

Reprint
as at 19 April 2016



Canterbury Earthquake (Building Act) Order 2011

(SR 2011/311)

Canterbury Earthquake (Building Act) Order 2011: revoked (after expiring on the close of 16 September 2013), on 19 April 2016, by section 146(2) of the Greater Christchurch Regeneration Act 2016 (2016 No 14).

Jerry Mateparae, Governor-General

Order in Council

At Christchurch this 5th day of September 2011

Present:

The Right Hon John Key presiding in Council

Pursuant to section 71 of the Canterbury Earthquake Recovery Act 2011, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the relevant Minister following the Canterbury Earthquake Recovery Review Panel's review of a draft of the order.

Contents

| | Page |
|----------------------------------|------|
| 1 Title | 2 |
| 2 Commencement | 2 |
| 3 Expiry | 2 |
| 4 Interpretation and application | 2 |

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Business, Innovation, and Employment.

| | | |
|----|---|---|
| 5 | Territorial authorities to which this order applies | 3 |
| 6 | Cases where building consent is not required | 3 |
| 7 | Modification of meaning of dangerous building and extent to which territorial authority can apply modified provision | 3 |
| 8 | Notices under section 124 of Act | 4 |
| 9 | Modification of powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings under section 124 of Act | 4 |
| 10 | Modification of requirements for notice given under section 124 of Act | 5 |
| 11 | Modification of section 126 of Act | 6 |
| 12 | Building work includes demolition of building | 6 |
| 13 | Prohibition on using dangerous, earthquake-prone, or insanitary building under section 128 of Act | 6 |
| 14 | Modification of owner liability for costs of work under section 129 of Act | 6 |
| 15 | Extension of provision protecting territorial authority from liability under section 129 of Act | 7 |
| 16 | Exemption from requirement to apply under section 130 of Act to District Court for confirmation of warrant | 7 |
| 17 | Extension of purpose stated in section 204(1) of Act | 7 |
| 18 | Definition of authorised officer extended | 7 |
| 19 | Modifications to Schedule 1 of Act | 7 |
| 20 | Definition of dangerous building in section 4 of Canterbury Earthquake Recovery Act 2011 amended | 8 |
| 21 | Effect of expiry of Canterbury Earthquake (Building Act) Order 2010 | 8 |

Order

1 Title

This order is the Canterbury Earthquake (Building Act) Order 2011.

2 Commencement

This order comes into force on 17 September 2011.

3 Expiry

This order expires on the close of 16 September 2013.

4 Interpretation and application

- (1) In this order, unless the context otherwise requires,—
Act means the Building Act 2004

moderate earthquake has the meaning given to it by regulation 7 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

- (2) Any term or expression that is not defined in this order, but defined in the Act or the Canterbury Earthquake Recovery Act 2011, has the meaning given to it by that Act.
- (3) The modifications or extensions to the Act made by this order do not affect the text of the Act but require it to be read as if it had been amended in the manner indicated in this order.

5 Territorial authorities to which this order applies

This order applies only to the following territorial authorities:

- (a) Christchurch City Council:
- (b) Selwyn District Council:
- (c) Waimakariri District Council.

6 Cases where building consent is not required

Section 41(1)(e) of the Act is extended by adding “, including under any provision of this Act as exempted, modified, or extended by the Canterbury Earthquake (Building Act) Order 2011”.

7 Modification of meaning of dangerous building and extent to which territorial authority can apply modified provision

- (1) Section 121(1) of the Act is modified by adding “; or” and also by adding the following paragraphs:
 - (c) there is a risk that the building could collapse or otherwise cause injury or death to any person in the building as a result of an earthquake that generates shaking that is less than a moderate earthquake; or
 - (d) there is a risk that adjacent, adjoining, or nearby buildings or land could collapse (including collapse by way of rock fall, landslip, cliff collapse, or subsidence) or otherwise cause injury or death to any person in the building; or
 - (e) a territorial authority has not been able to undertake an inspection to determine whether the building is dangerous under paragraph (a) or (d).
- (2) Section 121(1)(c) of the Act as modified by this clause applies only for the purposes of a territorial authority exercising its powers under section 124(1)(a), (b), (c), or (d) of the Act as modified by clause 9.
- (3) Section 121(1)(d) or (e) of the Act as modified by this clause applies only for the purposes of a territorial authority exercising its powers under section 124(1)(a), (b), or (d) of the Act as modified by clause 9.

