Environmental Justice; lessons on definition and delivery from Scotland

Abstract

This paper considers the concept of environmental justice in Scotland. It reviews the research and developments in law and policy in this area, starting with the Dynamic Earth speech in Edinburgh in 2002. It analyses the findings by grouping causes and solutions to environmental justice and identifies a particularly wide definition of the concept in Scotland. It concludes that the inclusion of social justice is a defining feature of environmental justice in Scotland; however, measures to mitigate environmental injustice are being implemented in an incremental way, with the most significant achievements being through the implementation of international obligations.

Introduction

Environmental justice as an aim for the Scottish Executive (now the Scottish Government) was introduced in what has become known as the Dynamic Earth speech in February 2002 (McConnell 2002). Some four years later, the authors sought to establish how the policy of environmental justice in Scotland had been developed and to what extent it had been implemented through new legislation.\(^1\) This article focuses on the development of environmental justice in Scotland from 2002 to 2007. In this period, the political climate in Scotland has changed and it is, therefore, considered an appropriate time to assess the legacy of the Dynamic Earth speech.\(^2\) The paper outlines the arrangements for devolution from the United Kingdom government and considers the political changes that have recently taken place. It
describes the development of the concept of environmental justice in Scotland by reviewing the development of policy and research in this area. It uses this to identify instances of environmental injustice in Scotland, as well as a range of solutions. The legal remedies are then considered, allowing conclusions about the development and delivery of environmental justice in Scotland to be drawn.

**What is environmental justice?**

In 2002, Jack McConnell, the then First Minister stated, “….the people who have the most urgent environmental concerns in Scotland are those who daily cope with the consequences of a poor quality of life and live in a rotten environment - close to industrial pollution, plagued by vehicle emissions, streets filled with litter and walls covered in graffiti” (McConnell 2002). He made several references to environmental justice in that speech, but although his concerns were clearly articulated, what exactly environmental justice meant in a Scottish context was not yet clear.

The concept of environmental justice originated in the United States of America as a concept that grew out of the racial and social justice equality movement (Gauna 2002). Environmental justice in that context promotes the equitable treatment of people of all races, incomes and cultures with respect to environmental law, regulations, policies and decisions. It is therefore based on the premise that everyone should have the right to live in a healthy environment with access to enough environmental resources for a healthy life (Bullard 2000 and Bullard 2005). For this, an equitable distribution of environmental costs and benefits of economic development, both globally and nationally is required. Environmental justice also
recognises that it is predominantly the poorest and least powerful people who are missing these conditions (ESRC 2001).

The Environment Agency has demonstrated that in England there is a distinct correlation between deprivation and poor environmental quality (Environment Agency 2002). This was backed by research conducted by Friends of the Earth indicating that the majority of facilities covered by the Integrated Pollution Control (IPC) regime in England were located in areas of low household income (Friends of the Earth 1999). This has also been demonstrated for Scotland. Dunion and Scandrett, suggest that it is accepted in the United Kingdom that poorer and less powerful social groups face a greater risk of living in a degraded environment, than wealthier or more powerful groups (Dunion and Scandrett 2003). Environmental justice is considered as a mechanism to redress this perception. Poverty and deprivation is integral to environmental injustice, but the context goes wider than that. Scotland has traditionally been a source of natural resources, used for development that generally occurs elsewhere, but the extraction of which, has led to disproportionate environmental damage. There has also historically been a strong social division within Scotland (Midwinter, Keating and Mitchell 1991). Poverty relates both to the uneven distribution of landownership, as well as the effects of post-industrialism. In the United States, marginal communities have often been targeted as areas where polluting industries could be located, with little or no consultation with the local people, colloquially known as, “black, brown, red, poor and poisoned” (Todd and Zografos 2005). In Scotland, by contrast, communities were founded around polluting industries, such as coal mining or steel production, especially in the more populated central belt. More recently, rural communities have faced nuclear power stations,
aquaculture operations and proposed siting of industrialised wind farms in their areas (Todd and Zografos 2005). It could be argued that environmental injustice has, therefore, occurred over hundreds of years in Scotland and indeed is often accepted as a consequence of employment. In the Scotland of today, however, the wider social and health issues of environmental justice are increasingly recognised.

