

GENERAL SCHEME OF A NURSING HOMES SUPPORT SCHEME (AMENDMENT) BILL 2019
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PART 1
PRELIMINARY AND GENERAL

Head 1 Short title and commencement

Provide along the following lines:

- (1) This Act may be cited as the Nursing Homes Support Scheme (Amendment) Act 2019.
- (2) This Act shall come into operation on the day or days that the Minister may appoint by order either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory note

This is a standard citation and commencement provision.

Head 2: Interpretation

Provide along the following lines:

“Principal Act” means the Nursing Homes Support Scheme Act 2009;

Explanatory note

This head is a standard provision containing definitions of the key terms of the Act. The proposed list of terms is not intended to be exhaustive.

PART 2

AMENDMENT OF NURSING HOMES SUPPORT SCHEME ACT 2009

Head 3 Amendment of First Schedule Part 3 of Principal Act – Typographical Error

Provide along the following lines:

- (1) The First Schedule Part 3 to the Principal Act is amended by the substitution for paragraph 7 with the following:

“7. Subject to paragraphs 8 and 9, the interest of a person in a farm or relevant business shall not be or shall cease to be a relevant asset where the person concerned is receiving or has received—

(a) care services,

(b) transitional care services within the meaning of section 13,

(c) 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”, or

(d) any combination of the services referred to in subparagraphs (a) to (c),

for a period of 3 years (which period need not be continuous).”

Explanatory note

The effect of this amendment will be to remove potential misinterpretation of a paragraph (First Schedule Part 3 Paragraph 7) and align it with the interpretation and drafting of a similar clause in the preceding paragraph (First Schedule Part 3 Paragraph 6).

Head 4: Amendment of First Schedule Part 3 of Principal Act: Removal of sudden illness clause and provision of core eligibility requirements for 3-year cap

Provide along the following lines:

- (1) The substitution for paragraph 8(a) of a provision to provide that the person receiving care services must nominate a family successor of the interest in the farm or relevant business; and
- (2) the substitution for paragraph 8(b) of a provision to provide that a substantial part of the working day of the person requiring care services or his or her partner or his or her nominated family successor (nominated as per (1) above) was regularly and consistently applied to the farming of the farm or carrying on of the relevant business for at least three years of the five years prior to the person receiving care services; and
- (3) The substitution for paragraph 8(c) a provision to provide that the nominated family successor will on a consistent and regular basis apply a substantial part of his or her working day to the farming of the farm or carrying on of the relevant business for a period of not less than 6 years, continuous, commencing on the date which the family successor was nominated under subparagraph (1);
- (4) The 6-year period specified in subparagraph (3) shall commence no earlier than the date on which the person commenced receiving care services.

Explanatory note

“3-year cap” means that the interest of a person in a farm or relevant business shall not be or shall cease to be a relevant asset where the person concerned is receiving or has received—

(a) care services,

(b) transitional care services within the meaning of section 13 of the Principal Act,

(c) 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”, or

(d) any combination of the services referred to in subparagraphs (a) to (c),

for a period of 3 years (which period need not be continuous) and criteria and conditions relating to the cap have been met and continue to be met in accordance with the Act.

The participant in NHSS who has an interest in a farm or business, must signal their intent that a family successor succeeds their interest in order to continue holding and working the family asset. The stated policy objective is to increase the protection of a family farm or business from the uncertainty of an open-ended contribution so that the farm or business can be kept within the family where it is relied upon by the next generation for their livelihood. This Head provides the core requirements for an application for a 3-year cap. The criteria require that the farm has been farmed or business has been carried on by a family member applying a substantial part of their working day to the activity and that a family successor would continue to do so, as their principal livelihood for a further 6 years.

Head 5: Implementing the 3-year cap

Provide along the following lines:

The First Schedule Part 3 to the Principal Act is amended by the insertion of a new paragraph along the lines of:

