

## EPR Q&A – 15<sup>th</sup> November 2023

### Updates from Defra, January 2024 in Red – click below to jump

[What is Nation Data?](#)

[Are there differences for packaging materials \(plastic or paper\) for EPR obligations?](#)

[If a UK Manufacturer of plastic packaging which has a higher turnover of 2million supplying B to B, do they hold the obligations or is it their customers?](#)

[If as a garden centre we have no own brand and do not import, is our obligation solely nation data?](#)

[What are the consequences of not submitting the data?](#)

**Q: If I am a manufacturer and I supply 100 customers, some are obligated and some aren't, how do I know how much I'm obligated for?**

A: If it is a branded product, with your branding that you then sell on to other businesses to sell, then you would be responsible for all packaging you fill whether it has your brand on it or not (if unbranded such as transit packaging, then you would be obligated as a pack/filler) and regardless of your customers' obligations.

If you are not a brand owner and are supplying empty packaging onto other businesses who then go on to fill them, you would be responsible for unfilled packaging sold to any businesses under the smallest threshold as a Distributor. To identify if your customers are obligated or not, you would need to directly speak with them (or a sample of them) and/or in the future use the Register of obligated companies.

**Q: If I import garden furniture FOB through a third-party supplier, am I an importer?**

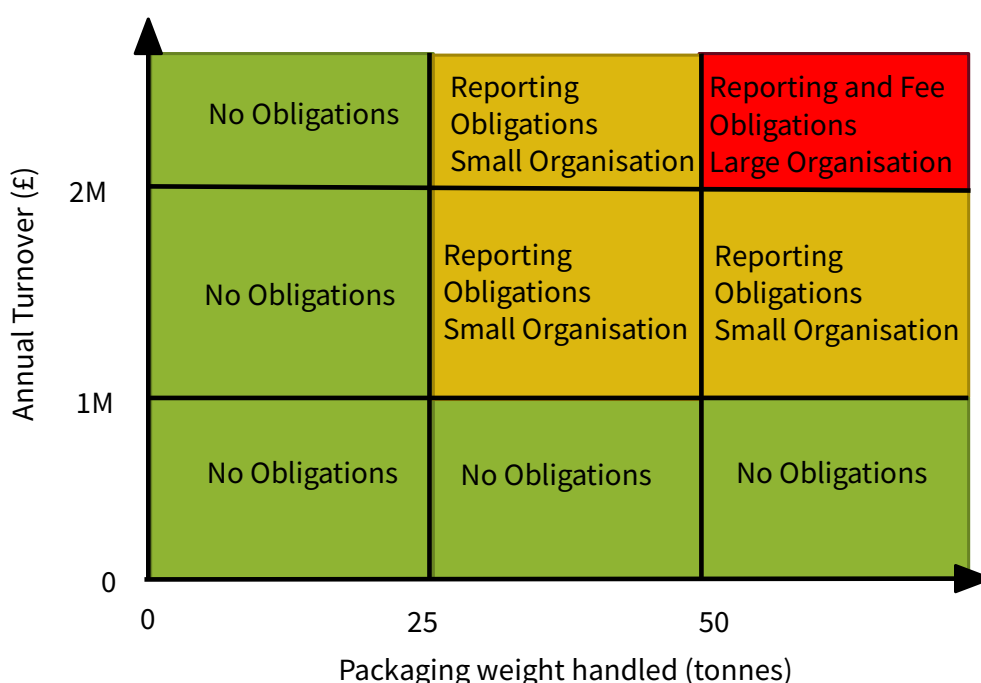
A: As you are importing through a third-party, you are unlikely to be the importer, however this does come down to the first point of ownership once the packaging reaches the UK. If this is your business, you would count as the importer. If it is the third-party, who then go on to sell it to you (and you did not purchase it until after the third party had already imported it), then the third-party would count as the importer. We strongly recommend seeking legal advice and checking any contracts for any liability or responsibility for any other regulation that may be listed under a FOB agreement.

**Q: If we have empty boxes from products we receive into the business, we allow customers to take these to put their purchased goods in how should this be reported?**

A: As these empty boxes have been previously used, they would have been obligated at the point they were first filled, before being sent to you. Therefore, this packaging would not have an additional point of obligation in this instance.

**Q: Can you explain the threshold obligations?**

A: The threshold obligations are split into two kinds. The lower threshold is an annual turnover between £1 and £2 million and handles or supplies at least 25 tonnes of packaging. The higher threshold is an annual turnover of £2 million or more and handles or supplies at least 50 tonnes of packaging. This can be seen in the graph below, where the lower threshold comes with a reporting obligation only, and the higher threshold has reporting and fee-paying obligations.



