



Number 27 of 2021

Nursing Homes Support Scheme (Amendment) Act 2021



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NURSING HOMES SUPPORT SCHEME (AMENDMENT) ACT 2021

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[No. 27.]

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[2021.]

*Nursing Homes Support Scheme
(Amendment) Act 2021.*

[No. 27.]

ACTS REFERRED TO

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Family Home Protection Act 1976 (No. 27)

Health Act 2004 (No. 42)

Land and Conveyancing Law Reform Act 2009 (No. 27)

Nursing Homes Support Scheme Act 2009 (No. 15)

Registration of Title Act 1964 (No. 16)



Number 27 of 2021

NURSING HOMES SUPPORT SCHEME (AMENDMENT) ACT 2021

An Act to amend the Nursing Homes Support Scheme Act 2009, to make further provision for the financial assessment of persons applying for financial support to be made available to them in respect of long-term residential care services who have, or had, an interest in a farm or relevant business and comply with certain conditions; and to provide for related matters. [22nd July, 2021] 5

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act, “Principal Act” means the Nursing Homes Support Scheme Act 2009. 10

Amendment of section 3 of Principal Act

2. Section 3 of the Principal Act is amended, in subsection (1), by the insertion of the following definitions:
- “ ‘Act of 2021’ means the *Nursing Homes Support Scheme (Amendment) Act 2021*; 15
- ‘chargeable land’ has the meaning assigned to it by section 14B;
- ‘family successor’ has the meaning assigned to it by Schedule 1;
- ‘farm’ has the meaning assigned to it by Schedule 1;
- ‘farming’ has the meaning assigned to it by Schedule 1;
- ‘particular family asset’, in relation to a family successor, means the asset or assets in relation to which the family successor was appointed under section 14A, 14F, 14G, 14H, 14K or 14L; 20
- ‘relevant business’ has the meaning assigned to it by Schedule 1;
- ‘repayment event’ has the meaning assigned to it by section 14I;
- ‘revoked’, in relation to a determination of the Executive under section 14C(2)(a), means revoked under section 14G(12) or 14I(3); 25
- ‘running the family asset’, in relation to a specified asset or a particular family asset, means—
- (a) where the specified asset or the particular family asset is a farm, farming the farm, and 30

- (b) where the specified asset or the particular family asset is a relevant business, carrying on the relevant business;

‘specified asset’ has the meaning assigned to it by section 14A;”.

Application for appointment of family successor: farm or relevant business

3. The Principal Act is amended, in Part 2, by the insertion of the following section after section 14: 5

“14A. (1) This section applies where—

- (a) the 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, 10

- (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— 15

- (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. 20

(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 25

- (b) if not so satisfied, refuse the application.

(3) The conditions referred to in subsection (2)(a) are— 30

- (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, or 35

- (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— 5
- (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, 10
- (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 15
- (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, 20
- (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), 25
- (d) 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, 30
- (e) that, except where the application relates to a relevant business which does not include an interest in land situated within the State— 35
- (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, 5
- (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 10
- (ii) the relevant person's partner consents to the making of the application by the relevant person. 15
- (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 20
- (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— 25
- (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. 30
- (7) The Executive may not— 35
- (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— 5
- (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 10
- (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. 15
- (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. 20
- (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. 25
- (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. 30
- (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, 35
- (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.”.

Charge against interest in chargeable land

4. The Principal Act is amended by the insertion of the following section after section 14A (inserted by *section 3*): 5
- “14B. (1) Where—
- (a) paragraphs (a) and (b) of section 14C(1) apply in relation to a person (in this section referred to as the ‘relevant person’),
- (b) the Executive is satisfied that the conditions in paragraphs (a) to (f) of section 14C(4) have been met in respect of the relevant person in relation to a particular family asset, and 10
- (c) the relevant person or the partner of the relevant person or, in the case of a transferred asset, the family successor has an interest in the particular family asset, 15
- the Executive shall make an order in accordance with this section charging the interest in the chargeable land in respect of the particular family asset with the secured amount.
- (2) The Board of the Executive may appoint a person or persons who is or are employees of the Executive to make orders under subsection (1) 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 to the Health Act 2004. 20
- (3) An order made under subsection (1) shall be deemed to be a legal mortgage under Part 10 of the Land and Conveyancing Law Reform Act 2009 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. 25
- (4) The Executive shall from the date of the making of the order under subsection (1)— 30
- (a) be deemed to be a mortgagee of the property for the purposes of Part 10 of the Land and Conveyancing Law Reform Act 2009, and
- (b) have, in relation to the charge referred to in subsection (1), all the powers conferred by that Act on mortgagees under mortgages made by deed. 35
- (5) Where the Executive makes an order under subsection (1), it shall, as soon as practicable thereafter, cause the order to be registered in the Registry of Deeds or the Land Registry, as appropriate.

- (6) An order made under subsection (1) 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. 5
- (7) Any amount paid by way of increase in State support by virtue of a determination under section 14C(2)(a) in respect of a relevant person and calculated in accordance with section 14D(3), 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. 10
- (8) For the avoidance of doubt, neither an order made under subsection (1) 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 or section 28 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. 15
- (9) Subject to subsection (10), notwithstanding any rule of law or statutory provision, where a mortgage is created by reason of an order under subsection (1) 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 amounts paid by the Executive by way of increase in State support by virtue of a determination under section 14C(2)(a) in respect of a relevant person after the date of the subsequent mortgage whether the Executive did or did not have notice of such subsequent mortgage. 20 25
- (10) Subsection (9) 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. 30
- (11) The relevant person, his or her partner, the family successor and any other person who has an interest in the chargeable land 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 (1) in the Land Registry or Registry of Deeds. 35
- (12) Where a relevant asset of the relevant person or of the relevant person's partner ceases to be chargeable land for a reason not related to paragraph (b) of the definition of 'chargeable land' in subsection (18)— 40
- (a) (i) in the case of a relevant asset which is not a transferred asset, the relevant person (or the relevant person's care representative,

- if any) or, if applicable, the relevant person's partner (or the partner's care representative, if any), or
- (ii) in the case of a relevant asset which is a transferred asset, the family successor,
- shall, as soon as is practicable after the occurrence of such cesser 5
but, in any case, not later than 10 working days after the occurrence of such cesser, give notice in writing to the Executive of the cesser and the date on which it occurred, and
- (b) the Executive shall cease to make payments of such amount of increase in State support payable by virtue of a determination under 10
section 14C(2)(a) in respect of the relevant person which relates to the former chargeable land as calculated in accordance with section 14D(3).
- (13) Where the relevant person or, as the case may be, the relevant person's partner or the family successor transfers any part of an interest in the chargeable land that person shall give notice of such transfer to the Executive within 10 working days of the date of the transfer. 15
- (14) Amounts paid by way of increase in State support by virtue of a determination under section 14C(2)(a) in respect of a relevant person shall be deemed to have been paid to and for the benefit of the relevant person or, in the case of a person who is a member of a couple, to and for the benefit of both members of the couple or, in the case of a transferred asset, to and for the benefit of the family successor and any other person who has an interest in the transferred asset. 20
- (15) Where amounts are paid by way of increase in State support by virtue of a determination under section 14C(2)(a) which by reason of subsection (14) are deemed to have been advanced to both members of a couple, the liability of the members of the couple in relation to such advances shall be joint and several. 25
- (16) (a) An order made under subsection (1) shall be in the form prescribed by regulations made under section 36, and may be made— 30
- (i) by an appointed person, and
- (ii) in electronic form.
- (b) Where an order under subsection (1) is made in electronic form, an appointed 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— 35
- (i) it is lodged by electronic means in a manner approved by, and
- (ii) it complies with the requirements specified by, 40

the Property Registration Authority.

(17) Where an order under subsection (1) made in electronic form purports to have been made by an appointed 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. 5

(18) In this section—

‘appointed person’ means a person appointed by the Board of the Executive for the purposes of—

- (a) making orders under subsection (1), 10
- (b) transmitting orders by electronic means to the Property Registration Authority in accordance with subsection (16), and
- (c) 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; 15

‘chargeable land’ means an asset which is a relevant asset of the relevant person or of the partner of the relevant person, or of both of them, and which—

- (a) comprises or forms part of a particular family asset, 20
- (b) is an asset which is included in the computation of the assessed weekly means of a person, and
- (c) comprises an interest in land, which land is situated within the State;

‘interest in the chargeable land’ means— 25

- (a) the interest of the relevant person,
- (b) in the case of a relevant 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, the interest that the relevant person had or, in the case of a relevant person who is a member of a couple, the interest that each member of the couple had, 30

in the chargeable land;

‘secured amount’, in relation to chargeable land, means the aggregate of all amounts payable by way of increase in State support by virtue of a determination under section 14C(2)(a) in respect of a relevant person by the Executive (whether before or after the making of an order under subsection (1)) and calculated in accordance with section 14D(3) together with interest thereon calculated in accordance with section 35

14J(5) and which amounts relate to the interest in the chargeable land.”.

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

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

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“14C. (1) This section applies where—

- (a) a person is receiving care services (in this section referred to as the ‘relevant person’),
- (b) one or more family successors have been appointed in respect of the relevant person in relation to a particular family asset, and
- (c) the relevant person has received any combination of relevant services for a period of 3 years (which period need not be continuous).

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(2) The Executive shall—

- (a) if satisfied that the conditions in subsection (4) are met, make a determination that, with effect from the date specified in the determination, paragraph 6B of Part 3 of Schedule 1 applies in respect of the relevant person in relation to the particular family asset, or
- (b) if not so satisfied, make a determination that paragraph 6B of Part 3 of Schedule 1 does not apply in respect of the relevant person in relation to the particular family asset.

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(3) Where the Executive makes a determination under subsection (2)(a), the date specified in the determination shall not be earlier than the later of the following dates—

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- (a) the date by which the relevant person has received any combination of relevant services for a period of 3 years (which period need not be continuous), or
- (b) the date on which a family successor was appointed under section 14A in respect of the relevant person in relation to the particular family asset.

