



# Land Compensation (Scotland) Act 1973

## 1973 CHAPTER 56

### PART I

#### COMPENSATION FOR DEPRECIATION CAUSED BY USE OF PUBLIC WORKS

#### **1 Right to compensation**

- (1) Where the value of an interest in land is depreciated by physical factors caused by the use of public works, then, if—
  - (a) the interest qualifies for compensation under this Part of this Act; and
  - (b) the person entitled to the interest makes a claim within the time limited by and otherwise in accordance with this Part of this Act,compensation for that depreciation shall, subject to the provisions of this Part of this Act, be payable by the responsible authority to the person making the claim (hereafter referred to as "the claimant").
- (2) The physical factors mentioned in subsection (1) above are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land in respect of which the claim is made of any solid or liquid substance.
- (3) The public works mentioned in subsection (1) above are—
  - (a) any highway;
  - (b) any aerodrome ; and
  - (c) any works or land (not being a highway or aerodrome) provided or used in the exercise of statutory powers.
- (4) The responsible authority mentioned in subsection (1) above is, in relation to a highway, the appropriate highway authority and, in relation to other public works, the person managing those works.
- (5) Physical factors caused by an aircraft arriving at or departing from an aerodrome shall be treated as caused by the use of the aerodrome whether or not the aircraft is within the boundaries of the aerodrome; but, save as aforesaid, the source of the physical factors must be situated on or in the public works the use of which is alleged to be their cause.

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- (6) Compensation shall not be payable under this Part of this Act in respect of the physical factors caused by the use of any public works other than a highway unless immunity from actions for nuisance in respect of that use is conferred (whether expressly or by implication) by an enactment relating to those works or, in the case of an aerodrome and physical factors caused by aircraft, the aerodrome is one to which section 41(2) of the Civil Aviation Act 1949 (immunity from actions for nuisance) for the time being applies.
- (7) Compensation shall not be payable under this Part of this Act in respect of physical factors caused by accidents involving vehicles on a highway or accidents involving aircraft.
- (8) Compensation shall not be payable under this Part of this Act on any claim unless the relevant date in relation to the claim falls on or after 17th October 1969.
- (9) Subject to section 9 below, "the relevant date" in this Part of this Act means—
  - (a) in relation to a claim in respect of a highway, the date on which it was first open to public traffic;
  - (b) in relation to a claim in respect of other public works, the date on which they were first used after completion.

## 2 **Interests qualifying for compensation**

- (1) An interest qualifies for compensation under this Part of this Act if it was acquired by the claimant before the relevant date in relation to the claim and the requirements of subsection (2) or, as the case may be, subsection (3) below are satisfied on the date on which notice of the claim for compensation in respect of that interest is served.
- (2) If and so far as the interest is in land which is a dwelling, the said requirements are—
  - (a) that the interest is an owner's interest; and
  - (b) where the interest carries the right to occupy the land, that the land is occupied by the claimant in right of that interest as his residence.
- (3) If and so far as the interest is not in such land as aforesaid, the said requirements are—
  - (a) that the interest is that of an owner-occupier ; and
  - (b) that the land is or forms part of either—
    - (i) a hereditament the annual value of which does not exceed tide prescribed amount; or
    - (ii) an agricultural unit.
- (4) In this section " owner's interest", in relation to any land, includes the interest of—
  - (a) the lessee under a lease thereof, being a lease the unexpired period of which on the date of service of the notice of claim in respect thereof is not less than three years; and
  - (b) a crofter, a landholder, a statutory small tenant and a cottar in the land.
- (5) In this section " owner-occupier ", in relation to land in a hereditament, means a person who occupies the whole or a substantial part of the land in right of an owner's interest therein and, in relation to land in an agricultural unit, means a person who occupies the whole of that unit and is entitled while so occupying it, to an owner's interest in the whole or any part of that land.

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- (6) In this section " the prescribed amount" means the amount for the time being prescribed for the purposes of section 181(4)(a) of the Town and Country Planning (Scotland) Act 1972 (interests qualifying for protection under planning blight provisions) and " annual value " and " hereditament" have the meanings given in sections 196 of that Act taking references to the date of service of a notice under section 182 of that Act as references to the date on which notice of the claim is served.
- (7) This section has effect subject to sections 10(3) and 11 below.

