

1956/61

THE EARTHQUAKE AND WAR DAMAGE REGULATIONS 1956

H. E. BARROWCLOUGH, Administrator of the Government

ORDER IN COUNCIL

At the Government House at Wellington this 2nd day of May 1956

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

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

REGULATIONS

1. (1) These regulations may be cited as the Earthquake and War Damage Regulations 1956.

(2) These regulations shall come into force on the 1st day of June 1956.

2. (1) In these regulations, unless the context otherwise requires,—

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

“Disaster damage” means—

(a) Damage occurring as the direct result of storm, flood, or volcanic eruption (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 as aforesaid:

Provided that this definition does not include any damage for which compensation is payable under any enactment other than the Act and the regulations made under the Act:

“Disaster Fund” means the Disaster Fund established under these regulations:

“Extraordinary disaster damage” means disaster damage as hereinbefore defined in any case where the disaster is of an abnormal and unforeseen nature and is of extraordinary effect:

“Landslip” means the sudden slipping from any hill, mound, bank, slope, cliff, or face of earth or rock, of a substantial mass of earth or rock which before slipping formed an integral part of the hill, mound, bank, slope, cliff, or face; but does not include any subsidence of earth or rock:

“Landslip damage” means—

- (a) Damage occurring as the direct result of landslip:
- (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 consequences of any such damage as aforesaid:

Provided that this definition does not include any damage for which compensation is payable under any enactment other than the Act and the regulations made under the Act:

“Mortgage” means a deed, memorandum of mortgage, instrument, or agreement whereby security for the payment of any money or for the performance of any contract is granted over any property; and includes any statutory or other charge on any property, other than a charge for land tax or income tax or for rates under the Rating Act 1925; and also includes an agreement for the sale and purchase of land and a hire purchase agreement affecting any property other than land; but does not include any security for death duty, Maori succession duty, estate duty, gift duty, or stamp duty:

“Mortgagee” means the person entitled to the benefit of the security of a mortgage; and includes the vendor under an agreement for sale and purchase or under a hire purchase agreement:

“Mortgagor” means the owner of the property that is subject to a mortgage, or, in relation to any property that is subject to an agreement for sale and purchase or to a hire purchase agreement, means the purchaser thereunder:

“Ship” means any kind of vessel used in navigation, and not propelled by oars only; and includes any barge, hulk, mining dredge, floating crane, or floating dock; and also includes any other vessel or thing made to float, whether it is fixed or free, and whether or not it has any means of propulsion:

Expressions defined in the Act have the meanings so defined.

(2) If any question arises as to whether any damage is disaster damage, or as to whether any disaster damage is extraordinary disaster damage, or as to whether any damage is landslip damage, within the meaning of these regulations, the question shall be determined by the Commission, and the decision of the Commission shall be final and conclusive.

APPLICATION OF SECTION 14 OF THE ACT

3. Section 14 of the Act shall not apply to any property that is not tangible property.

4. Section 14 of the Act shall not apply to—

- (a) Any ship or anything in a ship except while the ship is on land:
- (b) Any land:
- (c) Any standing bush or forest:

- (d) Any road, street, or path:
- (e) Any railway track or pole, or any tramway track or pole:
- (f) Any bridge or viaduct either completed or in course of construction, or any boxing or falsework used in the construction of any bridge or viaduct:
- (g) Any tunnel or cutting:
- (h) Any retaining wall, dam, breakwater, mole, groyne, fence, or wall:
- (i) Any drain or channel:
- (j) Any reservoir, swimming bath, water tank (other than a water tank installed as part of the water supply system of any dwelling or farm building), water tower, or septic tank:
- (k) Any water or gas reticulation pipe (other than a water or gas reticulation pipe which, in the opinion of the Commission, constitutes a structural part of any building):
- (l) Any electric supply, telegraph, or telephone pole, line, or cable:
- (m) Any mine or quarry:
- (n) Any primary products purchased by the New Zealand Government for sale to Her Majesty's Government in the United Kingdom in accordance with contracts made between the two Governments:
- (o) Any aircraft or anything in an aircraft, except while insured under a contract which is substantially a contract of fire insurance:
- (p) Any goods in transit, except while insured under a contract which is substantially a contract of fire insurance:
- (q) Any explosives:
- (r) Any livestock:
- (s) Any growing crops (including fruit trees and vines):
- (t) Any ensilage insured in the open field:
- (u) Any hay or other cut crops insured in the open field.

