

SCHEDULES

SCHEDULE 2

Article 4

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“archaeological mitigation strategy” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the archaeological mitigation strategy for the purposes of this Order;

“biodiversity pre-commencement plan” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the biodiversity pre-commencement plan for the purposes of this Order;

“Brook Cottages heritage strategy” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the Brook Cottages heritage strategy for the purposes of this Order;

“Brook Cottages soft strip” means the soft strip referred to in the Brook Cottages heritage strategy at section 3;

“contaminated land” means land which the undertaker considers would amount to contaminated land within the meaning given in section 78A(2)(a) or (b) of the Environmental Protection Act 1990(1);

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker as required by the First Iteration EMP;

“First Iteration EMP” means the document of that description listed in Schedule 10 (documents to be certified), being the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and certified by the Secretary of State as the First Iteration EMP for the purposes of this Order, and which includes an outline plan for the following—

- (a) Air Quality Management Plan;
- (b) Noise Management Plan;
- (c) Waste Management Plan;

(1) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and was amended by section 86(2) the Water Act 2003 (c. 37).

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- (d) Biodiversity Management Plan;
- (e) Soil Handling and Management Plan;
- (f) Water Management Plan;
- (g) Energy and Resource Management Plan;
- (h) Materials Management Plan;
- (i) Contaminated Land Management Plan;
- (j) Archaeological Management Plan;
- (k) Construction Compound Management Plan;
- (l) Landscape and Ecology Management Plan;
- (m) Travel Plan; and
- (n) Borrow Pits Management Plan;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017⁽²⁾;

“flood risk assessment” means the document of that description including the flood risk assessment technical note as listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“outline construction traffic management plan” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“pre-commencement plan” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

“priority habitat” means a type of habitat identified as being of principle importance in England in accordance with section 41 (biodiversity lists and actions (England)) of the Natural Environment and Rural Communities Act 2006⁽³⁾;

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“relevant local authority” means a local authority within the meaning given by section 43(3)⁽⁴⁾ of the 2008 Act and in whose area the part of the authorised development in question is located;

“relevant stakeholders” in relation to a part of the authorised development means relevant local authorities and relevant statutory environmental bodies;

“relevant statutory environmental body” means a statutory body exercising functions relating to environmental matters and which because of those functions is likely to be interested in the detailed design of the part of the authorised development in question;

“scheme design approach and design principles” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the scheme design approach and design principles for the purposes of this Order;

“Second Iteration EMP” means the second iteration of the environmental management plan produced in accordance with the DMRB containing detailed plans relating to the construction phase of the authorised development substantially in accordance with the First Iteration EMP;

(2) [S.I. 2017/1012](#).

(3) [2006 c. 16](#).

(4) Section 43(3) was substituted by section 133(4) of the Localism Act [2011 \(c. 20\)](#).

“Third Iteration EMP” means the third iteration of the environmental management plan produced in accordance with the DMRB containing detailed plans relating to the operational and maintenance phase of the authorised development substantially in accordance with the First Iteration EMP.

Time limits

2. The authorised development must not begin later than the expiration of 5 years from the date on which this Order comes into force.

Second Iteration EMP

3.—(1) No part of the authorised development is to commence until the Second Iteration EMP in relation to that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the Environment Agency, Natural England, and the relevant local highway authority so far as it is relevant to their respective functions.

(2) The authorised development must be constructed in accordance with the Second Iteration EMP.

Third Iteration EMP

4.—(1) Following completion of construction of the authorised development the Third Iteration EMP must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the relevant local highway authority so far as it is relevant to their respective functions.

(2) The authorised development must be operated and maintained in accordance with the Third Iteration EMP.

Details of consultation

5.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report enclosing the written responses received and setting out the consultation undertaken by the undertaker pursuant to that requirement to inform the details submitted and the undertaker’s response to that consultation.

(2) Promptly after submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

Landscaping

6.—(1) No part of the authorised development can come into use until a landscaping scheme for that part which sets out details of all proposed hard and soft landscaping works is submitted to the Secretary of State for approval in writing following consultation with Natural England, the relevant planning authority and the relevant local highway authority so far as it is relevant to their respective functions.

(2) The landscaping scheme for each part must be substantially in accordance with the applicable mitigation measures for landscaping set out in the First Iteration EMP and the landscaping principles set out in the environmental masterplan.

