

ENVIRONMENTAL PROSECUTIONS

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CROWN OFFICE
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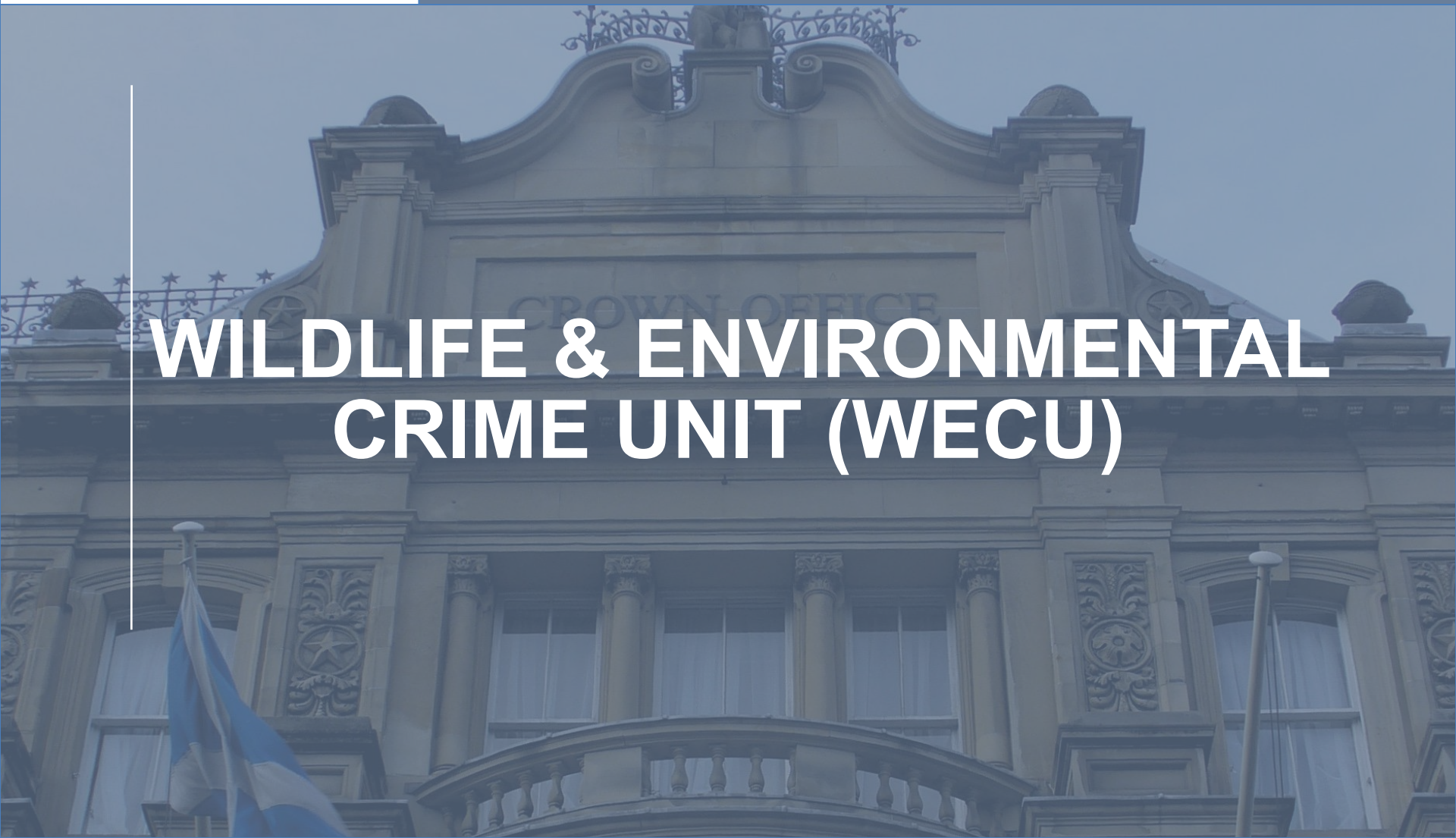
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE



WILDLIFE & ENVIRONMENTAL CRIME UNIT (WECU)

WHO ARE WE AND WHAT DO WE DO?