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(4) The conditions referred to in subsection (2)(a) are—

- (a) that, where a family successor was appointed in respect of the relevant person under section 14A—
 - (i) the family successor has complied with the undertaking given by him or her under subsection (3)(d) of that section since the appointment, and

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- (ii) where the family successor was appointed in respect of a transferred asset, it continues to be held as a transferred asset by the family successor (whether it is held solely by the family successor or jointly with another person or persons),
- (b) that, where a family successor was appointed under section 14G, the family successor has complied with the undertaking given by him or her under subsection (4)(b) of that section since the appointment, 5
- (c) that, where a family successor was appointed under section 14H, the family successor has complied with the undertaking given by him or her under subsection (5)(b) of that section since the appointment, 10
- (d) that, where a family successor was appointed under section 14K, the family successor has complied with the undertaking given by him or her under subsection (3)(e) of that section since the appointment, 15
- (e) that, where a family successor was appointed under section 14L, the family successor has complied with the undertaking given by him or her under subsection (3)(f) of that section since the appointment, 20
- (f) that, in the opinion of the Executive, a repayment event has not otherwise occurred in respect of the relevant person in relation to the particular family asset, and
- (g) that, where the condition in section 14A(3)(e), 14G(4)(d), 14H(5)(d), 14K(3)(f) or 14L(3)(g) applies, an order has been made under section 14B(1) in relation to the chargeable land. 25
- (5) For the purposes of making a determination under this section—
- (a) the Executive may request information from, and interviews with, the relevant person, the relevant person's partner, the family successor or family successors and any representative (whether appointed under section 21 or otherwise) of the relevant person, and 30
- (b) the Executive may request, receive and consider records and information relating to the relevant person, the relevant person's partner and the family successor or family successors whether received pursuant to section 45 or otherwise. 35
- (6) The persons referred to in subsection (5) shall furnish all information and attend any interviews which the Executive may request in accordance with this section.
- (7) The Executive may refuse to make a determination under this section if a person referred to in subsection (5) fails to provide the Executive 40

with such information as may be requested in accordance with this section within 40 working days from the date of the request.

- (8) Where the Executive refuses under subsection (7) to make a determination 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 family successor or family successors notice in writing of the decision and the reasons for the decision. 5
- (9) The Executive shall, not later than 10 working days after making a determination under this section, give notice in writing to the relevant person, the relevant person's partner and the family successor or family successors of the determination and the reasons for the determination. 10
- (10) In this section, 'relevant services' means—
- (a) care services (including any care services received before the coming into operation of *section 5* of the *Act of 2021*), 15
- (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' in section 3, have come within the meaning of the definition of 'long-term residential care services' in section 3.". 20

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

6. The Principal Act is amended by the insertion of the following section after section 14C (inserted by *section 5*):

- "14D.** (1) This section applies where the Executive makes a determination under section 14C(2)(a) in respect of a person (in this section referred to as the 'relevant person'). 25
- (2) Where the determination that has been made under section 11(1) in respect of the relevant person does not take account of the determination under section 14C(2)(a), the Executive shall— 30
- (a) determine the revised amount of State support payable in respect of the relevant person in accordance with the method of calculation of State support set out in section 14, and
- (b) not later than 10 working days after the determination under paragraph (a), give notice in writing to the relevant person, the relevant person's partner and, in the case of a transferred asset, the family successor (or family successors) of the revised amount and the date from which it is payable. 35

- (3) During the period where the determination under section 14C(2)(a) has effect in respect of the relevant person, the Executive shall also calculate, in accordance with the method set out in subsection (4), the amount of the increase in State support payable in respect of the relevant person by virtue of that determination. 5
- (4) The method referred to in subsection (3) is that the Executive shall calculate the difference between—
- (a) the amount that the assessed weekly value of relevant assets would be if the interest in the particular family asset were a relevant asset, and 10
- (b) the amount that is the assessed weekly value of relevant assets.
- (5) The Executive shall keep records of—
- (a) amounts calculated under subsection (3) and calculations relating to them,
- (b) each particular family asset to which these amounts relate, and 15
- (c) such other matters as may be prescribed.”.

Review of compliance with conditions

7. The Principal Act is amended by the insertion of the following section after section 14D (inserted by *section 6*):

- “14E. (1) This section applies where the Executive has made a determination 20
under section 14C(2)(a) in respect of a person in relation to a particular family asset, that determination has not been revoked so far as relating to that particular family asset and—
- (a) the person is receiving care services, or
- (b) the person has died since the making of the determination and 25
section 14F(2), (3), (6) or (9) applies in relation to the particular family asset.
- (2) A person referred to in paragraph (a) or (b) of subsection (1) is referred to in this section as the ‘relevant person’.
- (3) On at least one occasion during the relevant period, the Executive 30
shall arrange for a review to be carried out for the purpose of ascertaining whether a repayment event has occurred in respect of the relevant person.
- (4) The Executive may at any other time during the relevant period
arrange for a review to be carried out for the purpose referred to in 35
subsection (3).
- (5) In carrying out a review under this section—

- (a) the Executive may request information from, and interviews with, the family successor or family successors, the relevant person, the relevant person's partner 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 family successor or family successors, the relevant person and the relevant person's partner whether received pursuant to section 45 or otherwise. 5
- (6) The persons referred to in subsection (5) shall furnish all information which the Executive may request in accordance with this section within 40 working days from the date of the request. 10
- (7) If a person referred to in subsection (5) fails to provide the Executive with such information as may be requested in accordance with this section within 40 working days from the date of the request, the Executive shall make a decision under section 14I(2)(a). 15
- (8) Having carried out a review under this section—
- (a) where the Executive is satisfied that a repayment event has not occurred in respect of the relevant person in relation to the particular family asset, the Executive shall make a decision that a repayment event has not so occurred, or 20
- (b) where the Executive does not make a decision in accordance with paragraph (a), the Executive shall make a decision under section 14I(2)(a).
- (9) The Executive shall, not later than 10 working days after making a decision under subsection (8)(a), give notice in writing to the relevant person, the relevant person's partner, the relevant person's care representative (if any) and the family successor of the decision and the reasons for the decision. 25
- (10) In this section, 'relevant period', means the period beginning on the date specified in the determination under section 14C(2)(a) and ending on the date of the expiry of the period referred to in— 30
- (a) where the relevant person's family successor was appointed under section 14A, subsection (3)(d) of that section,
- (b) where the relevant person's family successor was appointed under section 14F, subsection (8)(b) of that section, 35
- (c) where the relevant person's family successor was appointed under section 14G, subsection (4)(b) of that section,
- (d) where the relevant person's family successor was appointed under section 14H, subsection (5)(b) of that section,

- (e) where the relevant person’s family successor was appointed under section 14K, the first period referred to in subsection (3)(e) of that section, or
- (f) where the relevant person’s family successor was appointed under section 14L, the first period referred to in subsection (3)(f) of that section.”. 5

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

8. The Principal Act is amended by the insertion of the following section after section 14E (inserted by *section 7*):

- “14F. (1) This section applies where— 10
- (a) a determination is made under section 14C(2)(a) in respect of a person (in this section referred to as the ‘relevant person’) in relation to a particular family asset,
 - (b) the relevant person dies,
 - (c) the relevant person has or, in the case of a transferred asset, had an interest in the particular family asset, and 15
 - (d) immediately before the death—
 - (i) the period to which the undertaking given by the family successor in relation to the particular family asset (in this section referred to as the ‘current family successor’) under section 14A(3)(d), 14G(4)(b) or 14H(5)(b) relates has not expired, and 20
 - (ii) the determination under section 14C(2)(a) has not been revoked in respect of the relevant person so far as relating to the particular family asset. 25
- (2) Subject to sections 14E and 14I, any amounts paid by way of increase in State support by virtue of the determination under section 14C(2)(a) in respect of the relevant person in so far as it relates to a particular family asset for the period ending with the death of the relevant person shall not be repayable to the Executive if— 30
- (a) the particular family asset is not a transferred asset,
 - (b) the current family successor is the person who is, or one of the persons who are, entitled to succeed on the death of the relevant person to the interest that the relevant person had in the particular family asset (in this section referred to as the ‘lawful successor’), and 35
 - (c) that current family successor notifies the Executive in writing in accordance with subsection (10) that, with the agreement of—

- (i) any other lawful successor or (where there is more than one other lawful successor) lawful successors, and
- (ii) where the relevant person was a member of a couple, the partner of the relevant person,
- he or she intends to comply with the undertaking given by him or her under section 14A(3)(d), 14G(4)(b) or 14H(5)(b) in respect of the relevant person in relation to that particular family asset until the expiry of the period referred to in the section concerned. 5
- (3) In the case of a transferred asset, subject to sections 14E and 14I, any amounts paid by way of increase in State support by virtue of the determination under section 14C(2)(a) in respect of the relevant person in so far as it relates to that transferred asset for the period ending with the death of the relevant person shall not be repayable to the Executive if the current family successor notifies the Executive in writing in accordance with subsection (10) that, with the agreement of— 10 15
- (a) where the relevant person was a member of a couple, the partner of the relevant person, and
- (b) any other owner of the transferred asset,
- he or she intends to comply with the undertaking given by him or her under section 14A(3)(d), 14G(4)(b) or 14H(5)(b) in respect of the relevant person in relation to that transferred asset until the expiry of the period referred to in the section concerned. 20
- (4) Subsections (6) and (7) apply if—
- (a) the particular family asset is not a transferred asset,
- (b) the current family successor is not the lawful successor or (where there is more than one lawful successor) a lawful successor, and 25
- (c) the lawful successor or (where there is more than one lawful successor) at least one of the lawful successors falls within subsection (5).
- (5) A lawful successor falls within this subsection if the lawful successor has attained the age of 18 years and is— 30
- (a) the partner of the relevant person,
- (b) a relative of the relevant person or of the relevant person's partner, or
- (c) a son-in-law or daughter-in-law of the relevant person or of the relevant person's partner. 35
- (6) Subject to sections 14E and 14I, any amounts paid by way of increase in State support by virtue of the determination under section 14C(2)(a) in respect of the relevant person in so far as it relates to the particular

family asset for the period ending with the death of the relevant person shall not be repayable to the Executive if—

- (a) the current family successor and the lawful successor (or lawful successors) agree that the current family successor should continue to comply with the undertaking given by him or her under section 14A(3)(d), 14G(4)(b) or 14H(5)(b) until the expiry of the period referred to in the section concerned, and 5
 - (b) they jointly give notice to the Executive of that fact in accordance with subsection (10).
- (7) On the application, in accordance with subsection (10), of the lawful successor or, where there is more than one lawful successor, on the joint application of both or all of the lawful successors, the Executive shall— 10
- (a) if satisfied that the conditions in subsection (8) are met, make a determination— 15
 - (i) revoking the appointment of the current family successor in respect of the relevant person in relation to the particular family asset, and
 - (ii) appointing the person specified in the application as the family successor in respect of the relevant person in relation to that particular family asset, 20
 - or
 - (b) if not so satisfied, make a decision under section 14I(2)(a).
- (8) The conditions referred to in subsection (7)(a) are—
- (a) that the person specified in the application— 25
 - (i) is a lawful successor who falls within subsection (5), or
 - (ii) is not a lawful successor but has attained the age of 18 years and falls within any of paragraphs (a) to (c) of subsection (5),
 - (b) that the person specified in the application undertakes by way of statutory declaration that, if appointed as the family successor under this section, a substantial part of that person's normal working time will regularly and consistently be applied to running the family asset during the period beginning on the date of his or her appointment under this section and ending on the date of the expiry of the period to which the undertaking given by the current family successor under section 14A(3)(d), 14G(4)(b) or 14H(5)(b) in relation to that particular family asset relates, 30 35