**Q: What is the cost of the my.ecoveritas subscription likely to be?**

A: Prices start from £499 per report. If you are a HTA member, you can quote your membership number to receive a 10% discount. You can sign up to a [free account](#) to gain unlimited access to our online quote calculator to receive definitive pricing.

**Q: What is nation data?**

A: Nation data is information about which nation in the UK packaging is supplied in and which nation in the UK packaging is discarded in. There are certain criteria for when a business needs to also submit Nation Data, and these can be found on the [government](#)

[website here](#). If you are required to submit nation data, the first deadline ~~is 1<sup>st</sup> December 2024~~, when you must submit nation data for calendar year 2023.

Although Nation of sale (NOS) data collection is required by the Data Reporting regulations ([The Packaging Waste \(Data Reporting\) \(England\) Regulations 2023](#)), there is **no reporting requirement** for this data until the Main EPR regulations comes into force, therefore due to the deferral of the Main EPR regulations, Nation of sale reporting will not be required to be submitted until 2025.

**Q: What weight data is used to calculate business size - is it just packaging data on general waste?**

A: In order to assess if your business is obligated, you should consider the packaging for which you perform any of the obligated activities. These are:

- supply packaged goods to the UK market under your own brand
- place goods into packaging that's unbranded when it's supplied
- import products in packaging
- own an online marketplace
- hire or loan out reusable packaging
- supply empty packaging
- supply packaged goods to an end user of that packaging

**Q: I'm a plant pot manufacturer, selling to growers. I also sell transport trays for pots. I have my company's logo on the packaging. The grower uses them and sells/passes them to retailers. Who is obligated here? Some of my customers are obligated and some aren't.**

A: Packaging becomes obligated at the point of filling, and empty packaging is only obligated by the supplier when it is supplied to a business that will fill it but is under the lower reporting threshold.

When a piece of empty branded packaging (eg: Jiffy Bag with their branding) is sold to a pack filler who fills with their own products and sends to their customers without adding their own brand to the packaging, then it is the pack filler who picks up this obligation. Where such packaging is sold by the packaging manufacturer to a small organisation below the reporting thresholds, the manufacturer will have the obligation as a distributor.

An example given by the regulators is when packaging is sold as a product (for example, jiffy bags, cardboard boxes, envelopes, bags and sacks), if the product goes on to perform a packaging function and meets the packaging definition and is supplied for use as

primary, secondary, tertiary or shipment, then it is classed as packaging, but the obligation falls to the business filling it.

**Q: We are a retail garden centre with an online shop, we don't buy any packaging, we re-use boxes and packaging received in store to send out to customers for our online business, how do we have to record and report this?**

A: You do not need to record or report any packaging that is reused/second hand, as it would have previously been obligated and reported up the supply chain, however any new packaging such as tape, carrier bags or promotional materials, that you add will count and therefore would need to be recorded and reported. Postage labels and stamps do not count as packaging.

**Q: As a grower, we transport our plants in a pot and marketing tray to other nurseries and garden centres. Pots go to the household with a care card. Will the marketing trays be classed as household? Not sure what the garden centres do with our marketing trays.**

A: These trays are usually intended to transport products and so classed as secondary packaging, as these are likely to end up in the business waste stream, rather than a household waste stream. As these would be obligated at the point of filling, this would occur when you fill the tray with the plants before sending out to your customers. If the retailer allowed a consumer to take the tray home with them, this would be reusing the packaging that has previously been obligated, and therefore not need to be recorded or reported again.

**Q: Relating to obligation around plant sales. There seems to be some dispute between different compliance advisers around brand ownership. Some say if they have our brand and the supplier brand on them, any obligation falls to the suppliers, others I believe including Ecoveritas saying it will fall to us regardless of if we have our brand on it (so having supplier details on the plants will have no effect).**

A: Defra have previously responded in writing to a similar question, the answer is below.

