



Hurunui/Kaikōura Earthquakes Recovery Bill

214—1

Report of the Local Government and
Environment Committee

Contents

Recommendation	2
Purpose and operation of the bill	2
Suggested amendments to the bill	3
Appendix A	7
Appendix B	8

Hurunui/Kaikōura Earthquakes Recovery Bill

Recommendation

The Local Government and Environment Committee has examined the Hurunui/Kaikōura Earthquakes Recovery Bill. We recommend that the bill be passed, and that the House take note of our recommendations in this report.

Due to the timeframe for reporting back to the House, we have not included our recommendations in a revision-tracked version of the bill. Rather, they are contained in a draft Supplementary Order Paper which we expect that the Minister will table in the House.

Purpose and operation of the bill

The Hurunui/Kaikōura Earthquake Recovery Bill is the last of three pieces of related emergency legislation which respond to the damage caused by a 7.8 magnitude earthquake sequence that started northeast of Culverden on 14 November 2016.

This bill aims to support the region's response and recovery (the region includes Canterbury, Marlborough, and Wellington) by allowing Ministers, by Order in Council, to make temporary law changes to help with economic recovery, planning processes, rebuilding, and the recovery of land and infrastructure in earthquake-affected areas.

An Order in Council is an order made by the Governor-General, on the advice of a Minister, to bring something into effect. The order in council process in this bill is exceptional because it allows primary legislation (and sometimes also plans and bylaws) to be amended, suspended, or overridden. However, in the case of an emergency it can be used to speed up standard processes, cut through impediments to recovery, and enable timely decision-making. Orders also allow more flexibility to deal with matters such as the provision of temporary housing and relief from tax-reporting deadlines.

The bill contains a range of checks and balances on the use of the Order in Council mechanism. For example, orders must be necessary or desirable to achieve the purpose of the bill, and not broader than required. Schedule 2 of the bill lists all of the Acts that could be amended through an order, and clause 10(c) lists the Acts that could not be. The bill also requires the Minister to establish a review panel, which would review draft orders and provide advice to the Ministers if requested to do so.

This legislation is expected to come into force before the end of 2016. In the bill as introduced, the whole Act would be repealed on 1 April 2018, and all Orders in Council made under this legislation would be revoked on 31 March 2018, unless revoked earlier.

This commentary covers the main amendments that we recommend to the bill. It does not cover technical amendments.

Suggested amendments to the bill

Purpose clause

We recommend amending clause 3 of the bill to make it clearer. As introduced, this clause could cause confusion, as it combines several concepts which we consider should be reorganised.

Some of us consider that clause 3 should include an additional provision to require any adverse effects on the environment from recovery activities to be avoided, remedied, or mitigated as far as practicable. The majority of the committee disagree.

Order in Council powers and the related checks and balances

We recommend an amendment to clause 8(1)(d)(ii), to add a deadline of 3 working days to the time by which the committee or leaders specified in clause 8(1)(c) must provide their comments to the Minister on a draft Order in Council.

We recommend inserting new clause 8(1)(e) to require that if an order relates to the Resource Management Act 1991 the relevant Minister must consider:

- the effects on the environment of any controls provided for in the order
- whether those controls avoid, remedy, or mitigate any adverse effects.

We recommend inserting new clause 8(1A). This addition would require the Minister to provide the review panel, and the persons specified under clause 8(1)(c), with draft reasons for recommending an Order in Council. We consider that this information would be helpful for the parties' consideration of the draft order, and would provide an additional check and balance. The effect of new clause 8(1A) is mirrored in new clause 16(3A).

Some of us believe that all Orders in Council should be affirmed by the House.

Some of us would have preferred that there be no limitation on the ability of the court to judicially review orders.

We recommend new clause 8(4), which notes that the courts are not prevented from determining whether an order is authorised by this Act. The effect of new clause 8(4) is mirrored in new clause 16(7).

We also recommend inserting new clause 8A, which provides for an engagement process for proposed Orders in Council.

We recommend deleting clause 16(1)(a) and (2), to remove the reference to Orders in Council adding additional local authorities. This would require Parliament to legislate to expand the geographic scope of this Act.

We recommend amending clause 16(3)(b). Our amendment would require the Minister to obtain near-unanimous support from the leaders of each political party represented in Parliament before adding new Acts to Schedule 2. Although the list of Acts can be expanded through this process, the extension to other Acts would lapse in the absence of an affirmative motion in the House of Representatives.

We note that there are checks and balances included in the bill intended to prevent abuse of the Order in Council mechanism. Some of us consider that additional checks on the Ministerial power to recommend Orders in Council are desirable, and would be achieved by deleting clause 8(3) and clause 16(6) to provide greater scope for judicial scrutiny. The majority of the committee disagree.

Review panel

Clause 11 would require the responsible Minister to appoint a new Hurunui/Kaikōura Earthquakes Recovery Review Panel of up to six persons. We carefully considered the criteria for the panel's composition, and decided that some amendments would be desirable to ensure that the panel contains people with the right skills and experience. As a consequence, we recommend amending clause 11(1) and inserting new clauses 11(1A) and (1B).