- (1) A person, whether in receipt of care services or not, as the case may be, may, on first application for State Support under section 9 of the Principal Act, apply on the prescribed form to avail of the 3-year cap.
- (2) A person who is in receipt of care services and in receipt of state support may apply at any time while in receipt of these care services on the prescribed form to avail of the 3-year cap.
- (3) A person who has applied for state support at any time, and who is in receipt of care services or not, as the case may be, but is not in receipt of state support (due to not taking up the state support, or previously being refused state support), may apply on the prescribed form to avail of the 3-year cap.
- (4) The cap shall only apply in the case of paragraphs (1), (2) or (3) where the qualifying conditions, as set out in Head 4, are met.
- (5) For avoidance of doubt, there will be no recoupment of contributions made in regard to the farm or business asset for those in the scheme over three years, or in long-term residential care for over three years, and paying a contribution under NHSS based on the value of farm or business asset of any payments made prior to the notification of the determination of the application.
- (6) The person requiring care services (or the person's Care Representative, if any) shall declare by statutory declaration that the criteria under Head 4 (2) is met.
- (7) The nominated family successor shall declare by statutory declaration that he or she will meet the relevant criteria under Head 4 (3).
- (8) At the time of application under this Head, the nominated family successor shall, in addition to the statutory declaration under paragraph (7), provide a legal undertaking that where they do not satisfy the Executive, at any stage during the six year period, that the criteria under Head 4 (3) is met, the nominated family successor shall be liable for the repayment of the total sum of relief.
- (9) Subject to the relevant criteria and application criteria being met, the Executive shall make a determination on the application for the 3-year cap and the date from which it shall apply (if

the application is successful) and it shall, not less than 10 days after the determination give notice in writing to the applicant of the decision and the reasons for the decision and said notice shall include a copy of the statement referred to in subsection (11).

(10) The Executive shall, not later than 10 working days after making a determination under this section that an application for the 3-year cap be refused, give notice in writing of the decision and the reasons for the decision to each person subject to the application.

(11) Following a positive determination of the application for the 3-year cap, the Executive shall:

- a. Where the person is already in receipt of State support:
 - i. calculate the revised State support;
 - ii. calculate the amount of relief in accordance with Head 12; and
 - iii. the Executive shall prepare a revised statement of State support and a statement of relief.
- b. Where the person is not already in receipt of State support:
 - i. calculate the applicable State support;
 - ii. calculate the amount of relief in accordance with Head 12; and
 - iii. the Executive shall prepare a statement of State support and a statement of relief.

and the Executive shall pay the revised State support from the date notified in subsection (9) above.

(12) The application for the 3-year cap shall incorporate an agreement that the relief applied on foot of the application of the cap results in the creation of a charge in favour of the Executive (which by virtue of this Act is deemed to be a mortgage made by deed)

- a. against the interest of the person who is in receipt of care services and of the partner of that person in the chargeable asset that relates to the application of the cap,
- b. or in the case of a transferred asset, having regard for Head 9, against the interest of the family successor in the chargeable asset that relates to the application of the cap.

(13) Administration of the charge shall be in accordance with Head 17.

Explanatory note

This Head sets out in detail the application process relating to the 3-year cap and the operational requirements that must be met. As well as the core requirements under Head 4, the application requirements under this Head must also be met in order to qualify for the 3-year cap. It also sets out matters relating to the determination by the HSE of applications and timelines required for notifying applicants of the outcome of their application and the date from which increased State support may be able.

Head 6: Amendment to Section 9 & Section 10 of Principal Act

Provide along the following lines:

- (1) The insertion in section 9 and section 10 of the Principal Act of a provision to provide that where a family successor has been nominated, said nominated family successor shall be subject to the condition requiring that they shall furnish all information which the Executive may request in connection with the consideration of the application.
- (2) The insertion in section 9 and section 10 of the Principal Act of a provision to provide that the Executive may refuse to consider or further consider an application for the 3-year cap if the nominated family successor fails to provide the Executive with such information as may be requested by the application form or such additional information as the Executive may reasonably require to enable it to determine the application.
- (3) In addition to an application for State support, an application for the 3-year cap shall be included in the provisions under section 9(5).

Explanatory note

There is existing provision in Section 9 of the 2009 Act for the requirement of the person for whom the application for State support is being made, or their partner, to furnish information requested in connection with the application. This Head extends this provision to the nominated family successor, so that the family successor can provide required documentation to assist with the consideration of an application.

