has to say regarding her amendment. We are very anxious to have a report on this within six months.

Deputy Denis Naughten: My apologies - the Minister of State is right. The figure is not 150,000 houses. That was a slip of the tongue. It is 50,000 houses. That is based on the figures provided to me by the HSE. There are approximately 14,000 people in long-term nursing home care at any time who have an asset, of whom 4,000 have a spouse who would normally be resident in the home. Some of those spouses may in long-term nursing home care and there may be other people residing in those homes. The HSE conducted a survey of these properties in 2016. I know getting the figures arising out of that survey is like finding out the third secret of Fatima. The Minister of State has them and might publish and furnish them to the committee, which would be helpful. Based on the figures available to me, up to 9,000 homes at any one time fall into this category. This is 4,500 homes per year based on average nursing home stay of two years. We are arguing about whether it is 50,000 or 25,000 homes. The reality is that we are still talking about a large number of homes, particularly if it will take another six years to address this anomaly in the same way as it has taken a long time to deal with the current capital issue.

These homes are in established communities. They are family homes in the main that are beside schools. Infrastructure is already in place. There is a clear commitment in the programme for Government to address the issue of vacant properties. Here is the first litmus test for the Government with regard to this. What we are talking about here is a treble tax. I accept that this is a complex area. I do not dispute that and I know the Minister of State may need time to bring forward a detailed amendment regarding how to deal with it. All I am asking is

that she does not discriminate against people. She is saying it would be inequitable not to take the value of the home and income into account. The Department of Social Protection makes payments to people based on a means assessment and what they need to meet their day-to-day income needs. The Department is a social income support body and it is saying that it is wrong to take the capital and income into account and that only one should be taken into account. Not only is the Minister of State taking both into account here, she is also charging for the money being lodged into the bank account. A treble tax is being charged on people if they rent out. I accept that this is a complex area and there is a need to bring forward detailed amendments but what I am asking for that the Minister of State clearly reflect in this legislation what is the law in the Department of Social Protection regarding means assessment, apply equity across the board and not raise a false and unjust barrier to people renting out their homes.

I welcome the fact that the Minister of State is bringing forward an amendment relating to selling the family home but she is undermining her own argument about people being forced into nursing home care. In respect of an option for older people in long-term nursing home care who will not return home to either sell or rent out their home, I know it is a psychological issue but they do not want to give up their home. What the Minister of State is doing is providing an incentive to sell the family home and a disincentive to rent it out. This in itself will cause duress for older people and is an inequitable approach in terms of the forced sale versus the renting out of the family home. I urge the Minister of State to reconsider the means assessment before Report Stage and come back with a further amendment. She should at least ensure she does not put in place a barrier to the renting out of these properties.

Deputy Mary Butler: I will come back to the Deputy on a number of points. As long as I am Minister of State with responsibility for older people, the two key words are “voice” and “choice” and their voices and choices will be heard. That is the first point.

The second is that we are working really hard to try to see how we can get the creative thinking in place on an extremely complex issue that was not dealt with by the previous Government. If I could say with tongue in cheek, the Deputy told me that the litmus test will be what I can do regarding housing. This was also in the programme for Government in the previous Dáil when Deputy Naughten was a senior Minister so I must say, this is something we----

Deputy Denis Naughten: The Cabinet records will show that I was the person at pre-legislative scrutiny stage of this Bill who made these arguments, which were accepted by the committee and are now reflected in the legislation before us. I have done my bit.

Deputy Mary Butler: In fairness, we all want the same thing. We all want to get people into empty houses. That is the most important thing. When we were working with the Department, it had two asks of us. One was that the cap would be included at three years on the sale of a house. That is done.

The second part is much more complex. I take on board that Deputy Shortall asked that we come forward within 12 months. We will do it in a much shorter timeframe. I am happy to meet the committee again to discuss this but it will not be in this particular legislation because we just do not have the time. This is going to Report Stage on either 13 or 14 July and I will be bringing it to the Seanad after the Dáil goes into recess. It is important that this Bill goes through now and that amendment regarding the sale of the houses and the cap at three years will be included.

