



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

10TACD2025

Between

████████████████████

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a Notice of Assessment raised by the Revenue Commissioners (hereinafter the “Respondent”) on 12 September 2023 in the amount of €7,500 which is a clawback of 100% of the Help to Buy relief which the Appellant had previously been approved for, and received, pursuant to section 477C of the Taxes Consolidation Act 1997 (hereinafter the “TCA 1997”).
2. The total amount of tax under appeal is €7,500.

## Background

3. [REDACTED] (hereinafter the “Appellant”) is a public sector worker and Pay As You Earn taxpayer.
4. On 16 December 2020, the Appellant, as a first time purchaser, purchased a property at [REDACTED] contained in Folio [REDACTED] (hereinafter the “Property”) from [REDACTED] in consideration for the amount of €75,000.
5. It is not in dispute between the parties that the Property had not been occupied, and was not used as a dwelling, prior to the Appellant purchasing it on 16 December 2020.
6. The Stamp Duty return associated with the purchase was submitted to the Respondent on 22 December 2020.
7. On 22 September 2021, the Appellant initiated a claim under the Help to Buy scheme on the grounds that the property was a “self-build qualifying residence” as defined in section 477C(1) and confirming that the purchase value of the Property was “€null” and that the Loan amount relating to the Property was €150,000. The amount claimed was €7,500.
8. On 23 September 2021, the Appellant’s solicitor verified the Application on the Respondent’s online system and Help to Buy relief of €7,500 was paid by the Respondent directly into the Appellant’s bank account.
9. On 24 February 2023, the Respondent commenced a compliance review of the Appellant’s Help to Buy claim.
10. On 12 September 2023 the Respondent raised a Notice of Assessment in the amount of €7,500 which is a clawback of 100% of the Help to Buy relief which the Appellant had previously been approved for, and received, pursuant to section 477C of the TCA 1997.

## Legislation and Guidelines

11. The legislation relevant to this appeal is section 477C of the TCA 1997 which is set out in full at **Annex 1** of this determination.

## Witness Evidence

Witness – [REDACTED]

12. The Appellant gave evidence at the oral hearing which may be summarised as follows:
13. The Appellant stated that he is 31 years of age, that he lives in the Property together with his then fiancée (now wife) and that he is a public servant.
14. He stated that in 2020 he began the process of applying for a mortgage in circumstances where he had been offered a site near his “*home place*”. He stated that the site included a “*shell of a building*”, the construction of which had a roof and windows but which, he stated, required substantial further construction in order to make it habitable.
15. He stated that he was approved for a self-build mortgage which he drew down in stages following approval of works by an architect.
16. The works which he carried out to the Property consisted of:
  - 16.1. All plumbing works;
  - 16.2. Completion of electrical works to comply with new regulatory standards;
  - 16.3. Pouring of floors;
  - 16.4. Electricity connection;
  - 16.5. Water connection;
  - 16.6. Installation of a septic tank; and
  - 16.7. Installation of a heating system.
17. He stated that, once the works were complete, he and his fiancée moved in to the Property on 13 February 2022.
18. He stated that he is a first time purchaser who: has been living in the property since February 2022; is tax compliant; is a PAYE taxpayer; and took out a self-build mortgage with a qualified lender. He stated that he believes he built the Property by carrying out substantial works to the shell of a building which he purchased. He stated that it is his belief that he comes within the qualification criteria for Help to Buy Relief.

19. On cross-examination the Appellant stated that he had bought the site of the Property which included a shell of a house. He stated that he had not applied for planning permission for the Property, that his father had been the person to do so. The Appellant was unable to state the dates on which the works, that is to say from foundation to first fix, were carried out on the Property.

## **Submissions**

### *Appellant's submissions*

20. The following is a summary of the submissions made both in writing and orally to the Commissioner on behalf of the Appellant. The Commissioner has had regard to all of the submissions whether written, oral or documentary received when considering this determination.

21. It was submitted that the Appellant is entitled to Help to Buy relief as provided for under section 477C of the TCA 1997 on the basis that:

21.1. He is a first time purchaser as defined in section 477C(1) of the TCA 1997;

21.2. He received a qualifying loan from a qualifying lender as defined in section 477C(1) of the TCA 1997;

21.3. The Property was a self-build qualifying residence as defined in section 477C(1) of the TCA 1997

22. It was submitted that the Property is a dwelling within the meaning of section 477C of the TCA 1997. The Appellant submitted that that the Property was not habitable at the time that he purchased it. In support of this the Appellant submitted a letter from ██████████, Architects and Surveyors Ltd, dated 1 September 2023 which contained 10 photographs of the finished property and which stated as follows:

*"We can confirm that we inspected the above dwelling house of ██████████ in February 2018.*

*The house at that stage was built and roofed.*

*It was not in a habitable state.*

*██████████ took over the works and completed it which involved substantial works to get it to a habitable state.*

*We further inspected the house in March 2022 and the house was complete with all services. We issued a Certificate of Compliance at that time."*

23. The Appellant submitted that he built a dwelling, this is on the basis that it required substantial works to be carried out to it in order for it to be made habitable. In support of this the Commissioner was referred to two previous determinations of the Tax Appeal Commission.
24. The first determination to which the Commissioner was referred is 31TACD2018 where the appellant in that appeal had purchased land which contained a pre-existing derelict farmhouse, had demolished the pre-existing derelict farmhouse and had constructed a new-build property. In that appeal both parties agreed that the word “*dwelling*” referred to a building which was suitable for use as a dwelling and at paragraph 17 of the determination, the Commissioner in that appeal was “...*satisfied that the word “dwelling” refers to a building which is suitable for use as a dwelling and that it should not be interpreted so generally that it would include a building which cannot be so used.*”.
25. The second determination to which the Commissioner was referred is 13TACD2024 where the appellant in that appeal had, in 2020, purchased a property which had been constructed by the vendor in or around 2007 but had never been lived in. The appellant in that appeal had carried out some additional works to the property and sought to claim Help to Buy relief on the basis that the additional works meant that the property came within the definition of a self-build qualifying residence. In particular the Appellant referred to paragraph 23 of that determination wherein it states that the respondent in that appeal “...*accepted that, in principle, ‘built directly or indirectly by a first time purchaser’ could include the conversion of a pre-existing building unsuitable for use as a dwelling for residential use.*”.
26. It was submitted that photographs submitted on behalf of the Appellant show that the Property was not suitable for use as a dwelling and therefore can be considered a self-build qualifying residence.

