



Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Amendment Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 26th day of June 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 401C(a) to (c) and 402(1)(p) and (pa) of the Building Act 2004 on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Building and Construction.

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	New Schedules 3 and 4 inserted	

Regulations

1 Title

These regulations are the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Amendment Regulations 2017.

2 Commencement

These regulations come into force on 1 July 2017.

3 Principal regulations

These regulations amend the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the **principal regulations**).

4 New cross-heading above regulation 4 inserted

After regulation 3, insert:

Specified systems

5 New cross-heading above regulation 5 inserted

After regulation 4, insert:

Change the use

6 New cross-heading above regulation 7 inserted

After regulation 6, insert:

Earthquake-prone buildings: general

7 Regulation 7 replaced (Earthquake-prone buildings: moderate earthquake defined)

Replace regulation 7 (as replaced by section 45 of the Building (Earthquake-prone Buildings) Amendment Act 2016) with:

7 Moderate earthquake and ultimate capacity defined

For the purposes of section 133AB of the Act (meaning of earthquake-prone building),—

moderate earthquake means, in relation to a building, an earthquake that would generate shaking at the site of the building that is of the same duration as, but that is one-third as strong as, the earthquake shaking (determined by normal measures of acceleration, velocity, and displacement) that would be used to design a new building at that site if it were designed on 1 July 2017

ultimate capacity means the probable capacity to withstand earthquake actions and maintain gravity load support assessed by reference to the building as a whole and its individual elements or parts.

8 New regulations 8 to 11 and cross-heading inserted

After regulation 7, insert:

8 Categories of earthquake ratings

For the purpose of section 133AL of the Act, the categories of earthquake ratings are—

Category

0% to less than 20%

20% to less than 34%

Examples

A territorial authority determines that an earthquake-prone building (**B1**) has an earthquake rating of 10%. B1's earthquake rating category is 0% to less than 20%.

The territorial authority determines that another earthquake-prone building (**B2**) has an earthquake rating of 25%. B2's earthquake rating category is 20% to less than 34%.

The territorial authority determines that a third earthquake-prone building (**B3**) has an earthquake rating of between 19% and 22%. B3's earthquake rating category is 0% to less than 20% (see section 133AL(3) of the Act).

9 Forms of EPB notice

- (1) This regulation prescribes, for the purpose of section 133AL of the Act, the forms of EPB notice to be issued for earthquake-prone buildings.
- (2) For each earthquake-prone building described in the first column of the following table, the EPB notice must—

- (a) be in the form set out in Schedule 3 (black text on white); and
- (b) have a border (with a uniform width of between 12.5 mm and 15 mm (**uniform width**)) that uses the colour and design set out opposite to it in the second column; and
- (c) be international standard size A4.

Description of earthquake-prone building	EPB notice (border)
Building or part in earthquake rating category of 0% to less than 20%	Orange and black diagonal lines (each line of uniform width and running bottom left to top right)
Building or part in earthquake rating category of 20% to less than 34%	Black and white diagonal lines (each line of uniform width and running bottom left to top right)
Building or part to which clause 2 of Schedule 1AA of the Act (which is a transitional provision) applies (earthquake rating unknown)	Solid orange

Examples

See examples under regulation 8. For each building, the territorial authority issues an EPB notice that is in the form set out in Schedule 3 and,—

- for B1 and B3, has a border of orange and black diagonal lines:
- for B2, has a border of black and white diagonal lines.

For a fourth building (**B4**), the territorial authority is proceeding under section 133AK(4) of the Act as if it had determined B4 to be earthquake prone (because the owner of B4 has not provided an engineering assessment). No previous notice under section 124 of the Act has been given in relation to B4. The territorial authority issues an EPB notice in the form set out in Schedule 3 with a border of orange and black diagonal lines (see section 133AL(4) of the Act).

