



**THE EARTHQUAKE AND WAR DAMAGE (LAND COVER)
REGULATIONS 1984**

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 5th day of June 1984

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Earthquake and War Damage Act 1944, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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| <ul style="list-style-type: none"> 1. Title and commencement 2. Application of regulations 3. Interpretation 4. Determination of earthquake damage or disaster damage or landslip damage 5. Extension of insurance to cover land 6. Commission to make good damage 7. Payments to be made from Disaster and Landslip Fund 8. Excess | <ul style="list-style-type: none"> 9. Misdescription, misrepresentation, and concealment 10. Reporting of claims 11. Rights of Commission as to salvage 12. Forfeiture 13. Subrogation of rights 14. Mitigation 15. Arbitration 16. Cancellation of insurance 17. Power to adjust value where claim cannot be settled promptly 18. Limitation of liability after settlement of claim for partial loss |
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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Earthquake and War Damage (Land Cover) Regulations 1984.

(2) These regulations shall come into force on the 14th day after the date of their notification in the *Gazette*.

2. Application of regulations—These regulations shall apply only in respect of loss or damage occurring after the commencement of these regulations.

3. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Earthquake and War Damage Act 1944:

“Building” means any structure, whether permanent or temporary, which, if it were to be constructed or erected otherwise than by the Crown after the commencement of these regulations, would require the grant by a territorial authority of a building permit; but does not include—

(a) Any relocatable building in respect of which a permit has been granted under section 641A (1) of the Local Government Act 1974:

(b) Any pole, tower, fence, or wall:

“Disaster damage” means—

(a) Damage occurring as the direct result of storm, flood, volcanic eruption, or hydrothermal activity (excluding damage caused by landslip, subsidence of earth or rock, or erosion by the sea):

(b) Damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequence of any such damage—

but does not include any damage for which compensation is payable under any enactment other than the Act and these regulations:

“District scheme” means a district scheme under the Town and Country Planning Act 1977:

“Insured person” means any person entitled to make a claim under regulation 6 of these regulations in respect of loss of or damage to any insured property:

“Insured property” means property that is for the time being insured under regulation 5 of these regulations:

“Land” does not include improvements as defined in section 2 of the Valuation of Land Act 1951:

“Landslip” and “Landslip damage” have the meanings ascribed to those terms by regulation 2 of the Earthquake and War Damage Regulations 1984:

“Retaining wall” means a wall built to support earth at a higher level on one side of the wall than the other side; but does not include—

(a) A wall used for the purpose of retaining water:

(b) A retaining wall built after the date of commencement of these regulations if it did not conform to the lawful requirements of the territorial authority of the district in which it is situated at the time it was built:

Expressions defined in the Act have the meanings so defined.

4. Determination of earthquake damage or disaster damage or landslip damage—(1) In determining whether any damage is earthquake damage or disaster damage or landslip damage, the Commission shall have regard to the following matters:

(a) Whether sound principles of site investigation and foundation design have been observed, and whether the construction of foundations and earthworks have been properly supervised:

- (b) The standard of repair and maintenance of the insured property;
- (c) Any neglect or carelessness of the insured person;
- (d) Any other matter of any kind whatever that the Commission considers relevant in the circumstances of the particular case.

(2) Where the Commission rejects any claim under these regulations on the ground that the damage to the insured property was not earthquake damage or disaster damage or landslip damage, the Commission shall give to the insured person notice in writing of the reasons for its decision.

5. Extension of insurance to cover land—(1) Notwithstanding regulation 4 of the Earthquake and War Damage Regulations 1984 but subject to the provisions of the Act and of these regulations, where any building is for the time being insured against earthquake damage, disaster damage (as defined by regulation 2 of the Earthquake and War Damage Regulations 1984), and landslip damage under or by virtue of the Act or the Earthquake and War Damage Regulations 1984, the following property owned by the owner of that building shall also be deemed to be insured under these regulations against earthquake damage, disaster damage (as defined by regulation 2 of these regulations), and landslip damage:

- (a) The land on which the insured building is situated;
 - (b) All land within 8 metres, in a horizontal line, of the insured building;
 - (c) The land on which is situated the main access way to the insured building from the boundary of the land holding on which the insured building is situated;
 - (d) All water supply, drainage, and sewerage services, and structures appurtenant thereto, serving the insured building and situated within the land holding on which the insured building is situated;
 - (e) All bridges and culverts situated within any area specified in paragraphs (a) to (c) of this subclause;
 - (f) All retaining walls and their support systems within 60 metres, in a horizontal line, of the insured building.
- (2) Subject to regulation 6 of these regulations, the insurance of any property under subclause (1) of this regulation includes—
- (a) The removal of the debris of that property and of other debris from that property; and
 - (b) Where practicable, the cost of resiting on the affected property of the building by virtue of which the property destroyed or damaged is insured under the said subclause (1).

