
Licensing and consenting emergency works at the coast

Summary:

We apply a proportionate approach to Flood Defence Consenting in an emergency situation, dependent upon time available, but emergency works can proceed without a Consent, subject to conditions as set out in section 4 of this briefing, if necessary.

Emergency works undertaken by us or by third parties above Mean High Water Springs (for example behind defences) do not require a Marine Licence.

Emergency works below Mean High Water Springs undertaken by third parties not on behalf of us or another Risk Management Authority always require a Marine Licence and there will be a fee associated with this.

All emergency works undertaken by or on behalf of the Environment Agency are exempt from a Marine Licence, but require MMO approval if they do not constitute maintenance of an existing structure within its existing boundaries, or if it constitutes beach replenishment.

1. Background

- 1.1 Regardless of the SMP policy in place for a particular location, people, property or the natural environment may be placed at high risk from repeat flooding or erosion in the immediate future. This means that emergency works are likely to be required to manage that risk at least temporarily.
- 1.2 Building on previous legislation, schedule 1 s12 (1) and (2) of the Floods and Water Management Act (2010) sets out the powers of the Environment Agency to undertake and delegate emergency works. Local authorities undertake and delegate emergency coast protection works under s5 (6) of the Coast Protection Act. Section 17 (7) includes provision for other third parties to undertake emergency works but Coast Protection Act Consenting has effectively been superseded by marine licensing by the Marine Management Organisation (MMO). In some critical cases where there is a risk to the public, the Environment Agency can exercise its emergency powers, carry out repairs and reclaim costs from the asset owner.

2. Defining 'emergency works' for consenting and licensing purposes

- 2.1 There is no legal definition of 'emergency' in the Land Drainage Act or related legislation. The **Environment Agency** defines emergency works generally as those in response to an event that is unexpected *and* serious such that it presents a significant risk to human life, health and property or the natural environment *and* involves the need for immediate action to manage the risk. 'Significant risk' is not defined and should be assessed case by case.
- 2.2 **Local authorities** in practice take a similar approach although the Coast Protection Act defines emergency more strictly as 'an unpredictable and sudden situation that

poses an immediate risk to loss of life and requires immediate action’, without mention of property.

- 2.3 The **Marine Management Organisation** defines emergency works as ‘where urgent permission is required to shore up/make safe only an existing structure...where human health, property or the environment are at imminent risk’.
- 2.4 **Timescales** are not defined in the context of emergency works on the basis that circumstances of a case will differ according to physical, financial or technical factors. A pragmatic interpretation is needed. Overall, if it is not a realistic possibility that normal licensing procedures (or any ‘fast-track’ version of them) can be followed, then it constitutes emergency works.
- 2.5 In many cases of works requests, a ‘fast-track’ approach to normal consenting and licensing may be an option if time allows. The Environment Agency and MMO will aim to uphold the consenting and licensing regime where possible through applying such a fast-track approach, using information and conditions proportionate to the scale and immediacy of the risk involved.
- 2.6 **IMPORTANT:** An emergency is not a situation that has planned actions that have become urgent due to increased rates of deterioration over time. Emergency works should not be confused with ‘urgent’ works identified in a broader FCRM programme or strategy on the basis of risk arising from actual or anticipated asset deterioration.

3. Funding emergency works

- 3.1 Application for Grant in Aid funding may be made for emergency works in retrospect by a Risk Management Authority if the Environment Agency Area Flood and Coastal Risk Manager has been informed prior to works commencement (other third party works may be ‘promoted’ by the Risk Management Authority to the Environment Agency for funding). After a flood event the Environment Agency may make specific arrangements to categorise, prioritise and fast-track the allocation of investment through the Partnership Funding mechanism. Such arrangements will take into account factors such as basic design criteria, value for money and SMP policy.
- 3.2 There is no guarantee of funding for emergency works carried out. Further details can be found in Operational Instruction (OI) 187_07 ‘Approving local authority and internal drainage board flood and coastal risk management strategies, studies and projects’ p7.

4. Licensing requirements

- 4.1 Depending on who maintains a defence or other asset, licensing procedures from the Environment Agency and the Marine Management Organisation (MMO) may apply for emergency works.

Flood Defence Consents:

- 4.2 Flood Defence Consents are issued by the Environment Agency to third parties (including other Risk Management Authorities) wishing to carry out flood defence works. Full guidance is available in OI 85_02 ‘Flood Defence Consents’. At the coast, these are issued under Sea Defence Bylaws and other legislation. In some circumstances they may be dis-applied where provisions can be covered within a Marine Licence.
- 4.3 Flood Defence Consents cannot be issued retrospectively. It is considered that emergency works will usually be temporary, to repair or replace an existing asset on its original footprint to manage immediate risk: these should be assessed, amended

and if necessary removed as soon as possible after the immediate risk has passed so permanent measures can be designed and consented as normal (see OI 85_02 p3 'emergency works'). Where emergency works involve permanent fixtures beyond the original footprint of the structure/feature, a Flood Defence Consent will be required as normal.

4.4 **Emergency flood risk management works done on behalf of the Environment Agency** do not require a Flood Defence Consent. We prioritise and apply emergency action required for Environment Agency maintained assets using similar criteria to those we apply to external Flood Defence Consenting (see OI 333_04 'Consenting Internal Works').

4.5 For **emergency flood risk management works done**

- a) **by or on behalf of another Risk Management Authority;**
- b) **by another third party such as an individual land owner or business;**

the Environment Agency (and any other statutory consultees) must be informed at the earliest opportunity prior to works commencing, as a minimum.