The owner of another building (**B5**) was given a notice before 1 July 2017, under section 124 of the Act, requiring work to be carried out on B5 to remove the danger associated with B5 being earthquake prone. B5 is a building to which subpart 6A of Part 2 of the Act applies. The territorial authority has not determined the earthquake rating of B5. The territorial authority issues an EPB notice in the form set out in Schedule 3 with a solid orange border.

After a time, the owner of B5 chooses to send the territorial authority an engineering assessment of the building (see section 133AQ of the Act). The territorial authority considers the engineering assessment and determines that B5 is still earthquake prone and has an earthquake rating of 20%. The earthquake rating category is now known: 20% to less than 34%. The territorial authority reissues the EPB notice in the form set out in Schedule 3 with a border of black and white diagonal lines.

Earthquake-prone buildings subject to EPB notices

10 Exemption from requirement to carry out seismic work: required building characteristics

(1) This regulation sets out the characteristics that a building or a part of a building must have for a territorial authority to grant an exemption, under section 133AN of the Act, from the requirement to carry out seismic work on the building or part.

(2) The territorial authority must be satisfied that the building or the part of the building has all of the following characteristics:

Intensity of occupation and passage: nil to low or low to moderate (current)

(a) the intensity of occupation and passage in and near the building or part meets the definition in Schedule 4 of—

- (i) nil to low intensity; or
- (ii) low to moderate intensity; and

Intensity of occupation and passage: nil to low or low to moderate (expected)

(b) the intensity of occupation and passage in and near the building or part is likely, for the foreseeable future, to meet the definition in Schedule 4 of—

- (i) nil to low intensity; or
- (ii) low to moderate intensity; and

Collapse of building or part in moderate earthquake unlikely to have certain impacts

(c) either—

(i) the collapse of the building or part in a moderate earthquake is unlikely to result in the death of, or injury to, more than a low number of persons in or near the building or on any other property because of the way in which the building or part is expected to collapse in a moderate earthquake; or

(ii) the following is true in respect of the building or part:

(A) paragraphs (a)(i) and (b)(i) apply to it (which means that the intensity of occupation and passage in and near the building or part is, and for the foreseeable future is likely to be, nil to low intensity); and

(B) if the building or part is adjacent to, adjoining, or nearby any other building or property, it is likely that the intensity of occupation and passage in and near the other building, or in, on, or near the other property is, and in the foreseeable

future will be, nil to low intensity (in the case of property, with all necessary amendments); and

- (d) either—
 - (i) the collapse of the building or part in a moderate earthquake is unlikely to result in more than minor damage to any other property because of the way in which the building or part is expected to collapse in a moderate earthquake; or
 - (ii) the building or part is not, and is not likely in the foreseeable future to be, adjacent to, adjoining, or nearby any other building or property (excluding land); and
- (e) no strategic transport route would be impeded if the building or part collapsed in a moderate earthquake—
 - (i) because of the way in which the building or part is expected to collapse in a moderate earthquake; or
 - (ii) because of the building's or part's lack of proximity to strategic transport routes; and

Not needed for use in emergency

- (f) the building or part is not likely to be needed for use for emergency services.

- (3) In this regulation,—

emergency services means the provision of any of the following in an emergency:

- (a) emergency shelter:
- (b) emergency centre:
- (c) emergency medical services:
- (d) emergency response services (for example, policing, fire, ambulance, and rescue services)

nil to low intensity and **low to moderate intensity** are defined in Schedule 4

strategic transport routes means all transport routes of strategic importance (in terms of an emergency response), if any, that the territorial authority has identified by the special consultative procedure in section 83 of the Local Government Act 2002 if initiated for the purpose of section 133AE(1)(f) of the Act.