New clause 11(1A) would require that one of the panel members be a former or retired Judge of the High Court. This panel member would also be the convenor.

New clause 11(1B) would make the panel membership requirements less prescriptive in comparison with the provisions of clause 11(1) in the bill as introduced. It would require the Minister to appoint members with the appropriate knowledge, skills, and experience in 1 or more of the following areas:

- law, public administration, or local government
- mātauranga Māori (Māori traditional knowledge) and tikanga Māori (Māori protocol and culture)
- environmental protection
- the nature of the affected communities and the earthquake-affected area (whether rural or urban).

We also recommend that the Minister, when appointing the panel, take into account the views of both:

- Local Government New Zealand
- 1 or more organisations, or representatives of organisations, that the Minister considers have knowledge, skill, or experience relating to mātauranga Māori and tikanga Māori in the earthquake-affected area.

Our suggested amendments would require small consequential changes to clauses 11(4) and 12(3), to update the clause references.

Exemption to orders revoked on 31 March 2018

We recommend inserting new clause 14(2) to respond to submitters' concerns about the timing and implementation of local authority long-term plans. This new clause would clarify that orders relating to local government administration, for example rates, could be extended to 30 June 2021.

New clause 14(2) would align with our recommended new clause 1 in Schedule 1 of the bill.

Validity of orders

We recommend amending clause 15(1)(a) to clarify that an order may not be invalid just because it is, or authorises any act or omission that is, inconsistent with an enactment listed in Schedule 2. In the bill as introduced this provision could refer to any enactment.

Actions taken before determination of invalidity

We recommend inserting new clause 15A. This new clause notes that any action taken under, or in reliance on, an order before a determination about whether it is authorised under this legislation, must be treated as valid and effective to the extent that it would have been had the order been authorised by this legislation. However, if the court considers it is just to do so, it has the discretion to remedy the injustice by not applying this clause.

Report on the exercise of the powers contained in this legislation

We recommend inserting new clause 19(A). This would provide an additional check and balance mechanism by requiring the Minister to present, at least once every 6 months, a report to the House of Representatives relating to the operation of this Act. The report would need to include a list, and description of, all Orders in Council made during the period covered by the report.

Repeal of the Act

We recommend that clause 20 be amended so that only the clauses relating to Orders in Council (7 to 19, and Schedule 2) would be repealed on 1 April 2018.

We recommend a longer duration for the remainder of the Act: until 1 July 2021.

Provisions relating to this legislation

We recommend amendments to Schedule 1, to include three new provisions related to this legislation.

New clause 1 of Schedule 1 applies to orders in force immediately before 31 March 2018 and relating to specified districts. It would grant exemptions from, modify, or extend any provision of 1 or more of the following:

- the Local Government Act 2002
- the Local Government (Rating) Act 2002
- the Ratings Valuations Act 1998
- any regulations made under one of the above Acts.

Such orders would remain in force until 30 June 2021 unless amended or revoked earlier.

New clause 2 of Schedule 2 would allow the Minister to begin making appointments for the review panel before the commencement of this Act. We believe this would be practical given the urgency of the recovery tasks.

List of Acts to which an order may relate

We scrutinised the Acts listed in Schedule 2, and sought justification for the inclusion of each Act. As a result, we recommend deleting the following eight Acts from Schedule 2:

- the Marine and Coastal Area (Takutai Moana) Act 2011
- the Waste Minimisation Act 2008
- the Cadastral Survey Act 2002
- the Animal Welfare Act 1999
- the Hazardous Substances and New Organisms Act 1996
- the Fisheries Act 1996
- the Education Act 1989
- the Health Act 1956.

These Acts are unlikely to be needed for the purposes of an Order in Council, and therefore should be deleted.

We also recommend amending clause 47 of Schedule 2 to specifically exclude the Public Finance Act 1989 from being amended by Order in Council.

Earthquake-affected areas

We received submissions from Professor Andrew Geddis and Dr Dean Knight, as well as Dr W John Hopkins, who considered that it was not justified to confer the override powers in the Wellington region. Some of us agree, and would have preferred that the geographic ambit of the bill not be extended to Wellington until or unless it was needed.

Some of us consider that the inclusion of Greater Wellington is unnecessary because there was no state of emergency declared in this region. Instead, some of us consider that separate targeted legislation—as recommended by the Regulations Review Committee in its recent Inquiry into Parliament's legislative response to future national emergencies—should be brought to Parliament to address any future events that affect Wellington. The majority of us believe that the geographic regions are appropriate.

Appendix A

Committee procedure

The Local Government and Environment Committee was referred the Hurunui/Kaikōura Earthquakes Recovery Bill on 1 December 2016.

We received and considered 15 written submissions, most of which we invited from targeted organisations and individuals. We heard oral evidence from 16 submitters in Wellington. We also had an opportunity to hear from the Acting Minister of Civil Defence, Hon Gerry Brownlee.

We received advice from the Department of the Prime Minister and Cabinet and other departments through that department, and from the Ministry for the Environment. We also received advice from the Parliamentary Counsel Office.

