

SCHEDULES

SCHEDULE 2

Section 15(5).

RECIPIENTS OF DEPRECIATION PAYMENTS: SPECIAL CASES

Mortgages

- 1 (1) Subject to paragraph 2 below, where the Corporation are satisfied that 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 Conveyancing and Feudal Reform (Scotland) Act 1970, and “mortgagee”, in relation to such property, means the creditor under the heritable security.
- 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.
- (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.

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.

Status: This is the original version (as it was originally enacted).

- (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) in relation to property situated in Scotland, a feuduty or a ground annual.

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—
- (a) a trust within the meaning of the Trusts (Scotland) Act 1921; or
 - (b) 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.

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.

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.