Tackling environmental justice, is a complicated process, not least because it often questions development and the belief that, as the economy grows, prosperity and social well-being also rise for an increasing majority of people. Yet development can also mean more pollution, greater environmental risks and an increased use of scarce natural resources. It is typically the organised and articulate middle class communities that object to proposed developments in their areas. In the US, this led to the siting of unpopular facilities in “the path of least resistance” (Kaswan 1997). Increasingly, however, such people also object to developments in areas away from their main residence, for example where they have a second home or have holidayed. For example, in August 1994, a planning application was submitted by the Cairngorm Chairlift Co. Ltd, as lessee of the Cairngorm ski area, to what was then Highland Regional Council to replace the main chair lift with a funicular railway. It provoked a massive response from the public, with 1,114 letters of objection and 722 letters of support. Those supporting the application tended to be concentrated locally in the Aviemore area and focused largely on the benefits of the proposal to the local economy. The objectors were distributed more widely through both Scotland and England, with few from the Aviemore area. Their concerns included a range of issues, but mostly related to conservation (Rowan-Robinson and Slater 1999).
A high profile case may also be part of a wider policy objective for a non-governmental organisation (NGO). One such example was the arrival four ships in Hartlepool, Teeside, from the USA, for dismantling, disposal and recycling on a site adjacent to a Special Protection Area. Friends of the Earth (FoE) took up the case against the so called “toxic fleet”, as part of a world wide campaign, to draw attention to the potential environmental hazards of sending redundant ships to developing countries for dismantling and disposal. Many in the local community, including the local council and media were in favour of the project. Some residents close to the site, however, were concerned about the environmental effect of the processes and FoE raised a number of actions which contributed to the cessation of the operation (Slater 2004). In this case it was anticipated that much needed shipyard work would be created. In many other cases, however, the surrounding community not only suffers environmental costs, but does not directly benefit from the development, where few local jobs are created, as with landfill sites or aquaculture operations (Todd and Zografos 2005). This is the distributive aspect of environmental harms, which is discussed in more detail below.

Environmental justice is also regarded as a procedural mechanism that aims to make the process of environmental decision-making open and inclusive and thereby, avoiding environmental injustice. Such processes and procedures have begun to be institutionalised at international level with implications for the legal regimes of European countries. In particular, in 1998, the United Nations Economic Commission for Europe adopted the Aarhus Convention on Access to Environmental Information, Public Participation and Access to Justice in Environmental matters (Aarhus Convention 1998). The European Commission and Parliament have also been

**Government and governance in Scotland**

Devolution in Scotland stems from the Scotland Act 1998, which enabled the establishment of a Scottish Parliament. The UK Parliament voluntarily transferred (or devolved) specific law making powers to the Scottish Parliament without relinquishing its own sovereignty. Matters specifically reserved to the UK Parliament are those which it was considered could be handled more effectively and beneficially on a UK basis (Scotland Act 1998). This, however, leaves many areas relevant to the development of environmental justice policies devolved to Scotland. These include environment, land use planning, transport, economic development and the justice system.

The Scottish Parliament was (re-)established in 1999 and is now in its third session. Elections times are set by the legislation at four year intervals in normal circumstances (Scotland Act 1998). The electoral system encourages coalition
government and such an arrangement was negotiated between Scottish Labour and the Scottish Liberal Democrats after both the 1999 and 2003 elections (Scotland Act 1998). In the second post-devolution election the Green party were also somewhat unexpectedly successful, as seven Green MSPs were elected, and party leaders evidently perceived that a sound environmental record would appeal to the electorate (Ross 2006). The subsequent legislative programme based on the Partnership Agreement presented the environment as a recurring theme and has become known as the agreement’s, strong environmental thread. The Partnership Agreement of 2003 stated:

“We want a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland’s communities.”

In particular, under the heading “social justice” the Scottish Executive undertook high level commitments to regenerate communities and secure a decent environment through reforming planning laws; to improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investments decisions, as well as delivering good quality, sustainable and affordable housing for all. These were regarded as ‘high level commitments’ and were to be addressed by a range of measures (Watchman 2003). The agreement also contained specific pledges to introduce legislation on strategic environmental assessment, water services and nature conservation. It also contemplated significant legal reforms, including a consultation on third party rights of appeal in the planning system; consideration on the establishment of environmental courts and other options for improving prosecution and dispute resolution and to improve access to justice for
NGOs pursuant to the Aarhus Convention’s provisions on public access to environmental justice.

Since May 2007, Scotland has had a minority Scottish National Party administration, now known as the Scottish Government. There is no partnership agreement, but an overall “purpose” of government with strategic principles setting out the aims of the new administration (Scottish Government 2008a). The need for consensus in order to get majority votes in the Scottish Parliament, however, is a constraining factor and, at the time of writing, has yet to be really tested in relation to the environment. This article is a consideration of the legacy of the previous Scottish administration in relation to environmental justice.

