



From mountain to sea

Street trading and occupation of the road

Manual

March 2022



2 | Street trading and occupation of the road

Revision Date	Previous revision date	Summary of changes
18/03/2022	26/11/2020	Conditions and guidance regarding food accompanying alcohol in street cafes revised.

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1 Introduction

As a Local Roads Authority, Aberdeenshire Council is responsible for the management and maintenance of all non-trunk, public roads within its boundaries. These roads vary greatly in character from high-speed dual carriageways to residential cul-de-sacs, and busy town centre shopping streets to quiet country lanes. Similarly, there is a wide range of purposes which residents, businesses and other organisations may legitimately seek to occupy the road for including community events, trading and facilitating construction works.

Whilst seeking to accommodate such legitimate and in many cases desirable uses, a road is, by definition, a “way... over which there is a public right of passage”¹ and any other uses are secondary to this paramount purpose.

1.1 Legal & Policy Background

Aberdeenshire Council’s *Street Trading and Occupation of the Road Policy* affirms that the primary function of its road network is to provide a means of passage. It recognises the demand for competing uses of the road but states that these will not be allowed to undermine or unreasonably detract from the public right of passage and, furthermore, that where secondary uses are permitted the maximum duration of the road occupation shall be proportionate to the community benefit.

This *Street Trading and Occupation of the Road Manual* is directly referred to in the Policy and the requirements contained within this manual shall be mandatory for all non-trunk roads in Aberdeenshire.

It should be noted that the intention of this policy is to remove inappropriate and unauthorised obstructions from the public road. While legal remedies are presented here, a softer initial approach will often achieve the desired outcome more quickly and with less rancour compared to the immediate use of statutory powers.

The Roads (Scotland) Act 1984 includes a number of provisions that enable roads authorities to protect this core function while also permitting and regulating secondary uses. These are discussed elsewhere in this document but include:

- Section 58 – occupation of parts of road for deposit of building materials etc.
- Section 59 – control of obstructions in roads;
- Section 85 – control of builders’ skips on road; and
- Section 87 – power to remove structures from roads.

¹ Section 151, Roads (Scotland) Act 1984

2 Street Trading

2.1 General

The *Street Trading – Guidance for Applicants* document provides prospective street traders with full details of the various permissions they may require and standard conditions they would need to comply with if trading in Aberdeenshire. The guidance given below in this manual considers only roads-related matters.

In this manual, street traders shall be categorised as either **mobile** or **static** traders. Units trading at a location for more than 30 minutes are considered to be static.

2.2 Mobile Trading

Mobile traders are defined here as those who do not trade for more than 30 minutes from any location.

Mobile traders shall not be required to apply for specific approval from the local roads authority but must comply with the following conditions which are included in Licencing's Standard Conditions for Principal Street Traders:

- Trading must not take place at any one location for more than 30 minutes during the permitted trading hours and must be moved to another location no less than 100 metres away and shall not return within 4 hours. Multiple consecutive short stops shall be permitted if the cumulative time spent in any 100m length of road does not exceed 30 minutes in any 4 ½ hour period.
- The business unit must be positioned so that any customers being served or waiting to be served do not interfere in any way with the free movement of vehicular traffic and/or pedestrians.
- Any business units trading in the public road must not have any wheel on the footway or verge and must be sited such that customers stand only on the footway while being served or waiting to be served.
- The business unit shall not trade from the carriageway on any road where the speed limit is greater than 30 mph.
- The business unit must not trade within 20m of a road junction, a designated pedestrian crossing point or the site of a school crossing patrol.

2.3 Static Trading

Static traders are defined here as those who trade for more than 30 minutes from any location. Static units still need to be moveable and must not be left at their stance overnight.

2.3.1 Acceptable locations

Static units are obstructions in the road and will require consent from the local roads authority under Section 59 of the *Roads (Scotland) Act 1984*. Our preference is that static trading is carried out in an off-road location, but we accept that street trading units have a role in delivering services to some locations where the demand for their

goods is not otherwise being met and that off-road stances may not always be available.