- (c) that, where the relevant person was a member of a couple, the relevant person's partner consents to the making of the application, and
- (d) that, in the opinion of the Executive, a repayment event has not occurred in relation to the particular family asset. 5
- (9) Subject to sections 14E and 14I, where the Executive makes a determination under subsection (7)(a), any amounts paid by way of increase in State support by virtue of the determination under section 14C(2)(a) to the relevant person in so far as it relates to the particular family asset for the period ending with the death of the relevant person shall not be repayable to the Executive. 10
- (10) Notice under subsection (2)(c), (3) or (6)(b) shall be given, or an application under subsection (7) shall be made, before the expiry of the period of 6 months beginning on the date of death of the relevant person. 15
- (11) In reckoning the period referred to in subsection (8)(b) or section 14A(3)(d), 14G(4)(b) or 14H(5)(b), the period beginning on the date of death of the relevant person and ending on the date of the making of an appointment under subsection (7)(a) shall be disregarded.
- (12) In deciding an application under this section— 20
- (a) the Executive may request information from, and interviews with, the relevant person's partner, the person specified in the application, the current family successor, the lawful successor (or, where there is more than one, either or any of them) and any representative (whether appointed under section 21 or otherwise) of the relevant person, and 25
- (b) the Executive may request, receive and consider records and information relating to the relevant person, the relevant person's partner, the person specified in the application, the current family successor and the lawful successor (or, where there is more than one, either or any of them) whether received pursuant to section 45 or otherwise. 30
- (13) The persons referred to in subsection (12) shall furnish all information and attend any interviews which the Executive may request in accordance with this section. 35
- (14) If a person referred to in subsection (12) fails to provide the Executive with such information as may be requested in accordance with this section within 40 working days from the date of the request, the Executive shall make a decision under section 14I(2)(a).
- (15) The Executive shall, not later than 10 working days after making a determination under this section, give notice in writing to the relevant 40

person's partner, the person specified in the application, the lawful successor (or the lawful successors) and the current family successor of the determination and the reasons for the determination.

- (16) An application under this section shall be made in the specified form.”.

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Death or change in circumstances of family successor

9. The Principal Act is amended by the insertion of the following section after section 14F (inserted by *section 8*):

“14G. (1) This section applies where—

- (a) a person is or has been receiving care services (in this section referred to as the ‘relevant person’), 10
 - (b) a family successor has been appointed (in this section referred to as the ‘current family successor’) in respect of the relevant person in relation to a particular family asset,
 - (c) the current family successor dies or is no longer able to comply with the undertaking given by him or her under subsection (4)(b), section 14A(3)(d), 14F(8)(b) or 14H(5)(b), 15
 - (d) the period to which the undertaking referred to in paragraph (c) relates has not expired, and
 - (e) where a determination was made under section 14C(2)(a) in respect of the relevant person in relation to the particular family asset, that determination has not been revoked so far as relating to that particular family asset. 20
- (2) On the application of the relevant person, the Executive may—
- (a) if satisfied that the conditions in subsection (4) are met, make a determination— 25
 - (i) revoking the appointment of the current family successor in respect of the relevant person in relation to the particular family asset, and
 - (ii) appointing the person specified in the application as the family successor in respect of the relevant person in relation to that particular family asset, 30
 - or
 - (b) if not so satisfied, make a decision under section 14I(2)(a).
- (3) Where the relevant person has died, the application under subsection (2) shall be made by the person who holds, or the persons who hold, 35

the interest that the relevant person had in the particular family asset or such other person as may be prescribed.

- (4) 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 an appropriate person, 5
 - (b) that the person specified in the application undertakes by way of statutory declaration that, if appointed as the family successor under this section, a substantial part of that person’s normal working time will regularly and consistently be applied to running the family asset during the period beginning on the date of his or her appointment under this section and ending on the date of the expiry of the period to which the undertaking given by the current family successor under this paragraph or section 14A(3)(d), 14F(8) (b) or 14H(5)(b) in relation to that particular family asset relates, 10
 - (c) that if all or part of the particular family asset is a transferred asset, 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), 15
 - (d) that, except where the application relates to a relevant business which does not include an interest in land situated within the State or a charge has already been created in respect of the particular family asset by virtue of section 14B(1)— 20
 - (i) in a case where the particular family asset is not a transferred asset, the relevant person, the relevant person’s partner and any other owner of the particular family asset, or 25
 - (ii) in a case where the particular family 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 particular family asset, 30
 - (e) that, where the particular family asset is a transferred asset, each owner of the transferred asset consents to the making of the application,
 - (f) that, where the relevant person is or was a member of a couple, the relevant person’s partner consents to the making of the application, and 35
 - (g) that, in the opinion of the Executive, a repayment event has not occurred in respect of the relevant person in relation to the particular family asset. 40

- (5) An application under subsection (2) shall be made before the expiry of the period of 6 months beginning on—
- (a) in a case where the current family successor has died, the date of death of the family successor, or
 - (b) in a case where the current family successor is no longer able to comply with the undertaking given under subsection (4)(b) or section 14A(3)(d), 14F(8)(b) or 14H(5)(b), the date on which it first comes to the Executive's attention that the family successor is no longer able to comply with that undertaking.
- (6) In reckoning the period referred to in subsection (4)(b) or section 14A(3)(d), 14F(8)(b) or 14H(5)(b)—
- (a) where subsection (5)(a) applies, the period beginning on the date of death of the family successor, or
 - (b) where subsection (5)(b) applies, the period beginning on the date on which it first comes to the Executive's attention that the family successor is no longer able to comply with the undertaking given under subsection (4)(b) or section 14A(3)(d), 14F(8)(b) or 14H(5)(b),
- and ending on the date of the making of an appointment under subsection (2)(a) shall be disregarded.
- (7) In determining an application under this section—
- (a) the Executive may request information from, and interviews with, the relevant person, the relevant person's partner, any representative (whether appointed under section 21 or otherwise) of the relevant person and, where appropriate, the current family successor, the person specified in the application and the lawful successor, and
 - (b) the Executive may request, receive and consider records and information relating to the relevant person, the relevant person's partner and, where appropriate, the current family successor, the person specified in the application and the lawful successor whether received pursuant to section 45 or otherwise.
- (8) The persons referred to in subsection (7) shall furnish all information and attend any interviews which the Executive may request in accordance with this section.
- (9) If a person referred to in subsection (7) fails to provide the Executive with such information as may be requested in accordance with this section within 40 working days from the date of the request, the Executive shall make a decision under section 14I(2)(a).

- (10) The Executive shall, not later than 10 working days after making a determination under this section, give notice in writing to the relevant person, the relevant person's partner and, where appropriate, the current family successor, the lawful successor and the person specified in the application of the determination and the reasons for the determination. 5
- (11) Subsections (12) and (13) apply where—
- (a) the current family successor has died,
 - (b) the particular family asset is a transferred asset,
 - (c) the lawful successor is not an appropriate person, 10
 - (d) the lawful successor notifies the Executive before the expiry of the period of 6 months beginning on the date of death of the current family successor that no application is to be made under this section, and
 - (e) before the death of the current family successor a determination was made under section 14C(2)(a) in relation to the particular family asset which had not been revoked. 15
- (12) The determination under section 14C(2)(a) is revoked with effect from the date of death of the current family successor in relation to the particular family asset. 20
- (13) Any amounts paid or payable by way of increase in State support by virtue of the determination under section 14C(2)(a) in respect of the relevant person in so far as it relates to the particular family asset for the period ending with the death of the current family successor shall not be repayable to the Executive by reason only of that determination having been revoked. 25
- (14) An application under this section shall be made in the specified form.
- (15) In this section, 'appropriate person' means—
- (a) where the particular family asset is not a transferred asset—
 - (i) the partner of the relevant person, 30
 - (ii) a relative of the relevant person or of the relevant person's partner, or
 - (iii) a son-in-law or daughter-in-law of the relevant person or of the relevant person's partner,
 - (b) where— 35
 - (i) the particular family asset is a transferred asset,
 - (ii) the current family successor has died, and

- (iii) the person or one of the persons entitled to succeed to the current family successor's estate on the death (in this section referred to as the 'lawful successor') is the relevant person's partner, a relative or son-in-law or daughter-in-law of the relevant person, a relative or son-in-law or daughter-in-law of the relevant person's partner or the partner of the current family successor,

that person, or

- (c) where—

- (i) the particular family asset is a transferred asset, and

- (ii) the current family successor is no longer able to comply with the undertaking given under subsection (4)(b) or section 14A(3)(d), 14F(8)(b) or 14H(5)(b),

the current family successor's partner.”.

Change of family successor following transfer of particular family asset

- 10.** The Principal Act is amended by the insertion of the following section after section 14G (inserted by *section 9*):

“**14H.** (1) This section applies where—

- (a) a person is or has been receiving care services (in this section referred to as the 'relevant person'),

- (b) a family successor has been appointed (in this section referred to as the 'current family successor') in respect of the relevant person in relation to a particular family asset,

- (c) the period to which the undertaking under subsection (5)(b) or section 14A(3)(d), 14F(8)(b) or 14G(4)(b) relates has not expired, and

- (d) where a determination was made under section 14C(2)(a) in respect of the relevant person in relation to the particular family asset, that determination has not been revoked so far as relating to that particular family asset.

- (2) An application may be made under subsection (3) where a particular family asset has been transferred to—

- (a) the partner of the relevant person,

- (b) a relative of the relevant person or of the relevant person's partner,

- (c) a son-in-law or daughter-in-law of the relevant person or of the relevant person's partner, or

- (d) the partner of the current family successor,

by the relevant person or the relevant person's partner or, in the case of an existing transferred asset, by the current family successor.

