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Department of Transport

Guidelines on Traffic Works Procedures

Section 38 of the Road Traffic Act (1994)

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Guidelines under Section 38(6) of the Road Traffic Act 1994

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1. Introduction

These Guidelines apply to all Local Authorities (Road Authorities) in relation to works undertaken in accordance with Section 38 of the Road Traffic Act 1994. In particular the Guidelines set out types of works that can be undertaken, processes that apply for permanent works and procedures for temporary or ‘trial’ works. Such processes and procedures allow for consultation and related Traffic Works Orders (Chief Executive Orders).

2. Background

Section 38 of the Road Traffic Act 1994 (“**Section 38**”) sets out powers of a road authority in relation to the provision and removal of certain measures, categorised as “*traffic calming measures*”, in respect of public roads in their charge.

Subsection (6) of Section 38 identifies that guidelines may be issued by the Minister for Transport to road authorities relating to traffic calming measures under this section and that road authorities are required to have regard to such guidelines when performing functions under this section.

3. Scope of Section 38

3.1. Overview

Section 38 relates to the provision or removal of traffic calming measures by a local authority “*in respect of public roads in their charge.*”

The Roads Act, 1993 defines a “*public road*” as meaning “*a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority*”.

“*Traffic calming measures*” are defined in Subsection (9) of Section 38 as meaning:

“*measures which —*

- (a) *enhance the provision of public bus services, including measures which restrict or control access to all or part of a public road by mechanically propelled vehicles (whether generally or of a particular class) for the purpose of enhancing public bus services, or*
- (b) *restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists),*

and includes for the purposes of the above the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified

junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works.”

3.2. Types of Measures

There is a broad scope of interventions on public roads which fall within the definition of “*traffic calming measures*” for the purposes of this legislation. This can include such items, *inter alia*, as:

- Roadway alterations to enhance safety,
- Re-allocation of street space,
- Junction enhancement schemes to improve safety,
- Filtered permeability / filtered one-ways,

- Provision of bus lanes and bus gates,
- Bus facilities such as lay-bys, accessible bus stops and bus shelters.

- Construction or enhancement of footpaths,
- Pedestrianisation of sections of public roads,
- Construction of pedestrian and/or cycle crossings,

- Installation of cycle tracks,
- Cycle facilities, such as cycle stands, bike stations or bike parking.

The above list is not exhaustive in any way, but is illustrative of the range of road measures falling within the scope of Section 38.

However, it is important to note that the proposed particular measure, or measures, must be on or within the boundaries of a public road (or roads). There may be circumstances where the prevention, restriction or control of access to a public road take place outside of the public road, and may fall within the scope of Section 38, but this should be considered an exceptional circumstance.

More generally, the position will be that where the intended intervention is not being implemented in full on a public road, Section 38 is not the applicable empowering provision. Accordingly, where the proposed measure extends outside the boundary of the public road, an alternative approval process is required, as Section 38 will not be applicable in those circumstances.

For completeness, the Roads Act, 1993 defines a “*road*” as including:

- “(a) *any street, lane, footpath, square, court, alley or passage,*
- (b) *any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple and whether or not designated for a particular class of vehicle), pavement or footway,*
- (c) *any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, verge, kerb, lay-by, hard shoulder,*

island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and

- (d) *any other structure or thing forming part of the road—*
 - (i) *used, or the use of which is reasonably required, for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or*
 - (ii) *prescribed by the Minister”.*

4. Prescribed Measures

Subsection (3) of Section 38 references the provision or removal of *“traffic calming measures under this section of such class or classes as may be prescribed”*. As at the date of these Guidelines, no traffic calming measures have been prescribed by regulation and, accordingly, the requirements set out in subsections 3(a), 3(b) and 3(c) are not mandatory and the associated requirement in subsection (4) is not applicable and is not in operation.

5. Section 38 and the Planning Process

5.1. General

Section 38 of the Road Traffic Act 1994 empowers a local authority to carry out certain works in accordance with the provisions of that section. However, by itself it does not remove the requirement to comply with planning consent legislation.