CONDITIONS OF INSURANCE

5. In addition to all other conditions imposed by the Act or by these regulations,—

- (a) The insurance of any property against earthquake damage under section 14 of the Act shall be subject to the conditions set out in Parts I and II of the Schedule hereto:
- (b) The insurance of any property against earthquake damage under section 15 of the Act shall, except as otherwise provided in the contract of earthquake damage insurance, be subject to the conditions set out in Parts I and II of the Schedule hereto:
- (c) The insurance of any property against war damage under section 14 of the Act shall be subject to the conditions set out in Part I of the Schedule hereto:
- (d) The insurance of any property against war damage under section 15 of the Act shall, except as otherwise provided in the contract of war damage insurance, be subject to the conditions set out in Part I of the Schedule hereto:
- (e) The insurance of any property against extraordinary disaster damage under section 14 of the Act shall be subject to the conditions set out in Parts I and III of the Schedule hereto:

- (f) The insurance of any property against disaster damage or landslide damage under section 15 of the Act shall, except as otherwise provided in the contract of disaster damage insurance or landslide damage insurance, be subject to the conditions set out in Parts I and III of the Schedule hereto.

PREMIUMS PAYABLE UNDER SECTION 14

6. (1) The rate of premium payable in respect of the insurance of any property against earthquake damage, war damage, and extraordinary disaster damage to any amount for any period under section 14 of the Act—

(a) Where the period is one year, shall be 1s. per cent of that amount; and

(b) In the case of any other period, shall be 1d. per cent of that amount for every month or part of a month comprised in that period.

(2) No such premium shall be less than 1s.

(3) For the purposes of this regulation any period commencing at any time on any day of a calendar month and ending at the same time on the corresponding day of the next calendar month shall be deemed to be one month.

PAYMENT OF PREMIUMS BY INSURANCE COMPANIES

7. (1) The amount of the premiums for which any insurance company becomes liable under section 14 of the Act in any month shall be paid by the company to the Commission within two months after the end of that month.

(2) Every such payment shall be made into the Public Account to the credit of the Earthquake and War Damage Fund, and forthwith after it is made the company shall forward to the Commission a duplicate of the bank receipt, accompanied by a certificate by an officer or agent of the company, stating that, according to the books thereof, and to the best of his knowledge and belief, the payment is correct.

8. (1) The amount of every such payment, and all such certificates, and all information obtained, and all extracts made in order to verify the certificates, shall be kept secret by the Commission and every member thereof, and by every officer and person appointed thereby.

(2) Nothing in this regulation shall be construed to prohibit the publication of the gross amount of the premiums under section 14 of the Act received by the Commission from all insurance companies during or in respect of any period.

9. Every insurance company shall at all times keep in safe custody all records of contracts of fire insurance in respect of which it becomes liable to pay a premium under section 14 of the Act, including full particulars of each contract and the amount of the premium and the date of its payment to the Commission.

10. For the purpose of ascertaining whether all premiums for which any insurance company is liable under section 14 of the Act have been paid and whether the provisions of the Act and of these regulations have been complied with, the Commission may from time to time require the Audit Office or any auditor to examine the books and accounts of the company and it shall be the duty of the Audit Office or that auditor

to make an examination accordingly and to report the result thereof to the Commission, and the company shall forthwith on demand submit its books and accounts accordingly to any duly authorised officer of the Audit Office or of that auditor.

INSURANCE AGAINST DISASTER DAMAGE

11. Subject to the provisions of the Act and of these regulations, where in respect of any period after the commencement of these regulations any property is insured to any amount against earthquake damage and war damage under section 14 of the Act by virtue of a contract of fire insurance the property shall at all times during that period be deemed to be insured under section 14 of the Act to the same amount against extraordinary disaster damage.