### **3 Claims**

- (1) A claim under this Part of this Act shall be made by serving on the responsible authority a notice containing particulars of—
- (a) the land in respect of which the claim is made;
  - (b) the claimant's interest and the date on which, and the manner in which, it was acquired ;
  - (c) the claimant's occupation of the land (except where the interest qualifies for compensation without occupation) ;
  - (d) any other interests in the land so far as known to the claimant;
  - (e) the public works to which the claim relates ;
  - (f) the amount of compensation claimed;
  - (g) any land contiguous or adjacent to the land in respect of which the claim is made, being land to which the claimant was entitled in the same capacity (within the meaning of section 6 below) on the relevant date.
- (2) Subject to the provisions of this section and of section 12 below, no claim shall be made otherwise than in the claim period, that is to say, the period of two years beginning on the expiration of twelve months from the relevant date.
- (3) Subsection (2) above shall not preclude the making of a claim in respect of an interest in land before the beginning of the claim period if—
- (a) the claimant has during the said twelve months made a contract for disposing of that interest or (in so far as the interest is in land which is not a dwelling) for the grant of a tenancy of that land; and
  - (b) the claim is made before the interest is disposed of or the tenancy is granted ;
- but compensation shall not be payable before the beginning of the claim period on any claim made by virtue of this subsection.
- (4) Where notice of a claim has been served on a responsible authority, any person authorised by that authority may, on giving reasonable notice, enter the land to which the claim relates for the purpose of surveying it and ascertaining its value in connection with the claim; and any person who wilfully obstructs a person in the exercise of the powers conferred by this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20.
- (5) Where compensation is payable by a responsible authority on a claim there shall be payable by the authority, in addition to the compensation, any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of the claim; but this subsection is without prejudice to the powers of the Lands Tribunal in respect of the expenses of proceedings before the Tribunal by virtue of section 14 below.

#### **4 Assessment of compensation: general provisions**

- (1) The compensation payable on any claim shall be assessed by reference to prices current on the first day of the claim period.
- (2) In assessing depreciation due to the physical factors caused by the use of any public works, account shall be taken of the use of those works as it exists on the first day of the claim period and of any intensification that may then be reasonably expected of the use of those works in the state in which they are on that date.
- (3) In assessing the extent of the depreciation there shall be taken into account the benefit of any relevant works—
  - (a) which have been carried out, or in respect of which a grant has been paid, under section 18 below, section 15 of the Airports Authority Act 1965 or any corresponding local enactment;
  - (b) which have been carried out under section 21 or 25 below;
 and it shall be assumed that any relevant works which could be or could have been carried out, or in respect of which a grant could be or could have been paid, under any of the provisions mentioned in paragraph (a) above have been carried out but, in a case where the authority having functions under that provision have a discretion whether or not to carry out the works or pay the grant, only if they have undertaken to do so.
- (4) The value of the interest in respect of which the claim is made shall be assessed—
  - (a) subject to subsection (5) below, by reference to the nature of the interest and the condition of the land as it subsisted on the date of service of notice of the claim;
  - (b) subject to section 5 below, in accordance with rules (2) to (4) of the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 ;
  - (c) if the interest is subject to a heritable security or to missives of sale or to a contract made after the relevant date for the grant of a tenancy, as if it were not subject to the heritable security, missives or contract.
- (5) In assessing the value of the interest in respect of which the claim is made there shall be left out of account any part of that value which is attributable to—
  - (a) any building, or improvement or extension of a building, on the land if the building or, as the case may be, the building as improved or extended, was first occupied after the relevant date ; and
  - (b) any change in the use of the land made after that date.

