

Clarifying the application of the definition of waste to re-use and repair activities.

Discussion paper

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Introduction

1. England's Waste Prevention Programme (WPP)¹ published in December 2013, identified clarification on the impacts and approaches to the definition of waste as a priority for action.
2. Waste can be defined as any product or substance that has no further use or value for the person or organisation that owns it, and which is, or will be, discarded. However, what is discarded by one party may have value or be a resource to another through re-use, or repair and re-use. There are a wide variety of wastes and waste streams, each with different environmental impacts. Whether a product or substance is being 'discarded' often has to be decided on a case by case basis, to ensure that the aims of the Waste Framework Directive (WFD)², to protect the environment and human health, are not undermined. And whether a substance is 'waste' has implications for its handling.
3. This paper is an introduction to the definition of waste, its application to re-use and repair activities, and some of the problems that may occur. Whilst it will not capture all of the issues relating to the definition of waste, it does aim to progress discussion on the issues, table some conclusions, and suggest a way forward.

Background

4. Waste prevention is at the top of the waste hierarchy, delivering environmental, economic and social benefits. The term includes many different activities, from designing products so they last longer, are easily repaired and use fewer or less hazardous resources, to ensuring services are available so that unwanted items get a second life through re-use.
5. The WPP sets out Government's view on how to reduce the amount of waste produced. It outlines the key roles and actions for businesses, government, the wider public sector, civil society and consumers, towards a more resource-efficient economy.
6. The amount of waste generated, and its actual and potential negative effects on the environment and human health, are matters of concern to the Government, industry

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265022/pb14091-waste-prevention-20131211.pdf

² <http://ec.europa.eu/environment/waste/framework/>

and the civil society. Consequently, regulatory controls are used to ensure the necessary levels of protection.

7. The current definition of waste has been used for over three decades and is embedded in the WFD. Article 3 sets out a range of definitions relating to waste (See Annex on page 12 for a full list of waste definitions). In particular, Article 3(1) defines “waste” as:-

“...any substance or object which the holder³ discards or intends or is required to discard...”

8. This indicates that once a material or item ceases to be required for its original purpose, normally because it is unsuitable, unwanted or surplus to requirements, it becomes waste. Defining a material as waste gives rise to many consequences as to how the material is handled, what administrative procedures apply to its transportation and processing, and what costs will be incurred by the waste handler.
9. In addition to defining ‘waste’, activities classified as ‘re-use’ or ‘preparation for re-use’ are also set out within the WFD:

‘re-use’ means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived (repair is allowed), and

‘preparing for re-use’ means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing.

10. The difference between ‘re-use’ and ‘preparation for re-use’ is rooted in whether the product or material has become waste or not prior to its ‘new’ life. If items have not become waste, then they are re-used. However, if items have become waste and are then re-used, they must undergo a process to turn them from waste into a useable product or material for the same purpose, a process classified as ‘preparing for re-use’. It is worth noting that items which are not waste may be checked, cleaned or repaired. These activities do not make the items waste.

³ “Holder” means the waste producer or the natural or legal person who is in possession of the waste.

11. If a product or material is considered by regulators (the Environment Agency (EA) in England) to be waste, then it will usually require the handler to be regulated and/or the movement of that waste to be permitted. This is done in three main ways:
- (i) Standard permits - a set of fixed rules for common activities. If an operator can meet the EA requirements, they can have a standard permit. They are generally the cheapest permitting option, with fixed charges.
 - (ii) Bespoke permits - would usually be written specifically for a particular waste activity. They can take longer to process than standard permits and tend to be more expensive.
 - (iii) Exemptions - the EU legislation allows Member States to provide for exemptions from the need for a permit, providing general rules are laid down for each type of exempt activity, and the operation is registered with the relevant registration authority. Registration for waste exemptions is free and is valid for three years.
12. In order to provide clear guidance to ensure businesses and other organisations take the right decisions in defining what is waste and non-waste, Defra, in conjunction with other competent authorities⁴, published *Guidance on the legal definition of waste and its application*⁵ in August 2012. Although primarily aimed at waste operators, this also provides guidance for waste producers with little or no knowledge of the regulations.
13. The guidance clarifies that the intention of the ‘discarder’ of a material or item is critical in defining whether it is waste. If the discarder intends that the item should be re-used or repaired, then it would not be considered waste, and would not be subject to the associated permitting or monitoring framework. This would be the case when people give items to their local charity shop, leave items for door to door collections or place textiles in banks for this purpose.
14. On the surface, then, it appears that there is clarity regarding the definition of waste and its interpretation. However, experience across the re-use and repair sector demonstrates that there is some confusion and inconsistency in the interpretation of the definition. It is this (rather than the definition itself) that may have acted as a

