

## Key update under EPR – Plant Breeder’s Rights – registered and trademarked plant names.

**Date: 25 March 2024**

We have had the following clarification and update from Defra regarding how both registered plant names and Plant Breeder’s Rights interact with Extended Producer Responsibility for Packaging legislation.

“Being the owner of the Plant Breeder Rights **does not equate to being a brand owner** for the purposes of packaging extended producer responsibility. The Packaging Waste (Data Reporting) (England) Regulations 2023 defines a brand as ‘a brand name, trademark or other distinctive mark’, as **the registered name of the plant does not constitute any of these things**, we do not consider a plant name to constitute a brand where it is listed on the packaging for the purposes of compliance with the Plant Varieties Act 1997.

However, it is important to note that **if the plant name is also a registered trademark, this would be considered a brand** and as such the owner of the trade mark may have obligations under The Packaging Waste (Data Reporting) (England) Regulations 2023.”

**Therefore, to help businesses understand where their obligations may lie, the following steps should be taken to know if you are obligated:**

1. The first step is to determine what kind of producer(s) they are such as brand owner, pack/fill, importer, seller etc.
2. The second step is to evaluate how they meet the thresholds for obligations (£1m/25t or £2m/50t). This includes all packaging they handle or supply, but they only need to include packaging that they perform a producer function on. This means that any packaging for which they are: a brand owner, packer/filler, importer, distributor, service provider, online marketplace, or seller. **The seller producer function only applies where the packaging is supplied to the end user.** This means that if they supply packaging to someone that then supplies it on to someone else, they are not the ‘seller’ in relation to this packaging and they can therefore omit this from their threshold calculations.
3. If they meet both above steps, they must then carry out the data collection, reporting, and if over the higher threshold have a fee-paying obligation as well.

It is also important to remember **that packaging only needs to be counted once**, so if a member is a packer/filler and is also the seller of this packaging, they only include the weight once.

All producer functions except for that of a seller, will attract a recycling obligation (PRN obligation) and if the packaging is classified as household packaging, it will **also attract a disposal cost** obligation.