The argument for social and employment competence (Q1 – Q3)

1. *To what extent is EU action in this area necessary for the operation of the single market?*

EU intervention in employment law should be confined to areas necessary for a functional single market, such as freedom of movement of workers. It may also be useful to set up a framework of minimum safeguards for employees, in areas such as health and safety. A basic working time framework may also be necessary; however, the current directive is controversial with employers due to the lack of flexibility. There is no evidence that there have been any direct improvements in safety at work as a result of this legislation, so a more flexible approach could be considered without necessarily risking the health and safety of employees.

Outside of these areas, it should be left to Member States to decide what regulation is necessary and appropriate within their territory. Having too much legislative intervention in the employment field can prevent employers from making best use of their workforce, and can deter the recruitment of additional employees, particularly in small businesses.

It should also be remembered that the European Courts have a role to play in competence as well; the broad interpretation of EU legislation by the European Courts can extend the reach of that legislation further.

In short, EU competence is necessary to an extent for the operation of the single market and the free movement of labour, and to ensure commonality, so that farmers in the UK are not disadvantaged vis-a-vis their European counterparts. There must, however, be recognition that flexibility at Member State level is also necessary to enable Member States to take action most appropriate to the labour market, and businesses, within their territory.

In relation to health and safety, some competence at an EU level is necessary to ensure to ensure consistent standards in all Member States. However in general the volume and content of legislation from Brussels is a concern for our members. It is important that future Directives are risk based, proportionate and justified by strong evidence. A greater emphasis should be placed on the principles of subsidiarity and proportionality to avoid unnecessarily prescriptive legislation at a European level.

There appears to be some difference in standards relating to health and safety across Member States. The HSE statistics for 2012/13 show that the UK has one of the best accident records in the EU; with only 0.71 fatalities per 100,000 workers, this is lower than France, Germany, Italy and Spain. Only the Netherlands and Slovakia have marginally lower accident rates according to the Eurostat statistics on which the HSE report is based. In terms of perceptions, the European Working Conditions Survey found that 18% of workers in the UK thought that their jobs put their health and safety at risk- compared to around 25% of all EU 27 Countries. We believe this disparity may be, in part, due to differences in the effectiveness of the appropriate health and safety regimes. It is also important to consider the impact of other social partners, such as insurers, in helping to reduce accident figures.

Member states have to fund the social burden from poor health and safety. Consequently, they should be able to decide on solutions by adopting the best risk based approach when considering the factors affecting the safety culture in their country. The European health and safety regime largely mirrors our own pre-existing domestic legislative requirements. However, we are concerned that at a European level there is a greater tendency towards more prescriptive hazard and topic based legislation. This prescriptive legislation makes it more difficult for Member States to tailor legislation to their particular circumstances and an inflexible one-size-fits-all approach is sometimes implemented without proper regard to subsidiarity and proportionality principles.

One example of this would be the Physical Agents Directive 2002/44/EC which imposes a limit on whole body vibration at work. Whole body vibration (WBV) is known to exacerbate, but not cause, back pain. Limiting WBV to as lower level as reasonably practicable, and ensuring WBV risks are taken into account (especially for susceptible workers) is appropriate. Having a prescribed limit value is not appropriate as levels of WBV vary dramatically dependant on a number of factors outside of the employers' control including worker lifestyle. It is also virtually impossible to assess compliance on a daily basis without expensive monitoring equipment.

2. *To what extent are social and employment goals a desirable function of the EU in their own right?*

In terms of health and safety; it is desirable that the EU seeks to improve health and safety across Member States. We consider that a greater use of non-legislative action to improve safety under the existing legislative framework is a desirable alternative to further prescriptive legislation.

Employment goals are a desirable function of the EU only to the extent necessary to achieve free movement of labour and commonality across Member States in terms of the competitive position of businesses. It is difficult to see the justification for EU competence on social policy. Employment law should provide a safety net for employees and employers commonly across the EU, but neither employment law nor social policy should be used by the EU to dictate employment terms or as an exercise in social engineering. EU level action should be confined to areas relevant to the functioning of the single market and the free movement of workers; this may include some complementary measures, such as non-discrimination on grounds of race which are necessary to facilitate freedom of movement. Where possible, such intervention should be in the form of a "framework" with Member States being left to decide and implement the detail of the requirements in a manner that suites their labour and business market.

