

Building (Earthquake-prone Buildings) Amendment Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Building (Earthquake-prone Buildings) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Building (Earthquake-prone Buildings) Amendment Bill seeks to amend the Building Act 2004 with reference to earthquake-prone buildings. It would use a risk-based framework to enforce national time frames and procedures for addressing earthquake-prone buildings. It would also clarify the definition of, and criteria for, earthquake-prone buildings and provide for a national earthquake-prone building register.

This legislation would have wide-ranging effects on territorial authorities, building owners, building users, and the public. The intent of the bill is to balance the protection of citizens from earthquake-prone buildings; the cost of strengthening, upgrading, or demolishing buildings; and the protection of heritage buildings.

Background

The bill stemmed from recommendations the Canterbury Earthquakes Royal Commission made in its *Volume 4 Final Report*, released by the Government in December 2012. The recommendations focused on the legislation, policies, and practices underpinning New Zealand's approach to earthquake-prone buildings in the wake of the Canterbury earthquakes.

As a result of the recommendations, the Ministry of Business, Innovation and Employment reviewed the current system and processes for managing earthquake-prone buildings. The ministry released a consultation document for public submissions in

December 2012 entitled *Building Seismic Performance: Proposals to Improve the New Zealand Earthquake-prone Building System*. After public consultation, the then Minister for Building and Construction introduced this bill, which largely aligns with the recommendations the commission made.

We recommend a series of amendments to the bill as introduced. Our amendments aim to avoid a one-size-fits-all approach. They are the result of our consideration of time, risk, cost, and other factors. This commentary focuses on these main amendments and does not cover minor or technical amendments.

Definitions

Earthquake-prone building

The bill as introduced was not clear about the application of the provisions for buildings or parts of buildings that might cause injury or death to persons nearby, whether those persons are on the same property as an earthquake-prone building or on another property. We recommend that clause 23, new section 133AB(1)(b)(i), be amended to clarify this.

It would be impractical and costly to apply an earthquake-prone building assessment to all buildings. Therefore, we recommend adding new section 133AA to clause 23 to exclude the following structures: certain residential housing, farm buildings, retaining walls that are not integral to the structure of a building, fences, certain monuments, wharves, bridges, tunnels, and storage tanks.

We note that although dams and parts of buildings that are dams are not listed in new section 133AA of clause 23, the provisions in section 133 of the principal Act provide that the current dangerous, insanitary, and earthquake-prone building provisions do not apply to dams. To ensure that dams and parts of buildings that are dams continue to be excluded, we propose including them under new section 133AA(1).

We recommend inserting new section 133AA(2) so that hostels, boarding houses, or other specialised accommodation of two or more storeys, and residential buildings of two or more storeys that contain three or more household units, would not be eligible for exclusion from the earthquake-prone building process. These facilities provide services to the public and so should not be exempt from the provisions governing earthquake-prone buildings.

Some concern was raised about excluding a few of these structures. We note that, although these structures will not be required to go through the earthquake-prone building process set out in this legislation, Subpart 7 of the principal Act will continue to apply to dams, and the dangerous building provisions in the principal Act will continue to apply to the other excluded structures.

We recommend amending section 133AB(3) so that regulations would define the meaning of the term “ultimate capacity” when used to describe an earthquake-prone building.

Seismic risk

We recommend outlining the criteria for low, medium, and high seismic risk areas by inserting new section 133ABB into clause 23. We propose that the earthquake-prone building identification and remediation process be based on seismic risk throughout New Zealand. The seismic risk of an area would be defined by its hazard factor (Z factor) as follows:

- a factor greater than or equal to 0.3 for an area of high seismic risk
- a factor between 0.15 and 0.3 for an area of medium seismic risk
- a factor less than 0.15 for an area of low seismic risk.

New section 133ABB(3) specifies that the seismic risk of an area would affect the deadline for identifying, reporting progress on, and remediating earthquake-prone buildings.

Priority buildings

We received advice from the Regulations Review Committee about including a definition of priority buildings within this legislation. We recommend replacing new section 133AC in clause 23 to specify that the following buildings in areas of medium or high seismic risk are priority buildings:

- hospitals and emergency services facilities
- certain educational facilities regularly occupied by 20 or more people
- parts of unreinforced masonry buildings that could fall from a building onto busy thoroughfares in an earthquake, such as parapets
- buildings that a territorial authority has identified as having the potential to impede strategic transport routes after an earthquake.

We recommend including parts of unreinforced masonry buildings in this list because these structures can be dangerous in an earthquake.

For the purposes of identifying priority buildings that may fall onto busy thoroughfares, new section 133AD would require territorial authorities to consult with their local communities. Consultation would occur in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.

We also recommend new section 133AD(4), which notes that the consultation period would need to allow ample time for a territorial authority to meet its obligations in identifying earthquake-prone buildings.

The time frames for identifying and remediating priority buildings would be shorter than those for other earthquake-prone buildings, as we indicate below in this commentary.

Procedure for earthquake-prone buildings

Identifying potentially earthquake-prone buildings

We recommend several changes to the process for identifying earthquake-prone buildings. We recommend replacing sections 133AF to 133AQ in clause 23 of the bill.

New section 133AF would require territorial authorities to identify potentially earthquake-prone buildings or parts of buildings within the relevant time frames. Territorial authorities would use the methodology specified by the chief executive of the Ministry of Business, Innovation and Employment to identify a building or part of a building that is potentially earthquake-prone. A territorial authority would also be able to at any time identify a building or part of a building that it has reason to suspect is earthquake-prone.

New section 133AF(4) would require these investigations to be done within 5 years for areas of high seismic risk, 10 years for areas of medium seismic risk, and 15 years for areas of low seismic risk. We recommend that the time frames for identifying priority buildings be halved. We note that some submitters have a different view about the chosen time frames for identifying buildings. We believe that these time frames allow for local variation throughout New Zealand.

New section 133AF(2) would require territorial authorities to report their progress on identifying potentially earthquake-prone buildings

- annually in districts containing areas of high seismic risk
- every 2 years in districts containing areas of medium seismic risk
- every 3 years in districts of only low seismic risk.

If a locality includes more than one seismic risk level, the shortest time frame for reporting would apply.

Engineering assessments

New section 133AG would require territorial authorities to send a written request for an engineering assessment to the owners of buildings identified as potentially earthquake-prone. This notice would have certain requirements, set out in new section 133AG(2). The notice would provide details about the state of the building, the process for a building identified as potentially earthquake-prone, and whether it is a priority building.

Territorial authorities would be required to inform building owners of the owners' responsibility to provide an engineering assessment within 12 months of the notification. If this is impractical for reasons such as a shortage of qualified engineers, building owners would be able to, no later than two months before the due date for an assessment, apply for an extension of up to 12 months. This provision is set out in new section 133AI. We also recommend new section 133AI(4), which specifies that the due date for an engineering assessment must not be extended more than once.

New section 133AH outlines the options available to a building owner to satisfy their obligation to provide an engineering assessment. A building owner may provide the territorial authority with an engineering assessment, notify the territorial authority of a factual error it has made in identifying the building as potentially earthquake-prone, or inform the territorial authority that they do not intend to provide an engineering assessment. If a territorial authority pays for a building's engineering assessment, it would be eligible to recover these costs from the building's owners, as set out in new section 133AH(3).

If a territorial authority agrees that a building has been incorrectly identified, new section 133AH(2) would apply. This would require the territorial authority to provide the building owner with a written notice about the engineering assessment request cancellation.

New section 133AG(2) notes that a request for an engineering assessment must explain the consequences of a building owner failing to provide a territorial authority with an engineering assessment.

In new section 133AK, we recommend that an earthquake-prone building notice be sent to a building owner who fails to provide an engineering assessment. The notice would state that the building has not been assessed but may be earthquake-prone (this status would also be reflected in the register, as per new section 275A(2) in clause 35). This notice would be sent to the people and organisations specified in new section 133AK(5).

Territorial authority evaluation of engineering assessments

New section 133AJ requires a territorial authority, once it has received an engineering assessment, to use the specified earthquake-prone building methodology to determine whether a building is earthquake-prone. The territorial authority would also need to determine the building's earthquake rating.

We recommend that the term "earthquake rating" be defined in new section 133ABA of clause 23. The term would mean the degree to which an earthquake-prone building or part of a building meets the requirements of the building code. A territorial authority would determine this rating in accordance with the methodology set out by the chief executive of the Ministry of Business, Innovation and Employment. The rating would also be specified on the notice issued for the building and in the earthquake-prone building register.

New section 133AJ(3) would require territorial authorities to issue all earthquake-prone buildings with an earthquake-prone building notice and to record information about the building in the earthquake-prone building register. New section 133AK lists the occasions on which a territorial authority may issue an earthquake-prone building notice. New section 133AK also stipulates that a notice must identify whether the building is a priority or heritage building and that building work is required to ensure that the building or part of the building is no longer earthquake-prone.

Remediation

We recommend the following proposed time frames in clause 23, new section 133AL, for remediating earthquake-prone buildings:

- 15 years for high seismic risk areas
- 25 years for medium seismic risk areas
- 35 years for low seismic risk areas.

We also recommend amending clause 23, new section 133AT, so that, as well as owners of Category 1 historic buildings, owners of buildings on the National Historic Landmarks List would be eligible to apply for an extension of up to 10 years to complete seismic strengthening work.

New section 133AL specifies that the time frame for remediating priority buildings would be half that of the above seismic time frames. We note that some submitters have a different opinion about the chosen remediation time frames. We recommend these time frames based on earthquake frequency statistics and after carefully considering the variety of local circumstances throughout New Zealand. We believe that a staggered approach would help to prioritise engineering resources and also provide greater flexibility for building owners outside of high and medium seismic areas.

For clarity, we also recommend adding new section 133AL(4) to specify that seismic work can include demolishing a building.

Exemptions

We recommend amending section 133AS, which refers to exemptions to the requirement to carry out seismic work. Under new section 133AS, a territorial authority would need to advise the building owner in writing if an exemption has not been granted. If an exemption is granted, the territorial authority would need to issue an exemption notice and record this decision in the earthquake-prone building register.

We recommended amending section 133AS(10) so that a territorial authority that revokes an exemption would be required to issue a new earthquake-prone building notice and record the details of the revocation in the earthquake-prone building register as soon as practicable.

Earthquake-prone building notices

For simplicity, we recommend that the written notice be called an “earthquake-prone building notice”, instead of a “seismic work notice”. Earthquake-prone building notices are intended to provide building owners with an incentive to strengthen buildings.

We recommend adding new section 133ATB, which states that a building’s earthquake-prone building notice, and details on the earthquake-prone buildings register, would be required to be kept up to date. If a building was no longer considered earthquake-prone, it would be removed from the earthquake-prone buildings register and any earthquake-prone building notices removed.

We recommend adding sections 133AV(1)(c) and 133AV(1A) to the bill. These sections would allow territorial authorities to continue to issue up to two 30-day written

notices restricting entry into an earthquake-prone building. Specified persons set out in new section 133AK(5) would be required to be notified.

In addition, we recommend amending clause 2 in Schedule 1AA to provide that, if a notice has been issued under the conditions of section 124 of the principal Act, then the territorial authority must issue a new notice and update the register as soon as practicable after the commencement of this legislation. The notice would not be required to include an earthquake rating. The conditions on new notices would override the conditions on old notices. However, if the new notice extends the time frame, the old deadline would continue to apply.

We recommend new clauses 2(5)–(7) in Schedule 1AA. These clauses note that a building owner may request that the relevant new time frame in new section 133AL be applied to their earthquake-prone building instead of the time frame stated on their old notice. If a territorial authority accepts an application of this kind, the time frame would start from the date of the old notice, the register would be updated to reflect the new time frame, and a new notice would be issued.