(3) The authorised development must be landscaped in accordance with the approved landscaping scheme for that part.

(4) A landscaping scheme referred to in paragraph (1) must contain details of—

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- (a) location, number, species, mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) existing trees to be retained, with measures for their protection during the construction period; and
- (e) implementation timetables for all landscaping works.

(5) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(6) Any tree or shrub planted as part of a landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority, gives consent to a variation.

Fencing

7. Any permanent and temporary fencing and other means of enclosure that would be adjacent to the new dual carriageway forming part of the authorised development must be constructed and installed in accordance with the undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Contaminated land and groundwater

8.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the Environment Agency and the relevant planning authority, and the undertaker must complete a risk assessment of the contamination in consultation with the Environment Agency and the relevant planning authority.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority.

(3) Remediation must be carried out in accordance with the approved scheme.

Archaeology

9. The authorised development must be carried out, operated and maintained in accordance with the archaeological mitigation strategy and, as set out in that strategy, the undertaker must submit individual Site Specific Written Schemes of Investigation to the relevant planning authority for approval.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must—

- (a) cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works; and
- (b) prepare a written scheme for the protection and mitigation measures of such protected species or nesting birds when carrying out the authorised development.

(2) The undertaker must implement the written scheme prepared under paragraph (1) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Traffic management

11.—(1) No part of the authorised development is to commence until a traffic management plan for the construction of that part of the authorised development, substantially in accordance with the outline construction traffic management plan, has been submitted to and approved in writing by the Secretary of State following consultation with the relevant local highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

12.—(1) The detailed design for the authorised development must accord with—

- (a) the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings;
- (b) the principles set out in the environmental masterplan; and
- (c) the design principles set out in the scheme design approach and design principles,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding plans or sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(3) No part of the authorised development is to commence until, for that part, a report has been submitted to, and, following consultation with the relevant local planning authority, approved by the Secretary of State, demonstrating that—

- (a) the undertaker has engaged with relevant stakeholders on refinements to detailed design for that part of the authorised development;
- (b) the undertaker has had regard to the relevant stakeholders' comments; and
- (c) any refinements to the detailed design for that part of the authorised development arising as a result of that engagement accord with the scheme design approach and design principles.

Surface and foul water drainage

13.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the engineering section drawings (drainage layouts) including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant local authority on matters relating to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details referred to in paragraph (1) unless otherwise agreed in writing by the Secretary

of State following consultation with the relevant local authority on matters relating to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Flood compensatory storage

14.—(1) Subject to paragraph (2) below, no part of the authorised development is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) No part of the authorised development at the River Great Ouse is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

(3) The schemes prepared under paragraphs (1) and (2) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 35% climate change allowance event.

(4) The scheme must be implemented as approved and subsequently maintained.

Safeguarding of milestones

15. Any work to the grade II listed milestones with National Heritage Numbers 1163534, 1331394 and 1162760 and the non-designated milestone Historic Environment Record Reference 8808 must be carried out in accordance with the archaeological mitigation strategy.

Brook Cottages

16.—(1) Subject to paragraphs (2) and (5), the dismantling of Brook Cottages comprised within Work No. 21 must be carried out in accordance with the Brook Cottages heritage strategy unless otherwise agreed with the Secretary of State.

(2) At the completion of the Brook Cottages soft strip, the undertaker must provide to Historic England and Bedford Borough Council a report containing—

- (a) information on the heritage interest and significance of Brook Cottages;
- (b) details of the existing physical condition of Brook Cottages; and
- (c) in light of (a) and (b) above, options for dismantling Brook Cottages and if relevant, storing, transporting and reconstructing those elements of Brook Cottages that could be relocated to conserve the historic fabric.

(3) Within 35 days of receipt of the information set out in paragraph (2), Historic England, in consultation with Bedford Borough Council, must advise the undertaker of the suitability of proceeding with relocation and, if Historic England advises that the historic fabric is suitable for relocation, it must confirm an approved method of dismantling and storing the historic fabric.

(4) Unless Historic England, in consultation with Bedford Borough Council, advises that the historic fabric is suitable for relocation within 35 days in accordance with paragraph (3) the undertaker must proceed with dismantling and recording as set out in the Brook Cottages heritage strategy but is not required to take any further steps in relation to relocation.