The development of the concept of environmental justice in the governance of Scotland

Environmental justice first emerged in Scotland, as a concept when Friends of the Earth Scotland (FoES) spear-headed a campaign in 1999 (Scandrett, Dunion and McBride 2000). This was launched because a landfill site in the small community of Greengairs, in the Central Belt of Scotland, was becoming the destination for polychlorinated biphenyl (PCB) contaminated soil from across the UK. This was primarily because the Scottish Environment Protection Agency (SEPA) had yet to review the licence of the landfill site operator, leading to the situation where landfill sites in England were operating with stricter limits tolerating lower levels of PCBs than sites in Scotland (Dunion 2003). Supported by FoES, and boosted by national
press coverage, the local community initiated peaceful protests and demonstrations ultimately leading to SEPA reviewing the operator’s licence and the operator implementing numerous recommendations put forward in a report produced by an independent consultant (Dunion 2003).

From then on, the Scottish Executive approached environmental justice from two ways - distributive: the distribution of factors affecting the environmental quality and procedural; providing the information and opportunities for people to participate in decisions about their environment. It acknowledged that these two strands are distinct, but they are interrelated, as well as being of equal importance. The following definition was adopted by the Scottish Executive on a number of occasions:

“Distributive justice: that no social group, especially if already deprived in other socio-economic respects should suffer a disproportionate burden of negative environmental effects.

Procedural justice: that all communities should have access to the information and mechanisms to allow them to participate fully in decisions effecting their environment.”

(Scottish Executive 2005a)

The research carried out by the authors revealed, however, that the Scottish Executive consistently adopted a wider approach to environmental justice. The next part of the article considers the use of the term environmental justice in Scotland from the time of the Dynamic Earth speech onwards. This is divided into three sections: Scottish Executive policy statements, Scottish Environment Protection Agency work and research reports. Each is dealt with in turn.
Scottish Executive policy statements

In April 2002, the Scottish Executive stated that economic and social justice should be combined with economic progress to achieve sustainable development (Scottish Executive 2002a). In particular the Executive considered that current problems should be solved before trying to make progress for future generations. This was reiterated in the Dynamic Earth speech, when McConnell made no clear distinction between the concepts of social justice, environmental justice and sustainable development, but set the Executive the challenge of combining environmental justice with economic progress.

This commitment to environmental justice was expanded in the Executive’s 2002 Report, Social Justice...a Scotland where everyone matters (Scottish Executive 2002b). It stated that environmental justice goes hand in hand with social justice and tackling crime, as well as being part of the Executive’s approach to sustainable development. It committed itself to addressing fuel poverty and reducing the amount of waste to landfill. Environmental justice was also to be achieved by addressing litter, derelict land, poor air quality and landfill sites. The report was augmented by independent commentators contributing topics, to widen the understanding of the social justice strategy and enhance its development and implementation. Kevin Dunion, Director, FoES was one of these and he went on to distance environmental justice from the Not In My Back Yard (NIMBY) principle and referred to recycling, good neighbour agreements, fuel poverty and the environmental information regulations as being related to environmental justice.
Scottish Environment Protection Agency (SEPA)

SEPA, as the environment agency for Scotland, was also the subject of a number of statements and research reports. In 2003, the Executive stated that well-informed decisions by SEPA were an important component of meeting the Scottish Ministers’ commitment to environmental justice. In 2004, research was conducted into the opportunities for SEPA to take account of environmental justice within the current legislative framework (Poustie 2004). It used the two strand definition of environmental justice: distributive and procedural. This work found that SEPA must have regard to environmental justice for two reasons, firstly on the basis of the Environment Act 1995 and subsequent guidance to which SEPA must have regard, when carrying out its licensing and enforcement activities and secondly SEPA’s general obligation to take account of the policies of the Scottish Executive. The report made ten recommendations to implement environmental justice, all procedural, but which would have a distributive effect in many cases. Prior to this, environmental justice guidance was issued for SEPA, which reiterated the Executive’s commitment to environmental justice and the obligation upon SEPA to support this. Environmental justice was defined as, “the aspect of social justice to which environmental protection relates the most” (SEPA 2004). The guidance requires that no social group, in particular any group disadvantaged in other social or economic respects, should suffer a disproportionate burden of poor environmental conditions. It also identifies the procedural aspect of environmental justice and sets out specific actions for SEPA to implement this. Finally, in October 2004, policy priorities relevant to SEPA reinforced SEPA’s role in achieving environmental justice. It particularly drew
attention to the cumulative effect of environmental impacts on health and the importance of the availability of information and increasing engagement with the general public. Once again, therefore, both the distributive and the procedural aspects of environmental justice were addressed.

