An Roinn Coimirce Sóisialaí
Department of Social Protection

Review of Certain Rules for Leased Land for State Pension (Non-Contributory) and Farm Assist.

November 2022

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1. Overview

This report outlines a review conducted in 2022 by the Department of Social Protection (DSP) of how leased land is assessed under the State Pension (Non-Contributory) and Farm Assist Schemes.

It fulfils a commitment made by the Minister for Social Protection, Heather Humphreys, T.D., during the Committee Stage debate of the Social Welfare Act 2021.

The Terms of Reference for the Review are as follows:

- Review the treatment of income from leased farmland for the State Pension (Non-Contributory) and Farm Assist Schemes.
- Provide relevant statistics.
- Consider if new provisions are required, and if so, provide suitable recommendations with a solution focused approach.

2. Policy Context

The Department carried out a technical review of means testing disregards for Farm Assist in 2021, leading to the extensive expansion of the list of agri-environmental schemes (under the remit of the Department of Agriculture, Food and the Marine) which attract a specific disregard for the scheme. This measure was announced in Budget 2022, legislated for in the Social Welfare Act 2021 and implemented from June 2022. Budget 2023 has provided for an increase in the amount disregarded in respect of these schemes from €2,540 to €5,000 effective from January 2023. The measure supports the Government's climate and environmental agenda and encourages farmers in receipt of Farm Assist to engage with the agri-environmental schemes.

This Review into income from leased land has been completed in line with a commitment made by the Minister for Social Protection, Heather Humphreys T.D., during the Committee Stage debate of the Social Welfare Act 2021.

Section 20 of that Act provides for an extension to the list of agri-environmental schemes that attract a disregard for the Farm Assist Scheme and the State Pension (Non-Contributory). During the debates on that Section at the Second and Committee Stages of the Act, Deputy Denis Naughten, T.D,. requested that the Minister would consider introducing a disregard for income from leased land, in circumstances where older farmers lease their land. Specific rules already exist for State Pension (Non-Contributory) to allow persons in receipt of that payment transfer their farm and land to their children without it affecting their entitlement to the scheme.

The Minister agreed to 'carry out a report on increasing the disregard for leasing land for the State Non-Contributory Pension and Farm Assist.'

Deputy Naughten made a submission during the course of the review which has resulted in this report in which he highlighted the succession issues that face some older farmers and noted that for many older farmers the conditions of and compliance with the agri-environmental farm schemes are far too burdensome, and as a result many steer clear of such initiatives. The submission makes the following proposal –

> "where a farmer enters a long-term lease that complies with Revenue rules (even if they are exempt from tax) that they receive some relief in their means calculation under State non-contributory pension.
> If these farmers were to go out to work, there is a €200 income disregard for them and I believe that a similar relief should be put in place if they enter a long-term lease of their farm holding, thus improving the emissions profile of the land they previously farmed."

3. Context – Age Profile and Farm Incomes

The Central Statistics Office completes a Census of Agriculture[1] every 10 years and published the preliminary results for 2020 in December 2021. Table 1 below shows the distribution of farm holders by age, as per the 2010 and 2020 Censuses.

Table 1 - Distribution of Farm Holders by Age

Age of Holder	2010	2020	Change	% Change
<35 years	8,683	9,338	655	7.01
35-44 years	24,562	18,701	-5,861	-31.34
45-54 years	34,614	29,616	-4,998	-16.88
55-64 years	35,058	33,247	-1,811	-5.45
65+ years	36,639	44,135	7,496	16.98
Total	**139,556**	**135,037**	**-4,519**	**-3.35**

According to the National Farm Survey Report published by Teagasc in July 2021[2],some 34% of farms recorded in that survey were classed as economically viable i.e., Family Farm Income (FFI)[3] is sufficient to remunerate family labour at the minimum wage and provide a 5% return on the capital invested in non-land assets. A further 34% of farms were considered sustainable due to the presence of an off-farm income[4] while 33% were classified as vulnerable with no such alternative income.