#### *Respondent’s submissions*

27. The following is a summary of the submissions made both in writing and orally to the Commissioner on behalf of the Respondent. The Commissioner has had regard to all of the submissions whether written, oral or documentary received when considering this determination.
28. The respondent submitted that, as the Appellant has made a claim for Help to Buy relief on the basis that the Property is a self-build qualifying residence as defined under section 477C of the TCA 1997, the legal test to be applied in this appeal is to establish whether the Property falls within the definition of a self-build qualifying residence. It was submitted

that, in order to answer this the question, the Commissioner must focus on is whether the Appellant, either directly or indirectly, built the Property.

29. The Respondent pointed the Commissioner to a "*Partial Certificate of Compliance*" dated 8 February 2018 completed by ██████ which states *inter alia* that two grants of Planning Permission related to the Property. The first was dated 21 June 1999 under reference number ██████ and the second was dated 23 February 2004 under reference number ██████. The "*Partial Certificate of Compliance*" further stated that a Commencement Notice of the intention to undertake the works relevant to the Planning Permission was dated 12 March 2004.

30. The Respondent referred the Commissioner to a copy of a Valuation Report dated 9 October 2020 which had been prepared as part of the Appellant's mortgage application for the Property and which, *inter alia*, indicated that at that time:

30.1. The Property was a detached dormer building;

30.2. Which was completed to roof level;

30.3. Was not fully built;

30.4. Was completed to first fix stage;

30.5. Had water and electricity services;

30.6. Had underfloor, electric heating;

30.7. Had a septic tank;

30.8. Was of standard construction with concrete walls, a tile roof with wood and concrete floors;

30.9. An accompanying photograph showed a roofed property with windows and skylights installed.

31. The Respondent then referred the Commissioner to a document entitled "*Detailed Costing Certificate for Direct Labour Self Builds*" dated 10 August 2020 which the Appellant had submitted to the Respondent. The Respondent submitted that it is noteworthy that in that document:

31.1. No demolition works were listed;

31.2. No preliminary works were listed;

31.3. No works to the substructure and foundation were listed;

- 31.4. No block laying was listed;
- 31.5. No structural work was listed;
- 31.6. No external walls were listed;
- 31.7. No internal walls were listed;
- 31.8. No internal doors were listed;
- 31.9. No roof structure was listed;
- 31.10. No first fix electrical works were listed;
- 31.11. No first or second fix plumbing details were listed;
- 31.12. No waste draining was listed;
- 31.13. No amount for water or electricity connection fees was listed.

## **Material Facts**

### *Uncontested Material Facts*

- 32. The following material facts are not at issue in the within appeal and the Commissioner accepts same as material facts:
  - 32.1. The Appellant is a public sector worker and Pay As You Earn taxpayer.
  - 32.2. On 16 December 2020, the Appellant purchased a Property from [REDACTED] in consideration for the amount of €75,000.
  - 32.3. The Stamp Duty return associated with the purchase was submitted to the Respondent on 22 December 2020.
  - 32.4. The Appellant purchased the Property as a first time purchaser.
  - 32.5. On 22 September 2021, the Appellant initiated a claim under the Help to Buy scheme on the grounds that the property was a “self-build qualifying residence” as defined in section 477C(1) and confirming that the purchase value of the Property was “€null” and that the Loan amount relating to the Property was €150,000. The amount claimed was €7,500.
  - 32.6. It is not in dispute between the parties that the Property had not been occupied, and was not used as a dwelling, prior to the Appellant purchasing it on 16 December 2020.



- 32.7. On 23 September 2021, the Appellant's solicitor verified the Application on the Respondent's online system and Help to Buy relief of €7,500 was paid by the Respondent directly into the Appellant's bank account.
- 32.8. On 24 February 2023, the Respondent commenced a compliance review of the Appellant's Help to Buy claim.
- 32.9. On 12 September 2023 the Respondent raised a Notice of Assessment in the amount of €7,500 which is a clawback of 100% of the Help to Buy relief which the Appellant had previously been approved for, and received, pursuant to section 477C of the TCA 1997.

### *Contested Material Facts*

33. The following material facts are at issue in the within appeal:

33.1. Whether the Appellant built the Property.

34. The appropriate starting point for the examination of material facts is to confirm that in an appeal before the Commissioner, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 (hereinafter "*Menolly Homes*"), at paragraph 22, Charleton J. stated:

*"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".*

35. The standard of proof applicable in an appeal to an Appeal Commissioner is the balance of probabilities.

### *Whether the Appellant built the Property:*

36. On the one hand, it is the Appellant's position that he built the Property the subject matter of this appeal. This is on the basis that, when he purchased the property on 16 December 2020, it was not habitable and it required substantial works to bring it to a habitable state.

37. On the other hand, it is the Respondent's position that the Appellant did not build the Property. This is on the basis that the Property had been constructed from foundation to roof level, had windows and that first fix works had been completed when the Appellant purchased it.