8 Notices under section 124 of Act

- (1) In this clause and in clause 9,—

red card means a card—

- (a) of the kind described as a red placard in the New Zealand Society for Earthquake Engineering Building Safety Evaluation Guidelines; and
- (b) that is issued under Part 5 of the Civil Defence Emergency Management Act 2002 in relation to the Canterbury earthquakes

yellow card means a card—

- (a) of the kind described as a yellow placard in the New Zealand Society for Earthquake Engineering Building Safety Evaluation Guidelines; and
- (b) that is issued under Part 5 of the Civil Defence Emergency Management Act 2002 in relation to the Canterbury earthquakes.

- (2) A red card is deemed to be a notice issued under section 124(1)(b) of the Act that warns people not to approach the building.
- (3) A yellow card is deemed to be a notice issued under section 124(1)(d) of the Act as modified by clause 9.
- (4) Any restrictions on use that are described on a yellow card are deemed to be requirements of a notice issued under section 124(1)(d) of the Act as modified by clause 9.

9 Modification of powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings under section 124 of Act

- (1) Section 124(1) of the Act is modified by replacing paragraph (c) with the following paragraphs:

(c) give written notice—

- (i) requiring work to be carried out on the building to reduce or remove the danger or prevent the building from remaining insanitary; and
- (ii) requiring the work to be carried out within a time stated in the notice (which must not be less than a period of 5 days after the notice is given under section 125 or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer); and
- (iii) advising the owner of the building that if the work is not carried out within the time stated in the notice,—
 - (A) a territorial authority may carry out the work required under the notice; and
 - (B) the owner of the building will be liable for the costs of the work carried out by the territorial authority unless the owner applies, within 5 days of the work being carried out, to a

District Court for relief from the obligation to pay the territorial authority's costs:

- (d) issue a notice restricting entry to a building for particular purposes or restricting entry to particular persons or groups of persons.
- (2) A red card that is deemed to be a notice issued under section 124(1)(b) of the Act—
 - (a) may be issued for a maximum period of 12 weeks; and
 - (b) may be renewed; but
 - (c) expires earlier than the end of the period of 12 weeks if the territorial authority in question is reasonably satisfied that the building is no longer a dangerous building.
 - (3) A notice issued under section 124(1)(c) of the Act as modified by this clause may be issued for such period that a territorial authority thinks fit.
 - (4) A yellow card that is deemed to be a notice issued under section 124(1)(d) of the Act as modified by this clause—
 - (a) may be issued for a maximum period of 12 weeks; and
 - (b) may be renewed; but
 - (c) expires earlier than the end of the period of 12 weeks if the territorial authority in question is reasonably satisfied that the building is no longer a dangerous building.
 - (5) A notice issued under section 124(1)(d) of the Act as modified by this clause that relates to a building that is dangerous under section 121(1)(d) or (e) of the Act as added by clause 7(1)—
 - (a) may be issued for a maximum period of 12 weeks; and
 - (b) may be renewed; but
 - (c) expires earlier than the end of the period of 12 weeks if the territorial authority in question is reasonably satisfied that the building is no longer a dangerous building.
 - (6) For the avoidance of doubt, a notice that does not fall within subclause (2), (4), or (5) is not subject to a maximum period.

10 Modification of requirements for notice given under section 124 of Act

Section 125(1) of the Act is modified by replacing paragraph (b) with the following paragraphs:

- (b) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice; and
- (c) if the owner is not required by the territorial authority to obtain a building consent, state—

- (i) the conditions (if any) in respect of the work required by the notice; and
- (ii) that the work must be carried out in accordance with the guidelines (if any) issued by the territorial authority on how building work to reduce or remove the danger or to demolish buildings should be carried out in accordance with the building code.

11 Modification of section 126 of Act

Section 126 of the Act is modified by adding the following subsections:

- (4) Subsections (1) to (3) do not apply to a territorial authority that has issued a notice under section 124(1)(c) as modified by the Canterbury Earthquake (Building Act) Order 2011.
- (5) If a territorial authority has issued a notice under section 124(1)(c) as modified by the Canterbury Earthquake (Building Act) Order 2011 and the work required under the notice has not been carried out within the time stated in the notice, the territorial authority may carry out the work required under the notice.
- (6) The owner of a building is liable for the costs of the work carried out by the territorial authority unless—
 - (a) the owner applies to a District Court, within 5 days of the work being carried out by the territorial authority, for relief from the obligation to pay the territorial authority's costs; and
 - (b) the application to the District Court is successful.
- (7) If the owner is liable for the costs of the work carried out by the territorial authority, the territorial authority may recover its costs from the owner, and the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.