- Myself + 3 solicitors (currently all Edinburgh based).
- We deal with:
  - Wildlife Crime
  - Environmental Crime
  - Heritage Crime
- We take cases from first reporting, mark them and prosecute them in courts across the country

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ENVIRONMENTAL CRIME

THREE MAIN TYPES OF ENVIRONMENTAL CASES

1. Flytipping

2. Chaotic or illegitimate commercial operations

3. Large-scale regulatory offences by legitimate and sizeable companies

FLYTIPPING









FLYTIPPING

- Domestic flytipping involves people illegally dumping their own waste
- Commercial flytipping primarily involves 'Man with a van' type of cases or commercial premises improperly disposing of their waste
- Main offences are:
  - Deposit controlled waste - s33(1)(a) EPA 1990
  - Knowingly cause or knowingly permit controlled waste to be deposited – s33(1)(a) EPA 1990
  - Duty of care offences against businesses + householders – s34 EPA 1990
  - No waste carriers license - Control of Pollution (Amendment) Act 1989, Section 1(1)

FLYTIPPING

- Penalties for s33:
  - on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £40,000 or both; and
  - on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (unlimited) or both.
- Penalties for s34
  - on summary conviction, to a fine not exceeding £10,000
  - on conviction on indictment, to an unlimited fine.
- Penalty for no waste carriers license
  - on summary conviction to a fine not exceeding £10,000

FLYTIPPING

- Primarily investigated and reported by Local Authorities
- Local Authorities now have powers to issue £500 fixed penalties
- Currently around 30-40 cases reported each year
- Low numbers reflect a combination of the difficulty in proving such offences and the use of fixed penalties

CHAOTIC OR ILLEGITIMATE COMMERCIAL OPERATIONS

- Reported by SEPA. 3 or 4 cases reported a year.
- Often involves small waste management companies breaching the terms of or operating without a Waste Management License
- Usual offences are depositing, keeping and disposing of controlled waste
- Most likely to prosecute individuals as the related companies are usually small, single director companies that are unlikely to continue trading under that name
- Sentencers need to balance punishment, related POCA proceedings, limited financial means and a desire to clear the waste

CHAOTIC COMMERCIAL OPERATIONS



CHAOTIC COMMERCIAL OPERATIONS



ILLEGITIMATE COMMERCIAL OPERATIONS

- Other cases in this category involve illegal landfill sites
- Large-scale commercial activity, often with links to organised crime
- Cases are likely to be prosecuted at solemn level
- POCA proceedings will be a key tool in tackling such offending
- A few investigations ongoing but nothing prosecuted in recent years

ILLEGITIMATE COMMERCIAL OPERATIONS



LARGE-SCALE REGULATORY OFFENCES

- Reported by SEPA
- Usually prosecuted at solemn level
- Most likely to prosecute the company only (rather than Directors)
- Offences are now likely to fall under regulations made under s18 Regulatory Reform (Scotland) Act 2014, including The Environmental Authorisations (Scotland) Regulations 2018
- English Sentencing Guidelines are invaluable

LARGE-SCALE REGULATORY OFFENCES

- Exxon Mobil Chemical Ltd
- Unplanned flaring at the Mossmorran plant, Fife, resulting in excess noise and smoke pollution
- Significant impact on towns and villages within 5 miles over 5 days
- PG by s76
- Fined £176,000



LARGE-SCALE REGULATORY OFFENCES

- Devro (Scotland) Ltd
- A blocked 'foul pipe' caused trade waste containing fat and chemicals to flow into the Bothlin Burn
- Caused by lack of sufficient pipe maintenance
- Killed nearly all fish and invertebrates over a 6km stretch
- Company had a similar PC
- PG by s76
- Fined £48,000



SIGNIFICANT ENVIRONMENTAL HARM

S40 Regulatory Reform (Scotland) Act 2014

It is an offence for a person to—

(a)act, or permit another person to act, in a way that causes or is likely to cause **significant** environmental harm, or

(b)fail to act, or permit another person not to act, in a way such that (in either case) the failure to act causes or is likely to cause **significant** environmental harm

For the purposes of this section, environmental harm is "significant" if—
it has or may have **serious** adverse effects, whether locally, nationally or on a wider scale

SIGNIFICANT ENVIRONMENTAL HARM

- Carries greater sentencing powers for individuals (5 years imprisonment) but not for companies
- No cases prosecuted under this offence so far, primarily due to the challenges with proving this offence and the existence of other easier to prove offences with equal sentencing powers (for companies)
- Need to prove environmental harm was "significant" beyond a reasonable doubt
- Legal definition hard to match up with scientific evidence

SCOTTISH SENTENCING GUIDELINES

- Currently being considered by the Scottish Sentencing Council

- From experience of using the English Sentencing Guidelines the benefits are:

    - Provides a barometer re the seriousness of the offence
    - Consistency in sentencing
    - Helps decisions about forum
    - Cases more likely to resolve by way of a plea if sentences can be better predicted
    - Manages the expectations of the public / special interest groups

HMA v EXXONMOBIL CHEMICAL LTD

Fife Ethylene Plant, Mossmorran



HMA v EXXONMOBIL CHEMICAL LTD

Fife Ethylene Plant, Mossmorran

- Boiler sensor fault on 21 April 2019
- Causing unplanned flaring
- Plant shutdown
- Continuous supply of gas from North Sea terminal
- Extended constant flaring until 26 April 2029
- Smoke and noise

HMA v EXXONMOBIL CHEMICAL LTD

Fife Ethylene Plant, Mossmorran



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Fife Ethylene Plant, Mossmorran