I will make one final point on the social protection means test and assessment under the fair deal scheme. They have some similarities but they serve different purposes. It is not desirable

for the system to work in the exact same way. I am just pointing out the specifics here. Some 37% of people who enter nursing homes are only in a nursing home for six months. The problem is that we do not have the data regarding how many houses are empty for six months or 12 months. We just do not have it. That is part of the problem and why it is so difficult to bring this forward.

As I said already, 70% of people already have capacity issues. They have dementia in nursing homes. We want to give them a voice and a choice. Some people will never rent out their home. Deputy O'Dea brought forward a proposal with regard to including approved housing bodies, AHB, and having a system in place where a person only rents out the house and can have access to it if he or she leaves the nursing home, which I know is unusual. We are trying to work through every single aspect we can, however.

I would like to hear from Deputy Shortall, if that is okay.

Deputy Róisín Shortall: I thank the Minister of State very much for that response. I agree with the points made by Deputy Naughten about using similar rules to the Department of Social Protection. It also crossed my mind that there is an incredible contrast in the approach to rental income for people in nursing homes and the treatment of rental income for investment funds. We need to get our priorities right in that regard. There is, therefore, an element of small-mindedness about this and about going after every euro that a person earns. That needs to be removed because we need to consider the bigger picture.

I welcome what the Minister of State said about the sale of houses. It is disappointing, though, that she will not have anything ready with regard to rental income. That is actually an easier issue to address. I am not sure that the Minister of State's concerns about people coming under pressure to go into nursing homes are well founded given the fact there are tests in that regard as it is. I do not believe there is any issue about those; they work fairly well. If people are in nursing homes who should not be there, it is much more likely to be down to the fact that funding was not provided for home care. Anyway, there are tests and they stand up reasonably well.

In light of what the Minister of State said, I am happy to withdraw the amendment now on the basis of expecting an update from her when we come back to deal with Report Stage of this Bill. I will consider whether I will retable that amendment with a shorter timescale in terms of getting a report, at a very minimum. This issue has gone on for years on end and we need to see action very soon. On that basis, therefore, I will maintain my right to retable a similar amendment on Report Stage but today I will withdraw that amendment.

Chairman: I advise the Deputy that she will have to do that when we reach section 24. Does anyone else wish to speak to section 21?

Question put and agreed to.

Sections 22 and 23 agreed to.

NEW SECTION

Deputy Róisín Shortall: I move amendment No. 7:

In page 39, between lines 5 and 6, to insert the following:

“24. The Principal Act is amended by the insertion of the following section after section

45A (inserted by *section 23*):

“**45B.** (1) The Executive shall prepare, within a year of the Act taking effect, a report containing information in relation to—

(a) the legislative and policy options available to the State for the reassessment of rental income for those in receipt of the Nursing Homes Support Scheme in order to incentivise the letting of these homes, and

(b) an assessment of the likely impact of these options on the operation of the Scheme and the letting of vacant properties.

(2) The Executive shall send a copy of the report prepared under subsection (1) to the Minister within three months of the provisions of the subsection taking effect.

(3) The Minister shall cause a copy of the report prepared under subsection (1) to be laid before each House of the Oireachtas not more than three months after it has been prepared.”.”.

Amendment, by leave, withdrawn.

Section 24 agreed to.

SECTION 25

Chairman: I am informed that amendment No. 8 on section 25 put forward by Deputies Naughten, Berry, Canney, Grealish, Verona Murphy and Shanahan, is out of order because of a potential charge on the Revenue. As no-one else wishes to speak to this amendment, we will move on.

Amendment No. 8 not moved.

Question proposed: “That section 25 stand part of the Bill.”

Deputy Mary Butler: I wish to flag that this is the amendment I want to bring forward on Report Stage. This section repeals existing provisions within the principal Act pertaining to the availability of a 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 to the primary Act to allow for relevant farm and business assets to be eligible for the three-year cap following a determination under section 14C, which is what we discussed in the previous ten minutes.

Question put and agreed to.