Head 7: Compliance with qualifying criteria

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) Where a person receiving care services has received or is receiving any of the care services in specific in paragraph (7) of Part 3 of Schedule 1 of the Principal Act, and it appears that any of the conditions set out in Head 4 relating to the 3-year cap on the farm and business assets have not been or are not being met, the person shall no longer be considered eligible for the cap.
- (2) Where subsection (1) applies and having given the person receiving care services the opportunity to make representations, the Executive shall make a determination as to whether the 3-year cap applies. Where the 3-year cap no longer applies the Executive shall:
 - a. calculate the revised State Support resulting from the discontinuation of the cap, and
 - b. give notice in writing to the person receiving care services of the revised State Support, as soon as practicable, and in any event, not longer than 10 days following the determination.
- (3) Where,
 - a. save in circumstances referred to in Head 10 (2), a particular event occurs and the nominated family successor is not the lawful successor of the farm or relevant business, or
 - b. save in circumstances referred to in Head 10 (1) & (2), the nominated family successor (or new nominated family successor, as the case may be) fails to satisfy, at any stage within the relevant 6-year period, the criteria under Head 4(3), or
 - c. the conditions in Head 9 in relation to documentary evidence are not met,the total sum of relief granted shall be repayable.
- (4) Where 3(a) occurs the amount of relief received shall be repayable from the estate of the person who was in receipt of care services.
- (5) Where 3(b) occurs the amount of relief received shall be repayable by:
 - a. the person in receipt of care services,
 - b. if the person is a member of a couple, his or her partner,
 - c. the nominated family successor, or their estate, pursuant to the undertaking referred to in Head 5(8), or
 - d. where a new nominated family successor has been appointed in accordance with Head 10, the new nominated family successor, or their estate, pursuant to the undertaking referred to in Head 5(8)

(6) In this Head, “particular event” means:

- a. the death of the person concerned who is receiving care services, or
- b. the transfer of any part of the interest in the farm or relevant business of any person who is receiving care services and is availing of the 3-year cap.

(7) Where a particular event occurs:

- a. and it relates to the death of the person receiving care services, the personal representative shall notify the Executive of the death as soon as practicable after the death, but in any event no later than 20 working days after the issue of a grant of representation in respect of the estate of the deceased person concerned.
- b. and it relates to the transfer of any part of the interest in the farm or relevant business, the person receiving care services or the nominated family successor shall notify the Executive of the transfer as soon as practicable after the transfer, but in any event no later than 10 working days after the transfer.

Explanatory note

In order to safeguard the primary policy objective and the operation of the Scheme, this Head provides for the cessation of the 3-year cap or the recoument of total sum of relief in the event that the qualifying criteria of the 3-year cap are not being met or are not continuing to be met at any stage during the 6-year period. The Head sets out the administrative process in relation to same and liability arising in a situation where a person does not meet the requirements.

Head 8: Monitoring of adherence to 6-year condition

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) The Executive to be named as the body responsible for operation of monitoring adherence to conditions by which the 3-year cap applies to farm or relevant business assets.
- (2) The Executive to monitor, by way of proof requisitioned from the nominated family successor, that he or she is meeting the conditions for relief by way of the 3-year cap by applying on a consistent and regular basis a substantial part of his or her working day to the farming of the farm or carrying on of the relevant business as specified in the Act and continues to do so, at periodic intervals across the six year period at their discretion, but at any event prior to application of the 3-year cap, and in advance of the anniversary of the conclusion of the 6-year period.
- (3) That the Executive may request any documentary evidence it deems necessary from the person receiving care, or their care representative or the family successor, or all named parties, in order to verify that the conditions of the cap are being met and that the persons requested for such documentary evidence shall provide the requested material.
- (4) Where the information requested is not provided, the Executive may cease the application of the 3-year cap and require repayment of the total sum of relief. The Executive may grant a period of not more than three months from the date of the request for information, during which time the application of the 3-year cap shall continue. During this time the progression of the 6-year period shall temporarily cease.
- (5) Any person who knowingly, or recklessly, gives the Executive information which is false or misleading in a material particular in, with, or in connection with, the 6-year period is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 3 months or both.
- (6) The person referred to in subsection 3 has a positive obligation to demonstrate that they meet and continue to meet the criteria of application of the 3-year cap.

Explanatory note

This provision sets out that the HSE will have responsibility for the monitoring of adherence to the conditions which must be met in order for the 3-year cap on farm or business assets to apply. It establishes the administrative and operational powers and processes to support this task.