HMA v EXXONMOBIL CHEMICAL LTD
Fife Ethylene Plant, Mossmorran

- Two contraventions of:
- The **Pollution Prevention and Control (Scotland) Regulations 2012, Regulation 67(1)(b), and the Pollution, Prevention and Control Act 1999, Section 2**
- Namely, (i) failing to comply with a permit condition as to smoke emissions; and (ii) failing to comply with a permit condition as to noise and vibration emissions

HMA v EXXONMOBIL CHEMICAL LTD
Kirkcaldy Sheriff Court, 28 October 2025

- Section 76 plea
- Detailed Crown Narrative & Plea in Mitigation
- Sentencing Council **Environmental Offences Definitive Guideline**
- Culpability: Deliberate; Reckless; Negligent; or low or no culpability
- Harm category: categories 1 – 4
- Negligent / HC 3
- Starting point £60,000 for "large" organisation

HMA v EXXONMOBIL CHEMICAL LTD
Kirkcaldy Sheriff Court 28 October 2025

- Sheriff Williamson
- ExxonMobil a very large organisation
- Fine must be punative and have an impact
- Numerous mitigating features
- Headline sentence of £220,000, reduced to £176,000

HMA v EXXONMOBIL CHEMICAL LTD

Fife Ethylene Plant, Mossmorran



HMA v DEVRO (SCOTLAND) LTD
Moodiesburn



HMA v DEVRO (SCOTLAND) LTD
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HMA v DEVRO (SCOTLAND) LTD
Moodiesburn



HMA v DEVRO (SCOTLAND) LTD

Moodiesburn

- Reports of pollution in Bothlin Burn on 14 July 2021
- Complaints to Scottish Water on 16 July
- Foul smell; scum on water; “milky” colour; dead fish
- Pollution traced to outflow pipe at Devro on 17 July
- Company notified – drainage infrastructure checked
- SEPA attended on 18 July
- Blockage in discovered – production shut-down – blockage cleared

HMA v DEVRO (SCOTLAND) LTD
Moodiesburn



HMA v DEVRO (SCOTLAND) LTD

Airdrie Sheriff Court 2 December 2025

- Section 76 plea
- Detailed Crown Narrative & mitigation
- Case continued…

HMA v DEVRO (SCOTLAND) LTD

Airdrie Sheriff Court 19 January 2026

- Sheriff Hughes "unavailable"

HMA v DEVRO (SCOTLAND) LTD

Airdrie Sheriff Court 6 February 2026

- Sentencing Council **Environmental Offences Definitive Guideline**
- Culpability: Deliberate; Reckless; Negligent; or low or no culpability
- Harm category: categories 1 – 4
- Negligent / HC 2 or 3
- Starting point £25,000 (HC 3) or £50,000 (HC 2) for "medium" organisation
- Devro (Scotland) part of much larger Saria Group

HMA v DEVRO (SCOTLAND) LTD

Airdrie Sheriff Court 6 February 2026

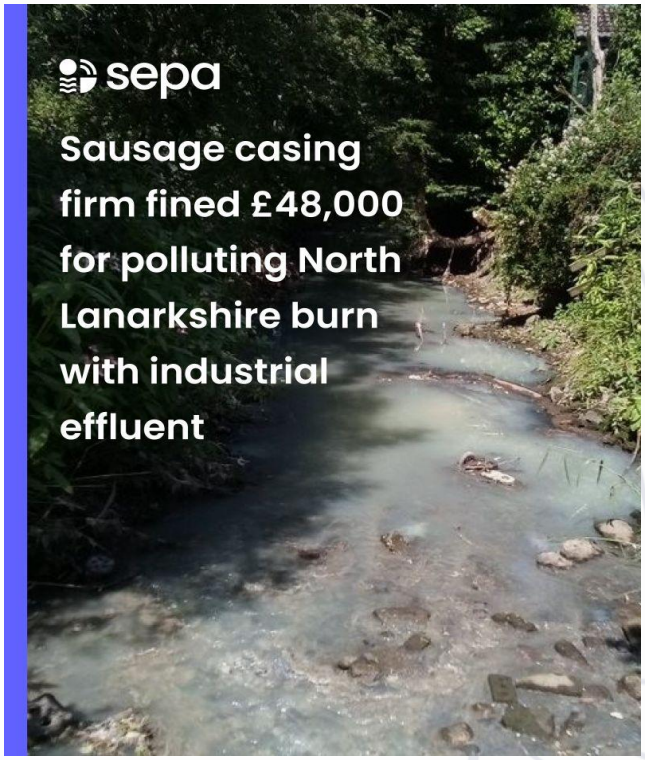
- Sheriff Hughes
- "Wishing further time to reflect…"

HMA v DEVRO (SCOTLAND) LTD

Airdrie Sheriff Court 24 March 2026

- Senior counsel "unavailable"

HMA v DEVRO (SCOTLAND) LTD



Questions?



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