Development by a local authority is generally governed by Section 179 of the Planning and Development Act of 2000 (**“Section 179”**), except where proposals are required to be referred to An Bord Pleanála in relation to Environmental Impact Assessment and Appropriate Assessment. Section 179 outlines the procedures that must be followed for local authority own development, the application of which is then prescribed in Part VIII of the Planning and Development Regulations 2001 – for the purpose of this guidance, this process is referred to as the **“Part 8 procedure”**.

Section 80 of the Planning and Development Regulations 2001 prescribes the development types to which the Part VIII procedure applies. Of most relevance are Sections 80(1)(b), (c) and (k) below, which applies the Part VII procedure to:

- (b) *“the construction of a new road or the widening or realignment of an existing road, where the length of the new road or of the widened or realigned portion of the existing road, as the case may be, would be—*
 - (i) *in the case of a road in an urban area, 100 metres or more, or*
 - (ii) *in the case of a road in any other area, 1 kilometre or more”,*
- (c) *“the construction of a bridge or tunnel”, and*

- (k) *“any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.”*

Unless subject to other processes under environmental impact assessment or appropriate assessment, projects falling within these categories are, in the absence of an exemption applying as set out below, subject to the Part VIII procedure.

5.2. Exemptions from Part 8 Procedure

There are a number of exemptions from the Part 8 Procedure, with one of those exemptions relating to certain proposals under Section 38 of the Road Traffic Act 1994. This is set out in Section 179(6)(bb) of the Planning and Development Act of 2000, which states the following exemption: -

“works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994”.

Accordingly, any works *“to enhance public bus services or improve facilities for cyclists”* which are delivered under Section 38 of the Road Traffic Act 1994, are exempted from the normal local authority Part VIII planning process.

It is important to note that other works proposed to be implemented under Section 38, which are not for the purposes of enhancing public bus services or improving facilities for cyclists, will require approval under the Part 8 procedure, unless exempted under another provision, such as the exemption for certain works below a certain value, which is currently €126,000 (Section 80(1)(k) of the Planning and Development Regulations 2001) and which may be subject to review from time to time.

It is also important to note that the exemption in subsection (6)(bb) of Section 179, is qualified to relate only to works *“other than works involving road widening”*. Accordingly, where the proposed works include road widening, this exemption does not apply.

5.3. Multi-faceted Works

Frequently works which are primarily to enhance public bus services or improve facilities for cyclists, also contain other ancillary elements such as improvements for pedestrians, possibly in the form of upgraded footpaths or upgraded pedestrian crossings. It is recommended that a decision on the appropriateness of utilising either the Section 38 procedure or the applicability of the exemption from the Part 8 Procedure is made based on the primary purpose of the scheme.

If the primary purpose of the project does not relate to bus or cycling enhancements, then the exemption set out in Section 179(6)(bb) of the Planning and Development Act of 2000 does not apply. On the other hand, if the primary objective is either bus or cycling enhancements, then the exemption should apply, notwithstanding that there may be other elements associated with the project.

6. Determining the Appropriate Procedure

The process of determining the appropriate planning procedure involves a number of stages which are set out in the following sections.

6.1. Stage 1: Is Section 38 the appropriate empowerment section?

The first step in the process of this determination is the assessment of whether the proposed scheme or plan falls within the ambit of Section 38. To make this determination, the following steps should be undertaken:

- Identify the scope and key details of the proposal and assess whether they constitute traffic management measures within the definition set out in Section 38; and
- Determine if the proposed scheme is to be undertaken on a public road or public roads and does not extend outside the boundaries of the public road(s).

If the proposal constitute traffic management measures, as defined in Section 38, and are wholly undertaken within the boundaries of a public road or public roads, then Section 38 is the appropriate empowerment provision under which the local authority may implement the proposed scheme. However, this in itself does not obviate the need for a separate development consent process and further steps are required to determine if, and what, additional development consent process may be required.

6.2. Stage 2: EIA and AA Screening Process

Central to the decision as to whether an additional development consent process is required, is the determination of the need for environmental impact assessment or appropriate assessment. The relevant steps are as follows:

- Identify if the proposal is above the threshold prescribed for the preparation of an Environmental Impact Assessment Report (EIAR);
- Where the scheme is below the prescribed threshold for the preparation of an EIAR, identify if EIA screening is required and, if so, an EIA screening determination must identify whether or not EIA is required; and
- Identify if Appropriate Assessment (AA) screening is required and, if so, an AA screening determination must identify whether or not AA is required.

