

1967/111



THE EARTHQUAKE AND WAR DAMAGE REGULATIONS 1956,  
AMENDMENT NO. 2

BERNARD FERGUSSON, Governor-General  
ORDER IN COUNCIL

At the Government House at Wellington this 31st day of May 1967

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.

REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Earthquake and War Damage Regulations 1956, Amendment No. 2, and shall be read together with and deemed part of the Earthquake and War Damage Regulations 1956\* (hereinafter referred to as the principal regulations).

(2) Regulation 6 of these regulations shall come into force on the 10th day of July 1967.

(3) Except as provided in subclause (2) of these regulations, these regulations shall come into force on the date of their notification in the *Gazette*.

**2. Meaning of “extraordinary disaster damage”**—Regulation 2 of the principal regulations is hereby amended by revoking the definition of the term “extraordinary disaster damage” in subclause (1), and substituting the following definition:

“‘Extraordinary disaster damage’ means disaster damage as hereinbefore defined where the storm, flood, or volcanic eruption is of an abnormal and unforeseen nature and is of extraordinary effect.”.

**3. Meaning of “landslip”**—Regulation 2 of the principal regulations is hereby further amended by omitting from the definition of the term “landslip” in subclause (1) the word “sudden” and also the words “but does not include any subsidence of earth or rock”.

**4. Determination by Commission**—Regulation 2 of the principal regulations is hereby further amended by revoking subclause (2).

**5. Extraordinary disaster damage**—The principal regulations are here-by further amended by inserting, after regulation 2, the following heading and regulation:

“EXTRAORDINARY DISASTER DAMAGE

“2A. (1) In determining whether any disaster damage is extraordinary disaster damage, the Commission shall have regard to the following matters:

“(a) In the case of damage by storm to any building or the contents of any building, whether the storm was of such severity that it could not reasonably be expected that the building should have been constructed or located to withstand or avoid damage by a storm of such severity, or, as the case may be, to protect the contents from damage by a storm of such severity, having regard to the severity of storms normally experienced in the locality, and having regard also as to whether or not other buildings in the same locality which were properly constructed were damaged by the same storm:

“(b) In the case of damage to any building or the contents of any building, whether the building complied with the requirements of any applicable New Zealand standard model building-by-law declared or continuing in force under the Standards Act 1965:

“(c) In the case of damage to the insured property by flood, whether the flood was of such severity that it could not reasonably be expected that the property should have been located in a position where it would not have been reached by such a flood, having regard to the severity of floods normally experienced in the locality:

“(d) The standard of repair and maintenance of the insured property or of any building containing the insured property:

“(e) Any neglect or carelessness of the insured person:

“(f) Any other matter of any kind whatsoever that the Commission considers relevant in the circumstances of the particular case.

“(2) Where the Commission rejects any claim for compensation on the ground that the damage to the insured property was not extraordinary disaster damage, the Commission shall give to the insured person notice in writing of the reasons for its decision.”

**6. Rate of premiums**—Regulation 6 of the principal regulations is hereby amended by revoking subclauses (1) and (2), and substituting the following subclauses:

“(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 5c for every \$100 of that amount; and

“(b) In the case of any other period, shall be a *pro rata* proportion of the rate prescribed in paragraph (a) of this subclause.

“(2) No such premium shall be less than 10c.”

**7. Insurance against geothermal-activity damage**—(1) The principal regulations are hereby further amended by inserting, after regulation 17, the following heading and regulations:

**“INSURANCE AGAINST GEOTHERMAL-ACTIVITY DAMAGE**

“17A. A contract may be made by the Commission under section 15 of the Act for the insurance of any property against geothermal-activity damage, either alone or in conjunction with insurance against earthquake damage and war damage and disaster damage, or any of them.

“17B. 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 geothermal-activity 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.

“17c. (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 geothermal-activity damage.

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

(2) Regulation 2 of the principal regulations is hereby further amended by inserting in subclause (1), after the definition of the term “extraordinary disaster damage” (as substituted by regulation 2 (1) hereof), the following definition:

“‘Geothermal-activity damage’ means—

“(a) Damage occurring as the direct result of geothermal activity:

“(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 under the Act:”.

(3) The principal regulations are hereby further amended—

- (a) By inserting in paragraph (f) of regulation 5, after the words “disaster damage or landslip damage”, the words “or geothermal-activity damage”:
- (b) By inserting in the same paragraph, after the words “landslip damage insurance”, the words “or geothermal-activity damage insurance”:
- (c) By inserting in regulation 12, after the words “landslip damage”, the words “and geothermal-activity damage”:
- (d) By omitting from the heading to Part I of the Schedule, and also from the heading to Part III, the words “or Landslip Damage”, and substituting in each case the words “Landslip Damage, or Geothermal-activity Damage”:
- (e) By omitting from clause 18 of the Schedule the words “or landslip damage”, and substituting the words “landslip damage, or geothermal-activity damage”:

- (f) By omitting from subclause (1) of clause 24 of the Schedule the words “or landslip damage”, and substituting the words “landslip damage, or geothermal-activity damage”:
- (g) By omitting from subclause (3) of clause 24 of the Schedule the words “or landslip” wherever they occur, and substituting in each case the words “landslip, or geothermal activity”.

**8. Conditions applying to insurance against extraordinary disaster damage**—The Schedule to the principal regulations is hereby amended by adding to clause 19, as subclause (2), the following subclause:

“(2) In determining any question as to whether or not any disaster damage is extraordinary disaster damage, the arbitrator or arbitrators shall have regard to the matters to which the Commission is required to have regard by subclause (1) of regulation 2A hereof.”

T. J. SHERRARD,  
Clerk of the Executive Council.

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#### EXPLANATORY NOTE

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

Regulation 2 replaces the definition of the term “extraordinary disaster damage” in the principal regulations, and defines that term in relation to the nature of the storm, flood, or volcanic eruption, instead of in relation to its results.

The effect of the amendments made by regulation 3 to the definition of “landslip” is to remove the condition that the landslip must be a sudden one and to omit the words that exclude any subsidence of earth or rock.

Regulation 4 revokes regulation 2 (2) of the principal regulations, under which the Commission is an administrative tribunal, whose decision is final, for the purpose of deciding questions under the regulations. As a result, all questions arising between the Commission and a person claiming compensation will be referred to arbitration under the provisions of clause 19 of the conditions of insurance set out in the Schedule to the principal regulations.

Regulation 5 prescribes the matters that are to be taken into account by the Commission in deciding whether any disaster damage is extraordinary disaster damage. If the Commission rejects a claim on the ground that the damage was not extraordinary disaster damage, it must notify the insured person of the reasons for its decision.

Regulation 6 (which comes into force on the date of the introduction of decimal currency) fixes the rate of premium, in the case of insurance for a period of one year, at 5c for every \$100 of the amount of the insurance. In the case of an insurance for any other period, the rate will be a *pro rata* proportion of the rate for one year instead of the present rate of 1d. percent per month.

Regulation 7 will enable the Commission to insure property against geothermal-activity damage by voluntary contracts under section 15 of the Act.

Regulation 8 requires the arbitrator or arbitrators, in deciding any question relating to extraordinary disaster damage, to take into account the same matters as the Commission is required to take into account by regulation 2A (1) of the principal regulations (as inserted by regulation 5 of this amendment).

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 1 June 1967.

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