Additionally, we recommend that notices be revoked for the buildings listed in new section 133AA, which would be exempt from the earthquake-prone building process, as in new clause 2(2) in Schedule 1AA.

Building alterations

We recommend replacing section 133AX with new section 133AX about alterations to buildings that have been issued an earthquake-prone building notice. We received a lot of feedback on section 133AX. To make this section clearer, and for cross-reference purposes, we recommend incorporating sections 112(1)(a) and (b) of the principal Act into new section 133AX(2).

New section 133AX(2) would impose conditions on territorial authorities granting building consents for alterations to earthquake-prone buildings. Consents could be granted if the alteration would satisfy the requirements of the building code, as near as is reasonably practicable, that relate to means of escape from fire, and access and facilities for persons with disabilities. The building would also need to comply with the provisions of the building code to at least the same standard that it did before work began.

In the case of a substantial alteration, new section 133AX(2)(c) would require the alteration to include the necessary seismic work to ensure that the building is no longer earthquake-prone. We agree with submitters that regulations classifying substantial alterations need to be clear. We understand that the draft regulations will be subject to public consultation and input.

Exemptions to upgrading facilities for means of escape from fire and provisions for persons with disabilities

New section 133AX(3) would allow a territorial authority to grant a building consent without the building complying with the provisions of the building code that relate to means of escape from fire and provisions for persons with disabilities, in certain

limited circumstances. The territorial authority would need to be satisfied that the alteration would contribute towards making the building no longer earthquake-prone.

The territorial authority would also need to be satisfied that complying with either or both of these provisions would be unduly onerous for the building owner in the circumstances. Non-compliance would only be permitted to the extent necessary to achieve the objective of ensuring that a building is no longer earthquake-prone. The building would need to continue to comply with the building code to at least the same extent as it complied before alteration work started.

We are aware of concern that this new section could result in earthquake strengthening being prioritised at the expense of upgrades to a building's means of escape from fire and provisions for persons with disabilities. We are also aware that section 118 of the principal Act requires public buildings to provide adequate facilities for persons with disabilities. We stress that our recommended changes do not set out to discourage these upgrades, with each exemption being granted on a case-by-case basis. Our recommendations recognise that the requirement to upgrade fire and disability access facilities can be prohibitive to earthquake-strengthening work, particularly for owners of historic buildings. We believe our amendments take into account the financial limitations faced by building owners. They do not intend to allow financially capable building owners to circumvent fire and disability upgrade requirements.

We note that the provisions in the bill as introduced were confirmed as consistent with New Zealand's international obligations and the rights and freedoms set out in the Bill of Rights Act 1990. We also note that the Ministry of Business, Innovation and Employment and the Office for Disability Issues recently reviewed the extent to which building regulatory systems meet the needs of the disabled community. Their findings suggest that building designers may not be as informed about the needs of the disabled community as they should be, and a long-term plan is being prepared to address this issue.

Earthquake-prone building register

The earthquake-prone building register is intended for the public to access information about earthquake-prone buildings. Unlike the old provisions in section 275A, clause 35 of the bill, we recommend that the register include only those buildings determined to be earthquake-prone.

We also recommend replacing section 275B with new section 275B, which clarifies that the Official Information Act 1982 would apply to information held in the register that is not already required to be made available for public inspection. New section 275B(3) notes that the chief executive of the Ministry of Business, Innovation and Employment would be able to supply certain information in the earthquake-prone building register to an entity covered under the State Sector Act 1988 if they consider it necessary or desirable.

References to parts of buildings

We recommend that the bill be amended to clarify how the provisions of new Subpart 6A apply to parts of buildings. In the bill as introduced, this was achieved by a single provision (clause 23, new section 133AD), but we believe it would be clearer for each provision to refer to parts of buildings as appropriate. This amendment is not intended to affect the interpretation of other provisions of the principal Act. Therefore, we recommend inserting new clause 4 into Schedule 1AA to preserve the effect that clause 23, section 133AD(2), and clause 14, 123A(3), would have had in the bill as introduced.

Regulations Review Committee advice

We received advice from the Regulations Review Committee to specify the criteria that territorial authorities would apply when granting an exemption from the requirement of this legislation to carry out seismic work. We recommend that clause 37, new section 401C(b), be amended to be more specific about the prescribed characteristics that a building must have before an exemption can be granted (age, construction type, use, level of occupancy, location, and other characteristics).

The Regulations Review Committee questioned why the Act's commencement should be by Order in Council, as stated in clause 2 of the bill. We believe that the circumstances associated with bringing the bill into force are warranted, given that the methodology for identifying earthquake-prone buildings and associated regulations will be technical and time-consuming, and that the earthquake-prone building register will need time to be established before the Act comes into force. The Act would come into force 2 years after Royal assent if not brought into force earlier by Order in Council, as per clause 2(b) of the bill.

We note the Regulations Review Committee's suggestion to add a definition of a moderate earthquake into the bill, rather than leaving it within regulations. We believe that this would be undesirable because the definition is highly technical in nature and because having this definition within this legislation would slow down the response to any new information.

Appendix

Committee process

The Building (Earthquake-prone Buildings) Amendment Bill was referred to the Local Government and Environment Committee of the 50th Parliament on 5 March 2014. The closing date for submissions was 17 April 2014. The committee received and considered 121 submissions from interested groups and individuals. The committee heard 66 oral submissions and held hearings in Wellington, Auckland, Christchurch, and Dunedin.

On 23 June 2015, we released an interim report inviting further submissions on our proposed changes to the bill, with a closing date of 16 July 2015. We received a further 51 submissions from interested groups and individuals, and heard from all 26 submitters who requested to be heard orally.

We received advice from the Ministry of Business, Innovation and Employment, and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in clauses 2, 37, and 38.

Committee membership

Scott Simpson (Chairperson)

Matt Doocey

Paul Foster-Bell

Joanne Hayes

Tutehounuku Korako

Ron Mark

Todd Muller

Eugenie Sage

James Shaw

Su'a William Sio

Dr Megan Woods

Mojo Mathers replaced James Shaw for this item of business.

Hon Clayton Cosgrove replaced Su'a William Sio for this item of business.

Building (Earthquake-prone Buildings) Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Nick Smith

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Government Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Building (Earthquake-prone Buildings) Amendment Act **2013**.

2 Commencement

This Act comes into force on the earlier of—

5

- (a) a date appointed by the Governor-General by Order in Council; and
- (b) the day that is 2 years after the date on which this Act receives the Royal assent.

Part 1**Amendments to principal Act**

10

3 Principal Act

This **Part** amends the Building Act 2004 (the **principal Act**).

4 Section 4 amended (Principles to be applied in performing functions or duties, or exercising powers, under this Act)

In section 4(1)(c), replace “in relation to the grant of waivers or modifications of the building code and the adoption and review of policy on dangerous, earthquake-prone, and insanitary buildings or, as the case may be, dangerous dams” with “under **subpart 6A** of Part 2 (which relates to earthquake-prone buildings) or in relation to the grant of waivers or modifications of the building code or, the adoption and review of policy on dangerous and insanitary buildings or dangerous dams, or the setting of a time frame for completing seismic work on priority buildings”.

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5 New section 5A and cross-heading inserted

After section 5, insert:

Provisions affecting application of amendments to this Act

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5A Provisions affecting application of amendments to this Act

~~**Schedule 1AA** contains application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2014 (see **section 450A**).~~

*Transitional, savings, and related provisions***5A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 7 amended (Interpretation)

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In section 7, insert in their appropriate alphabetical order:

~~**Category 1 heritage building** has the meaning given in **section 133AA**~~
~~**deadline**, in relation to seismic work, has the meaning given in **section 133AA**~~

earthquake-prone building has the meaning given in **section 133AB** 10

earthquake rating has the meaning given in **section 133ABA**

engineering assessment, in relation to a building or a part of a building, means an engineering assessment of the building or part that complies with the requirements of the EPB methodology

EPB exemption notice means an exemption notice issued under **section 133AS** 15

EPB methodology means the methodology for identifying earthquake-prone buildings that is set by the chief executive under **section 133AZ**

EPB notice means an earthquake-prone building notice issued under **section 133AK** 20

EPB register means the register of earthquake-prone buildings established and maintained under **section 273(1)(aab)**

~~**heritage building** means a building registered as a historic place under Part 2 of the Historic Places Act 1993~~

~~**heritage dam** means a dam registered as a historic place under Part 2 of the Historic Places Act 1993~~ 25

heritage building means a building that is included on—

(a) the New Zealand Heritage List/Rāangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or

(b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014 30

heritage dam means a dam that is included on—

(a) the New Zealand Heritage List/Rāangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or 35

- (b) the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014
- high seismic risk** has the meaning given in **section 133ABB**
- low seismic risk** has the meaning given in **section 133ABB** 5
- medium seismic risk** has the meaning given in **section 133ABB**
- ~~outcome notice~~ has the meaning given in ~~section 133AA~~
- priority building** has the meaning given in **section 133AC**
- ~~seismic capacity assessment~~ has the meaning given in ~~section 133AA~~
- seismic capacity register** has the meaning given in **section 133AA** 10
- ~~seismic work~~ has the meaning given in ~~section 133AA~~, in relation to a building or a part of a building that is subject to an EPB notice, means the building work required to ensure that the building or part is no longer earthquake prone
- ~~seismic work notice~~ has the meaning given in ~~section 133AA~~
- 7 Section 11 amended (Role of chief executive)** 15
- (1) After section 11(d), insert:
- (da) monitors, in accordance with **section 169A**, the application and effectiveness of **subpart 6A** of Part 2 (which relates to earthquake-prone buildings); and
- (2) After section 11(i), insert: 20
- (ia) ~~sets a methodology under **section 133AG** for seismic capacity assessments; and~~
- (ia) sets a methodology under **section 133AZ** for identifying earthquake-prone buildings; and
- 7A Section 45 amended (How to apply for building consent)** 25
- In section 45(1)(d), replace “section 240” with “section 219 or 240 (as applicable)”.
- 8 Section 85 amended (Offences relating to carrying out or supervising restricted building work)**
- In section 85(4), after “liable”, insert “on conviction”. 30
- 9 Section 95 amended (Issue of code compliance certificate)**
- In section 95, insert as subsection (2):
- (2) ~~As soon as practicable after a certificate is issued under this section for the construction of a building that is to be included in the seismic capacity register under **section 275A(3)**, the territorial authority in whose district the building~~ 35

~~is situated must record on the seismic capacity register any information that the register is required to contain under that section.~~

9 Section 95 amended (Issue of code compliance certificate)

In section 95(c), replace “section 240” with “section 219 or 240 (as applicable)”.

5

10 Section 112 amended (Alterations to existing buildings)

After section 112(2), insert:

(3) This section is subject to **section 133AX**.

11 Subpart 6 heading in Part 2 amended

In Part 2, in the subpart 6 heading, replace “certain categories of buildings” with “dangerous, affected, and insanitary buildings”.

10

12 Cross-heading above section 121 replaced

Replace the cross-heading above section 121 with:

Interpretation and application

13 Section 122 repealed (Meaning of earthquake-prone building)

Repeal section 122.

15

14 New section 123A inserted (Application of this subpart to parts of buildings)

After section 123, insert:

123A Application of this subpart to parts of buildings

20

(1) If a territorial authority is satisfied that only part of a building is dangerous (within the meaning of section 121) or insanitary (within the meaning of section 123),—

(a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and

25

(b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.

(2) To the extent that a power or function of a territorial authority under this subpart relates to affected buildings,—

30

(a) the territorial authority may exercise the power or perform the function in respect of all or part of an affected building; and

(b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.