#### **5 Assessment of compensation: assumptions as to planning permission**

- (1) The following assumptions shall be made in assessing the value of the interest in respect of which the claim is made.
- (2) Subject to subsection (3) below, it shall be assumed that planning permission would be granted in respect of the land in which the interest subsists (" the relevant land ") or any part thereof for development of any class specified in Schedule 6 to the Town and Country Planning (Scotland) Act 1972.
- (3) Notwithstanding subsection (2) above—
  - (a) it shall not by virtue of that subsection be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in Part II of the said Schedule 6 if

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- it is development for which planning permission has been refused and compensation under section 158 of the said Act of 1972 has become payable in respect of that refusal;
- (b) where planning permission has been granted, in respect of the relevant land or any part thereof, for development of any class specified in the said Part II but was so granted subject to conditions, and compensation under the said section 158 has become payable in respect of the imposition of the conditions, it shall not by virtue of the said subsection (2) be assumed that planning permission for that development, in respect of the relevant land or that part thereof, as the case may be, would be granted otherwise than subject to those conditions;
  - (c) where an order has been made under section 49 of the said Act of 1972, in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and compensation has become payable in respect of that order under section 159 of that Act, it shall not by virtue of the said subsection (2) be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, as the case may be, for the rebuilding of that building or the resumption of that use.
- (4) It shall be assumed that planning permission would not be granted in respect of the relevant land or any part thereof for any development other than such development as is mentioned in subsection (2) above; and, if planning permission has been granted in respect of the relevant land or any part thereof for such other development, it shall be assumed that the planning permission has not been granted in so far as it relates to development that has not been carried out.
- (5) In this section any expression which is also used in the said Act of 1972 has the same meaning as in that Act and references to any provision of that Act include references to any corresponding provision previously in force.

## **6 Reduction of compensation where land is benefited**

- (1) The compensation payable on a claim shall be reduced by an amount equal to any increase in the value of—
- (a) the claimant's interest in the land in respect of which the claim is made; and
  - (b) any interest in other land contiguous or adjacent to the land mentioned in paragraph (a) above to which the claimant was entitled in the same capacity on the relevant date,
- which is attributable to the existence of or the use or prospective use of the public works to which the claim relates.
- (2) Sections 4 and 5 above shall not apply to the assessment, for the purposes of subsection (1) above, of the value of the interest mentioned in paragraph (a) of that subsection.
- (3) Where, for the purpose of assessing compensation on a claim in respect of any interest in land, an increase in the value of an interest in other land has been taken into account under subsection (1) above, then, in connection with any subsequent acquisition to which this subsection applies, that increase shall not be left out of account by virtue of section 13 of the Land Compensation (Scotland) Act 1963 or taken into account by virtue of section 14 of that Act or any corresponding enactment, in so far as it was taken into account in connection with that claim.

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- (4) Subsection (3) above applies to any subsequent acquisition, not being an acquisition of the land in respect of which the claim is made, where either—
- (a) the interest acquired by the subsequent acquisition is the same as the interest previously taken into account (whether the acquisition extends to the whole of the land in which that interest previously subsisted or only to part of that land); or
  - (b) the person entitled to the interest acquired is, or directly or indirectly derives title to that interest from, the person who at the time of the claim mentioned in that subsection was entitled to the interest previously taken into account;
- and in this subsection "the interest previously taken into account" means the interest the increased value of which was taken into account as mentioned in the said subsection (3).
- (5) For the purposes of this section a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled—
- (a) to both of them beneficially; or
  - (b) to both of them as trustee of one particular trust; or
  - (c) to both of them as personal representative of one particular person;
- and in this section references to a person deriving title from another person include references to any successor in title of that other person.
- (6) In subsection (3) above "corresponding enactment" has the same meaning as in section 15 of the said Act of 1963.

## 7 Exclusion of minimal compensation

Compensation shall not be payable on any claim unless the amount of the compensation exceeds £50.

