

Building Amendment Bill

Government Bill

As reported from the Social Services
Committee

Commentary

Recommendation

The Social Services Committee has examined the Building Amendment Bill and recommends that it be passed by majority, with the amendments shown.

Introduction

The bill makes minor adjustments to the Building Act 2004 to improve its clarity, and to ensure that it is workable and achieves its intended purpose. The Building Act 2004 was introduced to strengthen the regulation of building in order to minimise the possibility of building failure, in response to the high incidence of major building faults from the mid-1990s to 2001. The bill would make adjustments to clarify parts of the Act relating to building consent exemptions and restricted building work. The amendments would adjust the dam safety and dam owners' accreditation regime, making the accreditation and audit fee system more flexible so that a product certification scheme could be established. The bill also requires project information memoranda to include a reminder about access provi-

sions for disabled persons. The amendments we are recommending are of a technical nature.

Restricted building work exemptions

We understand that regulations to be introduced under the Building Act 2004 may exempt buildings below a certain size or design threshold from the requirement that a licensed building practitioner oversee the work. While a licensed building practitioner might not be essential for building these structures, a building consent and building inspection should continue to be required. We emphasise the need to maintain the permit regime whereby local authorities can check plans and conduct inspections in the usual way. The 2004 Act was designed to improve building standards, including work done by unqualified and DIY builders, and this bill adds clarity.

National Party Minority View

The National Party opposes the Building Amendment Bill 2007 because it fails to address the massive bureaucratic problems with the original Building Act and does nothing to improve home affordability or the increased rates costs to homeowners.

In our opinion, the 2004 Act prohibited DIY work by requiring restricted building work to be only done by, or supervised by, a licensed building practitioner. The Government has previously argued that the Act did not restrict DIY work, whereas this bill proposes to water down the previous very strict interpretation of restricted building work and allow it to be defined by regulation. Furthermore, we have concerns about the practicality of the very complex licensed building practitioners regime and while the bill is an improvement, we still oppose this aspect.

We believe that the bill gives the Government wider powers to bill councils for accreditation and auditing them as a building consent authority. This bill shifts the system from one of fixed fees by regulation to full cost recovery; this cost-shifting by central to local government will inevitably drive up rates.

The bill creates a new definition of large dam, dangerous dam, earthquake-prone dam, and flood-prone dam, and sets additional requirements for a dam safety assurance programme. While these

were supported by local authorities, engineers, and energy companies, concern was voiced regarding compliance costs for farms.

Appendix

Committee process

The Building Amendment Bill was referred to the committee on 7 August 2007. The closing date for submissions was 3 September 2007. We received and considered 30 submissions from interested groups and individuals. We heard 12 submissions.

We received advice from the Department of Building and Housing.

Committee membership

Russell Fairbrother (Chairperson)

Sue Bradford

Steve Chadwick

Bob Clarkson

Judith Collins (Deputy Chairperson)

Hon Harry Duynhoven

Dr Paul Hutchison

Lynne Pillay

Heather Roy

Katrina Shanks

Judy Turner

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Clayton Cosgrove

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Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Building Amendment Act **2007**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Building Act 2004.

Part 1
Amendments to principal Act 10

- 4 Commencement**
Section 2(3) is amended by omitting “2009” and substituting “2010”.
- 5 Principles to be applied in performing functions, duties, or exercising powers, under this Act** 15
Section 4(2)(k) is amended by omitting “people” and substituting “persons”.
- 6 Interpretation**
- (1) Paragraph (a) of the definition of **dam** in section 7 is amended by repealing subparagraph (iii). 20
- (2) The definition of **estimated value** in section 7 is amended by omitting “values” and substituting “consideration”.
- (3) Paragraph (b) of the definition of **owner** in section 7 is amended by repealing subparagraph (ii) and substituting the following subparagraph: 25

“(ii) for the purposes of sections 32, 44, 92, 96, and 97, any person who has agreed in writing,

whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force”.

5

- (4) Section 7 is amended by repealing the definition of **restricted building work** and substituting the following definition:

~~“restricted building work means building work that—~~

~~“(a) requires a building consent; and~~

~~“(b) is part of a significant building project; and~~

10

~~“(c) is of a kind declared by the Governor-General by Order in Council to be building work that must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise that work~~

“restricted building work—

15

“(a) means building work that is—

“(i) critical to the integrity of a building, for example, its envelope and structure; and

“(ii) of a kind declared by the Governor-General by Order in Council to be building work that must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise that work; and that Order in Council may relate, without limitation, to certain types or categories of buildings, or parts of buildings specified in the Order in Council; and

20

25

“(b) includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act; and

30

“(c) does not include any building work for which, in accordance with section 41, a building consent is not required”.