4.6 Environment Agency teams should use the following checklist to highlight to those wishing to undertake works any potential issues that might affect whether or how emergency works might be done. This checklist is one of seven screening checklists in OI 85_02 for low-risk activities, and covers maintenance (or like-for-like replacement) of existing structures – which is what emergency works generally aim to achieve in the short term. Where 'no' is checked in the list below, this should trigger further discussion with the landowner prior to works commencement to arrive at a practical solution that complies with environmental legislation.

Tick Box		Checklist for maintenance of existing structures (85_02)
YES	NO	
		The site is not in or near to a statutory or non-statutory designated conservation site.
		The maintenance / repair will not alter the dimensions of the structure.
		Suitable measures will be in place to prevent pollution to the environment.
		The site is not near to a protected or priority species record held by the Environment Agency, nor has the applicant identified the presence of any protected or priority species.
		Removal of the structure is not a priority from a flood risk and/or WFD perspective.
		The work will not involve the removal of large trees.

4.7 In all cases, Environment Agency Fisheries and Biodiversity teams should be informed prior to works commencement to check for potential impacts on species and habitats, including designated sites. Where designated sites are involved, Natural England should also be informed, and consulted on consenting any permanent works as normal. Further guidance on WFD implications can be found in OI 872_11 'Flood Defence Consenting – assessing new modifications for compliance with the Water Framework Directive'.

4.8 Further work to address the items in the checklist should be proportionate to the scale of, and risk involved with, the emergency works being proposed. If time allows, a fast-tracked approach to the normal licensing procedure should be followed and a standard consent for maintenance of existing structures issued with appropriate conditions (e.g. time-limiting) attached, as per OI 85_02 p8. If this is not possible, permission may be given to the third party on the basis that the works may be revisited for the purposes of licensing a more permanent solution or enforcement of unauthorised works.

Marine Licenses:

- 4.9 Marine licensing of works below Mean High Water Springs is done by the MMO, but Environment Agency teams are also likely to be asked questions by third parties about marine licensing requirements. If clarity around marine licensing requirements for particular works is required, please contact Emma Barton or Nick Hardiman (details below) in the first instance.
- 4.10 **All emergency FCRM works (maintenance or otherwise) done by or on behalf of the Environment Agency** are exempt from a Marine Licence, although the MMO must be contacted as soon as possible prior to commencement in order to be issued with an approval from the MMO for the works.
- 4.11 Additionally, **FCRM works done by or on behalf of the Environment Agency or another Risk Management Authority** are exempt from needing a Marine Licence for the purpose of **maintaining** assets or features within their original boundary. The exemption does not apply to beach replenishment activities¹. Maintenance is interpreted as the upkeep, repair or reasonable improvement of the works that do not constitute a significant alteration. Like-for-like replacement is included in this definition. ‘Significant alteration’ and ‘reasonable improvement’ are not defined and will be assessed case by case.
- 4.12 Further information on exemptions can be found on the MMO website and in the Marine Licensing (Exempted Activities) Orders (2011) and (2013).
- 4.13 **Emergency drainage, flood or coastal erosion risk management works done by another third party** require a Marine Licence. Guidance on marine licensing for emergency works can be found in Guidance Note 7 on the MMO website.
- 4.14 The MMO adopt a similarly proportionate approach to the Environment Agency, and will tend to treat emergency works as temporary, with follow-up assessment of more permanent solutions using the normal licensing procedure. A Marine Licence for emergency works will be issued online, and terms and conditions must be accepted before works commencement before the licence is signed digitally by the MMO. The applicant must notify the MMO of commencement of the works to activate the licence. The MMO is not required to consult other parties for emergency licensing, but will do so if time allows. The MMO will require payment from the third party for the Licence fee not more than two weeks after submitting the Licence request.
- 4.15 If further works are required to repair damage, reinstate infrastructure etc which are not deemed to be emergency works, a marine licence application must be submitted to the MMO for these works in the normal way in advance of commencement. The MMO will then follow the usual application process in deciding whether to licence these works.
- 4.16 Queries relating to emergency works can be made to the MMO by calling 0300 123 1032 or online at marine.consents@marinemanagement.org.uk.

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¹ See separate briefing ‘Marine licensing of beach management activities’ for further clarification of how ‘maintenance’, ‘replenishment’ and ‘within the original boundary of the works’ apply to beach management.

ANNEX: Environment Agency emergency works letter example

Rob Goodliffe
Coastal Management Team Leader
North Norfolk District Council
Council Offices
Holt Road
Cromer
Norfolk NR27 9EN

Our ref: MJ/HD
Your ref:
Date: 28 February 2014

Dear Rob

Coast Protection Act Section 5(6)

EMERGENCY WORKS AT Sheringham, Mundesley, The Runtons, Overstrand, Trimmingham Vale Road, Bacton, Walcott and Ostend

I refer to recent discussions highlighting the need to complete emergency works at the above locations for reasons of public safety.

It is of course for your Council to determine whether or not undertaking works on an emergency basis is justified and that all possible stakeholders have been notified. However, I can confirm the Environment Agency is content with the proposed action and recognises the need to commence work immediately at these sites.

If you consider that the emergency works meet the technical, environmental and financial considerations for grant, then submit an application to us in the normal way as soon as possible.

Please be aware that grant allocations remain limited and you may be asked to fund these works yourselves or delay any of your programmed works in this financial year.

Yours sincerely

Mark Johnson
Area Coastal Manager