(5) If Historic England, in consultation with Bedford Borough Council, advises that the historic fabric is suitable for relocation then, unless otherwise agreed with the Secretary of State, the undertaker must complete the dismantling and store the historic fabric using the approved method confirmed by Historic England under paragraph (3).

(6) As soon as reasonably practicable following dismantling and storage of the historic fabric in accordance with paragraph (5) the undertaker must submit to the Secretary of State for approval in consultation with Bedford Borough Council and Historic England, either—

- (a) details demonstrating why reconstruction is not appropriate; or
- (b) details of—
 - (i) an appropriate future use for the historic fabric;
 - (ii) a suitable receptor willing to receive the historic fabric;
 - (iii) the method of transporting the historic fabric for reconstruction;
 - (iv) a schedule of works for reconstruction; and
 - (v) a timetable for the completion of the reconstruction.

(7) In the event that the Secretary of State approves details for the relocation of the historic fabric under sub-paragraph (6)(b), the undertaker must relocate the historic fabric in accordance with the details so approved, unless otherwise agreed with the Secretary of State.

(8) The undertaker must provide a copy of the level 3 record to Bedford Borough Council and Historic England on completion of the dismantling.

(9) The level 3 record referred in sub-paragraph (8) is a record prepared in accordance with the Brook Cottages heritage strategy which conforms to a level 3 archaeological record, as defined in Historic England's Understanding Historic Buildings: A Guide to Good Recording Practice (2016).

Highway Lighting

17.—(1) No part of the authorised development may be brought into use until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant local authority on matters relating to its function.

(2) The highway lighting scheme referred to in paragraph (1) must encompass the specification, level of provision, energy efficiency, light spillage, intensity and brightness of the highway lighting and must—

- (a) reflect the mitigation measures included in Chapter 8 Biodiversity and Chapter 14 Climate of the environmental statement; or
- (b) where it materially differs from these measures, must demonstrate that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) The highway lighting must be provided in accordance with the approved details referred to in paragraph (1).

(4) Nothing in this requirement restricts the lighting of the authorised development during its construction or where temporarily required for maintenance.

Noise Mitigation

18.—(1) No part of the authorised development is to commence until written details of the proposed noise mitigation for the use and operation of that part of the authorised development, including noise barriers, noise bunds and low noise surfacing, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The written details referred to in paragraph (1) must—

- (a) reflect the mitigation measures for operation included in Chapter 11 Noise and Vibration, of the environmental statement; or

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- (b) where it materially differs from these measures, must demonstrate that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.
- (3) The noise mitigation must be provided in accordance with the approved details referred to in paragraph (1) and must be retained thereafter.

Construction hours

19.—(1) Construction work for the authorised development must only take place between 0700 hours and 1800 hours Monday to Friday, and 0700 hours to 1300 hours on Saturdays, with no activity on Sundays or bank holidays, except as specified in paragraphs (2) and (3).

(2) Outside the hours and days specified in paragraph (1), daily start up and shut down is permitted and construction work may be undertaken for essential activities comprising—

- (a) bridge and gantry demolition and installation including the installation of safety systems;
- (b) works over and adjacent to the East Coast Main Line railway;
- (c) lifting operations;
- (d) site clearance of vegetation adjacent to live carriageways;
- (e) site clearance of signs, street furniture and lighting columns adjacent to live carriageways;
- (f) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation, including delivery of plant;
- (g) junction and highway tie-in works;
- (h) installation of temporary and permanent line markings;
- (i) traffic management measures and signal changes;
- (j) installation of signs and technology;
- (k) any emergency works or operations required for safe working;
- (l) completion of activities already begun which require continuous periods of operation, such as completing concrete pouring; or
- (m) non-intrusive environmental and engineering surveys.

(3) Outside the hours and days specified in paragraph (1), the undertaker may with the prior written consent of the relevant planning authority carry out the following activities—

- (a) concrete pours and piling, diaphragm wall works, pavement operations;
- (b) work associated with the diversion of existing utilities, including the removal of overhead power lines;
- (c) earthworks operations, including excavation, filling, transport, placing and compacting of earthworks material;
- (d) intrusive environmental and engineering surveys; or
- (e) activities assessed in the environmental statement or which would not give rise to new or materially different effects from those assessed in the environmental statement which do not fall within paragraph (2).