Committee members

Scott Simpson (Chairperson)
Sarah Dowie
Matt Doocey
Paul Foster-Bell
Joanne Hayes
Tutehounuku Korako
Ron Mark
Mojo Mathers
Hon David Parker
Eugenie Sage
Meka Whaitiri

Joanne Hayes was replaced by Dr Parmjeet Parmar and Dr Jian Yang for some of this item of business.

Matt Doocey was replaced by Brett Hudson and Alastair Scott for some of this item of business.

Sarah Dowie was replaced by Brett Hudson and Andrew Bayly for some of this item of business.

Ron Mark was replaced by Denis O'Rourke for this item of business.

Mojo Mathers was replaced by Jan Logie for this item of business.

Appendix B

Draft Supplementary Order Paper

A draft Supplementary Order Paper (PCO 20216-1/1.8) containing our recommended amendments to the bill is attached.

IN CONFIDENCE

House of Representatives

Supplementary Order Paper

Thursday, 8 December 2016

Hurunui/Kaikōura Earthquakes Recovery Bill

*Proposed amendments for the consideration of the Committee of the
whole House*

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT** have official status in terms of unamended text
- **NOT** have the status of an as-reported version of the Bill.

Explanatory note

This Supplementary Order Paper amends the Hurunui/Kaikōura Earthquakes Recovery Bill. In summary, the amendments—

- clarify the purpose of the Bill in *clause 3*:
- remove the ability to extend the definition of council by Order in Council:
- require a relevant Minister, in the case of an order relating to the Resource Management Act 1991, to consider certain matters:
- clarify the time-frame within which the Regulations Review Committee (or party leaders) must provide comments under *clause 8(1)(d)(ii)*:
- require a draft order provided to the Panel and to the Regulations Review Committee (or party leaders) to be accompanied by a draft of the relevant Minister's reasons for a recommendation, including why the draft order is appropriate (*new clause 8(1A)*):
- clarify that, except as provided in *clause 8(3)*, nothing in the Bill prevents a court from determining whether an order is authorised by the Bill. A similar change is made in *clause 16(7)*:
- provide for engagement about a proposal for an order in *clause 8A*:
- modify the provisions relating to the appointment of the Panel. Instead of appointing members that represent iwi or local government, the Minister must consider whether a potential member has knowledge, skills, or experience in certain areas (for example, mātauranga Māori and tikanga Māori, environmental protection, and the nature of the affected communities). In addition, the Minister must have regard to the views of Local Government New Zealand and organisations that the Minister considers have knowledge, skills, or experience relating to mātauranga Māori and tikanga Māori in the earthquake-affected area (*new clause 11(1) to (1B)*). In addition, the Panel must include a former or retired Judge of the High Court (rather than just a lawyer):
- modify *clause 13(2)* so that the time allowed for the review of an order by the Panel is set by the relevant Minister rather than the Minister:
- modify *clause 15(1)(a)*. This provision provides that an order may not be held invalid just because it is, or authorises any act or omission that is, inconsistent with any other enactment. This has been narrowed to refer only to enactments referred to in *Schedule 2*:
- insert *new clause 15A*. This applies if a court determines that an order is not authorised by the Bill. In that case, an action taken under, or in reliance on, the order before the determination is made must be treated as valid and effective to the extent that it would have been had the order been authorised. However, this does not apply if the court orders otherwise:
- modify the process for adding Acts by Order in Council in *clause 16*. A draft of the order must be provided to the leaders of political parties represented in Parliament and the Minister must be satisfied that there is unanimous or near

unanimous support for the order. The ability to add local authorities to the application of the Act has been removed from *clause 16*:

- insert *new clause 19A* to provide for 6-monthly reports on the operation of the Bill to be presented to the House of Representatives:
- include a transitional provision in *Schedule 1* so that orders relating to local government administration (for example, rates and rating valuations) can continue until 30 June 2021 (*see also* the consequential changes to *clauses 14 and 20*):
- include a transitional provision in *Schedule 1* to treat actions taken by a relevant Minister before commencement of the Bill for the purposes of engagement under *clause 8A* to be valid (to allow the engagement to be undertaken more quickly):
- include a transitional provision in *Schedule 1* to treat actions taken by the Minister before commencement of the Bill for the purposes of Panel appointments to be valid (to allow the Panel to be set up more quickly):
- remove various Acts from the application of the Bill (in particular, the Cadasstral Survey Act 2002, the Hazardous Substances and New Organisms Act 1996, the Marine and Coastal Area (Takutai Moana) Act 2011, the Waste Minimisation Act 2008, the Education Act 1989, and the Health Act 1956). In addition, the paragraph relating to financial reporting does not include reporting under the Public Finance Act 1989.

Departmental disclosure statement

The Department of the Prime Minister and Cabinet is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2016&no=0> (if it has been provided for publication).

The Honourable Gerry Brownlee, in Committee, to propose the amendments shown in the following document.