38. In considering this material fact, the Commissioner has considered the meaning of the word “built”. The Oxford English Dictionary defines “built” as meaning:

*“To construct, put up, erect (a house or other dwelling or building); to construct (a permanent static structure such as a wall, bridge, or architectural feature, a road or railway, etc.).”*

39. The Cambridge Dictionary describes the word “built” as being the “*past simple and past participle of build*” and defines the word “build” as:

*“to make something by putting bricks or other materials together”*

40. Having considered the definitions as set out, the Commissioner considers that to build a house involves the construction of a building from foundation stage onwards, to include, but not limited to: the laying of foundations; the laying of blocks and/or the construction of a wooden structure; the construction of a roof; the installation of windows; the insulation of the building; the plastering of the building; the installation of electrical wiring and plumbing; the installation of a heating system; the laying out of rooms; the fitting of doors, a kitchen and bathroom sanitary ware.

41. The Commissioner has considered what works the Appellant carried out. By his own evidence he does not know when or by whom: the Property site was cleared; the foundations were laid; the blocks were laid; the roof was constructed; the windows were installed. The Commissioner notes that in the valuation report dated 9 October 2020 submitted by the Appellant and which was completed in the context of the Appellant’s mortgage application states that the Property:

41.1. Was two storey dormer;

41.2. Was completed to first fix stage;

41.3. Had one reception room, four bedrooms, two bathrooms, a kitchen and a utility room;

41.4. Had water and electricity services;

41.5. Had underfloor central heating powered by an electric heating system;

41.6. Had an onsite septic tank;

41.7. The type of use of the Property was indicated as being for a one family occupation and as fitted for residential lettings;

41.8. Was of standard concrete construction with a tile roof;

- 41.9. Had wood and concrete floors;
- 41.10. The general condition of the structural repair was good;
- 41.11. The general condition of the outside walls was good;
- 41.12. The general condition of the windows was good;
- 41.13. The general condition of the roof was good;
- 41.14. There was no obvious evidence of rising damp, rot and/or beetle infestation;
- 41.15. Essential repairs were required and were specified as being *“Completion of some first fixings, all second fixings and external landscaping is required. Estimated cost of completion of work is €94,960”*;
- 41.16. Internal floor area of the Property is noted as 185 square metres.

42. General notes / observations in the Valuation Report state:

*“The subject property is situated in a quiet countryside area close to local amenities. Upon completion of proposed works the property will be an ideal home for family occupation or for rental purposes. This purchase of the property is €75,000, we estimate the competed market value of the property post proposed completion works in this desirable countryside location to be: €185,000. Close to all essential amenities including churches, childcare facilities and primary school.”*

43. The Commissioner notes the contents of a *“Detailed Costing Certificate for Direct Labour Self Builds”* dated 10 August 2020 and completed by ██████ which details the following items and costs for works to the Property:

	Item Description	Total Cost € (Materials and Labour incl. VAT)
1	Demolition of exiting dwelling (if applicable)	
	Preliminaries	
	Site clearance and Preparation	
	Substructure	
	Foundation	
	Blocklaying	

	Timberframe (if applicable)	
2.	Structure	
	External Walls	
	Internal Walls	
	Brickwork	
	External Doors	€5,500
	Internal Doors	
	Windows	€10,500
	Roof Structure	
3.	Stairs	€3,800
	Plasterwork and Finishes	€5,000
	Internal Joinery	€7,800
	Flooring and Finishes	€7,000
	Electric	€5,800
	1 <sup>st</sup> Fix	
	2 <sup>nd</sup> Fix	€7,500
	Plumbing	€6,500
	1 <sup>st</sup> Fix	
	2 <sup>nd</sup> Fix	
	Heating	€11,000
	Insulation	€3,000
4.	Kitchen & Utility units	€9,000
	Bathroom and sanitary ware & fittings	€5,600

	Fitted wardrobes	
	Fireplace	
	Fixtures & Fittings	
	Waste and Drainage	
	Landscaping & Driveway	€4,000
	Tarmac & Kerbing	€4,000
	Garage	
	Conservatory	
	<b>Total Build Cost (Materials and Labour incl. VAT)</b>	€92,000
5.	10% Contingency	
6.	Architect / Solicitor / Professional fees (incl. VAT)	
	Connection Fees (Water and ESB)	
	Other Fees Purchase Price	€75,000
	<b>Overall Project Outlay</b>	€167,000

44. In addition, the Commissioner has considered the “*Partial Certificate of Compliance*” dated 8 February 2018 completed by ██████ which states *inter alia* that two grants of Planning Permission related to the Property. The first was dated 21 June 1999 under reference number ██████ and the second was dated 23 February 2004 under reference number ██████. The “*Partial Certificate of Compliance*” further stated that a Commencement Notice of the intention to undertake the works relevant to the Planning Permission was dated 12 March 2004. It does not detail or specify the works carried out to the Property to that date. In addition it states at paragraph 7 that:

*“I have inspected the Relevant Works thereof AND in my opinion the construction of same to date complies substantially with all of the said Building Regulations applicable thereto.”*

45. A similar “*Certificate of Compliance*” was completed by [REDACTED] on 23 March 2022.
46. The Commissioner has also considered [REDACTED] letter dated 1 September 2023 which states that:

*“We can confirm that we inspected the above dwelling house of [REDACTED] in February 2018.*

*The house at that stage was built and roofed.*

*It was not in a habitable state.*

*[REDACTED] took over the works and completed it which involved substantial works to get it to a habitable state.*

*We further inspected the house in March 2022 and the house was complete with all services. We issued a Certificate of Compliance at that time.”*

47. The Commissioner notes that the Planning Permission for the Property was granted on 23 February 2004. In addition, the Commissioner notes that the Commencement Notice relating to the Property is dated 12 March 2004. At that time the Appellant, by his own evidence, was 11 years of age.
48. Having considered all of the submissions, evidence and documentation submitted, the Commissioner is satisfied that the foundations, walls, roof, windows, external doors, internal room layout, first fix electricity and plumbing along with septic tank, water and electricity connections relating to the Property were complete prior to the Appellant purchasing the Property. The Appellant has not provided any evidence which tends to establish that he caused those works to be carried out.
49. In addition, the Appellant has submitted a “*Detailed Costing Certificate for Direct Labour Self Builds*” dated 10 August 2020. The Commissioner notes that, whilst some of the works detailed in that document may have been necessary works, the Appellant has not submitted any documentation or adduced any independent evidence as to the extent of the works which were necessary. In particular the Commissioner notes that the Valuation Report dated 9 October 2020 stated, *inter alia*, that the Property had electric underfloor heating and that the general condition of the windows was good. In contrast, the detailed costing certificate contains sums of €11,000 for heating and €10,500 for windows. No evidence has been adduced to the Commission which explains this divergence in information.