3. *What domestic legislation would the UK need in the absence of EU legislation?*

In the absence of EU provisions, the UK is likely to need to implement or retain legislation on minimum working conditions, such as minimum holiday entitlement and anti-discrimination legislation. The UK may also wish to consider whether regulations on working time, such as rest breaks, are necessary on health and safety grounds, but any such measures should be based on objective risk assessments and restrictions should be proportionate to the risks involved. The current working time directive provisions are unnecessarily strict and lack the flexibility required in the agricultural sector where weather conditions and seasonal requirements dictate the time scales for completing operations and carrying out certain activities.

EU health and safety legislation largely mirrors our existing legislative requirements. We are not aware of any EU legislative requirements that could not be adequately controlled through our existing comprehensive risk based regime.

Impact on the national interest (Q4 - Q7)

4. *What evidence is there that EU action in social policy advantages the UK?*

In reality one of the main promoters for safety on farm are requirements imposed by insurers. These may take a much more risk limiting approach (for example measures to prevent financial loss) than is required by the legal minimum safety standard. In principle harmonised social standards should benefit UK farmers by ensuring that all employers are required to apply the same safety standards. In reality we consider that a disparity between countries exists and, whilst legislation may help balance legal minimum safety standards, there is likely to be a continued difference between Member States for some time.

Free movement of workers, and their families, within the EU is obviously beneficial to the UK, as it enables businesses to draw their workforce from across the EU, and allows workers to travel to areas where their skills are in demand. The agricultural sector is reliant on the availability of workers from across the EU, and employers would struggle to fill some posts without this pool of workers.

Setting certain minimum conditions, such as parental leave and working time restrictions, may have some benefits for the UK in terms of creating a level playing field with other Member States. However, if the measures go beyond the minimum necessary to protect the health and safety of employees, it is questionable whether the benefits from having a level playing field are outweighed by the costs on individual businesses.

5. *What evidence is there that EU action in social policy disadvantages the UK?*

As mentioned in our answer question 1, imposition of prescriptive EU requirements can present an unnecessary burden to UK business. For small businesses in particular, keeping up to date with complex, technical EU legislation presents a significant challenge, and can be a substantial burden for these employers. Many agricultural businesses are small and medium sized enterprises, so the regulatory burden is a major concern for the agricultural sector. The right for certain categories of employee (e.g. parents) to request flexible working patterns, and for employers to have to give reasoned decisions, also imposes significant burdens on employers and is an example of an area which places significant burdens on small and medium sized businesses.

Agriculture is, by its nature, a seasonal industry, with fluctuating working patterns dictated by natural conditions and seasonal patterns. These inevitably create fluctuations in working patterns in the sector, meaning that businesses need a degree of flexibility around working time arrangements. Ridged EU rules around, for example, compensatory rest breaks, can be detrimental to UK employers. If EU intervention was confined to establishing a basic framework, the UK government would be able to adopt measures which are better suited to the UK economy, taking account of the needs and structures of typical businesses in the UK, as well as social concerns, which may differ to those found in other EU countries.

6. *Are there any other impacts of EU action in social policy that should be noted?*

NA.

7. *What evidence is there about the impact of EU action on the UK economy? How far*

can this be separated from any domestic legislation you would need in the absence of EU action?

Please see our comments above in relation to the impacts on businesses of rigid, rather than flexible, employment legislation. Please also see our comments above in relation to the need for an EU framework to enable the operation of the single market and the free movement of workers.

Future options and challenges (Q8 - Q12)

8. *How might the UK benefit from the EU taking more action in social policy?*

It is the NFU's view that action in areas of social policy should be dealt with at national level, where it is considered necessary to do so, unless EU intervention is necessary to assist the functioning of the single market.