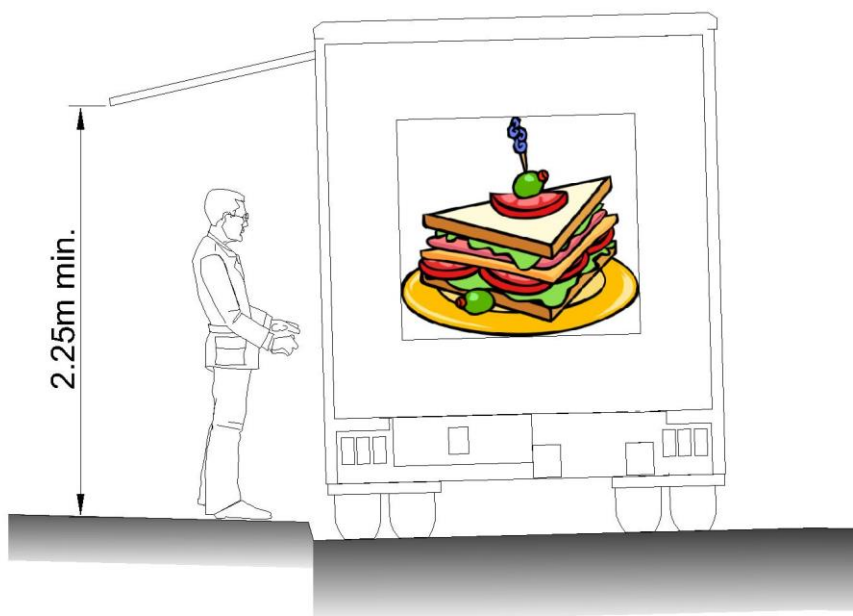
All requests for consent to operate a trading unit within the public road will be assessed by roads officers, considering road safety and traffic management issues while weighing up the community benefit against the level of obstruction or inconvenience caused. A hot food unit in a large, remote layby may deliver a useful service to passing motorists while causing very minor levels of obstruction however the same unit in a town centre may use up valuable parking spaces and increase congestion but do little to provide new services at that location. A burger van may be acceptable in a quiet cul-de-sac in an industrial estate with no parking problems but unacceptable in another location in an industrial estate where there is pressure on available parking or limited room for manoeuvring larger vehicles. In all instances the final decision shall rest with the local Roads and Landscape Manager for the relevant area.

2.3.2 Information to be included in applications

Applications for permission to operate a static trading unit in the public road (Section 59 consent) should include:

- Location plan (or detailed textual description) of trading pitch
- Site plan of pitch showing proposed site (can be provided as sketch)
- Details of what is to be traded
- Details of vehicle/trailer (type, dimensions, position of serving hatch)
- Trading hours
- Start date for requested consent
- Traders name and address

Figure 2.1: Vertical clearance to awning or other projection over the footway



2.3.3 Consents and standard conditions:

Where Section 59 consent is granted to operate a static trading unit in the public road it shall be:

- Personal to the applicant and non-transferable;
- Specific to the vehicle in the application; and
- Limited to a period not greater than 3 years.

The following standard conditions shall apply and be included in all consents:

- Units used for trading from a static pitch within the public road may only occupy that pitch during their approved trading hours and must be removed from the site out with their approved trading hours. Units must not be left on their pitch overnight.
- The unit must be immediately removed from the site when requested by the roads authority or a police officer.
- The Licence holder must ensure that his vehicle does not interfere in any way with the free movement of vehicular traffic and/or pedestrians.
- Trading units must not obstruct or interfere with access to, or the operation of, any item of street furniture or utility apparatus such as hydrants, chambers, traffic signs or lighting columns.
- Units used for static trading must be fully self-contained and must not be connected to mains services. Any gas canisters, generators, water tanks etc. must not be placed on any part of the public road (including carriageway, footway and verge).
- The roads drainage system must not be used for the disposal of wastewater or any other substance.
- No advertising or direction signing is permitted other than that on the trading unit itself.

Applicants should be aware that it is an offence² to place any projection over a footway where it is less than 2.25m above the footway surface and must ensure that any serving hatch awning or shelter does not endanger footway users. Allowance shall be made for kerb upstands and footway/carriageway slopes when checking the vertical clearance (see Figure 2.1).