Where a proposal requires the preparation of either an EIAR or the undertaking of Appropriate Assessment, separate development consent processes are required in respect of such EIAR or Appropriate Assessment, requiring applications to An Bord Pleanála under the relevant legislation.

6.3. Stage 3: Applicability of Part 8 Procedure

Where it has been determined that a proposal does fall within the ambit of Section 38, and that it does not require either the preparation of an EIAR or the undertaking of Appropriate Assessment, the

issue of whether the proposal requires consent under the Part 8 procedure or is exempted from the Part 8 Procedure remains to be determined.

The key step in this determination is the following:

- Identify whether the primary purpose of the proposal is to enhance public bus services or improve facilities for cyclists.

Where the primary purpose of the proposal is for the enhancement of public bus services or the improvement of facilities for cyclists, the proposal is exempt from the Part 8 Procedure as identified under the exemption set out in subsection (6)(bb) of Section 179. Where the primary objective of the proposal is for purposes other than the enhancement of public bus services or the improvement of facilities for cyclists, then the Part 8 Procedure will apply, unless the proposal falls under one of the other available exemptions.

To determine whether other exemptions to the Part 8 Procedure apply, four further tests are required. These four tests are:

- Determine whether the cost of the proposal is likely to be below €126,000 (Section 80(1)(k) of the Planning and Development Regulations 2001) - works below this value are exempted from the Part 8 procedure.
- Determine whether the proposal consists of works of maintenance or repair (other than significant works to a protected structure, or a proposed protected structure) – such maintenance or repair works are exempted from the Part 8 procedure.
- Determine whether the proposal consists of works necessary for dealing urgently with an emergency situation calling for immediate action – such emergency works are exempted from the Part 8 procedure, and
- Determine if the proposal comprises of works which a local authority is required to undertake by or under any Irish or European legislation or under a Court order – such mandated works are exempted from the Part 8 procedure.

These four tests will determine whether any of these exemptions apply to the proposal.

6.4. Decision Making Process

A local authority should initially determine whether the proposed scheme or plan falls within the ambit of Section 38. This requires the undertaking of the assessment set out in Section 6.1 above.

Where that determination identifies that Section 38 is the appropriate empowerment provision for the proposed scheme, the steps set out in sections 6.2 and 6.3 should then be undertaken. This will identify whether or not an additional development consent process is required in respect of the proposal.

The outcome of the determination will be one of the following options:

1. The proposal will be progressed under the provisions of Section 38,

2. An EIAR is required and an application for development consent will be made to An Bord Pleanála in line with legislative requirements,
3. No EIAR is necessary but Appropriate Assessment is required, which will be submitted to An Bord Pleanála in line with legislative requirements, or
4. Development consent under Section 179 of the Planning and Development Act 2000 is required and the proposal will be the subject of a Part 8 Procedure.

Where the outcome of the determination process is that the proposal will be progressed under the provisions of Section 38 without requiring an EIAR, Appropriate Assessment or development consent under Section 179, that decision should be recorded in a formal decision record and published on the local authority's website. This allows the public to become aware that such a decision has been taken in respect of the applicable proposal.

7. Interaction with Section 95 of the Road Traffic Act 1961

Section 95 of the Road Traffic Act 1961 (as amended) deals with the erection and removal of traffic signs on public roads. Traffic signs are defined in this section as meaning:

“any sign, device, notice or road marking, or any instrument for giving signals by mechanical means, which does one or more of the following in relation to a public road or public roads:

- (a) gives information (such a sign being referred to in this section as ‘an information sign’),*
- (b) warns persons of danger or advises persons of the precautions to be taken against such danger, or both (such a sign being referred to in this section as ‘a warning sign’),*
- (c) indicates the existence of a road regulation or implements such a regulation, or both, or indicates the existence of a provision in an enactment relating to road traffic (such a sign being referred to in this section as ‘a regulatory sign’);”*

The section provides a procedure for the provision of regulatory signs, requiring consultation with the Commissioner of An Garda Síochána.

