

SCHEDULES

SECOND SCHEDULE

Sections 1, 8.

DETERMINATION OF AMOUNT OF DEPRECIATION AND RECIPIENTS OF CERTAIN PAYMENTS

- 1 For the purposes of determining under subsection (4) of section one of this Act the amount of the depreciation in the value of any property affected by subsidence damage which is caused by that damage, the unit of property to be taken into account shall be—
- (a) where any property which has suffered subsidence damage constitutes or is comprised in a rating unit, that rating unit; and
 - (b) in any other case, such unit consisting of or comprising property which has suffered subsidence damage as may be determined by agreement between the Board and all persons entitled to serve a damage notice in respect of that damage or, in default of such agreement, in the manner provided by section thirteen of this Act, to be equitable in all the circumstances of the case:

Provided that a rating unit and property not included in any rating unit may, if it is determined as aforesaid to be equitable so to do, be treated for the purposes aforesaid as a single unit of property, and two or more rating units within the same curtilage and belonging to the same owner, or a rating unit part only of which has suffered subsidence damage, may in either case be treated for the purposes aforesaid either—

- (i) as a single unit of property; or
 - (ii) as consisting of such separate units of property as may be determined as aforesaid to be equitable in all the circumstances of the case,
as may be so determined.
- 2 (1) For the purposes aforesaid the amount of the depreciation in the value of a unit of property caused by any subsidence damage shall be taken to be the amount by which the value of the property in the state in which it was immediately after the occurrence of the damage is less than the value of the property in the state in which it was immediately before the occurrence of the damage, and the value of the property in either of the said states shall be taken to be the amount which it might have been expected to realise in that state on a sale effected immediately after the damage occurred, being in the case of property comprising land or buildings a sale of the fee simple in the open market and with vacant possession subject to—
- (a) any restrictive covenant, easement, quasi-easement, or other right inuring for the benefit of other land ;
 - (b) any public right of way, right of common, or other right inuring for the benefit of the public or of any section thereof; and
 - (c) any restriction imposed by or under any enactment,
- to which the property was subject at the time immediately after the damage occurred, but free from any other incumbrance, and without regard to any liability of the property to become subject after the said time to any restriction by virtue of any enactment other than a closing order under section twelve of the Housing Act, 1936,

or section ten of the Local Government (Miscellaneous Provisions) Act, 1953, or under or by virtue of section nine, ten, eleven or thirteen of the Housing (Scotland) Act, 1950:

Provided that—

- (i) except where a demolition order under section eleven of the said Act of 1936, a clearance order under section twenty-six of that Act, a closing order under section ten of the said Act of 1953 or a compulsory purchase order was in force in respect of the property immediately before the date of the occurrence of the damage, if any payment or payments would have fallen to be made under section one of the Slum Clearance (Compensation) Act, 1956, in respect of any person's interest in the property upon a compulsory purchase thereof in pursuance of a notice to treat served immediately before that date, the amount of the depreciation in the value of the property caused by the damage shall not be taken to be less than the amount, if any, by which the full compulsory purchase value within the meaning of the said Act of 1956 of that interest, or of all such interests taken together, for the purposes of that compulsory purchase would have been reduced if the notice to treat had been served immediately after that date;
- (ii) in the case of a unit of property consisting of or comprising property of a kind not normally the subject of sales in the open market, provision may be made by regulations made by the Minister for ascertaining the value of the property in any state by reference to such matters as may be specified in the regulations.

(2) In determining for the purposes of the foregoing sub-paragraph the value of any property in the state in which it was immediately after the occurrence of the damage, any right to a payment under subsection (4) of section one of this Act in respect of that damage shall be disregarded.

3 A payment under subsection (3) or subsection (5) of section one of this Act shall be made to the person by whom the cost of carrying out the works in question is incurred, or, if that cost is incurred partly by one person and partly by another, shall be apportioned between them in such manner as may be determined by agreement or, in default of agreement, in shares corresponding to their respective shares in the cost.

4 Subject to the provisions of this Act, a payment under subsection (4) of section one of this Act shall be made to the person who is for the time being the owner of the property in question:

Provided that—

- (a) if any other person is liable to make good the whole of the damage to which the payment relates, the payment shall be made to him ;
- (b) if any other person is liable to make good any part of that damage, such part of the amount of the payment shall be paid to him as bears to the whole of that amount the same proportion as the cost of meeting that liability bears to the cost of making good the whole of the damage.

5 Where the Board are satisfied that the interest in the property in question of any person to whom, apart from the provisions of this paragraph or paragraph 7 of this Schedule, the whole or part of a payment under the said subsection (4) would fall to be paid was, at the time immediately after the damage occurred, subject to a mortgage, the payment or that part thereof shall be paid to the mortgagee, and the mortgagee shall be liable to account therefor as if it had been proceeds of sale of

that interest arising under a power of sale exercised by the mortgagee at the said time, except that the mortgagee shall not be entitled to credit for any costs incurred by him in connection with the claiming, ascertainment, apportionment or making of the payment:

Provided that—

- (a) if at the time when the payment is made the debt secured by the mortgage (other than any part thereof representing costs for which the mortgagee would not be entitled to credit) has been paid in full, the payment shall be disposed of as if the interest had not been subject to the mortgage ;
- (b) if the interest was subject to two or more successive mortgages, this paragraph shall have effect with the substitution for references to the mortgagee of references to the first mortgagee, or, if the preceding subparagraph has effect in relation to the first mortgage, to the second mortgagee, and so on ; and
- (c) in any case this paragraph shall have effect, as regards any mortgage, subject to any agreement between the mortgagee and the person who apart from that mortgage would have been entitled to receive the payment or part thereof.