- (5) Section 7 is amended by inserting the following definitions in their appropriate alphabetical order:

35

“consideration, in relation to estimated value, has the meaning given to it in section 2(1) of the Goods and Service Tax Act 1985

“**large dam** means a dam that retains 3 or more metres depth, and holds 20 000 or more cubic metres volume, of water or other fluid

“**prescribed fee** includes a fee calculated in accordance with a rate or method prescribed for this purpose in regulations made under this Act 5

~~“**significant building project** means building work that—~~

~~“(a) must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise that work; and 10~~

~~“(b) is of a kind declared by the Governor-General by Order in Council to be a significant building project”.~~

7 Building: what it does not include

Section 9 is amended by inserting the following paragraph after paragraph (a): 15

“(ab) a pylon, free-standing communication tower, power pole, or telephone pole that is a NUO system or part of a NUO system; or”.

8 Roles of building consent authorities, territorial authorities, and regional authorities in relation to dams 20

(1) Section 14(3)(b) is amended by omitting “sections 40 to 116, 220 to 232, and 276 to 281” and substituting “sections 40 to 116 (except section 114(2)(c)), 216 to 218, 220 to 232, 276 to 281, 363A, and 374”.

(2) Section 14(4) is amended by omitting “sections 31 to 116, 220 to 232, and 276 to 281” and substituting “sections 31 to 116 (except section 114(2)(c)), 216 to 218, 220 to 232, 276 to 281, 363A, and 374”. 25

9 Compliance documents to be available on Ministry’s website 30

Section 25A is amended by repealing subsections (2) and (3).

10 Content of project information memorandum

Section 35(1) is amended by adding “; and” and also by adding the following paragraph:

- “(i) if the building is one that is intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2, a statement that the building must comply with—
- “(i) section 118 (relating to access and facilities for persons with disabilities to and within buildings); and 5
- “(ii) the provisions of the building code that relate to providing for persons with disabilities to have access to buildings and to facilities within buildings.” 10

11 Buildings not to be constructed, altered, demolished, or removed without consent

Section 40 is amended by repealing subsection (1) and substituting the following subsection: 15

- “(1) A person must not carry out building work, or engage or permit another person to carry out building work, except in accordance with a building consent.”

12 How to apply for building consent

- (1) Section 45 is amended by repealing subsection (2) and substituting the following subsection: 20

“(2) If an application for a building consent relates to design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act, any plans and specifications referred to in subsection (1) that accompany the application must— 25

“(a) be prepared by, or under the supervision of, 1 or more licensed building practitioners; and

“(b) be the subject of a memorandum— 30

“(i) prepared by 1 or more licensed building practitioners who carried out or supervised the restricted building work; and

“(ii) that identifies that work; and

“(iii) that is provided with the plans and specifications.” 35

- (2) Section 45(3) is repealed.

- (3) Section 45(4) is amended by omitting “certification” and substituting “memorandum”.
- 13 Waiver or modification may only be granted by chief executive in certain cases**
 Section 69(1)(b) is amended by omitting “people” and substituting “persons”. 5
- 14 Building consent for building on land subject to natural hazards must be granted in certain cases**
 Section 72 is amended by inserting “that is a territorial authority” after “a building consent authority”. 10
- 15 Conditions on building consents granted under section 72**
 Section 73(1) is amended by inserting “that is a territorial authority” after “A building consent authority”.
- 16 Licensed building practitioner must carry out or supervise restricted building work** 15
 Section 84 is amended by omitting “whose licence authorises him or her” and substituting “who is licensed”.
- 17 Offences relating to carrying out or supervising restricted building work**
 (1) Section 85(1) is amended by omitting “whose licence authorises the practitioner” and substituting “who is licensed”. 20
 (2) Section 85(1A) is amended by omitting “his or her licence does not authorise him or her” wherever it appears and substituting in each case “he or she is not licensed”.
- 18 Offence to engage another person to carry out or supervise restricted building work if person is not licensed building practitioner** 25
 Section 86(1)(b)(ii) is amended by omitting “whose licence authorises him or her” and substituting “who is licensed”.