*"If the retailer's (brand owner) name has been adhered to the pot without the request of the brand owner and is for logistics/reservations purposes only, then the grower will be obligated on those pots and any labels as packer filler.*

*However, if when the plant is supplied to the retailer, the retailer then adds further branded primary packaging, this will then transfer the obligation of the pot and any labels (if they stay on the plant) to the retailer as these now form part of the branded primary packaging of the sales unit. The pack/filler can discount it from their reporting if they can show that this is the case."*

In cases of dual branding, where, for example, a grower brand and a retailer brand is clearly displayed, the official position from the EA is as follows: *“If packaging carries more than one brand, the producer who makes the first supply of the filled packaging is considered to be the brand owner and producer in relation to that packaging.”*

*“Ownership at point of pack filling: It is important to establish who owns packaging at the point of pack/filling, because the obligation for that activity falls on the owner. If a contract packer purchases packaging materials and pack/fills it for a client, the contract packer is the owner of the packaging and will be obligated for that packaging. If the packaging materials are owned by the client company at the time of pack/filling by the contract packer, the client company will be obligated for that packaging as the pack/filler.*

*The only exception to this is if the packaging being pack/filled is going to be part of a branded packaging unit, in which case the brand owner will be obligated.”*

**Q: If the only non-branded product I sell is coffee/tea to a customer in a paper cup, am I classed as a 'filler'?**

A: Yes you will need to include this packaging within the packer/filler obligations. You should also be aware of additional obligations on cups, from October 2025, disposable cups are also subject to mandatory takeback obligation on sellers of filled (with drink or food) fibre-based composite cups, which employ 10 or more full time staff (full time equivalents). This obligation will require sellers to provide a dedicated paper cup collection and recycling system in-store for those supplied by the producer and other producers. Sellers will also be required to report on their cup sales and collection volumes in kgs, which can be done via voluntary takeback scheme, and should be submitted every six months by the 1st October and 1st April.

**Q: Does a group of separate limited companies report as one or individually?**

A: For parent companies and their subsidiaries, there are different ways to comply with EPR for packaging. The company can register:

1. as a whole group (in this instance, the parent group complies with EPR for packaging on behalf of every subsidiary within the group but reports each subsidiary's data separately and takes on their legal obligations)
2. as individual subsidiaries (in this instance, the subsidiaries that meet the turnover and tonnage requirements and comply with EPR for packaging independently)
3. as a parent company for part of the group (this is where the parent company registers to comply with EPR for packaging on behalf of some, but not all its subsidiaries)
4. register as a parent company for part of the group if some of your subsidiaries do not meet the turnover and tonnage requirements but do meet the requirements

when combined. In this instance, the parent company will comply with EPR for packaging on behalf of the combined subsidiaries.

When assessing whether the turnover and packaging thresholds have been met, groups must consider the total packaging handled by the group and the combined turnover of each of the companies that handled packaging. Where both the combined turnover and packaging thresholds are met, all companies within the group that handled packaging are obligated.

Where a group exceeds the small producer thresholds but not the large producer thresholds, all companies that handled packaging within the group are obligated as a small producer. Similarly, where the combined turnover and packaging handled exceeds the large producer threshold, all companies that handle packaging are obligated as a large producer.

Example: If there are five subsidiaries within a group of companies. Four of the companies each handle 10 tonnes of packaging and have a turnover of £250,000 each. The fifth company has a turnover of £1.2 million and handles 100 tonnes of packaging. All of these companies are obligated as large producers because their combined turnover and packaging handled exceed the large producer threshold.

**Q: If we had a say £5m turnover in a typical garden centre with minimal imports, are we likely to be obligated?**

A: The likelihood is yes if you also meet the packaging handled threshold. Then you would be responsible as an importer for the packaging you import (even if you discard once imported, such as plastic wrap), and be required to report, and then nation data for anything else you sell.

**Q: Does a grower pot count as packaging and if we supply this into a retailer with their own brand on a lock in label, who is liable for what?**

A: Plant pots are counted as packaging with the following exceptions: *“Except when biodegradable and intended to be planted with the plant, or when sold containing a plant intended to stay in the pot for example, a house/patio plant”*

If the retailer adds a branded label, then this and the pot becomes their responsibility as a brand owner, as described by Defra previously.

**Q: Do we have an idea on the cost of EPR?**

A: Unfortunately, we do not have this detail yet. There have been estimates, however this is why it is crucial to submit 2023 data as close as possible to the original deadlines as this

data will inform the calculations and decisions on fees which will be charged in 2025 based on 2024 data.

**Q: Are there differences for packaging materials (plastic or paper) for EPR obligations?**

A: Yes, the fees for EPR will vary based on material type. For the first year these are likely to be split by base material (i.e., plastic, steel, aluminium, paper/cardboard etc.), but in future, these will be further modulated initially based on the recyclability of the packaging material. This will require further information about the packaging, such as the polymer of plastic used, with the ultimate purpose of charging higher fees for harder to recycle materials and lower fees for easy to recycle materials.

