

Changes to legislation: Coal Mining Subsidence Act 1991, SCHEDULE 1 is up to date with all changes known to be in force on or before 25 December 2023. 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 1

Section 14(4).

DETERMINATION OF AMOUNT OF DEPRECIATION PAYMENTS

Commencement Information

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

Units of property

- 1 (1) Subject to sub-paragraph (2) below, the unit of property to be taken into account for any purposes of section 10 or 11 of this Act (depreciation payments) shall be—
- (a) where any property affected constitutes or is comprised in a dwelling-house, that dwelling-house;
 - (b) where any property affected, other than property to which paragraph (a) above applies, is situated in England and Wales and is a relevant non-domestic hereditament for the purposes of Part III of the ^{M1}Local Government Finance Act 1988, that hereditament;
 - (c) where any property affected, other than property to which paragraph (a) above applies, is situated in Scotland and is lands and heritages entered in the valuation roll, those lands and heritages; and
 - (d) in any other case, such unit consisting of or comprising any property affected as may be equitable in all the circumstances of the case.
- (2) If it is equitable in all the circumstances of the case to do so, two or more units of property, or a unit of property part only of which is property affected, may in either case be treated for those purposes either—
- (a) as a single unit of property; or
 - (b) as consisting of such separate units of property as may be equitable in those circumstances.
- (3) In this paragraph any reference to property affected is a reference to property which has been affected by subsidence damage.

Commencement Information

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

Marginal Citations

M1 1988 c. 41.

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Basis of valuation

- 2 (1) For any purposes of section 10 or 11 of this Act, the value of a unit of property at any time shall be taken to be the amount which it might be expected to realise in the state in which it is at that time on a sale effected at that time.
- (2) In the case of property comprising land or buildings the sale referred to in sub-paragraph (1) above is 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 any section of the public; and
 - (c) any restriction imposed by or under any enactment,
- to which the property is subject at the time of the sale, but free from any other incumbrance.
- (3) In the case of property within sub-paragraph (2) above, the value shall be determined without regard to any liability of the property to become subject after the time of the sale to any restriction by virtue of any enactment other than—
- (a) a demolition or closing order made under housing clearance powers; or
 - (b) where the property is situated in England and Wales, the declaration of an area to be a clearance area under such powers.
- (4) 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 Secretary of State for ascertaining the value of the property in any state by reference to such matters as may be specified in the regulations.
- (5) In determining for the purposes of the preceding provisions of this paragraph the value of any property which has been affected by subsidence damage, any right to a depreciation payment in respect of that damage shall be disregarded.
- (6) In the application of this paragraph to Scotland—
- “fee simple” means^{F1}, 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^{F1}the interest of the owner;
- “easement” means servitude.

Textual Amendments

- F1** Word in Sch. 1 para. 2(6) substituted (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 12 para. 54\(3\)\(a\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F2** Words in Sch. 1 para. 2(6) repealed (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 12 para. 54\(3\)\(b\)](#), [13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

Commencement Information

- I3** Sch. 1 para. 2 wholly in force at 30. 11. 1991 see s. 54(2) and [S.I. 1991/2508](#), [art.2](#)

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Amount of depreciation

- 3 (1) For the purposes of section 10 or 11 of this Act 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 at the relevant time is less than what would have been its value at that time (determined in accordance with paragraph 2 above) if it had not been affected by the damage.
- (2) For the purposes of this paragraph the relevant time—
- (a) in relation to the determination of the amount of a depreciation payment under section 10 of this Act (discretionary depreciation payments), is the time immediately after the date on which the Corporation gives to the claimant a notice of proposed remedial action with respect to the damage;
 - (b) in relation to the determination of the amount of a depreciation payment under subsection (1) of section 11 of this Act (obligatory depreciation payments), is whichever is the later of the time mentioned in paragraph (a) above and the time immediately after—
 - (i) the service of the notice to treat;
 - (ii) the making of the demolition or closing order; or
 - (iii) where the property is situated in England and Wales, the declaration of the area to be a clearance area,by virtue of which the obligation to make the payment arises; and
 - (c) in relation to the determination of the amount of a depreciation payment under subsection (3) of section 11 of this Act (obligation to make a depreciation payment in respect of depreciation continuing after completion of remedial works), is the time immediately after the completion of the remedial works.

Commencement Information

I4 Sch. 1 para. 3 wholly in force at 30. 11. 1991 see [s. 54\(2\)](#) and [S.I. 1991/2508](#), [art.2](#)

Interest on depreciation payments

- 4 (1) Subject to sub-paragraph (2) below, so much of the amount of any depreciation payment as for the time being remains unpaid by the Corporation shall carry interest at the applicable rate (if any) in respect of any period falling—
- (a) after the relevant time for the purposes of paragraph 3 above in relation to that payment; and
 - (b) before the whole amount and any accrued interest is paid.
- (2) Any period of delay in determining the amount of any such payment which is attributable to unreasonable conduct on the part of the claimant or any other person interested shall be disregarded for the purposes of sub-paragraph (1) above.

Commencement Information

I5 Sch. 1 para. 4 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 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](#)