The definition of “*traffic management measures*” in Section 38 also includes reference to “*the provision of traffic signs, road markings, ...*”. For the provision of traffic signs in respect of a scheme being advanced under Section 38, it is important for a local authority to also comply with the requirements of Section 95 of the Road Traffic Act 1961 and to ensure that the appropriate process is followed in relation to regulatory signs. It is insufficient to rely solely upon Section 38 powers for the provision of regulatory signs.

Thus in addition to complying with the processes prescribed in Section 95 of the Road Traffic Act 1961 in the provision of traffic signs, it is recommended that any decision to progress a proposal under the provisions of Section 38 would, where traffic signs will form part of the proposal, also reference Section 95 in the decision. This will ensure that the appropriate powers are referenced in the determination related to the appropriate process.

8. Section 38 – Standard Procedure (Traffic Works Order)

Road authorities should carry out non-statutory public consultation in relation to proposals to be delivered under Section 38, except in the case of:

- (i) works which are required to be carried out to deal with an emergency,
- (ii) works of a very minor nature,
- (iii) works subject to a trial scheme as outlined in Section 9 of this document.

The type of public consultation to be undertaken will be guided by the location and nature of the proposed measures. Generally, road authorities are advised to place the public consultation material on its website for a period of not less than two weeks, allowing for submissions or observations to be submitted to the road authority during that period.

At the end of the consultation period, road authorities should carefully consider any submissions or observations received by the consultation deadline, and should determine whether:

- (a) the proposal should proceed without any further modifications,
- (b) the proposal should proceed with some modifications, or
- (c) the proposal should not proceed.

With the exception of minor and emergency works, a decision to implement proposals to be delivered under Section 38 is an executive decision and should be recorded in a formal decision record as a Chief Executive's Order (**Traffic Works Order**) and should be published on the local authority's website. The local authority shall also inform the elected members of the Council of the determination.

9. Section 38 –Trials Procedure (Temporary Traffic Works Order)

9.1. General

Trial provision of certain arrangements falling under the ambit of Section 38 can be a useful way of assessing the full implications of a particular proposal. While such a trial provision is not practicable in many cases, in other cases it may be feasible to proceed with a trial implementation.

Such trial implementation can be progressed under the provisions of Section 38, provided that:

- (a) the proposal falls within the definition of "*traffic management measures*",
- (b) the proposed particular measure, or measures, is on a public road (or roads),
- (c) neither an EIAR nor an Appropriate Assessment is required, and
- (d) the proposal is exempted from the Part 8 Procedure, most likely on the basis of the exemption set out in Section 179(6)(bb) of the Planning and Development Act 2000.

The core rationale for a trial is to allow particular proposals to be implemented on a temporary basis, for a defined period of time, allowing the impacts of the proposal to be monitored. This then informs a subsequent decision on whether the proposals should or should not be implemented on a permanent basis. Accordingly, instead of seeking public feedback on draft proposals in the usual

manner, the consultation process should be focussed on obtaining feedback on the trial scheme in operation. The following arrangements are recommended where it is proposed to implement a trial scheme.

9.2. Trial Scheme Procedure

9.2.1 Where a local authority proposes to implement a scheme on a trial basis, referred to in this guidance as a “trial scheme”, in accordance with the provisions of Section 38, the local authority should confirm that:

- (a) the trial scheme proposal falls within the definition of “*traffic management measures*”;
- (b) the proposed particular measure, or measures, implementing the trial scheme is/are on a public road (or roads);
- (c) neither an EIAR nor an Appropriate Assessment is required for the trial scheme; and
- (d) the trial scheme is exempted from the Part 8 Procedure, such as on the basis of the exemption set out in Section 179(6)(bb) of the Planning and Development Act 2000.

9.2.2 The period of the trial should be established. It is essential that sufficient time is given to allow revised patterns to become fully established in order to be properly able to assess the impact of the trial scheme. In most cases the trial period should be between six months and twelve months, but where there are specific reasons to do so, shorter or longer trials can be considered. However, the period of a trial should not exceed 18 months.