12. A contract may be made by the Commission under section 15 of the Act for the insurance of any property against disaster damage generally or against any specified class of disaster damage, either alone or in conjunction with insurance against earthquake damage and war damage and landslip damage, or any of them.

13. Subject to the provisions of these regulations, all the provisions of the Act shall, so far as they are applicable and with the necessary modifications, apply with respect to insurance against disaster damage as if it were insurance against earthquake damage and as if references to the Earthquake and War Damage Fund were references to the Disaster Fund.

14. (1) There is hereby established within the Earthquake and War Damage Fund a separate account to be called the Disaster Fund.

(2) There shall from time to time be paid into the Disaster Fund—

(a) Ten per cent of the proceeds of all premiums payable to the Commission in respect of the insurance of any property under section 14 of the Act by virtue of contracts of fire insurance made after the commencement of these regulations:

(b) All other money payable into the Earthquake and War Damage Fund, to the extent to which it relates to insurance against disaster damage.

(3) All money paid out of the Earthquake and War Damage Fund, to the extent to which it relates to insurance against disaster damage, shall be paid out of the Disaster Fund.

INSURANCE AGAINST LANDSLIP DAMAGE

15. A contract may be made by the Commission under section 15 of the Act for the insurance of any property against landslip damage, either alone or in conjunction with insurance against earthquake damage and war damage and disaster damage, or any of them.

16. Subject to the provisions of these regulations, all the provisions of the Act (except section 14) shall, so far as they are applicable and with the necessary modifications, apply with respect to insurance against landslip damage as if it were insurance against earthquake damage and as if references to the Earthquake and War Damage Fund were references to the Disaster Fund.

17. (1) There shall from time to time be paid into the Disaster Fund (in addition to other money lawfully paid into it) all money payable into the Earthquake and War Damage Fund, to the extent to which it relates to insurance against landslip damage.

(2) All money paid out of the Earthquake and War Damage Fund, to the extent to which it relates to insurance against landslip damage, shall be paid out of the Disaster Fund.

MORTGAGED PROPERTY

18. (1) Where any property is insured against earthquake damage and war damage under section 14 of the Act, and at the time of the making of the contract of fire insurance the property is subject to a mortgage or to two or more mortgages, the following provisions shall apply as between the mortgagor and the mortgagee or mortgagees:

- (a) One-half of the premium under section 14 of the Act shall be payable by the mortgagor:
- (b) One-half of the premium shall be payable by the mortgagee or mortgagees; and where there are two or more mortgages an equal proportion shall be payable by the mortgagee under each mortgage:
- (c) (i) The proportion of the premium or premiums payable as aforesaid by the mortgagee under any mortgage shall not exceed the amount of the interest payable under the mortgage for the preceding year:
 - (ii) The amount by which the proportion of the premium payable by the mortgagee under any mortgage is reduced under subparagraph (i) of this paragraph shall be payable by the mortgagor, unless the property is subject to any other mortgage or mortgages, in which case it shall be payable by the mortgagor and the mortgagees under the other mortgage or mortgages in the same proportions as if the property were not subject to the first-mentioned mortgage:
 - (iii) For the purposes of this paragraph the expression "the preceding year" means the period of twelve months ending on the last half-yearly or other regular date for the computation of interest before the making of the contract of fire insurance or, where there is no such regular date, means the period of twelve months ending on the last day of the month preceding the month in which the contract is made, and where the mortgage has been in existence for part only of the preceding year the interest actually payable for that part of the year shall be deemed to be increased by the proportion that one year bears to that part of the year:
 - (iv) The proportion of the premium payable by any mortgagee under the foregoing provisions of this paragraph shall be proportionately increased or reduced if the period in respect of which the contract of fire insurance is made is greater or less than a year:
- (d) If the mortgagor or any mortgagee pays to the insurance company or to the Commission any part of the premium in excess of the proportion payable by him under this regulation he may recover the excess as a debt from any other person or persons liable under this regulation to pay any part of the premium, to the extent to which they are respectively so liable:

- (e) No action for the recovery of any amount under paragraph (d) of this subclause shall be commenced except within two years after the payment of the premium:

Provided that a failure to commence an action within the time hereby limited shall be no bar to the action if, in the opinion of the Court, the failure was occasioned by mistake, or by absence from New Zealand, or by any other reasonable cause:

- (f) Any amount recoverable as a debt by the mortgagor under paragraph (d) of this subclause may be deducted by him from any money payable by him to the person from whom the amount is recoverable at any time within two years after the payment of the premium:
- (g) Any person who is bound to pay the premium by any contract or agreement with the mortgagor shall have the same rights under the foregoing provisions of this subclause as if he were the mortgagor:
- (h) Any amount so recoverable by any mortgagee from the mortgagor shall, until it is paid, be deemed to be added to the money secured by the mortgage, but no interest shall be payable thereon.

(2) Nothing in this regulation shall be construed to affect the liability of any person to pay to the insurance company or to the Commission the full amount of any premium for which he may be liable under section 14 of the Act.

(3) No covenant or agreement entered into before or after the commencement of these regulations shall have any force or effect to deprive any person of any right, power, privilege, or benefit provided for by this regulation.

PAYMENT OF CLAIMS

19. The Commission shall have power at its discretion to pay or allow at any time the amount of any claim or claims that have been duly formulated by or on behalf of the insured person to the satisfaction of the Commission.

OFFENCES

20. (1) Every person commits an offence against these regulations who—

- (a) Without lawful excuse acts in contravention of or fails to comply in any respect with any provision of these regulations:
- (b) With intent to deceive, makes any false or misleading statement or any material omission in any communication to the Commission or any other person (whether in writing or otherwise) for the purposes of these regulations:
- (c) Wilfully destroys or mutilates or renders illegible any entry in any record, book, or account required to be kept for the purposes of these regulations, or wilfully makes a false or fraudulent entry in or omission from any such record, book, or account:
- (d) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under these regulations.

(2) Nothing in this regulation shall be construed to relieve any person from any liability under any other enactment, but no person shall be punished twice for the same offence.

21. Every person who commits an offence against these regulations shall be liable on summary conviction to a fine not exceeding £50, and (if the offence is a continuing one) to a further fine not exceeding £5 for every day during which the offence continues.

REVOCATIONS

22. (1) The following regulations are hereby revoked, namely:

- (a) The Earthquake and War Damage Regulations 1944 (S.R. 1944/173):
- (b) The Earthquake and War Damage Regulations 1944, Amendment No. 1 (S.R. 1948/105):
- (c) The Earthquake and War Damage Regulations 1944, Amendment No. 2 (S.R. 1949/123):
- (d) The Earthquake and War Damage Regulations 1944, Amendment No. 3 (S.R. 1950/9):
- (e) The Earthquake and War Damage Regulations 1944, Amendment No. 4 (S.R. 1951/239):
- (f) The Earthquake and War Damage Regulations 1944, Amendment No. 5 (S.R. 1953/35):
- (g) The Earthquake and War Damage Regulations 1944, Amendment No. 6 (S.R. 1954/179).

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the revocation of any provision by these regulations shall not affect any document made or any thing whatsoever done under the provision so revoked or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the revocation and could have been made or done under these regulations, shall continue and have effect as if it had been made or done under the corresponding provision of these regulations and as if that provision had been in force when the document was made or the thing was done.

SCHEDULE

CONDITIONS OF INSURANCE

PART I—CONDITIONS APPLYING TO INSURANCE AGAINST EARTHQUAKE DAMAGE, WAR DAMAGE, EXTRAORDINARY DISASTER DAMAGE, DISASTER DAMAGE, OR LANDSLIP DAMAGE

MISDESCRIPTION, MISREPRESENTATION, AND CONCEALMENT

1. If there is or has been on the part of the insured person (whether to the Commission or its agents or, in the case of insurance under section 14 of the Act, to the insurance company) any wilful and material misdescription of any of the insured property or of any building or place in which the property is situated, 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.