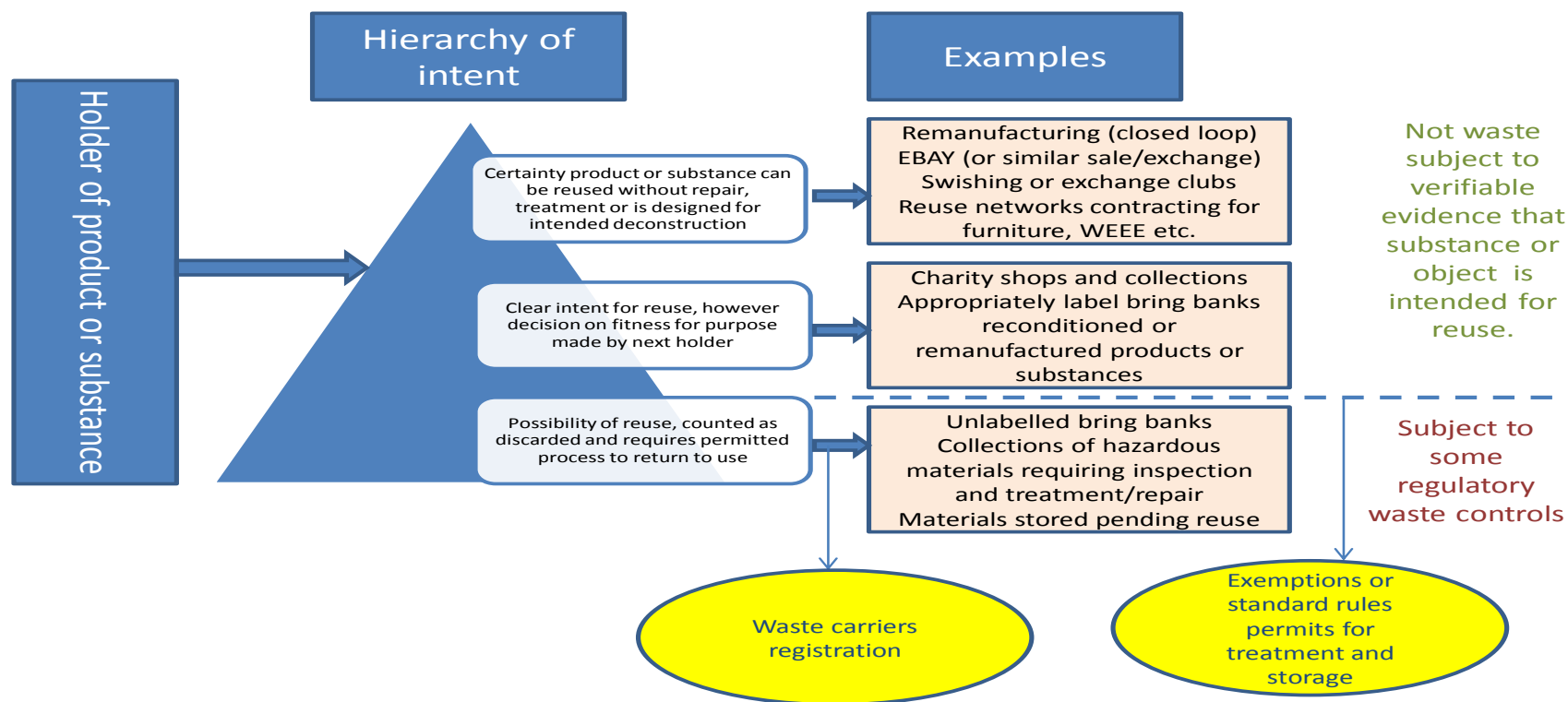
⁴ Competent authorities in this document refer to the Environment Agency, the Welsh Government, the Department of the Environment in Northern Ireland and the Northern Ireland Environment Agency (NIEA).

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69590/pb13813-waste-legal-def-guide.pdf

barrier to the full exploitation of re-use and repair across sectors, and by different waste operators. This is explored in the next section.