Head 9 Transferred farm and business assets that are relevant assets

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) Where an application for the 3-year cap under Head 5 relates to a relevant asset that is considered a transferred asset, as per the meaning assigned to “transferred asset” in Schedule 1 of the Principal Act, in addition to the criteria in Head 4 the person to whom the asset was transferred must be a family successor of the person receiving care services and he or she must continue to have ownership of the relevant asset.
- (2) Where an application relates to a transferred asset, the family successor shall meet all of the requirements under this Act, including in Head 5, that relate to the application of the 3-year cap.
- (3) Where the requirements outlined in subsections (1) and (2) are not met, the Executive shall refuse the application for the 3-year cap.

Explanatory note

As the 3-year cap on asset contribution applies in the instance of a transferred asset that was a principal residence, the asset cap should also apply to farm and business assets where the qualifying criteria are met.

Head 10: Special provisions

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) In circumstances where the nominated family successor may not be able to continue to meet the conditions under Head 4 (3), the person receiving care services may on notice apply to the Executive to nominate a new family successor.
- (2) In circumstances where the nominated family successor is not the lawful successor of the farm or relevant business, the lawful successor, provided that he or she is a family successor of the person who is or was in receipt of care services, may apply to the Executive to:
 - a. renominate the existing nominated family successor with his or her express written consent as the nominated family successor, or
 - b. nominate a new family successor, which may be his or herself.
- (3) In circumstances where the nominated family successor under subsection (2) may not be able to continue to meet the conditions under Head 4 (3), the lawful family successor may apply to the Executive to nominate a new family successor.
- (4) The new nominated family successor shall be required to meet the conditions of Head 5 (including the declaration and undertaking under paragraph 8 & 9 of that Head) and all other conditions of the nominated family successor, and shall become the nominated family successor for the balance of the 6-year period.
- (5) The Executive may grant a period of up to three months to allow for nomination of a new family successor, in accordance with this Head. During this time the progression of the 6-year period shall temporarily cease. During this time the relief may not be repayable, unless the family successor notifies the Executive that a new family successor will not be nominated.
- (6) For the avoidance of doubt, if the relevant arrangements for the nomination of the new family successor under this Head are not completed in the period granted by the Executive, the total sum of the relief shall be repayable.

Explanatory note

This provision provides for some limited contingency (force majeure) measures in the event that certain issues may arise in relation to meeting the ongoing requirements. The provision sets out the requirements relating to these measures and the administrative provisions required to enable consideration of such measures.

Head 11: Calculation of relief

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) Where the Executive has determined that an application for the 3-year cap be granted it shall calculate the amount of weekly relief applicable.
- (2) The amount of weekly relief applicable shall be calculated as the difference between the assessed weekly value of relevant assets of the person in respect of whom the financial assessment is being carried out and the assessed weekly value of the relevant assets excluding the farm or relevant business to for which the 3-year cap shall be granted.
- (3) The Executive shall keep records and accounts relating to the total sum of relief provided under the 3-year cap in relation to each person.
- (4) The Executive may, following a review of a financial assessment under section 30, alter the amount of relief by way of the 3-year cap enjoyed in respect of a person under this section.
- (5) Where relief is applied to or on behalf of a person in relation to different chargeable assets related to the farm or relevant business, it shall be recorded by the Executive in a manner which identifies separately the amount of relief applied in respect of each chargeable asset.

Explanatory note

The provision enables the HSE to calculate the relief that may be payable following the determination that an application for the 3-year cap applies. The provision also provides powers to and sets obligations on the HSE in relation to the administration of the calculation of relief.

Head 12: Payment of clawback

Provide for:

- (1) Where the Executive has increased the payment of State support by way of application of the 3-year cap and an event under Head 7 3(a) or 3(b) (“relevant event” in this section) occurs, the Executive shall in accordance with Head 11 calculate the amount of the total sum of relief due to be repaid (in this section referred to as the “relief repayable”) and give notice of that amount and particulars of how it is calculated to the relevant liable person.
- (2) (a) The relief repayable together with any interest thereon shall be a debt due and payable to the Executive.
(b) The Revenue Commissioners shall act as agent for the Executive in respect of the collection of monies due to the Executive under this Act in relation to relief repayable.
- (3) The Executive shall within the relevant period referred to in subsection (4) notify the Revenue Commissioners of—
 - (a) the relief repayable amount,
 - (b) particulars of how that amount is calculated,
 - (c) particulars of the asset or assets against which the relief repayable amount is secured, if applicable,
 - (d) the relevant event, as the case may be, and the date of that event,
 - (e) the name, PPS Number and address of—
 - (i) the person in respect of whom State support was paid,
 - (ii) where the person referred to in subparagraph (i) is a member of a couple, the partner of that person, and
 - (iii) the relevant accountable person (if known to the Executive), and
 - (iv) the nominated family successor, and
 - (f) such other information as the Revenue Commissioners may reasonably require for the purposes of this section.
- (4) The relevant period referred to in subsection (3) means the period of 3 months after it comes to the knowledge of the Executive that a relevant event has occurred.
- (5) Interest on the relief repayable amount shall accrue in accordance with Regulations made under section 36 of the Principal Act.
- (6) Until the relief repayable amount is discharged to the Revenue Commissioners interest shall continue to accrue, in accordance with regulations made under section 36, on the relief repayable amount, as calculated in Head 11.

