

Supplementary written response provided by Gary Walker on behalf of SEPA

Section 34 offences: The Environmental Protection Act 1990 (as amended)

The proposed penalty provisions for Scrap Metal Dealers licensing are comparable with the penalties for 'duty of care' offences in section 34 of the Environmental Protection Act 1990 (as amended).

The section 34 duty of care requirements are in some respects similar to the proposed requirements of the Scrap Metal Dealers licensing system. For example, section 34 includes a record keeping requirement where transfers of waste between parties must be recorded on a written transfer note. That written record must, amongst other things, include the identity of the persons involved, the date, time and place of transfer, and a description of the waste. Transfer notes must be retained for 2 years.

The penalty for failing to comply with the duty of care requirements (section 34 (6), EPA 1990) is as follows -

Any person who fails to comply with the duty imposed by subsection (1), (1A) or (2A) above or with any requirement imposed under subsection (5) above shall be liable —

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine

The statutory maximum is the same as that proposed for the Scrap Metal Dealers licensing system: £5,000.

Section 33 Offences: The Environmental Protection Act 1990 (as amended)

By contrast, the penalties for failing to obtain a waste management licence (section 33 of the Environmental Protection Act 1990 as amended) are much higher. Waste management licensing conditions can be used to impose technical standards for storage (e.g. containment or impermeable surfacing), operating restrictions (e.g. that all end of life vehicles must be depolluted), as well as record keeping requirements.

A person who commits an offence under this section is liable —

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £40,000 or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

It is SEPA's view that the requirements associated with waste management licences are more onerous than the proposed Scrap Metal Dealer requirements and that the difference in the level of penalty is understandable.