



Baroness Drake  
Chair of the Lords Constitution Committee  
House of Lords  
London  
SW1A 2AU

30 May 2024

Dear Baroness Drake

We welcomed the opportunity to give evidence to the Lords Constitution Committee and thank you for your letter dated 22 May in regards to delegated and Henry VIII powers.

### **Delegated Powers**

It is sometimes appropriate for the UK Government to introduce UK-wide regulations, including in devolved areas. This does not mean there is no scrutiny of these powers. Delegated powers in devolved areas undergo scrutiny in the UK Parliament during the passage of the legislation, and from the devolved Parliaments through the legislative consent process. As stated by all ministers during the evidence session, the UK Government always engages with the devolved administrations when making regulations in devolved areas.

Turning to the questions on delegated powers outlined in your letter, the inclusion of a consult or consent obligation is assessed on a case by case basis. It is important to note that each policy area has a different legislative context so in our view it is appropriate to consider and include such powers on that individual basis. There have been instances where the UK Government has included these obligations but that is following careful policy consideration and where there is strong rationale for doing so.

There have also been cases where the UK Government has not considered it appropriate to include consent or consult requirements. For example, it would not have been appropriate to include these requirements on the power held within Section 84 of the Nationality and Borders Act 2022. This is because the purpose of this Act was reserved, and any amendments to devolved legislation made under this power would be necessary as a consequence of those reserved provisions.

However, we want to be clear that the Sewel Convention applies only when primary legislation makes provision specifically for a devolved purpose, and does not apply to

secondary legislation created under primary legislation. Nor should it. We believe that there is already a good practice of engagement between the UK Government and the devolved administrations. We hope this continues.

### **Henry VIII Powers**

The UK Government will only ever use Henry VIII powers when absolutely necessary. Their justification is set out in the Delegated Powers Memorandum, which is published alongside the Bill, and scrutinised by Parliament during passage of the Bill. In answer to your question outlined in the letter, when the UK Government is legislating in a devolved area, it is critical that there is engagement with the relevant devolved administration.

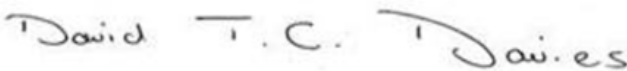
The Statutory Instrument Consent Mechanism, as set out in the Senedd's Orders and the Devolution Guidance Note on primary legislation affecting Wales also provides that the consent of the Senedd is normally required where subordinate legislation introduced by the UK Government amends primary legislation for which the Senedd has competence. To note, this matter specifically applies to the Welsh devolution settlement.

Thank you once again for writing.

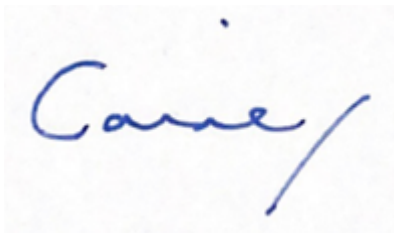
Yours Sincerely



**THE RT HON. ALISTER JACK MP  
SECRETARY OF STATE FOR SCOTLAND**



**RT HON DAVID TC DAVIES MP  
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YSGRIFENNYDD GWLADOL CYMRU**



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