50. The Commissioner has considered a Stamp Duty Return filed with the Respondent on 25 October 2011 relating to the Property which describes the Property as being:

50.1. Transferred from [REDACTED] to [REDACTED] by way of instrument dated 2 September 2010;

50.2. A residential property;

50.3. With an address at [REDACTED];

50.4. A second-hand dwelling house / apartment;

50.5. Greater or equal to 38 sq metres and less than 125 sq metres;

50.6. The purchaser being a first time buyer Owner-Occupier;

50.7. With an Open Market Value of €80,000.

51. The Commissioner has also considered a Stamp Duty Return filed with the Respondent on 22 December 2020 relating to the Property which describes the Property as being:

51.1. Transferred from [REDACTED] to the Appellant by way of a contract dated 16 October 2020;

51.2. A residential property;

51.3. With an address at [REDACTED];

51.4. Folio [REDACTED]

51.5. A second-hand dwelling house / apartment;

51.6. The purchaser being an Owner-Occupier;

51.7. With an Open Market Value of €75,000.

52. No explanation has been given by, and no evidence has been adduced on behalf of, the Appellant which explains why the Stamp Duty Return dated 25 October 2011 describes the Property as being a second hand dwelling house.

53. As a result of the above, whilst the Commissioner is satisfied that the Appellant carried out some works to the Property after he purchased it, the exact nature and extent of the works which he carried out have not been established. Therefore, the Commissioner is not satisfied that the Appellant has discharged the burden of proof to establish that he built the Property. The Commissioner finds as a material fact that the Appellant did not build the Property. The Commissioner also finds as a material fact that the Appellant

carried out some works, the extent of which have not been established, to the Property after he purchased it.

*Findings of Material Facts*

54. For the avoidance of doubt, the Commissioner makes the following findings of material fact:

54.1. The Appellant is a public sector worker and Pay As You Earn taxpayer.

54.2. On 16 December 2020, the Appellant purchased a Property from [REDACTED] in consideration for the amount of €75,000.

54.3. The Stamp Duty return associated with the purchase was submitted to the Respondent on 22 December 2020.

54.4. The Appellant purchased the Property as a first time purchaser.

54.5. On 22 September 2021, the Appellant initiated a claim under the Help to Buy scheme on the grounds that the property was a “self-build qualifying residence” as defined in section 477C(1) and confirming that the purchase value of the Property was “€null” and that the Loan amount relating to the Property was €150,000. The amount claimed was €7,500.

54.6. It is not in dispute between the parties that the Property had not been occupied, and was not used as a dwelling, prior to the Appellant purchasing it on 16 December 2020.

54.7. On 23 September 2021, the Appellant’s solicitor verified the Application on the Respondent’s online system and Help to Buy relief of €7,500 was paid by the Respondent directly into the Appellant’s bank account.

54.8. On 24 February 2023, the Respondent commenced a compliance review of the Appellant’s Help to Buy claim.

54.9. On 12 September 2023 the Respondent raised a Notice of Assessment in the amount of €7,500 which is a clawback of 100% of the Help to Buy relief which the Appellant had previously been approved for, and received, pursuant to section 477C of the TCA 1997.

54.10. The Appellant did not build the Property.

54.11. The Appellant carried out some works, the extent of which have not been established, to the Property after he purchased it.



## Analysis

55. It is not in dispute, and the Commissioner has found as a material fact, that the Appellant's application for Help to Buy relief was made on the basis that the Property is a self-build qualifying residence as defined in section 477C(1) of the TCA 1997.

56. It is also not in dispute that the Property was not used as a dwelling prior to the time that the Appellant purchased it on 16 December 2020. However, in this appeal the Commissioner must also consider whether the Property falls within the meaning of a self-build qualifying residence.

57. A self-build qualifying residence is defined in section 477C of the TCA 1997 as meaning:

*“a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf;”*

58. Section 477C(1) of the TCA 1997 defines a qualifying residence as meaning:

*(a) a new building which was not, at any time, used, or suitable for use as a dwelling, or*

*(b) a building which was not, at any time, in whole or in part, used, or suitable for use, as a dwelling and which has been converted for use as a dwelling,*

*and-*

*(i) which is occupied as the sole or main residence of a first time purchaser,*

*(ii) in respect of which the construction work is subject to the rate of tax specified in section 46(1)(c) of the Value Added Tax Consolidation Act 2010, and*

*(iii) where the purchase value is not greater than –*

*(I) where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection 3(a) is entered into between a claimant and a qualifying contractor or the first tranche of a qualifying loan referred to in subsection (3) (b) is drawn down by a claimant, €600,000 or*

*(II) in all other cases €500,000.*

59. The Commissioner has already found as a material fact that the Appellant did not build the Property, for the reasons as set out above.

60. As a result, the Property is not, and cannot fall within the definition of, a self-build qualifying residence and cannot be said to be “a *qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf;*” and, therefore, cannot fall within the provisions of section 477C of the TCA 1997 and the Help to Buy scheme contained therein.