2.3.4 Enforcement

Where a trading unit has S.59 consent but is failing to comply with any of the consent's conditions the local Roads team shall write to the consent holder, advising them:

1. That they are committing an offence
2. Of the nature of the non-compliance;
3. Of the action required to achieve compliance;

² ss. 129(8)(a) of Roads (Scotland) Act 1984

4. Of the date by which either compliance must be achieved, or the trading unit permanently removed from the site (there is no restriction on the minimum period of notice but this should be the minimum period that could be reasonably expected in the circumstances);
5. That if compliance/removal is not achieved by that date, the roads authority may remove the unit and recover its reasonably incurred expenses.

For trailers operating without S.59 consent the procedure in Section 4.2 shall be followed.

2.3.5 *Car parks*

Unauthorised trading from Council managed off-street car parks in Aberdeenshire is prohibited however traders may apply to purchase a Traders Exemption Permit. Applications will be considered where certain criteria are met and further details are available from our car-parking team (parkingteam@aberdeenshire.gov.uk).

3 Street Cafes

3.1 General

Provision of well managed street cafes can add to the vibrancy of our town centres and are to be welcomed in appropriate locations. Conversely, poorly managed, inappropriately sited street cafes can be a source of nuisance to residents and a potential hazard to other road users, particularly the visually impaired, wheelchair users and those with prams.

The *Street Cafes – Guidance for Applicants* document provides prospective street traders with full details of the various permissions they may require and standard conditions they would need to comply with if seeking to use part of the public footway in front of their premises for the consumption of food and drink.

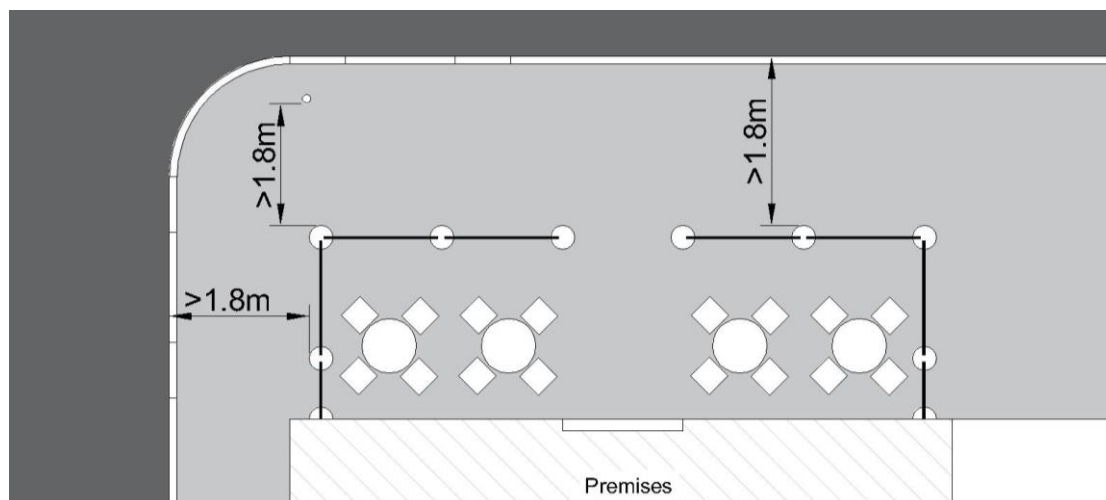
The guidance given below in this manual considers only roads related matters. Any permission we give would only be for occupation of the road (Section 59 of R(S)A) and the applicants may still require consent for planning permission and alcohol licensing.

Consent shall not be granted for the serving of alcohol alone and alcohol may only be consumed in the street café when it accompanies food served from the premises. (In this context, “Food” is defined as being an item that needs a plate and implements to be used to prepare an item for consumption such as scones, cakes etc, or an item that requires to be delivered on a plate and requires utensils for consumption. It does not include snack items such as crisps or nuts.)

Any consent granted shall be for a period of no more than 12 months and shall be subject to annual renewal. Details of all consents shall be logged on the Scottish Road Works Register.

