

1984/71



THE EARTHQUAKE AND WAR DAMAGE REGULATIONS 1984

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 19th day
of March 1984

Present:

THE RIGHT HON. D. MACINTYRE PRESIDING 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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REGULATIONS

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

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

Preliminary

2. Interpretation—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 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:

“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, or of a substantial mass of earth or rock, which before movement formed an integral part of the hill, mound, bank, slope, cliff, or face:

“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—

and includes damage which is imminent as the direct result of landslip if, in the opinion of the Commission, the likely result is total loss of the property concerned; but does not include any damage for which compensation is payable under any enactment other than the Act and these regulations:

“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.

3. Determination of disaster or landslip damage—(1) In determining whether any damage is disaster damage or 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 bylaw 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:
 - (d) Any neglect or carelessness of the insured person:
 - (e) 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 for compensation on the ground that the damage to the insured property was not disaster damage or landslip damage, the Commission shall give to the insured person notice in writing of the reasons for its decision.

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

- (a) Any property that is not tangible property:
- (b) Any ship or any thing in a ship, except while the ship is on land:
- (c) Any land:
- (d) Any standing bush or forest:
- (e) Any road, street, or path:
- (f) Any railway track or pole, or any tramway track or pole:
- (g) 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:
- (h) Any tunnel or cutting:
- (i) Any retaining wall, dam, breakwater, mole, groyne, fence, or wall:
- (j) Any drain or channel:
- (k) 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:
- (l) 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):
- (m) Any electric supply, telegraph, or telephone pole, line, or cable:
- (n) Any mine or quarry:
- (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. Conditions of insurance—(1) In addition to all other conditions imposed by the Act or by these regulations but subject to subclause (2) of this regulation,—

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

(2) The insurance of any property under the Act and these regulations shall be subject to the same conditions as are set out in the contract of fire insurance, so far as they are applicable and are not inconsistent with the provisions of the Act and of these regulations. If any condition of the contract of fire insurance (other than a condition relating to the application of any excess) is similar in effect to any condition set out in the Act or in these regulations, the condition of lesser advantage to the insured person shall apply.

(3) Subject to section 14 (2A) (c) of the Act, if, at the time of any loss or damage, the insured property or any part of it is of greater value than the amount for which it is insured, the Commission may in its discretion determine that the insured person shall be regarded as being his own insurer for the difference and that he shall accordingly bear a rateable proportion of the loss or damage.

Premiums

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

(a) Where the period is 1 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.

(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 1 month.

(4) Subject to subclauses (1) to (3) of this regulation, the Commission may from time to time make and issue determinations relating to the method of calculation of premiums in respect of any class of insurance business, class of property, and clauses and wordings contained in contracts of insurance.

7. Payment of premiums by insurance companies—(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 2 months after the end of that month.

(2) Every such payment shall be made to the Commission and shall be accompanied by a certificate by an officer or agent of the company, stating that, according to the books of the company, and to the best of his knowledge and belief, the payment is correct.

8. Secrecy of information—(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 by every member, officer, and employee of the Commission.

(2) Nothing in this regulation shall 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. Insurance companies to keep records—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, the amount of the premium, and the date of its payment to the Commission.

10. Examination of records—(1) 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 of it to the Commission.

(2) The company shall forthwith on demand submit its books and accounts accordingly to any duly authorised officer of the Audit Office or to that auditor.

Disaster and Landslip Fund

11. Disaster and Landslip Fund—(1) There shall continue to be a fund (previously known as the Disaster Fund) within the Earthquake and War Damage Fund, which shall from now on be called the Disaster and Landslip Fund.

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

(a) Ten percent 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 or to insurance against landslip 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 or to insurance against landslip damage, shall be paid out of the Disaster and Landslip Fund.

Insurance Against Disaster Damage

12. Insurance against disaster damage—Subject to the provisions of the Act and of these regulations, where in respect of any period commencing 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 disaster damage.

13. Voluntary insurance against disaster damage—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, war damage, and landslip damage, or any of them.

