

Reprint
as at 1 April 2018



Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018 (LI 2018/33)

Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018: revoked, on the close of 31 March 2018, pursuant to clause 4 of the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 (LI 2017/25).

Patsy Reddy, Governor-General

Order in Council

At Wellington this 5th day of March 2018

Present:

Her Excellency the Governor-General in Council

This order is made under section 7 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Building and Construction made in accordance with sections 8 and 9 of that Act.

Contents

	Page
1 Title	2
2 Commencement	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.

3	Principal order	2
4	Clause 10 amended (Offences in relation to dangerous street-facing unreinforced masonry buildings)	2
5	New clause 12A inserted (Time limit for filing charging document)	2
	12A Time limit for filing charging document	3

Order

1 Title

This order is the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018.

2 Commencement

This order comes into force on 9 March 2018.

3 Principal order

This order amends the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 (the **principal order**).

4 Clause 10 amended (Offences in relation to dangerous street-facing unreinforced masonry buildings)

After clause 10(2), insert:

- (3) However, it is a defence if a person referred to in subclause (2) proves, in respect of the offence under section 128A, that—
- (a) the person has taken reasonable steps towards complying with the notice within 1 year of the date on which the notice is issued; and
 - (b) the work required to be carried out on the dangerous street-facing unreinforced masonry building under the notice has been completed within 18 months of the date on which the notice is issued.
- (4) In this order, a person is treated as having taken **reasonable steps towards complying with the notice** only if—
- (a) the design of the building work required under the notice has been, or is being, carried out or reviewed by a chartered professional engineer; and
 - (b) a programme of work is available to the territorial authority for inspection that shows that the building work required under the notice will be completed within 18 months of the date on which the notice is issued.

5 New clause 12A inserted (Time limit for filing charging document)

After clause 12, insert:

12A Time limit for filing charging document

- (1) This clause modifies section 378 of the Building Act.
- (2) This clause applies to the limitation period in respect of an offence to which clause 10 applies if the person has taken reasonable steps towards complying with the notice within 1 year of the date on which the notice is issued.
- (3) The limitation period ends on the date that is 12 months after the date when the matter giving rise to the charge first became known, or should have become known, to any of the persons referred to in section 378(a) to (d).

Michael Webster,
Clerk of the Executive Council.

Statement of reasons

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

This order is made under the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the **Recovery Act**) and its effect is temporary. It comes into force on 9 March 2018 and amends the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 (the **principal order**), which is revoked on the close of 31 March 2018. The Recovery Act enables orders to be made that grant exemptions from, modify, or extend the provisions of certain enactments.

The principal order relates to certain street-facing unreinforced masonry buildings that have 1 or more unreinforced masonry parapets or façades that have not been secured or strengthened to an acceptable standard, and that may fall from the buildings in an earthquake onto any part of a public road, footpath, or other thoroughfare that is listed in the Schedule of the principal order.

The principal order empowered 4 territorial authorities, namely, Hurunui District Council, Hutt City Council, Marlborough District Council, and Wellington City Council, to issue notices under the Building Act 2004 (the **Building Act**) to require work to be done to secure those parapets or façades. The order provided that the notices must be issued no later than 29 March 2017 and must require the work to be carried out within 1 year of the date on which the notice is issued.

Clause 10 of the principal order provided that the offence provision in section 128A of the Building Act will apply if a person fails to comply with a notice that requires work to be done. The penalty in section 128A of the Building Act is a fine not exceeding \$200,000.

This order has, in relation to the street-facing unreinforced masonry buildings, the effect of providing, in certain cases, an extension of 6 months for the work to be completed. It does this by—

- further modifying the application of section 128A of the Building Act by providing a defence if the person proves that they have taken reasonable steps towards complying with the notice within 1 year of the date on which the notice is issued, and that the work required under the order has been completed within a further 6 months. See *new clause 10(4)* for the circumstances in which a person is treated as having taken reasonable steps towards complying with the notice; and
- extending, by 6 months, the limitation period for filing a charging document in those cases.

An order under section 7 of the Recovery Act may be made only on the recommendation of the relevant Minister.

Section 8(1) of the Recovery Act provides that a relevant Minister must not recommend the making of an order unless the relevant Minister is satisfied that (among other things)—

- the order is necessary or desirable for the purpose of the Recovery Act; and
- the extent of the order is not broader than is reasonably necessary to address the matters that gave rise to the order.

The relevant Minister is the Minister responsible for the administration of the enactment that this order modifies. For this order, the relevant Minister is the Minister for Building and Construction (as the Minister responsible for the administration of the Building Act).

The effect of this order is set out below, together with a statement of the reasons why the relevant Minister is satisfied of the matters in section 8(1) of the Recovery Act and considers it appropriate to recommend the making of this order.

Effect of this order

This order makes the following changes.

Clause 4 amends clause 10 of the principal order (offences in relation to dangerous street-facing unreinforced masonry buildings) to provide a defence if a building owner proves that they have taken reasonable steps towards complying with a notice issued by the territorial authority within 1 year of the date on which the notice was issued and that they have completed the work required under the notice within a further 6 months.

Clause 5 modifies section 378 of the Building Act, which relates to the time limit for filing charging documents. The normal rule under that section is that the limitation period in respect of an offence against the Building Act ends 6 months after the date when the matter giving rise to the charge first became known, or should have become known, to any of the persons listed in the section. The modification is that the limitation period is extended by a further 6 months for a building owner who has taken reasonable steps towards complying with a notice issued by the territorial authority within 1 year of the date on which the notice was issued. This modification is needed

so that the 6-month extension of time to complete the work does not use up the existing limitation period.

Relevant Minister's reasons

The relevant Minister considers that the amendment is necessary or desirable for the purpose of the Act, and is appropriate and no broader than is reasonably necessary, because—

- practical constraints beyond building owners' control may have delayed securing work:
- heightened earthquake probability is expected to continue for at least another 6 months beyond the period originally anticipated:
- securing work remains the most effective means of managing life safety risks during this period:
- this order is intended to encourage building owners to complete securing work that is already in progress by providing an additional 6 months to complete the work (via a new defence):
- 6 months is a reasonable and sufficient period for building owners to complete projects that are in progress, balancing life safety and practical considerations.

Regulatory impact assessment

A regulatory impact assessment is not required because there are minor marginal impacts over and above the requirements in the principal order. This order will be subject to a post-implementation review.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 8 March 2018.

Reprints notes

1 *General*

This is a reprint of the Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Amendment Order 2018 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*

Hurunui/Kaikōura Earthquakes Recovery (Unreinforced Masonry Buildings) Order 2017 (LI 2017/25): clause 4