## 8 Other restrictions on compensation

- (1) Where a claim has been made in respect of depreciation of the value of an interest in land caused by the use of any public works and compensation has been paid or is payable on that claim, compensation shall not be payable on any subsequent claim in relation to the same works and the same land or any part thereof (whether in respect of the same or a different interest) except that, in the case of land which is a dwelling, this subsection shall not preclude the payment of compensation both on a claim in respect of the ownership of the dominium utile and on a claim in respect of a tenancy.
- (2) Where a person is entitled to compensation in respect of the acquisition of an interest in land by an authority possessing compulsory purchase powers, or would be so entitled if the acquisition were compulsory, and—
- (a) the land is acquired for the purposes of any public works; and
  - (b) that person retains land which, in relation to the land acquired, constitutes other land or lands within the meaning of section 61 of the Lands Clauses Consolidation (Scotland) Act 1845 (compensation for acquisition to include compensation for injurious affection of other land retained),
- then, whether or not any sum is paid or payable in respect of injurious affection of the land retained, compensation shall not be payable under this Part of this Act on any claim in relation to those works made after the date of service of the notice to treat

(or, if the acquisition is by agreement, the date of the agreement) in respect of any interest in the land retained.

- (3) Subsection (2) above applies whether the acquisition is before, on or after 23rd June 1973 and, where it is on or after that date, the public works for the purposes of which the land is acquired shall be taken to be those specified in the relevant particulars recorded under subsection (4) below.
- (4) Where on or after 23rd June 1973 an authority possessing compulsory purchase powers acquires land for the purposes of any public works and the person from whom the land is acquired retains land which, in relation to the land acquired, constitutes other land or lands within the meaning of the section mentioned in subsection (2) above, the authority shall cause particulars of the land retained and the nature and extent of those works to be recorded in the Register of Sasines and shall send a copy of those particulars to the local planning authority.
- (5) In a case in which compensation for injurious affection fell or falls to be assessed otherwise than in accordance with section 41 below, subsection (2) above shall not preclude the payment of compensation under this Part of this Act in respect of depreciation by public works so far as situated elsewhere than on the land acquired.
- (6) Where after a claim has been made in respect of any interest in land the whole or part of the land in which that interest subsists is compulsorily acquired, then, if—
  - (a) the value of that land has been diminished by the public works to which the claim relates ; but
  - (b) the compensation in respect of the compulsory acquisition falls to be assessed without regard to the diminution,the compensation in respect of the acquisition shall be reduced by an amount equal to the compensation paid or payable on the claim or, if the acquisition extends only to part of the land, to so much of the last-mentioned compensation as is attributable to that part.
- (7) Without prejudice to the foregoing provisions of this section, compensation shall not be payable in respect of the same depreciation both under this Part of this Act and under any other enactment.

## **9 Alterations to public works and changes of use**

- (1) This section has effect where, whether before, on or after 23rd June 1973—
  - (a) the carriageway of a highway has been altered after the highway has been open to public traffic ;
  - (b) any public works other than a highway have been reconstructed, extended or otherwise altered after they have been first used ; or
  - (c) there has been a change of use in respect of any public works other than a highway or aerodrome.
- (2) If and so far as a claim in respect of the highway or other public works relates to depreciation that would not have been caused but for the alterations or change of use, this Part of this Act shall, subject to subsection (3) below, have effect in relation to the claim as if the relevant date (instead of being the date specified in section 1(9) above) were—
  - (a) the date on which the highway was first open to public traffic after completion of the alterations to the carriageway;

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- (b) the date on which the other public works were first used after completion of the alterations ; or
  - (c) the date of the change of use,

as the case may be.
- (3) Subsection (2) above shall not by virtue of any alterations to an aerodrome apply to a claim in respect of physical factors caused by aircraft unless the alterations are runway or apron alterations.
- (4) Where a claim relates to such depreciation as is mentioned in subsection (2) above the notice of claim shall specify, in addition to the matters mentioned in section 3 above, the alterations or change of use alleged to give rise to the depreciation ; and if and so far as the claim relates to such depreciation—
  - (a) section 6 above shall have effect as if the increase in value to be taken into account were any increase that would not have been caused but for the alterations or change of use in question ;
  - (b) subsection (1) of section 8 above shall not preclude the payment of compensation unless the previous claim was in respect of depreciation that would not have been caused but for the same alterations or change of use, and subsection (2) of that section shall not preclude the payment of compensation unless the works for which the land was acquired were works resulting from the alterations, or works used for the purpose, to which the claim relates.
- (5) For the purposes of this section the carriageway of a highway is altered if, and only if—
  - (a) the location, width or level of the carriageway is altered (otherwise than by re-surfacing); or
  - (b) an additional carriageway is provided for the highway beside, above or below an existing one ;