Insurance Against Landslip Damage

14. Insurance against landslip damage—(1) Subject to the provisions of the Act and of these regulations, where in respect of any period commencing 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.

15. Voluntary insurance against landslip damage—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, and disaster damage, or any of them.

16. Commission may limit its maximum liability after first claim for landslip damage—(1) Where any claim is made against the Commission in respect of landslip damage and, because of circumstances relating to the landslip, the Commission considers it desirable to limit its subsequent maximum liability for landslip damage to the amount for which the property

concerned is insured, pursuant to the Act, at the time landslip damage first occurred, the Commission may notify the claimant and his insurer accordingly; and from the date of such notification the liability of the Commission for landslip damage to the property shall not exceed the amount for which the property is so insured.

(2) After such notification has been given, the renewal of the contract of insurance, or the entry by the claimant or any successor in title into a new contract of insurance, of the property shall not operate to increase the liability of the Commission in respect of landslip damage to the property; but the Commission may in its discretion, at each insurance renewal date, adjust the amount for which the property is insured against landslip damage in accordance with changes in the values of properties situated in the same area as the insured property (being properties not affected or likely to be affected by landslip).

Application of Act to Disaster Damage and Landslip Damage

17. Application of Act—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 to insurance against disaster damage, and to insurance against landslip damage, as if they were insurance against earthquake damage and as if references to the Earthquake and War Damage Fund were references to the Disaster and Landslip Fund.

Miscellaneous Provisions

18. Payment of claims—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.

19. Offences and penalties—Every person who without lawful excuse acts in contravention of or fails to comply in any respect with any provision of these regulations commits an offence against these regulations and is liable on summary conviction to a fine not exceeding \$1,000 and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued.

20. Revocations and saving—(1) The following regulations are hereby revoked:

- (a) The Earthquake and War Damage Regulations 1956*:
- (b) The Earthquake and War Damage Regulations 1956, Amendment No. 1†:
- (c) The Earthquake and War Damage Regulations 1956, Amendment No. 2‡:
- (d) The Earthquake and War Damage Regulations 1956, Amendment No. 3§.

*S.R. 1956/61
 †S.R. 1962/178
 ‡S.R. 1967/111
 §S.R. 1970/148

(2) The repeal of regulation 18 of the Earthquake and War Damage Regulations 1956 shall not affect the liability of any person, under that regulation, to pay any money to any other person in respect of a period of insurance commencing before the date of commencement of these regulations.

21. Transitional provisions relating to cover against storm and flood damage—(1) Subject to subclauses (2) to (4) of this regulation, until the expiry of the 31st day of July 1985, regulation 2 of these regulations shall be read as if paragraph (b) of the definition of the term “disaster damage” were replaced by the following paragraphs:

“(b) Damage occurring as the direct result of storm or flood (excluding damage caused by landslip, subsidence of earth or rock, or erosion by the sea) where the storm or flood is of an abnormal and unforeseen nature and is of extraordinary effect:

“(c) 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—”

clause 25 (3) of the Schedule hereto shall be read as if there were inserted, after the words “hydro-thermal activity” wherever they occur, the words “or storm or flood”; and regulation 2A of the Earthquake and War Damage Regulations 1956 shall be deemed to have remained in force, with the necessary modifications, in respect of damage occurring as the direct result of storm or flood.

(2) Subclause (1) of this regulation shall not apply in respect of any contract of fire insurance the inception date of which is on or after the 1st day of August 1984.

(3) Subject to subclause (4) of this regulation, subclause (1) of this regulation shall cease to apply in respect of each contract of fire insurance (by virtue of which any property is deemed to be insured against disaster damage under regulation 12 of these regulations)—

(a) On the first expiry or renewal date of the contract occurring on or after the 1st day of August 1984; or

(b) On the expiry of the 31st day of July 1985—
whichever first occurs.

(4) If any contract of fire insurance (by virtue of which any property is deemed to be insured against disaster damage under regulation 12 of these regulations) which was in force on the date of notification in the *Gazette* of these regulations specified, at that date, an expiry or renewal date later than the 31st day of July 1985, subclause (1) of this regulation shall continue to apply in respect of that contract until that expiry or renewal date, and shall then cease to apply.