9.2.3 The local authority should consult with An Garda Síochána and, in the case of schemes where the direction of general traffic movement on a road is proposed to be changed or restricted, the fire service and the ambulance service, in relation to the proposals. Where views are provided, these shall be considered by the relevant local authority.

9.2.4. Prior to implementing the trial scheme, the local authority shall place a notice on its website setting out its intention to introduce the trial and providing details of the trial scheme, including the general layout of the scheme, its approximate implementation commencement date and the planned conclusion date of the trial scheme. Such notice shall be placed at least fourteen (14) days prior to the commencement of the implementation of the trial scheme.

In addition, the notice should advise that feedback on the trial scheme can be provided at any stage while the trial scheme is in operation, up to a date stated in the notice, which should be between four and eight weeks prior to the planned conclusion date stated in the notice. This feedback should be facilitated through a specified email address and a specified postal address, or it may utilise any other convenient feedback arrangements that the local authority may have in place.

9.2.5 Prior to implementing the trial scheme, the local authority shall inform the elected members of the Council of the intention to proceed with the trial. This should be by way of regular monthly update to the Councillors, or by specific communication.

- 9.2.6 A decision to implement a ‘trial’ is an executive decision and should be recorded in a formal decision record as a Chief Executive’s Order (**Temporary Traffic Works Order**) and should be published on the local authority’s website.
- 9.2.7 Where the trial scheme requires new infrastructure to be put in place, such infrastructure should comprise, as far as practicable, of temporary elements (examples are plastic delineators and moveable planter boxes) or elements that can be relatively easily removed at the end of the period of the trial scheme. However, this does not preclude the use of elements such as concrete kerbs or bitumen-based materials where considered appropriate.
- 9.2.8 Upon the introduction of the trial scheme, the local authority should be available to engage with local stakeholders, particularly local shops, businesses and residents, in relation to any operational issues that may arise from the implementation of the trial scheme.
- 9.2.9 Where a trial scheme is carried out involving traffic changes, road users should be advised of the changes through appropriate signage.
- 9.2.10 Where a local authority considers that the period of implementation of a trial scheme should be extended, it shall place a notice on its website setting out its intention to extend the period of the trial scheme and shall state the revised conclusion date of the trial scheme. Such notice shall be placed at least seven (7) days prior to the previously planned conclusion date of the trial scheme. In addition, the local authority shall also inform the elected members of the Council of the extension of the trial period. This should be by way of regular monthly update to the Councillors, or by specific communication. It should be noted that the period of a trial, inclusive of any extensions, should not exceed 18 months.
- 9.2.11 Within the final three-month period prior to the planned conclusion date of the trial scheme, or the extended date where applicable, the local authority shall compile a report of the trial scheme. This report should set out its assessment of the operation of the trial scheme, a summary of the feedback received during the trial period and a recommendation that:
- (a) the provisions of the trial scheme should be implemented on permanent basis,
 - (b) a modified version of the trial scheme should be implemented on a permanent basis,
 - (c) the provisions of the trial scheme should not be implemented on permanent basis,
 - (d) an alternative trial scheme should be considered for implementation.
- Following completion of the report on the trial scheme, the local authority shall make a determination on the future arrangements, having regard to the recommendation of the report. This determination will be an executive decision and should be recorded in a formal decision record as a Chief Executive’s Order (**Traffic Works Order**). The determination should also be published on the local authority’s website.
- 9.2.12 At end of the period of the trial scheme, infrastructure elements of the trial should be removed as soon as practicable, unless a prior decision has been taken to make the provisions of the trial scheme permanent either with or without modifications.

