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## **EURO-AMERICAN LAWYERS GROUP**

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### ***UK: SCOTLAND***

## ***WHITE PAPER ON MODERNISING THE PLANNING SYSTEM***

*AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE*

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Traditionally planning has been concerned with the use of land – indeed the phrase commonly used was “land use planning”. Over the last decade or so the role of planning has become much wider. The Scottish Executive in particular sees planning as a tool to achieve social objectives. In SPP1 they make that very clear. Specifically this document provides “Scottish Ministers expect the planning system to support and inform the wider political agenda linking principles and actions to enable sustainable development”.

A commitment to revamp the planning system was set out in the Partnership Agreement entered into following upon the last election in Scotland. This committed the Executive “to improve the planning system, to strengthen the involvement of local communities, speed up decisions, reflect local views better and allow quicker investment decisions”.

After the extensive consultation process the Executive produced over the summer a White Paper entitled “Modernising the Planning System”.

The White Paper contains a package of measures (which have been framed as a package). At a recent conference Scotland’s Chief Planner made very clear that what was on offer was not “pick and mix”. The objectives behind the package are:-

1. To make the system fit for purpose;
2. To make the system efficient;
3. To provide an inclusive system;
4. To ensure that development is sustainable.

To achieve these objectives a range of measures were proposed. However somewhat controversially there is no commitment in the White Paper to third party rights of appeal. At the present time objectors have no appeal against the grant of planning permission. Their position can be contrasted to that of the developer who does have a right of appeal. The Executive has



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been under considerable pressure to introduce third party rights of appeal and a backbench Labour MSP has a Bill before the Parliament seeking to achieve this. While under considerable pressure however the Executive has decided not to go down that route. It is unlikely that we have heard the last word on third party rights of appeal.

The proposed changes are extensive. At this stage it is impossible to predict how some of the changes will work in practice because as yet we have not seen essential details which will either be contained in the Planning Bill or supplementary legislation which will follow on from the Bill. Changes are proposed to all parts of the planning system. While these changes are generally welcome it is fair to point out that these, in themselves, will not achieve the objectives set out by the Executive referred to above, nor will they in themselves remedy dissatisfaction with the system. The Scottish Executive have fairly acknowledged, there will need to be a change of attitude on the part of all of those involved in the planning system and introduction of significant resources to make the system work better and more efficiently.

It is not possible in a brief article to detail all the changes proposed. Significant changes include a proposal to re-categorise developments into four categories, namely national, major, local and minor developments. National developments will be identified as such in the National Planning Framework with the consequence that the principle of these developments will not be open to scrutiny. The Scottish Executive will primarily be responsible for planning applications in relation to these developments. While Local Authorities will deal with the other 3, different procedures will be adopted for each.

In Scotland we have a plan led system – in other words if a development is in accordance with the development plan, planning permission should normally be granted for that development. The difficulty with the plan led system is that development plans are often considerably out of date. The Scottish Executive want to remedy this and propose to impose upon Local Authorities a statutory duty to review the Local Plan every 5 years. The process of adopting a Local Plan will also be simplified.

There are also a number of detailed changes some of which will impact potentially upon the value of land. Outline planning permission may be done away with and it is likely that the duration of a planning permission will be limited to three years from the current five years. Any appeal in relation to the refusal of planning permission will have to be brought in the future within three months rather than six months.

The changes proposed are significant which is hardly surprising given the intention to ensure that we have a planning system that is fit for purpose and efficient. While the Planning Bill is



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important it clearly needs more than just a Planning Bill to achieve the ultimate objectives of the Scottish Executive. What will be interesting to see over the next three to five years is whether there is really a change of attitude on the part of those who are users of and are involved in the planning system.

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