- (3) On the application of the relevant person, the Executive may—
- (a) if satisfied that the conditions in subsection (5) are met, make a determination— 5
 - (i) revoking the appointment of the current family successor in respect of the relevant person in relation to the particular family asset, and
 - (ii) appointing the person specified in the application as the family successor in respect of the relevant person in relation to that particular family asset, 10
 - or
 - (b) if not so satisfied, make a decision under section 14I(2)(a).
- (4) Where the relevant person has died, the application under subsection (3) shall be made by the person who holds, or the persons who hold, 15 the interest that the relevant person had in the particular family asset or such other person as may be prescribed.
- (5) The conditions referred to in subsection (3)(a) are—
- (a) that the person specified in the application has attained the age of 18 years and is a person referred to in paragraph (a), (b), (c) or (d) 20 of subsection (2) to whom a particular family asset has been transferred by the relevant person or the relevant person's partner or, in the case of an existing transferred asset, by the current family successor,
 - (b) that the person specified in the application undertakes by way of 25 statutory declaration that, if appointed as the family successor under this section, a substantial part of that person's normal working time will regularly and consistently be applied to running the family asset during the period beginning on the date of his or her appointment under this section and ending on the date of the 30 expiry of the period to which the undertaking given by the current family successor under this paragraph or section 14A(3)(d), 14F(8)(b) or 14G(4)(b) in relation to that particular family asset relates,
 - (c) that the person specified in the application undertakes by way of 35 statutory declaration to repay any sums for which he or she may become liable by virtue of section 14J(11),
 - (d) that, except where the application relates to a relevant business which does not include an interest in land situated within the State or a charge has already been created in respect of the particular family asset by virtue of section 14B(1), the person specified in the 40

application and any other owner of the particular family 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 that particular family asset,

- (e) that, where the transfer referred to in subsection (2) was made jointly to the person specified in the application and any other person or persons, such other person or persons each consent to the making of the application, 5
- (f) that, where the relevant person is or was a member of a couple, the relevant person's partner consents to the making of the application, and 10
- (g) that, immediately before the transfer referred to in subsection (2), in the opinion of the Executive, a repayment event has not occurred in respect of the relevant person in relation to the particular family asset. 15
- (6) An application under subsection (3) shall be made before the expiry of the period of 3 months beginning on the date of the transfer referred to in subsection (2).
- (7) For the purposes of subsection (5)(a) it is immaterial whether the transfer was made— 20
- (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.
- (8) In reckoning the period referred to in subsection (5)(b) or section 14A(3)(d), 14F(8)(b) or 14G(4)(b), the period beginning on the date of the transfer of the particular family asset to the person specified in the application and ending on the date of the making of an appointment under subsection (3)(a) shall be disregarded. 25
- (9) In determining an application under this section—
- (a) the Executive may request information from, and interviews with, the relevant person, the relevant person's partner, any representative (whether appointed under section 21 or otherwise) of the relevant person, the current family successor and the person specified in the application, and 30
- (b) the Executive may request, receive and consider records and information relating to the relevant person, the relevant person's partner, the current family successor and the person specified in the application whether received pursuant to section 45 or otherwise. 35

- (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) If a person referred to in subsection (9) fails to provide the Executive with such information as may be requested in accordance with this section within 40 working days from the date of the request, the Executive shall make a decision under section 14I(2)(a). 5
- (12) The Executive shall, not later than 10 working days after making a determination under this section, give notice in writing to the relevant person, the relevant person's partner and, where appropriate, the current family successor and the person specified in the application of the determination and the reasons for the determination. 10
- (13) An application under this section shall be made in the specified form.
- (14) In this section, 'existing transferred asset' means a transferred asset which was a transferred asset immediately before the transfer referred to in subsection (2).". 15

Repayment of increase in State support

11. The Principal Act is amended by the insertion of the following section after section 14H (inserted by *section 10*):

- “14I. (1) This section applies where— 20
- (a) a determination has been made under section 14C(2)(a) in respect of a person (in this section referred to as the 'relevant person'),
- (b) the period to which the undertaking in relation to a particular family asset given by the family successor under the relevant provision has not yet expired in relation to that particular family asset, 25
- (c) the relevant person has died or the determination under section 14C(2)(a) has not been revoked so far as relating to that particular family asset, and
- (d) either— 30
- (i) section 14E(7), 14E(8)(b), 14F(7)(b), 14F(14), 14G(2)(b), 14G(9), 14H(3)(b) or 14H(11) applies, or
- (ii) it otherwise appears to the Executive that a repayment event may have occurred in respect of the relevant person in relation to the particular family asset. 35
- (2) (a) Having given the relevant person, the family successor, the relevant person's partner and the person or persons who, in the event of the occurrence of a repayment event, would be primarily accountable

for repayment of the repayable amount under section 14J(11) the opportunity to make representations, the Executive shall—

- (i) decide that a repayment event has occurred in respect of the relevant person in relation to the particular family asset, or
 - (ii) decide that a repayment event has not occurred in respect of the relevant person in relation to the particular family asset. 5
- (b) Representations referred to in paragraph (a) shall, unless the Executive permits otherwise, be made in writing.
- (3) Where the Executive has made a decision under subsection (2)(a)(i) and the relevant person has not died, the determination made under section 14C(2)(a), in so far as it relates to the particular family asset, shall be revoked. 10
- (4) Where the Executive has made a decision under subsection (2)(a)(i), the amount of the increase in State support advanced or in the course of being advanced in respect of the relevant person by virtue of the determination made under section 14C(2)(a), in so far as it relates to the particular family asset, shall become due and payable. 15
- (5) The Executive shall, not later than 10 working days after the date of its decision under subsection (2)(a), notify the relevant person, the relevant person's partner and the person or persons who, in the event of the occurrence of a repayment event, would be primarily accountable for repayment of the repayable amount under section 14J(11) in writing of the decision and the reasons for the decision. 20
- (6) Where subsection (3) applies, the Executive shall—
- (a) determine the revised amount of State support payable in respect of the relevant person in accordance with the method of calculation of State support set out in section 14, and 25
 - (b) not later than 10 working days after the date of its decision under subsection (2)(a), give notice in writing to the relevant person of the revised amount and the date from which it is payable. 30
- (7) In this section—
- ‘relevant provision’ means—
- (a) where the family successor was appointed under section 14A, subsection (3)(d) of that section,
 - (b) where the family successor was appointed under section 14F, subsection (8)(b) of that section, 35
 - (c) where the family successor was appointed under section 14G, subsection (4)(b) of that section,

- (d) where the family successor was appointed under section 14H, subsection (5)(b) of that section;

‘repayment event’, in relation to a relevant person, means—

- (a) except in a case where section 14G applies and the period referred to in section 14G(5) has not yet expired, the failure of a family successor to comply with a relevant provision in relation to a particular family asset (or, where that failure continued for more than one day or is continuing, the first day on which it occurred), 5
- (b) except in the cases referred to in subsections (2), (3) and (6) of section 14F, in a case where section 14F applies and no appointment is made under section 14F(7)(a) in relation to a particular family asset, the expiry of the period referred to in section 14F(10), 10
- (c) except in the case referred to in section 14G(13), in a case where section 14G applies and no appointment is made under section 14G(2)(a) in relation to a particular family asset, the expiry of the period referred to in section 14G(5), or 15
- (d) except in a specified case—
- (i) where all or part of a particular family asset to which the determination under section 14C(2)(a) relates is transferred to a person other than the family successor, or 20
- (ii) in the case of a transferred asset, where all or part of the particular family asset to which the determination under section 14C(2)(a) relates is transferred to another person,
- the expiry of the period of 3 months beginning on the date on which that transfer occurred; 25

‘specified case’ means—

- (a) a case referred to in section 14F(2), 14F(6), 14F(9) or 14G(13),
- (b) a case where an appropriate person within the meaning of section 14G(15)(b) is appointed as a family successor under section 14G(2)(a), or 30
- (c) a case where an appointment is made under section 14H(3)(a).”.

Recovery of sums due under section 14I

12. The Principal Act is amended by the insertion of the following section after section 14I (inserted by *section 11*): 35

“14J. (1) Where the Executive has, by virtue of a determination under section 14C(2)(a) in relation to a particular family asset, advanced monies by way of an increase in State support and section 14I(4) applies in

- respect of a person in relation to that particular family asset, the Executive shall in accordance with section 14D calculate the amount due (in this section referred to as the ‘repayable amount’) and give notice of that amount and particulars of how it is calculated to the relevant accountable person. 5
- (2) (a) The repayable amount 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 paragraph (a). 10
- (3) The Executive shall within the relevant period referred to in subsection (4) notify the Revenue Commissioners of—
- (a) the repayable amount,
- (b) particulars of how that amount is calculated,
- (c) where a charge has been created in respect of the particular family asset by virtue of section 14B(1), particulars of the interest in the chargeable land against which the repayable amount is secured, 15
- (d) the repayment event and the date of that event,
- (e) the name, Personal Public Service Number and address of—
- (i) the person in respect of whom State support was paid (in this section referred to as the ‘relevant person’), 20
- (ii) where the relevant person is a member of a couple, the partner of that person, and
- (iii) the relevant accountable person (if known to the Executive),
- and 25
- (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—
- (a) where no appeal against the decision is brought under section 32, 10 working days after the expiration of the period specified in that section for bringing an appeal under that section, or 30
- (b) in the case where an appeal is brought under section 32, 10 working days after the date on which the decision is confirmed on appeal or the appeal is withdrawn, abandoned or otherwise not proceeded with, as the case may be. 35
- (5) Until the repayable amount is discharged to the Revenue Commissioners interest shall continue to accrue, in accordance with regulations made under section 36, on the repayable amount.

- (6) The Revenue Commissioners may furnish to the Executive such information as relates to the collection of the repayable amount and any interest accruing on that amount pursuant to regulations made under section 36.
- (7) (a) The Revenue Commissioners may take all steps which they consider appropriate to recover the repayable amount and interest accrued thereon, including the bringing of legal proceedings in their own name. 5
- (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. 10
- (8) Where, by virtue of a determination under section 14C(2)(a) in relation to a particular family asset, monies are advanced by the Executive by way of an increase in State support no action shall be commenced by the Revenue Commissioners— 15
- (a) to recover the repayable amount or interest thereon, or
- (b) seeking the sale of the particular family asset,
- after the expiration of 12 years from the occurrence of the repayment event concerned. 20
- (9) The collection and recovery of a 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 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. 25
- (10) Monies received by the Revenue Commissioners under this section shall be paid by the Revenue Commissioners into the Central Fund.
- (11) The person primarily accountable for payment of the repayable amount to the Revenue Commissioners shall be— 30
- (a) in the case of a particular family asset which is not a transferred asset:
- (i) the relevant person;
- (ii) where the relevant person is a member of a couple, the partner of that person; 35
- (iii) where the relevant person is deceased, the personal representative of that person,
- or

- (b) in the case of a particular family asset which is a transferred asset:
- (i) the family successor appointed in relation to the particular family asset;
 - (ii) any other person who is an owner of the transferred asset;
 - (iii) where the family successor is deceased, the personal representative of that person. 5
- (12) A person who becomes entitled to an interest in the asset against which the repayable amount is secured shall also be accountable for payment of the repayable amount to the Revenue Commissioners.
- (13) (a) The liability of a person referred to in subsection (11)(a)(iii) or (11)(b)(iii) shall not exceed the gross value of the estate of the deceased person concerned less the amount of the funeral and testamentary expenses. 10
- (b) The liability of a person referred to in subsection (12) shall not exceed the amount of the value of the interest in the asset to which the person becomes entitled. 15
- (14) In this section, ‘relevant accountable person’ means—
- (a) a person who as respects a particular repayment event is primarily accountable, and
 - (b) a person who is accountable by reason of subsection (12), 20
for the payment of the repayable amount to the Revenue Commissioners.”.