SCHEDULE—*continued*

RISKS NOT COVERED

2. The insurance does not cover loss by theft during or after the occurrence of any damage insured under the Act or these regulations.

3. Unless otherwise expressly provided in the contract of insurance under section 15 of the Act or (in the case of property insured under section 14 of the Act) in the contract of fire insurance, the insurance does not cover—

- (a) Bullion or unset precious stones:
- (b) Any curiosity or work of art for an amount exceeding £50:
- (c) Manuscripts, plans, drawings, designs, patterns, models, or moulds:
- (d) Securities, obligations, or documents of any kind, stamps, coined or paper money, cheques, books of account, or other business books.

CANCELLATION OF THE INSURANCE

4. The insurance may be cancelled or the amount of the insurance may be reduced by the Commission, in its discretion, at any time. Upon any such cancellation or reduction a proportionate part of the premium paid for every complete month of the unexpired term of the insurance shall be refunded by the Commission to or for the benefit of the insured person.

REDUCTION OF INSURANCE ON PAYMENT OF PARTIAL CLAIMS

5. On the payment by the Commission of any amount on account of any loss or damage to any of the insured property, the amount of the insurance shall be deemed to be reduced by the amount so paid for the unexpired term of the insurance.

OCCURRENCE OF DAMAGE

6. On the occurrence of any loss or damage the insured person shall forthwith give notice thereof to the Commission, and shall within thirty days after the occurrence thereof, or within such further time as the Commission may in writing allow in that behalf, at his own expense deliver to the Commission—

- (a) 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 thereof, having regard to their value at the time of the occurrence of the loss or damage, not including profit of any kind:
- (b) Particulars of all other insurances, if any.

7. 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 therewith.

SCHEDULE—*continued*

8. 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.

RIGHTS OF COMMISSION AS TO SALVAGE

9. On the occurrence of any loss or damage to any of the insured property, the Commission or its agent may—

- (a) Enter and take and keep possession of the building or premises where the loss or damage has occurred:
- (b) Take possession of or require to be delivered to it any of the insured property situated in that building or on those premises at the time of the loss or damage:
- (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.

10. The powers conferred by clause 9 hereof may be exercised at any time until notice is given to the Commission by the insured person that he makes no claim under the insurance or, if any claim is made, until the claim is finally determined or withdrawn. The Commission shall not by any act done in the exercise or purported exercise of its powers under that clause incur any liability to the insured person or diminish its right to rely on any of the conditions of the insurance in answer to any claim.

11. 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 clause 9 hereof, all benefit under the insurance shall be forfeited.

12. 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.

FORFEITURE

13. If any claim is in any respect fraudulent, or if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the insured person or any one acting on his behalf to obtain any benefit under the insurance, or if any loss or damage is occasioned by the wilful act or with the connivance of the insured person, or if any claim is made and rejected and an action or suit is not commenced within three months after the rejection or (in the case of an arbitration) within three months after the making of the award, all benefit under the insurance shall be forfeited.

REINSTATEMENT

14. The Commission may at its option reinstate or replace the property destroyed or damaged or any part thereof, instead of paying the amount of the loss or damage, but the Commission shall not be bound to reinstate or replace exactly or completely, but only as circumstances permit and

SCHEDULE—*continued*

in a reasonably sufficient manner, and in no case shall the Commission be bound to expend more in reinstatement or replacement than it would have cost to reinstate or replace the property as it was at the time of the occurrence of the loss or damage, nor more than the sum insured by the Commission thereon.

15. If the Commission so elects to reinstate or replace any property or wishes to consider whether it shall so elect, the insured person shall furnish the Commission with such plans, specifications, measurements, quantities, and other particulars as the Commission may require. No acts done or caused to be done by the Commission with a view to reinstatement or replacement shall be deemed to be an election by the Commission to reinstate or replace.

16. If in any case the Commission is unable or does not elect to reinstate or replace the insured property, the Commission shall not be pecuniarily liable for more than it would have cost to reinstate or replace the property as it was at the time of the occurrence of the loss or damage, nor more than the sum insured by the Commission thereon.