11 Alteration of building: what amounts to substantial alteration

- (1) For the purposes of section 133AT(2)(c) of the Act, an alteration of a building or a part of a building that is subject to an EPB notice is a **substantial alteration** if the territorial authority is satisfied that—

$$(x + y) > (z / 4)$$

where—

- x is the estimated value of the building work to which the current application relates, other than work that the territorial authority is satisfied is seismic work
- y is the aggregate of the estimated value of the building work to which all recent building consents relate, other than work that the territorial authority is satisfied is seismic work
- z is the total building value of the building.
- (2) In variable z, the **total building value** of the building is,—
- (a) if—
- (i) the building is on land comprised in 1 rating unit; and
- (ii) all of the improvements on the land comprise or relate to the building; and
- (iii) the value of improvements can be ascertained from the last calculated rateable value,—
- the value of the improvements referred to in subparagraph (iii); or
- (b) if paragraph (a) does not apply, and if—
- (i) the owner, with supporting evidence, proposes an amount as a reasonable estimate of the added value that the building gives to the land on which it is built; and
- (ii) the territorial authority accepts that amount, for the purpose of this regulation, as a reasonable estimate of that added value,—
- the amount proposed and accepted; or
- (c) if neither paragraph (a) nor (b) applies, the number 4.
- (3) In this regulation,—
- current application** means the application referred to in section 133AT(1) of the Act
- estimated value** means,—
- (a) in variable x, the estimated value (as defined in section 7 of the Act) at the date on which the current application is made; and
- (b) in variable y, in respect of each recent building consent,—
- (i) the estimated value (as defined in section 7 of the Act) at the time that the consent was applied for; or
- (ii) if the applicant notified the territorial authority of any change in the estimated value of the building work, the changed estimated value
- improvements** has the meaning set out in section 2 of the Rating Valuations Act 1998

rateable value means the rateable value of land under section 13(3) of the Local Government (Rating) Act 2002

rating unit means a rating unit for the purposes of the Rating Valuations Act 1998

recent building consent means a building consent—

- (a) for building work to or in connection with the building; and
- (b) granted in the 2 years immediately before the date on which the current application is made; but
- (c) excluding a building consent that has lapsed at the date on which the current application is made

value of improvements has the meaning set out in section 2 of the Rating Valuations Act 1998.

9 New Schedules 3 and 4 inserted

After Schedule 2, insert the Schedules 3 and 4 set out in the Schedule of these regulations.

Schedule
New Schedules 3 and 4 inserted

r 9

Schedule 3
Form

r 9(2)(a)

EPB notice

Section 133AL, Building Act 2004

Earthquake-prone building

Notice under section 133AL of the Building Act 2004

Select the statement that applies.

Earthquake rating is [insert earthquake rating]

or

Earthquake rating has not been determined

†[Name of territorial authority] has previously issued a written notice under section 124(2)(c)(i) of the Building Act 2004.

†Delete if inapplicable.

Select the statement that applies.

This notice is for the building situated at [address], [legal description of land where building is located].

or

This notice is for the following part of the building situated at [address], [legal description of land where building is located]: [specify the part, eg, by description and location within building].

Select the statement that applies.

The building/part of the building* has been determined by [name of territorial authority] to be earthquake prone.

or

[Name of territorial authority] has not determined if the building/part of the building* is earthquake prone (because the owner has not provided an engineering assessment), but is proceeding as if it had determined the building/part of the building* to be earthquake prone.

*Select one.

Select the statement that applies.

The building/part of the building* is a priority building (as defined in section 133AE of the Building Act 2004).

or

The building/part of the building* is not a priority building (as defined in section 133AE of the Building Act 2004).

*Select one.

The owner of the building/part of the building* is required to carry out building work to ensure that the building/part of the building* is no longer earthquake prone (**seismic work**). The owner is required to complete seismic work by *[date]*.

*Select one.

The owner of the building/part of the building* may apply to *[name of territorial authority]*, under section 133AN of the Building Act 2004, for an exemption from the requirement to carry out seismic work. The building/part of the building* must have certain characteristics to be granted an exemption (*see also* the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005).

*Select one.

Delete the following statement if inapplicable.

The building/part of the building* is a heritage building to which section 133AO of the Building Act 2004 applies. The owner may apply to *[name of territorial authority]* under section 133AO of the Building Act 2004 for an extension of time to complete seismic work.