Hon Gerry Brownlee

Hurunui/Kaikōura Earthquakes Recovery Bill

Government Bill

Contents

	Page
1 Title	2
2 Commencement	2
Part 1	
Preliminary provisions	
3 Purpose	2
4 Interpretation	3
5 Transitional, savings, and related provisions	4
6 Act binds the Crown	4
Part 2	
Orders in Council	
7 Governor-General may make Orders in Council	5
<i>Key restrictions on orders</i>	
8 Relevant Minister may recommend order only for purposes of Act, etc	5
<u>8A</u> <u>Engagement about proposal</u>	<u>6</u>
9 Reasons for order	7
10 Further restrictions on orders	7
<i>Hurunui/Kaikōura Earthquakes Recovery Review Panel</i>	
11 Hurunui/Kaikōura Earthquakes Recovery Review Panel	8
12 Panel may act by division	9
13 Functions of Panel	9
<i>Further provisions about orders</i>	
14 Orders revoked on 31 March 2018	10

cl 1 Proposed amendments to Hurunui/Kaikōura Earthquakes Recovery Bill		
15	Validity of orders	10
15A	<u>Actions taken before determination of invalidity</u>	<u>11</u>
	<i>Other orders</i>	
16	Order in Council may specify additional local authorities and Acts	11
17	Order to add Acts revoked if not approved by House	12
18	Reasons for order	12
	<i>Application of Legislation Act 2012</i>	
19	Application of Legislation Act 2012	13
	<i>Report on operation of Act</i>	
19A	<u>Report on operation of Act</u>	<u>13</u>
	<i>Repeal</i>	
20	Repeal of Act	13
	Schedule 1	14
	Transitional, savings, and related provisions	
	Schedule 2	15
	Enactments to which order may relate	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Hurunui/Kaikōura Earthquakes Recovery Act **2016**.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to assist the earthquake-affected area and its councils and communities to respond to, and recover from, the impacts of the Hurunui/Kaikōura earthquakes and, in particular, to—

- (a) provide for economic recovery; and
- (b) provide for the planning, rebuilding, and recovery of affected communities and persons, including—
 - (i) the repair and rebuilding of land, infrastructure, and other property of affected communities or of any affected persons; and
 - (ii) safety enhancements to, and improvements to the resilience of, that land, infrastructure, or other property; and

- (iii) facilitating co-ordinated efforts and processes for short-term, medium-term, and long-term recovery; and
- (iv) facilitating the restoration and improvement of the economic, social, and cultural well-being, and the resilience, of affected communities or of any affected persons; and
- (v) facilitating the restoration of the environment.
- (e) ~~facilitate co-ordinated efforts and processes used to bring about the short-term, medium-term, and long-term recovery and enhancement of affected communities; and~~
- (d) ~~facilitate the restoration and improvement of the environmental, economic, social, and cultural well-being, and the resilience, of affected communities or of any affected persons.~~

Compare: 2011 No 12 s 3

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

council means—

- (a) ~~the Hurunui District Council, the Kaikoura District Council, the Marlborough District Council, the Wellington City Council, the Hutt City Council, the Canterbury Regional Council (Environment Canterbury), and the Wellington Regional Council (Greater Wellington); and~~
- (b) ~~a local authority specified for the purposes of this definition in an Order in Council made under **section 16**~~

council means the Hurunui District Council, the Kaikoura District Council, the Marlborough District Council, the Wellington City Council, the Hutt City Council, the Canterbury Regional Council (Environment Canterbury), and the Wellington Regional Council (Greater Wellington)

earthquake-affected area means, to the extent that they are affected (whether directly or indirectly) by the Hurunui/Kaikōura earthquakes,—

- (a) the districts or regions of the councils; and
- (b) the parts of the coastal marine area (within the meaning of section 2(1) of the Resource Management Act 1991) that are part of, or adjacent to, those districts and regions; and
- (c) the areas of other districts or regions that contain transport or other infrastructure

enactment has the same meaning as in section 29 of the Interpretation Act 1999, and also includes any plan, programme, bylaw, or rule made under any Act or regulations

Hurunui/Kaikōura earthquakes or **earthquakes**—

- (a) means the earthquakes that occurred on 14 November 2016 in Hurunui and Kaikōura; and
- (b) includes any earthquake that occurs in, or significantly affects, the earthquake-affected area (as defined in **paragraphs (a) and (b)** of the definition of that term) on or after 14 November 2016

local authority has the same meaning as in section 5(1) of the Local Government Act 2002

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

order means an Order in Council made under **section 7**

Panel means the Hurunui/Kaikōura Earthquakes Recovery Review Panel established under **section 11**

relevant Minister,—

- (a) in relation to an enactment (other than this Act or an instrument referred to in **paragraph (b)**), means the Minister who is, under the authority of any warrant or with the authority of the Prime Minister, responsible for the administration of the enactment:
 - (b) in relation to a plan, programme, bylaw, or rule, means the Minister who is, under the authority of any warrant or with the authority of the Prime Minister, responsible for—
 - (i) the administration of the Act under which that instrument is made; or
 - (ii) if that instrument is made under regulations, the administration of the Act under which the regulations are made.
- (2) If there is more than 1 relevant Minister for an order, the references in this Act to the relevant Minister must be treated as references to those Ministers acting together (unless the context otherwise requires).

