



## **Information note on the Nursing Homes Support Scheme (Amendment) Act 2021**

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### **Changes to the treatment of farm or business**

Under the Fair Deal Nursing Home Support Scheme applicants contribute up to 80% of their assessable income and a maximum of 7.5% of the value of their assets each year. The State then pays the balance of the cost of care.

A person's level of contribution is unaffected by their choice of nursing home, be it public, private or voluntary.

The scheme contains important safeguards for participants, such as ensuring that nobody will pay more than the actual cost of care. It also ensures that people do not have to sell their home during their lifetime to pay for long-term nursing home care.

Where an applicant's assets include land and property held in the State, the contribution based on such assets may be deferred and collected from the estate through the optional loan element of the scheme which is known as ancillary State support.



There are also limits on the financial assessment. For example, the first €36,000 of the value of an individual's assets, or €72,000 in the case of couple, is not counted at all. If an applicant has a spouse or partner remaining at home, he or she will retain half of the couple's income.

Importantly, the capital value of an applicant's principal private residence is only included in the financial assessment for the first three years of their time in care. This is known as the three-year cap.

The changes made to the law last July by Dáil Éireann which will be implemented over the coming weeks will now extend this principle to cap contributions based on family-owned and family-operated farm and business assets at three years where a family successor commits within the first three years of the person's time in care to working the farm or business for a period of six years. These six years will commence after the appointment of the family successor. (see below)

The intention of this change is to ensure that in situations where the productive income of the family farm or business is being relied upon as a principal livelihood and the farm or business is being handed down to the next generation, the viability and sustainability of these farms and businesses is protected. Ultimately, this change in the law seeks to alleviate any unnecessary financial pressures placed on these families due to existing provisions within the law.



Therefore, **regardless of the duration of a person's length of stay in long-term residential care, the maximum contribution based on the capital value of a farm or business will be 7.5% per annum for three years only**, provided that all the conditions of the scheme are complied with.

### **Appointment of a Family Successor**

The new law provides for the appointment of a family successor to a farm or business asset which the person in care, or his or her partner, owns or previously owned.

It allows for the appointment of a family successor to the farm(s) or business(es) which the person in care currently or previously owned, and to which a cap on the amount paid by the person in the nursing home towards the Scheme is being sought.

There are eligibility criteria which the **person in the nursing home** must meet. The key requirement is that the person in the nursing home must declare, by way of a statutory declaration, that for a period of three years (which need not be continuous) in the five years before they went into a nursing home that a substantial part of their working time, or that of their partner, or the family successor who is a relative (normally a son or daughter), was spent running the farm or business.



The nominated **family successor** must also commit, by way of statutory declaration that a substantial part of his or her normal working time will regularly and consistently be applied to running the farm or business for a period of **six years beginning on the date of his or her appointment**.

This appointment cannot take place until the law is commenced in the coming weeks.

The prospective family successor must be at least 18 years of age and related to the person in care, or his or her partner. If the asset in question is a transferred asset, the family successor must be the owner of the asset.

The law also allows the person in a nursing home to appoint multiple family successors on multiple assets, but only one family successor on any given asset.

The law also obliges the owner or owners of the farm or business asset to consent to a charging order being registered against the asset.

**This is all provided for in Section 3 of the Nursing Homes Support Scheme (Amendment) Act 2021 which is attached.**



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## **Sale of the family home**

Changes have also been made that effectively extends the existing three-year cap on contributions from a principal residence to the proceeds from the sale of that residence. This effectively means that money on deposit from the sale of the family home will be excluded from the means test 3 years after the person enters a nursing home.

Please note that this is an information note and not a legal interpretation – professional legal advice should be sought before making any decision.



## **Section 3 of the Nursing Homes Support Scheme (Amendment) Act 2021**

Application for appointment of family successor: farm or relevant business

Section 3. The Principal Act is amended, in Part 2, by the insertion of the following section after section 14:

“14A. (1) This section applies where—

- (a) the Executive (**that is the Health Services Executive**) has made a determination under section 7(8)(a) that a person (in this section referred to as the ‘relevant person’) needs care services,
- (b) the Executive has made a determination under section 11(1) in relation to the relevant person,
- (c) the relevant person is receiving care services, and
- (d) the relevant person or his or her partner falls into one or more of the following categories—
  - (i) he or she has an interest in a farm,
  - (ii) he or she has an interest in a relevant business,
  - (iii) he or she had an interest in a farm which is a transferred asset, or
  - (iv) he or she had an interest in a relevant business which is a transferred asset.