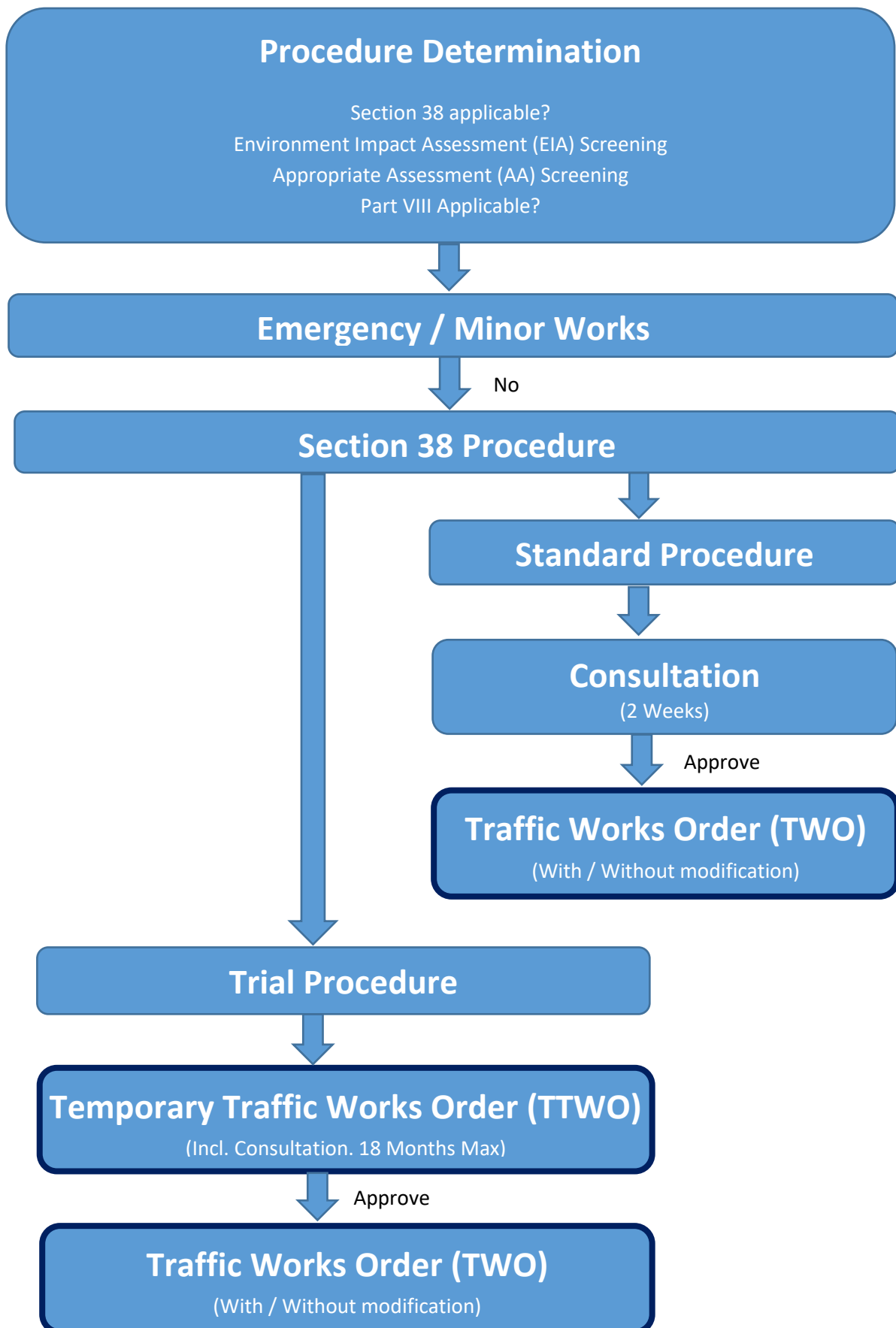
Where it is decided that the provisions of the trial scheme should be implemented on a permanent basis, with or without modifications, the local authority shall proceed, in accordance with the relevant procedures, to replace the elements of the trial scheme, modified as necessary, with the permanent proposals. The normal notification procedures of the local authority shall apply to such implementation. However, as feedback arrangements were in place in respect of the trial scheme, a further public consultation process in relation to the permanent scheme is not required.

Where a decision is made to make the scheme permanent the temporary works may remain in place until the permanent scheme has been installed.

- 9.2.13 Where the above process for the implementation of trial schemes requires notification to the elected members of the Council, such notification may be to the full Council, the members of the Strategic Policy Committee of the Council dealing with transport matters, the elected members of a Municipal District or to the elected members of a local electoral area.