Pre-commencement works

20. Any pre-commencement works must be carried out in accordance with the biodiversity pre-commencement plan and the pre-commencement plan.

Flood risk assessment

21.—(1) Subject to sub-paragraph (2), the authorised development must be carried out in accordance with the flood risk assessment, including the mitigation measures detailed in it, so that no part of the authorised development is predicted to result in any exceedance of the flood levels to properties and land shown in the flood risk assessment.

(2) Sub-paragraph (1) does not apply in any circumstance where the undertaker proposes to carry out a part of the authorised development otherwise than in accordance with the flood risk assessment and either demonstrates to the Secretary of State's satisfaction, in consultation with the Environment Agency, that the part of the authorised development concerned would not result in an exceedance of the flood levels shown in the flood risk assessment beyond 10mm or demonstrates that all affected landowners accept the predicted exceedance of the flood levels shown in the flood risk assessment.

Construction phase local traffic monitoring

22.—(1) No part of the authorised development is to commence until a construction phase local traffic monitoring scheme for the locations identified in the outline construction traffic management plan has been submitted to, and, following consultation with the relevant local highway authority, approved by the Secretary of State.

(2) The construction phase local traffic management scheme must include—

- (a) a survey to assess baseline traffic at the locations identified in the outline construction traffic management plan;
- (b) the methodology to be used to collect the required data;
- (c) the periods over which construction phase traffic is to be monitored;
- (d) proposals for the submission of the survey data collected and an interpretative report to be provided to the relevant local highway authority; and
- (e) surveys as agreed in paragraphs (b) to (d) at the location in paragraph (a).

(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker unless otherwise agreed in writing with the Secretary of State following consultation with the relevant local highway authority.

Operation phase local traffic monitoring

23.—(1) No part of the authorised development is to commence until an operation phase local traffic monitoring scheme has been submitted to, and following consultation with the relevant local highway authority, approved by the Secretary of State for the following locations—

- (a) Great North Road, between A428 and Nelson Road;
- (b) Cambridge Road, between Station Road and A428;
- (c) Park Street East, Dry Drayton;
- (d) Brook Lane, Coton; and
- (e) St Neots Road, Sandy.

(2) The operation phase local traffic monitoring scheme must include—

- (a) a survey to assess baseline traffic levels at the locations listed in sub-paragraph (1)(a) to (e);
- (b) an operation traffic survey at the locations listed in sub-paragraph (1)(a) to (e) within the first year and fifth year following the date on which the authorised development is fully completed and open for traffic to assess the changes in traffic from the baseline;
- (c) the methodology to be used to collect the required data;
- (d) the periods over which operation traffic is to be monitored; and

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(e) proposals for the submission of the survey data collected and an interpretative report to be provided to the relevant local highway authority.

(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker unless otherwise agreed in writing with the Secretary of State following consultation with the relevant local highway authority.

Biodiversity net gain assessment and offsetting scheme

24.—(1) No part of the authorised development is to commence until an updated biodiversity net gain assessment has been submitted to, and, following consultation with Natural England and the relevant local planning authorities, approved by the Secretary of State.

(2) The biodiversity net gain assessment must describe—

- (a) the scope of the assessment, which must include priority habitats such as lowland mixed deciduous woodland, wood-pasture and parkland, and hedgerows;
- (b) the methodology used to collect the required data based on a metric that has been agreed with Natural England and the relevant local planning authorities (such agreement not to be unreasonably withheld or delayed);
- (c) the timing of the assessment; and
- (d) the assessment findings and conclusions.

(3) If the assessment findings and conclusions demonstrate that a loss of priority habitat will be incurred, no part of the authorised development is to commence until a biodiversity offsetting scheme has been submitted to, and, following consultation with Natural England and the relevant local planning authorities, approved by the Secretary of State.

(4) A biodiversity offsetting scheme must include—

- (a) details of how any priority habitat losses incurred as a result of the authorised development will be offset and the target condition for each habitat; and
- (b) a programme for the implementation, monitoring and management of the biodiversity offset proposals.

(5) The biodiversity offsetting scheme must provide for its implementation before any part of the authorised development is open to traffic.

Approvals and amendments to approved details

25. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

26.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 27; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted under the requirement that considers it likely that the subject matter of the application is to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

27.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 26 and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971⁽⁵⁾.

Register of requirements

28.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(5) 1971 c. 80.

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(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

29. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.