It may be worth adding that under EPR, when the main EPR regulations come in, there will be the disposal cost obligations but also similar to the current 2007 packaging regulations, there will be a recycling obligation; for the recycling obligation producers must purchase Packaging Recovery Notes (PRNs) Packaging Export Recovery Notes (PERNs), these vary in value depending on materials and are issued by accredited packaging processors and exporters.

**Q: Are canes and root ball hessian regarded as packaging?**

A: As root ball hessian is planted with the plant, this would not count as packaging under the EA approved positions document.

The definition of a plant pot is as follows: “Yes, except when biodegradable and intended to be planted with the plant, or when sold containing a plant intended to stay in the pot for example, a house/patio plant.

Canes will count as packaging if part of the product, such as a support for a plant, it forms part of the presentation function. Canes being sold as a product themselves would not count as packaging under EPR.

**Q: If a UK Manufacturer of plastic packaging which has a higher turnover of 2million supplying B to B, do they hold the obligations or is it their customers?**

A: If it is a branded product, with your branding that you then sell on to other businesses to sell, then you would be responsible for all packaging you fill whether it has your brand on it or not (if unbranded such as transit packaging, then you would be obligated as a pack/filler) and regardless of your customers’ obligations. If you are not a brand owner and are supplying empty packaging onto other businesses who then go on to fill them, you would be responsible for unfilled packaging sold to any businesses under the ~~smallest~~ **large producer** threshold as a Distributor. To identify if your customers are obligated or not, you would need to directly speak with them (or a sample of them) and/or in the future use the Register of obligated companies.



**Q: When importing young plants, will we need to include this in the packaging data? They are transported in plug trays and cardboard boxes. Then potted on into pots.**

A: Yes, all imported filled packaging will be the responsibility of the importer (including any imported packaging removed by the importer), unless they are branded products and the brand owner is responsible for the import.

**Q: When buying plants that have our logo added to the label, does the packaging responsibility fall to us as a retailer or with the grower?**

A: If the retailer adds a branded label, then this and the pot becomes their responsibility as a brand owner, as described by Defra previously.

**Q: How are we supposed to know what our customers are doing?**

A: This can be very difficult and has been raised multiple times to Defra. However, it is suggested that you would need to directly speak with them (or a sample of them) and/or in the future use the Register of obligated companies to assess if they are registered producers/obligated or not.

**Q: Please define the clear difference between a 'seller' and a 'brand owner packer / filler'.**

A: Brand owner: "...whose name, trademark or other distinctive mark appears on an item of filled packaging" Also the producer of unbranded packaging contained within or forming primary packaging alongside the branded packaging.

Primary, secondary, shipment and tertiary packaging can all be classed as 'supplied under your brand' packaging. If your organisation pays another organisation to carry out part of the supply chain for you, your organisation should still report any packaging that's supplied under 'your own brand'.

Seller: Supply filled or empty packaging directly to customers in the UK, where they are the end user of the packaging.

**Q: If a pot has the manufacturers name/brand on it does this make the pot the manufacturer responsible?**

A: No, this would not normally be the manufacturers responsibility unless they are selling the empty pots to a business that will go on to fill them but is under the lower threshold. Then the manufacturer of the pots would be obligated as a distributor. If the pots are being sold as a product directly to consumers any additional packaging such as transit packaging the manufacturer fills (i.e., cardboard boxes, pallets etc) sent with the pots to the retailer would be the manufacturer's responsibility.

When a piece of empty branded packaging (eg: Jiffy Bag with their branding) is sold to a pack filler who fills with their own products and sends to their customers without adding



their own brand to the packaging, then it is the pack filler who picks up this obligation. Where such packaging is sold by the packaging manufacturer to a small organisation under the reporting thresholds, the manufacturer will have the obligation as a distributor.

**Q: If as a garden centre we have no own brand and do not import, is our obligation solely nation data?**

A: Ecoveritas has recently had in writing from the EA that businesses are only required to submit nation data if they also have EPR reporting requirements. This means that if you do not carry out any other packaging activity, then you would have no obligations under EPR, regardless of your turnover. Please note that **carrier bags do count as packaging**, so if you are providing carrier bags to consumers to take their shopping with them, this counts as a packaging activity, as a packer/filler and you would then be obligated to report EPR as a packer/filler and then report all relevant Nation Data. If you are over the top threshold, you would only be required to pay EPR fees on the carrier bags only, as Nation data does not have fees associated with it.

Quite a few people have misconceptions over the ‘seller’ producer function. Like the functions of brand owner, packer/filler, distributor, importer, service provider and online marketplace, a seller is a function as per regulation 8. Unlike the other producer functions, the seller activity will not attract a cost or recycling obligation under the main EPR regulations and producers are not required to report this data at present, however it is nonetheless a producer function for the purposes of pEPR and therefore needs to be taken into account when a person assesses whether they meet the thresholds in regulation 11.