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions ~~(if any)~~ set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2 Orders in Council

7 Governor-General may make Orders in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, grant exemptions from, modify, or extend any provisions of an enactment referred to in **Schedule 2** in connection with the whole or a part of the earthquake-affected area.
- (2) An exemption from, modification of, or extension of a provision—
 - (a) may be absolute, or subject to terms or conditions; and
 - (b) may be made by—
 - (i) stating alternative means of complying with the provision; or
 - (ii) substituting a discretionary power for the provision.
- (3) An exemption from, modification of, or extension of a provision may be for the purposes of enabling the relaxation or suspension of provisions in enactments referred to in **Schedule 2** that—
 - (a) may divert resources away from the effort to—
 - (i) efficiently respond to the damage caused by the earthquakes;
 - (ii) minimise further damage; or
 - (b) may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the earthquakes.
- (4) **Subsections (2) and (3)** do not limit **subsection (1)**.
- (5) In this Act, **modify**, in relation to a provision, includes disapplying or suspending the provision.

Compare: 2011 No 12 s 71

Key restrictions on orders

8 Relevant Minister may recommend order only for purposes of Act, etc

- (1) The relevant Minister must not recommend the making of an order unless—
 - (a) the relevant Minister is satisfied that—
 - (i) the order is necessary or desirable for the purpose of this Act; and
 - (ii) the extent of the order is not broader than is reasonably necessary to address the matters that gave rise to the order; and
 - (iii) the order does not breach **section 10**; and
 - (b) a draft of the order has been reviewed by the Panel; and
 - (c) a draft of the order has been provided to—
 - (i) the Committee of the House of Representatives that is responsible for the review of disallowable instruments; or

- (ii) if the House of Representatives is adjourned, each leader of a political party represented in Parliament (unless a leader cannot be contacted after reasonable efforts have been made); and
- (d) the relevant Minister has had regard to—
 - (i) the Panel’s recommendations on the draft order; and
 - (ii) the comments on the draft order (if any) that are provided by the Committee or a leader referred to in **paragraph (c)** ~~(if any)~~ and that are provided within 3 working days after the date on which the draft order is first provided under **paragraph (c)** (or any longer time allowed by the relevant Minister); and
- (e) if the order relates to the Resource Management Act 1991, the relevant Minister has considered—
 - (i) the effects on the environment of any controls provided for in the order; and
 - (ii) whether those controls avoid, remedy, or mitigate any adverse effects; and
- (f) the engagement process under **section 8A** has been complied with.
- (1A) The draft order provided to the Panel and under **subsection (1)(c)** must be accompanied by a draft of the relevant Minister’s reasons for a recommendation under **subsection (1)** (including why the draft order is appropriate).
- (2) Where a draft of the order has been subject to the process under **subsection (1)(b), (c), or (d), (e), or (f)**, that paragraph applies to a subsequent draft of the order only if the relevant Minister considers that, given the differences between the drafts, it would be appropriate to repeat the process.
- (3) The recommendation and decisions of the relevant Minister may not be challenged, reviewed, quashed, or called into question in any court.
- (4) Except as provided in **subsection (3)**, nothing in this Act prevents a court from determining whether an order is authorised by this Act.

Compare: 2011 No 12 s 74

8A Engagement about proposal

- (1) For the purposes of **section 8(1)(f)**, the relevant Minister must—
 - (a) make available a document referred to in **subsection (2)** to—
 - (i) the persons or representatives of persons that the relevant Minister considers appropriate given the proposed effect of the order; or
 - (ii) the public generally; and
 - (b) invite those persons to make written comments on the document; and
 - (c) give those persons 3 working days from the making of the invitation within which to make their comments to the relevant Minister (or any longer time allowed by the relevant Minister); and

- (d) have regard to those comments that are received within the 3-working-day period (or within the longer time allowed by the relevant Minister).
- (2) The document must include—
 - (a) an explanation of what the proposal is intended to achieve; and
 - (b) a description of the proposed effect of the order; and
 - (c) an explanation of why the relevant Minister considers that the order is necessary or desirable for the purpose of this Act.
- (3) **Subsection (1)** and **section 8(1)(f)** do not apply, or do not apply to a person or class of persons, if the relevant Minister is satisfied that—
 - (a) engagement is impracticable in the circumstances; or
 - (b) the urgency of the situation requires that the order be made as soon as practicable without that engagement.
- (4) If **subsection (3)** is relied on, the relevant Minister's reasons for relying on that subsection must be published together with the order.

9 Reasons for order

If the relevant Minister makes a recommendation under **section 7**, the relevant Minister's reasons for making the recommendation (including why the order is appropriate) must be published together with the order.

10 Further restrictions on orders

- (1) Despite anything else in this Act, an order must not—
 - (a) grant an exemption from or modify a requirement to—
 - (i) release a person from custody or detention; or
 - (ii) have any person's detention reviewed by a court, Judge, or Registrar; or
 - (b) grant an exemption from or modify a restriction on keeping a person in custody or detention; or
 - (c) grant an exemption from or modify a requirement or restriction imposed by the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicature Amendment Act 1972, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014; or
 - (d) contain any provision that has the effect of amending a provision of this Act.
- (2) **Subsection (1)(d)** does not limit **section 16**.