and the reference in subsection (2) above to depreciation that would not have been caused but for alterations to the carriageway of a highway is a reference to such depreciation by physical factors which are caused by the use of, and the source of which is situated on, the length of carriageway which has been altered as mentioned in paragraph (a) above or, as the case may be, the additional carriageway and the corresponding length of the existing one mentioned in paragraph (b) above.
- (6) In this section " runway or apron alterations " means—
  - (a) the construction of a new runway, the major realignment of an existing runway or the extension or strengthening of an existing runway ; or
  - (b) a substantial addition to, or alteration of, a taxiway or apron, being an addition or alteration whose purpose or main purpose is the provision of facilities for a greater number of aircraft.
- (7) For the avoidance of doubt it is hereby declared that references in this section to a change of use do not include references to the intensification of an existing use.

## **10 Restricted interests in land**

- (1) Where an interest is subject to a heritable security—
  - (a) a claim may be made by any heritable creditor of the interest as if he were the person entitled to that interest but without prejudice to the making of a claim by that person;



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- (b) no compensation shall be payable in respect of the interest of the heritable creditor (as distinct from the interest which is subject to the heritable security);
  - (c) any compensation which is payable in respect of the interest which is subject to the heritable security shall be paid to the heritable creditor or, if there is more than one heritable creditor, to the first heritable creditor and shall in either case be applied by him as if it were proceeds of sale.
- (2) Where the interest is that of any of the persons specified in section 67 of the Lands Clauses Consolidation (Scotland) Act 1845, that Act shall have effect with regard to the application of the compensation as it has effect with regard to the application of the compensation payable in respect of the purchase of land.
- (3) Where an interest in land is vested in trustees and a person beneficially entitled (whether directly or derivatively) under the trust is entitled or permitted by reason of his interest to occupy the land, section 2 above shall have effect as if occupation by that person were occupation by the trustees in right of the interest vested in them.

## **11 Interests acquired by inheritance**

- (1) So much of section 2(1) above as requires an interest qualifying for compensation under this Part of this Act to have been acquired by the claimant before the relevant date shall not apply to any interest acquired by him by inheritance from a person who acquired that interest, or a greater interest out of which it is derived, before the relevant date.
- (2) For the purposes of this section an interest is acquired by a person by inheritance if it devolves on him by virtue only of a testamentary disposition or any other deed with testamentary effect taking effect on, or the law of intestate succession as applied to, the death of another person or the successive deaths of two or more other persons.
- (3) For the purposes of subsection (2) above a person who acquires an interest in satisfaction or in partial satisfaction of any legacy, share in residue or other share in the estate of a deceased person shall be treated as a person on whom the interest devolves by direct bequest.

## **12 Special provisions for claims arising before 23rd June 1973**

- (1) Where the whole of the claim period for a claim has expired before 23rd June 1973, or less than two years of that period remains unexpired on that date, that period shall be treated as continuing until the end of two years from 23rd June 1973.
- (2) Where on or after 17th October 1972 and before 23rd June 1973 a person—
- (a) has disposed of an interest in land which would have qualified for compensation under this Part of this Act if it had then been in force and a notice of claim had been served in respect of the interest immediately before the disposal; or
  - (b) being entitled to such an interest as is mentioned in paragraph (a) above in land which is not a dwelling, has granted a tenancy thereof so that the interest remaining to him is not such an interest as aforesaid,

this Part of this Act shall have effect in relation to any claim made before the end of one year from 23rd June 1973 (being a claim in relation to which the relevant date falls before the disposal or the grant of the tenancy) as if that person were still entitled

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to the interest disposed of or the interest to which he was entitled prior to the grant of the tenancy.