15. In July 2014, the European Commission published proposals to amend key waste Directives, including the WFD. Although there is no intention to alter the definition of 'waste', 're-use' or 'preparation for re-use', some other amendments may impact on the issues raised around these definitions. One example is a proposal for some small and medium enterprises carrying small quantities of their own waste to be exempted from the requirement to register as a waste carrier, which would reduce the number of businesses requiring clarification on whether what they are transporting is waste. Additionally, the extension of targets set on a 'recycling and preparation for re-use' basis to the European Parliament and Council Directive 94/62/EC on packaging and packaging waste, as well as further, more stretching targets in the WFD, means that it is more important than ever to understand the issues surrounding 're-use' and 'preparation for re-use'.
16. The diagram below illustrates a materials flow process. In particular, it highlights how intent can play a part in determining the status of a product or material and how this hierarchy of intent matches the level of control that needs to be applied.

Clarifying the application of the definition of waste to re-use and repair activities



Source: Environment Agency

What's the problem? Barriers to re-use & repair caused by the definition of waste

17. Opinions vary from sector to sector, and product to product, on whether the definition of waste is a barrier to re-use and repair in itself, whether the UK's transposition of EU obligations has given rise to difficulties, or whether it is actually a question of the interpretation and application of the definition that can act as a blocker to growth in these sectors. This section summarises the different perspectives and draws some conclusions.
18. Analysis of the WPP 'Call for Evidence' identified a number of sectors (such as construction, farming, and energy) where the definition of waste has proved to be challenging when carrying out re-use and repair activities. Feedback during discussions at stakeholder events prior to the WPP launch (specifically, the Re-use Forum) also suggested that there might be a case to answer. These sectors called for the EA to be more flexible in how they interpret the definition and apply it to re-use and repair activities. The EA itself also receives a notable volume of enquiries concerning the definition of waste.
19. The table below sets out some examples where the definition of waste has been perceived to be a barrier to re-use and repair activities. It illustrates the diverse re-use and repair activities that occur across very different sectors. These necessarily require environmental controls, but these are sometimes seen as making re-use and repair activity more difficult.

Clarifying the application of the definition of waste to re-use and repair activities

Examples of where the definition of waste has been perceived to be a barrier to re-use and repair					
	Construction & demolition	WEEE	Agriculture	Chemicals	Other e.g. energy
Sector's desired activity	Company A is demolishing bridges near a major road. Company B shows an interest in taking the material for use in the road widening project but the project schedule windows don't marry up. Company A decides to store the 10,000 tonnes of material at a disused former station site until Company B is in a position to take the material.	A householder decides to order his new TV from a supermarket chain and subsequently takes his old TV back to the store. He receives loyalty card points for using the take-back scheme. The supermarket uses its own vehicles and employees to transport take-back Used Electronic Electrical Equipment to a centralised location which is under the control and ownership of the supermarket. At this centralised sorting centre, TVs are tested to ascertain whether they are fully functioning, some minor repairs may also take place before these TVs are offered for sale or for re-use.	A farmer wants to carry out on-farm activities such as spreading ditch dredgings, mulching with prunings and re-use of paper as animal bedding.	A company receives drums of chemicals, uses the chemicals then has the drums picked up for cleaning and re-use.	A business wants to use biomass that meet the Renewables Obligation Fuel Measurement and Sampling Guidance (which states "To meet the definition an individual fuel's energy content must be at least 90 per cent derived directly or indirectly from 'relevant material' e.g. plant matter, animal matter, fungi or algae") as a fuel for power stations.
Perceived barriers	Company's intention to discard means regulatory controls. Window of opportunity for providing the regulators with the necessary paperwork makes re-use by another project prohibitive.	Old item is classed as waste at point of return, meaning regulatory controls and waste permitting.	Established approaches to re-use of on-farm waste require additional waste permitting	Established approaches class the drums as waste meaning regulatory controls kick in. A company collecting and storing the drums prior to sending them back to the chemicals company must have the necessary permits, at additional cost.	The current waste system renders a significant proportion of viable biomass materials as 'waste'. Difficulties associated with demonstrating recovery, combined with the complicated issues associated with incineration and energy recovery means that the current policies prevent some beneficial re-use of natural materials.

