

**Julie James AS/MS**  
**Y Gweinidog Newid Hinsawdd**  
**Minister for Climate Change**



**Llywodraeth Cymru**  
**Welsh Government**

Ein cyf/Our ref: JJ/PO/318/2023

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

27 September 2023

Dear Huw,

Thank you for your letter of 15 September in respect of the Fluorinated Greenhouse Gases (Amendment) Regulations 2023.

I welcome the feedback of the Legislation, Justice and Constitution Committee (LJC Committee) on this matter and have responded to your questions in the attached annex to this letter.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

**Julie James AS/MS**  
**Y Gweinidog Newid Hinsawdd**  
**Minister for Climate Change**

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex

**1(i). Please would you confirm and provide details of the consent process which has been followed in respect of the Regulations.**

The UK Government has committed to not using powers set out in the legislation to make provisions that could be made by a devolved Government without their consent. As you are aware from my letter to the LJC Committee of 1 September, these Regulations make provisions that could be made by Welsh Ministers in exercise of their own powers. Specifically, the enabling powers under Section 14(2) of the REUL Act allow a National Authority (as defined in the Act) to legislate either individually or jointly to revoke any secondary retained EU law and replace it with a provision as it considers to be appropriate. The consent of the Welsh Ministers was sought on this basis.

In this instance, the Welsh Ministers were given a very tight timeframe to consider consent, in the context of UK Government plans to lay the Regulations. My officials worked with their counterparts in UK Government to understand consequences and implications of withholding consent, or not consenting in time, as well as the various scenarios which might follow. If Welsh Ministers had refused consent, or not confirmed their decision in the requested timescales, the Regulations would not have been laid before the UK Parliament.

Consequently, reference values for 2024-26 would have been calculated based on 2021 data, in accordance with the legislation, and the amount of quota available to businesses significantly reduced. This severe, premature and unexpected phasedown could have resulted in potential supply issues for critical sectors, with insufficient time for alternatives to be deployed.

**1(ii). Please would you confirm that the Welsh Ministers were consulted on the terms of the Regulations as part of the relevant common framework structures, as is suggested in the draft Explanatory Memorandum to the Regulations**

I can confirm that Welsh Ministers were consulted on the terms of the Regulations through the Ozone-Depleting Substances and Fluorinated Greenhouse Gases UK Common Framework. The detail in the draft Explanatory Memorandum provides an accurate explanation of the process followed.

**2(i). Please would you confirm our understanding that the Regulations do not result in the revocation or replacement of REUL or its assimilation into the domestic statute book.**

As you rightly set out in your letter, these Regulations were made under section 14(2) of the REUL Act. Reference, in my letter of 1 September, to the Regulations being made under paragraph 5(5) of Schedule 5, was to the parliamentary process through which the Regulations were proposed to be scrutinised and agreed. Regulations made under section 14(2) of the REUL Act are subject to these requirements.

I can confirm the Regulations amend Article 16(3) of the retained EU F-Gas Regulation ((EU) No 517/2014 on fluorinated greenhouse gases. This does not result in the complete replacement of the original EU Regulation. That Regulation continues to be regarded as retained EU law until the end of 2023 at which point such law will be known as 'assimilated law' (see, section 5 of the REUL Act 2023). Assimilated law will be stripped of certain features of EU law which influence how such law is interpreted and applied by domestic

courts. These features include the principle of EU law supremacy, consistent interpretation, direct effect and directly effective rights, and general principles of EU law (see, sections 2 - 4 of the REUL Act 2023).

**2(ii). Before making a decision to consent to the Regulations, did the Welsh Government undertake any assessment of the specific power in the REUL Act being used to make the Regulations?**

An assessment was made of the nature of the proposed enabling powers contained in section 14(2) of the REUL Act. Consideration was given to the possibility of making a Wales-only SI. However, as set out in my previous letters, it was considered appropriate for the substance of the amendments made by the UK SI to apply to Wales as there was no policy divergence between the Welsh and UK Government (and Scottish Government) on this matter.

The REUL Act did not come into force until 29<sup>th</sup> June, after which time consideration was given to the applicability of the enabling powers contained therein. Subsequently, there was insufficient time to prepare and lay a Welsh SI and have it in force in Wales by 31 October. Consequently, failure to make a Welsh SI in that scenario would have potentially resulted in the GB systems for quota allocation becoming inoperable.

**2(iii). Our understanding is that paragraph 5(5) of Schedule 5 to the REUL Act gives a UK Minister the option of using the draft affirmative or made negative procedure. Before making a decision to consent to the Regulations, did the Welsh Government undertake any assessment of the choice of scrutiny procedure being followed by the UK Government?**

The precise route with which UK Parliament makes regulations is a matter for UK Government and UK Ministers. However, I can confirm that both draft affirmative and made negative procedures were considered as part of routine discussions held under the common framework arrangements.

The affirmative resolution procedure was proposed by the UK Government as the preferred option due to timescale requirements for the Regulations needing to come into force by 31 October, and as the safer route for avoiding any potential future delays. Officials supported the draft affirmative procedure as it provides greater scrutiny through parliamentary debates.

**2(iv). You will be aware that the powers in section 14 of the REUL Act are constrained to revocation or replacement of the law that a relevant national authority considers does not increase the regulatory burden in a particular subject area. Before making a decision to consent to the Regulations, did the Welsh Government's consideration of the Regulations include an assessment of how they comply with this constraint and if there is any potential increase to the regulatory burden? If so, would you share it with the Committee?**

As set out in my letter of 1 September, these Regulations are solely intended to correct a technical error made by a previous amending instrument (SI 2020/1616). This relates to the date from which data can be used to recalculate the quantities of hydrofluorocarbons that can be lawfully placed on the GB market from 2024. The amendment realigns the GBs phase-down of hydrofluorocarbons with previous commitments made under the Montreal protocol and current policy ambitions.

As set out in the Explanatory Memorandum to the Regulations, the agreed intention when leaving the EU was to retain the substance of the F-gas Regulation following Exit, including

the process to calculate HFC reference values, quota and the pace of phasedown set out in the EU F-gas Regulation. The technical amendment made by the Regulations realigns the GB with that policy intent.