

The Distinction between Waste Vehicles and Used vehicles

Overview

This guidance sets out a framework of factors to be considered in establishing whether a used vehicle¹ and/or used vehicle parts are likely to fall within the scope of the definition of waste in the Waste Framework Directive (2008/98/EC) and adopted in the UK². It is not a substitute for legal advice and does not attempt to address all the legal considerations.

The definition of waste can not be interpreted restrictively. Case law dictates that whether something is waste must be determined by reference *to all the circumstances and* having regard to the Waste Framework Directive and the need to ensure that its effectiveness is not undermined. SEPA can however, make use of established definitions within existing waste legislation and take into account principles established by court judgements when considering individual cases to determine whether a vehicle is waste and it's treatment or use should be regulated under the waste legislation.

Ultimately, interpretation of the definition of waste is for the Courts either within the UK or at European level to decide.

This guidance should be read in conjunction with the SEPA guidance "Is it waste?"³ (WML-G-DEF-01) and "Supplementary Guidance to Is it Waste?"⁴ which provide a fuller discussion on the definition of waste.

For guidance on exporting vehicles or vehicle components (parts) see SEPA Guidance "The shipment of end-of-life vehicles and vehicles components (excluding tyres)" and the European Commission Guidance "Correspondents' Guidelines No 9 on shipment of waste vehicles"⁵

Definition of Waste

Article 3 of the revised Waste Framework Directive (2008/98/EC) defines 'waste' as; "any substance or object which the holder discards or intends or is required to discard".

Indicators of discard

The following are some indicators of whether a used vehicle has been or is intended to be or is required to be discarded and is waste. They are in no particular order of importance and it should be noted that simply satisfying one of these criteria does not necessarily mean that the vehicle is waste. For example, some indicators in a particular case may suggest an intention to discard exists, whilst others may suggest it does not. The particular circumstances of each case should be considered in order to determine whether a used vehicle has been discarded or whether there is an intention or requirement to discard it. It is not sufficient to decide that a vehicle is or isn't waste based purely on the answers to a limited set of questions or lines of enquiry. Questions will inevitably evolve as the facts surrounding the circumstances are ascertained.

- Does the holder intend to discard the vehicle?
- Is the holder required to discard the vehicle or part? For example; vehicles written off and given insurance Category A or B; vehicles issued with a Certificate of Destruction.

¹ See SEPA Guidance "Definition of Waste Motor Vehicles and End-of-life Vehicles" WST-G-004

² Vintage vehicles, meaning historic vehicles or vehicles of value to collectors or intended for museums, kept in a proper and environmentally sound manner, either ready for use or stripped into parts, are not covered by the definition of waste laid down by Directive 2008/98/EC and do not fall within the scope of this Directive therefore are not waste.

³ [SEPA Guidance - Is it waste? - Understanding the definition of waste](http://www.sepa.org.uk/waste/waste_regulation/guidance_position_statements.aspx)
(http://www.sepa.org.uk/waste/waste_regulation/guidance_position_statements.aspx)

⁴ [Supplementary Guidance to "Is it waste?"](http://www.sepa.org.uk/waste/waste_regulation/guidance_position_statements.aspx)
(http://www.sepa.org.uk/waste/waste_regulation/guidance_position_statements.aspx)

⁵ <http://ec.europa.eu/environment/waste/shipments/guidance.htm>

- Was the vehicle discarded?
- Is a used vehicle of this type or in this condition commonly regarded as waste?
- Is the vehicle undergoing a disposal or recovery operation (many of which are listed in Annex II of revised Waste Framework Directive (2008/98/EC)), or does the holder of the vehicle intend for it to be consigned to such a disposal or recovery operation (or is the holder required to consign it to such an operation)? If yes, this is indicative of an intention to discard and the vehicle may well constitute waste.

Other points which should be considered are:

- The fact that the holder may have a beneficial use for the vehicle or part does not mean that it is not waste. For example a vehicle or part could be reused but is likely to be waste until it is repaired or recovered.
- The fact that the used vehicle or part is fully functional does not mean in itself that it is not waste OR that it has ceased to be waste.
- The fact that a used vehicle or part has no adverse impact on human health or the environment does not mean that it is not waste or that it has ceased to be waste.
- The fact that a used vehicle or part has value (e.g. scrap metal) does not mean that it is not waste or that it has ceased to be waste.
- The fact that a used vehicle or part has been donated or given away does not mean that it is not waste or that it ceases to be waste, as the decision to discard usually precedes the decision to donate. Used goods are likely to be waste and donating them does not affect their status as waste.