Across Irish farms there are considerable variances in Family Farm Income, the return from farming for family farm labour, land and capital. While Dairy farms were the most profitable at on average €74,326 in 2020, this contrasts sharply with other sectors such as Cattle Rearing with an average income of €9,037 and Sheep farms with an average income of €18,383. For many Drystock farms (Beef and Sheep) market income was less than zero. In these sectors,

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[1] Census of Agriculture 2020 – Preliminary Results Census of Agriculture 2020 - Preliminary Results - CSO - Central Statistics Office

[2]Teagasc National Farm Survey 2020 - 2021 - National Farm Survey 2020 - Teagasc | Agriculture and Food Development Authority

[3] Family Farm Income (FFI) is defined in the Teagasc report as being gross output less total net expenses; it represents the total return to the family labour, management and capital investment in the farm business.

[4] In comparison, this is approximately double the proportion of Farm Assist recipients who are engaged in off-farm employment.

on average farms do not make a profit from production and are heavily dependent on financial support including through direct payments[5].

A 2022 survey conducted by the Irish Farmers Journal identified farm succession as an issue facing the sector. According to this survey, 46% of farmers have not identified a successor to take over their farm when they retire[6].

4. Description of Schemes

The State Pension (Non-Contributory) scheme is a legislative-based payment for people aged 66 or over, who do not qualify for State Pension (Contributory) on their record of social insurance contributions or who qualify for payment below the maximum rate of State Pension (Contributory) and would be eligible to receive a higher rate of payment from the State Pension (Non-Contributory) scheme.

To qualify for the State Pension (Non-Contributory), a person must be habitually resident in the State; be living in the State while getting the pension (if a recipient goes to live in Northern Ireland, the pension can continue to be paid for up to five years subject to certain conditions); and satisfy a means test.

Further information on the State Pension (Non-Contributory) is available at [gov.ie - State Pension (Non-contributory) (www.gov.ie)].

The Farm Assist scheme is a statutory social assistance scheme which provides support for farmers on low incomes. It has similarities to the Jobseeker's Allowance scheme, and recipients retain the advantages of that scheme such as the retention of secondary benefits and access to activation programmes.

A person can qualify if they are aged 18 to 66 and engaged in farming.

The scheme is subject to a means test. Farmers can earn income from self-employment, insured employment, capital etc. The means test takes account of virtually every form of income but assesses it in different ways and disregards various amounts.

Means from all sources are added together to determine total weekly means.

For the purposes of Farm Assist, "Farming" means farming farmland in the State, including commonage, which is

- owned and used by the claimant for the purposes of husbandry, or
- leased and used by the claimant for the purposes of husbandry.

Further information on the Farm Assist Scheme is available at [gov.ie - Farm Assist (www.gov.ie)].

[5] Ibid., pg 29.
[6] https://www.farmersjournal.ie/only-54-of-farms-have-successor-identified-699124

Note - Where a claimant was in receipt of Farm Assist immediately prior to becoming entitled to the State Pension (Non-Contributory), at a rate greater than the amount of State Pension (Non-Contributory) assessed as payable to that person, then they receive the amount they were receiving from Farm Assist prior to entitlement to State Pension (Non-Contributory).

5. Scheme Statistics

State Pension (Non-Contributory)

The 2022 Revised Estimates for the Department provide for expenditure of €1,086 million on the State Pension (Non-Contributory). Expenditure on the scheme rose from € 972 million in 2011 to €1,083 million in 2021. Recipient numbers dropped slightly in that period with the increase in expenditure resulting from an increase in the rate of payments.

Table 2 – State Pension (Non-Contributory) Expenditure and Recipients, 2011-2021

Year	Expenditure (€m)	Recipients[7,8]
2011	€ 971.99	96,749
2012	€ 963.21	96,126
2013	€ 952.46	95,801
2014	€ 954.41	95,570
2015	€ 972.21	95,179
2016	€ 982.14	95,221
2017	€ 999.74	95,140
2018	€ 1,020.25	95,263
2019	€ 1,042.83	94,854
2020	€ 1,048.55	95,465
2021	€ 1,083.12	95,010

[7] Figures do not include an additional 3,000-3,200 Increase for Qualified Adult (IQA) payments each year.

[8] Data is not available to indicate the numbers State Pension (Non-Contributory) customers that are or were engaged in farming.