Compare: 2011 No 12 s 71(6)

Hurunui/Kaikōura Earthquakes Recovery Review Panel

11 Hurunui/Kaikōura Earthquakes Recovery Review Panel

- (1) ~~The Minister must appoint a Hurunui/Kaikōura Earthquakes Recovery Review Panel of up to 6 persons with relevant expertise or appropriate skills,—~~
- (a) ~~1 of whom must be—~~
- (i) ~~a former or retired Judge of the High Court; or~~
- (ii) ~~a lawyer who has, for at least 7 years, held a New Zealand practising certificate as a barrister or as a barrister and solicitor; and~~
- (b) ~~1 of whom must be an iwi representative; and~~
- (c) ~~1 of whom must be nominated for appointment by Local Government New Zealand.~~
- (1) The Minister must appoint a Hurunui/Kaikōura Earthquakes Recovery Review Panel of up to 6 persons who have appropriate knowledge, skills, and experience to assist the Panel to perform its functions.
- (1A) One of the members must be a former or retired Judge of the High Court (and that member will be the convener).
- (1B) In appointing a person as a member, the Minister must—
- (a) consider whether the person has knowledge, skills, or experience relating to 1 or more of the following:
- (i) law, public administration, or local government;
- (ii) mātauranga Māori (Māori traditional knowledge) and tikanga Māori (Māori protocol and culture);
- (iii) environmental protection;
- (iv) the nature of the affected communities and the earthquake-affected area (for example, its rural or urban character); and
- (b) have regard to the views of—
- (i) Local Government New Zealand; and
- (ii) 1 or more organisations, or representatives of organisations, that the Minister considers have knowledge, skills, or experience relating to mātauranga Māori and tikanga Māori in the earthquake-affected area.
- (2) A member of the Panel must be appointed by notice of appointment in writing that—
- (a) states the date on which the appointment takes effect; and
- (b) states the term of the appointment.
- (3) ~~The Minister must appoint one of the appointed members to be the convener of the Panel.~~

- (4) If, for any reason, the convener, ~~or a person referred to in **subsection (1)(a) to (c)**~~, is unable or unwilling to act in relation to a matter or class of matters,—
- (a) the convener may designate any other member of the Panel to act in the convener's place ~~or in place of the person referred to in **subsection (1)(a) to (c)**~~; or
 - (b) if the convener is unable or unwilling to act under **paragraph (a)**, the Minister may designate any other member of the Panel to act in the convener's place ~~or in place of the person referred to in **subsection (1)(a) to (c)**~~.
- (5) If a person (A) is designated to act in the convener's place under **subsection (4)** in relation to a matter or class of matters, references in this section and **sections 12 and 13** to the convener must, in relation to the matter or matters, be treated as references to A.
- (6) An appointed member vacates office if he or she—
- (a) is removed by written notice given by the Minister; or
 - (b) resigns by written notice given to the Minister.
- (7) The Department of the Prime Minister and Cabinet must provide administrative support for the Panel.

Compare: 2011 No 12 s 72

12 Panel may act by division

- (1) The convener may determine that the Panel may act in separate divisions of the Panel in relation to any matter or class of matters.
- (2) A division must consist of—
- (a) the convener; and
 - (b) at least 3 other members of the Panel selected by the convener.
- (3) ~~The division must include the persons referred to in **section 11(1)(a) to (c)**.~~
- (4) **Subsections (2) and (3)** ~~are~~ is subject to **section 11(4) and (5)**.
- (5) For the purposes of acting in relation to any matter or class of matters referred to a division of the Panel, the Panel consists of the division and **section 13** applies with any necessary modifications.

13 Functions of Panel

- (1) The functions of the Panel are—
- (a) to review draft orders; and
 - (b) to provide advice on request to both the Minister and the relevant Minister in relation to orders that may be required for the purpose of this Act.
- (2) Within 3 working days after the date on which a draft order is received for review, or any longer time allowed by the relevant Minister, the Panel must—

- (a) review the draft; and
 - (b) give the Panel's recommendations to both the Minister and the relevant Minister.
- (3) A review by the Panel may be conducted in any manner that the convener thinks appropriate, including by telephone or video conference.
- (4) The convener has a casting vote if there are more than 2 members voting and there is an equality of votes.
- (5) The relevant Minister must ensure that the Panel's recommendations on a draft order are publicly available on an Internet site.
- (6) The Panel's recommendations must include the Panel's reasons for making the recommendations.
- (7) The relevant Minister must, as soon as practicable after receiving the Panel's recommendations on a draft order, present a copy of the recommendations to the House of Representatives.

Compare: 2011 No 12 s 73

Further provisions about orders

14 Orders revoked on 31 March 2018

- (1) Every order is revoked on the close of 31 March 2018 (unless sooner revoked).
- (2) However, **subsection (1)** does not apply to an order referred to in **clause 1 of Schedule 1** (which provides for the order to continue in force until the close of 30 June 2021, unless it is sooner revoked).

15 Validity of orders

- (1) An order may not be held invalid just because—
 - (a) it is, or authorises any act or omission that is, inconsistent with any ~~other~~ enactment referred to in **Schedule 2**; or
 - (b) it confers any discretion on, or allows any matter to be determined or approved by, any person.
- (2) An order may be expressed to come into force on a day that is before, on, or after the date on which it is made, but not earlier than 14 November 2016; and the order comes into force or, as the case may be, is deemed to have come into force accordingly.
- (3) An order may be retrospective only to the extent provided for in **subsection (2)**.
- (4) So far as it is authorised by this Act, an order has the force of law as if it were enacted as a provision of this Act.
- (5) This section is subject to **section 10**.

