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The NFU represents more than 55,000 farming and growing members and in addition some 40,000 countryside members with an interest in the countryside and rural affairs.

## Call for Evidence on the Review of the Balance of Competences between the United Kingdom and the European Union – Information Rights

**1. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) has been advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?**

The Data Protection Directive has been advantageous in advancing further protection for personal data for individuals. However, it is arguable that the Directive goes too far. The practical application of the Directive results in considerable financial and administrative burdens placed on businesses, and the public sector, in managing and processing data in accordance with the Directive. For example, many businesses appoint specific staff to solely address data issues, including monitoring and compliance. Significant spending on sophisticated compliance computer software is often required by business to ensure that compliance is met at all times. Whilst accepting that the protection of personal data is very important, the NFU believes that in terms of data, regulation is not sufficiently linked to risk. The consequential result is that often small and medium sized enterprises that retain or process only a minor amount of data are over regulated, and are required to utilise considerable cost and labour on monitoring and compliance. In reality these enterprises pose minimal risks.

**2. What evidence is there that the EU's competence and the way in which it has used it (principally the Data Protection Directive) strikes the right balance between individuals' data protection rights and the pursuit of economic growth?**

Whilst the protection of personal data is highly important, as explained above, the compliance requirements on businesses, particularly small and medium low-risk business is over burdensome and inconsistent with the risks addressed by the Directive. In the NFU's view, this will adversely affect the pursuit of economic growth.

**3. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) is meeting the challenges posed by the increasing international flow of data, technological developments, and the growth of online commerce and social networks?**

The NFU believes that the focus of data protection and the requirements for regulation have altered significantly since the introduction of the Data Protection Directive. At present, in our view the Directive is not effectively meeting the challenges posed by online activities. There is insufficient regulation against the illegal use of personal data online, and regulation bodies within the UK seem unwilling to actively address online data protection breaches and complaints made by those affected.

In our view, there needs to be tighter regulation of online activities involving the processing and use of personal data. Websites and social networking sites should be accountable for breaches of data protection, or at the very least be required to put in place robust and effective complaints procedures, with strict timetables for addressing and handling complaints received. The NFU's experience of lodging complaints against the illegal use of personal data on social networking sites such as Facebook and Twitter is that the current procedures are often ineffective.

The NFU is aware of many incidents of online 'trolling' involving serious data protection breaches in which individuals affected have made complaints to social networking sites but to no avail. Their personal data has not only remained on the site concerned but has been 'shared' and re-published elsewhere on the internet. Formal complaints made by legal advisors to these individuals have also been unsuccessful. In our view these sites require stricter regulation and harsher penalties for failing to address these problems when they are alerted to them.

Due to the cross-border (often international) ownership and control of websites, it seems correct that such regulation should be consistently applied throughout the EU, and its legal inception should remain at EU level.

**4. What evidence is there that proposals for a new EU Data Protection Regulation will be advantageous or disadvantageous to individuals, business the public sector or any other groups?**

The current proposals put forward suggest that the proposed regulation would include many elements which would be advantageous to individuals, for example the right to be "forgotten", and the right to receive electronic data through various formats. However the question remains as to the extent to which the balance of individual rights will be weighed against the focus of regulation. The regulation must be proportionate to the risk, with those riskier businesses and sectors being required to comply at a more sophisticated level, for example online websites and social networking sites.

**5. What evidence is there that the right of access documents of the EU institutions has been advantageous or disadvantageous to individuals, businesses, the public sector or any other groups in the UK?**

The NFU is not aware of any such evidence.

**6. How would UK citizens' ability to access official information benefit from more or less EU action?**

In our view, the ability to access official information should be determined and legislated for by individual Member States. We do not see that EU action in this area would benefit UK citizens.

**7. How could action, in respect of information rights, be taken differently at national, regional or international level, and what would be the advantages and disadvantages to the UK.**

In terms of the Freedom of Information Act 2000, the NFU is of the view that whilst in principle the key rights are advantageous, in practice the legislation often creates complex and unwarranted challenges. An example of this is the impact of the legislation on third party businesses that are not prima facie bound by the legislation, but find that information sent to, for example, public sector bodies, is disclosed to the public under the provisions of the legislation. This is unnecessary and wholly disproportionate.

In addition, the NFU believes that whilst exemptions and exceptions to statutory disclosure do exist these are exceptionally challenging to effectively be relied upon, and the numerous appeal mechanisms within the legislative framework add an enormous amount of unnecessary cost.

From a national perspective, in our view the Freedom of Information Act requires review. From a regional and international level we can see advantages in certain information rights being enforceable, particularly in relation to information held or stored online.

**8. Is there any evidence of information rights being used indirectly to expand the competence of the EU?**

The NFU is not aware of any such evidence.

**9. What is the impact on EU competence of creating an entirely new legal base for making data protection legislation that is not expressly linked to the EU's single market objectives?**

The NFU believes that legislation governing data protection at EU level should cover key areas of legislative importance in relation to data, thereafter this is an area of law that should be further defined at national level.

**10. What future challenges or opportunities in respect of Information Rights might be relevant at a UK, EU or international level; for example cloud computing.**

The internet and its regulation is clearly the most prevalent challenge on the horizon. It has complex national, cross border and international dimensions. However in relation to data protection and information rights, whilst the complexities of the internet are acknowledged, so too must the rights of individuals, particularly in relation to the processing of personal data.

**11. Is there any other evidence in the field of EU Information Rights that is relevant to this review?**

The NFU has no further submissions on this issue.