**Research Reports**

Environmental justice was also the subject of three research reports published during the study period. Each contributes to the comprehension of the concept of environmental justice in Scotland and are examined in turn.

In a report by the Healthy Environment Network from March 2005, the main conclusion is that environmental justice is a platform for addressing wider aspects of human health, such as lifestyle and social environments (Beck 2003). Another research project gauged the link between social grouping and proximity to poor environmental quality (SNIFFER 2005). It concentrated on distributive justice in measuring eight environmental topics against the Scottish Index of Multiple Deprivation. The research revealed that for the topics of industrial pollution, derelict land and river water quality, there is a strong connection between proximity and deprivation. For landfill sites, quarries and open cast sites, the nexus between deprivation and proximity is less evident. In relation to woodland, the research shows that people living in deprived areas are less likely to live within their proximity. There was no simple connection between proximity to green space and deprivation. It was
clear, however, that people living in deprived areas are most likely to experience poorer air quality.

The report on Public Attitudes and Environmental Justice in Scotland identified the types of incivilities (low level environmental nuisances such as graffiti and unclean streets) considered problematic in communities and looked at the perception of environmental incivilities at a subjective level (Scottish Executive 2005a). This research revealed that the main problems are ‘street level’ incivilities such as dog mess, litter and rubbish, uneven pavements and the lack of a safe place for children to play. The research showed that people in the most deprived areas are most likely to experience such incivilities, compared to people in the least deprived areas. Urban populations are also more likely to experience them, than rural ones. The study indicated that high exposure to incivilities affects health and that people experiencing street level incivilities are least likely to trust others; feel overwhelmed by the problems in their area and are most likely to worry about being a victim of crime. Problems such as factory noise and emissions, overhead power lines and sewage smell, however, were generally considered less of a problem. Interestingly, there was no real difference in what people perceived as an environmental incivility across deprivation scales.

The article has thus far shown the development of environmental justice by the Scottish Executive. It has demonstrated the breadth of the issues included in the environmental justice agenda in Scotland. This was particularly strong in the second term of the Scottish Parliament following the environmental thread of the Partnership Agreement and the use of the two strand definition. The instances of identification of
environmental injustice were a feature of the debate and literature on environmental justice thus far. There was also identification of potential solutions. The SEPA work, however, was set within a wider policy context and although significant was fairly self-contained.

At the same time, legislation espousing environmental justice characteristics was being implemented in Scotland mainly focused on the procedural side of environmental justice. For example, freedom of information legislation came into force in Scotland in 2005 in the shape of the Freedom of Information (Scotland) Act 2002, with a separate regime for environmental information – Environmental Information (Scotland) Regulations 2004 (Freedom of Information (Scotland) Act 2002 and Coppel 2005). However, these were more to do with Labour’s general commitment to constitutional reform than specific environmental justice objectives. The changes made to the law were, in addition, reflections of the Scottish Executive’s obligations under international and EC law. For example, the 2004 Environmental Information (Scotland) Regulations were produced to secure conformity with the 1998 Aarhus Convention and the corresponding EC Directives. Similarly, the changes made to the Pollution Prevention and Control (Scotland) Regulations were made to secure compliance with the 2003 EC Directive on public participation (Pollution Prevention and Control (Scotland) Regulations 2005). Additionally, changes were made to EIA regimes throughout 2006 through the Environmental Impact Assessment (Scotland) Amendment Regulations granting standing before the courts to environmental NGOs (Environmental Impact Assessment (Scotland) Regulations 2006). In this connection, it is, however, worth also noting that the strategic environmental assessment scheme introduced by the Environmental Assessment
(Scotland) Act 2005, includes provisions on the consultation on certain plans and programmes affecting the environment (Environmental Assessment (Scotland) Act 2005). In its designation of public sector plans, the Act is in fact broader than the corresponding EC Directive. Moreover, the maximum level of fines available for certain environmental crimes, such as fly-tipping, discharge of sewage without the required permits and offences under the Environmental Protection Act 1990 was increased to £40,000 under anti-social legislation (Anti-Social Behaviour (Scotland) Act 2004). The same legislation also provided for the possibility of local authority officers to issue fixed penalty notices in such incidents.