SUBROGATION OF RIGHTS

17. The insured person shall at the expense of the Commission, and whether before or after the Commission makes good any loss or damage under the insurance, 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.

MITIGATION

18. The insured person shall at all times take due precautions for the safety of the insured property, having regard to the nature thereof; and, in particular, if at any time any part of the insured property or any premises in which any part thereof is situated are destroyed or damaged by earthquake damage, war damage, extraordinary disaster 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.

ARBITRATION

19. If any difference arises out of the insurance between the Commission and the insured person, the difference shall be referred to one arbitrator if the parties can agree upon one, and otherwise to two arbitrators, one to be appointed by the Commission and one by the insured person, under the Arbitration Act 1908, and the obtaining of an award shall be a condition precedent to any right of action against the Commission.

NOTICES

20. Every notice or other communication to the Commission required under these conditions shall be in writing.

SCHEDULE—*continued*PART II—CONDITIONS APPLYING ONLY TO INSURANCE AGAINST
EARTHQUAKE DAMAGE

PROPORTION OF LOSS TO BE BORNE BY INSURED PERSON

21. (1) In respect of any loss or damage to any one property occurring during any period of forty-eight hours as the direct result of earthquake (not including earthquake fire), 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 (hereinafter referred to as the franchise).

(2) For the purposes of this clause—

- (a) All property in the same ownership and located in one situation shall be deemed to be one property:
- (b) All property insured in the joint names of a husband and his wife or in the name of either of them shall be deemed to be in the same ownership.

(3) For the purposes of this clause the Commission, after causing a survey to be made of any property to determine its estimated resistance to earthquake shock, may classify that property into any one of the following classes:

Class A—Property with a good measure of earthquake resistance:

Class B—Property with a fair measure of earthquake resistance:

Class C—Property with little resistance to earthquake shock.

(4) Until the Commission has classified any property under this clause, that property shall be deemed to be classified in Class A:

Provided that if any unclassified property is contained in a building classified in Class B or Class C that property shall be deemed to be classified in the same class as the building.

(5) Where the property insured is classified in Class A, the amount of the franchise shall be computed by reference to the amount of loss or damage (to the extent to which it does not exceed the amount of the insurance) and in accordance with the following scale:

Amount of Insured Loss or Damage	Franchise
Not over £5,000	1 per cent of the amount of the insured loss or damage, but not less than £10.
Over £5,000	£50.

(6) Where the property insured is classified in Class B or Class C, the franchise shall be such amount as the Commission from time to time determines, either generally or in any particular case, but not exceeding in any case 25 per cent of the amount of the insurance.

SCHEDULE—*continued*

(7) The Commission may from time to time alter the classification of any property, but no such alteration which has the effect of increasing any franchise shall take effect until the expiration of thirty days after notice thereof in writing has been given by the Commission to each insured person named in the policy of insurance or in any endorsement thereon by posting the same addressed to him at his last known place of abode or business in New Zealand. That notice shall be deemed to have been received when in the ordinary course of post it would be delivered.

(8) Every determination of the Commission clarifying or altering the classification of any property or determining the amount of any franchise shall for the purposes of this clause be final and conclusive.

RISKS PREVIOUSLY REFUSED OR CANCELLED

22. The Commission shall not be liable in respect of any earthquake damage to the property if at any time before the 1st day of March 1944 any insurance office has refused to insure the property against any form of earthquake damage or earthquake fire damage on a proposal made by the insured person or has cancelled any such insurance held by the insured person, except where the refusal or cancellation was exclusively due to defects of construction which have subsequently been satisfactorily remedied or to earthquake damage which has subsequently been satisfactorily made good.

REQUIREMENTS AS TO PREVIOUS EARTHQUAKE DAMAGE NOT COMPLIED WITH

23. The Commission shall not be liable in respect of any earthquake damage to the property if any local authority or other person empowered in that behalf has at any time before the occurrence of the damage required any earthquake damage to the property to be made good and that requirement has not been satisfactorily complied with.