6 (1) The Minister may by regulations make provision as to the person to whom any payment under the said subsection (4) or any part thereof is to be paid in cases where the interest in the property in question of a person to whom, apart from the provisions of this or the next following paragraph, the whole or part of the payment would fall to be paid was at the time immediately after the damage occurred subject to a rentcharge; and any such regulations may apply all or any of the provisions of section twenty-five of the War Damage Act, 1943 (which relates to the rights of owners of rentcharges as to payments for war damage), subject to such adaptations and modifications as may be specified in the regulations.

(2) In this paragraph the expression " rentcharge" means any annual sum charged on the property, not being rent incidental to a reversion.

7 Where the interest in the property in question of the person to whom, apart from the provisions of this paragraph, the whole or part of a payment under the said subsection (4) would fall to be paid is subject to a settlement or otherwise held in such manner that the person entitled to the interest would not be competent to give an effective discharge for the proceeds of a sale thereof, that payment or that part thereof shall be paid to the person so competent.

8 Where the interest in the property in question of the person to whom the whole or part of a payment under the said subsection (4) falls to be paid, or the proceeds of sale of that interest, are the subject of a devise or bequest, that devise or bequest shall be deemed to include that payment or that part thereof.

9 Where the interest in the property in question of the person to whom the whole or part of a payment under the said subsection (4) falls to be paid is the subject of a contract of sale or of a notice to treat served under an enactment authorising the compulsory acquisition thereof, being a contract made or notice served before the damage occurred, that payment or that part thereof shall, unless the contract is rescinded or the notice ceases to have effect, be held by that person upon trust for the purchaser :

Provided that any lien upon that interest to which that person is entitled by virtue of the contract shall extend to that payment or that part thereof.

- 10 In the application of this Schedule to Scotland—
- (a) paragraph 7 shall not apply, but where the interest in the property in question of the person to whom the whole or part of a payment under subsection (4) of section one of this Act falls to be paid is subject to a trust within the meaning of the Trusts (Scotland) Act, 1921, or to an entail or to a life-rent, that person shall hold and apply that payment or that part thereof in like manner as if the interest had been acquired under compulsory powers and the payment or that part thereof were the purchase money or compensation for that interest;
- (b) the following expressions have the following meanings respectively, that is to say—
- " fee simple " means, in the case of feudal property, the estate or interest of the proprietor of the dominium utile, or, in the case of property other than feudal property, the estate or interest of the owner ;
- " incumbrance " means any ground annual or other incumbrance or any liability to pay feuduty ;
- " easement " means servitude ;
- " mortgage " means—
- (i) a heritable security within the meaning of the Conveyancing (Scotland) Act, 1924, exclusive of a security by way of ground annual and a real burden ad factum praestandum but inclusive of a security constituted by ex facie absolute disposition ; or
- (ii) an assignation in security of a lease recorded under the Registration of Leases (Scotland) Act, 1857 ;
- and " mortgagee " shall be construed accordingly ;
- " rentcharge " means a feuduty or a ground annual.

Short Title	Session and Chapter
Lands Valuation (Scotland) Act, 1854	17 & 18 Vict. c. 91.
Registration of Leases (Scotland) Act, 1857	20 & 21 Vict. c. 26.
Tramways Act, 1870	33 & 34 Vict. c. 78.
Ancient Monuments Protection Act, 1882	45 & 46 Vict. c. 73.
Crofters Holdings (Scotland) Act, 1886	49 & 50 Vict. c. 29.
Sheriff Courts (Scotland) Act, 1907	7 Edw. 7. c. 51.
Small Landholders (Scotland) Act, 1911	1 & 2 Geo. 5. c. 49.
Ancient Monuments Consolidation and Amendment Act, 1913	3 & 4 Geo. 5. c. 32.
Trusts (Scotland) Act, 1921	11 & 12 Geo. 5. c. 58.
Conveyancing (Scotland) Act, 1924	14 & 15 Geo. 5. c. 27.
Settled Land Act, 1925	15 & 16 Geo. 5. c. 18.
Law of Property Act, 1925	15 & 16 Geo. 5. c. 20.
Universities and College Estates Act, 1925	15 & 16 Geo. 5. c. 24.
Landlord and Tenant Act, 1927	17 & 18 Geo. 5. c. 36.

Status: This is the original version (as it was originally enacted).

Short Title	Session and Chapter
Rating and Valuation (Apportionment) Act, 1928	18 & 19 Geo. 5. c. 44.
Doncaster Area Drainage Act, 1929	19 & 20 Geo. 5. c. xvii.
Land Drainage Act, 1930	20 & 21 Geo. 5. c. 44.
County Courts Act, 1934 .	24 & 25 Geo. 5. c. 53.
Housing Act, 1936	26 Geo. 5 & 1 Edw. 8. c. 51.
War Damage Act, 1943	6 & 7 Geo. 6. c. 21.
Agriculture Act, 1947	10 & 11 Geo. 6. c. 48.
Agriculture (Scotland) Act, 1948	11 & 12 Geo. 6. c. 45.
Agricultural Holdings Act, 1948	11 & 12 Geo. 6. c. 63.
Agricultural Holdings/Scotland) Act, 1949	12, 13 & 14 Geo. 6. c. 75.
Coal-Mining (Subsidence) Act, 1950	14 Geo. 6. c. 23.
Housing (Scotland) Act, 1950	14 Geo. 6. c. 34.
Local Government (Miscellaneous Provisions) Act, 1953	1 & 2 Eliz. 2. c. 26.
Mines and Quarries Act, 1954	2 & 3 Eliz. 2. c. 70.
Crofters (Scotland) Act, 1955	3 & 4 Eliz. 2. c. 21.
Slum Clearance (Compensation) Act, 1956	4 & 5 Eliz. 2 c. 57.