6. Commission to make good damage—(1) Subject to the provisions of the Act and of these regulations if, while any property is insured under regulation 5 of these regulations, the property or any part of it is destroyed or damaged by earthquake damage or disaster damage or landslip damage, as the case may be, the Commission shall be liable to make good (by payment or reinstatement or repair or by a combination thereof, at the option of the Commission) all such loss or damage to an amount not exceeding—

- (a) The value, at the site of the destruction or damage, of—
 - (i) An area of land equal to the minimum area allowable under the district scheme for land used for the same purpose that the destroyed or damaged land was being used at the time of the destruction or damage; or

- (ii) An area of land of 4000 square metres; or
- (iii) The area of land actually destroyed or damaged—
whichever is the smallest; or
- (b) If there is no district scheme operative in respect of the destroyed or damaged land, the value, at the site of the destruction or damage, of—
 - (i) An area of land of 4000 square metres; or
 - (ii) The area of land actually destroyed or damaged—
whichever is the smaller.
- (2) Only persons having an insurable interest in any property insured under these regulations shall be entitled to make a claim for the loss of or damage to the property.
- (3) If the Commission decides to make good or partially make good any loss or damage by the payment of money, the persons having an insurable interest in the property in respect of which payment is made shall be entitled, subject to any contract which provides otherwise, to receive payment in proportion to the value of their respective interests, but the total amount paid shall not exceed the amount set by subclause (1) of this regulation.

7. Payments to be made from Disaster and Landslip Fund—All money paid out of the Earthquake and War Damage Fund in respect of property insured under these regulations shall be paid out of the Disaster and Landslip Fund continued in existence by regulation 11 of the Earthquake and War Damage Regulations 1984.

8. Excess—(1) In respect of any loss or damage to any 1 property occurring during any period of 48 consecutive hours as the direct result of earthquake damage or disaster damage or landslip damage the Commission shall not be liable to pay or contribute more than the amount by which that loss or damage exceeds the proportion of the loss or damage to be borne by the insured person (in this regulation referred to as the excess).

- (2) For the purposes of this regulation—
 - (a) All property in the same ownership and located in 1 situation shall be deemed to be 1 property;
 - (b) All property in the joint names of a married couple or in the name of either of them shall be deemed to be in the same ownership.
- (3) The amount of the excess shall be computed by reference to the amount calculated in accordance with regulation 6 of these regulations and in accordance with the following scale:

<i>Amount so Calculated</i>	..	<i>Excess</i>
Under \$50,000	..	10 percent of the amount so calculated.
\$50,000 or over	..	\$5,000.

9. Misdescription, misrepresentation, and concealment—If there is or has been on the part of the insured person (whether to the Commission or its agents) any wilful and material misdescription of any of the insured property, or any misrepresentation as to any fact material for the purpose of estimating the value of the property, or any omission to state any such fact, the Commission shall not be liable in respect of any property affected by any such misdescription, misrepresentation, or omission.

10. Reporting of claims—(1) On the occurrence of any loss or damage the insured person shall forthwith give notice of it to the Commission and shall, within 30 days after its occurrence, or within such further time as the Commission may in writing allow, at his own expense deliver to the Commission a claim in writing for the loss or damage, including as particular an account as may be reasonably practicable of all the several articles or items of property destroyed or damaged, and of the respective amounts claimed in respect of them, having regard to their value at the time of the occurrence of the loss or damage.

(2) Notwithstanding the provisions of subclause (1) of this regulation, if the loss or damage is not immediately apparent, or if the insured person is unable by his absence or incapacity, or by other disability suffered by him and proved to the satisfaction of the Commission, to give notice or deliver a claim to the Commission at or within the required time, it shall be sufficient compliance with this regulation for notice to be given and the claim to be delivered to the Commission as soon as the loss or damage is apparent or the insured person is able to do so if notice is given and the claim is made within 3 months after the loss or damage has taken place and the Commission is not thereby prejudiced by lapse of time.