(5) Any contract made by the Commission under section 15 of the Act for the insurance of any property against damage occurring as the direct result of storm or flood which was in force on the date of commencement of these regulations shall continue in force until the first expiry or renewal date after that date of commencement and shall then expire.

SCHEDULE

CONDITIONS OF INSURANCE

PART I

CONDITIONS APPLYING TO INSURANCE AGAINST EARTHQUAKE DAMAGE,
WAR DAMAGE, DISASTER DAMAGE, AND 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.

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 securities, obligations, or documents of any kind, stamps, coined or paper money, cheques, books of account, or other business books.

Cancellation of Insurance

4. (1) The Commission may at any time, in its discretion, cancel the insurance or reduce the amount of insurance by giving notice thereof to the insured person by posting the notice 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) On 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.

(3) Every such cancellation or reduction shall remain in force notwithstanding—

- (a) The subsequent renewal of the contract of fire insurance covering the property; or
- (b) The subsequent issue of a new contract of fire insurance covering the property; or
- (c) A subsequent change in the person in whom is vested the insurable interest to which the notice relates.

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.

SCHEDULE—*continued*

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 30 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):

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.

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 with it.

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 land or 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

SCHEDULE—*continued*

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. All benefit under the insurance 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 and—
 - (i) An action or suit, or proceeding by way of arbitration under clause 19 hereof, 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.

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 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

SCHEDULE—*continued*

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, 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 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.

20. 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.

Notices

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

PART II

CONDITIONS APPLYING ONLY TO INSURANCE AGAINST EARTHQUAKE DAMAGE

Proportion of Loss to be Borne by Insured Person

22. (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 (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 excess).

SCHEDULE—*continued*

(2) For the purposes of this clause—

- (a) All property in the same ownership and located in 1 situation shall be deemed to be 1 property:
 (b) All property insured 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) 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) Every such classification of a property shall remain in force until it is altered by the Commission notwithstanding—

- (a) The subsequent renewal of the contract of fire insurance covering the property; or
 (b) The subsequent issue of a new contract of fire insurance covering the property; or
 (c) A subsequent change in the person in whom is vested the insurable interest to which the classification relates.

(5) 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.

(6) Where the property insured is classified in Class A, the amount of the excess 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	Excess
Not over \$20,000	\$200.
Over \$20,000	1 percent of the amount of the insured loss or damage.

(7) Where the property insured is classified in Class B or Class C, the excess 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.

(8) The Commission may from time to time alter the classification of any property, but no such alteration which has the effect of increasing any excess shall take effect until the expiration of 30 days after written notice of it has been given by the Commission to the insured person named in the policy of insurance or in any endorsement on it by posting the notice 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.

SCHEDULE—*continued*

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

Risks Previously Refused or Cancelled

23. 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

24. 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 DISASTER DAMAGE

Proportion of Loss to be Borne by Insured Person

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 disaster 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 excess).

(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 married couple 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 volcanic eruption or hydrothermal activity, may classify that property into any one of the following classes:

Class A—Property not particularly susceptible to damage from volcanic eruption or hydrothermal activity:

Class B—Property fairly susceptible to damage from volcanic eruption or hydrothermal activity:

Class C—Property very susceptible to damage from volcanic eruption or hydrothermal activity.

(4) Every such classification of a property shall remain in force until it is altered by the Commission notwithstanding—

(a) The subsequent renewal of the contract of fire insurance covering the property; or

SCHEDULE—*continued*

(b) The subsequent issue of a new contract of fire insurance covering the property; or

(c) A subsequent change in the person in whom is vested the insurable interest to which the classification relates.

(5) 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.

(6) Where the property insured is classified in Class A, the amount of the excess 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	Excess
Not over \$20,000	\$200.
Over \$20,000	1 percent of the amount of the insured loss or damage.

(7) Where the property insured is classified in Class B or Class C, the excess 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.

(8) The Commission may from time to time alter the classification of any property, but no such alteration which has the effect of increasing any excess shall take effect until the expiration of 30 days after written notice of it has been given by the Commission to the insured person named in the policy of insurance or in any endorsement on it by posting the notice 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.