Appendix A

Traffic Works Procedure Flowchart



Appendix B

Statutory Approval Processes

The different consent procedures for delivery of traffic, traffic calming or active travel projects are set out below:

1. **Section 38 of the Road Traffic Act 1994** – this is an Executive decision of the relevant local authority;
2. **Part VIII Procedure** (under the Planning and Development Regulations 2001) to be adjudicated by the elected Councillors of the relevant local authority;
3. **Environmental Impact Assessment Report** to be adjudicated by An Bord Pleanála; and
4. **Appropriate Assessment** process under Section 177AE of the Planning and Development Act 2000.
5. Information to Elected Members and power of Direction.

Each of these is elaborated in the subsequent sections.

2.1 Section 38 of the Road Traffic Act 1994

Section 38 of the Road Traffic Act 1994 deals with the implementation of “*traffic calming measures*” meaning measures which:

- (a) *enhance the provision of public bus services, including measures which restrict or control access to all or part of a public road by mechanically propelled vehicles (whether generally or of a particular class) for the purpose of enhancing public bus services, or*
- (b) *restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists),*

and includes for the purposes of the above the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works.”

The definition of “*traffic calming measures*” is very wide, including “*measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists)*”.

Projects developed under the provisions of Section 38 are exempt from the provisions of the Part VIII planning process. Section 179(6)(bb) of the Planning and Development Act 2000 includes as an exemption from the Part VIII process: “*works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section*

37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994". Progression of schemes under Section 38 of the Road Traffic Act 1994 is an Executive function of the relevant local authority.

2.2 Part VIII Procedure (under the Planning and Development Regulations 2001)

The Part VIII procedure set out in the Planning and Development Regulations 2001 is the process by which local authority development, which is below the threshold for referral to An Bord Pleanála, is approved for implementation. Part VIII are required for: -

(b) the construction of a new road or the widening or realignment of an existing road, where the length of the new road or of the widened or realigned portion of the existing road would be—

(i) 100 metres or more, in the case of a road in an urban area, or,

(ii) 1 kilometre or more in the case of a road in any other area,

(c) the construction of a bridge or tunnel.

The process involves a public consultation process and consideration by the Councillors of the project details and the feedback from the consultation process.

2.3 Environmental Impact Assessment Report

Very large schemes may trigger the need for an Environmental Impact Assessment Report (EIAR) on the basis that the scheme is likely to have significant environmental impacts – these impacts can be both positive and negative. There may be other cases where the proposed scheme is above one of the prescribed thresholds for an EIAR.

Screening is the initial stage in the EIA process and determines whether or not specified public or private developments are likely to have significant effects on the environment and, as such, require EIA to be carried out prior to a decision on a development consent application being made.

An assessment as to whether to carry out a screening process needs to be considered for all projects and is based on the whether such a project is covered by the schedule in the annex and any national thresholds. Environmental effects can, in principle, be either positive or negative.

EU Directive 2011/92/EU thresholds for which an EIA is required for projects are: -

Annex I projects (EIA required by Directive) are: -

“(b) Construction of motorways and express roads,

(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length.”,

Annex II projects (Irish requirements specifying thresholds which trigger an EIA),

Includes busway (not bus lanes), service area, new 100m bridge, new 100m tunnel, four-lane road of 500m or more in an urban area and 8 km in a rural area.

In general, it should be noted that any project of whatever scale that is likely to have significant effects on the environment would trigger the need for an EIA.

If an EIAR is required, then the application for development approval must be made to An Bord Pleanála and the normal procedures operated by the Board applies. The process may, and in most cases will be likely to, include an oral hearing held by an inspector appointed by An Bord Pleanála.

Schemes for which an EIAR is required are then exempted from going through the separate Part VIII planning procedure.

2.4 Appropriate Assessment Process

Appropriate Assessment is a process set out under the Habitats Directive (Directive 92/43/EEC) and the European Communities (Birds and Natural Habitats) Regulations 2011 to assess the potential impacts of plans or projects on sites of environmental importance. There is a process set out in the above legislation that requires preliminary evaluations to be undertaken (screening) to establish whether an Appropriate Assessment process should be undertaken for the relevant plan or project. Where Appropriate Assessment is undertaken, it is a form of environmental assessment establishing the potential impacts on relevant designated sites, culminating in the preparation of a “*Natura Impact Statement*”. This statement is then required to be submitted to An Bord Pleanála under Section 177AE of the Planning and Development Act 2000, for its determination.