### **Determination**

61. The Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to issue the Notice of Assessment on 12 September 2023 in the amount of €7,500 which is a clawback of 100% of the Help to Buy relief which the Appellant had previously been approved for, and received, pursuant to section 477C of the TCA 1997.

62. The Notice of Assessment dated 12 September 2023 raised by the Respondent therefore stands.

63. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

64. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) of the TCA 1997 and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the Parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The Parties shall not receive any other notification of this determination by any other methods of communication.

### **Appeal**

65. Any party dissatisfied with the determination has a right of appeal on a point or points of law only to the High Court within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Clare O'Driscoll  
Appeal Commissioner  
5 November 2024

## **Annex 1**

### **Section 477C of the TCA 1997 - Help to Buy.**

*(1) In this section -*

*'appropriate payment' shall be construed in accordance with subsection (4);*

*'appropriate tax' has the meaning assigned to it by section 256;*

*'approved valuation', in relation to a self-build qualifying residence, means the valuation of the residence that, at the time the qualifying loan is entered into, is approved by the qualifying lender as being the valuation of the residence;*

*'first-time purchaser' means an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;*

*'income tax payable' has the meaning assigned to it by section 3;*

*'loan' means any loan or advance, or any other arrangement whatever, by virtue of which interest is paid or payable;*

*'loan-to-value ratio' means the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence;*

*'PPS number', in relation to an individual, means the individual's personal public service number within the meaning of section 262 of the Social Welfare Consolidation Act 2005;*

*'purchase value' means -*

*(a) in the case of a qualifying residence, the price paid for the qualifying residence, being a price that is not less than its market value, or*

*(b) in the case of a self-build qualifying residence, the approved valuation;*

*'qualifying contractor' has the meaning assigned to it by subsection (2);*

*'qualifying lender' has the meaning assigned to it by section 244A(3);*

*'qualifying loan', means a loan, which -*

*(a) is used by the first-time purchaser wholly and exclusively for the purpose of defraying money employed in -*

*(i) the purchase of a qualifying residence, or*

*(ii) the provision of a self-build qualifying residence (including, in a case where such acquisition is required for its construction, the acquisition of land on which the residence is constructed),*

*(b) is entered into solely between a first-time purchaser and a qualifying lender (but this does not exclude a loan to which a guarantor is a party), and*

*(c) is secured by the mortgage of a freehold or leasehold estate or interest in, or a charge on, a qualifying residence or a self-build qualifying residence;*

*'qualifying period' means the period commencing on 19 July 2016 and ending on 31 December 2021;*

*'qualifying residence' means -*

*(a) a new building which was not, at any time, used, or suitable for use, as a dwelling, or*

*(b) a building which was not, at any time, in whole or in part, used, or suitable for use, as a dwelling and which has been converted for use as a dwelling,*

*and -*

*(i) which is occupied as the sole or main residence of a first-time purchaser,*

*(ii) in respect of which the construction work is subject to the rate of tax specified in section 461(1)(c) of the Value-Added Tax Consolidation Act 2010, and*

*(iii) where the purchase value is not greater than -*

*(I) where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection (3)(a) is entered into between a claimant and a qualifying contractor or the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by a claimant, €600,000, or*

*(II) in all other cases, €500,000;*

*'relevant tax year' means a year of assessment, within the 4 tax years immediately preceding the year in which an application is made under this section, in respect of*

*which a claim for an appropriate payment, or part of such appropriate payment, is made by an individual;*

*'Revenue officer' means an officer of the Revenue Commissioners;*

*'self-build qualifying residence' means a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf;*

*'tax reference number' means in the case of an individual, the individual's PPS number or in the case of a company, the reference number stated on any return of income form or notice of assessment issued to that company by the Revenue Commissioners;*

*'tax year' means a year of assessment within the meaning of the Tax Acts;*

*'VAT registration number', in relation to a person, means the registration number assigned to the person under section 65 of the Value-Added Tax Consolidation Act 2010.*

*(2) In this section, a 'qualifying contractor' means a person who applies to the Revenue Commissioners for registration as a qualifying contractor (pursuant to arrangements for such registration that are put in place by the Revenue Commissioners) and in respect of whom the Revenue Commissioners are satisfied is entitled to be so registered and -*

*(a) who -*

*(i) complies with the obligations referred to in section 530G or 530H, or*

*(ii) in the case of a contractor who is not a subcontractor to whom Chapter of Part 18 applies, complies with the obligations referred to in subparagraph (i), other than the obligations referred to in paragraphs (a) and (b) of subsection (1) of section 530G or 530H,*

*(b) who has been issued with a tax clearance certificate in accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section, and*

*(c) who provides to the Revenue Commissioners -*

*(i) details of qualifying residences which the contractor offers, or proposes to offer, for sale within the qualifying period,*

*(ii) details of any planning permission under the Planning and Development Acts 2000 to 2015 in respect of the qualifying residences referred to in subparagraph (i),*

*(iii) details of the freehold or leasehold estate or interest in the land on which the qualifying residences referred to in subparagraph (i) are constructed or to be constructed, and*

*(iv) any other relevant information that may be required by the Revenue Commissioners for the purposes of registration of a person as a qualifying contractor.*

*(3) Where an individual has, in the qualifying period, either -*

*(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or*

*(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,*

*that individual may make a claim for an appropriate payment.*

*(4) On the making of a claim by an individual referred to in subsection (3), a payment (in this section referred to as an 'appropriate payment') shall, subject to the provisions of this section, be made in accordance with subsection (16).*

*(5)*

*(a) An appropriate payment in relation to a qualifying residence or a self-build qualifying residence under this section shall not be greater than whichever of the amounts referred to in the following subparagraphs is the lesser, namely:*

*(i) the amount of €20,000,*

*(ii) the amount of income tax payable and paid by the claimant in respect of the 4 tax years immediately preceding the year in which an application is made under subsection (6), or*

