

House of Representatives

Supplementary Order Paper

Tuesday, 3 November 2015

Building (Earthquake-prone Buildings) Amendment Bill

Proposed amendments

Hon Dr Nick Smith, in Committee, to move the following amendments:

Clause 23

In *clause 23*, replace *new section 133AL(3)* (page 27, lines 33 to 36) with:

- (3) However,—
 - (a) if **clause 2 of Schedule 1AA** applies to the building or the part of the building, the deadline is the deadline determined in accordance with that clause; and
 - (b) if the building or the part of 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 **paragraph (a) or subsection (2)** if no extension were granted.

In *clause 23*, *new section 133AT(3)*, after “**section 133AL(2)**” (page 29, line 32), insert “or **(3)(a)**”.

Clause 29

Delete *clause 29(1)* (page 40, line 5).

Delete *clause 29(3)* (page 40, lines 10 to 14).

Clause 35

In *clause 35*, *new section 275A(1)(f)*, delete “or **clause 2 of Schedule 1AA**” (page 43, line 9).

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Schedule

In the *Schedule*, new *Schedule IAA heading*, replace “**s 5A**” (page 48, line 8) with “**ss 5A, 133AK, 133AL, 401C**”.

In the *Schedule*, new *Schedule IAA*, replace *clause 2(3)(d) and (e)* (page 49, lines 25 to 34) with:

- (d) the deadline for completing the seismic work is determined as follows:
 - (i) if the old deadline is earlier than the deadline calculated under **section 133AL(2)**, the deadline for completing the seismic work is the old deadline (subject to **subclause (5)**); and
 - (ii) if the old deadline is on or after the deadline calculated under **section 133AL(2)**, the deadline for completing the seismic work is the deadline calculated under **section 133AL(2)**; and

In the *Schedule*, new *Schedule IAA*, replace *clause 2(4) to (6)* (page 49, line 37 to page 50, line 11) with:

- (4) To avoid doubt, for the purpose of **subclause (3)(d)** the deadline calculated under **section 133AL(2)** is the expiry of the relevant period as measured from the date of the EPB notice and not from the date of the old notice.
- (5) If an old deadline is preserved by **subclause (3)(d)(i)** but the period given for completing the seismic work under the old notice is shorter than the relevant period specified in **section 133AL(2)** (for example, an old notice issued for a building in an area of medium seismic risk required the owner to complete seismic work within 20 years after the date of that notice, but the period specified in **section 133AL(2)** that is relevant to the building is 25 years),—
 - (a) the owner of the building or the part of the building may apply to the territorial authority to have the relevant period specified in **section 133AL(2)** applied retrospectively to the date of the old notice (which would have the effect of extending the deadline for completing the seismic work); and
 - (b) in deciding whether to grant the application, the territorial authority must have regard to the particular circumstances and any guidance issued by the chief executive under section 175 for that purpose; and
 - (c) if the territorial authority grants the application, the deadline is the expiry of the relevant period specified in **section 133AL(2)**, as measured from the date of the old notice and not from the date of the EPB notice.

Explanatory note

This Supplementary Order Paper amends the Building (Earthquake-prone Buildings) Amendment Bill. The majority of the amendments relate to transitional matters.

Substantive amendment

New section 133AL, which is part of *new subpart 6A* (inserted by *clause 23* of the Bill), specifies how to calculate the deadline for completing seismic work on an earthquake-prone building. *Clause 2(3) to (5) of new Schedule 1AA* sets out how the deadline for completing seismic work is calculated for a building that has already been identified as earthquake-prone, and been issued with a notice requiring seismic work (the **old notice**), before the commencement of *new subpart 6A*. The intended effect of the transitional regime is to preserve existing deadlines with 2 exceptions.

The first exception is that an existing deadline is brought forward if it would otherwise fall after the deadline that applies under the new regime.

The second exception is that an existing deadline will be extended if—

- the owner was given a shorter period within which to complete strengthening work under the old notice than the period that is relevant to the building under the new regime; and
- the owner applies to the territorial authority to have the longer period applied retrospectively to the date of the old notice.

To ensure that the regime works correctly, *clause 2(4) of new Schedule 1AA* is replaced so that it requires the deadline under *new section 133AL(2)* to be calculated for the purpose of *clause 2(3)(d) of new Schedule 1AA* from the date of the EPB notice issued for a building and not from the date of the old notice.

A worked example of the effect of the transitional provisions, as amended by this Supplementary Order Paper, is set out below.

Example

A building in an area of medium seismic risk was issued with a notice on 1 June 2015 under section 124(2)(c) of the Building Act 2004 (the **old notice**). The old notice requires the owner to carry out remediation work on the building. An EPB notice for the building is issued on 1 June 2017 (in accordance with *clause 2(3)(c) of new Schedule 1AA*). The building is not a priority building (within the meaning of *new section 133AC*), so the period that is relevant to the building under *new section 133AL(2)* is 25 years and the deadline calculated under that section would be 1 June 2042.

Scenario 1

The old notice required remediation work to be completed within a period of 20 years—ie, by a deadline of 1 June 2035. Because that deadline is earlier than the deadline calculated under *new section 133AL(2)*, which is 1 June 2042,—

- the old deadline of 1 June 2035 continues to apply (*clause 2(3)(d)(i) of new Schedule 1AA*); but
- the owner of the building can apply to the territorial authority to have the deadline extended to 1 June 2040—which is 25 years after the date of the old notice (*clause 2(5) of new Schedule 1AA*).

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Scenario 2

The old notice required remediation work to be completed within a period of 30 years—ie, by a deadline of 1 June 2045. Because that deadline is later than the deadline calculated under *new section 133AL(2)*, which is 1 June 2042, the deadline is brought forward to 1 June 2042 (*clause 2(3)(d)(ii)* of *new Schedule 1AA*).

Consequential and technical amendments

The remaining amendments made by this Supplementary Order Paper are technical in nature, as follows:

- *new section 133AL(3)* (inserted by *clause 23* of the Bill) is replaced to incorporate a reference to the transitional provisions in *new Schedule 1AA*, and consequential amendments are made to *new sections 133AT and 275A* (inserted by *clauses 23 and 35* respectively) and to *clause 2(3)* of *new Schedule 1AA*:
- *clause 29* of the Bill amends section 181 of the Building Act 2004, which enables the chief executive to make a determination, on his or her own initiative, on a matter referred to in section 177. As a result of other changes to the Bill, the amendments made by *clause 29(1) and (3)* are now unnecessary. The redundant subclauses are removed:
- the heading of *new Schedule 1AA* is amended to ensure that the shoulder reference lists all the provisions that reference the transitional provisions:
- to improve clarity, *clause 2(5) and (6)* of *new Schedule 1AA* is replaced by *new clause 2(5)*.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.