Chairman: Amendment No. 9 in the names of Deputies Naughten, Berry, Canney, Grealish, Verona Murphy and Shanahan is also out of order because of a potential charge on the Revenue.

Amendment No. 9 not moved.

Section 26 agreed to.

SECTION 27

Chairman: As I am told Deputy Naughten had to leave for another meeting, does anyone

wish to move this amendment?

Deputy Matt Shanahan: I move amendment No. 10:

In page 43, to delete lines 41 and 42, and in page 44, to delete lines 1 and 2 and substitute the following:

“(2) This Act shall come into operation 30 days after its enactment.”.

Chairman: Does anyone wish to speak to the amendment?

Deputy Mary Butler: I will speak to it if that is okay. This proposed amendment provides that the Bill is brought into operation no more than 30 days after it is enacted. My firm intention is that this legislation amendment is enacted and commenced as quickly as possible. A number of matters need to be considered carefully before this can happen, however. The changes to the scheme are complex and significant work needs to happen at operational level to ensure that the system works smoothly from day one of these changes coming into effect.

The recent cyberattack has had a significant effect on the HSE’s capacity. The attack impacted both the national nursing home support scheme office and the 15 national nursing home support offices. I commend the excellent work of the nursing home support scheme’s team and staff. The HSE managed to put a manual processing system in place, ensuring that the attack did not affect funding releases to clients and patients and payments to private nursing homes.

A significant body of work is currently required to bring all systems up to date, however, while continuing to ensure there is no delay to dealing with the new applications or their processing. The nursing home support scheme IT system is currently being rebuilt on new servers. Once this is completed, significant testing will be required before the system is transferred to a live environment. The testing is crucial when considering that the nursing home support scheme controls and processes €1 billion in public money annually.

We are not, therefore, in a position to fully commence the provision within the 30 days proposed. I want to work with the Deputies who have brought forward this amendment, however. I accept it is important to provide clarity on this matter and ensure that people can benefit from these new arrangements as soon as possible. While I cannot, therefore, accept the amendment as drafted, which proposes a period of 30 days, I will bring an additional amendment to the Bill on Report Stage committing to commencement of the Bill within 90 days. That would make the date of commencement the start of October. My intention was always to try and commence the legislation in September but as a result of the cyberattack, that has proved very difficult. Perhaps Deputy Shanahan and his colleagues will come with me on this. I am not opposing the amendment, but I will bring forward another amendment on Report Stage to state that we will impose a timeline in respect of the legislation and that it will be enacted within 90 days to give the nursing home support scheme and the HSE the time to put the measures in place. I hope the Deputy can accept that.

Deputy Matt Shanahan: I accept that. We understand the difficulties in the context of IT, etc. We are happy to work with the Minister of State on the matter. We have a concern regarding the timeframe. Given what the Minister of State has just said, however, we will work with her. I will withdraw the amendment.

Deputy Mary Butler: I thank the Deputy for withdrawing the amendment. I will bring forward an amendment on Report Stage, which is expected to be taken on either 13 or 14 July.

I thank the Deputy for his co-operation.

Amendment, by leave, withdrawn.

Section 27 agreed to.

Title agreed to.

Deputy Mary Butler: I wish to confirm that, as flagged during the debate, I will be bringing forward several amendments on Report Stage.

Chairman: Was section 26 agreed to?

Deputy Mary Butler: Yes.

Chairman: I thank the members and the Minister of State for their co-operation. It is clear that the Minister of State is open to amending and improving the Bill. She has asked members to write to her in respect of changes to be made.

Deputy Mary Butler: I thank members for their time. I wish to raise one final point. A technical amendment is to be made to section 47 of the principal Act. That will also be done on Report Stage. The details will be available then.

I thank the Chairman and the members for their co-operation. It is great to complete Committee Stage within the time constraints of two hours. I thank all members for their co-operation and the great interest they have shown in this Bill.

Message to Dáil

Chairman: In accordance with Standing Order 101, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Health has completed its consideration of the Nursing Homes Support Scheme (Amendment) Bill 2021 and has made no amendments thereto.

The select committee adjourned at 11.24 a.m. *sine die*.