Application by partner for appointment of family successor

13. The Principal Act is amended by the insertion of the following section after section 14J (inserted by *section 12*): 25
- “14K. (1) This section applies where—
- (a) a family successor has been appointed in respect of a person (in this section referred to as the ‘relevant person’) in relation to a particular family asset,
 - (b) the period to which the undertaking given by that family successor in relation to the particular family asset under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b) relates has not expired, 30
 - (c) the Executive has made a determination under section 7(8)(a) that the relevant person’s partner (in this section referred to as ‘the partner’) needs care services, 35
 - (d) the Executive has made a determination under section 11(1) in relation to the partner, and

- (e) the partner is receiving care services.
- (2) On the application of the partner, 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 partner in relation to the interest that the partner and the relevant person has or had in the particular family asset, or
- (b) if not so satisfied, refuse the application.
- (3) The conditions referred to in subsection (2)(a) are—
- (a) that a repayment event has not occurred in relation to the particular family asset,
- (b) that any determination made under section 14C(2)(a) has not been revoked,
- (c) that the person specified in the application is the family successor appointed in respect of the relevant person,
- (d) that the partner declares by way of statutory declaration that, in relation to the particular family asset, for a period of 3 years (which period need not be continuous) during the period of 5 years ending on the date on which the partner began to receive care services, a substantial part of the working time of—
- (i) the partner,
- (ii) the person specified in the application,
- (iii) any other person appointed as a family successor in respect of the relevant person, or
- (iv) the relevant person,
- was regularly and consistently applied to running the family asset,
- (e) that the person specified in the application undertakes by way of statutory declaration that, if appointed as a family successor in respect of the partner under subsection (2), a substantial part of that person's normal working time will regularly and consistently be applied to running the family asset during the period beginning on the date of his or her appointment under subsection (2)(a) and ending on the expiry of the period to which the undertaking given by the family successor in respect of the relevant person under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b) in relation to that particular family asset relates,
- (f) 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 particular family asset is not a transferred asset, the partner, the relevant person and any other owner of the particular family asset, or
- (ii) in a case where the particular family asset is a transferred asset, the person specified in the application and any other owner of the transferred asset, 5
- each consent to the creation by virtue of section 14B(1) of a further charge in favour of the Executive against the interest in the chargeable land in respect of the particular family asset,
- (g) that, where the particular family asset is a transferred asset, each owner of the transferred asset consents to the making of the application, and 10
- (h) that the relevant person consents to the making of the application.
- (4) The Executive may appoint more than one person as a family successor in respect of the partner in accordance with this section where more than one family successor has been appointed in respect of the relevant person. 15
- (5) An application under this section shall be made in the specified form.
- (6) In deciding an application under this section—
- (a) the Executive may request information from, and interviews with, the partner, the relevant person, the person specified in the application and any representative (whether appointed under section 21 or otherwise) of the partner or the relevant person, and 20
- (b) the Executive may request, receive and consider records and information relating to the partner, the relevant person and the person specified in the application whether received pursuant to section 45 or otherwise. 25
- (7) The persons referred to in subsection (6) shall furnish all information and attend any interviews which the Executive may request in accordance with this section. 30
- (8) The Executive may refuse to consider or further consider an application under this section if a person referred to in subsection (6) 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. 35
- (9) Where the Executive refuses under subsection (8) to consider or further consider an application under this section, it shall, not later than 10 working days after the refusal, give the partner, the relevant person and the person specified in the application notice in writing of the decision and the reasons for the decision. 40

- (10) The Executive shall, not later than 10 working days after granting or refusing an application under this section, give notice in writing to the partner, the relevant person and the person specified in the application of the decision and the reasons for the decision.”.

Application by partner of deceased person for appointment of family successor 5

- 14.** The Principal Act is amended by the insertion of the following section after section 14K (inserted by *section 13*):

“**14L.** (1) This section applies where—

- (a) a family successor has been appointed in respect of a person (in this section referred to as the ‘relevant person’) in relation to a particular family asset, 10
 - (b) the relevant person dies,
 - (c) immediately before the death, the period to which the undertaking given by that family successor in relation to the particular family asset under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b) relates has not expired, 15
 - (d) the Executive has made a determination under section 7(8)(a) that the relevant person’s partner (in this section referred to as ‘the partner’) needs care services,
 - (e) the Executive has made a determination under section 11(1) in relation to the partner, 20
 - (f) the partner is receiving care services, and
 - (g) the 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, 25
 - (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 partner, the Executive shall— 30
- (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 partner in relation to the interest that the partner has or (in the case of a transferred asset) had in the particular family asset, or 35
 - (b) if not so satisfied, refuse the application.

- (3) The conditions referred to in subsection (2)(a) are—
- (a) that a repayment event has not occurred in relation to the particular family asset,
 - (b) that any determination made under section 14C(2)(a) has not been revoked, 5
 - (c) that, where a determination was made under section 14C(2)(a) in respect of the relevant person, the person specified in the application is the family successor appointed in respect of the relevant person,
 - (d) that, where no determination was made under section 14C(2)(a) in respect of the relevant person, the person specified in the application is— 10
 - (i) the family successor appointed in respect of the relevant person,
 - (ii) a relative of the relevant person or of the partner, or
 - (iii) a son-in-law or daughter-in-law of the relevant person or of the partner, 15
 - (e) that the partner declares by way of statutory declaration that, in relation to the particular family asset, for a period of 3 years (which period need not be continuous) during the period of 5 years ending on the date on which the partner began to receive care services, a substantial part of the working time of— 20
 - (i) the partner,
 - (ii) the person specified in the application,
 - (iii) any other person appointed as a family successor in respect of the relevant person, or 25
 - (iv) the relevant person,

was regularly and consistently applied to running the family asset,
 - (f) that the person specified in the application undertakes by way of statutory declaration that, if appointed as a family successor in respect of the partner under subsection (2), a substantial part of that person's normal working time will regularly and consistently be applied to running the family asset during the period beginning on the date of his or her appointment under subsection (2)(a) and ending on the expiry of the period to which the undertaking given by the family successor in respect of the relevant person under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b) in relation to that particular family asset relates, 30 35

- (g) 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 particular family asset is not a transferred asset, the partner and any other owner of the particular family asset, or
- (ii) in a case where the particular family 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 further charge in favour of the Executive against the interest in the chargeable land in respect of the particular family asset, and
- (h) that, where the particular family asset is a transferred asset, each owner of the transferred asset consents to the making of the application.
- (4) Where no determination under section 14C(2)(a) was made in respect of the relevant person, the period beginning with the appointment of a family successor in respect of the relevant person and ending with the death of the relevant person shall be taken into account in reckoning the period mentioned in subsection (3)(f).
- (5) The Executive may appoint more than one person as a family successor in respect of the partner in accordance with this section.
- (6) An application under this section shall be made in the specified form.
- (7) In deciding an application under this section—
- (a) the Executive may request information from, and interviews with, the partner, the person specified in the application and any representative (whether appointed under section 21 or otherwise) of the partner, and
- (b) the Executive may request, receive and consider records and information relating to the partner and the person specified in the application whether received pursuant to section 45 or otherwise.
- (8) The persons referred to in subsection (7) shall furnish all information and attend any interviews which the Executive may request in accordance with this section.
- (9) The Executive may refuse to consider or further consider an application under this section if a person referred to in subsection (7) 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.

- (10) Where the Executive refuses under subsection (9) to consider or further consider an application under this section, it shall, not later than 10 working days after the refusal, give the partner and the person specified in the application notice in writing of the decision and the reasons for the decision. 5
- (11) The Executive shall, not later than 10 working days after granting or refusing an application under this section, give notice in writing to the partner and the person specified in the application of the decision and the reasons for the decision.”.

Determination as to farm or business relief where family successor fulfils undertaking 10

15. The Principal Act is amended by the insertion of the following section after section 14L (inserted by *section 14*):

“14M. (1) This section applies where—

- (a) a determination has been made under section 14C(2)(a) in respect of a person (in this section referred to as the ‘relevant person’) in relation to a particular family asset, 15
- (b) the period to which the undertaking given by the family successor in relation to the particular family asset under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b) relates expires,
- (c) if the relevant person has died, the relevant person’s partner (in this section referred to as ‘the partner’) has an interest in the particular family asset, and 20
- (d) after the expiry of the period mentioned in paragraph (b)—
- (i) the Executive has made a determination under section 7(8)(a) that the partner needs care services, 25
- (ii) the Executive has made a determination under section 11(1) in relation to the partner, and
- (iii) the partner has received any combination of relevant services for a period of 3 years (which period need not be continuous).
- (2) The partner need not make an application under this Act for the appointment of a family successor in relation to the particular family asset. 30
- (3) The Executive shall make a determination that, with effect from the date specified in the determination, paragraph 6B of Part 3 of Schedule 1 applies in respect of the partner in relation to the particular family asset. 35
- (4) Where the Executive makes a determination under subsection (3), the date specified in the determination shall not be earlier than the date by

which the partner has received any combination of relevant services for a period of 3 years (which period need not be continuous).

- (5) In this section, ‘relevant services’ has the same meaning as in section 14C.’.

Offence of giving false or misleading information to Executive under certain provisions 5

16. The Principal Act is amended by the insertion of the following section after section 14M (inserted by *section 15*):

“14N. 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—

- (a) an application under section 14A, 14F, 14G, 14H, 14K or 14L,
- (b) a notification under section 14F or 14G,
- (c) a determination under section 14C or 14M,
- (d) a review under section 14E, or
- (e) a decision under section 14I,

is guilty of an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months or both.”.

Amendment of section 21 of Principal Act

17. Section 21 of the Principal Act is amended, in subsection (1)—

- (a) by the substitution, in paragraph (c), of “the application relates),” for “the application relates).”, and

- (b) by the insertion of the following paragraphs after paragraph (c):

“(d) the appointment of a family successor or family successors, including selecting an appropriate person or persons to act as family successor, the making of an application under section 14A, 14G, 14H, 14K or 14L for the appointment of a family successor and taking necessary actions in connection with such application or applications,

- (e) taking necessary actions in connection with the making of an order under section 14B(1) or the registration of such order in the Land Registry or the Registry of Deeds (including the perfection of the title of the person to whom the application relates),

- (f) such other matters as may be prescribed.”.

Amendment of section 24 of Principal Act

18. Section 24 of the Principal Act is amended, in subsection (1), by the insertion of “or a person who is a family successor” after “who is provided with financial support”.

Notification of material change in circumstances of family successor

19. The Principal Act is amended by the insertion of the following section after section 24: 5

“24A. (1) A person (or the person’s care representative, if any) who is the subject of an application for State support or who is provided with financial support or a person who is a family successor shall give notice in writing to the Executive of any material change in circumstances not later than 20 working days after the material change in circumstances comes to the knowledge of the person. 10

(2) A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a class D fine.

(3) A person who in compliance or purported compliance with this section knowingly, or recklessly, gives the Executive information which is false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months or both. 15

(4) In this section, ‘material change in circumstances’ means, in relation to a family successor— 20

(a) any change in the circumstances of the family successor which may result in the occurrence of a repayment event,

(b) any change affecting the particular family asset in relation to which the family successor was appointed which may result in the occurrence of a repayment event, or 25

(c) any change affecting the family successor’s ability to comply with the undertaking given by him or her under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b).”.