Where an Appropriate Assessment application has been made by a local authority to An Bord Pleanála for a project under this section, it then does not follow the Section 38 or Part VIII planning process.

2.5 Information to Elected Members and power of Direction

Section 138 of the local government act provides for information to be provided to a local authority elected council before any works are undertaken. Specifically, the chief executive shall inform the elected council before any works (other than maintenance or repair) are undertaken, or before committing the local authority to any expenditure in connection with proposed works (other than maintenance or repair).

In addition, an elected council or joint body may by resolution direct that, before the chief executive performs any specified executive function, he or she shall inform the elected council or joint body, as the case may be, of the manner in which he or she proposes to perform that function, and the chief executive shall comply with the resolution.

Section 139 of the Local Government Act provides that where the elected council or joint body is informed in accordance with section 138 of any works (not being any works which the local authority or joint body are required by or under statute or by order of a court to undertake), the elected council or joint body may by resolution, direct that those works shall not proceed. Where such a direction is made the chief executive shall comply with it.

Section 140 allows for an elected council or joint body to requirement that a particular thing is done. This must occur by resolution to require any particular act, matter or thing specifically mentioned in the resolution and which the local authority or the chief executive concerned can lawfully do or effect, to be done or effected in the performance of the executive functions of the local authority.

Appendix C

Section 38 – Road Traffic Act (1994)

Road Traffic Act 1994

Traffic calming measures.

- 38.— (1) A road authority may, in the interest of the safety and convenience of road users, provide such traffic calming measures as they consider desirable in respect of public roads in their charge.
- (2) A road authority may remove any traffic calming measures provided by them under this section.
- (3) Before providing or removing traffic calming measures under this section of such class or classes as may be prescribed, a road authority shall—
- (a) consult with the Commissioner;
 - (b) publish a notice in one or more newspapers circulating in the functional area of the authority—
 - (i) indicating that it is proposed to provide or remove the measures, and
 - (ii) stating that representations in relation to the proposal may be made in writing to the road authority before a specified date (which shall be not less than one month after the publication of the notice);
 - (c) consider any observations made by the Commissioner or any representations made pursuant to paragraph (b) (ii).
- (4) The making of a decision to provide or remove traffic calming measures of a class prescribed under subsection (3) and the consideration of observations or representations under paragraph (c) of that subsection shall be reserved functions.
- (5) Traffic calming measures shall not be provided or removed in respect of a national road without the prior consent of the National Roads Authority.
- (6) The Minister may issue general guidelines to road authorities relating to traffic calming measures under this section and may amend or cancel any such guidelines and, where any such guidelines are, for the time being, in force, road authorities shall have regard to such guidelines when performing functions under this section.
- (7) A traffic calming measure provided under this section shall be deemed to be a structure forming part of the public road concerned and necessary for the safety of road users.
- (8) (a) A person who, without lawful authority, removes or damages or attempts to remove or damage a traffic calming measure provided under this section shall be guilty of an offence.

(b) An offence under this subsection may be prosecuted by the road authority in whose functional area the acts constituting the offence were done.

(9) In this section—

“provide” includes erect or place, maintain and (in the case of an instrument for giving signals by mechanical means) operate and cognate words shall be construed accordingly; and

“traffic calming measures” means measures which restrict or control the speed or movement of, or which prevent, restrict or control access to a public road or roads by, mechanically propelled vehicles (whether generally or of a particular class) and measures which facilitate the safe use of public roads by different classes of traffic (including pedestrians and cyclists) and includes the provision of traffic signs, road markings, bollards, posts, poles, chicanes, rumble areas, raised, lowered or modified road surfaces, ramps, speed cushions, speed tables or other similar works or devices, islands or central reservations, roundabouts, modified junctions, works to reduce or modify the width of the roadway and landscaping, planting or other similar works.



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