Compare: 2011 No 12 s 75

15A Actions taken before determination of invalidity

- (1) This section applies if a court determines that an order is not authorised by this Act.
- (2) Any action taken under, or in reliance on, the order before the determination is made must be treated as valid and effective to the extent that it would have been had the order been authorised by this Act.
- (3) However, if the court considers that it is just to do so, the court may order that **subsection (2)** does not apply (whether generally or in particular circumstances).

Other orders

16 Order in Council may specify additional ~~local authorities and~~ Acts

- (1) ~~The Governor-General may, by Order in Council made on the recommendation of the Minister, do either or both of the following:~~
 - ~~(a) specify 1 or more local authorities for the purposes of the definition of council in **section 4**:~~
 - ~~(b) specify 1 or more Acts for the purposes of **Schedule 2**.~~
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify 1 or more Acts for the purposes of **Schedule 2**.
- (2) ~~The Minister may make a recommendation for an Order in Council under **subsection (1)(a)** to specify a local authority only if the Minister is satisfied that—~~
 - ~~(a) an earthquake has occurred in, or significantly affected, the earthquake-affected area after this Act is enacted; and~~
 - ~~(b) the district or region or any part of the district or region of the local authority is affected by the earthquake to such an extent that it is necessary or desirable to apply the measures available under this Act.~~
- (3) ~~The Minister may make a recommendation for an Order in Council under **subsection (1)(b)** only if—~~
 - ~~(a) the Minister is satisfied that—~~
 - ~~(i) the order is necessary or desirable for the purpose of this Act; and~~
 - ~~(ii) the order does not breach **section 10(1)(a) to (c)**; and~~
 - ~~(b) a draft of the order has been provided to—~~
 - ~~(i) the Committee of the House of Representatives that is responsible for the review of disallowable instruments; or~~
 - ~~(ii) if the House of Representatives is adjourned, each leader of a political party represented in Parliament (unless that leader cannot be contacted after reasonable efforts have been made); and~~

- (b) a draft of the order has been provided to each leader of a political party represented in Parliament; and
 - (e) ~~the Minister has had regard to the comments on the draft order that are provided by the Committee or a leader (if any);~~
 - (c) the Minister is satisfied that there is unanimous or near unanimous support for the order from those leaders.
- (3A) The draft order provided under **subsection (3)(b)** must be accompanied by a draft of the Minister's reasons for a recommendation under **subsection (3)** (including why the draft order is appropriate).
- (4) An order under **section 7** that relates to an Act specified by an Order in Council under **subsection (1)(b)** may, in accordance with **section 15(2) and (3)**, come into force before, on, or after the date on which the order under **section 7** is made, but not earlier than 14 November 2016.
 - (5) Where a draft of the Order in Council has been subject to the process under **subsection (3)(b) or (c)**, that paragraph applies to a subsequent draft of the order only if the Minister considers that, given the differences between the drafts, it would be appropriate to repeat the process.
 - (6) The recommendation and decisions of the Minister may not be challenged, reviewed, quashed, or called into question in any court.
 - (7) Except as provided in **subsection (6)**, nothing in this Act prevents a court from determining whether an Order in Council under **subsection (1)** is authorised by this Act.

17 Order to add Acts revoked if not approved by House

- (1) An Order in Council under **section 16(1)(b)** is revoked (unless it is earlier revoked) on the expiry of the relevant period if no motion to approve the order is agreed to by the House of Representatives within that period.
- (2) The **relevant period** is the longer of the following:
 - (a) the period of 10 sitting days of the House of Representatives after the date on which the Order in Council is made;
 - (b) the period of 28 days after the date on which notice that the Order in Council has been made is given in the *Gazette*.
- (3) An order under **section 7** that relates to an Act specified by an Order in Council under **section 16(1)(b)** that is revoked under **subsection (1)** is also revoked at the same time.

18 Reasons for order

If the Minister makes a recommendation under **section 16**, the Minister's reasons for making the recommendation (including why the Order in Council is appropriate) must be published together with the order.

Application of Legislation Act 2012

19 Application of Legislation Act 2012

- (1) Despite **section 15(4)**, an Order in Council made under this Act is a disallowable instrument for the purposes of the Legislation Act 2012.
- (2) An Order in Council made under this Act is also a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 2011 No 12 s 76

Report on operation of Act

19A Report on operation of Act

- (1) The Minister must, at least once every 6 months, present to the House of Representatives a report relating to the operation of this Act since the last report was presented (or, in the case of the first report, since the commencement of this Act).
- (2) The report must, for the period covered by the report, include—
 - (a) a list of the Orders in Council made under this Act during the period;
and
 - (b) a brief description of those orders.

Repeal

20 Repeal of Act

- (1) ~~This Act is **Sections 7 to 18** and **Schedule 2** are repealed on 1 April 2018.~~
- (2) The rest of this Act is repealed on 1 July 2021.