Amendment of section 27 of Principal Act 30

20. Section 27 of the Principal Act is amended, in subsection (2)(b), by the insertion of the following subparagraph after subparagraph (i):

“(ia) pursuant to section 14J(11) in respect of the deceased person,”.

Discharge of orders made under section 14B

21. The Principal Act is amended by the insertion of the following section after section 27: 35

- “27A. (1) Where subsection (2) applies, the Executive shall issue a receipt and the receipt shall act as a discharge or release of the order made under section 14B(1) to which it refers and may be registered in the Land Registry or the Registry of Deeds as appropriate.
- (2) This subsection applies where— 5
- (a) following the occurrence of a repayment event and consultation with the Revenue Commissioners, the secured amount has been repaid,
- (b) a determination was made under section 14C(2)(a) in relation to the particular family asset to which the chargeable land relates and the family successor has complied with the undertaking given by him or her under section 14A(3)(d), 14F(8)(b), 14G(4)(b) or 14H(5)(b) during the relevant period, 10
- (c) no determination under section 14C(2)(a) has been made in relation to the particular family asset to which the chargeable land relates and the relevant person has died, or 15
- (d) where the Executive, in consultation with the Revenue Commissioners, is otherwise satisfied that the secured amount has been repaid or is not repayable to the Executive.
- (3) A receipt under subsection (1) may be issued by an appointed person. 20
- (4) An application to the Property Registration Authority for the cancellation in the Land Registry of an entry of a charge on the register of the property charged, where such charge relates to an order created under section 14B, may be made by an appointed person and such application may be made by electronic means if— 25
- (a) it is lodged by electronic means in a manner approved by, and
- (b) it complies with the requirements specified by, the Property Registration Authority.
- (5) A receipt under subsection (1) and an application under subsection (4) shall be in the form prescribed by regulations made under section 36. 30
- (6) Where an application under subsection (4) made in electronic form purports to have been made by an appointed 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. 35
- (7) In this section—
- ‘appointed person’ has the meaning assigned to it by section 14B;
- ‘relevant period’ means—

- (a) in the case of a family successor appointed under section 14A, the period referred to in subsection (3)(d) of that section,
 - (b) in the case of a family successor appointed under section 14F, the period referred to in subsection (8)(b) of that section,
 - (c) in the case of a family successor appointed under section 14G, the period referred to in subsection (4)(b) of that section, or
 - (d) in the case of a family successor appointed under section 14H, the period referred to in subsection (5)(b) of that section;
- ‘secured amount’ has the meaning assigned to it by section 14B.”.

Amendment of section 29 of Principal Act

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22. Section 29 of the Principal Act is amended—

- (a) by the substitution, in subsection (1), of “section 14B(1) or 17(2)” for “section 17(2)”,
- (b) in subsection (2)—
 - (i) by the substitution of “section 14B(1) or 17(2)” for “section 17(2)”,
 - (ii) by the insertion of “, in the case of an order made under section 14B(1), the interested person or interested persons, or, in the case of an order made under section 17(2),” after “in the land concerned to which”, and
 - (iii) by the substitution, in paragraph (a), of “section 14B(3) or 17(4)” for “section 17(4)”,
- (c) by the substitution of the following subsection for subsection (3):
 - “(3) Subsection (2) shall not apply—
 - (a) in the case of an order made under section 14B(1), where all the joint tenants in the joint tenancy concerned are interested persons, or
 - (b) in the case of an order made under section 17(2), where all the joint tenants in the joint tenancy concerned have made a request to the Executive that the ancillary State support be paid in relation to the interest in the land concerned.”,
- and
- (d) by the insertion of the following subsection after subsection (3):
 - “(4) In this section—
 - ‘interested person’, in relation to an order made under section 14B(1), means—
 - (a) where the chargeable land is not a transferred asset—

- (i) each member of the couple, where the relevant person is a member of a couple, or
 - (ii) the relevant person, where the relevant person is not a member of a couple,
- or 5
- (b) where the chargeable land is a transferred asset, the person or persons who hold the interest that—
 - (i) each member of the couple had in the chargeable land, where the relevant person is a member of a couple, or
 - (ii) the relevant person had in the chargeable land, where the relevant person is not a member of a couple; 10
- ‘relevant person’ means a person receiving care services.’.

Amendment of section 32 of Principal Act

23. Section 32 of the Principal Act is amended, in subsection (1)—

- (a) by the insertion of “14A(2), 14A(11), 14C(2)(b), 14C(7), 14D(2)(a), 14I(2)(a)(i), 14I(6)(a), 14J(1), 14K(2), 14K(8), 14L(2), 14L(9),” after “11(1),” and 15
- (b) by the insertion, in paragraph (b), of “14A(12), 14A(13), 14C(8), 14C(9), 14D(2)(b), 14I(5), 14I(6)(b), 14J(1), 14K(9), 14K(10), 14L(10), 14L(11),” after “11(3),”.

Amendment of section 36 of Principal Act

24. Section 36 of the Principal Act is amended— 20

- (a) in subsection (1), by the substitution of “(1A)” for “(2)”,
- (b) by the insertion of the following subsections after subsection (1):
 - “(1A) The Minister may by regulations provide for the arrangements that shall apply in relation to persons who are or were members of a couple where one member of the couple has made an application under section 14A. 25
 - (1B) Without prejudice to the generality of subsection (1A), regulations under that subsection may provide for all or any of the following:
 - (a) arrangements that shall apply in relation to a charge under section 14B; 30
 - (b) arrangements that shall apply in relation to a determination under section 14C, including the conditions that shall apply in respect of a determination under that section of the revised amount of State support payable in respect of a person;

- (c) arrangements that shall apply in relation to a review under section 14E for the purpose of ascertaining whether a repayment event has occurred;
- (d) arrangements that shall apply in relation to the death of a person where a determination under section 14C was made before the death, including any notification or application for appointment of a family successor to be made under section 14F and any conditions that shall apply to such notification or application; 5
- (e) arrangements that shall apply in relation to the death or change in circumstances of a family successor, including any application for appointment of a new family successor to be made under section 14G and any conditions that shall apply to such application; 10
- (f) arrangements that shall apply in relation to the change in family successor following the transfer of a particular family asset, including any application for appointment of a new family successor to be made under section 14H and any conditions that shall apply to such application; 15
- (g) arrangements that shall apply in relation to repayment events;
- (h) arrangements that shall apply in relation to an application under section 14K or 14L; 20
- (i) arrangements that shall apply in relation to a determination under section 14M, including any conditions that may apply in respect of a determination under that section;
- (j) arrangements that shall apply in relation to Schedule 1.
- (1C) When making regulations under subsection (1A), the Minister shall have regard to the following: 25
- (a) the policies and objectives of the Government to protect the future viability of farms and relevant businesses that are owned and operated by families;
- (b) the fair and equitable treatment of couples under the Scheme; 30
- (c) the proper and efficient administration of the Scheme.
- (1D) In regulations under subsection (1A), the Minister may make provision for different circumstances or cases, including where—
- (a) the period referred to in an undertaking given by a family successor under any provision of this Act has or has not expired, 35
- (b) one or both members of a couple is or are receiving care services, or
- (c) one or both members of a couple has or have died.”,

- (c) in subsection (6)—
- (i) by the substitution of “sections 14J(7) and 26(8)” for “section 26(8)”, and
 - (ii) by the substitution of “within the meaning of sections 14J(1) and 26(1)” for “within the meaning of section 26(1)”,
- (d) by the insertion of the following subsection after subsection (8): 5
- “(8A) The Minister may, in respect of any difficulty which arises during the period of 3 years from the commencement of *section 24* of the *Act of 2021* in bringing the amendments effected to this Act by the *Act of 2021* into operation, by regulations do anything which appears to be necessary or expedient for bringing the said amendments into operation and regulations under this subsection may, in so far only as may appear necessary for carrying the regulations into effect, modify a provision of this Act if the modification is in conformity with the purposes, principles and spirit of this Act and the amendments effected to this Act by the *Act of 2021*.” 10
- and 15
- (e) in subsection (10), by the insertion of “or (8A)” after “subsection (8)”.

Amendment of section 45 of Principal Act

25. Section 45 of the Principal Act is amended—

- (a) by the insertion of the following subsection after subsection (2): 20
- “(2A) Subject to subsection (3A), the Executive shall, as soon as practicable after the coming into operation of *section 25* of the *Act of 2021*, and from time to time thereafter where it considers it appropriate to do so, prepare and publish a revised code of practice for the purposes referred to in subsection (2).” 25
- (b) by the insertion of the following subsection after subsection (3):
- “(3A) The Executive shall not perform the function under subsection (2A) except after consultation with the Data Protection Commission.”
- (c) in subsection (7), by the substitution of the following paragraph for paragraph (a): 30
- “(a) applications for State support, applications under section 14A, 14F, 14G, 14H, 14K or 14L and notifications under section 14F or 14G (including any documents accompanying such applications or notifications),”
- and 35
- (d) in subsection (11), by the substitution of the following definition for the definition of “relevant record”:

“ ‘relevant record’ means—

- (a) any record which will or may assist the Executive to determine an application for State support, an application under section 14A, 14F, 14G, 14H, 14K or 14L or a request for refundable State support, 5
- (b) any record pertaining to a notification under section 14F or 14G, or
- (c) any documents accompanying—
 - (i) an application referred to in paragraph (a), or
 - (ii) a notification referred to in paragraph (b).”.

Annual report concerning relief in relation to farm or relevant business 10

26. The Principal Act is amended by the insertion of the following section after section 45:

“**45A.** (1) The Executive shall prepare in respect of each year (or such longer period as the Minister may, following receipt of the third report under this section, prescribe by regulations) a report containing information in relation to— 15

- (a) the effects on the Scheme of applications and appointments made under sections 14A, 14F, 14G, 14H, 14K and 14L, determinations under sections 14C(2) and 14M(3), reviews under section 14E, decisions on repayment events under section 14I(2) and repayments under section 14J, 20
- (b) an assessment of likely trends arising from the effects on the Scheme of those applications, appointments, determinations, reviews and repayments, and
- (c) such other matters as may be specified by the Minister.

(2) The Executive shall send a copy of each report prepared under this section to the Minister— 25

- (a) before the end of June in the year following that to which the report relates, or
- (b) where the Minister has made regulations under subsection (1), before the end of June in the year following the last year to which the report relates. 30

(3) For the purposes of preparing a report under subsection (1) and, subject to section 45(7), the Executive shall keep records of information in relation to—

- (a) applications and appointments made under sections 14A, 14F, 14G, 14H, 14K and 14L, 35

- (b) farms and relevant businesses to which such applications and appointments relate,
 - (c) determinations under sections 14C(2) and 14M(3),
 - (d) reviews under section 14E,
 - (e) decisions on repayment events under section 14I(2), 5
 - (f) repayments under section 14J, and
 - (g) such other matters as may be specified by the Minister.
- (4) The first report under this section shall be prepared by the Executive not later than 2 years after *section 26* of the *Act of 2021* comes into operation.”. 10

Review of operation of amendments effected by *Act of 2021*

27. The Principal Act is amended by the insertion of the following section after section 45A (inserted by *section 26*):

- “45B. (1) The Minister shall, not later than 5 years after the coming into operation of *section 27* of the *Act of 2021*, in consultation with the Minister for Public Expenditure and Reform, carry out a review of the operation of the amendments to this Act effected by the *Act of 2021*. 15
- (2) Having completed the review under subsection (1), the Minister shall, in consultation with the Minister for Public Expenditure and Reform, prepare a report setting out the findings and conclusions consequent on such review. 20
- (3) The Minister shall cause a copy of the report prepared under subsection (2) to be laid before each House of the Oireachtas as soon as practicable after it has been prepared.”.

