

The Rt Hon Lord Benyon,  
Minister of State (Minister for Biosecurity, Marine and Rural Affairs)

Rebecca Pow MP,  
Parliamentary Under Secretary of State (Minister for Environmental  
Quality and Resilience)

1 November 2023

Dear both,

### Retained EU Law (Revocation and Reform) Act 2023

The Legislation, Justice and Constitution Committee monitors matters relevant to devolution in Wales and constitutional and external affairs which have an impact on Welsh devolution.

We have closely monitored the UK Parliament's scrutiny and passing of the Retained EU Law (Revocation and Reform) Bill – now 2023 Act - and, in parallel, considered the Welsh Government's legislative consent memoranda for the Bill.

Under the terms of an Inter-institutional relations agreement we have in place with the Welsh Government, in recent weeks we have received correspondence which has informed us that you have separately written to Welsh Ministers seeking their consent before Regulations are made, covering devolved areas, under powers in the 2023 Act.

On 1 September 2023, Julie James MS, Minister for Climate Change, wrote to us in respect of consent being sought by the Rt Hon Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs, for the making of the Fluorinated Greenhouse Gases (Amendment) Regulations 2023. We wrote to the Minister for Climate Change on 15 September with a series of questions, and received her response on 27 September.

On 13 September 2023, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, wrote to us in respect of consent being sought by Rebecca Pow MP, Minister for Environmental Quality and Resilience, for the making of the Plant Protection Products (Miscellaneous Amendments)

Regulations 2023. We wrote to the Minister for Rural Affairs and North Wales, and Trefnydd on 22 September with a series of questions, and received her response on 3 October.

You may appreciate that one of the reasons for our interest in these matters is that the 2023 Act contains no requirement for UK Ministers, when exercising their powers under the 2023 Act, to seek the consent of the Welsh Ministers if and when making regulations containing provision within the devolved competence of the Welsh Ministers as defined by paragraph 2(3) of Schedule 4 to the 2023 Act.

In a letter to us on 12 October 2023, following our request for further information, Mick Antoniw MS, Counsel General and Minister for the Constitution, told us "No mechanism has been agreed between UK Government and the Devolved Governments about how consent should be obtained in relation to UK Ministers making regulations using powers in the REUL Act".

Given that the letters from the Minister for Climate Change and the Minister for Rural Affairs and North Wales, and Trefnydd appear to be examples of a working consent-seeking process between UK Ministers in the Department for Environment, Food and Rural Affairs (DEFRA) and relevant Welsh Ministers, we would welcome clarity and any details you may be able to provide from your perspective as DEFRA Ministers.

I would be grateful if you could provide a response to the questions we ask the annex to this letter by 21 November 2023.

I am copying this letter to the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies  
Chair

## Annex

1. Have you, as Ministers in the Department for Environment, Food and Rural Affairs (DEFRA), entered into a localised agreement and/or arrangement with relevant departments in the Welsh Government about the terms of when and how you will engage with and seek the informal consent of Welsh Ministers before making regulations in devolved areas under the 2023 Act?
2. If a DEFRA-specific agreement and/or arrangement is in place with Welsh Government departments, are you able to provide us with the specific details?
3. Are you aware of any other UK Government departments having entered into similar agreements and/or arrangements with the Welsh Government?
4. In her letter to us on 27 September 2023, in relation to the Fluorinated Greenhouse Gases (Amendment) Regulations 2023, the Minister for Climate Change said “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.” This could be interpreted as the Welsh Ministers having a power of veto over whether UK Ministers proceed with their regulatory intentions. What is your view on this matter and, in particular, is this your understanding of the terms under which you sought consent for the making of these Regulations?
5. In her letter to us on 3 October 2023, in relation to the Plant Protection Products (Miscellaneous Amendments) Regulations 2023, the Minister for Rural Affairs and North Wales, and Trefnydd said “Whilst there is not a legal requirement to seek consent, the UK Government have sought the Welsh Ministers consent in accordance with the convention on legislating in devolved areas.” This appears to apply the terms of the Sewel Convention to the making of subordinate legislation. What is your view on this matter and, in particular, is this your understanding of the terms under which you sought consent for the making of these Regulations?