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UK: SCOTLAND

PROPERTY LAW - THE NEED TO KEEP UP TO SPEED

AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE

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2005 has been a more active year on the legal side of the property market than might have been anticipated. The year kicked off in February with the rights of access to land throughout Scotland being made official sending ramblers and wild campers racing round the countryside.

The general public now have the right to access all land in Scotland other than land and property which is specifically excluded such as schools, building sites, and enough of a proprietor's land as is required to give them privacy. The latter exclusion is definitely one which will be difficult to interpret in some situations. Local authorities have been charged with policing the new access rights and have the power to designate paths over land, by compulsory order where it is not possible to do so by agreement. One landowner has already faced resistance to a proposed development which would entail creating a "gated community" and blocking rights of access.

The Chancellor provided one of the biggest shocks of the year by whipping away Disadvantaged Areas Relief from Stamp Duty Land Tax from commercial properties with immediate effect at midnight on 16 March 2005. On that very same night, an estimated £500m worth of property deals were concluded to avoid payment of SDLT. Inevitably, some deals did not slide under the wire and some as a result were abandoned when the relief became no longer available.

With the first day of May in 2005, came the new Scottish Building Standards and Regulations to regulate how we build properties in Scotland. The new system also brought with it the Scottish Building Standards Agency whose remit is to oversee the operation of the new system. Full implementation of the legislation will in time change the way we seek consents for all buildings from household extensions to major developments. The most significant change will be the shifting of complete control from the local authorities. Approved independent verifiers and certifiers will in time be authorised to issue permission to build and certify compliance with the new legislation respectively.

The first successful transfer of land under the community right to buy legislation was also completed in May this year. Fifteen hectares of woodland, grazing and amenity area were transferred to the community of Crossgates in Fife. Time will tell if the community right to buy becomes the weapon for those wishing to obstruct development rather than sustain it as is



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intended. Biggart Baillie is currently acting on behalf of a landowner who wishes to develop his land for housing but to do so will require to prevent the local community from exercising its registered community right to buy.

The Smoking, Health and Social Care (Scotland) Act 2005 was approved by the Scottish Parliament on June 30, 2005. This legislation which will ban smoking in enclosed public places in Scotland as at 26 March 2005 will have repercussions for those proprietors who generally act as host to members of the public and who don't comply with the legislation.

The year was rounded off with another bombshell from the Chancellor in his pre-Budget Report in December. He declared that investors would not be able to put residential property into a pension in April 2006 after all. As a result, many investors have been left owning properties which were destined for their SIPP and which they would not otherwise have bought.

All of the above has kept the property lawyers on their toes as has the task of familiarising themselves with the land reform provisions introduced at the end of 2004. However, they cannot afford to sit back and catch their breath. Just around the corner is the new planning regime which is being pushed through the Scottish Parliament and is being described as the most fundamental and comprehensive reform of the planning system since it was created in 1948.

We at Biggart Baillie monitor all of these changes closely and ensure that our clients are advised on the best possible way forward for their particular type of business or transaction.

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