- (7) The Revenue Commissioners may furnish to the Executive such information as relates to the collection of the relief repayable amount and any interest accruing on that amount pursuant to regulations made under section 36.
- (8) (a) The Revenue Commissioners may take all steps which they consider appropriate to recover the relief repayable amount and interest accrued thereon, including the bringing of legal proceedings in their own name.
- (b) In every case where legal proceedings are brought by the Revenue Commissioners pursuant to paragraph (a) the proceedings shall indicate clearly that they are brought pursuant to the Nursing Homes Support Scheme Act 2009.
- (9) Where the Executive has increased the payment of State support by way of application of the 3-year cap no action shall be commenced by the Revenue Commissioners—
- (a) to recover the relief repayable amount or interest on any part of the repayable amount, or
- (b) seeking the sale of the relevant asset, if applicable,
- after the expiration of 12 years from the occurrence of the relevant event concerned.
- (10) The collection and recovery of a relief repayable amount shall be under the care and management of the Revenue Commissioners and the Commissioners may do all such acts as may be deemed necessary and expedient for collecting, receiving and accounting for a relief repayable amount in the like and in as full and ample a manner as they are authorised to do in relation to income tax under their care and management.
- (11) Monies received by the Revenue Commissioners under this section shall be paid by the Revenue Commissioners into the Central Fund.
- (12) This section applies notwithstanding any provision of the Data Protection Acts 1988 to 2018.
- (13) The person primarily accountable for payment of the relief repayable amount to the Revenue Commissioners shall be as set out in Head 7 (3) and (4).
- (14) A person who becomes entitled to an interest in the asset against which the relief repayable amount is secured shall also be accountable for payment of the relief repayable amount to the Revenue Commissioners.
- (15) (a) The liability in relation to Head 7 (3) shall not exceed the gross value of the estate of the deceased person concerned less the amount of the funeral and testamentary expenses.
- (b) The liability of a person referred to in subsection (13) above shall not exceed the amount of the value of the interest in the asset to which the person becomes entitled.

Explanatory note

This Head sets out the process and obligations in relation to repayment of the relief received arising from a situation where the conditions of the application of the 3-year cap are not met. The provisions have been adapted from existing provisions within section 26 of the 2009 Act so that the repayment of the relief is analogous to the repayment of ancillary State support, insofar as is appropriate, including the assignment of the Revenue Commissioners with responsibility for collecting repayments, and provisions enabling the process of doing so.

Head 13 Amendment to Section 24 – Notification of material change in circumstances

Provide along the following lines:

- (1) Amendment of section 24 (1) of the Principal Act for the inclusion of nominated family successor as one of the classes of person who is obliged to notify the Executive of any material change in circumstances.

- (2) Insertion of a paragraph after section 24 (4)(b) of the Principal Act, before “which may result in—” identifying as a “material change in circumstances” any change in the circumstances of the farm or relevant business to which the cap applies and to the compliance with the conditions of this cap as per Head 4.

- (3) Insertion of a paragraph after section 24 (4)(b)(iii) of the Principal Act indicating withdrawal of relief by way of the 3-year cap being a potential result of the change in circumstances to be notified to the Executive.

Explanatory note

This extends existing provisions in the Principal Act in relation to requirements certain persons participating in the Scheme have to notify the HSE of a material change in circumstances. This Head extends those requirements to nominated family successors and to material changes regarding assets to which the 3-year cap applies.