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

PART IV

CONDITIONS APPLYING ONLY TO INSURANCE AGAINST LANDSLIP DAMAGE

Proportion of Loss to be Borne by Insured Person

26. (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 excess).

(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 married couple 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 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) Every such classification of a property shall remain in force until it is altered by the Commission notwithstanding—

(a) The subsequent renewal of the contract of fire insurance covering the property; or

(b) The subsequent issue of a new contract of fire insurance covering the property; or

(c) A subsequent change in the person in whom is vested the insurable interest to which the classification relates.

(5) 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.

(6) Where the property insured is classified in Class A, the amount of the excess 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	Excess
Not over \$20,000	\$200.
Over \$20,000	1 percent of the amount of the insured loss or damage.

(7) Where the property insured is classified in Class B or Class C, the excess 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.

(8) The Commission may from time to time alter the classification of any property, but no such alteration which has the effect of increasing any excess shall take effect until the expiration of 30 days after written notice of it has been given by the Commission to the insured person named in the policy of insurance or in any endorsement on it by posting the notice 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.

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

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 consolidate and amend the Earthquake and War Damage Regulations 1956 and amendments.

The main amendments are as follows:

- (a) Insurance against damage caused by storm and flood is no longer provided for. Insurance under the regulations will only be against damage caused by volcanic eruption, hydrothermal activity, and landslip. Generally, storm and flood cover will finally terminate on 1 August 1985. However, storm and flood cover will not apply in respect of any new contract of insurance the inception date of which is on or after 1 August 1984. In respect of each existing contract of insurance, cover will cease on the first renewal date occurring on or after 1 August 1984 or will cease on 1 August 1985, whichever first occurs. However, if any contract of insurance, which was in force on the date of gazettal of these regulations, specifies an expiry or renewal date later than 31 July 1985, storm and flood cover will continue until that expiry or renewal date.
- (b) The basic excess (for property not particularly susceptible to damage) will now be 1 percent of the amount of the insured loss or damage with a minimum excess of \$200.
- (c) Insurance under the Earthquake and War Damage Act 1944 and the regulations is to be subject to the same conditions as are set out in the contract of fire insurance, so far as they are applicable and not inconsistent with the provisions of the Act and regulations.
- (d) Insurance will now cover certain property previously excluded, namely bullion, uncut precious stones, curiosities and works of art for an amount exceeding \$100, manuscripts, plans, drawings, designs, patterns, models, and moulds.
- (e) Arbitration will now be mandatory only if any difference relates to the amount to be paid on a claim.
- (f) If, at the time of any loss or damage, an insured property or any part of it is of greater value than the amount for which it is insured, the Commission may determine that the insured person is to be regarded as being his own insurer for the difference and that he shall accordingly bear a rateable proportion of the loss or damage.
- (g) The definition of landslip damage is extended to include damage which is imminent as the direct result of landslip if, in the opinion of the Commission, the likely result is total loss of the property concerned.
- (h) Where a claim is made in respect of landslip damage and, because of circumstances relating to the landslip, the Commission considers it desirable to limit its subsequent liability to the amount for which the property concerned is insured at the time landslip damage first occurred, it may notify the claimant and his insurer accordingly. A renewal of the contract of insurance or entry into a new contract of insurance will not affect the Commission's maximum liability, but the Commission may, at each insurance renewal date, adjust the amount for which the property is insured in accordance with changes in property values in the area concerned.
- (i) If the Commission cancels or reduces any insurance, or classifies any property, the cancellation, reduction, or classification is to remain in force notwithstanding the subsequent renewal of the policy covering the property or the issue of a new policy or a change of ownership of the property.
- (j) The provision enabling mortgagors to recover half the cost of earthquake and war damage premiums from mortgagees has been omitted.
- (k) The maximum fines for an offence against the regulations are increased from \$100 to \$1,000, and from \$10 to \$100 a day for a continuing offence.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 March 1984.

These regulations are administered in the State Insurance Office.