- ~~(3) Nothing in this section limits or affects the application of a provision of this Act outside this subpart.~~
- 15 Cross-heading above section 124 amended**
In the cross-heading above section 124, delete “*earthquake-prone*”.
- 16 Section 124 amended (Dangerous, affected, earthquake-prone, or insanitary buildings: powers of territorial authority)** 5
- (1) In the heading to section 124, delete “**earthquake-prone**”.
- (2) In section 124(1), delete “earthquake-prone”.
- (3) Repeal section 124(3).
- 17 Section 125 amended (Requirements for notice requiring building work or restricting entry)** 10
- Replace section 125(2)(e) with:
- (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and 15
- 18 Section 128 amended (Prohibition on using dangerous, affected, earthquake-prone, or insanitary building)**
In the heading to section 128, delete “**earthquake-prone**”.
- 19 Section 128A amended (Offences in relation to dangerous, affected, earthquake-prone, or insanitary buildings)** 20
- In the heading to section 128A, delete “**earthquake-prone**”.
- 20 Section 129 amended (Measures to avoid immediate danger or to fix insanitary conditions)**
In section 129(1)(a), replace “or section 122 or section 123” with “or 123”.
- 21 Cross-heading above section 131 amended** 25
- In the cross-heading above section 131, delete “, *earthquake-prone*”.
- 22 Section 131 amended (Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings)**
- (1) In the heading to section 131, delete “, **earthquake-prone**”.
- (2) In section 131(1), delete “, earthquake-prone”.
- 23 New subpart 6A of Part 2 inserted** 30
- After section 133, insert:

Subpart 6A—Special provisions for earthquake-prone buildings

Interpretation and application
*Application and interpretation***133AA Interpretation**

In this subpart,—

Category 1 heritage building means a building registered as a Category 1 historic place under Part 2 of the Historic Places Act 1993 5

deadline, in relation to seismic work, means the deadline for completing that work as specified in **section 133AO**

outcome notice means a notice, given under **section 133AJ**, of the outcome of a seismic capacity assessment of a building 10

priority building has the meaning given in **section 133AC**

seismic capacity assessment means an assessment, made under **section 133AF**, of the seismic capacity of a building

seismic capacity register means the register established and maintained under **section 273(1)(aab)** 15

seismic work means the building work required to ensure that a building is no longer earthquake prone

seismic work notice means a notice given under **section 133AL** requiring the owner of a building to carry out seismic work on the building.

133AA Buildings to which this subpart applies 20

- (1) This subpart applies to all buildings except the following:
- (a) a building that is used wholly or mainly for residential purposes (*but see subsection (2)*):
 - (b) a farm building (being a shed or other building that is located on a farm and used primarily for farming activities or an ancillary purpose): 25
 - (c) a stand-alone retaining wall (being a retaining wall that is not integral to the structure of a building):
 - (d) a fence:
 - (e) a monument (including a statue), unless the monument is capable of being entered by a person: 30
 - (f) a wharf:
 - (g) a bridge:
 - (h) a tunnel:
 - (i) a storage tank:
 - (j) a building that is a dam: 35
 - (k) a part of a building that is a dam.

- (2) Despite **subsection (1)(a)**, this subpart applies to a building described in that subsection if the building—
- (a) comprises 2 or more storeys; and
 - (b) either—
 - (i) is a hostel, boardinghouse, or other specialised accommodation; or
 - (ii) contains 3 or more household units.

133AB Meaning of earthquake-prone building

- (1) A building or a part of a building is **earthquake prone** for the purposes of this Act if, having regard to its the condition of the building or part and to the ground on which it the building is built, and because of its the construction of the building or part,
- (a) the building or part will have its ultimate capacity exceeded in a moderate earthquake (as defined in regulations); and
 - (b) if the building or part were to collapse in a moderate earthquake, the collapse would be likely to cause—
 - (i) injury or death to persons in or near the building or to persons on any other property or on any other property; or
 - (ii) damage to any other property.
- (2) Whether a building or a part of a building is earthquake prone is determined by the territorial authority in whose district the building is situated: *see* **section 133AJ**.
- (3) For the purpose of **subsection (1)(a)**, **ultimate capacity** and **moderate earthquake** have the meanings given to them by regulations.

Compare: 1991 No 150 s 66

133ABA Meaning of earthquake rating

- (1) In this Act, **earthquake rating**, in relation to a building or a part of a building that a territorial authority has determined is earthquake prone, means the degree to which the building or part meets the requirements of the building code—
- (a) that relate to how a building is likely to perform in an earthquake; and
 - (b) that would be used to design a new building on the same site; and
 - (c) as they apply on the day on which this section comes into force.
- (2) The earthquake rating of a building or a part of a building—
- (a) is determined by a territorial authority in accordance with the EPB methodology (*see* **section 133AJ**); and
 - (b) is specified on the EPB notice issued for the building or part and recorded in the EPB register; and

(c) determines the form of the EPB notice issued for the building or part (see **section 401C(a)**).

(3) An earthquake rating may be expressed as a percentage or a percentage range.

Examples

If a territorial authority determines that a building meets 25% of the requirements of the building code referred to in **subsection (1)**, the earthquake rating of the building is 25%.

If a territorial authority determines that a building meets between 0% and 10% of the requirements of the building code referred in **subsection (1)**, the earthquake rating of the building is the range of 0% to 10%.

133ABB Meaning of low, medium, and high seismic risk

(1) For the purposes of this Act, the area in which a building is located has—

(a) a **low seismic risk** if the area has a Z factor that is less than 0.15; and

(b) a **medium seismic risk** if the area has a Z factor that is greater than or equal to 0.15 and less than 0.3; and

(c) a **high seismic risk** if the area has a Z factor that is greater than or equal to 0.3.

(2) For the purpose of **subsection (1)**, the **Z factor** of an area is the seismic hazard factor that would be used to design a new building on a site in that area in accordance with the following, as they relate to calculating Z factors and as they apply on the day on which this section comes into force:

(a) the building code; and

(b) verification methods; and

(c) standards incorporated by reference into the building code or a verification method.

(3) The seismic risk of an area affects—

(a) the time frame within which a territorial authority must—

(i) apply the EPB methodology to identify buildings or parts of buildings in the area that are potentially earthquake prone (see **section 133AF**); and

(ii) report to the chief executive on its progress towards that objective; and

(b) the deadline for completing seismic work on a building or a part of a building in the area, if it is subject to an EPB notice (see **section 133AL**).

133AC Meaning of priority building

(1) In this subpart, **priority building** has the meaning given in regulations made under **section 401C(a)**.

- (2) If a building is a priority building, a territorial authority—
- (a) ~~must, in accordance with the methodology set under **section 133AG**, prioritise its assessment of the building's seismic capacity; and~~
 - (b) ~~may, in setting a time frame under **section 133AZ**, shorten the time frame within which seismic work on the building must be completed.~~

133AC Meaning of priority building

- (1) In this subpart, **priority building** means any of the following that are located in an area of medium or high seismic risk:
- (a) a hospital building that is likely to be needed in an emergency (within the meaning of the Civil Defence Emergency Management Act 2002) to provide—
 - (i) emergency medical services; or
 - (ii) ancillary services that are essential for the provision of emergency medical services:
 - (b) a building that is likely to be needed in an emergency for use as an emergency shelter or emergency centre:
 - (c) a building that is used to provide emergency response services (for example, policing, fire, ambulance, or rescue services):
 - (d) a building that is regularly occupied by at least 20 people and that is used as any of the following:
 - (i) an early childhood education and care centre licensed under Part 26 of the Education Act 1989:
 - (ii) a registered school or an integrated school (within the meaning of the Education Act 1989):
 - (iii) a private training establishment registered under Part 18 of the Education Act 1989:
 - (iv) a tertiary institution established under section 162 of the Education Act 1989:
 - (e) any part of an unreinforced masonry building that could—
 - (i) fall from the building in an earthquake (for example, a parapet, an external wall, or a veranda); and
 - (ii) fall onto any part of a public road, footpath, or other thoroughfare that a territorial authority has identified under **section 133AD(2)(a)**:
 - (f) a building that a territorial authority has identified under **section 133AD(2)(b)** as having the potential to impede a transport route of strategic importance (in terms of an emergency response) if the building were to collapse in an earthquake.

- (2) For the purposes of **subsection (1)(a) and (b)**, the likelihood of a building being needed in an emergency for a particular purpose must be assessed having regard to—
- (a) any national civil defence emergency management plan made under section 39 of the Civil Defence Emergency Management Act 2002; and 5
 - (b) the civil defence emergency management group plan approved under section 48 of the Civil Defence Emergency Management Act 2002 that covers the district in which the building is situated.
- (3) If only part of a building meets the criteria set out in **subsection (1)**, only that part of the building is a priority building. 10
- (4) Whether a building is a priority building affects—
- (a) the deadline by which a territorial authority must identify whether the building or a part of the building is potentially earthquake prone (*see section 133AF*); and
 - (b) the deadline for completing seismic work on the building or a part of the building, if it is subject to an EPB notice (*see section 133AL*). 15

133AD Role of territorial authority in identifying certain priority buildings

- (1) This section applies to a territorial authority whose district includes any area of medium or high seismic risk.
- (2) The territorial authority,— 20
- (a) for the purpose of **section 133AC(1)(e)** (prioritising parts of unreinforced masonry buildings), must use the special consultative procedure in section 83 of the Local Government Act 2002 to identify any part of a public road, footpath, or other thoroughfare in an area of medium or high seismic risk— 25
 - (i) onto which parts of an unreinforced masonry building could fall in an earthquake; and
 - (ii) that has sufficient vehicle or pedestrian traffic to warrant prioritising the identification and remediation of those parts of unreinforced masonry buildings; and 30
 - (b) for the purpose of **section 133AC(1)(f)** (prioritising buildings that could impede a strategic transport route),—
 - (i) may, in its discretion, initiate the special consultative procedure in section 83 of the Local Government Act 2002 to identify buildings for that purpose; but 35
 - (ii) must not identify buildings for that purpose other than in accordance with the special consultative procedure.

- (3) ~~However, a territorial authority is not required to act under **subsection (2)(a)** if there is no reasonable prospect of any thoroughfare in its district satisfying the criteria set out in **subsection (2)(a)(i) and (ii)**.~~
- (4) ~~If a territorial authority is required by **subsection (2)(a)** or decides under **subsection (2)(b)** to use the special consultative procedure in section 83 of the Local Government Act 2002, it must use the procedure within a time frame that enables the territorial authority to meet the applicable time frame under **section 133AF(4)** for identifying potentially earthquake-prone priority buildings in its district.~~ 5
- 133AD Application of this subpart to residential buildings** 10
- ~~This subpart does not apply to a building that is used wholly or mainly for residential purposes, unless the building—~~
- ~~(a) comprises 2 or more storeys; and~~
- ~~(b) contains 3 or more household units.~~
- 133AE Application of this subpart to parts of buildings** 15
- (1) ~~If a territorial authority is satisfied that only part of a building is earthquake prone (within the meaning of **section 133AB**),—~~
- ~~(a) the territorial authority may exercise any of its powers or perform any of its functions under this subpart in respect of that part of the building rather than the whole building; and~~ 20
- ~~(b) for the purpose of **paragraph (a)**, this subpart applies with any necessary modifications.~~
- (2) ~~Nothing in this section limits or affects the application of a provision of this Act outside this subpart.~~
- Seismic capacity assessments* 25
- 133AF Territorial authority must assess seismic capacity of existing buildings**
- (1) ~~A territorial authority must complete seismic capacity assessments of existing buildings within the district of the territorial authority.~~
- (2) ~~A seismic capacity assessment—~~
- ~~(a) must be carried out using the methodology set under **section 133AG**; and~~ 30
- ~~(b) must be completed not later than 5 years after the day on which this section comes into force.~~
- (3) ~~For the purpose of **subsection (1)**, a building is an **existing building** if,—~~
- ~~(a) before the day on which this section comes into force, a certificate is issued under section 95 for the construction of the building; or~~ 35
- ~~(b) the building was constructed before 31 March 2005.~~