Head 14: Transitional provisions

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) A person in receipt of care services and also in receipt of State support immediately prior to commencement of these amendments, who qualifies under the existing provisions of Schedule 1 Part 3 paragraphs (7) and (8) of the Principal Act for the application of the 3-year cap on contributions based on the value of farm or relevant business assets, may be subject to the conditions of the Principal Act as they were on the date the person commenced receiving State support, should they choose to be.

- (2) A person referred to in subsection (1) who wishes to avail of the cap according to existing provisions shall apply to do so no later than 6 months following the commencement of these amendments.

Explanatory Note

For those persons with farm or business assets who have entered NHSS prior to commencement of the amendment and who qualify for a cap on farm or business assets based on having suffered a sudden illness or disability which caused that person to require care services, and satisfy the further criteria of Schedule 1 Part 3, section 8, i.e.

(b) a substantial part of the working day of the person requiring care services or his or her partner was regularly and consistently applied to the farming of the farm or carrying on of the relevant business until the onset of the sudden illness or disability, and

(c) a family successor certifies in writing that he or she will on a consistent and regular basis apply a substantial part of his or her working day to the farming of the farm or carrying on of the relevant business.

the conditions by which the person entered NHSS, which is the legislation prior to amendment, shall apply, whereby the person must only satisfy Schedule 1 Part 3 sections 7 & 8 and shall not be held to the new conditions of application of a cap on contributions based on the value of farm or business assets, as prescribed by the amendment.

A transitional period of 6 months shall be provided to enable existing participants to signal their intention to apply for the 3-year cap based on the existing provisions that sudden illness or sudden disability necessitated long-term residential care.

Head 15: Amendment to Section 21 of Principal Act – appointment of care representative

Provide along the following lines:

- (1) Insertion of a paragraph after section 21 (1)(c) of the Principal Act, identifying nomination of a family successor as a matter to which the section applies.

Explanatory note

In this Head, the principal Act is amended to make provision for the nomination of a family successor as one of the functions of an appointed Care Representative, where it is deemed that the applicant does not currently have the capacity to make such a nomination.

Head 16: Amendment to Section 42 of Principal Act – non-disclosure and misstatement

Provide along the following lines:

- (1) Insertion of a paragraph following paragraph (1) of section 42 of the Principal Act an instance in which excess of State support may have been received in any situation whereby the family successor ceases to work the farm or business asset, as per the conditions set out in Head 4, and does not indicate that a further family successor should be nominated in the allowable period, as set out in Head 10.
- (2) The insertion of non-compliance with continuing conditions of the 3-year cap on farm and business assets, as per Head 4, as a reason by which an excess amount of State support has been paid may arise.
- (3) The inclusion in paragraph (3) of Section 42 of the Principal Act of reference to the above subsection (1) as a subsection under which the rights of the Executive will not be affected by the implementation of recovery of excess State support by way of reducing State support payable.
- (4) Amendment of section title to include non-compliance with conditions governing cap on contributions.

Explanatory note

Existing provisions in the Principal Act allows the Executive to require repayment of excess State support paid as a result of misstatement or non-disclosure of income or assets. This Head extends the scope of application of existing provisions to situations where excess State support is paid relating to farms and businesses, where non-disclosure or misstatement have been found to occur in respect of the application of the 3-year cap.

Head 17: Relief to be charged against farm or relevant business in the context of the 3-year cap

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

(1) In this section—

“authorised person” means a person authorised by the Board of the Executive for the purposes of—

- (i) making orders under subsection (2),
- (ii) transmitting orders by electronic means to the Property Registration Authority in accordance with subsection (13),
- (iii) making an application to the Property Registration Authority for the cancellation of an entry of a charge on the register of the property charged where such charge relates to an order created under this section, and
- (iv) performing functions which under this Act may be performed by authorised persons.

“interest in the relevant chargeable asset” means—

- (a) the interest of the person in respect of whom the relief relating to the 3-year cap is granted,
- (b) in the case of such a person who is a member of a couple, the interest of each member of the couple, or
- (c) in the case of a transferred asset in relation to which the provisions of Head 9 applies, the interest of the family successor,

in the chargeable asset concerned.

“secured amount”, in relation to a chargeable asset, means the aggregate of all amounts advanced by the Executive (whether before or after the making of an order under subsection (2)) in respect of a person by way of relief together with interest thereon calculated in accordance with Head 11 (2) and Head 12(5) and which amounts relate to the interest of that person or of that person’s partner, or of both of them, or which amounts relate to the interest of the family successor under Head 9, in that chargeable asset.