19 Licensed building practitioner to certify restricted building work

- (1) The heading to section 88 is amended by inserting “**or provide memorandum about**” after “**certify**”.
- (2) Section 88 is amended by repealing subsection (1) and substituting the following subsection: 5
- “(1) Each licensed building practitioner who carries out or supervises restricted building work under a building consent must, on completion of the restricted building work,—
- “(a) provide the persons specified in subsection (2) with a memorandum, in the prescribed form, stating what restricted building work the licensed building practitioner carried out or supervised; and 10
- “(b) if applicable, give to the persons specified in subsection (2) a certificate, in the prescribed form, stating that any specified systems in the building to which the restricted building work relates are capable of performing to the performance standards set out in ~~the compliance schedule attached to~~ the building consent.” 15
- (3) Section 88(4) is amended by— 20
- (a) omitting “A certificate” and substituting “A memorandum provided or certificate”; and
- (b) omitting “the certificate” in each place where it appears and substituting in each case “the memorandum or certificate”. 25

20 Application for code compliance certificate

Section 92 is amended by inserting the following subsection after subsection (2):

- “(2A) If applicable, the owner must include with the application any memoranda provided by licensed building practitioners under section 88(1)(a).” 30

21 New section 95A inserted

The following section is inserted after section 95:

- “95A Refusal of application for to issue code compliance certificate**
 If a building consent authority refuses to ~~grant an application for issue~~ a code compliance certificate, the building consent authority must give the applicant written notice of— 5
 “(a) the refusal; and
 “(b) the reasons for the refusal.”
- 22 New section 99A inserted**
 The following section is inserted after section 99:
- “99A Refusal of application for certificate of acceptance** 10
 If a territorial authority refuses to grant an application for a certificate of acceptance, the territorial authority must give the applicant written notice of—
 “(a) the refusal; and
 “(b) the reasons for the refusal.” 15
- 23 Content of compliance schedule**
 Section 103(1)(c) is amended by inserting “or other persons” after “licensed building practitioners”.
- 24 New section 104A inserted**
 The following section is inserted after section 104: 20
- “104A Territorial authority must issue statement in relation to compliance schedule statement**
 A territorial authority that receives a copy under section 104 of a compliance schedule must, within 5 working days after receiving the compliance schedule, provide the owner of the building for which the compliance schedule was issued with the statement in relation to the compliance schedule ~~statement~~ described in section 105(e).” 25
- 25 Annual building warrant of fitness**
 Section 108(5) is amended by inserting the following paragraph before paragraph (a): 30
 “(aa) fails to supply to the territorial authority the building warrant of fitness in accordance with subsection (1); or”.

26 Owner must obtain reports on compliance schedule

Section 110(a) is amended by inserting “or other person” after “licensed building practitioner”.

27 Buildings with specified intended lives

Section 113(1) is amended by omitting “50 years or less” and substituting “less than 50 years”. 5

28 Access symbol must be displayed

(1) The heading to section 120 is amended by omitting “Access symbol” and substituting “Symbols of access”.

(2) Section 120 is amended by omitting “access symbol” and substituting “symbols of access”. 10

29 New heading and section 133A inserted

The following heading and section are inserted after the subpart 7 heading:

“Dams to which provisions of this subpart apply 15

“133A Dams to which subpart 7 provisions apply

“(1) Sections 157 to 159 apply to all dams.

“(2) The other provisions in this subpart apply only to large dams.”

30 Review of dam safety assurance programme

Section 146 is amended by repealing subsection (2) and substituting the following subsection: 20

“(2) The owner must also review the dam safety assurance programme—

“(a) if, at any time,—

“(i) building work that requires a building consent is carried out on the dam; and 25

“(ii) the building work results, or could result, in a change to the potential impact of the dam on persons, property, or the environment; or

“(b) when requested by the regional authority to do so, if the dam is an earthquake-prone dam or a flood-prone dam.” 30

31 New section 150A inserted

The following section is inserted after section 150:

“150A Annual dam compliance certificate requirements not to apply to accredited dam owner
 Section 150 does not apply to an accredited dam owner.”

32 Meaning of dangerous dam

(1) ~~Section 153(b) is amended by repealing subparagraph (iii) and substituting the following subparagraph:~~ 5

~~“(iii) in a moderate flood (as defined in the regulations).”~~

(1) Section 153 is amended by repealing paragraph (b) and substituting the following paragraph: 10

“(b) is likely to fail—

“(i) in the ordinary course of events; or

“(ii) in a moderate earthquake (as defined in the regulations); or

“(iii) in a moderate flood (as defined in the regulations).” 15

(2) Section 153(c) is repealed.

33 New section 153A inserted

The following section is inserted after section 153:

“153A Meaning of earthquake-prone dam and flood-prone dam 20

“(1) A dam is an earthquake-prone dam for the purposes of this Act if the dam—

“(a) is a high potential impact dam or a medium potential impact dam; and

“(b) is likely to ~~collapse~~ fail in an earthquake threshold event (as defined in the regulations).” 25

“(2) A dam is a flood-prone dam for the purposes of this Act if the dam—

“(a) is a high potential impact dam or a medium potential impact dam; and 30

“(b) is likely to ~~collapse~~ fail in a flood threshold event (as defined in the regulations).”

