Dear Clare Cavers,

Thank you for your letter dated 27 May 2022 concerning the case for urgent, group-based regulation to prevent continued PFAS pollution in the UK environment, alongside the Joint Statement to this end. Minister McAllan and Minister Slater have forwarded your letter to me to respond.

The Scottish Government welcomes the engagement of these 30 civil society organisations representing health and environmental interests. We agree that per- and polyfluorinated alkyl substances (PFAS) are a key chemical issue. This issue needs to be addressed based on substances in this group’s high persistency, environmental mobility and potential for long range transport, and the indication that the known hazards for currently regulated substances in the group may be of relevance for untested substances. We also agree that to date the approach to regulating PFAS chemicals under EU REACH has been inefficient (PFOS and PFOA regulated under the Stockholm Convention, while PFHxS and long chain C9 – 21 PFCAs are candidate POPs; under the EU and UK REACH regulations, PFBS and “GenX” and their salts have been identified as SVHCs, while under EU REACH a restriction for C9 – 14 PFCAs has been added.) when considering these group-based issues.

It is well recognised this is a complex chemical issue because of: (i) the sheer number of PFAS, depending on which definition is used, that have been identified and that may be in use; (ii) a lack of relevant hazard data for many PFAS; and (iii) the many, varied and not always well understood uses PFAS are put to in consumer products, in addition to their industrial uses. To robustly justify regulatory action, with recourse where necessary to the precautionary principle, we need to understand much better than we do currently which substances we need to include, how these substances are used, and how we can group them (based on properties and/or use) in regulation. We believe that the process that is already underway in UK REACH, outlined below, will identify the most appropriate regulatory approaches, allowing Scottish Ministers in collaboration with Welsh Ministers and UK Government to then decide on the best course of action for the protection of people and the environment.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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We recognise Fidra’s excellent work with retailers in this area, to support the removal of some uses of PFAS for which there is good evidence for their being unnecessary. The concept of essential use and its place in regulation is being discussed in the EU and UK, with the EU Commission looking to form a conclusion by the end of 2022 on the concept’s use as part of planned EU REACH reforms. In the UK a recent RSC, in collaboration with Defra, HSE, the Chemical Industry Association and Fidra, workshop largely focussed on the topic (“When the science is uncertain, what is the role of risk-based approaches and precautionary control in chemicals policy?”; 9 June 2022). To date the concept has only been used in a very specific and targeted way and we believe requires further development before its wider application.

The EU’s recast Drinking Water Directive (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020L2184&from=EN) was agreed in December 2020 and came into force on 12 January 2021. Scotland will align with the provisions contained within this Directive in accordance with the requirements of the UK Withdrawal from the European Union (Continuity) Act 2021 (https://www.legislation.gov.uk/asp/2021/4/contents/enacted). New Drinking Water Regulations reflecting the changes are in preparation and are expected to become law in early 2023. The Directive introduces new requirements in relation to sum of PFAS and PFAS total which will need to be considered as part of Catchment Risk Assessments and monitoring programmes.

Work on PFAS is an agreed priority between all three UK REACH Appropriate Authorities; during the first year of operation of UK REACH it was agreed to undertake a Regulatory Management Options Analysis (RMOA) for PFAS. This RMOA is expected to identify relevant substances, better understand their uses, hazards and risks, and propose regulatory actions. The Agency (HSE) had a call for evidence to support the preparation of this RMOA for PFAS from 1 December 2021 – 30 January 2022. I hope that you and colleagues responded to this call. The RMOA report is due to be published in the next few months, after which officials will closely review the findings and proposals. Whilst we await the Agency’s RMOA report we understand that the delay in putting measures in place is frustrating. However, we believe that having the full consideration of the issue through the RMOA process will lead to clearer and more appropriate identification of the controls required.

Yours sincerely

Phil Leeks
EQR : Environmental Quality