Table 3 – State Pension (Non-Contributory) Recipients by County 2021

County	Recipients	County	Recipients
Carlow	1,245	Longford	1,260
Cavan	2,182	Louth	2,551
Clare	3,119	Mayo	5,260
Cork	9,642	Meath	2,684
Donegal	7,131	Monaghan	1,767
Dublin	15,228	Offaly	1,539
Galway	7,054	Roscommon	2,002
Kerry	4,720	Sligo	1,739
Kildare	2,402	Tipperary	4,147
Kilkenny	1,949	Waterford	2,598
Laois	1,505	Westmeath	1,715
Leitrim	1,121	Wexford	4,127
Limerick	3,934	Wicklow	2,304

Farm Assist

The 2022 Revised Estimates for the Department provide for expenditure of €53.87 million on the Farm Assist scheme. Expenditure on the scheme fell from €113.72 million in 2011 to €66.41 million in 2020 and €59.03 million in 2021, largely due to a fall in the number of claimants. There were 4,945 Farm Assist social welfare claims on record at the end of 2021, down from 11,246 at the end of 2011.

Table 4 - Farm Assist Expenditure and Recipients, 2011-2021

Year	Expenditure (€m)	Recipients
2011	€ 113.72	11,246
2012	€ 108.17	11,029
2013	€ 99.18	10,303
2014	€ 93.63	9,809
2015	€ 88.49	8,790
2016	€ 78.83	7,828
2017	€ 78.18	7,234
2018	€ 73.82	6,535
2019	€ 68.57	5,971
2020	€ 66.41	5,511
2021*	€ 59.03	4,945

*provisional figures

Farm Assist supplements small farms, mainly in the west of Ireland - 59% of claims are made in Donegal, Mayo, Galway, Kerry, and Cork (and this proportion has increased since 2011).

Table 5 - Top 5 Counties with most Farm Assist Claims

	2021		2019		2011	
County	**No of recipients**	**% of total**	**No of recipients**	**% of total**	**No of recipients**	**% of total**
Donegal	907	18.3%	1,045	17.5%	1,491	13.2%
Mayo	799	16.2%	994	16.6%	1,869	16.5%
Galway	457	9.2%	574	9.6%	1,137	10.0%
Kerry	422	8.5%	484	8.1%	819	7.2%
Cork	346	7.0%	435	7.3%	957	8.4%
National Total	**4,945**		**5,971**		**11,333**	
% of top 5 counties out of total claims		**59.2%**		**59.2%**		**55.4%**

In terms of the age profile of Farm Assist claimants, 69% of claimants are aged 50 years or over, 52% are aged 55 years and over and 30% are aged 60 years and over. In comparison, fewer than 10% of Jobseeker's Allowance claimants are aged 60 years and older. The age profile of claimants is rising (for example, in 2011, 25% of claimants were aged 60 years and older), while claims that include an increase for a qualified adult are falling (from 46% of all claims in 2011 to 40% in 2022). There is little 'churn' on the scheme and claimants are most likely to move from the scheme to retirement.

Table 6 below shows the full age profile of Farm Assist claimants.

Table 6 – Age Profile of Farm Assist Recipients

	2021			2011		
Age	**Male**	**Female**	**Total**	**Male**	**Female**	**Total**
Under 25	18	5	23	67	2	69
25-29	54	8	62	176	5	181
30-34	116	9	125	421	26	447
35-39	213	21	234	786	59	845
40-44	361	38	399	1,218	112	1,330
45-49	562	59	621	110	143	1,653
50-54	777	94	871	1,785	155	1,940
55-59	984	92	1,076	1,927	167	2,094
60 and over	1,413	121	1,534	2,609	165	2,774
Total	**4,498**	**447**	**4,945**	**10,499**	**834**	**11,333**

6. Current Rules

Overview of Means Testing
State Pension (Non-Contributory) and Farm Assist are means-tested social assistance payments.

A means test is a way of checking if a claimant has enough financial resources to support themselves and determine what amount of social assistance payment, if any, they may qualify for. A maximum rate is payable where a person has limited or no means, and tapering applies to the rate payable to those with modest or more substantial means, as there is an expectation that those with resources can, at least partly, contribute towards supporting themselves.