(3) The insured person shall also at all times at his own expense produce, procure, and give to the Commission all such further particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proof, and information with respect to the claim and the origin and cause of the loss or damage, and the circumstances under which the loss or damage occurred, and any matter touching the liability as may be reasonably required, together with a statutory declaration of the truth of the claim and of any matter connected with it.

(4) The Commission may appoint any person as its agent to receive any such notices and to inquire into claims, but no settlement may be effected without the authority of the Commission. With the authority of the Commission, all expenses incurred by any such agent shall be payable by the Commission.

11. Rights of Commission as to salvage—(1) On the occurrence of any loss of or damage to any insured property, the Commission or its agent may—

- (a) Enter and take and keep possession of the land where the loss or damage has occurred;
- (b) Take possession of any of the insured property;
- (c) Keep possession of any such property and examine, sort, arrange, remove, or otherwise deal with it;
- (d) Sell any such property or dispose of it on account of whom it may concern.

(2) The powers conferred by subclause (1) of this regulation may be exercised at any time until notice is given to the Commission by the insured person that he makes no claim or, if any claim is made, until the claim is finally determined or withdrawn.

(3) The Commission shall not, by any act done in the exercise or purported exercise of its powers under this regulation, incur any liability to the insured person or diminish its right to rely on any of the provisions of these regulations in answer to any claim.

(4) If the insured person or any person on his behalf does not comply with the requirements of the Commission or hinders or obstructs the Commission in the exercise of its powers under this regulation, all benefit under the insurance shall be forfeited.

(5) The insured person shall not in any case be entitled to abandon any property to the Commission, whether or not possession of it is taken by the Commission.

12. Forfeiture—The benefit of any insurance under these regulations shall be forfeited if—

- (a) Any claim is in any respect fraudulent; or
- (b) Any false declaration is made or used in support of any claim; or
- (c) Any fraudulent means or devices are used by the insured person or anyone acting on his behalf to obtain any benefit under the insurance; or
- (d) Any loss or damage is occasioned by the wilful act or with the connivance of the insured person; or
- (e) Any claim is made and rejected—
 - (i) An action or suit, or proceeding by way of arbitration under regulation 15 of these regulations, is not commenced within 3 months after the rejection; or
 - (ii) In the case of an arbitration, an action or suit is not commenced within 3 months after the making of the award:

Provided that, if a claimant requests that the claim be reconsidered, the period of 3 months shall not start to run until the Commission has reconsidered the claim and confirmed its initial decision.

13. Subrogation of rights—The insured person shall at the expense of the Commission, and whether before or after the Commission makes good any loss or damage under these regulations, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Commission for the purpose of enforcing any rights and remedies, or of obtaining any relief or indemnity from other persons, to which the Commission is or would upon its making good any such loss or damage be entitled or subrogated.

14. Mitigation—The insured person shall at all times take due precautions for the safety of the insured property, having regard to its nature; and, in particular, if at any time any part of the insured property is destroyed or damaged by earthquake damage, disaster damage, or landslip damage, as the case may be, the insured person shall take all reasonable steps to preserve the insured property from further damage or from damage, as the case may be.

15. Arbitration—(1) If any difference arises between the Commission and the insured person as to the amount to be paid in respect of any loss or damage, the difference shall be referred, pursuant to the Arbitration Act 1908, to an arbitrator if the parties in difference can agree upon one, and otherwise to 2 arbitrators, 1 to be appointed in writing by each party within 1 month after having been required in writing to do so by the other party. If the 2 arbitrators cannot agree they shall appoint an umpire. Where any such difference is so referred to arbitration the making of an award shall be a condition precedent to any right of action against the Commission.

(2) The Commission shall not be liable to pay in respect of any loss or damage where the amount to be paid is in dispute unless the insured person commences a proceeding by way of arbitration within 3 months after the date on which was given the decision of the Commission in dispute.

16. Cancellation of insurance—(1) The Commission may at any time, in its discretion, cancel the insurance of any property under these regulations by posting written notice of the cancellation to the insured person addressed to him at his last known place of residence or business in New Zealand. The notice shall be deemed to have been received when in the ordinary course of post it would be delivered.

(2) Every such cancellation shall remain in force notwithstanding—

- (a) The subsequent renewal of the contract of fire insurance covering the building by virtue of which the property covered by the cancelled insurance was insured under these regulations; or
- (b) The subsequent issue of a new contract of fire insurance covering such a building; or
- (c) A subsequent change in the person in whom is vested any insurable interest to which the notice relates.