Sources: Defra desk research 2014 & the WPP Call for Evidence (June 2013)

Interpretation by others

20. Discussions with colleagues in the Devolved Administrations and stakeholders have identified some inconsistency in the application and interpretation of the definition of waste. For example, the Scottish Government (SG) and Scottish Environment Protection Agency (SEPA) are supportive of the activities of charities that operate shops as part of their fundraising activities; however, they remain of the opinion that the materials donated to them, including clothing, are considered to be waste. In England, a general exemption⁶ applies to charity shops. Discussions are underway between SG and SEPA to review their position on 're-use' and 'preparing for re-use' activities.
21. In Northern Ireland, any material or product which falls within the 'preparation for re-use' category is classed as waste. The Northern Ireland Environment Agency (NIEA) has discretionary power to exempt some very low risk activities leading to stakeholders being able to propose an exception for a range of low risk preparing for re-use activities.
22. The Welsh Government has produced and consulted on a set of guidance on the definitions of recycling, preparation for reuse and composting (consultation has now closed). The guidance sets out what constitutes 'preparation for re-use', this includes 'checking', 'cleaning' and 'repairing'. For waste to be considered as prepared for re-use it must satisfy the criteria set out in Article 4 of the Recycling, Preparation for Re-use and Composting Targets (Definitions) (Wales) Order 2011.
23. In considering ways in which to remove barriers to re-use and repair stemming from interpretation and application of the definition of waste, we are interested in hearing about experiences and approaches in other Member States.

Conclusions

24. The aim of this phase of work on the definition of waste was to understand the situation – this was necessary before action can be taken to remove any barriers presented by the definition of waste to re-use and repair activities.
25. Evidence gathered to date suggests that it is not the definition of waste itself that acts as a barrier to growth in the re-use and repair sectors, but the interpretation of the definition, and the application of the regulatory regime. This can act as a blocker

⁶ <http://archive.defra.gov.uk/environment/waste/controls/documents/waste-man-duty-code.pdf>

in some cases (as identified in the table on page 9). Greater clarity on application of the definition of waste, consistency within and across the Devolved Administrations, and communication across different sectors, are clear areas for work to helping to dismantle barriers to growth in re-use and repair sector.

Next steps

26. In order to fully examine the issue we need your assistance. We would welcome general feedback on the matters covered by this paper but also need:

- specific examples on your experience of where the definition of waste has acted as a barrier to re-use and repair activities;
- your suggestions for changes that might support growth in the re-use and repair sector.

27. In order to tackle identified barriers, we will:

- constitute a working group in winter 2014/15 consisting of the enforcement authorities, Waste and Resources Action Programme (WRAP), representatives of the re-use/repair sector and the Devolved Administrations;
- through this working group, examine the issues covered by this paper with a view to developing an action plan, and develop trial approaches in different sectors to help remove barriers to re-use and repair brought about through the current application of the definition of waste.

28. We would be grateful for any responses by **Friday 30th January 2015**. Please send your responses to the waste prevention mailbox (wasteprevention@defra.gsi.gov.uk) for the attention of Ibby Sanusi.

Annexes

Article 3 - DIRECTIVE 2008/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'waste' means any substance or object which the holder discards or intends or is required to discard;
2. 'hazardous waste' means waste which displays one or more of the hazardous properties listed in Annex III;
3. 'waste oils' means any mineral or synthetic lubrication or industrial oils which have become unfit for the use for which they were originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;
4. 'bio-waste' means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants;
5. 'waste producer' means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;
6. 'waste holder' means the waste producer or the natural or legal person who is in possession of the waste;
7. 'dealer' means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;
8. 'broker' means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;
9. 'waste management' means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;
10. 'collection' means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;
11. 'separate collection' means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;
12. 'prevention' means measures taken before a substance, material or product has become waste, that reduce:
 - (a) the quantity of waste, including through the re-use of products or the extension of the life span of products;
 - (b) the adverse impacts of the generated waste on the environment and human health; or
 - (c) the content of harmful substances in materials and products;
13. 're-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;
14. 'treatment' means recovery or disposal operations, including preparation prior to recovery or disposal;
15. 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;

16. 'preparing for re-use' means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;
17. 'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
18. 'regeneration of waste oils' means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;
19. 'disposal' means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations;
20. 'best available techniques' means best available techniques as defined in Article 2(11) of Directive 96/61/EC.