- (2) (a) Where the Executive has received an application for the 3-year cap and the Executive is satisfied that it is appropriate that the relief in question be provided, the Executive shall make an order in accordance with this section.
 - (b) The Executive shall not make a payment in respect of increased State support as a result of application of the 3-year cap prior to the making of an order by the Executive charging the interest in the relevant chargeable asset with the secured amount.
- (3) The Board of the Executive may appoint a person or persons who are employees of the Executive to make orders under subsection (2) and each such order shall be deemed to have

been executed by the Executive under the seal of the Executive in compliance with paragraph 1 of Schedule 2 of the Health Act 2004.

- (4) An order made under subsection (2) shall be deemed to be a mortgage made by deed within the meaning of the Conveyancing Acts 1881 to 1911 in favour of the Executive for a charge of the secured amount and to have been executed at the time of the making of the order.
- (5) The Executive shall from the date of the making of the order under subsection (2)—
 - (i) be deemed to be a mortgagee of the property for the purposes of the Conveyancing Acts 1881 to 1911, and
 - (ii) have, in relation to the charge referred to in subsection (2), all the powers conferred by those Acts on mortgages made by deed.
- (6) Where the Executive makes an order under subsection (2), it shall, as soon as practicable thereafter, cause the order to be registered in the Registry of Deeds or the Land Registry, as appropriate.
- (7) An order made under subsection (2) affecting an interest in land which is registered land within the meaning of the Registration of Title Act 1964 shall be registrable as a burden affecting such land whether the person named in such order as the owner of the land is or is not registered under that Act as the owner of such land, and the Property Registration Authority shall on application being made to it register such order affecting the land concerned.
- (8) Any amount paid by way of relief, whether or not it is the subject of a mortgage arising by reason of this section, may, without prejudice to any other power in that behalf, be recovered by the Executive as a simple contract debt in any court of competent jurisdiction.
- (9) For the avoidance of doubt, neither an order made under subsection (2) nor a mortgage that arises under it shall be regarded as a conveyance for the purposes of section 3 of the Family Home Protection Act 1976.
- (10) Subject to subsection (11), notwithstanding any rule of law or statutory provision, where a mortgage is created by reason of an order under subsection (2) and registered in the Registry of Deeds or the Land Registry as appropriate and a subsequent mortgage is created in favour of a party other than the Executive, the Executive is entitled to priority over any subsequent mortgage in respect of advances made by the Executive after the date of the subsequent mortgage whether the Executive did or did not have notice of such subsequent mortgage.

(11) Subsection (10) does not apply as respects a subsequent mortgage where the Executive has consented in writing to such subsequent mortgage subject to any conditions specified in that consent.

(12) A person who makes an application for the 3-year cap, or their partner, or their nominated family successor shall have an obligation to give all reasonable assistance to the Executive as the Executive may request to facilitate the registration of an order under subsection (2) in the Land Registry or Registry of Deeds, and the Executive shall not be required to apply the relief where such assistance has not been given.

(13)(a) An order made under subsection (2) shall be in the form prescribed by regulations made under section 36, and may be made—

- (i) by an authorised person, and
- (ii) in electronic form.

(b) Where an order is made in electronic form under this section, an authorised person may transmit the order by electronic means to the Property Registration Authority for registration in the Land Registry, and the Property Registration Authority may effect registration of the order if—

- (i) it is lodged by electronic means in a manner approved by, and
- (ii) it complies with the requirements specified by,

the Property Registration Authority.

(14) Where an order under this section made in electronic form purports to have been made by an authorised person it shall be presumed by the Property Registration Authority that such electronic document was made and transmitted by the person by whom it purports to have been made and transmitted.

(15) The relief granted by the Executive by way of the increased State support as a result of application of the 3-year cap in respect of care services for the person to whom the application for the 3-year cap relates and which is granted in accordance with Head 5 shall be deemed to have been granted for the benefit of the person who or on whose behalf the request for such cap was made or, in the case of a person who is a member of a couple, for the benefit of both members of the couple, and for the benefit of the family successor.

(16) Where State support is increased by way of the 3-year cap which by reason of subsection (1) is deemed to have been advanced to both members of the couple, the liability of the members of the couple in relation to such advances shall be joint and several.