3.1.1 *Acceptable locations*

Street cafe consent shall only be granted for Sections of footway immediately outside the applicant’s premises and applications shall only be considered for premises which provide tables and chairs for the serving of food and drink within their premises. The number of chairs permitted on the footway shall not exceed the number of chairs provided within the premises for the serving of food and drink.

Figure 3.1: Clearances to be maintained

Consideration should be given to the impact the proposal would have on other road users, particularly pedestrians. A clearance of a minimum of 1.8m must be maintained from any furniture (including bases) to any other obstruction in, or edge of, the footway. (See Figure 3.1) This minimum clearance value may be increased at the discretion of Roads officers when deemed to be necessary, such as at locations with high pedestrian flows, where the opening of doors on cars parked at the kerbside is likely to be a problem or at bus stops or pedestrian crossing points.

All furniture must be contained within the street cafe boundary and must not be allowed to obscure any signs nor adversely limit sight lines. The street cafe layout shall be designed and maintained to ensure there is no obstruction to emergency exits or access by emergency services. Fire hydrants must be kept clear.

3.1.2 Information to be included in applications

Applications for permission to operate a street cafe in the public road (Section 59 consent) should include:

- An A4 location plan (suggested Scale 1:500) showing the premises and location of proposed outdoor seating area.
- A detailed site plan (suggested scale 1:200) showing
 - Building lines, kerb lines and other street furniture (Lighting columns, bollards, signposts etc.);
 - Access points;
 - Extents of proposed street cafe area with dimensions and clearances to nearby street furniture/kerb lines shown;
 - Arrangement of tables and chairs;
- A statement of management arrangements;
- Details of furniture and barriers/enclosures to be used;
- The application fee (if applicable); and
- Evidence of Public Liability Insurance cover.

3.1.3 Consents and standard conditions:

Where Section 59 consent is granted to operate a street cafe in the public road it shall be:

- Personal to the applicant and non-transferable;
- Limited to a period not greater than 12 months; and
- Subject to annual renewal.

The following standard conditions shall apply and be included in all consents:

1. This consent for occupation of the pavement will be for Tables and Chairs and Barriers **only** and will be valid until expiry of permit. The granting of permission under Section 59 of the Act only relates to occupation of the road and applicants will need to ensure that they obtain all other necessary permits and permissions eg planning consent, alcohol licencing.
 2. The consent will be for a defined area, as shown on the successful permit. Occupation of the pavement or roadway must not extend out with this area. The minimum width of unobstructed space between the carriageway and the front of the street cafe must be no less than 1.8m.
 3. The street cafe must be surrounded by a physical barrier of not less than 0.6m in height to guide people with disabilities around the area and this should include a low level kick board or similar which can be detected by the visually impaired using a stick. These barriers must not be fixed to the ground and must be of a design agreed with an Aberdeenshire Council officer with the appropriate delegated authority. There should be no free standing signs or other impediments placed out with this barrier. No permanent fixings are to be affixed to the pavement/road.
 4. Barriers, Tables and Chairs are only allowed on the pavement/road between 0900hrs and 2100hrs and must be removed from the area promptly at 2100hrs.
 5. Storage of Furniture/Barriers/A Boards etc. on the pavement/road is not permitted out with authorised times as laid out in condition 4. Any items found on the pavement/road out with these times will be removed/confiscated under Section 59 of the Roads Scotland Act 1984.
 6. Permit holders must ensure that the defined area is kept clear of all waste including cigarette litter associated with their business. These areas **MUST** be swept/cleansed when required on a daily basis and after removal of the Tables and Chairs at the end of each day. All waste/litter must be disposed of in an appropriate manner i.e. NOT swept into kerbside.
 7. The operators of the premises must actively manage and supervise the external seating area at all times to ensure that there is no obstruction of or encroachment onto the carriageway/footway and no antisocial behaviour.
 8. Alcohol may only be consumed within the street cafe when it accompanies food served from the premises.
 9. Barriers and furniture shall be sufficiently robust and stable for expected weather conditions and must be removed when wind speeds cause any movement or instability.
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10. Access to any public utility plant or fire hydrant in the area occupied must be made available when required.
 11. The consent will be suspended when public utility or road workings are being undertaken in your area.
 12. The consent holder shall indemnify the Aberdeenshire Council from and against all actions, claims, demands, costs, charges, losses and expenses of whatsoever kind of nature which may be brought or made against them or incurred by them in the occupation of the road or pavement granted under the consent. Proof of indemnification against all claims, injuries or accidents with cover up to £5 million for any 1 event must be provided prior to placement of any furniture or associated structures on the footway and this proof should also be provided with any application to renew.
 13. Failure to comply with any of these conditions may result in Aberdeenshire Council withdrawing this consent.
 14. The Council shall not be liable for any losses which arise through the withdrawal of consent.
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4 Caravans and trailers etc.