While the legislative traces of environmental justice in Scotland are mainly found in the participatory and procedural part of the concept, initiatives taken by the Scottish Executive to address the distributive side of environmental justice are worth mentioning. Alongside the amendments made to secure conformity with the Aarhus Convention and the subsequent EC Directives, the Scottish Executive opened its Environmental Justice Fund for applications in spring 2007 (Pedersen 2007). The Fund targeted communities that “suffer the effects of negative environmental impacts such as past or present industry, pollution or other damaging impacts” to improve the quality of their local environments and to help communities become more involved in the amenities and decision-making. The Fund has since been discontinued by the current Scottish Government and although it has launched an £18 million Climate Challenge Fund, no fund with an explicit environmental justice remit exists today. In addition to this, planning policy guidance was issued by the Scottish Executive in relation to open cast mining stressing the need to address cumulative impacts and
environmental injustices (Scottish Executive, 2005b). Furthermore, a wide range of grants have been made available to companies with the aim of encouraging transport of freight by rail rather than by road in order to alleviate bad air pollution in certain areas (Scottish Government 2008).

**Analysis**

It is considered that these findings could be further unpacked, in an attempt to impose some coherence on the process and indeed answer the question as to whether environmental justice has actually begun to be implemented in Scotland. It is considered that instances of environmental justice in Scotland could be divided into five categories:-

1. Social justice as part of a legacy of industrial decline, poor housing schemes and wider social problems

2. Social and health problems associated with roads

3. Social Justice and energy

4. Wider environmental issues

5. Land use decisions

The instances of environmental injustice in each category are set out in Table 1.
The literature review of the development of the concept of environmental justice in Scotland also identified a wide variety of solutions to the various environmental injustices. These, however, can be divided into three categories of legal remedies, procedural remedies and social policy. The solutions too, can also be overlapping and are set out in Table 2.

**Solutions**

This fairly simplistic unpacking of the instances of environmental injustice and the identification of the range of solutions set out in Table 2 allows some detailed analysis of the issues and initial conclusions to be drawn. In particular, it allows consideration of the role that law and legal remedies have played in this process. Before this is undertaken, there are some general points to be made. Firstly, a most striking feature of this study is the extent to which environmental justice has been used by politicians and policy makers in Scotland over the last few years. Much of this leadership stems from the interest shown by the former First Minister, who is a longstanding environmental campaigner. It appears, however, to have found favour with many, as a way of labelling environmental harms of all kinds. Secondly, a great deal of work has been undertaken through specially commissioned research on environmental justice and by those tasked with developing the Scottish Executive’s policy on this topic. What this has done very well is to identify the issues, or perhaps repackage problems as being environmental injustices. The Partnership Agreement initially appeared to be sending out a clear message on environmental justice, but as Ross pointed out progress on these promises has varied significantly (Ross 2006). This is perhaps compounded by the fact that many of the environmental justice problems can fit into a
number of categories (see tables below). Furthermore, the process of identifying the instances of environmental justice and putting forward solutions is subject to overlap and blurred boundaries. Bearing these general points in mind, it is now appropriate to consider each category of environmental injustice in turn.

In the first category: social justice, as part of a legacy of industrial decline, poor housing and wider social problems, there are two distinct threads: the general state of the housing areas, encompassed by descriptions as degraded residential areas and derelict land. These problems do not just stem from land use planning decisions that have resulted in a degraded environment, the problems and indeed the solutions are rather more complex. It is not therefore a straightforward case of distributive justice. Addressing these issues satisfactorily may also require procedural justice elements to involve communities living in these degraded areas. Part of the problem is that the communities themselves are often difficult to engage.

The problems associated with poor housing, infrastructure and degraded areas are compounded by wider social problems including fly tipping, litter and graffiti. These social problems have not traditionally been included in the environmental justice agenda. However, they were very clearly highlighted in the Dynamic Earth speech and have been a recurring theme in the environmental justice rhetoric from many sources. In fact, it is these local problems, categorised as street level incivilities, which in one study were regarded as overwhelming, rather than traditional environmental issues, such as factory noise and noxious smells. This may be because these problematic housing schemes were developed well away from industrial
development and it is the poor housing area itself which is the problem. How to address the identified problems of fly tipping, litter and graffiti? These can already be prosecuted under the existing civil and criminal regime, but obviously to date, to little effect in the study areas. It is yet to be seen, however, what impact the changes made through the anti-social legislation will have. The training of special prosecutors may assist, although it is anticipated that they will be focusing on traditional environmental crimes. The range of solutions put forward include: reducing graffiti, dealing with litter and learning programmes. Finally, the deprived estates may also have households that experience fuel poverty and have energy inefficient homes. The solution put forward is the rather obvious one of addressing fuel poverty.