(17) Where the relief enjoyed falls due to be repaid, the amount repayable in respect of the 3-year cap shall be the aggregate of increased State support (as calculated by Head 11) by the

Executive by way of the 3-year cap together with interest, if any, computed in accordance with subsection (15).

(18) Where the Executive is satisfied that all of the criteria relating to the 3-year cap has been met, it may, no earlier than the conclusion of the 6-year period specified in Head 4(3), arrange for charge against the relevant property to be removed.

(19) Where the Executive, in consultation with the Revenue Commissioners, is satisfied that secured amount has been repaid it may arrange for charge against the relevant property to be removed.

Explanatory Note

This Head provides for the creation of a charge on an asset or assets to which the 3-year cap is to be applied. Increased State support is not be payable on behalf of the person until such charge is in place, where applicable. This provision adopts the administrative procedures to facilitate the charging of assets from analogous procedures in the 2009 Act relating to the ancillary State support.

Head 18: Amendment to Section 32 of the Principal Act - Appeals

Provide along the following lines:

- (1) the insertion in section 32 (1) that the appeals process will apply to Head 5(9), 5(10), 6(2), 8(4) and 9(2).

Explanatory Note

To provide an effective appeals procedure for those elements of the amendments that may be appealed. This amends to the current appeals procedure sections of the Amendment that may be appealed.

Head 19: Amendment of definitions

Provide along the following lines:

- (1) the substitution of the definition of “relevant business” in Schedule 1, Part 3, paragraph 1, for the following:

“relevant business” means—

- (a) the business or an interest in a business carried on by a sole trader or by a partnership, including any land, building, machinery or plant used wholly or mainly for the purpose of the business, or
- (b) the unquoted shares in or securities of a company carrying on a business in which the applicant or his or her partner or his or her nominated family successor has been actively involved in carrying on the business

- (2) the substitution of the definition of “family successor” in Schedule Part 3, paragraph 1, for the following:

“family successor” means a partner or relative of the person applying for State support, which person, at the time of the application for State support—

- (a) in the case of a farm, regularly and consistently applies a substantial part of his or her working day in farming the farm, or
- (b) in the case of a business, regularly and consistently applies a substantial part of his or her working day in the carrying on of the relevant business

Explanatory Note

The definition of “relevant business” cited in subsection (1) is to substitute the definition as currently given in First Schedule Part 3, Paragraph 1, which removes the current sudden illness or disability clause.

The definition of “family successor” cited in subsection (2) is to substitute the definition as currently given in First Schedule Part 3, Paragraph 1, in line with the requirement in Schedule 1 Part 3 Paragraph 8 (to be amended) of the Principal Act and Head 4 (3).

Head 20: Data Collection and Review

Provide along the following lines:

Insert new paragraph in Part 3 of Schedule 1 of the Principal Act, along the lines of:

- (1) The Executive shall collect relevant operational and statistical data in relation to the application of the 3-year cap, including but not limited to statistical data on applications and approvals for the 3-year cap, the type and value of such business and farms to which the cap has been applied and compliance and clawback information.

- (2) The Executive shall provide a report to the Minister no later than the last day of June each year, providing a summary of key information on the operation of the 3-year cap and impacts on the Nursing Homes Support Scheme relating to the previous calendar year and trends in relation to the year ahead. The Minister may, by regulation, amend the frequency at which such reports are required to be submitted but may not do so until reports for at least 3 full years of operation have been submitted. The frequency shall not be more than one report per annum.

- (3) The Minister shall, in consultation with the Minister for Public Expenditure and Reform, not later than 5 years after the commencement of this Act, initiate a review of the operation of the amendments of the Principal Act made by this Act insofar as those amendments relate to the application of the 3-year cap.

- (4) Having completed the review, the Minister shall, in consultation with the Minister for Public Expenditure and Reform, prepare a report setting out such findings as the Minister considers appropriate consequent on such review.

Explanatory Note

This provision creates an obligation to gather key operational and statistical data relating to the application of the cap and to submit a summary reports to the Minister for Health in accordance with defined timelines. The Minister, in consultation with the Minister for Public Expenditure and Reform to initiate a review of the operation of the 3-year cap within 5 years of its coming into force and to prepare a report on the findings. The purpose of this is to ensure that a formal review of the operation of the amendments is conducted, after such time as is appropriate to collect the required data and outcomes, to reassess longer-term implications.