34 Regional authority must adopt policy on dangerous dams

(1) The heading to section 161 is amended by adding “, earthquake-prone dams, and flood-prone dams”. 35

- (2) Section 161(1) is amended by omitting “within its district” and substituting “, earthquake-prone dams, and flood-prone dams within its region”.

35 Form and content of notice to fix

Section 165(1) is amended by repealing paragraph (f) and substituting the following paragraph: 5

“(f) if it relates to building work, it may direct that the site be made safe immediately and that all or any building work cease immediately (except any building work necessary to make the site safe) until the responsible authority is satisfied that the person carrying out the work is able and willing to resume operations in compliance with this Act and the regulations.” 10

36 Special provisions for notices to fix from building consent authority 15

- (1) Section 166(1) is amended by omitting “that is not a territorial authority or a regional authority”.
- (2) Section 166(2) is amended by inserting “or a regional authority” after “that is not a territorial authority”.

37 Application for determination 20

(1AA) Section 177(c) is amended by inserting the following subparagraph after subparagraph (ii):

“(iia) grant or refuse an exemption from building consent requirements under paragraph (k) of Schedule 1; or”. 25

Section 177(f) is amended by omitting “under subpart 5 of Part 2”.

38 Heading above section 191 amended

The heading above section 191 is amended by omitting “*or regional authorities*”. 30

39 Effect of suspension

- (1) Section 198(1) is amended by omitting “An authority” and substituting “A building consent authority”.

- (2) Section 198(3) is amended—
- (a) by omitting “an authority” and substituting “a building consent authority”; and
 - (b) by omitting “the person” and substituting “the authority”.
- 5
- 40 Appeals to District Court**
- (1) Section 208(1)(b)(i) is amended by omitting “or, as the case may be, a regional authority”.
- (2) Section 208(2)(c) is amended by omitting “or, as the case may be, the regional authority”.
- 10
- 41 Territorial authority must keep information about buildings**
- Section 216(2)(b) is amended by inserting the following subparagraph after subparagraph (iv):
- “(iva) memoranda provided by licensed building practitioners under section 45(2) or 88(1)(a):”.
- 15
- 42 Heading to subpart 3 of Part 3 amended**
- The heading to subpart 3 of Part 3 is amended by adding “or regional authority”.
- 43 New heading and section 249A inserted**
- The following heading and section are inserted after section 249:
- “Audit fees*
- “249A Fees for audits**
- A building consent accreditation body may charge an accredited building consent authority the prescribed fee (if any) for an audit conducted under section 249(a) by the building consent accreditation body on the building consent authority.”
- 25
- 44 Accreditation**
- Section 250 is amended by inserting “and on payment by the person of the prescribed fee (if any),” after “section 253,”.
- 30

- 45 Application for accreditation**
- (1) Section 253(c) is amended by omitting “(if any); and” and substituting “(if any).”
- (2) Section 253(d) is repealed.
- 46 New heading and section 257A inserted** 5
The following heading and section are inserted after section 257:
- “Audit fees*
- “257A Fees for audits** 10
A dam owner accreditation body may charge an accredited dam owner the prescribed fee (if any) for an audit conducted under section 257(a) by the dam owner accreditation body on the accredited dam owner.”
- 47 Accreditation**
- (1) Section 258(1) is amended by inserting “and on payment by the person of the prescribed fee (if any),” after “subsection (3),” 15
- (2) Section 258(3)(c) is amended by omitting “(if any); and” and substituting “(if any).”
- (3) Section 258(3)(d) is repealed. 20
- 48 New heading and section 262A inserted**
The following heading and section are inserted after section 262:
- “Audit fees*
- “262A Fees for audits** 25
A product certification accreditation body may charge an accredited product certification body the prescribed fee (if any) for an audit conducted under section 262(1)(a) by the product certification accreditation body on the accredited product certification body.” 30