The second category relates to social and health problems associated with roads. These include poor air quality, high child pedestrian death rates, traffic congestion, noise, dust and disruption from trunk road construction and pollution from vehicle emissions. The consequences of roads, particularly high volume traffic routes, close to residential areas can clearly result in social deprivation issues, also increasingly recognised as environmental injustice. The research revealed environmental justice solutions relating to road issues, to include procedural remedies of community involvement, dissemination of information and public participation and schemes set up to encourage the freight of heavy goods by train rather than road. Most of these are relevant to the decision making process for new roads; ensuring that the public are involved and have the information upon which to contribute to the consultation process. Over recent years, groups have formed in many parts of the United Kingdom to campaign against new roads. In Scotland, high profile protests have included the
extension of the M74 (FoES 2005 and BBC 2005), which was eventually approved, and the ongoing process of the designation of the route for the Aberdeen Western Peripheral Route. Typically, these groups are well organised and knowledgeable and ensure that they have all the relevant information. They are often supported by national and local NGOs in their fight. Their ultimate aim, however, is to stop the road and inevitably they are not always going to be successful. If this is the case, the fact that the procedures were transparent; that all the relevant information was available and that all effected sections were able to contribute to the decision making process may satisfy the needs of environmental justice but may be of little comfort to the unsuccessful campaigners. Added to this, is the issue that some of the proposed new road projects may actually address environmental justice issues by, for instance, moving traffic out of inner-city areas.

However, is it inevitable that a new road will bring with it environmental injustice? One way of measuring this is by way of a pollution register. This has been put forward as a solution to achieve environmental justice. Nevertheless, once a road has been built, it is hard to regulate the volume of traffic that uses it and the consequent levels of pollution. One further remedy would have been utilisation of the environmental justice fund, which could provide funding to offset the effects of environmental damage associated with a particular road. This solution, however, would require an organised group to identify a suitable project; apply to the fund and if successful implement and project manage the proposal.
The third environmental justice category of wider environmental issues including industrial pollution, the siting of landfill sites and overhead power lines, sewage disposal and vehicle emission all require procedural and distributive remedies. In many cases it is existing sites that are causing the problems. Although they will have been through an approval process, communities may wish to probe aspects of their licences, as in the Greengairs case. It may be that conditions are not being complied with or licences or permits required to be renewed. It is important that communities can relay their experiences of living with the environmental injustice as part of the decision making review process. It is interesting to note again that it was not these issues that so blighted the lives of respondents living in very poor housing estates, but it was the incivilities of ‘everyday life’. The solutions that stand out in this topic are training for prosecutors and the introduction of fixed penalty notices allowing for quicker procedures. This will enable a more effective enforcement regime.

The final environmental injustice category of land use decisions includes: industrial pollution, landfill sites, open cast mining, loss of playing field and “green areas” to development, trunk road construction, degraded residential areas and derelict land. The planning system in Scotland is undergoing reform and this will have implications for both distributive and procedural elements of the land use planning regime. Nevertheless, the emphasis has been on community involvement at an early stage in the planning process, at the plan-making stage, as well as the individual application stage. The right of third party appeal was not included in the legislation, following an extensive consultation exercise and despite a majority of respondents being in favour of the idea (Scottish Executive 2004a and Scottish Executive 2004b). The new law also includes provisions for good neighbour agreements although the potential of
these is debatable (Planning etc. (Scotland) Act 2006 and Poustie 2007). These are therefore elements that appear to address environmental justice issues through changes in the law. It should be noted, however, that the Act, did not refer to environmental justice *per se* and neither did most of the accompanying debates in the Scottish parliament. The inclusion of environmental justice in the Planning etc (Scotland) Act 2006, is therefore implicit rather than explicit, although environmental justice was referred to in the preceding White Paper *Modernising the Planning System* (See Scottish Executive 2005c).

**Conclusions**

In 2003, The Partnership Agreement stated that, “[W]e want a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland’s communities.” This article has examined the development of this concept in Scotland and it is now possible to draw some conclusions.

The extent of material that was available on environmental justice in Scotland suggests that it is a concept that has caught the imagination of politicians and policy makers. In the early stages of the project it seemed that the phrase was being used so widely and with very different interpretations, that it was merely a convenient peg upon which to hang almost any kind of environmental or social justice concern. The identification of a particular Scottish interpretation of the concept of environmental
justice was further compounded by the existence of an extensive body of international and social science literature on environmental justice. This did, however, provide a useful context for the research into environmental justice in the wider sense that was emerging in Scotland. At the same time, it cannot be ruled out that a strong factor in the political focus on environmental justice in Scotland is partly down to the influence of the former First Minister McConnell and his personal interest in environmental justice.