133AG Chief executive must set methodology for seismic capacity assessments

- (1) ~~The chief executive must set a methodology for territorial authorities to use for the purpose of carrying out seismic capacity assessments under **section 133AF**.~~
- (2) ~~The methodology must—~~ 5
- ~~(a) specify how a territorial authority is to assess a building's seismic capacity; and~~
 - ~~(b) specify how a territorial authority is to prioritise the assessment of buildings within its district, with particular reference to priority buildings; and~~
 - ~~(c) specify engineering tests from which alternative evidence of a building's seismic capacity may be derived (*see **section 133AR***); and~~ 10
 - ~~(d) specify how a territorial authority is to evaluate, as evidence of a building's seismic capacity, engineering tests completed before the day on which this section comes into force.~~
- (3) ~~The methodology may incorporate material by reference in accordance with sections 405 to 413.~~ 15
- (4) ~~The chief executive may—~~
- ~~(a) set the methodology in 1 or more stages; and~~
 - ~~(b) amend or replace the methodology at any time.~~
- (5) ~~If the chief executive amends or replaces the methodology, **sections 133AH and 133AI** apply in respect of that amendment or replacement with any necessary modifications.~~ 20

133AH Consultation requirements for setting methodology

- (1) ~~Before setting a methodology under **section 133AG**, the chief executive must do everything reasonably practicable on his or her part to consult territorial authorities and any other persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the setting of the methodology.~~ 25
- (2) ~~The process for consultation should, to the extent practicable in the circumstances, include—~~ 30
- ~~(a) giving adequate and appropriate notice of the intention to set the methodology; and~~
 - ~~(b) giving a reasonable opportunity for territorial authorities and other interested persons to make submissions; and~~
 - ~~(c) giving adequate and appropriate consideration to submissions.~~ 35
- (3) ~~A failure to comply with this section does not affect the validity of a methodology set under **section 133AG**.~~

133AI Notification and availability of methodology

- (1) ~~As soon as practicable after the chief executive has set a methodology under **section 133AG**, the chief executive must—~~
- ~~(a) notify territorial authorities that the methodology has been set; and~~
 - ~~(b) publicly notify that the methodology has been set; and~~ 5
 - ~~(c) make the methodology available on the Internet in an electronic form that is publicly accessible at all reasonable times; and~~
 - ~~(d) make the methodology available in printed form for purchase on request by members of the public.~~
- (2) ~~A methodology set under **section 133AG** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 10

*What territorial authority must do after seismic capacity assessment***133AJ Territorial authority must notify building owner of outcome of assessment** 15

- (1) ~~A territorial authority must, as soon as practicable after it has assessed the seismic capacity of a building, give the owner of the building a written notice of the outcome of the assessment (an **outcome notice**).~~
- (2) ~~An outcome notice must be dated and must—~~
- ~~(a) state whether the building is earthquake prone; and~~ 20
 - ~~(b) if the building is earthquake prone,—~~
 - ~~(i) state that the building requires seismic work; and~~
 - ~~(ii) state that the owner of the building may apply under **section 133AS** for an exemption from the requirement to carry out seismic work; and~~ 25
 - ~~(iii) if the building is a Category 1 heritage building, state that the owner of the building may apply under **section 133AT** for an extension of time to complete seismic work; and~~
 - ~~(c) state that the owner of the building may provide alternative evidence of the building's seismic capacity under **section 133AR**; and~~ 30
 - ~~(d) explain the time frame (as set out in **section 133AM**) within which the territorial authority will—~~
 - ~~(i) record the outcome of the assessment on the seismic capacity register; and~~
 - ~~(ii) if the building is earthquake prone, issue a seismic work notice for the building.~~ 35

~~133AK Territorial authority must record outcome of assessment on seismic capacity register~~

~~A territorial authority must, within the time frame specified in **section 133AM**, record on the seismic capacity register the outcome of a seismic capacity assessment and any related information that the register is required to contain under **section 275A**.~~

5

~~133AL Earthquake-prone buildings: territorial authority must issue seismic work notice~~

(1) ~~If a territorial authority gives an outcome notice stating that a building is earthquake prone, the territorial authority must, within the time frame specified in **section 133AM**, issue a seismic work notice for the building in accordance with **section 133AN**.~~

10

(2) ~~However, **subsection (1)** does not apply if an exemption from the requirement to carry out seismic work on the building is in force under **section 133AS**.~~

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~~133AM Time frame for territorial authority to act under sections 133AK and 133AL~~

(1) ~~This section sets out the time frame within which a territorial authority must act under **section 133AK** and, if applicable, **section 133AL**.~~

(2) ~~The territorial authority must act as soon as practicable after the expiry of the period of 20 working days after the date of the outcome notice (the **notice period**), unless **subsection (3) or (4)** applies.~~

20

(3) ~~If the owner of the building notifies the territorial authority before the expiry of the notice period that the owner intends to provide alternative evidence of the building's seismic capacity (*see* **section 133AR**), the territorial authority must act—~~

25

(a) ~~as soon as practicable after the territorial authority has considered the alternative evidence; or~~

(b) ~~if the owner does not provide alternative evidence within a reasonable time, as soon as practicable after the expiry of that reasonable time.~~

30

(4) ~~If the owner of the building applies before the expiry of the notice period for an exemption under **section 133AS**, the territorial authority must act as soon as practicable after it has made a decision on the application.~~

~~133AN Requirements for seismic work notice~~

(1) ~~A seismic work notice for a building must—~~

35

(a) ~~be in writing; and~~

(b) ~~state that the building is earthquake prone; and~~

- (e) ~~state that the owner of the building is required to carry out building work to ensure that the building is no longer earthquake prone (**seismic work**); and~~
- (d) ~~state the deadline for completing the seismic work; and~~
- (e) ~~be attached to the building in accordance with **subsection (4)**.~~ 5
- (2) ~~A copy of the notice must be given to—~~
- (a) ~~the owner of the building; and~~
- (b) ~~an occupier of the building; and~~
- (e) ~~every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and~~ 10
- (d) ~~every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and~~
- (e) ~~every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and~~ 15
- (f) ~~the New Zealand Historic Places Trust, if the building is a heritage building.~~
- (3) ~~A notice attached to a building is not invalid by reason only that a copy of it has not been given to any or all of the persons referred to in **subsection (2)**.~~ 20
- (4) ~~As soon as practicable after issuing a seismic work notice for a building, a territorial authority must attach, or require the owner of the building to attach, the notice in a prominent place on or adjacent to the building.~~
- (5) ~~If the seismic work notice ceases to be attached in a prominent place on or adjacent to the building, or becomes illegible,—~~ 25
- (a) ~~the owner of the building must notify the territorial authority of that fact; and~~
- (b) ~~the territorial authority must issue a replacement notice; and~~
- (e) ~~**subsections (1) and (4)** apply to that replacement notice.~~ 30
- (6) ~~However, **subsection (5)** does not apply if the removal of the notice from the building is authorised by or under this subpart.~~
- 133A0 Deadline for completing seismic work**
- (1) ~~The owner of an earthquake-prone building must complete seismic work on the building on or before the deadline specified in this section.~~ 35
- (2) ~~For a priority building (subject to **subsection (4)**), the deadline is the earlier of—~~
- (a) ~~the expiry of 15 years after the date of the outcome notice; and~~

- (b) the expiry of the period stated for that building or class of building in the time frame set by the territorial authority under **section 133AZ**, as measured from the date of the outcome notice.
- (3) For a Category 1 heritage building (subject to **subsection (4)**), the deadline is the later of— 5
- (a) the expiry of 15 years after the date of the outcome notice; and
- (b) the expiry of the period of an extension in force under **section 133AT** (if any), as measured from the expiry of 15 years after the date of the outcome notice.
- (4) For a building that is both a priority building and a Category 1 heritage building, the deadline is the later of— 10
- (a) the deadline calculated under **subsection (2)**; and
- (b) the expiry of the period of an extension in force under **section 133AT** (if any), as measured from the deadline calculated under **subsection (2)**. 15
- (5) For any other building, the deadline is the expiry of 15 years after the date of the outcome notice.
- 133AP Seismic work notice to be removed when building no longer earthquake prone**
- (1) This section applies if— 20
- (a) a territorial authority has issued a seismic work notice for a building; and
- (b) the territorial authority is satisfied that the building is no longer earthquake prone.
- (2) The territorial authority must remove, or authorise the owner of the building to remove, any seismic work notice attached to the building. 25
- 133AQ What territorial authority must do if definition of moderate earthquake amended**
- (1) This section applies if the definition of moderate earthquake, as defined in regulations for the purpose of **section 133AB** (Meaning of earthquake-prone building), is amended or replaced. 30
- (2) As soon as is reasonably practicable after the definition is amended or replaced, a territorial authority must—
- (a) consider whether the outcome of any seismic capacity assessment completed by the territorial authority before the amendment or replacement was made (**existing outcome**) is likely to be incorrect as a result of the amendment or replacement; and 35
- (b) if the territorial authority considers that an existing outcome is likely to be incorrect as a result of the amendment or replacement, reassess the seismic capacity of the building concerned.

*What building owner may do after seismic capacity assessment***133AR Owner may provide alternative evidence of building's seismic capacity**

- (1) The owner of a building may provide to the territorial authority alternative evidence of the building's seismic capacity.
- (2) Alternative evidence must be derived from an engineering test specified in the methodology set under **section 133AG**. 5
- (3) If a territorial authority considers, in accordance with the methodology, that the alternative evidence changes the outcome of the seismic capacity assessment, the territorial authority must—
- (a) give the owner of the building a revised outcome notice; and 10
- (b) comply with **section 133AK or 133AU** (as applicable); and
- (c) if the building is not earthquake prone, remove, or authorise the owner of the building to remove, any seismic work notice already attached to the building; and
- (d) if the building is earthquake prone, issue a seismic work notice in accordance with **section 133AN**. 15

*Identifying earthquake-prone buildings***133AF Territorial authority must identify potentially earthquake-prone buildings**

- (1) Within the applicable time frame under **subsection (4)**, a territorial authority— 20
- (a) must apply the EPB methodology to buildings in its district to identify buildings or parts of buildings that are potentially earthquake prone; and
- (b) may, if it has reason to suspect that a building or a part of a building in its district may be earthquake prone, identify the building or part as potentially earthquake prone, whether or not by reference to any aspect of the EPB methodology. 25
- (2) Until the end of the applicable time frame, a territorial authority must report to the chief executive on its progress towards identifying buildings or parts of buildings within its district that are potentially earthquake prone as follows: 30
- (a) if the whole district is of low seismic risk, every 3 years; or
- (b) if the district includes an area of medium seismic risk, but no areas of high seismic risk, every 2 years; or
- (c) if the district includes an area of high seismic risk, every year.
- (3) After the end of the applicable time frame, a territorial authority may, if it has reason to suspect that a building or a part of a building in its district may be earthquake prone, identify the building or part as potentially earthquake prone, whether or not by reference to the EPB methodology. 35

- (4) The **applicable time frame** is the period commencing on the day on which this section comes into force (the **commencement date**) and ending on,—
- (a) for each area of low seismic risk, the expiry of 15 years after the commencement date; and
 - (b) for each area of medium seismic risk, the expiry of the following period after the commencement date:
 - (i) 5 years for priority buildings; and
 - (ii) 10 years for other buildings; and
 - (c) for each area of high seismic risk, the expiry of the following period after the commencement date:
 - (i) 2 years and 6 months for priority buildings; and
 - (ii) 5 years for other buildings.