- 49 Accreditation**
 Section 263 is amended by inserting “and on payment by the person or body of the prescribed fee (if any),” after “section 265,”.
- 50 Application for accreditation** 5
 (1) Section 265(c) is amended by omitting “(if any); and” and substituting “(if any).”
 (2) Section 265(d) is repealed.
- 51 New section 266 substituted**
 Section 266 is repealed and the following section substituted: 10
- “266 Suspension or revocation of accreditation**
- “(1) A product certification accreditation body or the chief executive may, at any time, suspend or revoke the accreditation under section 263 of a product certification body, if the product certification accreditation body or chief executive— 15
- “(a) is satisfied that the product certification body no longer meets the prescribed criteria and standards for accreditation; and
- “(b) has first given the product certification body concerned a reasonable opportunity to be heard. 20
- “(2) A product certification accreditation body that, or chief executive who, suspends the accreditation of a product certification body must—
- “(a) give the product certification body a reasonable period to meet the criteria and standards prescribed for accreditation; and 25
- “(b) lift the suspension if it or he or she is satisfied that the product certification body meets those standards and criteria within that period.
- “(3) A product certification accreditation body or the chief executive may revoke the accreditation of a product certification body at the expiry of the period given in **subsection (2)**, if the product certification body has not met the criteria and standards prescribed for accreditation within that period. 30

- “(4) Despite **subsections (1) and (3)**, the product certification accreditation body or the chief executive must not suspend or revoke the accreditation of a product certification body if—
- “(a) the prescribed criteria and standards for accreditation are amended; and 5
 - “(b) the product certification body no longer meets those criteria and standards solely as a result of the amendments.
- “(5) The limit in **subsection (4)** applies only during the period of 3 months after the date on which the amendments come into force.” 10
- 52 Product certification accreditation body must notify chief executive of grant or revocation of accreditation**
- (1) The heading to section 267 is amended by inserting “, **suspension, lifting of suspension,**” after “grant”.
 - (2) Section 267(1) is amended by inserting “, suspends, lifts the suspension of,” after “grants”. 15
 - (3) Section 267(2)(b) is amended by inserting “, suspension, lifting of suspension,” after “grant”.
- 53 New section 271 substituted**
- Section 271 is repealed and the following section substituted: 20
- “271 Suspension or revocation of product certificate**
- “(1) A product certification body that performed the certification of a building method or product, or the chief executive, may, at any time, suspend or revoke that product certificate if the product certification body or chief executive has first given 25 the proprietor of the building method or product a reasonable opportunity to be heard, and the product certification body or chief executive is satisfied that—
- “(a) the certificate has been obtained by fraud, misrepresentation, or concealment of facts; or 30
 - “(b) the building method or product no longer meets the prescribed criteria and standards for certification (whether this becomes apparent as a result of an annual review of a product certificate under section 270 or otherwise); or

- “(c) any certification, or similar authorisation issued or granted in respect of that building method or product, has been revoked or cancelled for any reason; or
- “(d) the building code no longer applies to the building method or product because of an amendment to the code. 5
- “(2) A product certification body that, or chief executive who, suspends a product certificate must—
- “(a) give the proprietor of the building method or product a reasonable period to rectify the matter that led to the suspension of the product certificate; and 10
- “(b) lift the suspension if it or he or she is satisfied that the product certification body has rectified the matter within that period.
- “(3) A product certification body or the chief executive may revoke the product certificate at the expiry of the period given in **subsection (2)** if, within that period, the proprietor of the building method or product has not rectified the matter that led to the suspension of the product certificate. 15
- “(4) Despite **subsections (1) and (3)**, the product certification body or the chief executive must not suspend or revoke a product certificate if— 20
- “(a) the prescribed criteria and standards for certification are amended; and
- “(b) the building method or product to which the certificate relates no longer meets those criteria and standards solely as a result of the amendments. 25
- “(5) The limit in **subsection (4)** applies only during the period of 3 months after the date on which the amendments come into force.” 30

54 Product certification body must notify chief executive of issue and revocation of certificate

- (1) The heading to section 272 is amended by inserting “, **suspension, lifting of suspension,**” after “**issue**”.
- (2) Section 272(1) is amended by inserting “, suspends, lifts the suspension of,” after “issues”.

- (3) Section 272(2)(b) is amended by inserting “, suspension, lifting of suspension,” after “issue”.

55 Definitions for this Part

- (1) Paragraph (a) of the definition of **applicable minimum standards for licensing** in section 282 is amended by omitting “class of licence” and substituting “licensing class” 5
- (2) The definition of **building inspection work** in section 282 is amended by omitting paragraph (e) and substituting the following paragraph:
- “(e) inspection, maintenance, or reporting procedures stated in a compliance schedule” 10

56 New heading and section 282A inserted

The following heading and section are inserted after section 282:

“Purposes of licensing” 15

“282A Purposes of licensing building practitioners

The purposes of licensing building practitioners under this Act are—

- “(a) to assess and record building practitioners as having certain skills and knowledge relevant to building work; and 20
- “(b) to license building practitioners so that, in regard to restricted building work, licensed building practitioners can carry it out or supervise it.”