9. *How might the UK benefit from the EU taking less action in social policy, or from more action being taken at the national rather than EU level?*

Agriculture is a seasonal industry, which requires a degree of flexibility in terms of working patterns. Reduced EU action on social policy has the potential to give employers greater flexibility, enabling them to adopt working policies compatible with the needs of their businesses. This has the potential to enable businesses to be more competitive, and has the potential to remove some of the barriers to small businesses expanding their workforce.

National authorities are best placed to judge where legislative intervention is required within their territories, and should be free to adopt proportionate measures in response to social concerns within their territory, where it is appropriate to do so. If EU level action was restricted to the areas necessary for free movement of labour and the functioning of the single market, the UK would be able to develop its own policies and legislation in other areas, meeting the needs of the UK economy.

10. *How could action in social policy be undertaken differently? For example, are*

there ways of improving how EU legislation is made e.g. through greater adherence to the principles of subsidiarity and proportionality or the ways social partners are engaged?

As outlined in our answer to question 1 we are concerned about the increasingly prescriptive and topic based health and safety legislation at a European level. We consider that there should be greater adherence to the principles of subsidiarity and proportionality. We are concerned that increasing use of Directives made pursuant to social partners agreements could result in very specific and prescriptive topic based legislation.

We are also concerned that the complexity and lack of flexibility in EU legislation can be detrimental to small businesses. For that reason, we would like to see greater flexibility in EU legislation, and greater freedom for Member States to decide what measures are appropriate within their territory.

The broad interpretation given to some legislation, such as the working time directive, as mentioned in question 1, by the EU Courts is also a cause for concern, as in some instances legislation seems to have been expanded in terms of its meaning or reach considerably. The EU Court should take a less expansive approach to the interpretation of EU legislation, confining decisions to the minimum interference with national competence, giving due regard to the principle of subsidiarity, and thereby giving greater freedom for Member States to adopt policies and legislation which meet their needs. Legislation and policy should also be developed in the main by those institutions which are democratically accountable to the citizens of the EU, such as the Parliament, rather than by the Courts and the Commission.

11. *How else could the UK implement its current obligations in this area?*

In terms of health and safety the current existing UK regulatory regime adequately covers social requirements.

Domestic legislation has already been developed to implement many obligations in EU legislation, so the removal of EU involvement in this area would not automatically remove or reduce the rights and obligations resulting from EU law. Maternity and paternity leave, working time regulations, anti-discrimination legislation and the minimum wage, for example, are all enshrined in UK legislation. However, going forwards, the UK government would be able to amend the legislation and policies to ensure that they were fit for purpose and meet the social needs and concerns within the UK. Greater flexibility could be introduced into some legislation, such as the working time regulations, which would not undermine the health and safety of workers, but would reduce the administrative burdens on employers within the UK.

12. *What future challenge/opportunities might the UK face in this area and what impact might these have on the national interest?*

The UK agricultural sector is heavily dependent on access to a skilled pool of workers from across the EU. Without access to this expanded pool of workers it would be difficult to fill many seasonal vacancies, such as the need for pickers at harvest time. However, that needs to be balanced against the need for businesses to be able to adopt working practices that suit their needs, and to adapt to changing social pressures. Many retailers take an interest in the conditions on the farms from which they source their produce, and those kinds of market driven pressures will help to develop future social policies and norms without significant legislative intervention.

There also needs to be a consideration of the burdens placed on businesses, and a recognition that in some instances, it may be appropriate to apply different standards to small businesses with just one or two employees than to a large national company, with a dedicated HR department. Small businesses often struggle to keep up to date with complex and frequently changing requirements, and record keeping requirements can place a significant burden on these smaller employers. Having employment legislation which is too complex, and imposes too many burdens on small employers is likely to lead to small businesses entering into other types of arrangements, such as using agency staff or independent contractors, rather than employing people directly. This has a knock-on impact on the structure and functioning of the UK labour market. Ensuring that requirements are proportionate to the risks they are intended to address and the size of the business they are imposed on could encourage small business to employ workers directly.

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