

Your World First



Planning and consenting UK hydro projects

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Planning and consenting UK hydro projects

1. Consent Process
2. DCO vs s36
3. Environmental Assessment
4. People Over Wind
5. Top 5 Takeaways



(1) Consent Process

England

- 50MW+: DCO
- 50MW or less: planning permission

Scotland

- 50MW+: s36 Consent
- 50MW or less: planning permission

Wales

- 50MW+: DCO
- 50MW or less: planning permission
(note DNS)

Private Acts of Parliament



(2) DCO vs s36

	DCO	s36
<i>Timescale</i>	Fixed(ish) 16 months	No fixed timescale
<i>Pre-application Consultation</i>	Mandatory pre-application consultation	None required
<i>Land</i>	Compulsory purchase can be included as a 'one stop shop'	Separate compulsory purchase order needed, if required
<i>Flexibility</i>	Rochdale Envelope	Rochdale Envelope
<i>Environmental Assessment</i>	EIA, HRA and WFD	EIA, HRA and WFD
<i>Optimisation</i>	Non-material change / material change	s36C (material changes)
<i>Examination</i>	Mandatory examination process	Public local inquiry optional

(3) New EIA Regulations

- Directive 2014/52/EU of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment
- Required to be implemented by Member States by 16 May 2017
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017
- Etc.



(3) EIA & HRA

	EIA
What is it?	Likely significant effects (LSE) on environment
Responsibility?	Applicant
When needed?	Screening Opinion
Scope?	Scoping Opinion
Document to prepare?	Environmental Report
Consultation?	Submit with the consent application followed by <u>mandatory</u> consultation
Decision making?	Material considerations and planning balance

(3) EIA & HRA

	EIA	HRA
What is it?	Likely significant effects (LSE) on environment	LSE / adverse effects on European Sites
Responsibility?	Applicant	Decision maker
When needed?	Screening Opinion	Informal screening
Scope?	Scoping Opinion	Informal scoping
Document to prepare?	Environmental Report	Habitats Regulations Appraisal
Consultation?	Submit with the consent application followed by <u>mandatory</u> consultation	Submit with the consent application followed by <u>optional</u> consultation
Decision making?	Material considerations and planning balance	No adverse effect on site integrity (alone or in-combination), beyond reasonable scientific doubt

(4) People Over Wind

1. HRA Screening – mitigation measures

- a) People Over Wind v Teoranta, CJEU Case C-323/17 (April 2018)
 - i. Held: it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site
 - ii. This alters the position under UK case law, e.g. Hart [2008] EWHC 1204 (Admin)
- b) Langton [2018] EWHC 2190 (Admin) (August 2018)
 - i. is the measure a mitigation or protection measure, or is it an integral feature of the project
 - ii. NB: this case will be appealed to the Court of Appeal

(4) People Over Wind

2. Does People Over Wind Apply to EIA?

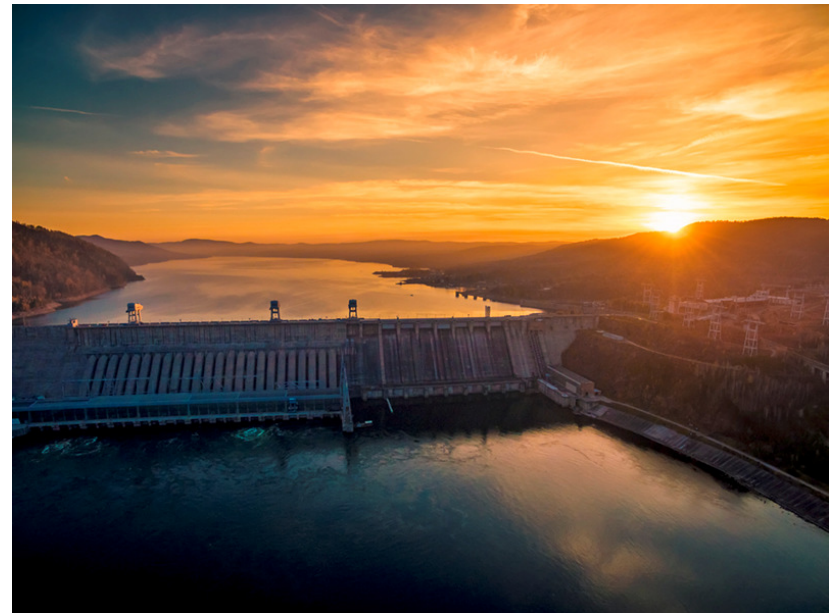
- a) In R (on the application of Cairns) v Hertfordshire County Council [2018] EWHC 2050 (Admin)
 - i. People Over Wind does not apply to EIA.