The researchers were also rather surprised by the amount of work that had been undertaken by the Executive and other bodies in Scotland, which related to environmental justice. The analysis revealed that this can be broken down into two categories of identification of causes of environmental injustices and solutions to such problems. It is clear that towards the end of the second session of the Parliament, what was beginning to emerge from the Executive were comprehensive policies, reforms and culture change towards inclusive public participation. This is seen most clearly in two areas: that of the work by SEPA and the planning reform process. SEPA’s environmental justice policy grew out of the research programme in 2004 and the subsequent policy papers. A significant change flowed from the Partnership Agreement’s commitment to train prosecutors in environmental law. However, many of the environmental justice mechanisms put forward for SEPA to implement, were as a contributor to the land use planning process. Reform in the planning system appears to have resulted in both explicit and implicit mechanisms for the achievement of environmental justice in Scotland in the Planning etc (Scotland) Act 2006. Alongside these mechanisms, the procedures introduced through the Strategic Environmental
Assessment Act 2005 may have further potential in addressing environmental injustices through the Act’s provisions on public consultation of plans and programmes affecting the environment.

At the end of this exploration of environmental justice in Scotland, it is possible to trace its development from the Dynamic Earth speech to legislative reform by the Scottish Parliament. The research has identified three preliminary conclusions. These relate firstly to the social justice element of environmental justice in Scotland; secondly to the planning reform process and thirdly to the conclusion that the real achievement of some elements of environmental justice has been achieved mainly through the implementation of international and European commitments. Each is discussed further below and leads to a final conclusion.

The inclusion of social justice issues is a defining feature of environmental justice in Scotland. Social injustices being included as environmental justice issues ranged from litter and dog fouling to aspects of urban deprivation resulting from a legacy of industrial decline and mass housing schemes. The research revealed that it was easy to list these problems and repackage them as environmental injustice. But this process was not going to make solving the problems any easier. Although it was clear that the environmental justice agenda is only one part of policy and legal developments in this area. It is important to note that in defining environmental injustice in Scotland, this often included social injustice.

Reform of the planning process was high profile and prolonged. It is clear that many aspects of the existing and the emerging land use planning system in Scotland can fit
into the two-fold definition of environmental justice. Yet, apart from the notable exception of planning policy on open cast mining, limited reference to environmental justice was included in the actual reform process. This may have been an opportunity lost, as specific inclusion could have embedded the concept of environmental justice in the planning system. It could also have teased out what environmental justice could mean within the planning process and identify the limits in linking it to a social justice policy. This is reiterated in the formulation of planning policy guidance over the research period, as environmental justice was often not specifically referenced. The overwhelming consultation response in favour of the right of third party appeals was an interesting development in the reform process. The Executive eventually decided against such a system, arguing that there was a range of measures in the Act, which enhanced community participation at all levels of the planning process. The 2006 Act and the good practice advice in the form of a planning advice note (PAN) on the subject demonstrate that the Planning Act is aiming at achieving the procedural aspect of the environmental justice (Scottish Executive 2007).  

It remains to be seen whether the implementation of the Act will in fact enhance environmental justice in Scotland to any great effect.

It is also possible to conclude that despite all the rhetoric, the actual translation of policy to legislative change, has in fact been rather small. Those that have been implemented have, with a few exceptions, been due to international commitments rather than a grass roots approach to reform by the Scottish Executive. Nevertheless, these changes, mainly focusing on the procedural side of environmental justice are to be welcomed. It is possible to conclude that Scotland is instituting measures to achieve a web of environmental justice procedures. It is, however, doing this
incrementally, and often without stating that this is the end result of the legislation. The procedural remedies now available in Scotland, in many cases because of international obligations, should for example, enable reasonable dissemination of information and involvement of those affected by road proposals.

There is, however, a dichotomy at the heart of this. The Scottish government is implementing the international legal requirements to improve the process, and therefore the procedural side of environmental justice. Yet only Scotland has the expanded definition of environmental justice, which encompasses particular social aspects. The research has shown that it is the small scale environmental harms that are more difficult to tackle and cumulatively they have more impact on day to day living of most Scots.