12 Building work includes demolition of building

The reference in section 127 of the Act to section 126 is modified to mean section 126 or 129 of the Act as modified by this order.

13 Prohibition on using dangerous, earthquake-prone, or insanitary building under section 128 of Act

Section 128 of the Act is extended so that it applies to any person who fails to comply with section 124(1)(d) of the Act as modified by this order.

14 Modification of owner liability for costs of work under section 129 of Act

- (1) Section 129(3) of the Act is modified by replacing “If the territorial authority takes action under subsection (2)” with “If the territorial authority takes action under subsection (2) and either of the events described in subsection (3A) has occurred”.

- (2) Section 129 is modified by inserting the following subsection after subsection (3):

(3A) The events are—

- (a) the owner of the building has failed to apply to a District Court, within 5 days of the work being carried out, for an order that the owner is not liable for the costs of the territorial authority exercising its powers under this section:
- (b) the owner’s application to a District Court for an order that the owner is not liable for the costs of the territorial authority exercising its powers under this section is unsuccessful.

15 Extension of provision protecting territorial authority from liability under section 129 of Act

Section 129(4) of the Act is extended by adding “or any liability arising from any work that the territorial authority has, in good faith, carried out under section 126 as modified by the Canterbury Earthquake (Building Act) Order 2011”.

16 Exemption from requirement to apply under section 130 of Act to District Court for confirmation of warrant

A territorial authority is exempted from the requirement in section 130 of the Act to apply to the District Court for confirmation of a warrant issued under section 129(2) of the Act.

17 Extension of purpose stated in section 204(1) of Act

The purpose stated in section 204(1) of the Act is extended by adding “; and” and also by adding the following paragraph:

- (d) monitor earthquake-affected buildings.

18 Definition of authorised officer extended

The definition of **authorised officer** in section 222(4) of the Act is extended so that an authorised officer includes any person accompanying the authorised officer.

19 Modifications to Schedule 1 of Act

- (1) Clause 1 of Schedule 1 of the Act is modified so that the provisions in paragraph (a)(iv) relating to water storage heaters are disappplied.
- (2) Clause 1 of Schedule 1 of the Act is extended by inserting the following paragraph after paragraph (a):

- (aab) the replacement or repositioning of water heaters carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006, except for systems that—

- (i) are not open-vented; or
 - (ii) have an uncontrolled heat source; or
 - (iii) have a controlled heat source other than gas or electricity:
- (3) In the event of any inconsistency between this clause and any provision of Schedule 1 of the Act, this clause prevails.

20 Definition of dangerous building in section 4 of Canterbury Earthquake Recovery Act 2011 amended

The definition of **dangerous building** in section 4(1) of the Canterbury Earthquake Recovery Act 2011 is amended by omitting “2010” and substituting “2011”.

21 Effect of expiry of Canterbury Earthquake (Building Act) Order 2010

Anything done, and any indemnity given, under a provision of the Act as modified by the Canterbury Earthquake (Building Act) Order 2010 continues to have effect as if that order had not expired.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 17 September 2011 and expires on the close of 16 September 2013, replaces the Canterbury Earthquake (Building Act) Order 2010 (the **2010 order**), which was made under the Canterbury Earthquake Response and Recovery Act 2010. That Act has itself been repealed and replaced by the Canterbury Earthquake Recovery Act 2011, under which this order is made. In large part, this order carries over unchanged the provisions of the 2010 order that effected certain modifications to the Building Act 2004 (the **Act**). Differences to highlight include the following:

- modified section 121(1)(d) and (e) of the Act (*see clause 7(1)* of the order) have been redrafted for better clarity of meaning;
- *clause 9(2), (4), and (5)* contain new provisions for the duration of a red card that is deemed to be a notice under section 124(1)(b) of the Act as modified, a yellow card that is deemed to be a notice issued under section 124(1)(d) of the Act as modified, or a notice issued under section 124(1)(d) of the Act as modified that relates to a dangerous building.

This Order in Council is made under the Canterbury Earthquake Recovery Act 2011 and its effect is temporary.

Reprinted as at
19 April 2016

Canterbury Earthquake (Building Act) Order 2011

Explanatory note

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 8 September 2011.

Reprints notes

1 *General*

This is a reprint of the Canterbury Earthquake (Building Act) Order 2011 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Greater Christchurch Regeneration Act 2016 (2016 No 14): section 146(2)

Canterbury Earthquake (Building Act) Order 2011 (SR 2011/311): clause 3