133AG Territorial authority must request engineering assessment of potentially earthquake-prone buildings

- (1) If a territorial authority identifies a building or a part of a building as potentially earthquake prone, the territorial authority must ask the owner of the building or part to provide an engineering assessment of the building or part.
- (2) The request must—
- (a) be in writing; and
 - (b) be dated; and
 - (c) identify the building or the part of a building that the territorial authority has identified as potentially earthquake prone; and
 - (d) explain the basis on which the territorial authority has identified the building or the part of the building as potentially earthquake prone; and
 - (e) explain the owner’s obligations under **section 133AH**; and
 - (f) state whether the building is a priority building; and
 - (g) state the due date for the engineering assessment, which must be 12 months after the date of the request; and
 - (h) explain that if the owner is not reasonably able to provide an engineering assessment by the due date (for example, because of a shortage of people qualified to conduct engineering assessments), the owner may apply under **section 133AI** for an extension of up to 12 months; and
 - (i) explain the consequences of the owner failing to provide the engineering assessment by the due date; and
 - (j) explain what will happen if the territorial authority determines that the building or the part of the building is earthquake prone.

133AH Obligations of owners on receiving request for engineering assessment

- (1) If a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**, the owner must, by the due date (which may be extended under **section 133AI**),— 5
- (a) provide to the territorial authority an engineering assessment of the building or part that complies with the requirements of the EPB methodology; or
- (b) provide to the territorial authority evidence of a factual error in the basis on which the territorial authority has identified the building or part as potentially earthquake prone; or 10
- (c) notify the territorial authority that the owner does not intend to provide an engineering assessment.
- (2) If a territorial authority is satisfied that it has incorrectly identified a building or a part of a building as potentially earthquake prone, the territorial authority must cancel the request for an engineering assessment and give the owner of the building or part written notice of that fact. 15
- (3) If an owner fails to comply with **subsection (1)**, or notifies the territorial authority under **subsection (1)(c)** that the owner does not intend to provide an engineering assessment of a building or a part of a building,— 20
- (a) the territorial authority must, under **section 133AJ(4)**, proceed as if it had determined the building or part to be earthquake prone; and
- (b) the EPB notice issued for the building or part must, under **section 133AK(4)**, be in the form that is prescribed for the category of earthquake ratings that includes the lowest earthquake ratings; and 25
- (c) the territorial authority may obtain an engineering assessment of the building or part and recover, as a debt due from the owner of the building or part, the costs of doing so.

133AI Owners may apply for extension of time to provide engineering assessment 30

- (1) This section applies if—
- (a) a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**; and
- (b) the owner is unable to provide an engineering assessment by the due date (for example, because of a shortage of people qualified to conduct engineering assessments). 35
- (2) The owner may, no later than 2 months before the due date, apply to the territorial authority for an extension of up to 12 months from the due date.
- (3) The territorial authority must deal with the application promptly, by— 40

- (a) granting the extension and notifying the owner in writing of the revised due date for the engineering assessment; or
- (b) notifying the owner in writing that the extension has not been granted.
- (4) A territorial authority must not extend the due date for an engineering assessment more than once.

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133AJ Territorial authority must determine whether building is earthquake prone

- (1) If a territorial authority receives an engineering assessment of a building or a part of a building in response to a request made under **section 133AG**, the territorial authority must determine, in accordance with the EPB methodology,—
- (a) whether the building or part is earthquake prone; and
- (b) if the building or part is earthquake prone, its earthquake rating.
- (2) If the territorial authority determines that the building or part is not earthquake prone, the territorial authority must promptly notify the owner in writing of its decision.
- (3) If the territorial authority determines that the building or part is earthquake prone, the territorial authority must promptly—
- (a) issue an EPB notice for the building or part under **section 133AK**; and
- (b) record the details of the decision in the EPB register and update other information in the EPB register as necessary.
- (4) If a territorial authority asks the owner of a building or a part of a building to provide an engineering assessment of the building or part under **section 133AG**, and either does not receive it by the due date or is notified that the owner does not intend to provide it by the due date,—
- (a) the territorial authority—
- (i) must proceed as if it had determined the building or part to be earthquake prone; and
- (ii) need not determine the earthquake rating of the building or part; and
- (b) this Act applies as if the territorial authority had determined the building or part to be earthquake prone.

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Remediation of earthquake-prone buildings

133AK Territorial authority must issue EPB notice for earthquake-prone buildings

- (1) This section applies if a territorial authority makes any of the following decisions:
- (a) determining under **section 133AJ or 133AZC** or **clause 2 of Schedule 1AA** that a building or a part of a building is earthquake prone; or

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- (b) revoking an exemption under **section 133AS**; or
- (c) revoking an extension under **section 133AT**; or
- (d) determining under **section 133ATB or 133AZC** that the earthquake rating of a building or a part of a building that is subject to an EPB notice is different from the earthquake rating (if any) of the building or part that is stated in the notice or the EPB register. 5
- (2) The territorial authority must promptly issue an EPB notice for the building or the part of the building, which must—
- (a) be dated; and
- (b) be in the prescribed form; and 10
- (c) identify the building or the part of a building determined to be earthquake prone; and
- (d) specify whether the building or part is a priority building; and
- (e) specify the earthquake rating of the building or part (unless this has not been determined: *see* **section 133AJ(4)** and **clause 2 of Schedule 1AA**); and 15
- (f) state that the owner of the building or part is required to carry out building work to ensure that the building or part is no longer earthquake prone (**seismic work**); and
- (g) state the deadline for completing seismic work (*see* **section 133AL**); and 20
- (h) state that the owner of the building or part may apply under **section 133AS** for an exemption from the requirement to carry out seismic work; and
- (i) if the building is a heritage building to which **section 133AT** applies, state that the owner of the building or part may apply under that section for an extension of time to complete seismic work; and 25
- (j) state that the owner is not required to complete seismic work if the territorial authority determines or is satisfied, in accordance with **section 133ATB**, that the building or part is not earthquake prone. 30
- (3) If the earthquake rating of a building or a part of a building is a percentage range that spans more than 1 prescribed category of earthquake ratings, the notice issued for the building or part must be in the form prescribed for the category that includes the lowest point in the percentage range.
- (4) If the territorial authority is proceeding under **section 133AJ(4)** as if it had determined a building or a part of a building to be earthquake prone (because the owner has not provided an engineering assessment),— 35
- (a) the notice must be in the form prescribed for the category of earthquake ratings that includes the lowest earthquake ratings (*see* **section 401C(a)**); and 40

- (b) the notice must state—
- (i) that the territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had; and
 - (ii) that the earthquake rating of the building or part has not been determined. 5
- (5) The territorial authority must give a copy of the notice to—
- (a) the owner of the building or the part of the building; and
 - (b) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and 10
 - (c) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (d) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the building or the land on which the building is situated; and 15
 - (e) Heritage New Zealand Pouhere Taonga, if the building is a heritage building.
- (6) However, the notice is not invalid because a copy of it has not been given to any or all of the persons referred to in **subsection (5)**. 20

133AL Deadline for completing seismic work

- (1) The owner of a building or a part of a building that is subject to an EPB notice must complete seismic work on the building or part on or before the deadline specified in this section.
- (2) The deadline is the expiry of whichever of the following periods, as measured from the date of the first EPB notice issued for the building or the part of the building (rather than any replacement EPB notice), is applicable: 25
 - (a) in an area of low seismic risk, 35 years for any building; and
 - (b) in an area of medium seismic risk, 12 years and 6 months for a priority building and 25 years for any other building; and 30
 - (c) in an area of high seismic risk, 7 years and 6 months for a priority building and 15 years for any other building.
- (3) However, if the building is a heritage building for which an extension is granted under **section 133AT**, the deadline is the expiry of the period of the extension, as measured from the deadline that would apply under **subsection (2)** if no extension were granted. 35
- (4) To avoid doubt, seismic work may include the demolition of a building or part of a building.

133AS Owner may apply for exemption from requirement to carry out seismic work

- (1) ~~The owner of a building~~ The owner of a building or a part of a building that is subject to an EPB notice may apply to a territorial authority for an exemption from the requirement to carry out seismic work on the building or part. 5
- (2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.
- (3) ~~If the territorial authority is satisfied that the building meets the criteria specified in regulations made under **section 401C(b)**, the territorial authority may grant an exemption by issuing an exemption notice.~~ 10
- (3) The territorial authority must deal with the application promptly, by doing one of the following:
- (a) if the territorial authority is satisfied that the building or the part of the building has the prescribed characteristics (see **section 401C(b)**),—
- (i) granting the exemption and issuing an EPB exemption notice; and 15
- (ii) recording the details of the exemption in the EPB register and updating other information in the EPB register as necessary; or
- (b) notifying the owner in writing that the exemption has not been granted.
- (4) An EPB exemption notice must—
- (a) ~~state that the building is earthquake prone~~ identify the building or the part of the building that is subject to an EPB notice; and 20
- (b) state that the owner of the building or the part of the building is exempt from the requirement to carry out seismic work on the building or part; and
- (c) give the territorial authority's reasons for granting the exemption. 25
- (5) ~~As soon as practicable after issuing an exemption notice, a territorial authority must—~~
- (a) ~~attach, or require the owner of the building to attach, the exemption notice in a prominent place on or adjacent to the building; and~~
- (b) ~~remove, or authorise the owner of the building to remove, any seismic work notice already attached to the building.~~ 30
- (6) ~~If the exemption notice ceases to be attached in a prominent place on or adjacent to the building, or becomes illegible,—~~
- (a) the owner of the building must notify the territorial authority of that fact; and
- (b) the territorial authority must issue a replacement notice; and
- (c) **subsections (4) and (5)** apply to that replacement notice. 35
- (7) However, **subsection (6)** does not apply if the removal of the notice is authorised by or under this subpart.

- (8) A territorial authority may, ~~but need not,~~ review an exemption at any time, and may revoke it if satisfied that the building no longer ~~meets the criteria~~ has the prescribed characteristics.
- (9) An exemption stays in force until the territorial authority revokes it.
- (10) As soon as practicable after revoking an exemption, a territorial authority must—
- (a) ~~issue a seismic work notice in accordance with **section 133AN**;~~ and
 - (b) ~~remove, or require the owner of the building to remove, any exemption notice already attached to the building.~~
 - (a) reissue an EPB notice under **section 133AK** for the building or the part of the building that is earthquake prone; and
 - (b) record the details of the revocation in the EPB register and update other information in the EPB register as necessary.
- 133AT ~~Owner of Category 1~~ Owners of certain heritage buildings may apply for extension of time to complete seismic work**
- (1AA) This section applies to a building if—
- (a) the building or a part of the building is subject to an EPB notice; and
 - (b) the building is—
 - (i) included as a Category 1 historic place on the New Zealand Heritage List/Rārangī Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
 - (ii) included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.
- (1) ~~The owner of a Category 1 heritage building~~ of the building or the part of the building (the **owner**) may apply to the territorial authority for an extension of time to complete seismic work on the building or part.
- (2) An application must be in writing and must be accompanied by any fee imposed by the territorial authority under section 219.
- (3) The territorial authority may, by notice in writing to the owner ~~of the building,~~ extend by up to 10 years the deadline for completing seismic work ~~on the building that applies under **section 133AL(2)**.~~
- (4) If the territorial authority grants an extension, the owner ~~of the building~~ must—
- (a) take all reasonably practicable steps to manage or reduce the risks associated with the building or the part of the building being earthquake prone; and
 - (b) comply with any conditions imposed by the territorial authority for the purpose of managing or reducing the risks referred to in **paragraph (a)**.