It is important to note that the classification of materials, substances or products as waste is not intended prevent their re-use. It is intended to ensure that they are managed in a way which ensures that the environment and human health are safeguarded. For many wastes that are being exported, transfrontier shipment legislation will apply. This legislation is designed to ensure that there is protection for the countries of destination and ensure that UK companies comply with the obligations set out the United Kingdom Management Plan for Exports and Imports of Waste.

When does a Waste Vehicle or it's Parts cease to be Waste?

Although a waste vehicle or part may be sold or traded, or is capable of being recovered, this does not necessarily mean that it has ceased to be waste. Only once a final recovery operation has been completed does it cease to be waste. It should be remembered that there may be several treatment processes (possibly on different sites) prior to full recovery and hence prior to a waste vehicle or any of it's parts ceasing to constitute waste.

SEPA recognises that although it may be the last holder's intention to discard the vehicle (thereby making it waste) that scrap yard operators may make the decision that the vehicle could be repaired or stripped for parts. Vehicles and vehicle parts which do fall within the legal definition of waste are generally considered to be fully recovered (i.e. no longer regarded as waste or subject to regulatory controls) when they are made available for reuse (i.e. they have been fully repaired to roadworthiness or the parts made available for use in the place of non-waste material).

SEPA's View

A used vehicle becomes waste if it's registered keeper or owner discards it, or intends or is required to discard it. To make this judgment it is necessary to examine the history of a vehicle or part on a case-by-case basis. However, there are characteristics of a used vehicle that are likely to indicate whether it is waste or not.

In SEPA's view a used vehicle would normally be classified as waste (and is therefore subject to regulatory control) if at least one of the following criteria applies:

1. DVLA records state that a Certificate of Destruction is attached to the registration mark or VIN number of the vehicle;

2. The vehicle has a Vehicle Identity Check (VIC) marker stating that it is scrap or “written off”. For example, if it has insurance write off markers Category A or B and is therefore required to be disposed of according to the Industry Code of Practice⁶ (the holder should be able to produce documentary evidence to demonstrate whether the vehicle has been “written off” or not e.g. a current HPI check⁷);
3. The vehicle has a Vehicle Identity Check (VIC) marker stating that it is “written off” with insurance Category C or D (e.g. where the repair costs exceed the present value of the vehicle (exception: vintage cars or vehicles) and the possibility for repair cannot be assumed (see points 7 and 8 below) (the holder should be able to produce documentary evidence to demonstrate whether the vehicle has been “written off” or not e.g. a current HPI check⁸);
4. The vehicle does not hold a current MOT certificate, a valid tax disc or Statutory Off Road Notification (SORN);
5. The vehicle has badly damaged essential parts (e.g. door pillars as a result of an accident) or has been cut into pieces (e.g. two halves);
6. The vehicle has been handed over to a vehicle collection network⁹, authorised waste treatment facility or scrap yard;
7. The vehicle is not appropriately protected against damage during transportation, loading, unloading and storage (e.g. against damage resulting from moving by forklift or by using it as "container" for items like spare parts or other wastes);
8. The vehicle is being stored in a manner that indicates that it is being treated as waste and not obviously being kept for resale or repair (e.g. where the vehicle is stored in a way that allows the vehicle to degrade such as open windows allowing rain ingress);
9. The vehicle is welded up or closed by insulating foam;
10. The vehicle stems from a waste collection or waste treatment system;
11. The vehicle is destined for dismantling and reuse of spare parts or for shredding/scraping;
12. The vehicle has no identification number and the owner of the vehicle is unknown.

Limitations

This guidance applies only in Scotland. The terms of this statement may be subject to periodical review and be changed or withdrawn in light of technological developments, regulatory or legislative changes, future government guidance or experience of its use. SEPA reserves its discretion to depart from the position outlined in this statement and to take appropriate action to avoid any risk of pollution or harm to human health or the environment.

⁶ Code of Practice for the Disposal of Motor Vehicle Salvage
(http://www.abi.org.uk/Information/Codes_and_Guidance_Notes/40510.pdf)

⁷ Alternatively, the DVLA holds this information. SEPA officers can request this information from the DVLA via the submission of a VQ615 Vehicle History request to establish if there is a V23 marker against the vehicle. However it can take a number of weeks for a request to be processed.

⁸ See Note 5 above. .

⁹ Collection networks established under Regulation 10 of The End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (<http://www.legislation.gov.uk/uksi/2005/263/regulation/10/made>)