

Provisions supplementary to sections 334 to 337. FA97 s155 338.—(1) In sections 334 to 337—

“certificate of reasonable cost” means a certificate granted by the Minister for the Environment and Local Government for the purposes of section 334 , 335 , 336 or 337, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979 , shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

“house” includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

“lease”, “lessee”, “lessor”, “premium” and “rent” have the same meanings respectively as in Chapter 8 of Part 4;

“total floor area” means the total floor area of a house measured in the manner referred to in section 4 (2)(b) of the Housing (Miscellaneous Provisions) Act, 1979 .

(2) A lease shall not be a qualifying lease for the purposes of section 334 , 335 or 336 if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm's length.

(3) A house shall not be a qualifying premises for the purposes of section 334 , 335 or 336 if—

(a) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under section 334 (2), 335 (4) or 336 (2), as the case may be, and

(b) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(4) (a) A house shall not be a qualifying premises for the purposes of section 334 or, in so far as it applies to expenditure other than expenditure on refurbishment, section 337 unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979 , in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(b) A house shall not be a qualifying premises for the purposes of section 335 or 336 or, in so far as

it applies to expenditure on refurbishment, section 337 unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(5) A house shall not be a qualifying premises for the purposes of section 334, 335, 336 or 337 unless persons authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(6) For the purposes of sections 334 to 337, references in those sections to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

(a) demolition or dismantling of any building on the land,

(b) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(c) walls, power supply, drainage, sanitation and water supply, and

(d) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(7) (a) For the purposes of determining, in relation to any claim under section 334 (2), 335 (4), 336 (2) or 337 (2), as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the premises which was actually carried out during the qualifying period shall be treated as having been incurred during that period.

(b) Where by virtue of subsection (6) expenditure on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises includes expenditure on the development of any land, paragraph (a) shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the qualifying premises were references to the development of such land.

(c) Nothing in this subsection shall affect the operation of section 337 (3).

(8) (a) For the purposes of sections 334 and 335 other than the purposes mentioned in subsection (7)(a), expenditure incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying

lease.

(b) For the purposes of section 336 other than the purposes mentioned in subsection (7)(a), relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(c) For the purposes of section 337 other than the purposes mentioned in subsection (7)(a), expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred on which the premises is in use as a dwelling.

(9) For the purposes of sections 335 and 336, expenditure shall not be regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority.

(10) Section 555 shall apply as if a deduction under section 334 (2), 335 (4) or 336 (2), as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under section 334 (5), 335 (7) or 336 (5), as the case may be, were a balancing charge.

(11) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under section 334 , 335, 336 or 337 of the Housing (Miscellaneous Provisions) Act, 1979 ) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.