- (5) If the owner of a building fails to comply with **subsection (4)**, the territorial authority may revoke the extension.
- (6) As soon as practicable after granting or revoking an extension, a territorial authority must—
- (a) ~~issue a seismic work notice in accordance with **section 133AN**; and~~ 5
 - (b) ~~remove, or require the owner of the building to remove, from the building any seismic work notice already attached to the building.~~
 - (a) reissue an EPB notice under **section 133AK** for the building or the part of the building; and
 - (b) record the details of the extension or revocation in the EPB register and update other information in the EPB register as necessary. 10

133ATA EPB notices and EPB exemption notices to be attached to earthquake-prone buildings

- (1) As soon as practicable after issuing an EPB notice or an EPB exemption notice for a building or a part of a building, the territorial authority must— 15
- (a) attach, or require the owner of the building or part to attach, the notice in a prominent place on or adjacent to the building; and
 - (b) remove, or authorise the owner of the building or part to remove, any superseded EPB notice or EPB exemption notice that is attached on or adjacent to the building. 20
- (2) If an EPB notice or an EPB exemption notice ceases to be attached in a prominent place on or adjacent to a building, or becomes illegible,—
- (a) the owner of the building or the part of the building to which the notice relates must notify the territorial authority of that fact; and
 - (b) the territorial authority must issue a replacement notice; and 25
 - (c) **subsection (1)** applies to the replacement notice.
- (3) **Subsection (2)** does not apply if the removal of the notice is authorised by or under this subpart.

133ATB Territorial authority may assess information relating to earthquake-prone building status at any time 30

- (1) This section applies if, at any time,—
- (a) the owner of a building or a part of a building sends to the territorial authority an engineering assessment of the building or part (whether or not the building or part is already subject to an EPB notice); or
 - (b) a territorial authority is satisfied, on the basis of evidence other than an engineering assessment, that a building or a part of a building that is subject to an EPB notice is not earthquake prone. 35

- (2) As soon as practicable after receiving an engineering assessment under this section for a building or a part of a building, the territorial authority must determine, in accordance with the EPB methodology,—
- (a) whether the building or part is earthquake prone; and
 - (b) if the building or part is earthquake prone, its earthquake rating. 5
- (3) If the territorial authority determines or is satisfied that the building or part is not earthquake prone, the territorial authority must promptly—
- (a) notify the owner in writing of its decision; and
 - (b) if the building or part is already subject to an EPB notice,—
 - (i) remove the building from the EPB register; and 10
 - (ii) remove, or authorise the owner of the building or part to remove, any EPB notice or EPB exemption notice attached on or adjacent to the building.
- (4) If the territorial authority determines that the building or part is earthquake prone, the territorial authority must promptly— 15
- (a) notify the owner in writing of its decision; and
 - (b) if the building or part is not already subject to an EPB notice, issue an EPB notice for the building or part under **section 133AK**; and
 - (c) if the building or part is already subject to an EPB notice,—
 - (i) if the earthquake rating has changed, reissue an EPB notice under **section 133AK** for the building or part; and 20
 - (ii) if the earthquake rating has not changed, notify the owner in writing of that fact; and
 - (d) record the details of the decision in the EPB register and update other information in the EPB register as necessary. 25

~~133AU Territorial authority must update seismic capacity register as necessary~~

- (1) ~~This section applies if, at any time after recording information on the seismic capacity register under **section 133AK**, a territorial authority—~~
- (a) ~~considers that alternative evidence provided under **section 133AR** changes the outcome of a seismic capacity assessment; or~~ 30
 - (b) ~~grants or revokes an exemption under **section 133AS** or an extension under **section 133AT**; or~~
 - (c) ~~is satisfied that a building is no longer earthquake prone; or~~
 - (d) ~~becomes aware that the seismic capacity register does not correctly record the information that the register is required to contain under **section 275A**.~~ 35

- (2) ~~If this section applies, the territorial authority must update the seismic capacity register so that it correctly records the information that the register is required to contain under **section 275A**.~~

Powers of territorial authorities in respect of earthquake-prone buildings

133AV Territorial authority may impose safety requirements

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- (1) ~~If a territorial authority is satisfied~~ determines that a building or a part of a building in its district is earthquake prone, the territorial authority may do ~~either or both~~ any or all of the following:

- (a) put up a hoarding or fence to prevent people from approaching the building or part nearer than is safe:
- (b) attach in a prominent place, on or adjacent to the building or part, a notice that warns people not to approach the building or part:
- (c) issue a notice that complies with **subsection (1A)** restricting entry to the building or part for particular purposes or restricting entry to particular persons or groups of persons.

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- (1A) A notice issued under **subsection (1)(c)**—

- (a) must be in writing; and
- (b) must be fixed to the building in question; and
- (c) must be given in the form of a copy to the persons listed in **section 133AK(5)**; and
- (d) may be issued for a period of up to 30 days; and
- (e) may be reissued, but not more than once, for a further period of up to 30 days.

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- (1B) However, a notice issued under **subsection (1)(c)**, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons listed in **section 133AK(5)**.

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- (2) ~~If, in relation to a building or a part of a building, a territorial authority has put up a hoarding or fence or attached a warning notice~~ notice under **subsection (1)(b) or (c)**, no person may, other than in accordance with the terms of a notice issued under **subsection (1)(c)**,—

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- (a) use or occupy the building or part; or
- (b) permit another person to use or occupy the building or part.

133AW Territorial authority may carry out seismic work

- (1) ~~This section applies if seismic work on an earthquake-prone building~~ a building or a part of a building that is subject to an EPB notice is not completed by the deadline that applies under **section 133AL**, or is not proceeding with reasonable speed in the light of that deadline.

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- (2) The territorial authority may apply to a District Court for an order authorising the territorial authority to carry out seismic work on the building or the part of the building.
 - (3) Before the territorial authority applies to a District Court under **subsection (2)**, the territorial authority must give the owner of the building or the part of the building not less than 10 days' written notice of its intention to do so. 5
 - (4) If a territorial authority carries out seismic work on a building or a part of a building under the authority of an order made under **subsection (2)**,—
 - (a) the owner of the building or part is liable for the costs of the work; and
 - (b) the territorial authority may recover those costs from the owner; and 10
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.
 - (5) Seismic work authorised to be done under this section may include the demolition of a building or part of a building. 15
- Compare: 1991 No 150 s 65(4), (5)

~~133AX Territorial authority may grant building consent for earthquake-prone building despite section 112(1)~~

~~Despite section 112(1), a territorial authority may grant a building consent for the alteration of a building if the territorial authority is satisfied that—~~

- ~~(a) the alteration is for the purpose of ensuring that the building is no longer earthquake prone; and 20~~
- ~~(b) after the alteration, the building will continue to comply with provisions of the building code to at least the same extent as before the alteration; and~~
- ~~(c) the territorial authority is satisfied that— 25~~
 - ~~(i) the alteration meets criteria prescribed under **section 401C(e)** (if any); and~~
 - ~~(ii) ensuring that the building is no longer earthquake prone outweighs any detriment that is likely to arise as a result of the building not complying as nearly as is reasonably practicable with the provisions of the building code that relate to— 30~~
 - ~~(A) means of escape from fire; and~~
 - ~~(B) access and facilities for persons with disabilities (if this is a requirement in terms of section 118).~~

133AX Alterations to buildings subject to EPB notice 35

- (1) This section applies instead of section 112 in relation to an application for a building consent for the alteration of a building or a part of a building that is subject to an EPB notice.

- (2) A building consent authority must not grant a building consent for the alteration of the building or part unless the building consent authority is satisfied that,—
- (a) after the alteration, the building will comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to— 5
- (i) means of escape from fire; and
- (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
- (b) after the alteration, the building will,—
- (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions; or 10
- (ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply; and 15
- (c) in the case of a substantial alteration, the alteration includes the necessary seismic work. An alteration of a building is a **substantial alteration** if the territorial authority is satisfied that the alteration meets criteria prescribed under **section 401C(ba)**.
- (3) Despite **subsection (2)(a)**, a territorial authority may, by written notice to the owner of the building or part, specify 1 or more of the provisions of the building code referred to in **subsection (2)(a)** and allow the alteration of the building or part without the building complying with the specified provisions if the territorial authority is satisfied that— 20
- (a) the alteration includes the necessary seismic work; and 25
- (b) if the building were required to comply with the specified provisions, it would be unduly onerous for the owner in the circumstances; and
- (c) the permitted non-compliance with the specified provisions is no more than is reasonably necessary in the light of the objective of ensuring that the building or part is no longer earthquake prone; and 30
- (d) after the alteration, the building will continue to comply with the specified provisions, and other provisions of the building code, to at least the same extent as it complied with those provisions immediately before the building work began.
- (4) When making the assessments required by **subsection (3)(b) and (c)**, the territorial authority must take into account the matters (if any) prescribed under **section 401C(c)**. 35

*Offences***133AY Offences in relation to earthquake-prone buildings***Failure to complete seismic work*

- (1) The owner of ~~an earthquake-prone building~~ a building or a part of a building that is subject to an EPB notice who fails to complete seismic work on the building or part by the deadline that applies under **section 133AL**— 5
- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding \$200,000.

Failures relating to seismic work EPB notices and EPB exemption notices

- (2) A person commits an offence if— 10
- (a) a territorial authority requires the person to attach to ~~an earthquake-prone building~~ an EPB notice or an EPB exemption notice on or adjacent to a building under **section 133ATA**; and
- (i) a seismic work notice under **section 133AN(4)**; or
- (ii) an exemption notice under **section 133AS(5)**; and 15
- (b) the person—
- (i) fails to attach the notice in accordance with that section; or
- (ii) attaches the notice otherwise than in accordance with that section.
- (3) A person commits an offence if— 20
- (a) the person is required under ~~section 133AN(5) or 133AS(6)~~ **section 133ATA(2)(a)** to notify the territorial authority if a seismic work when an EPB notice or an EPB exemption notice ceases to be attached on or adjacent to a building or becomes illegible; and
- (b) the person fails to notify the territorial authority in accordance with that section. 25
- (4) A person who commits an offence under **subsection (2) or (3)** is liable on conviction to a fine not exceeding \$20,000.

Failure to comply with safety requirements

- (5) A person who fails to comply with **section 133AV(2)** commits an offence and is liable on conviction— 30
- (a) to a fine not exceeding \$200,000; and
- (b) in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues.

*Time frame for completing seismic work on priority buildings***133AZ Territorial authority must set time frame for completing seismic work on priority buildings**

- (1) A territorial authority must, not later than 12 months after the day on which this section comes into force, set a time frame for the completion of seismic work on priority buildings within its district. 5
- (2) The time frame—
- (a) must include the period of time, in relation to the date of an outcome notice, within which seismic work on priority buildings must be completed (the **completion period**); and 10
- (b) may include different completion periods for particular buildings or classes of building.
- (3) A completion period—
- (a) may be a period of less than 15 years after the date of an outcome notice; but 15
- (b) must not exceed a period of 15 years after the date of an outcome notice.