(2) On the application of the relevant person, the Executive shall—

- (a) if satisfied that the conditions in subsection (3) are met, appoint the person specified in the application as the family successor in respect of the relevant person in relation to the interest that the



relevant person has or had or, in the case of a relevant person who is a member of a couple, the interest that each member of the couple has or had in the specified asset, or

- (b) if not so satisfied, refuse the application.
- (3) The conditions referred to in subsection (2)(a) are—
- (a) that the person specified in the application has attained the age of 18 years and is—
    - (i) the partner of the relevant person,
    - (ii) a relative of the relevant person or of the relevant person's partner,
    - (iii) a son-in-law or daughter-in-law of the relevant person or of the relevant person's partner,
  - (b) that the relevant person declares by way of statutory declaration that, in relation to the specified asset, for a period of 3 years (which period need not be continuous) during the period of 5 years ending with the day on which the relevant person began to receive care services, a substantial part of the working time of—
    - (i) the relevant person,
    - (ii) the person specified in the application,
    - (iii) a person appointed as a family successor in respect of the relevant person,
    - (iv) a person who meets the condition under subsection (3)(a) and is specified in any other application made by the relevant person under this section which has not been refused under subsection(2)(b), or



- (v) the relevant person's partner, was regularly and consistently applied to running the family asset,
- (c) that if all or part of the specified asset is a transferred asset—
  - (i) it became a transferred asset on its transfer by the relevant person or by the relevant person's partner to the person specified in the application,
  - (ii) it continues to be held as a transferred asset by the person specified in the application, and
  - (iii) the person specified in the application undertakes by way of statutory declaration to repay any sums for which he or she may become liable by virtue of section 14J(11),
- (c) that the person specified in the application undertakes by way of statutory declaration that, if appointed as a family successor in respect of the relevant person under subsection (2), a substantial part of that person's normal working time will regularly and consistently be applied to running the family asset for the period of 6 years beginning on the date of the appointment,
- (e) that, except where the application relates to a relevant business which does not include an interest in land situated within the State—
  - (i) in a case where the specified asset is not a transferred asset, the relevant person, the relevant person's partner and any other owner of the specified asset, or
  - (ii) in a case where the specified asset is a transferred asset, the person specified in the application and any other owner of the transferred asset, each consent to the creation by virtue of section 14B(1) of a charge in favour of the Executive against the interest in the chargeable land in respect of the specified asset,





- (f) that, where the specified asset is a transferred asset, each owner of the transferred asset consents to the making of the application, and
- (g) that, where the relevant person is a member of a couple—
  - (i) except for any application under this section in relation to which a repayment event has occurred or in such other circumstances as may be prescribed, the relevant person’s partner has not made an application under this section, and
  - (ii) the relevant person’s partner consents to the making of the application by the relevant person.
- (4) The reference to ‘care services’ in subsection (3)(b) shall be construed as a reference to the type of services referred to in paragraph (a) or (b) that the relevant person first received if before receiving care services the relevant person received—
  - (a) transitional care services within the meaning of section 13, or
  - (b) services in a nursing home which services would, if they had been provided after the coming into operation of the definition of ‘approved nursing home’, have come within the meaning of the definition of ‘long-term residential care services’.
- (5) For the purposes of subsection (3)(c) it is immaterial whether the transfer was made—
  - (a) to the person specified in the application solely, or
  - (b) jointly to the person specified in the application and any other person or persons.
- (6) Subject to subsection (7), the Executive may appoint more than one person as a family successor in respect of the relevant person in accordance with this section where it is satisfied that the conditions in



subsection (3) have been met in respect of each person specified in an application made under this section.

- (7) The Executive may not—
  - (a) appoint more than one person as the family successor in respect of the relevant person in relation to the interest which the relevant person and his or her partner had in a specified asset which is a transferred asset, or
  - (b) appoint 2 or more persons jointly as the family successors in respect of the relevant person in relation to the interest which the relevant person and his or her partner have in a specified asset.
- (8) An application under this section shall be made in the specified form.
- (9) In deciding an application under this section—
  - (a) the Executive may request information from, and interviews with, the relevant person, the relevant person's partner, the person specified in the application and any representative (whether appointed under section 21 or otherwise) of the relevant person, and
  - (b) the Executive may request, receive and consider records and information relating to the relevant person, the relevant person's partner and the person specified in the application whether received pursuant to section 45 or otherwise.
- (10) The persons referred to in subsection (9) shall furnish all information and attend any interviews which the Executive may request in accordance with this section.
- (11) The Executive may refuse to consider or further consider an application under this section if a person referred to in subsection (9) fails to provide the Executive with such information as may be requested by the application form or under that subsection within 40 working days from the date of the request.



- (12) Where the Executive refuses under subsection (11) to consider or further consider an application under this section, it shall, not later than 10 working days after the refusal, give the relevant person, the relevant person's partner and the person specified in the application notice in writing of the decision and the reasons for the decision.
- (13) The Executive shall, not later than 10 working days after granting or refusing an application under this section, give notice in writing to the relevant person, the relevant person's partner and the person specified in the application of the decision and the reasons for the decision.
- (14) In this section, 'specified asset', in relation to an application under this section, means—
- (a) any farm or farms specified in the application,
  - (b) any relevant business or businesses specified in the application,
  - (c) any farm which is a transferred asset, or any farms which are transferred assets, and which is (or are) specified in the application, and,
  - (d) any relevant business which is a transferred asset, or any relevant businesses which are transferred assets, and which is (or are) specified in the application.”

**SECTION 3 ENDS**