*(iii) the amount equal to 5 per cent of the purchase value of the qualifying residence or self-build qualifying residence, as the case may be.*

*(b) In paragraph (a)(ii), income tax paid shall include any amount of appropriate tax which has, in accordance with section 257 and 267AA, been deducted from payments of relevant interest made to the claimant in the 4 tax years immediately preceding the year in which an application is made under subsection (6).*

*(c) The amount of appropriate tax referred to in paragraph (b) shall be reduced by the amount of any appropriate tax repaid to the claimant under section 266A.*

*(d) Notwithstanding Chapter 1 of Parts 44 and 44A, where section 1017 or 1031C applied in respect of a tax year, the amount of income tax paid by a claimant, for the purposes of paragraph (a)(ii) shall be determined by the following formula -*

$$\frac{A \times C}{B}$$

*where -*

*A is the amount of the total income (if any) of the claimant for the tax year,*

*B is the sum of the amount of the total income (if any) of the claimant and the amount of the total income (if any) of the claimant's spouse or civil partner, and*

*C is the amount of income tax paid for the tax year.*

*(e) An appropriate payment under this section shall be made -*

*(i) in the first instance as a refund of income tax paid by the claimant in respect of the earliest relevant tax year and followed by each succeeding relevant tax year, and*

*(ii) thereafter as a refund of the amount of appropriate tax paid by the claimant in respect of the earliest relevant tax year and followed by each succeeding relevant tax year.*

*(5A) Where an individual has, in that part of the qualifying period beginning on 23 July 2020 and ending on 31 December 2021, either -*

*(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or*



*(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,*

*paragraph (a) of subsection (5) shall apply subject to the following modifications:*

*(i) in subparagraph (i) of that paragraph, '€30,000' shall be substituted for '€20,000';*

*(ii) in subparagraph (iii) of that paragraph, '10 per cent' shall be substituted for '5 per cent'.*

*(6)*

*(a) Prior to submitting a claim under subsection (3), an individual shall make an application to the Revenue Commissioners which shall include -*

*(i) an indication that he or she intends to make a claim under this section,*

*(ii) his or her name and PPS number, and*

*(iii) confirmation by the individual, where such is the case, that the conditions specified in paragraph (b) have been met.*

*(b) The conditions referred to in paragraph (a)(iii) are that -*

*(i) he or she is a first-time purchaser,*

*(ii) where the individual is a chargeable person within the meaning of Part 41A or, as appropriate, Part 41 for a tax year within the 4 tax years immediately preceding the year in which the application is made, he or she has complied with the requirements of that Part or, as appropriate, those Parts and has paid the amount of income tax payable and of universal social charge (within the meaning of Part 18D) which he or she is liable to pay, in respect of each such tax year,*

*(iii) where the individual is not a chargeable person within the meaning of Part 41A or, as appropriate, Part 41 for a relevant tax year, he or she has made a return of income, in such form as the Revenue Commissioners may require, and has paid the amount of income tax payable and of universal social charge which he or she is liable to pay, in respect of each such relevant tax year, and*

*(iv) in the case of an individual to which subparagraph (ii) refers, he or she has been issued with a tax clearance certificate in accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section.*

*(c) Where section 1017 or 1031C applied in respect of a tax year, the individual who must meet the conditions referred to in subparagraphs (ii) and (iii) of paragraph (b) shall be the person assessed to tax under section 1017 or the nominated civil partner within the meaning of section 1031A.*

*(7) For the purposes of subsections (5)(a)(ii) and (6)(b)(ii) and (iii) -*

*(a)*

*(i) an individual may elect to be deemed to have made his or her application under subsection (6) in the tax year 2016 where, in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection (3)(a) is entered into between the applicant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in [subsection \(3\)\(b\)](#) is drawn down by the applicant, provided the application is made on or before 31 March 2017, or*

*(ii) an individual may elect to be deemed to have made his or her application under subsection (6) in the tax year 2016 where, in the period commencing on 1 January 2017 and ending on 31 March 2017, a contract referred to in subsection (3)(a) is entered into between the applicant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the applicant, provided the application is made on or before 31 May 2017,*

*and where an individual so elects, the application shall be deemed to have been made in the tax year 2016 and the corresponding claim under subsection (3), where it is made in the tax year 2017, shall be deemed to have been made in the tax year 2016,*

*(b) notwithstanding the obligation on an individual under paragraph (a)(i) to, as appropriate, make an application on or before 31 March 2017, where such an individual makes an application under subsection (6) in 2018 or 2019, the application shall be deemed to have been made in the tax year 2017, and the*

*corresponding claim under subsection (3) shall be deemed to have been made in the tax year 2017.*

*(8)*

*(a) An application made in any tax year shall cease to be valid on the earlier of the following events:*

*(i) failure by the applicant to satisfy the conditions specified in subsection (6)(b);*

*(ii) on the rescission of the applicant's tax clearance certificate in accordance with subsection (3A) of section 1095; or*

*(iii) on the falling of 31 December in the tax year in which the application is made.*

*(b) Notwithstanding paragraph (a) and subsection (25), where an application is made under this section in the period commencing on 1 October and ending on 31 December in any of the tax years 2017 to 2021 (hereafter in this paragraph referred to as the 'first-mentioned period'), and the corresponding claim is made under subsection (3) in the period commencing on 1 January and ending on 31 March of the following year, the applicant shall be deemed to have made his or her claim in the first-mentioned period.*

*(c) No claim may be made on foot of an application which ceases to be valid in accordance with paragraph (a).*

*(9) Where an application is made under this section and more than one individual is a party to the application, each such individual shall -*

*(a) confirm that he or she is a first-time purchaser,*

*(b) satisfy the conditions specified in subsection (6)(b),*

*(c) consent to provide to the other parties his or her name, address and PPS number, and*

*(d) agree with each of the other parties as to the allocation between the parties of the amount of the appropriate payment and notify the Revenue Commissioners of such allocation.*