4.1 General principles

The storage of non-motorised vehicles (NMVs) such as caravans, trailers and horseboxes on the public road is an inappropriate use of the road and can be a source of annoyance and frustration to residents.

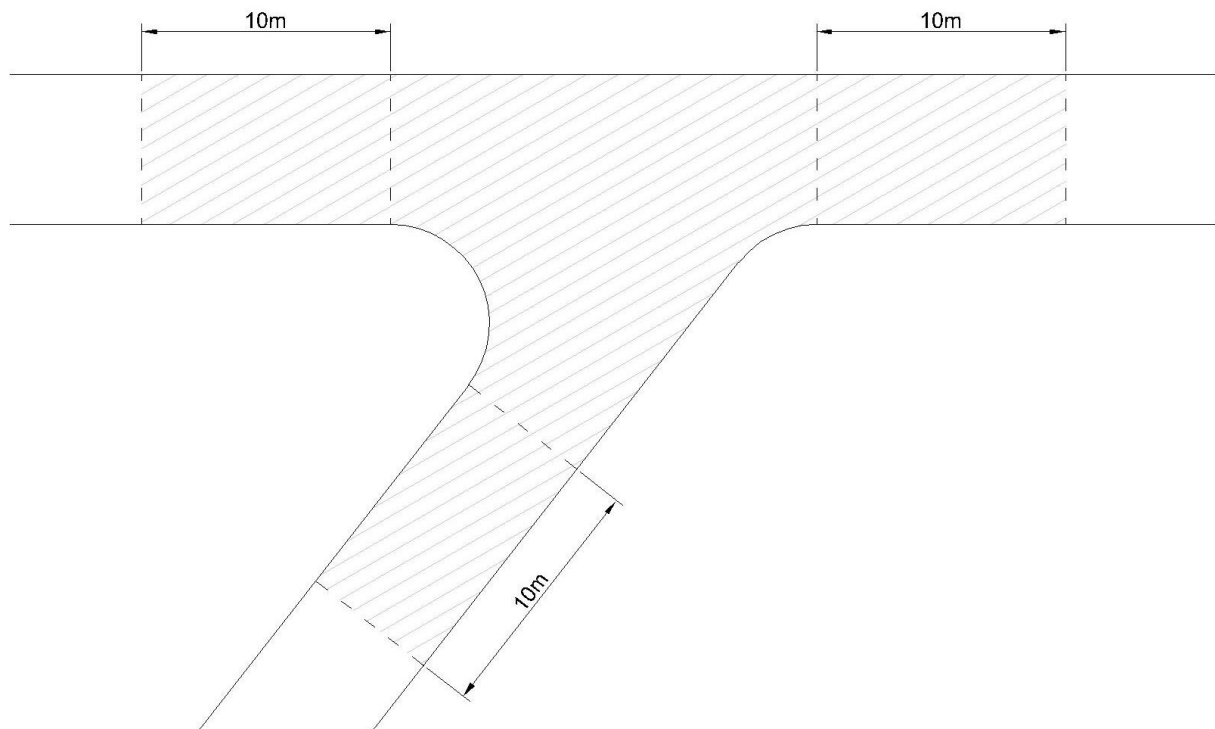
4.1.1 Relevant legislation

Where NMVs appear to be abandoned they can be dealt with under the Refuse Disposal (Amenity) Act 1978 but otherwise these shall be considered to be unauthorised structures within the road and shall be dealt with under Section 87 of the Roads (Scotland) Act 1984.