*Select one.

In the event that *[name of territorial authority]* determines or is satisfied, in accordance with section 133AQ of the Building Act 2004, that the building/part of the building* is not earthquake prone, the owner is not required to complete seismic work.

*Select one.

Signature:

Position:

On behalf of: *[name of territorial authority]*

Date:

Schedule 4

Seismic work exemption: definitions relevant to intensity of occupation and passage in and near earthquake-prone building

r 10(2)(a), (b), (3)

Meaning of nil to low intensity and of low to moderate intensity

Nil to low intensity means, in relation to the intensity of occupation and passage in and near a building or part, that occupation and passage is (in each case as defined in the second column)—

- (a) nil; or
- (b) always low numbers for short durations (but may be frequent); or
- (c) infrequent and always low in number, but sometimes more than short durations; or
- (d) infrequent, but sometimes more than low in number, always for short durations.

Low to moderate intensity means, in relation to the intensity of occupation and passage in and near a building or part, that occupation and passage is (in each case as defined in the second column)—

- (a) frequent, always low in number, sometimes for more than short durations (but in very low numbers); or
- (b) infrequent, sometimes more than low in number, sometimes for more than short durations; or

Further definitions relevant to intensity

Nil to low intensity

Nil means no person is ever present in or near the building or part (for any length of time).

Always low numbers for short durations (but may be frequent) means—

- (a) the number of persons present in or near the building or part at any time is always a low number; and
- (b) no person who is present in or near the building or part ever remains present for more than a short duration.

Infrequent and always low in number, but sometimes more than short durations means—

- (a) the building or part has persons present in or near it only infrequently; and
- (b) the number of persons present in or near the building or part at any time is always a low number; but
- (c) sometimes (or always), 1 or more persons who are present in or near the building or part remain present for more than a short duration.

Infrequent, but sometimes more than low in number, always for short durations means—

- (a) the building or part has persons present in or near it only infrequently; and
- (b) the number of persons present in or near the building or part at a time is not always (or is never) a low number; and
- (c) no person who is in or near the building or part ever remains present for more than a short duration.

Low to moderate intensity

Frequent, always low in number, sometimes for more than short durations (but in very low numbers) means—

- (a) frequently, the building or part has persons present in or near it; and
- (b) the number of persons present in or near the building or part at any time is always a low number; and
- (c) sometimes (or always), persons who are in or near the building or part remain present for more than a short duration (**persons A**), but the number of persons A present at a time is always 1 or a number close to 1.

Infrequent, sometimes more than low in number, sometimes for more than short durations means—

Meaning of nil to low intensity and of low to moderate intensity

(c) frequently more than low in number (but always for short durations).

Further definitions relevant to intensity

- (a) the building or part has persons present in or near it only infrequently; but
- (b) the number of persons present in or near the building or part at a time is not always (or is never) a low number; and
- (c) sometimes (or always) 1 or more persons who are in or near the building or part remain present for more than a short duration.

Frequently more than low in number (but always for short durations) means—

- (a) frequently, the number of persons present in or near the building or part at a time is more than a low number (a **higher number**); but
- (b) the duration of time that a higher number remains present in or near the building or part is only ever short; and
- (c) no person who is in or near the building or part ever remains present for more than a short duration.

Michael Webster,
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, which come into force on 1 July 2017, relate to buildings to which subpart 6A of Part 2 of the Building Act 2004 (the **Act**) applies. Subpart 6A of Part 2 of the Act contains special provisions relating to earthquake-prone buildings.

These regulations amend the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the **principal regulations**) under powers in the Act that come into force on 1 July 2017 (*see* the Building (Earthquake-prone Buildings) Amendment Act 2016 Commencement Order 2017).