57 New heading and section 285 substituted

Section 285 and the heading above that section are repealed 25 and the following heading and section substituted:

“Licensing classes

“285 Licensing classes may be designated by regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, designate a licensing class or 30 classes for carrying out or supervising particular types of—

- “(a) building work;
- “(b) building inspection work.”

58 Entitlement to licence

- (1) The heading to section 286 is amended by omitting “**licence**” and substituting “**be licensed**”.
- (2) Section 286(b) is amended by omitting “holding a licence” and substituting “being licensed”. 5
- ~~(3) Section 286 is amended by repealing paragraph (d) and substituting the following paragraph:~~
 - ~~“(d) that he or she has paid—~~
 - ~~“(i) the prescribed levy; and~~
 - ~~“(ii) the prescribed fee.”~~ 10

59 Applications for licence

- (1) The heading to section 287 is amended by omitting “**for licence**” and substituting “**to become licensed**”.
- (2) Section 287 is amended by omitting “for a licence” and substituting “to become licensed”. 15

60 Registrar to license applicant or decline application

- (1) Section 288(1) is amended by repealing paragraph (a) and substituting the following paragraph:
 - “(a) license the applicant; and”.
- (2) Section 288(1)(b) is amended by omitting “of the issue of that licence” and substituting “that he or she has been licensed”. 20

61 Duty to produce evidence of issue of licence

- (1) The heading to section 289 is amended by omitting “**issue of licence**” and substituting “**being licensed**”.
- (2) Section 289(a) is amended by omitting “the issue of a licence sent to that person” and substituting “being licensed sent to the licensed building practitioner”. 25

62 New section 290 substituted

- Section 290 is repealed and the following section substituted:
 - “290 Term of being licensed** 30
 - Licensing continues in force until it is cancelled or suspended under this subpart.”

63 Automatic licensing of people registered under other enactments

- (1) Section 291(2) is amended by omitting “hold a licence of” and substituting “were licensed in”.
- (2) Sections 291(3) and (4) are repealed and the following subsections substituted: 5
- “(3) A person who is treated as being licensed in a particular class or classes under subsection (2) may not apply under this Act to be licensed in another class that is substantially equivalent to the class of licensing in which he or she is treated as being licensed. 10
- “(4) The licensing provisions of this subpart do not apply to a person who is treated under this section and the rules as if he or she were licensed (for example, he or she need not apply to become licensed or pay any fees under this subpart).” 15

64 Licensed building practitioner must meet applicable minimum standards for licensing to continue to be licensed

- (1) The heading to section 292 is amended by omitting “**to be licensed**”. 20
- (2) Section 292(3) is amended by omitting “licence” and substituting “licensing”.

65 Consequences of failure to meet applicable minimum standards for licensing

Section 293 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 25

66 New heading above section 294 substituted

The heading above section 294 is repealed and the following heading substituted: “*Licensing cancellation and suspension*”.

67 Cancellation of licence

- (1) The heading to section 294 is amended by omitting “**licence**” and substituting “**licensing**”. 30
- (2) Section 294 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.

68 Mandatory suspension of licence

- (1) Section 295 is amended by omitting the heading and substituting the following heading: “**Mandatory licensing suspension**”.
- (2) Section 295 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”. 5

69 Voluntary suspension of licence

- (1) Section 296 is amended by omitting the heading and substituting the following heading: “**Voluntary licensing suspension**”. 10
- (2) Section 296 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.

70 Effect of suspension of licence

- (1) Section 297 is amended by omitting the heading and substituting the following heading: “**Effect of licensing suspension**”. 15
- (2) Section 297 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.

71 Register of licensed building practitioners

Section 298(1) is amended by omitting “rules” and substituting “regulations”. 20

72 Purpose of register

Section 299(a)(i) is amended by omitting “licence” and substituting “licensing”.

72A Form of register

Section 300(3) is amended by omitting “practical” and substituting “necessary or practical or appropriate”. 25

73 Matters to be contained in register

- (1) Section 301(1)(l) is amended by omitting “licence” and substituting “licensing”.
- (2) Section 301(1)(l)(i) is amended by omitting “of licence held by the person” and substituting “in which the person is licensed”. 30