Regulation 103 of the Road Vehicles (Construction and Use) Regulations 1986 states “no person in charge of a motor vehicle or trailer shall cause or permit the vehicle to stand on a road so as to cause any unnecessary obstruction of the road.”

Regulation 24 of The Road Vehicle Lighting Regulations 1989, generally speaking, prohibits the parking of unlit vehicles at the roadside between sunset and sunrise where the speed limit is greater than 30 mph and, where the speed limit is 30 mph or less, within 10m of a junction (as illustrated in Figure 4.1). Unhitched trailers must have a pair of front position lamps fitted and kept lit and unobscured while vehicles with trailers must have every front position lamp, rear position lamp, rear registration plate lamp, side marker lamp and end outline marker lamp, with which the vehicle is required by these Regulations to be fitted, kept lit and unobscured.

Figure 4.1: Area around junction to be kept clear of unlit vehicles overnight



Subsection 129(4) of the Roads (Scotland) Act 1984 prohibits encamping in a road so it is illegal to stay overnight in a caravan within the road boundary.

4.1.2 *Acceptable parking of NMVs*

Recognising the benefit to the residents with NMVs of being able to load or unload in front of their house, parking of NMV's shall be considered to be acceptable where all of the following apply:

- The NMV is not parked in the same road/parking area for more than 2 consecutive days nor more than any 4 days in a calendar month;
- The NMV must not be used for living in while parked in the road;
- The NMV must not be parked on the roadside where the speed limit is greater than 30 mph;
- Electricity or other services shall not be run across the road/footway to an NMV;
- The NMV shall be stable with all hazardous items removed/made safe;
- The NMV shall not be parked in a position (such as in turning heads, at or opposite driveway entrances, over footways, or near junctions) where it could impede vehicle or pedestrian movement: and
- The NMV shall be parked in accordance with relevant traffic restrictions and regulations.

4.2 Dealing with NMVs stored on the road

If the NMV in the road is stored in such a position or manner that it poses an immediate danger to the public then Police Scotland shall be informed. Otherwise the procedure below shall be followed.

4.2.1 *Initial warning*

Where practicable, if the owner of the NMV is known, a Roads officer should contact them, advising them informally that:

1. Their NMV is viewed as an unauthorised structure within the road under Section 87 of the Roads (Scotland) Act 1984;
2. If the NMV is not removed from the public road within 48 hours (or other longer period as the local Roads and Landscape Manager deems reasonable) then a formal notice shall be served requiring its removal from the public road.

Where a number plate is displayed on the NMV, registered keeper details (of the motor vehicle referenced by the number plate) can be retrieved from DVLA using its Web Enabled Enquiry System.

4.2.2 *Serving notices*

Where the owner cannot be traced, or the initial informal approach has proved to be unsuccessful then:

1. A Roads officer should issue and attach to the NMV a 7 day Notice of Removal under Section 87 of the Roads (Scotland) Act 1984;
 2. A photograph should be taken of the NMV with notice attached as evidence of service;
 3. If the NMV is not removed from the public road at the end of the notice period then the Council Fleet team shall be asked to remove the NMV from the road and store it for 14 days. If the owner comes forward and claims the NMV then it shall be released to him on payment of the removal and storage fee. Otherwise the NMV shall be disposed of.
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5 Sporting and community events

5.1 General principles

Sporting and community events are generally welcomed and encouraged within Aberdeenshire but, where these take place on the road, it is essential that they are planned and organised well in advance to minimise inconvenience to road users and to avoid any public safety issues.

Advice on aspects relating to the impact on the road is provided in our *Events on the Public Road – Guidance for Organisers*³ document while more general advice is available on the council website⁴.

Requests for occupation of the road for community and sporting events shall be determined by the local Roads and Landscape Manager for the relevant area, weighing up the benefits to the community against the inconvenience to road users and local ward Councillors shall be consulted in advance where traffic restrictions are required for such events.

The duration of traffic restrictions shall be kept to the minimum necessary and access for emergency services must be maintained. For each location, a temporary restriction up to a maximum duration of 3 days, once a year can be implemented using a “temporary notice” procedure.