These regulations—

- define ultimate capacity, which is needed to determine whether a building (or a part of a building) is earthquake prone;
- restate the definition of moderate earthquake inserted by section 45 of the Building (Earthquake-prone Buildings) Amendment Act 2016, with the addition of the commencement date as used in that inserted definition (now that the commencement date of 1 July 2017 is known). This change is made because it is desirable to state the actual commencement date in the definition;
- prescribe 2 categories of earthquake ratings for earthquake-prone buildings:

- prescribe the form of EPB notices. Under the Act, EPB notices are issued by territorial authorities and are required to be attached in a prominent place on or adjacent to the building (*see* section 133AP(1)(a)) and, among other things, to state the deadline for completing seismic work. EPB notices will include a border of a colour and design that depends on—
 - earthquake rating category; or
 - whether, under clause 2(3)(a) of Schedule 1AA of the Act (which is a transitional provision), the territorial authority is deemed to have determined that the building or part is earthquake prone (and the earthquake rating is unknown):
- prescribe characteristics that an earthquake-prone building that is subject to an EPB notice must have for a territorial authority to grant an exemption from the requirement to carry out seismic work (*see* further below):
- prescribe criteria to enable territorial authorities to identify when alterations to an earthquake-prone building that is subject to an EBP notice will trigger a requirement, under section 133AT(2)(c) of the Act, for the alterations to include the necessary seismic work. The criteria look at the estimated value of the proposed building works (other than seismic work) in the building consent application and the estimated value of all other building work (to or in connection with the building and, again, other than seismic work) for which a building consent was granted in the 2 years preceding the application. Building consents that have lapsed are disregarded. If the aggregate of the estimated values is more than a quarter of the total building value (*see regulation 11(2)*), the requirement to include the necessary seismic work will be triggered:
- insert cross-headings into the principal regulations for ease of reference.

Seismic work exemptions

For a building or a part of a building that is subject to an EPB notice, the availability of an exemption from the requirement to carry out seismic work on the building or part will depend on—

- the intensity of occupation and passage in and near the building or part (the **occupation intensity**)—current and expected; and
- whether the collapse of the building or part in a moderate earthquake is expected to have certain impacts; and
- whether the building or part is needed for use for certain services in an emergency.

Occupation intensity is generally measured by whether the building or part frequently has people in or near it, whether low or more than low numbers of people are in or near it at any 1 time, and whether people who are in or near the building or part remain in or near the building or part for short, or for more than short, durations. Two levels are defined—nil to low intensity and low to moderate intensity. For an exemption, the territorial authority will need to be satisfied that the building or part has an

occupation intensity that is, and is likely to continue to be, within 1 of these 2 intensity levels (as well as being satisfied that the building or part has the other prescribed characteristics).

The impacts that a building or part might have—if the building or part were to collapse in a moderate earthquake—relate to life and safety, property damage, and impeding strategic transport routes. In each case, there are 2 alternatives for measuring the impact and the territorial authority needs to be satisfied that 1 measure is met. Each impact can be measured by the way in which the building or part is expected to collapse in a moderate earthquake (for example, this may be known from an engineering assessment of the building or part). Alternatively, the life and safety and property damage impacts can be measured by the location of the building or part in relation to other buildings and property (and, in the case of life and safety, the likely intensity of occupation and passage in and near those other buildings and property). The effect on strategic transport routes—which are routes of strategic importance (in terms of an emergency response), if any, that are identified by territorial authorities whose districts include any area of medium or high seismic risk and who act under section 133AF(2)(b) of the Act—can be measured by the building's or part's proximity to those routes.

In order to grant the exemption, the territorial authority will also need to be satisfied that the building or part is not likely to be needed for use for any of the following in an emergency: emergency shelter, emergency centre, emergency medical services, or emergency response services (for example, policing, fire, ambulance, and rescue services).

See also the Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2017 for infringement offences relating to earthquake-prone buildings.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 9 May 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/building-and-construction/ris-regulations-under-the-building-amendment-act-16.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 29 June 2017.

These regulations are administered by the Ministry of Business, Innovation, and Employment.