133AZA Adoption and review of time frame

- (1) A time frame under **section 133AZ** must be set using the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) A time frame may be amended or replaced only in accordance with the special consultative procedure. 20

133AZB Notification and availability of time frame

- (1) As soon as practicable after a territorial authority has set a time frame under **section 133AZ**, the territorial authority must—
- (a) provide a copy of the time frame to the chief executive; and 25
- (b) make the time frame available on the Internet in an electronic form that is publicly accessible at all reasonable times; and
- (c) make the time frame available in printed form for purchase on request by members of the public.
- (2) A time frame set under **section 133AZ** is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act. 30

133AZC What territorial authority must do if time frame amended or replaced

- (1) This section applies if a territorial authority amends or replaces a time frame under **section 133AZA(2)**. 35

- (2) ~~Section 133AZB~~ applies to the amendment or replacement with any necessary modifications.
- (3) As soon as is reasonably practicable after the time frame is amended or replaced, the territorial authority must—
 - (a) ~~assess whether the deadline for completing seismic work on any building within its district has changed as a result of the amendment or replacement; and~~ 5
 - (b) if the deadline has changed,—
 - (i) ~~issue a seismic work notice in accordance with **section 133AN**; and~~ 10
 - (ii) ~~remove, or require the owner of the building to remove, from the building any seismic work notice already attached to the building.~~

Methodology for identifying earthquake-prone buildings (EPB methodology)

133AZ Chief executive must set methodology for identifying earthquake-prone buildings (EPB methodology) 15

- (1) The chief executive must set a methodology for identifying earthquake-prone buildings (the **EPB methodology**) that specifies how territorial authorities are to—
 - (a) identify the buildings or parts of buildings in their district that are potentially earthquake prone; and 20
 - (b) determine whether a potentially earthquake-prone building or part of a building is earthquake prone and, if it is, its earthquake rating.
- (2) The methodology—
 - (a) may specify buildings, parts of buildings, or classes of buildings or parts of buildings that are potentially earthquake prone; and 25
 - (b) may specify a method for identifying buildings, parts of buildings, or classes of buildings or parts of buildings that are potentially earthquake prone; and
 - (c) must specify the requirements for an engineering assessment of a building or a part of a building; and 30
 - (d) must specify how a territorial authority may use engineering or other tests completed before the commencement of this section to determine whether a building or a part of a building is earthquake prone or potentially earthquake prone.
- (3) The chief executive must set the methodology no later than 1 month after the commencement of this section. 35
- (4) The methodology may incorporate material by reference in accordance with sections 405 to 413.

- (5) The chief executive may amend or replace the methodology at any time.
- (6) If the chief executive amends or replaces the methodology, **sections 133AZA and 133AZB** apply in respect of the amendment or replacement with any necessary modifications.

133AZA Consultation requirements for setting EPB methodology

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- (1) Before setting the EPB methodology, the chief executive must do everything reasonably practicable on his or her part to consult territorial authorities and any other persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the setting of the methodology.
- (2) The process for consultation should, to the extent practicable in the circumstances, include—
- (a) giving adequate and appropriate notice of the intention to set the methodology; and
- (b) giving a reasonable opportunity for territorial authorities and other interested persons to make submissions; and
- (c) giving adequate and appropriate consideration to submissions.
- (3) A failure to comply with this section does not affect the validity of the methodology.

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133AZB Notification and availability of EPB methodology

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- (1) As soon as practicable after the chief executive has set the EPB methodology, the chief executive must—
- (a) notify territorial authorities that the methodology has been set; and
- (b) publicly notify that the methodology has been set; and
- (c) make the methodology available on the Internet in a form that is publicly accessible at all reasonable times; and
- (d) make the methodology available in printed form for purchase on request by members of the public.
- (2) The methodology is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

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Miscellaneous

133AZC What territorial authority must do if definition of ultimate capacity or moderate earthquake amended

- (1) This section applies if the definition of ultimate capacity or moderate earthquake, as set out in regulations made for the purpose of **section 133AB** (meaning of earthquake-prone building), is amended or replaced.

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- (2) As soon as is reasonably practicable after the definition is amended or replaced, a territorial authority—
- (a) must consider whether any decision that it has made under this subpart should be reassessed in the light of the changes to the definition; and
 - (b) may remake the decision. 5
- (3) **Section 133ATB(3) and (4)** applies if a decision is remade under this section.
- 24 Section 154 amended (Powers of regional authorities in respect of dangerous dams)**
 Repeal section 154(2). 10
- 25 Section 155 amended (Requirements for notice given under section 154)**
 Replace section 155(2)(e) with:
- (e) every statutory authority that has exercised a statutory power to classify or register, for any purpose, the dam or the land on which the dam is situated; and 15
- 26 New section 169A inserted (Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings))**
 After section 169, insert:
- 169A Chief executive must monitor application and effectiveness of subpart 6A of Part 2 (earthquake-prone buildings)** 20
 The chief executive must monitor the application of **subpart 6A** of Part 2 and its effectiveness in regulating earthquake-prone buildings.
- 27 Section 175 amended (Chief executive may publish guidance information)**
- (1) In section 175(1)(b)(iii), after “practitioners”, insert “; and”.
 - (2) After section 175(1)(b), insert: 25
 - (c) owners of buildings and members of the public in relation to the application of **subpart 6A** of Part 2.
- 28 Section 177 amended (Application for determination)**
- (1) In section 177(3)(f), replace “(which relate to dangerous, earthquake-prone, and insanitary buildings)” with “(which relate to dangerous, affected, and insanitary buildings)”. 30
 - (2) After section 177(3)(f), insert:
 - (fa) any power of decision of a territorial authority under **subpart 6A** of Part 2, other than a power of decision under **section 133AW** (Territorial authority may carry out seismic work) ~~or any of **sections 133AZ**~~ 35

~~to 133AZC~~ (which relate to time frames for completing seismic work on priority buildings):

29 Section 181 amended (Chief executive may make determination on own initiative)

- (1) In section 181(1), replace “section 177” with “**subsection (4)**”. 5
- (2) Replace section 181(2)(a) with:
- (a) may give a direction under subsection (1) either before or after a decision or a power that relates to the matter is made or exercised (as the case may be); and
- (3) After section 181(3), insert: 10
- (4) **Subsection (1)** applies in respect of a matter referred to in section 177.
- (a) ~~a matter referred to in section 177~~; or
- (b) ~~any power of decision of a territorial authority under **subpart 6A** of Part 2~~.

30 Section 216 amended (Territorial authority must keep information about buildings) 15

Repeal section 216(2)(b)(ivc).

31 Section 218 amended (Territorial authority must provide information to chief executive for purpose of facilitating performance of chief executive’s function under section 169) 20

- (1) In the heading to section 218, replace “**section 169**” with “**sections 169 and 169A**”.
- (2) In section 218(1), after “etc)”, insert “and **section 169A** (which relates to monitoring the application and effectiveness of **subpart 6A** of Part 2 (earthquake-prone buildings))”. 25

32 Section 222 amended (Inspections by territorial authority)

Replace section 222(1)(b)(ii) with:

- (ii) the purpose of determining whether the building is dangerous or insanitary within the meaning of subpart 6 of Part 2; or
- (iii) the purpose of determining whether the building or a part of the building is earthquake prone or potentially earthquake prone within the meaning of **subpart 6A** of Part 2. 30

33 Section 273 amended (Chief executive must keep registers)

- (1) After section 273(1)(aaa), insert:
- (aab) a register of earthquake-prone buildings for the purposes of **subpart 6A** of Part 2 (the **seismic capacity EPB register**): 35

(2) After section 273(3), insert:

(3A) ~~The seismic capacity EPB register must be kept in a manner that enables territorial authorities, as well as the chief executive, to record and update information in the register.~~

34 Section 274 amended (Purpose of registers)

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After section 274(a)(iaa), insert:

~~(iab) in the case of the seismic capacity register, whether a building is earthquake prone, together with information about the building; and~~

(iab) in the case of the EPB register, information relating to buildings or parts of buildings that territorial authorities have determined to be earthquake prone; and

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35 New sections 275A and 275B inserted

After section 275, insert:

275A Content of seismic capacity register

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(1) ~~The seismic capacity register must contain, for each building the seismic capacity of which a territorial authority assesses under **section 133AF**,—~~

~~(a) the address of, and any other details necessary to identify, the building; and~~

~~(b) the name of the territorial authority that made the assessment; and~~

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~~(c) the date of the outcome notice; and~~

~~(d) the outcome of the assessment (that is, whether the building is earthquake prone); and~~

~~(e) if the building is earthquake prone,—~~

~~(i) whether the building is a priority building; and~~

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~~(ii) the deadline for completing seismic work on the building (subject to **subsection (2)**); and~~

~~(iii) whether an exemption from the requirement to carry out seismic work on the building is in force under **section 133AS**; and~~

~~(iv) whether an extension of time for completing seismic work on the building is in force under **section 133AT** and, if so,—~~

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~~(A) the deadline for completing the seismic work that applies as a result of the extension; and~~

~~(B) the deadline for completing the seismic work that would have applied if the extension had not been granted; and~~

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~~(C) a summary of any conditions of the extension; and~~

~~(f) any information prescribed under **section 401C(d)**.~~

- (2) However, ~~subsection (1)(e)(ii)~~ does not apply if—
- (a) an exemption notice is in force under ~~section 133AS~~; or
 - (b) an extension of time for completing seismic work on the building is in force under ~~section 133AT~~ (in which case ~~subsection (1)(e)(iv)~~ applies). 5
- (3) The seismic capacity register must also contain, for each new building,—
- (a) the address of, and any other details necessary to identify, the building; and
 - (b) the date on which a certificate was issued under section 95 for the construction of the building; and 10
 - (c) a statement that the building is not earthquake prone; and
 - (d) any information prescribed under ~~section 401C(d)~~.
- (4) For the purpose of ~~subsection (3)~~, ~~new building~~—
- (a) means a building for which a certificate for the construction of the building is issued under section 95 on or after the day on which this section comes into force; but 15
 - (b) does not include any building that is used wholly or mainly for residential purposes, unless the building—
 - (i) comprises 2 or more storeys; and
 - (ii) contains 3 or more household units. 20
- ~~275B Restriction on public access to certain information on seismic capacity register~~**
- (1) Despite ~~section 273(2)~~, the chief executive must restrict public access to any prescribed information in the seismic capacity register—
- (a) if required to do so by regulations made under ~~section 401C(e)~~; or 25
 - (b) if the chief executive considers that it is not necessary, or it is not desirable, for the information to be publicly available.
- (2) Despite ~~subsection (1)~~, the chief executive may supply any information contained in the register—
- (a) to an entity in the State services (within the meaning of the State Sector Act 1988) if the chief executive is satisfied that it is necessary or desirable for the entity to have the information to assist in the exercise of its powers or the performance of its functions under any enactment; and 30
 - (b) to any person, with the permission of the person to whom the information relates. 35
- 275A Content of EPB register**
- (1) The EPB register must contain the following information for each building or part of a building that a territorial authority determines is earthquake prone:

- (a) the name of the territorial authority that made the decision:
 - (b) the address of, and any other details necessary to identify, the building or the part of the building determined to be earthquake prone:
 - (c) whether the building is a priority building:
 - (d) the date of the EPB notice issued for the building or part: 5
 - (e) the earthquake rating of the building or part, as determined by the territorial authority:
 - (f) the deadline for completing seismic work that applies under **section 133AL** or **clause 2 of Schedule 1AA** (unless an exemption from the requirement to carry out seismic work is in force under **section 133AS**): 10
 - (g) the details of any exemption from the requirement to carry out seismic work that is in force under **section 133AS**:
 - (h) the details of any extension of time for completing seismic work that is in force under **section 133AT**, including a summary of any conditions imposed by the territorial authority for the purpose of **section 133AT(4)(b)**: 15
 - (i) any information prescribed under **section 401C(d)**.
 - (2) If the territorial authority is proceeding under **section 133AJ(4)** as if it had determined the building or the part of the building to be earthquake prone (because the owner has not provided an engineering assessment),— 20
 - (a) **subsection (1)(e)** does not apply; and
 - (b) the register must contain statements to the following effect:
 - (i) that the territorial authority has not determined whether the building or part is earthquake prone, but is proceeding as if it had because the owner has not provided an engineering assessment; and 25
 - (ii) that the EPB notice issued for the building or part is in the form prescribed for the category of earthquake ratings that includes the lowest earthquake ratings (*see **section 401C(a)***); and
 - (iii) that the earthquake rating of the building or part has not been determined. 30
- 275B Modification of chief executive’s obligation to make EPB register available for public inspection**
- (1) This section applies to information that is required to be kept in the EPB register by regulations made under **section 401C(d)** (the **prescribed information**). 35
 - (2) Despite section 273(2), the chief executive need not make the prescribed information available for public inspection, or include the prescribed information in a copy of all or part of the register supplied to a person under that section, un-