2. Appropriate Assessment - compensatory measures

- a) Sweet and Graceman v An Bord Pleanála, CJEU Case C-164/17 (July 2018)
 - i. compensatory measures cannot be taken into account at AA stage

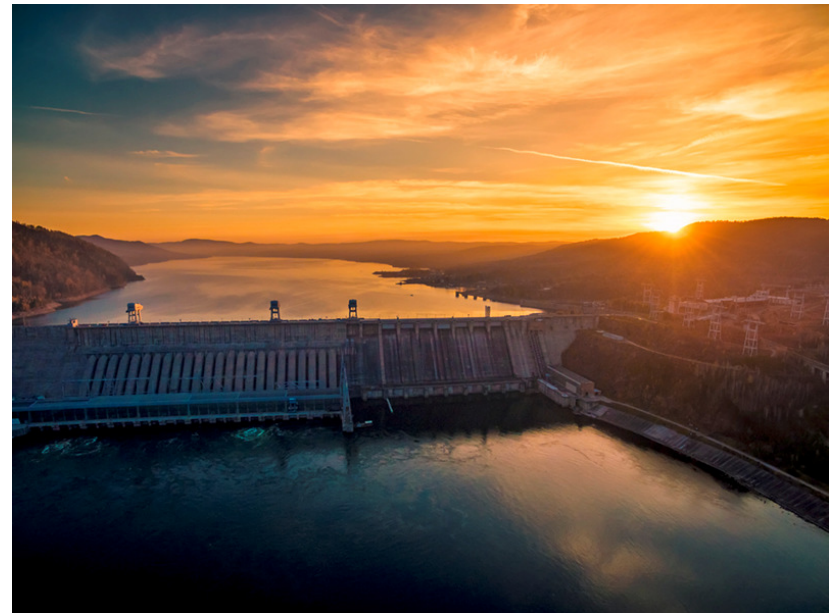
(5) Top 5 takeaways

1. Details matter
2. Macro and micro
3. Land and water rights



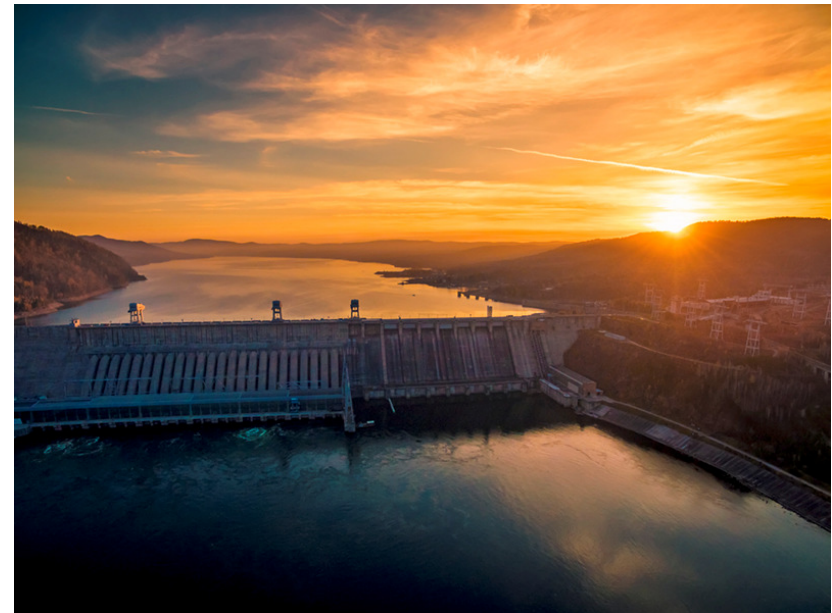
(5) Top 5 takeaways

The Waterworks Clauses Act 1847



(5) Top 5 takeaways

1. Details matter
2. Macro and micro
3. Land and water rights
4. European Environmental Law
5. Flexibility



Questions

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