If a restriction is required for a period exceeding 3 days or more than 1 restriction is required in the same location within a calendar year, then prior consent must be obtained from the Scottish Government⁵. If this is obtained, then the “temporary notice” procedure can be used. However, applicants should be advised that at least 6 weeks’ notice should be given to allow time for the additional consent to be obtained.

We do not charge for processing applications for a temporary restriction for a sporting or community event. Major events, however, may require substantial work in relation to the design and implementation of signing and barriers for the closures and diversion routes. If this is provided by the Council, then it should normally be done on a rechargeable basis.

³ <https://www.aberdeenshire.gov.uk/media/20211/events-on-the-public-road.pdf>

⁴ <https://www.aberdeenshire.gov.uk/licensing/events/>

⁵ <https://www.transport.gov.scot/media/5744/section-16a-special-events-guidance.pdf>

6 Filming

6.1 General principles

Filming in Aberdeenshire is generally to be welcomed, giving a short term boost to local service and accommodation providers and, potentially, greater awareness of Aberdeenshire and an increase in visitor numbers.

Any requests for using the public road for filming shall be determined by the local Roads and Landscape Manager for the relevant area, weighing up the benefits to the community against the inconvenience to road users.

Where traffic restrictions are needed their duration shall be limited to the minimum necessary and access for emergency services must be maintained. Local ward Councillors shall be consulted in advance where traffic restrictions are required.

Facilitating filming would not be legitimate grounds for implementing traffic restrictions under Sections 14 or 16A of *the Road Traffic Regulation Act 1984*, however we may make an order imposing temporary restrictions or prohibitions under Section 62 of the Roads (Scotland) Act 1984. Such Orders are limited to periods not exceeding 7 days and require a notice to be published beforehand in a local newspaper.

6.2 Filming by drone

The commercial use of drones for filming is becoming increasingly widespread and, while there may be no physical interaction between drones in the air and road users on the ground, there is still the potential for driver distraction.

Civil Aviation Authority (CAA) authorisation is required for all commercial use of drones and Reduced Distance Operations permission is required for flying at a distance less than 50m to people, vessels, vehicle or structures, within a congested area and less than 150m from an open air assembly of more than 1000 people. The CAA website⁶ stresses that operators filming in towns and cities must ensure that they have control of the area (including persons, vessels and vehicles) over which they intend to operate and that road closures or other restrictions of access will often be necessary.

Any requests for road closures or restrictions to facilitate filming by drones shall be determined by the local Roads and Landscape Manager for the relevant area, weighing up the benefits to the community against the inconvenience to road users. It is unlikely that the inconvenience to motorists caused by the closure of a busy route could be justified however closures may be considered on quieter roads with acceptable diversions. For very lightly trafficked roads it may be acceptable to accommodate short takes using temporary traffic control with stop/go boards.

⁶ <https://www.caa.co.uk/Commercial-industry/Aircraft/Unmanned-aircraft/Small-drones/Guidance-on-using-unmanned-aircraft-and-drones-for-commercial-work/>

7 Contact details

7.1 Aberdeenshire Council

The appropriate Roads officer can be contacted using our roads enquiries telephone number (**03456 08 12 05**) or through the email addresses given below in Table 8.1.

Table 8.1 Local Roads office contact details

Area	email
Banff & Buchan	banffandbuchan.roads@aberdeenshire.gov.uk
Buchan	buchan.roads@aberdeenshire.gov.uk
Formartine	formartine.roads@aberdeenshire.gov.uk
Garioch	garioch.roads@aberdeenshire.gov.uk
Kincardine & Mearns	kincardineandmearns.roads@aberdeenshire.gov.uk
Marr	marr.roads@aberdeenshire.gov.uk



7.2 Trunk Road

The A90 and A96 are trunk roads. These are managed by Transport Scotland on behalf of the Scottish Government rather than by Aberdeenshire Council.

All enquiries relating to proposals on the trunk road should be directed to

BEAR Scotland Limited
BEAR House
Inveralmond Road
Perth
PH1 3TW

Tel: 01738 448600

Email: enquiries@bearsotland.co.uk