- (3) Any notice of a claim made by virtue of subsection (2) above shall specify, in addition to the matters mentioned in section 3 above, the date on which the interest was disposed of or, as the case may be, the date on which the tenancy was granted.
- (4) A claim may be made by virtue of subsection (2) above notwithstanding that the claim period has not begun but compensation shall not be payable on the claim before the beginning of that period.
- (5) In relation to a claim made by virtue of subsection (2) above, section 4(4)(a) above shall have effect as if the reference to the date of service of notice of the claim were a reference to the date immediately preceding that on which the claimant disposed of the interest or granted the tenancy.

### **13 Information for ascertaining relevant date**

- (1) The responsible authority in relation to a highway or other public works shall keep a record and, on demand, furnish a statement in writing of—
  - (a) the date on which the highway was first open to public traffic, or was first open to public traffic after completion of any particular alterations to the carriageway of the highway;
  - (b) the date on which the public works were first used after completion, or were first used after completion of any particular alteration to those works ;
  - (c) in the case of public works other than a highway or aerodrome, the date on which there was a change of use in respect of the public works.
- (2) A certificate by the Secretary of State stating that runway or apron alterations have or have not been carried out at an aerodrome and the date on which an aerodrome at which any such alterations have been carried out was first used after completion of the alterations shall be conclusive evidence of the facts stated.
- (3) In this section references to alterations to the carriageway of a highway, to runway or apron alterations and to a change of use shall be construed in the same way as in section 9 above ; and subsection (1) above shall not apply unless the date in question falls on or after 23rd June 1973.

### **14 Disputes**

- (1) Any question of disputed compensation under this Part of this Act shall be referred to and determined by the Lands Tribunal.
- (2) No such question arising out of a claim made before the beginning of the claim period shall be referred to that Tribunal before the beginning of that period.

### **15 Action for nuisance following unsuccessful claim where responsible authority have disclaimed statutory immunity**

Where, in resisting a claim under this Part of this Act, a responsible authority contend that no enactment relating to the works in question confers immunity from actions for nuisance in respect of the use to which the claim relates, then if—

- (a) compensation is not paid on the claim ; and

(b) an action for nuisance in respect of the matters which were the subject of the claim is subsequently brought by the claimant against the authority, no enactment relating to those works, being an enactment in force when the contention was made, shall afford a defence to that action in so far as it relates to those matters.

## 16 Interest on compensation

Compensation under this Part of this Act shall carry interest, at the rate for the time being prescribed under section 40 of the Land Compensation (Scotland) Act 1963, from—

- (a) the date of service of the notice of claim ; or
- (b) if that date is before the beginning of the claim period, from the beginning of the claim period,

until payment.

## 17 Interpretation of Part I

(1) In this Part of this Act—

" the appropriate highway authority " means—

- (a) except where paragraph (b) below applies, the highway authority who constructed the highway to which the claim relates ;
- (b) if and so far as the claim relates to depreciation that would not have been caused but for alterations to the carriageway of a highway, the highway authority who carried out the alterations;

" claim " means a claim under this Part of this Act and " the claimant " means the person making such a claim;

" the claim period " has the meaning given in section 3(2) above but subject to section 12(1) above and subsection (3) below;

" highway " includes part of a highway and means a highway or part of a highway within the meaning of the Roads (Scotland) Act 1970 ;

" highway authority " has the meaning assigned to it in the said Act of 1970 ;

" land " includes salmon fishings ;

" public works " and " responsible authority " have the meaning given in section 1 above ;

" the relevant date " has the meaning given in sections 1(9) and 9(2) above.

(2) For the purposes of sections 2(1), 11(1) and 12(2) above an interest acquired or disposed of, or a tenancy granted, pursuant to a contract shall be treated as acquired, disposed of or granted when the contract was made.

(3) In the application of this Part of this Act to a road which has not always since 17th October 1969 been a highway—

- (a) references to its being open to public traffic shall be construed as references to its being so open whether or not as a highway;
- (b) for references to the highway authority who constructed it there shall be substituted references to the highway authority for the highway; and no claim shall be made if the relevant date falls at a time when the road was not a highway and the road does not become a highway within three years of that date, but, if it does, the claim period shall be treated as continuing until the

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end of one year from the date on which it becomes a highway if, apart from this provision, that period would end earlier.