- (3) Section 301(2)(a) is amended by omitting “licence” and substituting “person’s licensing”.
- 74 Obligation to notify Registrar of change in circumstances**
Section 302(1) is amended by omitting “applicant for a licence” and substituting “person applying to become licensed”. 5
- 75 Registrar must contact licensed building practitioners on annual basis**
- (1) Section 303(3) is amended by omitting “licence” and substituting “licensing”.
- (2) Section 303(4)(a) is amended by omitting “licence” and substituting “licensing”. 10
- (3) Section 303(5)(a) is amended by omitting “licence” and substituting “licensing”.
- 76 Functions of Registrar**
Section 311(b) is amended by omitting “licences” and substituting “persons’ licensing”. 15
- 77 Certificate of Registrar to be conclusive evidence**
Section 313(2)(c) is amended by omitting “authorised” and substituting “licensed”.
- 78 Offences relating to licensing** 20
Section 314(3)(a) is amended by omitting “the issue of a licence” and substituting “being licensed”.
- 79 Board must investigate complaints**
Section 316(2)(a) is amended by omitting “holds a licence” and substituting “is licensed”. 25
- 80 Grounds for discipline of licensed building practitioners**
- (1) Section 317(1) is amended by repealing paragraph (c) and substituting the following paragraph:
“(c) a licensed building practitioner has carried out or supervised restricted building work or building inspection 30

work of a type that he or she is not licensed to carry out or supervise; or”.

- (2) Section 317(1) is amended by inserting the following paragraphs after paragraph (d):

- “(da) a licensed building practitioner has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be),—

- “(i) to provide a memorandum, in accordance with section 45(2)(b), about any plans and specifications required to accompany the building consent application; or

- “(ii) to provide the persons specified in section 88(2) with a memorandum, on completion of the restricted building work, in accordance with section 88(1); or

- “(db) a licensed building practitioner has held himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise; or”.

- (3) Section 317(1)(e) is amended by omitting “obtaining a licence (either for himself or herself or for any other person)” and substituting “becoming licensed himself or herself, or for the purpose of any other person becoming licensed”.

81 Disciplinary penalties

- (1) Section 318(1)(a)(i) is amended by omitting “licence” and substituting “licensing”.

- (2) Section 318(1)(b) is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.

- (3) Section 318(1)(c) is amended by omitting “class of licence that he or she holds” and substituting “person’s licensing class or classes”.

- 82 Non-payment of fines or costs**
Section 319 is amended by omitting “licence” in each place where it appears and substituting in each case “licensing”.
- 83 Right of appeal**
- (1) Section 330(1)(b) is amended by omitting “licence” and substituting “licensing”. 5
- (2) Section 330 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) A person may appeal to a District Court against any decision of the Board— 10
- “(a) made by it on an appeal brought under subsection (1); or
- “(b) to take any action referred to in section 318.”
- 84 Form and content of annual report**
- Section 348(1)(b) is amended by omitting “class of licence” and substituting “licensing class”. 15
- 85 Rules relating to licensed building practitioners**
- (1) Section 353(1) is amended by omitting “class of licence” in each place where it appears and substituting in each case “licensing class”. 20
- (2) Section 353(2) is amended by omitting “a licence” in each place where it appears and substituting in each case “licensing”.
- 86 District Court may grant injunctions for certain continuing breaches** 25
- Section 381(1)(a) is amended by omitting “section 165” and substituting “section 168”.
- 87 Regulations: general**
- (1) Section 402(1)(d) is amended by omitting “licence” in each place where it appears and substituting in each case “evidence of being licensed”. 30
- (2) ~~Section 402(1)(c) is amended by omitting “section 303” and substituting “sections **286(d)(i)** and 303”.~~

- (3) Section 402(1) is amended by ~~repealing paragraph (n) and substituting the following paragraph~~ inserting the following paragraph after paragraph (n):
- “(na) designating a licensing class or classes for carrying out or supervising particular types of— 5
- “(i) building work; or
- “(ii) building inspection work.”
- (4) Section 402(1) is amended by inserting the following paragraphs after paragraph (q):
- “(qa) defining earthquake threshold event for the purposes of **section 153A**: 10
- “(qb) defining flood threshold event for the purposes of **section 153A**.”
- (5) Section 402(1) is amended by inserting the following paragraph after paragraph (t): 15
- “(ta) prescribing the fees payable for an audit under section 249(a), 257(a), or 262(1)(a), or the rate at which, or method by which, those fees are to be calculated.”
- (6) Section 402(1) is amended repealing paragraph (w) and substituting the following paragraph: 20
- “(w) prescribing—
- “(i) the matters in respect of which fees are payable under this Act, and the amount of those fees; or
- “(ii) the rate at which, or method by which, fees are to be calculated for the purposes of this Act.” 25

88 Incorporation of material by reference into regulations and compliance document

- (1) The heading to section 405 is amended by inserting “, **certain Orders in Council**,” after “**regulations**”.
- (2) Section 405(1) is amended by omitting “regulations or compliance document (**instruments**) made or issued under this Act” and substituting “instrument”. 30
- (3) Section 405 is amended by adding the following subsection:
- “(4) In this section and in sections 406 to 413, **instrument** means— 35
- “(a) any regulations; and
- “(b) any compliance document; and
- “(c) any Order in Council made under section 41 or 285.”

