

Changes to legislation: Coal Mining Subsidence Act 1991, SCHEDULE 2 is up to date with all changes known to be in force on or before 14 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 2

Section 15(5).

RECIPIENTS OF DEPRECIATION PAYMENTS: SPECIAL CASES

Commencement Information

II Sch. 2 para. 1 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Mortgages

- 1 (1) Subject to paragraph 2 below, where ^{F1} . . . the interest in the property in question of any person to whom, apart from this paragraph or paragraph 4 below, the whole or part of a depreciation payment would fall to be made was subject to a mortgage at the time when the subsidence damage became evident (“the relevant time”), the payment or that part of the payment shall be paid to the mortgagee.
- (2) The mortgagee shall be liable to account for such a payment as if it had been proceeds of sale of the mortgaged interest arising under a power of sale exercised by the mortgagee at the relevant 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.
- (3) In this paragraph and paragraph 2 below “mortgage”, in relation to property situated in Scotland, means a heritable security within the meaning of section 9 of the ^{M1}Conveyancing and Feudal Reform (Scotland) Act 1970, and “mortgagee”, in relation to such property, means the creditor under the heritable security.

Textual Amendments

F1 Words in Sch. 2 para. 1(1) repealed (31.10.1994) by 1994 c. 21, ss. 43, 67(8), Sch. 6 para. 11, Sch. 11 Pt. II (with ss. 40(7), 66); S.I. 1994/2553, art. 2

Commencement Information

I2 Sch. 2 para. 1 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Marginal Citations

M1 1970 c. 35.

- 2 (1) The following provisions of this paragraph apply in the circumstances mentioned in paragraph 1(1) above.
- (2) If at the time when the depreciation payment is made the debt secured by the mortgage (other than any part of it representing costs for which the mortgagee would not be entitled to credit) has been paid in full, the depreciation payment shall be disposed of as if the interest had not been subject to the mortgage.

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- (3) If the interest was subject to two or more successive mortgages, paragraph 1 above shall have effect with the substitution for references to the mortgagee of references to the first mortgagee or, if sub-paragraph (2) above has effect in relation to the first mortgage, to the second mortgagee, and so on.
- (4) Paragraph 1 above shall have effect in any case, 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 depreciation payment or part of that payment.

Commencement Information

I3 Sch. 2 para. 2 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Rentcharges

- 3 (1) The Secretary of State may by regulations make provision as to the person to whom a depreciation payment or any part of it is to be paid in cases where the interest in the property in question of a person to whom, apart from this paragraph or paragraph 4 below, the whole or part of the payment would fall to be paid was at the relevant time subject to a rentcharge.
- (2) In this paragraph “rentcharge” means—
- (a) in relation to property situated in England and Wales, any annual or other periodic sum charged on or issuing out of land, except rent reserved by a lease or tenancy and any sum payable by way of interest;
 - (b) [^{F2}in relation to property situated in Scotland, a feuduty or a ground annual.]

Textual Amendments

F2 Sch. 2 para. 3(2)(b) repealed (S.) (28.11.2004) by *Abolition of Feudal Tenure etc. (Scotland) Act 2000* (asp 5), ss. 71, 77(2), Sch. 12 para. 54(4)(a), **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

Commencement Information

I4 Sch. 2 para. 3 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, art. 2

Settlements etc.

- 4 (1) Where in the case of property situated in England and Wales the interest in the property of the person to whom, apart from this sub-paragraph, the whole or part of a depreciation payment would fall to be paid is—
- (a) subject to a settlement; or
 - (b) 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 of the interest,
- that payment or that part of that payment shall be paid to the person competent to give such a discharge.
- (2) Where in the case of property situated in Scotland the interest in the property of the person to whom the whole or part of a depreciation payment falls to be paid is subject to—

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- (a) a trust within the meaning of the ^{M2}Trusts (Scotland) Act 1921; or
- (b) [^{F3}an entail or] a life-rent,

that person shall hold and apply that payment or that part of that payment in like manner as if the interest had been acquired under compulsory powers and the payment or that part of it were the purchase money or compensation for that interest.

Textual Amendments

F3 Words in Sch. 2 para. 4(2)(b) repealed (S.) (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 54(4)(b), **13 Pt. 1** (with ss. 58, 62, 75); S.I. 2003/456, art. 2

Commencement Information

I5 Sch. 2 para. 4 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art.2**

Marginal Citations

M2 1921 c. 58.

Effect of devises or bequests

- 5 Where the interest in the property in question of the person to whom the whole or part of a depreciation payment 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 treated as including that payment or that part of that payment.

Commencement Information

I6 Sch. 2 para. 5 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art. 2**

Sale and compulsory acquisition

- 6 (1) Where the interest in the property in question of the person to whom the whole or part of a depreciation payment falls to be paid is the subject of—
- (a) a contract of sale made before the relevant time; or
 - (b) a notice to treat served before that time under an enactment authorising the compulsory acquisition of the interest,
- that payment or that part of that payment shall (subject to sub-paragraph (2) below) be held by that person in trust for the purchaser unless the contract is rescinded or the notice ceases to have effect.
- (2) Any lien upon that interest to which that person is entitled by virtue of the contract shall extend to that payment or that part of that payment.
- (3) In the application of sub-paragraph (1) above to Scotland, the reference to the service of a notice to treat includes a reference to the deemed service of such a notice.

Commencement Information

I7 Sch. 2 para. 6 wholly in force at 30. 11. 1991 see s. 54(2) and S.I. 1991/2508, **art.2**

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Changes and effects yet to be applied to :

- Sch. 2 para. 4(2)(a) words substituted by [2024 asp 2 Sch. 1 para. 16](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 19(1A) inserted by [2023 asc 3 Sch. 13 para. 162](#)