(3) On cancelling any insurance under subclause (1) of this regulation, the Commission shall forward a certificate to that effect to the District Land Registrar who shall, without fee, register it against the title to all land affected by the certificate.

(4) Every such certificate shall set out—

- (a) The description of the land, the insurance of which has been cancelled;
- (b) A statement of the provisions of subclause (6) of this regulation.

(5) The validity of a certificate under this regulation shall not be affected by any misdescription in it of the land if sufficient information appears on the face of the certificate for the District Land Registrar to identify the land intended to be affected by it.

(6) The Commission shall supply reasons in writing for the cancellation of the insurance to every person who applies to the Commission in writing to be so supplied:

(7) If the Secretary of the Commission is satisfied that the cancellation of insurance is no longer applicable to any land against which a certificate under this regulation is registered, the Secretary shall notify the District Land Registrar to that effect and the Registrar shall, without fee, note the discharge against the title to the land.

(8) Every certificate or notice of discharge under this section shall be signed by the Secretary of the Commission or by some person authorised by the Secretary in that behalf.

17. Power to adjust value where claim cannot be settled promptly—

Where any claim is made under these regulations in respect of damage to any property and, because of circumstances relating to the cause of the damage, the claim cannot be settled promptly, the Commission may in its discretion settle the claim on the basis of the value of the damaged property at the time of settlement of the claim notwithstanding the fact that that value is higher than the value at the time damage first occurred.

18. Limitation of liability after settlement of claim for partial loss—

(1) Where the Commission settles any claim by paying money for a partial loss on the basis of a percentage of the total value of the insured property,

the liability of the Commission for any future loss of or damage to the insured property shall not exceed the difference between the percentage so paid and 100 percent of the value of the insured property at the time of the first loss.

(2) Notwithstanding the provisions of subclause (1) of this regulation, the Commission may in its discretion increase its maximum liability under that subclause in respect of any insured property by adjusting the value of the insured property in accordance with changes in the values of properties situated in the same area as the insured property.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations provide for the insurance of land against earthquake damage, disaster damage (damage caused by storm or flood or volcanic eruption or hydrothermal activity), and landslip damage.

Where any building is insured against fire, the following property owned by the owner of the building shall be insured under the regulations against earthquake damage, disaster damage, and landslip damage:

- (a) The land on which the insured building is situated;
- (b) All land within 8 metres, in a horizontal line, of the insured building;
- (c) The land on which is situated the main access way to the insured building from the boundary of the land holding on which the insured building is situated;
- (d) All water supply, drainage, and sewerage services, and structures appurtenant thereto, serving the insured building and situated within the land holding on which the insured building is situated;
- (e) All bridges and culverts situated within any area specified in paragraphs (a) to (c) of this subclause;
- (f) All retaining walls and their support systems within 60 metres, in a horizontal line, of the insured building.

A building is defined as any structure, whether permanent or temporary, which, if it were to be constructed or erected otherwise than by the Crown after the commencement of the regulations, would require the grant by a territorial authority of a building permit; but does not include—

- (a) Any relocatable building in respect of which a permit has been granted under section 641A (1) of the Local Government Act 1974;
- (b) Any pole, tower, fence, or wall:
The amount payable is not to exceed—
 - (a) The value, at the site of the destruction or damage, of—
 - (i) An area of land equal to the minimum area allowable under the district scheme for land used for the same purpose that the destroyed or damaged land was being used at the time of the destruction or damage; or
 - (ii) An area of land of 4000 square metres; or
 - (iii) The area of land actually destroyed or damaged—
whichever is the smallest; or
 - (b) If there is no district scheme operative in respect of the destroyed or damaged land, the value, at the site of the destruction or damage, of—
 - (i) An area of land of 4000 square metres; or
 - (ii) The area of land actually destroyed or damaged—
whichever is the smaller.

The regulations also contain provisions relating to—

- (a) Excess:
- (b) Misdescription, misrepresentation, and concealment:
- (c) Reporting of claims:
- (d) Rights of salvage:
- (e) Forfeiture of insurance:
- (f) Subrogation of rights:
- (g) Mitigation:
- (h) Arbitration:
- (i) Cancellation of insurance:
- (j) Power of Commission to adjust value where a claim cannot be settled promptly:
- (k) Limitation of Commission's liability after settling a claim for partial loss.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 7 June 1984.

These regulations are administered in the Earthquake and War Damage Commission.