Social welfare legislation provides that, for social assistance schemes, income, and capital (such as savings, investments, and property other than the family home) belonging to the claimant and his or her partner, where applicable, is assessable for means assessment purposes. The purpose of the means assessment is to maintain the policy of ensuring that social welfare expenditure is targeted to those who need it most.

All of the claimant's sources of income are added together and taken into account when deciding whether they qualify for a means-tested payment, or the level at which they are paid. If a person is not satisfied with the decision, they may ask for a review of the decision or make an appeal to the Social Welfare Appeals Office.

The assessment of income can vary from scheme to scheme depending on the nature and purpose of the scheme. Sometimes a certain amount of income, or income from particular sources, is not taken into account for a particular scheme and these are usually referred to as income disregards.

Treatment of Capital
The assessment of capital (monies held in financial institutions or otherwise, the market value of shares as well as property owned by a claimant) is usually included in a means assessment. However, property personally used (a claimant's home) is not included. This reflects an expectation that people with reasonable amounts of capital and property are in a position to use that capital, or to realise the value of the property, to support themselves without having to rely solely on a means-tested welfare payment.

It is important to note that the assessment formula is not designed to mirror or impute potential interest or annuity rates available to investors, or potential rental income from a property, and no account is taken of any such income in the overall means assessment. The formula reflects the policy of ensuring that those with property and modest amounts of capital receive the greater share of available support while those with larger amounts avail of it to contribute, at least partially, towards meeting their needs. This approach is one of the key elements of a means-tested income support system.

The following table outlines the formula used for determining weekly means from capital for the State Pension (Non-Contributory) and Farm Assist.

Formula	Weekly Means
First €20,000	Nil
Next €10,000	€1 per €1,000
Next €10,000	€2 per €1,000
Excess of €40,000	€4 per €1,000

Treatment of Income from Leased Land
Department of Social Protection guidelines provide that the income from land let, sub-let or leased is assessed as follows:

Where a claimant is the lessor of a farm of land (including eleven months letting, letting on conacre, letting in agistment), the value of the property is not assessed as capital but the yearly value of any advantage accruing from that leased land is assessed.

Necessary expenses actually incurred by the owner (e.g. fencing or fertilising between lettings) may be deducted from the gross rent received.

Where a claimant is the owner or tenant of a farm of land and lets or sub-lets the farm to another due to illness or old age and receives part of the rent in kind instead of cash, the total benefit from the holding should be assessed.

Certain rules related to the 'deprivation of income'
If the income from a farm is deliberately kept below the potential income in order that a claimant will qualify for a pension/allowance or a pension/allowance at a higher rate, the claimant is deemed to have deprived her/himself of income and so the potential income is assessable against the claimant.

There is an exception to this rule provided for in the legislation governing State Pension (Non-Contributory), whereby the transfer of a farm of land to a child or children does not count as "deprivation" where the person making the transfer is the owner and occupier or the occupier of the farm. Rule 2 of Part 3, Schedule 3 of the Act refers.

2. (1) Subject to paragraph (2), if it appears that any person has, whether before or after the commencement of this Act, directly or indirectly deprived himself or herself of any income or property in order to qualify himself or herself for the receipt of the pension in question, or for the receipt of the pension at a higher rate than that to which he or she would otherwise be entitled, that income or the value of that property shall for the purposes of these Rules be taken to be part of the means of that person.

(2) Paragraph (1) shall not apply to any assignment—

(a) which is an assignment to a child or children of the assignor, and

(b) which is an assignment of property consisting of a farm of land (together with or without the stock and chattels thereon) and of which the assignor is the owner and the occupier or the occupier only.

(3) In the case of a person to whom paragraph (1) applies, where the income or the value of the property taken to be part of his or her means for the purposes of that paragraph has reduced since the date of calculation, the calculation may be revised, subject to the conditions and in the circumstances that may be prescribed, but

regulations made under this paragraph shall not cause the income or the value of the property taken to be part of his or her means to be increased.

A similar provision does not exist for Farm Assist. If a farmer fully transfers their farm, they are no longer engaged in farming and hence would not qualify for Farm Assist.