When a person supplies filled packaging to the end user, they perform the seller function (regulation 8(9)) and that person would be required to include this packaging in their threshold calculations, they would also be required to collect and retain nation of sale data in relation to this packaging as per schedule 1, paragraph 21. If a person only performs the seller function, there are no reporting requirements in place for packaging data for these producers at present, but they do still have requirements to submit organisation data ([Organisation details- GOV.UK](https://www.gov.uk/organisation-details)). This is because Nation of sale packaging reporting provisions will be in the main EPR regulations. When the main EPR regulations come into force, producers that only perform the seller function, will be required to register and report organisation details and nation of sale data in accordance with the nation of sale reporting requirements in the main regulations.

This subject is broadly covered in the agreed positions on P10 section 2.2 Producer Threshold Criteria.

**Q: We use a waste company that recycles all our waste packaging, cardboard, plastic and mixed, removed as separate collections. Does all the packaging have to be recorded or are there deductions made due to the waste not going to landfill?**

A: Your waste packaging should be recorded within the data reporting section 'self-managed waste'. However, it will not impact your obligations in any way unless you have collected packaging material from consumers, it is not collected by the local authority and you go onto recycle this.

**Q: Does the government have any tools available for reporting?**

A: Yes, the government has an obligation checker, and a reporting portal. They also have guidance on how to structure the data files for uploading. These can be found on the [government website here](#)

**Q: As an D2C online business, are invoices/packing slips/care instructions and any other leaflets included in the pack considered as packaging?**

A: Promotional packaging, for example, packaging around leaflets, posters or freebies are counted as packaging around promotional goods supplied. Invoices are not regarded as packaging.

**Q: What are the consequences of not submitting the data?**

A: If a company is found not to be compliant, companies would be required to pay the fees they have missed and additionally the enforcement body can:

- impose a fixed monetary penalty - £1,000
- impose a variable monetary penalty – 20% of the unpaid disposal fees or 5% of the company turnover (whichever is highest)
- impose a compliance notice
- enforcement undertaking
- take forward criminal proceedings

This seems to list consequences of not complying with the Main EPR regulations which are not yet in force. Consequences for non-compliance under the Data SI are not as wide ranging as those listed above.

**Q: Is there now, (or a plan to be) a helpline phone number where specific questions / scenarios can be discussed?**

A: Yes, there is a helpline with Ecoveritas that is available for HTA members, at 03330 050 177 or you can email [info@ecoveritas.com](mailto:info@ecoveritas.com).

There is also a dedicated phonenumber helpdesk on the reporting platform being run by Defra at 0300 060 0002 or you can email [EPRCustomerService@defra.gov.uk](mailto:EPRCustomerService@defra.gov.uk).

**Q: We are a garden centre and sell on other companies' products, therefore we fall into sellers and must provide nation data. However, our own bags are branded - we would be a brand owner. Is it right that we will fall into these two obligations?**

A: Yes, you would need to report under EPR as a brand owner for your branded bags that you sell, (note this is not when the bag is a bag for life as these count as a product), and then you would be required to report nation data for everything else you sell but would only pay EPR fees for your own brand bags. This is only the case if you meet the thresholds of obligations outlined above.

**Q: If a plant transport tray manufacturer sells the trays to a wholesaler, who then sells them to a grower who has a turnover of less than £2mil to transport their plants...who is obligated?**

A: This would come back to the definition of ownership of packaging and who fills the empty packaging.

*"Ownership at point of pack filling: It is important to establish who owns packaging at the point of pack/filling, because the obligation for that activity falls on the owner. If a contract packer purchases packaging materials and pack/fills it for a client, the contract packer is the owner of the packaging and will be obligated for that packaging. If the packaging materials are owned by the client company at the time of pack/filling by the contract packer, the client company will be obligated for that packaging as the pack/filler.*

*The only exception to this is if the packaging being pack/filled is going to be part of a branded packaging unit, in which case the brand owner will be obligated."*

Where such packaging is sold by the packaging manufacturer to a non-large organisation, the manufacturer will however have the obligation.

## **Further advice and support**

For more help and guidance, you can access all the HTA resources on EPR at [www.hta.org.uk/EPR](http://www.hta.org.uk/EPR)

You can also contact Ecoveritas for advice and support, or to request more information about the my.ecoveritas platform by calling 03330 050 177 or you can email [info@ecoveritas.com](mailto:info@ecoveritas.com).