Schedule 1

Transitional, savings, and related provisions

s 5

Part 1

Provisions relating to this Act as enacted

~~There are no transitional, savings, or related provisions relating to this Act as enacted.~~

1 Orders relating to local government administration (including rates and rating valuations) continue in force

- (1) ~~This clause applies to an order that—~~
- ~~(a) is in force immediately before 31 March 2018; and~~
 - ~~(b) relates only to the districts of 1 or more of the following:~~
 - ~~(i) the Kaikoura District Council;~~
 - ~~(ii) the Hurunui District Council;~~
 - ~~(iii) the Marlborough District Council; and~~
 - ~~(c) grants exemptions from, modifies, or extends any provision of 1 or more of the following:~~
 - ~~(i) the Rating Valuations Act 1998;~~
 - ~~(ii) the Local Government (Rating) Act 2002;~~
 - ~~(iii) the Local Government Act 2002;~~
 - ~~(iv) any enactment made under an Act referred to in any of **subparagraphs (i) to (iii)**.~~
- (2) ~~The order continues in force until the close of 30 June 2021 despite the repeal of **section 7** (unless it is sooner revoked).~~
- (3) ~~The order may be amended or revoked after 1 April 2018 as if the provisions repealed under **section 20(1)** were not repealed on that date.~~

2 Relevant Minister may act before commencement for purposes of engagement

~~Any act done before the commencement of this Act by a relevant Minister for the purposes of **section 8A** must be treated as validly done for those purposes.~~

3 Minister may act before commencement for purposes of Panel appointments

~~Any act done before the commencement of this Act by the Minister for the purposes of **section 11** must be treated as validly done for those purposes.~~

Schedule 2

Enactments to which order may relate

s 7

The enactments referred to in **section 7** are—

Land and buildings

- (1) the Building Act 2004:
- (2) ~~the Cadastral Survey Act 2002:~~
- (3) the Crown Pastoral Land Act 1998:
- (4) the Heritage New Zealand Pouhere Taonga Act 2014:
- (5) the Land Act 1948:
- (6) the Land Transfer Act 1952:
- (7) the Public Works Act 1981:
- (8) the Rating Valuations Act 1998:

Conservation, environment, and marine legislation

- (9) the Conservation Act 1987:
- (10) the Environment Canterbury (Transitional Governance Arrangements) Act 2016:
- (11) ~~the Hazardous Substances and New Organisms Act 1996:~~
- (12) the Kaikōura (Te Tai o Marokura) Marine Management Act 2014:
- (13) ~~the Marine and Coastal Area (Takutai Moana) Act 2011:~~
- (14) the Marine Mammals Protection Act 1978:
- (15) the Marine Reserves Act 1971:
- (16) the Reserves Act 1977:
- (17) the Resource Management Act 1991:
- (18) the Soil Conservation and Rivers Control Act 1941:
- (19) ~~the Waste Minimisation Act 2008:~~
- (20) the Wildlife Act 1953:

Civil defence and earthquakes

- (21) the Civil Defence Emergency Management Act 2002:
- (22) the Earthquake Commission Act 1993:
- (23) the Hurunui/Kaikōura Earthquakes Emergency Relief Act **2016**:

Health, education, and social

- (24) ~~the Accident Compensation Act 2001:~~
- (25) ~~the Education Act 1989:~~
- (26) ~~the Health Act 1956:~~

- (27) ~~the Social Security Act 1964:~~
Revenue
- (28) the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994):
Local government
- (29) the Local Government Act 1974:
- (30) the Local Government Act 2002:
- (31) the Local Government Official Information and Meetings Act 1987:
- (32) the Local Government (Rating) Act 2002:
Transport
- (33) the Government Roding Powers Act 1989:
- (34) the Land Transport Act 1998:
- (35) the Land Transport Management Act 2003:
- (36) the Maritime Transport Act 1994:
- (37) the New Zealand Railways Corporation Act 1981:
- (38) the Railways Act 2005:
- (39) the Road User Charges Act 2012:
- (40) the Utilities Access Act 2010:
~~*Primary industries*~~*Food safety*
- (41) the Animal Products Act 1999:
- (42) ~~the Animal Welfare Act 1999:~~
- (43) ~~the Fisheries Act 1996:~~
- (44) the Food Act 2014:
- (45) the Wine Act 2003:
Other
- (45A) the Accident Compensation Act 2001:
- (46) the Corrections Act 2004:
- (46A) the Social Security Act 1964:
- (47) any Act (other than the Public Finance Act 1989) to the extent that it relates to accounting records, the preparation, audit, approval, lodgement, or distribution of financial statements, or any other financial reporting obligations of any group, entity, or other person:
- (48) an Act that replaces (in whole or in part) an Act referred to in any of **paragraphs (1) to (47)**:
- (49) an Act specified for the purposes of this schedule in an Order in Council made under **section 16**:

-
- (50) regulations made under an Act referred to in any of **paragraphs (1) to (48)** or specified under **paragraph (49)**;
 - (51) any plan, programme, bylaw, or rule made under an enactment referred to in any of **paragraphs (1) to (50)**.