PART III—CONDITIONS APPLYING ONLY TO INSURANCE AGAINST EXTRAORDINARY DISASTER DAMAGE, DISASTER DAMAGE, OR LANDSLIP DAMAGE

24. (1) In respect of any loss or damage to any one property occurring during any period of forty-eight consecutive hours as the direct result of extraordinary disaster damage, 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 (hereinafter referred to as the franchise).

(2) For the purposes of this clause—

- (a) All property in the same ownership and located in one situation shall be deemed to be one property;
- (b) All property insured in the joint names of a husband and his wife or in the name of either of them shall be deemed to be in the same ownership.

SCHEDULE—*continued*

(3) For the purposes of this clause the Commission, after causing a survey to be made of any property to determine its susceptibility to damage from storm, flood, volcanic eruption, or landslip, may classify that property into any one of the following classes:

Class A—Property not particularly susceptible to damage from storm, flood, volcanic eruption, or landslip:

Class B—Property fairly susceptible to damage from storm, flood, volcanic eruption, or landslip:

Class C—Property very susceptible to damage from storm, flood, volcanic eruption, or landslip.

(4) Until the Commission has classified any property under this clause, that property shall be deemed to be classified in Class A:

Provided that if any unclassified property is contained in a building classified in Class B or Class C that property shall be deemed to be classified in the same class as the building.

(5) Where the property insured is classified in Class A, the amount of the franchise shall be computed by reference to the amount of the loss or damage (to the extent to which it does not exceed the amount of the insurance) and in accordance with the following scale:

Amount of Insured Loss or Damage	Franchise
Not over £5,000	1 per cent of the amount of the insured loss or damage, but not less than £10.
Over £5,000	£50.

(6) Where the property insured is classified in Class B or Class C, the franchise shall be such amount as the Commission from time to time determines, either generally or in any particular case, but not exceeding in any case 25 per cent of the amount of the insurance.

(7) The Commission may from time to time alter the classification of any property, but no such alteration which has the effect of increasing any franchise shall take effect until the expiration of thirty days after notice thereof in writing has been given by the Commission to each insured person named in the policy of insurance or in any endorsement thereon by posting the same addressed to him at his last known place of abode or business in New Zealand. That notice shall be deemed to have been received when in the ordinary course of post it would be delivered.

(8) Every determination of the Commission clarifying or altering the classification of any property or determining the amount of any franchise shall for the purposes of this clause be final and conclusive.

T. J. SHERRARD,
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 consolidate the Earthquake and War Damage Regulations 1944 and their existing amendments, and make further amendments as mentioned in this note.

The definition of "disaster damage" has been amended so as to make it clear that this definition does not include damage caused by landslip, subsidence, or erosion by the sea.

The definition of "extraordinary disaster damage" has been widened by omitting the requirement that the disaster must be of widespread effect.

Regulation 4 (f), which excludes bridges and viaducts from automatic insurance against earthquake and war damage under section 14 of the Earthquake and War Damage Act 1944, has been extended so as to refer also to bridges and viaducts in course of construction and to their boxing or falsework.

Regulation 4 now includes all absolute exclusions from section 14, including those in paragraphs (o) to (u), which formerly appeared in clause 3 of the Schedule to the 1944 regulations.

The amount of the franchise (the proportion of the loss to be borne by the insured person) has been reduced so as to be in all cases—

1 per cent of the loss, but not less than £10, where the loss does not exceed £5,000; and

£50 where the loss exceeds £5,000.

The above rates are to apply to property classified in Class A, that is, property with a good measure of earthquake resistance or not particularly susceptible to damage from storm, flood, volcanic eruption, or landslip. The franchise may be fixed at a higher rate where the property is classified in Class B or Class C, as being more susceptible to damage.

Provision is made for classifying all property (instead of only buildings and the contents of buildings), and for classification in relation to susceptibility to disaster or landslip damage (as well as earthquake damage).

Only one franchise is to be charged on all the insured property of a husband and wife if it is located in one situation, whether it is insured in their joint names or in the name of either of them or partly in one name and partly in the other.

Regulation 4 of the 1944 regulations, which prescribed the types of policies to be recognised as fire insurance policies under section 14 of the Act, has been omitted.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 3 May 1956.

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