It could be argued that joined up policy formulation on environmental justice by a Scottish Government is still at a relatively early stage. It has already been pointed out that neither the distributive nor the procedural strand of environmental justice can fully solve the social problems, but both of them can be part of a holistic approach to tackling these issues. It may be that better awareness of the links between the international and European obligations, relating to the achievement of environmental justice and the “home grown” identification of environmental injustice, will be part of the implementation of this policy aim in the Scottish Parliament’s third term and beyond.
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Table 1: Instances of Environmental Injustice

<table>
<thead>
<tr>
<th>Category</th>
<th>Industrial Decline &amp; Poor Housing</th>
<th>Roads</th>
<th>Energy</th>
<th>Environment</th>
<th>Land Use</th>
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<tbody>
<tr>
<td>Derelict Land</td>
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<tr>
<td>Degraded residential areas</td>
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<tr>
<td>Fly tipping</td>
<td>X</td>
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<tr>
<td>Litter</td>
<td>X</td>
<td></td>
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<tr>
<td>Graffiti</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy inefficient homes</td>
<td>X</td>
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<tr>
<td>Fuel poverty</td>
<td>X</td>
<td></td>
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<tr>
<td>Poor air quality</td>
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<td>High child pedestrian death rates</td>
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<tr>
<td>Traffic congestion</td>
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<tr>
<td>Noise, dust and disruption from trunk road construction</td>
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<tr>
<td>Pollution - traffic</td>
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<tr>
<td>Pollution</td>
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<td>Landfill</td>
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<td></td>
<td>X</td>
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<tr>
<td>Overhead power lines</td>
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<td>Sewage</td>
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<tr>
<td>Loss of playing fields</td>
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<td>Loss of green area</td>
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Table 2: Solutions to Address Environmental Injustice

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<tr>
<th>Legal</th>
<th>Procedural</th>
<th>Social</th>
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<tr>
<td>Aarhus Convention</td>
<td>Dissemination of Information</td>
<td>Environmental Justice Fund</td>
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<td>Environmental Courts</td>
<td>Pollution Register</td>
<td>Address Fuel Poverty</td>
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<tr>
<td>Planning Law Reform</td>
<td>Community Involvement</td>
<td>Reduce Graffiti</td>
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<td>Strategic Environmental Assessment</td>
<td>Learning Programmes</td>
<td>Learning Programmes</td>
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<tr>
<td>Third Party Right to Appeal</td>
<td>Training for Prosecutors and establishing of specialist environmental prosecutors</td>
<td>Dealing with Litter</td>
</tr>
<tr>
<td>Public Participation</td>
<td>Public Participation</td>
<td>New planning policy on</td>
</tr>
</tbody>
</table>
Grants for transporting freight by rail rather than road  
Higher minimum fines for environmental offences  

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1 The Research project was funded by the Planning Exchange Foundation.
2 The 2007 elections to the Scottish Parliament resulted in a minority Scottish National Party administration, following eight years of coalition government consisting of Scottish Labour and Scottish Liberal Democrats.
3 The US Environmental Protection Agency (EPA) defines environmental justice as: “The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.”
4 Reserved matters include: defence, foreign affairs, immigration, nationality, social security policy and central economic and fiscal responsibility, the constitution of the UK, common markets for UK goods and services, employment legislation, regulation of certain professions and transport safety and regulations.
5 The Scotland Act 1998 established the Scottish Parliament with 129 members elected by the additional member system of proportional representation. This combines the relative majority system (‘first past the post’) for individual single member constituencies with an additional element which tops up the political parties’ representation from registered parties lists, by allocating regional seats on the basis of a second vote cast not for an individual, but for a political party.
6 Following the most recent election in May 2007, however, the Green Part only holds two seats in the Parliament.
7 SEPA is a non-governmental public body accountable to the Scottish Ministers established by the Environment Act 1995.
8 Changes were also made to the regime of air quality through the Air Quality Limit Values (Scotland) Amendment Regulations 2005 SSI/2005/300 as well as to the rules governing nitrate vulnerable zones through the Nitrate (Public Participation etc.) (Scotland) Regulations 2005 SSI/2005/305.
9 SEPA and the Crown Office and Procurator Fiscal Service (COPFS) in June 2006 published a protocol for dealing with cases referred from SEPA to the COPFS setting out each agency’s responsibilities.
10 A Good Neighbour Agreement is an instrument, promoted in Scotland by FoES, which encourages agreements between local communities and developers or contractors. A Good Neighbour Agreement can, for instance, hold provisions on handling of waste as a by-product of the production; access to relevant information for the local community; access to the site/development for the local community; accident and end of production repairs and clean-ups; facilitating of jobs for the local community and pollution prevention activities.
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