*(10) Subject to the conditions specified in subsection (6)(b) being satisfied, the Revenue Commissioners shall notify the applicant of the maximum appropriate*

*payment that would, following the making of a claim under this section, be available to or in respect of the applicant.*

*(11)The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.*

*(12)*

*(a)On making a claim under subsection (3), where the qualifying residence is other than a self-build qualifying residence, the claimant shall provide to the Revenue Commissioners -*

*(i)his or her name and PPS number,*

*(ii)the address of the qualifying residence,*

*(iii)the purchase value of the qualifying residence,*

*(iv)details of the qualifying lender,*

*(v)confirmation that a qualifying loan has been entered into,*

*(vi)the qualifying loan application number or reference number used by the qualifying lender,*

*(vii)the amount of the qualifying loan,*

*(viii)evidence of the qualifying loan entered into,*

*(ix)evidence of the contract entered into with a qualifying contractor,*

*(x)the amount of deposit payable by the claimant to the qualifying contractor,*

*(xi)the amount, if any, of deposit paid by the claimant to the qualifying contractor,*

*(xii)confirmation that, on its completion, the qualifying residence will be occupied by the claimant as his or her only or main residence, and*

*(xiii)in the case of a claimant referred to in subsection (16)(a)(i), details of the claimant's bank account to which the appropriate payment shall, subject to the qualifying contractor having satisfied the requirements of subsection (13), be made.*

*(b)A claimant shall satisfy himself or herself that the contractor is a qualifying contractor.*

*(13)Following the making of a claim in accordance with subsection (12), the qualifying contractor shall provide to the Revenue Commissioners -*

*(a)the contractor's name,*

*(b)the contractor's tax reference number and VAT registration number,*

*(c)the name of the claimant,*

*(d)the address of the qualifying residence,*

*(e)the purchase value of the qualifying residence,*

*(f)the amount of deposit payable by the claimant to the qualifying contractor,*

*(g)the amount, if any, of deposit paid by the claimant to the qualifying contractor, and*

*(h)in the case of a contract to which subsection (16)(a)(ii) applies, details of the qualifying contractor's bank account.*

*(14)On making a claim under subsection (3) in the case of a self-build qualifying residence, the claimant shall provide to the Revenue Commissioners -*

*(a)his or her name and PPS number,*

*(b)the address of the self-build qualifying residence,*

*(c)the purchase value of the self-build qualifying residence,*

*(d)details of the qualifying lender,*

*(e)confirmation that a qualifying loan has been entered into,*

*(f)the amount of the qualifying loan,*

*(g)confirmation that, on its completion, the [self-build qualifying residence](#) will be occupied by the claimant as his or her only or main residence, and*

*(h)details of the qualifying loan bank account to which the appropriate payment shall, subject to a solicitor, acting on behalf of the claimant, having satisfied the requirements of subsection (15), be made.*

*(15)Following the making of a claim in accordance with subsection (14), a solicitor, acting on behalf of the claimant, shall provide to the Revenue Commissioners -*

*(a)the name of the claimant,*

*(b)the address of the self-build qualifying residence,*

*(c)evidence of the qualifying loan entered into between the claimant and the qualifying lender,*

*(d)evidence of the drawdown of the first tranche of the qualifying loan, and*

*(e)confirmation of the purchase value of the self-build qualifying residence.*

*(16)*

*(a)Subject to the provisions of this section, the appropriate payment shall be made by the Revenue Commissioners -*

*(i)where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection (3)(a) is entered into between the claimant and a qualifying contractor or, as appropriate, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the claimant, to the claimant's bank account,*

*(ii)where in the period commencing on 1 January 2017 and ending on 31 December 2021, a contract referred to in subsection (3)(a) is entered into between the claimant and a qualifying contractor, to the qualifying contractor's bank account, or*

*(iii)where in the period commencing on 1 January 2017 and ending on 31 December 2021, the first tranche of a qualifying loan referred to in subsection (3)(b) is drawn down by the claimant, to the claimant's qualifying loan bank account.*

*(b)Where the appropriate payment is made in respect of a claimant to a qualifying contractor referred to in paragraph (a)(ii), the contractor shall treat the appropriate payment as a credit against the purchase price of the qualifying residence.*

*(c)Where paragraph (a)(ii) applies, the claimant shall consent to the appropriate payment in respect of him or her being paid by the Revenue Commissioners to the qualifying contractor.*

(17)

*(a) On its completion, a qualifying residence or a self-build qualifying residence shall be occupied by the claimant as his or her only or main residence.*

*(b)*

*(i) Where an appropriate payment is made on foot of a claim under this section, and the qualifying residence or self-build qualifying residence ceases to be occupied -*

*(I) by the claimant, or*

*(II) where more than one individual is a party to the claim, by all of those individuals,*

*within 5 years from occupation of the residence, the claimant shall notify the Revenue Commissioners and, in accordance with subparagraph (ii), pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or the lesser percentage there specified of the amount of the appropriate payment.*

*(ii) Where the residence ceases to be occupied as mentioned in subparagraph (i) -*

*(I) within the first year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment,*

*(II) within the second year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 80 per cent of the amount of the appropriate payment,*

*(III) within the third year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 60 per cent of the amount of the appropriate payment* ,

*(IV) within the fourth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied,*

*pay to the Revenue Commissioners an amount equal to 40 per cent of the amount of the appropriate payment, or*

*(V) within the fifth year from occupation, the claimant shall, within 3 months from the residence ceasing to be so occupied, pay to the Revenue Commissioners an amount equal to 20 per cent of the amount of the appropriate payment.*

(18)

*(a) Where -*

*(i) arising from a claim under this section, an appropriate payment is made to, or in respect of, a claimant, and*