Amendment of section 47 of Principal Act 25

28. Section 47 of the Principal Act is amended in subsection (9)—

- (a) in paragraph (a), by the deletion of “or”, and
- (b) by the insertion of the following paragraph after paragraph (a):

“(aa) to do anything—

(i) falling within paragraph (b), (d) or (e) of subsection (1) of section 21, or 30

(ii) prescribed under paragraph (f) of subsection (1) of that section, unless that person is appointed as a care representative under that section, or”.

Right to bring another person to interview arranged by the Executive

29. The Principal Act is amended by the insertion of the following section after section 47:

“47A. Where the Executive is authorised or required under any provision of this Act to interview a person—

- (a) the person may be accompanied during the interview by a person of his or her choice who has attained the age of 18 years, and 5
- (b) the Executive shall inform the person of his or her right to be accompanied when the Executive is making arrangements with the person for the interview.”.

Amendment of Parts 1A and 2A of Schedule 1 to Principal Act

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30. Schedule 1 to the Principal Act is amended—

(a) in paragraph 3 of Part 1A—

(i) by the insertion of the following step after step C:

“CA. Where the person is entitled to the proceeds of sale deductible amount, deduct proceeds of sale deductible amount from the amount produced by step C.”, 15

and

(ii) by the substitution of the following step for step D:

“D. Deduct general assets deductible amount from the amount produced by step C or, if step CA applies, from the amount produced by step CA, to produce annual assessed cash assets.”, 20

(b) in paragraph 4 of Part 1A—

(i) by the insertion of the following step after step C:

“CA. Where the person is entitled to the proceeds of sale deductible amount and the proceeds of sale deductible amount has not been fully used in connection with the cash assets assessment then apply the unused balance by deducting the unused amount from the total net value of relevant assets produced by step C.”, 25

and

(ii) by the substitution of the following step for step D: 30

“D. If the general assets deductible amount has not been fully used in connection with the cash assets assessment then apply the unused balance by deducting the unused amount from total net value of relevant assets produced by step C or, if step CA applies, from the amount produced by step CA.”, 35

(c) in paragraph 3 of Part 2A—

(i) by the insertion of the following step after step C:

“CA. Where the person is entitled to the proceeds of sale deductible amount, deduct proceeds of sale deductible amount from the amount produced by step C.”,

and

5

(ii) by the substitution of the following step for step D:

“D. Deduct general assets deductible amount from the amount produced by step C or, if step CA applies, from the amount produced by step CA, to establish total assessed cash assets.”,

and

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(d) in paragraph 4 of Part 2A—

(i) by the insertion of the following step after step C:

“CA. Where the person is entitled to the proceeds of sale deductible amount and the proceeds of sale deductible amount has not been fully used in connection with the cash assets assessment then apply the unused balance by deducting the unused amount from the amount produced by step C.”,

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and

(ii) by the substitution of the following step for step D:

“D. If the general assets deductible amount has not been fully used in connection with the cash assets assessment then apply the unused balance by deducting the unused amount from the amount established by step C or, if step CA applies, from the amount established by step CA.”.

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Amendment of Part 3 of Schedule 1 to Principal Act

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31. Part 3 of Schedule 1 to the Principal Act is amended—

(a) in paragraph 1—

(i) by the substitution of the following definition for the definition of “family successor”:

“ ‘family successor’ means a person appointed under section 14A, 14F, 14G, 14H, 14K or 14L;”,

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(ii) in the definition of “farm”, by inserting “, and a reference to a farm includes a reference to part of a farm” after “all residential property”,

(iii) by the substitution of the following definition for the definition of “relevant business”:

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“ ‘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) where a business is carried on by a company, the unquoted shares in or securities of the company, 5

and a reference to a relevant business includes a reference to part of a relevant business;”,

(iv) by the insertion of the following definitions:

“ ‘proceeds of sale’ has the meaning assigned to it by paragraph 10D(d); 10

‘proceeds of sale deductible amount’ means, subject to paragraphs 10A to 10D—

(a) in the case where, following the sale of the person’s interest in a principal residence— 15

(i) the person or his or her partner purchases an interest in a principal residence, and

(ii) the purchase price of the principal residence is less than the proceeds of sale,

an amount equal to the difference between the purchase price and the proceeds of sale, 20

(b) in the case where, following the sale of the person’s interest in a principal residence—

(i) the person or his or her partner acquires an interest in a principal residence for no consideration, or a relevant asset of the relevant person or his or her partner becomes the principal residence, and 25

(ii) the estimated market value of the principal residence (less any borrowings referred to in paragraph (c) of the definition of ‘allowable deduction’ which relate to the principal residence) is less than the proceeds of sale, 30

an amount equal to the difference between the estimated market value of the principal residence (less any borrowings referred to in paragraph (c) of the definition of ‘allowable deduction’ which relate to the principal residence) and the proceeds of sale, or 35

(c) in any other case, an amount equal to the proceeds of sale;

‘purchase price’ has the meaning assigned to it by paragraph 10D(d);”,

and

- (v) in the definition of “transferred income”, by the insertion of “income earned by a family successor in the course of running a family asset or” after “but does not include”,
- (b) in paragraph 6, by the substitution of “Subject to paragraph 6A, the” for “The”,
- (c) by the insertion of the following paragraphs after paragraph 6: 5
- “6A. (a) Where paragraph 6 applies in relation to a person who is a member of a couple, the reference in that paragraph to the interest of the person shall be construed as a reference to the interest of the person and the interest (if any) of the other member of the couple. 10
- (b) Where the partner of a person who has or (in the case of a transferred asset) had an interest in a principal residence does not have an interest in the principal residence concerned he or she shall, for the purposes of paragraph 6, be deemed to have or (in the case of a transferred asset) be deemed to have had an interest in that principal residence. 15
- 6B. (a) Subject to subparagraphs (b) and (c), where a determination is made under section 14C(2)(a) or 14M(3) in respect of a person who has or (in the case of a transferred asset) had an interest in a particular family asset and that determination has not been revoked in so far as relating to that particular family asset, the interest of the person in the particular family asset shall not be, or shall cease to be, a relevant asset with effect from the date specified in the determination. 20
- (b) Where subparagraph (a) applies in relation to a person who is a member of a couple, the second reference in that subparagraph to the interest of the person shall be construed as a reference to the interest of the person and the interest (if any) of the other member of the couple. 25
- (c) Where the partner of a person who has or (in the case of a transferred asset) had an interest in a particular family asset does not have an interest in the particular family asset concerned he or she shall, for the purposes of subparagraph (a), be deemed to have or (in the case of a transferred asset) be deemed to have had an interest in that particular family asset. 30 35
- 6C. (a) Subject to subparagraphs (b) and (c), subparagraph (d) applies only in a case where a person (in this paragraph referred to as the ‘relevant person’) was a member of a couple, and— 40
- (i) paragraph 6B applies to the relevant person in relation to a particular family asset,

- (ii) a family successor was appointed in respect of the other member of the couple (in this paragraph referred to as the ‘other member’) in relation to the same particular family asset, and
- (iii) a repayment event has not occurred in respect of either the relevant person or the other member in relation to that particular family asset. 5
- (b) Subject to subparagraph (c), and other than in a case where both members of a couple are receiving care services on the coming into operation of *section 31(b)* of the *Act of 2021*, subparagraph (d) shall only apply where a family successor was appointed in relation to the particular family asset in respect of the second member of the couple to receive care services before the date by which that member of the couple received any combination of relevant services for a period of one year (which period need not be continuous). 10 15
- (c) Where—
- (i) the relevant person received relevant services before the coming into operation of *section 31(b)* of the *Act of 2021*, and 20
- (ii) a family successor was not appointed in respect of the relevant person in relation to the particular family asset by the date of death of the other member,
- subparagraph (d) shall apply only if the relevant person made an application for the appointment of a family successor in relation to the particular family asset within the first three months following the death of the other member. 25
- (d) The total of the amounts of the assessed weekly means under this Act which relate to the particular family asset, arising pursuant to the financial assessment relating to the other member and the financial assessment relating to the relevant person, when aggregated, shall not exceed the relevant amount determined under subparagraph (e), and on that threshold being reached, notwithstanding any other provision of this Schedule, the particular family asset shall cease to be a relevant asset. 30 35
- (e) The relevant amount referred to in subparagraph (d) shall be the amount referred to in subparagraph (f)(i) or, where any of clauses (ii), (iii) or (iv) of subparagraph (f) apply, the relevant amount referred to in subparagraph (d) shall be the aggregate of the amount referred to in subparagraph (f)(i) and the additional amount referred to in such other clauses of subparagraph (f) as apply. 40

- (f) (i) The amount is 22.5 per cent of the relevant value in respect of the relevant person.
- (ii) Where the date specified in the determination under section 14C(2)(a) in respect of the relevant person in relation to the particular family asset is later than the date by which the relevant person received any combination of relevant services for a period of 3 years (which period need not be continuous), the additional amount is 3.75 per cent of the relevant value in respect of the relevant person per annum, prorated for the relevant period. 5 10
- (iii) Where a determination was made under section 14C(2)(a) in respect of the other member in relation to the particular family asset and the date specified in that determination is later than the date by which the other member received any combination of relevant services for a period of 3 years (which period need not be continuous), the additional amount is 3.75 per cent of the relevant value in respect of the other member per annum, prorated for the relevant period. 15
- (iv) Where a determination was not made under section 14C(2)(a) in respect of the other member in relation to the particular family asset, and the other member received any combination of relevant services for a period of at least 3 years (which period need not be continuous), the additional amount is 3.75 per cent of the relevant value in respect of the other member per annum, prorated for the relevant period. 20 25
- (g) In this paragraph—
- ‘relevant period’ means—
- (a) where subparagraph (f)(ii) applies, the period between the date by which the relevant person received any combination of relevant services for a period of 3 years (which period need not be continuous) and the date specified in the determination under section 14C(2)(a) in respect of the relevant person in relation to the particular family asset; 30 35
- (b) where subparagraph (f)(iii) applies, the period between the date by which the other member received any combination of relevant services for a period of 3 years (which period need not be continuous) and the date specified in the determination under section 14C(2)(a) in respect of the other member in relation to the particular family asset; 40
- (c) where subparagraph (f)(iv) applies, the period between the date by which the other member received any combination of relevant services for a period of 3 years (which period need not be continuous) and the date of death of the other member; 45

‘relevant services’ means—

- (a) care services (including any care services received before the coming into operation of *section 5* of the *Act of 2021*),
- (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’ in *section 3*, have come within the meaning of the definition of ‘long-term residential care services’ in *section 3*;

‘relevant value’ means the estimated market value of the particular family asset at the date of valuation of the particular family asset in connection with the first financial assessment of the relevant person or the other member, as the case may be, less allowable deductions applicable to that asset.”

