

1970/143



**THE EARTHQUAKE AND WAR DAMAGE REGULATIONS 1956,
AMENDMENT NO. 3**

RICHARD WILD, Administrator of the Government
ORDER IN COUNCIL

At the Government House at Wellington this 13th day of July 1970

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. Title and commencement—(1) These regulations may be cited as the Earthquake and War Damage Regulations 1956, Amendment No. 3, 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) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Meaning of "landslip"—(1) Regulation 2 of the principal regulations (as amended by regulation 3 of the Earthquake and War Damage Regulations 1956, Amendment No. 2) is hereby further amended by revoking the definition of the term "landslip" in subclause (1), and substituting the following definition:

" 'Landslip' means subsidence of a substantial land mass other than by settlement, soil shrinkage, or compaction; and includes the movement from any hill, mound, bank, slope, cliff, or face of earth or rock, of a substantial mass of earth or rock which before movement formed an integral part of the hill, mound, bank, slope, cliff, or face:"

(2) Regulation 3 of the Earthquake and War Damage Regulations 1956, Amendment No. 2 is hereby consequentially revoked.

*S.R. 1956/61
Amendment No. 1: S.R. 1962/178
Amendment No. 2: S.R. 1967/111

3. Landslip damage—The principal regulations are hereby further amended by inserting, after regulation 2A (as inserted by regulation 5 of the Earthquake and War Damage Regulations 1956, Amendment No. 2), the following heading and regulation:

“LANDSLIP DAMAGE

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

- “(a) In the case of damage to any building, or to the contents of any building, whether the building complied with the requirements of any applicable New Zealand standard model building-by-law relating to foundations declared or continuing in force under the Standards Act 1965:
- “(b) Whether the basic principles of site investigation and foundation design have been observed, and the construction of foundations and earthworks have been properly supervised:
- “(c) The standard of repair and maintenance of the insured property or of any building containing the insured property:
- “(d) Any neglect or carelessness of the insured person:
- “(e) 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 landslip damage, the Commission shall give to the insured person notice in writing of the reasons for its decision.”

4. Conditions applying to landslip damage—Regulation 5 of the principal regulations is hereby amended by inserting, after paragraph (e), the following paragraph:

- “(ee) The insurance of any property against landslip damage under section 14 of the Act shall be subject to the conditions set out in Parts I and IV of the Schedule hereto:”.

5. Rates of premiums—Regulation 6 of the principal regulations (as amended by regulation 6 of the Earthquake and War Damage Regulations 1956, Amendment No. 2) is hereby further amended by omitting from subclause (1) the words “and extraordinary disaster damage”, and substituting the words “extraordinary disaster damage and landslip damage”.

6. Insurance against landslip—The principal regulations are hereby further amended by revoking regulations 15 and 16, and substituting the following regulations:

“15. (1) Subject to the provisions of the Act and of these regulations, if in respect of any period after the commencement of these regulations any property is insured under section 14 of the Act for any amount against earthquake damage and war damage 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 landslip damage.

“(2) For the purposes of this regulation, the expression ‘deemed to be insured’ does not include—

“(a) Any part of the cost of re-siting a building or any part of the cost incurred in stabilising the existing site of, or any new site for a building; or

“(b) Any part of the cost of clearing landslip debris, except to the extent that clearing debris is essential to enable landslip damage to an insured building to be repaired.

“16. 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, war damage, disaster damage, and geothermal-activity damage or any of them.

“16A. Subject to the provisions of these regulations, all provisions of the Act shall, so far as they are applicable and with the necessary modifications, apply 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.”

7. New Part IV to Schedule to principal regulations—The Schedule to the principal regulations is hereby further amended by adding the following Part:

“PART IV—CONDITIONS APPLYING ONLY TO INSURANCE AGAINST LANDSLIP DAMAGE

“25. (1) In respect of any loss or damage to any one property occurring during any period of 48 consecutive hours as the direct result of 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.

“(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 landslip, may classify that property into any one of the following classes:

“Class A—Property not particularly susceptible to damage from landslip:

“Class B—Property fairly susceptible to damage from landslip:

“Class C—Property very susceptible to damage from 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 at the rate of 1 percent of the amount of the insured loss or damage (to the extent to which it does not exceed the amount of the insurance), but in any case the franchise shall be not less than \$200.

“(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 percent 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 30 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 notice 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.”

8. Conditions of insurance—The Schedule to the principal regulations is hereby amended by adding to clause 6 of Part I the following proviso:

“Provided that 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 clause 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.”

P. J. BROOKS,
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 amend the Earthquake and War Damage Regulations 1956. The term “landslip” is redefined. Subject to certain conditions, property insured against earthquake and war damage is deemed to be insured also against landslip damage.

The time within which notice of loss or damage is to be given under the regulations is extended if the loss or damage is not immediately apparent or the insured person is unable to give notice or make a claim by reason of absence or incapacity or other disability proved to the satisfaction of the Commission, and the Commission is not thereby prejudiced by lapse of time.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 16 July 1970.

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

APPENDIX THE LOAD LINE RULES 1970—ZONES, AREAS, AND SEASONAL PERIODS