*(ii) any condition that imposes a qualification, as respects the claimant, in relation to the making of an appropriate payment under this section is not satisfied by the claimant,*

*the claimant shall, within 3 months from the date on which the appropriate payment is made, pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or part of such an amount, as appropriate.*

*(b)*

*(i) Where, arising from a claim under this section in respect of a self-build qualifying residence, an appropriate payment is made to an individual, the individual shall pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment -*

*(I) where the self-build qualifying residence is not completed within 2 years from the date on which the appropriate payment was made by the Revenue Commissioners, or*

*(II) if within that 2 year period, there are, in the opinion of the Revenue Commissioners, reasonable grounds to believe that the self-build qualifying residence will not be completed within that period.*

*(ii) Payment to the Revenue Commissioners under subparagraph (i) shall be made within 3 months from the end of the 2 year period referred to in clause (I) of that subparagraph or, as appropriate, within 3 months from the Revenue Commissioners issuing notice to the individual to the*



*effect that they had formed an opinion in accordance with clause (II) of that subparagraph.*

(c)

*(i)Where arising from a claim under this section, other than a claim to which paragraph (b) refers, an appropriate payment is made directly to an individual (who is not a qualifying contractor), the individual shall pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment -*

*(I)if the qualifying residence is not subsequently purchased by the individual within 2 years from the date on which the appropriate payment was made by the Revenue Commissioners, or*

*(II)if within that 2 year period, there are, in the opinion of the Revenue Commissioners, reasonable grounds to believe that the purchase of the qualifying residence by the individual will not be completed within that period.*

*(ii)Payment to the Revenue Commissioners under subparagraph (i) shall be made within 3 months from the end of the 2 year period referred to in clause (I) of that subparagraph or, as appropriate, within 3 months from the Revenue Commissioners issuing notice to the individual to the effect that they had formed an opinion in accordance with clause (II) of that subparagraph.*

(d)

*(i)Where, arising from a claim under this section, an appropriate payment claimed by an individual is made to a qualifying contractor under subsection (16)(a)(ii), and -*

*(I)the qualifying residence is not subsequently purchased by the individual within 2 years from the date of the making of the appropriate payment by the Revenue Commissioners, or*

*(II)if within that 2 year period, there are, in the opinion of the Revenue Commissioners, reasonable grounds to believe that the purchase of the qualifying residence by the individual will not be completed within that period,*

*the qualifying contractor shall pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment.*

*(ii) Payment to the Revenue Commissioners under subparagraph (i) shall be made within 3 months from the end of the 2 year period referred to in clause (I) of that subparagraph or, as appropriate, within 3 months from the Revenue Commissioners issuing notice to the qualifying contractor to the effect that they had formed an opinion in accordance with clause (II) of that subparagraph.*

*(e) For the purposes of paragraph (d), an individual referred to in that paragraph may notify the Revenue Commissioners where he or she has reasonable grounds to believe that the purchase of the qualifying residence by the individual will not be completed within the 2 year period referred to in that paragraph.*

*(f) Where the Revenue Commissioners are satisfied that a qualifying residence or self-build qualifying residence -*

*(i) is substantially complete at the end of the 2 year period referred to in paragraph (b), (c) or (d), and*

*(ii) is likely to be completed thereafter within a period of time that, in the opinion of the Revenue Commissioners, is a reasonable one (and such opinion shall be communicated to the person concerned),*

*the aforementioned 2 year period shall, for the purposes of those paragraphs, stand extended by the period referred to in subparagraph (ii).*

*(19) Where more than one individual is a party to a claim under this section and a liability arises under subsection (17) or (18) in respect of payment to the Revenue Commissioners of an amount equal to the amount of the appropriate payment, or part of such an amount, each party to the claim shall be liable jointly and severally.*

*(20)*

*(a) Where a person who is liable to pay to the Revenue Commissioners an amount referred to in subsection (17)(b) or paragraph (a), (b), (c) or (d) of subsection (18) fails to pay that amount, a Revenue officer may, at any time, make an assessment or an amended assessment on that person for a year of assessment or accounting period, as the case may be, in an amount that,*

*according to the best of that officer's judgement, ought to be charged on that person.*

*(b)A person aggrieved by an assessment or an amended assessment made on that person under this subsection may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment or amended assessment.*

*(c)Where in accordance with paragraph (a), a Revenue officer makes an assessment or an amended assessment on a person in an amount that, according to the best of that officer's judgement, ought to be charged on that person, the amount so charged shall, for the purposes of paragraph (a) and Part 42, be deemed to be tax due and payable in respect of the tax year in which the person is liable to pay the amount involved and shall carry interest as determined in accordance with subsection (2) of section 1080 as if a reference in that subsection to the date when the tax became due and payable were a reference to the date the amount so charged is, under this section, payable to the Revenue Commissioners.*

*(d)Any liability to pay an amount to which paragraph (a) applies, including any interest thereon, which is due and unpaid by a qualifying contractor under this section shall be and remain a charge on the freehold or leasehold estate or interest in the land on which the qualifying residence was to be constructed, where the contractor retains such estate or interest in the land.*

*(e)Notwithstanding section 36 of the Statute of Limitations 1957, the charge referred to in paragraph (d) shall continue to apply, without limit as to time, until such time as it is paid in full.*

*(21)An individual aggrieved by a decision by the Revenue Commissioners to refuse a claim under this section may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days of the notice of that decision.*

*(22)Anything required to be done by or under this section by the Revenue Commissioners may be done by any Revenue officer.*

*(23)Any application, claim, information, confirmation, declaration or documentation required by this section shall be given by electronic means and through such electronic systems as the Revenue Commissioners may make available for the time being for any such purpose, and the relevant provisions of Chapter 6 of Part 38 shall apply.*

*(24)Section 1021 shall not apply where an appropriate payment is made under this section.*

*(25)No application or claim may be made under this section after 31 December 2021.*