- less the regulations require the information to be made available for public inspection.
- (3) However, the chief executive may supply any prescribed information contained in the EPB register to an entity in the State services (within the meaning of the State Sector Act 1988) if the chief executive is satisfied that it is necessary or desirable for the entity to have the information to assist in the exercise of its powers or the performance of its functions under any enactment. 5
- (4) This section does not limit the Official Information Act 1982.
- 36 Section 381 amended (District Court may grant injunctions for certain continuing breaches)** 10
- (1) In section 381(1)(b), delete “, earthquake prone,”.
- (2) After section 381(1)(b), insert:
- (ba) a building or a part of a building is earthquake prone in terms of **subpart 6A** of Part 2 and the territorial authority has failed to take appropriate action; or 15
- 37 New section 401C inserted (Regulations: earthquake-prone buildings)**
- After section 401B, insert:
- 401C Regulations: earthquake-prone buildings**
- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that,— 20
- (a) ~~define priority buildings for the purpose of **subpart 6A** of Part 2, for example,—~~
- (i) ~~buildings that could, if they were to collapse in an earthquake, impede a transport route of strategic importance in an emergency;~~
- (ii) ~~buildings of particular significance in terms of public safety (for example, because of what may fall off or from them in an earthquake);~~ 25
- (a) for the purpose of **section 133AK**,—
- (i) prescribe categories of earthquake ratings;
- (ii) prescribe the form of EPB notice to be issued for buildings or parts of buildings in each earthquake ratings category; 30
- (iii) prescribe the form of EPB notice to be issued for a building or a part of a building to which **clause 2 of Schedule 1AA** (which is a transitional provision) applies;
- (b) ~~prescribe the criteria for granting an exemption from a requirement to carry out seismic work on a building (see **section 133AS**);~~ 35
- (b) prescribe the age, construction type, use, level of occupancy, location in relation to other buildings or building types, and any other characteris-

	tics that a building or a part of a building must have for a territorial authority to grant an exemption under section 133AS from the requirement to carry out seismic work on the building or part:	
	(ba) <u>prescribe the criteria for determining whether a building alteration is a substantial alteration for the purpose of section 133AX(2)(c):</u>	5
	(e) <u>prescribe the criteria for granting a building consent for an alteration to an earthquake-prone building, where section 112(1) would otherwise prevent a building consent authority from granting a building consent (<i>see section 133AX</i>):</u>	
	(c) <u>prescribe the matters that a territorial authority must take into account when making the assessments required by section 133AX(3)(b) and (c) (for the purpose of deciding whether to allow the alteration of a building or a part of a building that is subject to an EPB notice without the building complying with specified provisions of the building code):</u>	10
	(d) <u>prescribe information that must be kept on in the seismic capacity EPB register, and specify whether the chief executive is required to make that information available for public inspection (<i>see section 275B</i>):</u>	15
	(e) <u>specify any information prescribed under paragraph (d) to which the chief executive must restrict public access (<i>see section 275B(1)(a)</i>):</u>	
38	Section 402 amended (Regulations: general)	20
(1)	In section 402(1)(p), replace “122” with “ 133AB ”.	
(2)	After section 402(1)(p), insert:	
	(pa) <u>defining ultimate capacity for the purposes of section 133AB (meaning of earthquake-prone building):</u>	
39	Section 405 amended (Incorporation of material by reference into regulations, certain Orders in Council, acceptable solutions, and verification methods)	25
(1)	In the heading to section 405, replace “ regulations, certain Orders in Council, acceptable solutions, and verification methods ” with “ certain instruments, solutions, and methods ”.	30
(2)	In section 405(4)(c), after “285”, insert “; and”.	
(3)	After section 405(4)(c), insert:	
	(d) <u>a methodology set under section 133AG for seismic capacity assessments:</u>	
	(d) <u>the EPB methodology set under section 133AZ.</u>	35
40	New section 450A inserted (Application, savings, and transitional provisions relating to amendments to Act)	
	After section 450, insert:	

450A ~~Application, savings, and transitional provisions relating to amendments to Act~~

~~The application, savings, and transitional provisions set out in **Schedule 1AA**, which relate to amendments made to this Act after 1 January 2014, have effect for the purposes of this Act.~~

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41 New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in the **Schedule** of this Act.

41A Consequential amendments to Building Amendment Act 2012

- (1) This section amends the Building Amendment Act 2012. 10
- (2) In the Schedule,—
- (a) in new Schedule 1A, clause 1(e), replace “section 240” with “section 219 or 240 (as applicable)”; and
- (b) in new Schedule 1B, clause 1(e), replace “section 240” with “section 219 or 240 (as applicable)”; and 15
- (c) in new Schedule 1C, clause 1(e), replace “section 240” with “section 219 or 240 (as applicable)”; and
- (d) in new Schedule 1D, clause 1(f), replace “section 240” with “section 219 or 240 (as applicable)”.

41B Consequential amendments to Fire Safety and Evacuation of Buildings Regulations 2006 20

- (1) This section amends the Fire Safety and Evacuation of Buildings Regulations 2006.
- (2) In Schedule 3, clause 8(a), after “section 112”, insert “or **133AX**”.
- (3) In Schedule 4, Form 1, paragraph 26, after “section 112”, insert “or **133AX**”. 25

Part 2**Amendment to Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005****42 Principal regulations**

This **Part** amends the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the **principal regulations**). 30

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

Replace regulation 7 with:

7 Earthquake-prone buildings: moderate earthquake defined

- (1) For the purposes of **section 133AB** of the Act (M~~eaning 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 the commencement date. 5
- (2) In this regulation, **commencement date** means the day on which ~~section 23 of the Building (Earthquake-prone Buildings) Amendment Act 2013 (which inserts **subpart 6A of Part 2** of the Act)~~ **section 133AB** of the Act comes into force. 10

Schedule
New Schedule 1AA inserted

s 41

Schedule 1AA

~~Application, savings, and transitional provisions relating to amendments made to Act after 1 January 2014~~
Transitional, savings, and related provisions

ss 5A, 450A

Transitional provisions relating to Building (Earthquake-prone Buildings) Amendment Act 2013

1 Interpretation

In this schedule,—

amendment Act means the Building (Earthquake-prone Buildings) Amendment Act **2013**

commencement date means the day on which **section 23** of the amendment Act (which inserts **subpart 6A** of Part 2) comes into force.

2 Notices given under section 124 before commencement date

(1) This clause applies if—

(a) ~~the outcome of a seismic capacity assessment of a building is that the building is earthquake prone; and~~

(b) ~~before the commencement date, a territorial authority gave a written notice under section 124(2)(c)(i) (the **notice**) requiring work to be carried out on the building, within a time stated in the notice (the **time frame**), to reduce or remove the danger associated with the building being earthquake prone (the **work**).~~

(2) ~~If the time frame exceeds 15 years after the notice is given, the notice is revoked on the issue of a seismic work notice for the building.~~

(3) ~~If the time frame is, or is less than, 15 years after the notice is given, **subpart 6A of Part 2** applies as if the work were seismic work and as if the notice were a seismic work notice issued under that subpart, except that—~~

(a) ~~**section 133AL** (which requires a territorial authority to issue a seismic work notice) does not apply; and~~

(b) ~~if the building is a priority building, **section 133AO(2) and (4)** (which specifies the deadline for completing seismic work on priority buildings) does not apply.~~

- 2 Notices given under section 124 before commencement date**
- (1) This clause applies to a building or a part of a building if, before the commencement date, a territorial authority issued a written notice under section 124(2)(c)(i) (the **old notice**) requiring work to be carried out on the building or part, by a deadline stated in the old notice (the **old deadline**), to reduce or remove the danger associated with the building or part being earthquake prone (the **seismic work**). 5
- (2) If **subpart 6A** of Part 2 does not apply to the building (see **section 133AA**),—
- (a) the old notice is revoked on the commencement date; and 10
- (b) the territorial authority must notify the owner of the building of that fact.
- (3) If **subpart 6A** of Part 2 does apply to the building,—
- (a) the territorial authority is deemed to have determined that the building or the part of the building is earthquake prone; and
- (b) the territorial authority need not determine the earthquake rating of the building or part; and 15
- (c) the territorial authority must, as soon as practicable after the commencement date,—
- (i) issue an EPB notice for the building or the part of the building under **section 133AK**; and 20
- (ii) record the details of the building or the part of the building in the EPB register and update other information in the EPB register as necessary (but the territorial authority need not record the earthquake rating of the building or part); and
- (d) if the old deadline is earlier than the applicable deadline under **section 133AL**,— 25
- (i) **section 133AL** does not apply; and
- (ii) the deadline for completing the seismic work is the old deadline (subject to **subclause (5)**); and
- (e) if the old deadline is on or after the applicable deadline under **section 133AL**,— 30
- (i) the old deadline ceases to apply; and
- (ii) the deadline for completing the seismic work is the deadline that applies under **section 133AL**; and
- (f) until the territorial authority issues an EPB notice, the old notice must be treated as if it were an EPB notice issued under this Act. 35
- (4) For the purpose of **subclause (3)(d) and (e)**, the reference in **section 133AL(2)** to the date of the first EPB notice issued for the building or the part

	<u>of the building must be read as if it were a reference to the date of the old notice.</u>	
(5)	<u>If subclause (3)(d) applies to a building or a part of a building, the owner of the building or part may apply to the territorial authority for the applicable deadline under section 133AL to be applied instead of the old deadline, except that for this purpose section 133AL must be read as if the periods referred to in section 133AL(2) were measured from the date of the old notice instead of the date of the first EPB notice.</u>	5
(6)	<u>In deciding whether to grant an application under subclause (5), the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose.</u>	10
(7)	<u>If a territorial authority grants an application under subclause (5), the territorial authority must—</u>	
	<u>(a) issue or reissue (as applicable) an EPB notice for the building or part under section 133AK; and</u>	15
	<u>(b) record the details of the decision in the EPB register and update other information in the EPB register as necessary.</u>	
3	Policy adopted under section 131 before commencement date	
(1)	This clause applies to a policy under section 131 (policy on dangerous, earthquake-prone, and insanitary buildings) that is adopted by a territorial authority before the commencement date.	20
(2)	To the extent that the policy applies to earthquake-prone buildings, the policy ceases to apply on the commencement date.	
(3)	As soon as is reasonably practicable after the commencement date, the territorial authority must amend or replace the policy to remove references to earthquake-prone buildings.	25
(4)	Section 132 applies to an amendment or a replacement made under subclause (3) , except that the special consultative procedure in section 83 of the Local Government Act 2002 (<i>see</i> section 132(2)) does not apply unless the amendment or replacement materially affects the policy as it applies to dangerous and insanitary buildings.	30
4	What territorial authority must do after setting time frame under section 133AZ	
	As soon as is reasonably practicable after setting a time frame under section 133AZ, a territorial authority must comply with section 133AZC(3)(a) and (b), which applies as if the reference in section 133AZC(3)(a) to an amendment or a replacement of the time frame were a reference to the setting of the time frame.	35

4 Effect of certain references to parts of buildings

The fact that provisions added to this Act by the amendment Act refer separately to buildings and parts of buildings does not limit or affect any other provision of this Act in terms of how that provision applies in respect of parts of buildings.

5

Legislative history

9 December 2013
5 March 2014

Introduction (Bill 182–1)
First reading and referral to Local Government and Environment
Committee