89 Outline of transitional provisions

Section 416(1)(g) is amended by omitting “2009” and substituting “2010”.

90 Transitional provision for code compliance certificates and compliance schedules issued under former Act

5

Section 438 is amended by omitting “2009” in each place where it appears and substituting in each case “2010”.

91 Amendment to Schedule 1

(1) Schedule 1 is amended by repealing paragraph (a) and substituting the following paragraphs: 10

“(a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976, except— 15

“(i) complete or substantial replacement of a specified system; or

“(ii) complete or substantial replacement of any component or assembly contributing to the building’s structural behaviour or fire-safety properties; or 20

~~“(iii) repair or replacement of any component or assembly that does not comply with the provisions of the building code as set out in clause B2 of Schedule 1 of the Building Regulations 1992 (relating to durability);” 25~~

“(iii) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or” 30

“(iv) repair or replacement of any water storage heater connected to a solid-fuel heater or other supplementary heat exchanger, except for the repair, or replacement with a comparable heater, of any” 35

- open-vented water storage heater using the same pipework:
- “(ab) the opening and reinstatement of any purpose-made access point within a drainage system that—
 - “(i) is not an NUO system or part of a NUO system; 5
and
 - “(ii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976.”.
 - (2) Schedule 1 is amended by repealing paragraph (b) and substituting the following paragraph: 10
 - “(b) the construction of any motorway sign, stopbank, culvert for carrying water under or in association with a road, or other similar structure that is a simple structure and is owned or controlled by a network utility operator or other similar organisation.”. 15
 - (3) Paragraph (d) of Schedule 1 is amended by inserting “, in each case” after “hoarding”.
 - (4) Schedule 1 is amended by inserting the following paragraph after paragraph (d):
 - “(da) the construction of any dam that is not a large dam.”. 20
 - ~~(5) Paragraph (k) of Schedule 1 is amended by inserting “is minor and” after “that building work”.~~

Part 2

Validation and transitional provisions

- 92 Validation in respect of levies on estimated value of building work** 25
- (1) For the purpose of determining the calculation of any relevant levy on building work, the principal Act must be read as if at all material times it contained the definition of **estimated value** in section 7 of the Act, as amended by **section 6** of this Act. 30
 - (2) In this section, **relevant levy** means a levy—
 - (a) imposed under section 53 of the principal Act; and
 - (b) calculated in accordance with section 53(2)(a) of the principal Act; and 35
 - (c) prescribed in the Building Levy Order 2005; and

- (d) paid to the chief executive by the applicant for a building consent.

93 Transitional provision for content of project information memorandum

- (1) ~~This section applies to a project information memorandum if, before the commencement of this Act,—~~ 5
- (a) ~~an application for the project information memorandum—~~
- (i) ~~is made under section 31 or 32 of the principal Act; or~~ 10
- (ii) ~~is treated, because of section 432 of the principal Act, as if it were an application under section 31 or 32 of the principal Act; and~~
- (b) ~~the project information memorandum has not been issued.~~ 15
- (2) A territorial authority that issues a project information memorandum ~~to which this section applies~~ need not comply with **section 35(1)(i)** of the principal Act in respect of that project information memorandum, as inserted by this Act, unless 6 months have elapsed since the commencement of this Act. 20

94 Transitional provision for refusal of application for code compliance certificate

- (1) This section applies to a code compliance certificate application—
- (a) made under section 92 of the principal Act or to which section 436 of the principal Act applies; and 25
- (b) in respect of which a building consent authority has not made a decision under section 93 of the principal Act before the commencement of this Act.
- (2) A building consent authority that refuses to issue a code compliance certificate in respect of an application to which this section applies need not comply with **section 95A** of the principal Act, as inserted by this Act, in respect of that refusal unless 3 months have elapsed since the commencement of this Act. 30 35

95 Transitional provision for refusal of application for certificate of acceptance

- (1) This section applies to an application for a certificate of acceptance—
- (a) made under section 97 of the principal Act or to which section 437 of the principal Act applies; and 5
 - (b) in respect of which a territorial authority has not granted or refused a certificate of acceptance before the commencement of this Act.
- (2) A territorial authority that refuses to issue a certificate of acceptance in respect of an application to which this section applies need not comply with **section 99A** of the principal Act, as inserted by this Act, in respect of that refusal unless 3 months have elapsed since the commencement of this Act. 10

Legislative history

18 July 2007
7 August 2007

Introduction (Bill 128–1)
First reading and referral to Social Services
Committee

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