(d) by the deletion of paragraphs 7 to 9, and

(e) by the insertion of the following paragraphs after paragraph 10:

“10A. (a) Subject to paragraphs 10B to 10D, a person (in this paragraph and paragraphs 10B to 10D referred to as the ‘relevant person’) shall be entitled to the proceeds of sale deductible amount where the relevant person or his or her partner sells (whether before or after the commencement day) the interest of the relevant person in a principal residence and the relevant person is receiving or has received (whether before or after the commencement day)—

- (i) care services,
- (ii) transitional care services within the meaning of *section 13*,
- (iii) 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
- (iv) any combination of the services referred to in clauses (i) to (iii),

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

(b) Where, but for this subparagraph, the relevant person would be entitled to the proceeds of sale deductible amount in respect of a period occurring before the commencement day, the relevant person shall not be so entitled and shall instead,

by virtue of this subparagraph, be entitled to the proceeds of sale deductible amount with effect from the commencement day.

(c) In this paragraph, ‘commencement day’ means the day on which *section 31(d)* of the *Act of 2021* comes into operation. 5

10B. (a) Where paragraph 10A applies in relation to a relevant person who is a member of a couple, a reference in that paragraph to the interest of the relevant person shall be construed as a reference to the interest of the person and the interest (if any) of the other member of the couple. 10

(b) Where the partner of a person who has or (in the case of a transferred asset) had an interest in a principal residence does not have an interest in the principal residence concerned he or she shall, for the purposes of paragraph 10A, be deemed to have or (in the case of a transferred asset) be deemed to have had an interest in that principal residence. 15

10C. Paragraph 10A shall apply only where—

(a) the principal residence is situated within the State, and

(b) the sale of the interest in the principal residence is completed after the relevant person begins receiving any of the services referred to in clauses (i) to (iii) of paragraph 10A(a). 20

10D. (a) Where a relevant person is entitled to the proceeds of sale deductible amount under paragraph 10A and the relevant person or his or her partner purchases an interest in a principal residence— 25

(i) if the purchase price is less than the proceeds of sale, paragraph 6 shall apply in relation to the interest in the principal residence and the relevant person shall be entitled to the proceeds of sale deductible amount under paragraph (a) of the definition of ‘proceeds of sale deductible amount’, and 30

(ii) if the purchase price is equal to or greater than the proceeds of sale, paragraph 6 shall apply in relation to the interest in the principal residence and the relevant person shall no longer be entitled to the proceeds of sale deductible amount under paragraph 10A. 35

(b) Where a relevant person is entitled to the proceeds of sale deductible amount under paragraph 10A and the relevant person or his or her partner acquires an interest in a principal residence for no consideration— 40

(i) if the estimated market value of the principal residence (less any borrowings referred to in paragraph (c) of the

- definition of ‘allowable deduction’ which relate to the principal residence) is less than the proceeds of sale, paragraph 6 shall apply in relation to the interest in the principal residence and the relevant person shall be entitled to the proceeds of sale deductible amount under paragraph (b) of the definition of ‘proceeds of sale deductible amount’, and 5
- (ii) if the estimated market value of the principal residence (less any borrowings referred to in paragraph (c) of the definition of ‘allowable deduction’ which relate to the principal residence) is equal to or greater than the proceeds of sale, paragraph 6 shall apply in relation to the interest in the principal residence and the relevant person shall no longer be entitled to the proceeds of sale deductible amount under paragraph 10A. 10 15
- (c) Where a relevant person is entitled to the proceeds of sale deductible amount under paragraph 10A and a relevant asset of the relevant person or his or her partner becomes a principal residence—
- (i) if the estimated market value of the principal residence (less any borrowings referred to in paragraph (c) of the definition of ‘allowable deduction’ which relate to the principal residence) is less than the proceeds of sale, paragraph 6 shall apply in relation to the interest in the principal residence and the relevant person shall be entitled to the proceeds of sale deductible amount under paragraph (b) of the definition of ‘proceeds of sale deductible amount’, and 20 25
- (ii) if the estimated market value of the principal residence (less any borrowings referred to in paragraph (c) of the definition of ‘allowable deduction’ which relate to the principal residence) is equal to or greater than the proceeds of sale, paragraph 6 shall apply in relation to the interest in the principal residence and the relevant person shall no longer be entitled to the proceeds of sale deductible amount under paragraph 10A. 30 35
- (d) In this paragraph—
- ‘proceeds of sale’ means an amount equal to the consideration received by the relevant person or his or her partner on the sale of the interest in a principal residence after the discharge of all mortgages and other liabilities relating to the sale; 40
- ‘purchase price’ means an amount equal to the consideration paid by the relevant person or his or her partner on the purchase of an interest in a principal residence (including the cost of any liabilities relating to the purchase) less any borrowings referred to in paragraph (c) of the definition of 45

‘allowable deduction’ which relate to the principal residence.”.

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

32. The Principal Act is amended by the insertion of the following section after section 48: 5
- “49. (1) Where, immediately before the commencement day—
- (a) a person is receiving care services,
- (b) the person is receiving State support, and
- (c) paragraph 7 of Part 3 of Schedule 1 applies in relation to the person, 10
- paragraphs 7 to 9 of Part 3 of that Schedule shall, notwithstanding their deletion by *section 31(d)* of the *Act of 2021*, continue to have effect in relation to the person on and after the commencement day.
- (2) Subject to subsection (3), where, immediately before the commencement day— 15
- (a) a person is receiving care services,
- (b) the Executive has made a determination under section 7(8)(a) that the person needs care services,
- (c) the Executive has made a determination under section 11(1) in relation to the person, and 20
- (d) paragraph 8(a) and (b) (but not paragraph 7) of Part 3 of Schedule 1 applies in relation to the person,
- the person may elect that, having regard to the possibility that paragraph 7 of Part 3 of that Schedule may apply in relation to the person on or after the commencement day, paragraphs 7 to 9 of Part 3 25
- of that Schedule shall, notwithstanding their deletion by *section 31(d)* of the *Act of 2021*, have effect in relation to the person on and after the commencement day.
- (3) An election under subsection (2) is effective only if it is made in the specified form and submitted to the Executive before the expiry of the period of 6 months beginning on the commencement day. 30
- (4) Where an election is made by a person in accordance with subsection (2), paragraphs 7 to 9 of Part 3 of Schedule 1 shall, notwithstanding their deletion by *section 31(d)* of the *Act of 2021*, have effect in relation to that person on and after the commencement day. 35
- (5) (a) Where—
- (i) a person is or was a member of a couple, and

- (ii) paragraphs 7 to 9 of Part 3 of Schedule 1 apply or applied in relation to the partner of that person (whether before or after the commencement day),

paragraphs 7 to 9 of Part 3 of Schedule 1 shall, notwithstanding their deletion by *section 31(d)* of the *Act of 2021*, have effect in relation to that person on and after the commencement day. 5

- (b) Where paragraphs 7 to 9 of Part 3 of Schedule 1 have effect in relation to a person by virtue of paragraph (a), it is not necessary for the conditions in paragraph 8(a) and (b) of Part 3 of Schedule 1 to be met in respect of that person provided that these conditions have or had been met in respect of that person's partner. 10

- (c) Where—

(i) a person is a member of a couple,

(ii) paragraphs 7 to 9 of Part 3 of Schedule 1 have effect in relation to that person by virtue of paragraph (a), and 15

(iii) paragraph 7 of Part 3 of Schedule 1 applies in respect of that person's partner,

the certification to be provided under paragraph 8(c) of Part 3 of Schedule 1 shall be provided by the same family successor who provided the certification in respect of that person's partner. 20

- (6) For so long as paragraph 7 of Part 3 of Schedule 1 applies in relation to a person by virtue of subsection (1), (4) or (5)(a), the person may not make an application under section 14A.

- (7) (a) Paragraph 7 of Part 3 of Schedule 1 shall be deemed always to have had effect and shall, for the purposes of subsections (1), (4) and (5) (a), continue to have effect as if— 25

(i) the following subparagraph were substituted for subparagraph (d):

'(d) any combination of the services referred to in subparagraphs (a) to (c),', 30

and

(ii) the following provision applied to each of subparagraphs (a), (b), (c) and (d):

'for a period of 3 years (which period need not be continuous).', 35

and

- (b) Part 3 of Schedule 1 shall be deemed always to have had effect and shall, for the purposes of subsections (1), (4) and (5)(a), continue to

have effect as if the following paragraph were substituted for paragraph 9:

- ‘9. (a) Paragraph 7 shall apply to a relevant asset which is a transferred asset and which is a farm or relevant business.
- (b) Where paragraph 7 applies in relation to a person who is a member of a couple, the reference in that paragraph to the interest of the person shall be construed as a reference to the interest of the person and the interest (if any) of the other member of the couple. 5
- (c) Where the partner of a person who has or (in the case of a transferred asset) had an interest in a farm or relevant business does not have an interest in the farm or relevant business concerned he or she shall, for the purposes of paragraph 7, be deemed to have or (in the case of a transferred asset) be deemed to have had an interest in that farm or relevant business. 10 15
- (d) Subparagraph (e) applies only in a case where the person (in this paragraph referred to as the ‘relevant person’) was a member of a couple and—
- (i) paragraph 7 applies to the relevant person, and 20
- (ii) paragraph 7 applied to the other member of the couple (in this paragraph referred to as the ‘other member’),
- in relation to the same farm or relevant business.
- (e) The total of the amounts of the assessed weekly means under this Act which relate to the farm or relevant business, arising pursuant to the financial assessment relating to the other member and the financial assessment relating to the relevant person, when aggregated, shall not exceed the amount which is 22.5 per cent of the estimated market value of that farm or relevant business at the date of valuation of the farm or relevant business in connection with the first financial assessment of the relevant person less allowable deductions applicable to that asset, and on that threshold being reached, notwithstanding any provision of this Schedule, the farm or relevant business shall cease to be a relevant asset.’ 25 30 35

(8) In this section—

‘commencement day’ means the day on which *section 31(d)* of the *Act of 2021* comes into operation;

‘family successor’ has the same meaning as it had before *section 31(a)(i)* of the *Act of 2021* came into operation.”.

Short title and commencement

- 33.** (1) This Act may be cited as the Nursing Homes Support Scheme (Amendment) Act 2021.
- (2) This Act shall come into operation 90 days after the date of its passing.