ENVIROMENTAL CRIME AND JUSTICE

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Interview with former Cabinet Secretary for Justice Kenny MacAskill MSP
Scottish Justice Matters asks our politicians to respond to questions about crime and justice. We asked:

**Should environmental justice and crimes relating to the environment, be priorities for Scotland’s criminal justice system?**

### Patrick Harvie MSP, Scottish Green Party

ENVIRONMENTAL JUSTICE remains low on the political agenda, both in Scotland and internationally. Continued exploitation and on-going environmental harm necessitates an increased urgency for radical change. There simply hasn’t been anywhere near enough attention devoted to legislation, regulation and enforcement to effectively address this issue.

Environmental law in Scotland currently exists as a handful of separate acts of legislation which is yet to be worked into a clear and coherent body of law. Shortcomings of both regulation and enforcement undermine the aims of legislation.

The Regulatory Reform Act, passed one year ago, included a duty for regulators to contribute to “sustainable economic growth”. There’s an uncomfortable contradiction at play here; the relentless pursuit of growth is simply not consistent with meeting our climate targets and a host of other environmental priorities. Committing the Scottish Environmental Protection Agency and other regulators to pursuing economic growth will divert them from their core purpose.

Even where legislation and regulation are being used to protect us against environmental damage, the fines are often loose change for large multi-national corporations, and penalties are often reduced as a reward for early admission of non-compliance. A lack of political will to clamp down on big businesses acts as an obstacle to progress.

But as with other social ills such as tax avoidance, the problem lies not only with acts which are already crimes, but also with behaviour permitted and even encouraged by public policy. From oil and gas to waste management, from opencast extraction to transport, a host of industries inflict intolerable environmental harm yet operate entirely without sanction.

It’s not only the Scottish Government that needs to acquire an appetite for this issue. Only when government at Scottish, local and UK levels take environmental justice seriously will we see the progress that is so desperately needed.

### Sarah Boyack MSP, Scottish Labour

ACCESS to and promotion of environmental justice is a key priority for Scottish Labour. Our overarching ambitions to promote social justice, equality and solidarity mean that we understand the importance of the links between communities in Scotland in a global context. This means taking environmental justice seriously: meeting our climate change targets, our air quality obligations and our environmental protection obligations whether on land or in the marine environment. Ambitious targets that are ignored serve no purpose.

People are increasingly aware of the links between health and the quality of our environment. We have the opportunity to lead the way with climate justice given our growing renewables sector and green jobs but we need to do more.

Climate change is already affecting our environment. We have a beautiful and diverse landscape and wildlife that we must protect and maintain. Ignoring the challenges that come from climate change risks further irreparable environmental damage.

We believe that every individual should have a basic entitlement to a healthy environment and that it is important that Government protects this fundamental right.

A key question is how people protect those rights and how the laws governing our environment are upheld and enforced – whether it’s in relation to litter, waste management and pollution, or crimes against animal welfare and protected species.

We need a justice system with the capacity to address those crimes, which require specialised policing and prosecution services, across the country.

While there are important issues about the affordability of access to justice which need to be addressed, there is also the challenge of ensuring that access to environmental justice should begin much earlier than the criminal justice system.

We need stronger community engagement in local decision making to address the lack of influence people feel they have in their lives and local areas. That’s why we recently announced our support for giving communities the final say on fracking proposals given the impact such activity could have on people’s lives.
Richard Lochead MSP, Scottish National Party

ENVIRONMENTAL CRIME is a pernicious activity that threatens our environment. That is bad enough on its own, but is even more serious given the importance of the environment for our health and well-being, and the success of many key sectors of our economy. The Scottish Government recognises the importance of identifying environmental crime and taking action against it.

In 2011 I convened an environmental crime summit and established an environmental crime taskforce. The taskforce, chaired by SEPA’s Calum MacDonald, reported to me in 2013, and last November held a conference around progress to date.

We are making good progress in enhancing the tools for action. Criminals must not - and will not – be allowed to profit at the expense of Scotland’s natural assets or compliant operators.

The Regulatory Reform (Scotland) Act 2014, which implements recommendations from the taskforce, is a good example of the actions that we are taking; supporting the work of a key agency such as SEPA. It has given SEPA a wider suite of enforcement tools required courts to have regard to financial benefit arising from certain offences when setting fine levels.

Provided enhanced powers of entry and search for SEPA; allowing SEPA to gather information on financial benefit as well as the environmental offence itself.

Created a new offence relating to significant environmental harm;

Established new provisions on vicarious liability and liability, where activities which are carried out by arrangement with another will also help target those who are truly responsible, not just those who carry out their dirty work.

Environmental crime is a threat to Scotland that must be challenged, and will continue to be challenged for as long as it is required. People must be aware that we will not accept environmental crime in Scotland and we have an agenda for action which we will continue to pursue.

FROM A PROCEDURAL perspective, the criminal justice system can do more to empower people to realise their environmental rights, seek redress when laws are broken and help prevent future environmental injustices.

Scottish Liberal Democrats are committed to protecting and promoting the three principles of the Aarhus Convention. It enshrined the public’s rights to environmental information, participation in decision-making and access to justice where these or environmental law have been breached. The convention was ratified in 2005 but concerns have been raised about compliance.

For example, the recent Court Reform Act established a three month time limit for applications for judicial review which may erode access to justice. It is reasonable to expect individuals, communities and campaigners concerned about an environmental matter, or indeed any other issue, to require longer to decide upon a course of action and marshal their case.

The Scottish Parliament’s Justice Committee received evidence that this short limit will present real challenges to those who require legal aid or who need to find a solicitor willing to act pro bono or for a reduced fee. It could hurry some into making an appeal, prevent the proper exploration of alternative dispute resolution, or unreasonably put others off altogether.

These provisions are needlessly restrictive but the Scottish Government resisted my attempts to extend the time limit.

Elsewhere, some campaigners believe judicial review doesn’t go far enough to ensure Convention compliance because it is mainly about procedure, not substantive review on the merits. A recent draft ruling of the meeting of the parties to the Convention also indicated measures are required to ensure court procedures aren’t prohibitively expensive.

The Scottish Parliament and other public bodies must do more to ensure the environmental rights of communities and individuals are sufficiently protected and their ability to exercise them is enhanced.

Margaret Mitchell MSP, Scottish Conservatives

ACCORDING TO SEPA, Police Scotland, and the Crown Office and Procurator Fiscal Service environmental crime, such as illegal waste dumping and electronic sea-bed fishing, has become a key area for the expansion of organised crime and is worth an estimated £2 billion annually to organised crime groups.

Furthermore, at a recent Environmental Crime Taskforce conference, Police Scotland revealed that the crime group with the greatest threat risk and harm score in Scotland is involved in waste crime, which filters into other areas of their illegal activity such as corruption, drugs, trafficking, firearms and money laundering.

The Scottish Conservatives have therefore urged that Proceeds of Crime legislation should be used to target specific projects, including tackling environmental crime. Specific funds should be set aside for one-off projects which would allow a taskforce to target an area where they believe there is scope for greater prosecutions. Over time, this will generate more funds to be added to the confiscated proceeds of crime which could be invested in more community projects using the Cashback for Communities programme.

In addition, Zero Waste Scotland estimates that there are 61,000 incidents of fly-tipping each year in Scotland and are aiming to launch a fly-tipping map covering all 32 local authorities. Each local authority must, however, independently sign up and I would urge them to make this a priority, not only for local residents that have to suffer the effect of fly-tipping, but also for the longer-term environmental impact it causes.