7. Discussion and Recommendations

As stated above, in addition to raising the issue of leased farmland during a Dáil debate on the Social Welfare Bill 2021, Deputy Denis Naughten T.D., made a submission to the Review Group requesting that where a farmer enters a long-term lease that complies with Revenue rules (even if they are exempt from tax) that they receive some relief in their means calculation under State Pension (Non-Contributory).

Based on the evidence available, the Review does not consider it appropriate to introduce a disregard for income from leased land for either State Pension (Non-Contributory) or Farm Assist.

Data is not available on the number of Farm Assist or State Pension (Non-Contributory) claimants who have income from leased land and the Department has not been presented with details of individuals who are affected by the issue raised. The Review also carried out research within the Department to ascertain the extent of the potential issue and the number of potentially affected cases. There is no available evidence of any relative disadvantage to retiring farmers who retain ownership of their farm and opt to lease rather than divest of the property that would warrant a change to the current rules.

Social welfare means testing rules ensure that account is taken of any capital and income that a person has available to them. As outlined above, capital held by a claimant is subject to a particular assessment for means tested schemes. Leased income, in line with other streams of passive income which a person may have available to them, is also treated consistently across the range of means tested schemes. There is no evidence to support the position that the introduction of a disregard for leased land for farmers would be the most appropriate way from a social protection perspective of encouraging older farmers to pass otherwise neglected/underutilised land onto younger generations. Provision is already in place to support the transfer of a farm to a person's child or children. Such a change would create a discrepancy with how the Department assesses other types of leased income across its various schemes.

Recommendation – this Review recommends no change to the current rules on the treatment of income from leased land.

Appendix 1 – Changes to State Pension (Non-Contributory) since 2012

While significant changes were made to the State Pension (Contributory) in the period concerned, there were no policy changes for the State Pension (Non-Contributory). The rate of pay remained stable before being steadily increased from Budget 2016. A smaller rate is paid on a banded basis, depending on the means, as assessed.

Budget	Maxmimum rate of Pay
2012	€219
2013	€219
2014	€219
2015	€219
2016	€222
2017	€227
2018	€232
2019	€237
2020	€237
2021	€237
2022	€242
2023	€254

The rate of pay equates to circa 95% of the maximum rate of payment for the State Pension (Contributory).

Appendix 2 - Changes to the Farm Assist Scheme since 2012

Budget 2012

- The assessment of means from farming was raised from 70% (of farm income) to 85% from January 1st 2012.
- Disregards for children were halved from €254 per child per year to €127 per year for each of the first two dependent children and from €381 to €190.50 per year for each subsequent child from January 1st 2012.

Budget 2013

- The assessment of means from farming was raised from 85% (of farm income) to 100% from April 3rd 2013.
- Disregards for children were discontinued from April 3rd 2013.

Budget 2017

Budget 2017 reversed the changes to income assessment levels and disregards for children introduced in the 2012 and 2013 Budgets. Farm income and other income from off-farm self-employment is now to be assessed at 70% down from 100% with an additional disregard of €254 for each of the first two children and €381 for the third and other children.

Budget 2018

There were no significant policy developments in 2018. There was an increase of €5 in the weekly rate of payment.

Budget 2019

There were no significant policy developments in 2019. There was an increase of €5 in the weekly rate of payment.

Budgets 2020 and 2021

No changes introduced as part of Budgets 2020 and 2021. In certain circumstances farmers were eligible for the COVID 19 Pandemic Unemployment Payment (PUP).

Budget 2022

Budget 2022 extended the list of agri-environmental schemes that attract a disregard for Farm Assist, to take effect from 01 June 2022. The measure follows a technical review of the means test disregards for the Farm Assist scheme conducted by the Department in 2021, in consultation with the Department of Agriculture, Food and the Marine. The measure is aimed at supporting the Government's climate change agenda and act as an incentive to farmers to participate in the schemes.

Budget 2023

The specific disregard for income received under the approved list of agri-environmental schemes will be increased in January 2023 from the current €2,540 to €5,000. As under current rules, 50% of the remaining balance will also be disregarded. This measure will require a legislative amendment to Part 2 of Schedule 3 to the Social Welfare Consolidation Act 2005 in respect of Farm Assist, and to Part 3 of Schedule 3 in respect of State Pension (Non-Contributory).