Department for Environment, Food and Rural Affairs

Food Standards Agency

Assessing the EU's impact on the UK: a review of the balance of competences

Response form

November 2012

Please use this form to answer the questions contained within the call for evidence published at www.defra.gov.uk/corporate/about/how/europe/review

The closing date for the submission of responses is **28th February 2013**.

Reponses can be returned by email (preferable) or post.

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Your evidence should be objective, factual information about the impact or effect of the competence in your area of expertise.

A summary of the evidence received will be published alongside the final report in summer 2013 and will be available on the new Government website: www.gov.uk

We will share your responses with other Government departments if your evidence will be influential to other balance of competences reviews.

We expect to make available all evidence alongside our report, unless there is good reason not to do so. In the meantime we may use section 22 of the Freedom of Information Act (FOIA) to exempt such material from any FOIA requests. Please note that, even if you ask us to keep your contribution confidential, we might have to release it in response to an FOIA request. We will publish the name of your organisation unless you formally ask us not to, but will not publish your own name unless you wish it included.

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Please keep me informed by email about the progress of this review and other Defra reviews on the balance of competences	☒

Organisation Type (if applicable)	***Please mark / give details as appropriate***	
NGO / Civil Society	☐	
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Retail Sector	☐	
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NB: on the form below, please leave the response box blank for any questions that you do not wish to answer. All boxes may be expanded as required.

Questions in relation to animal health and animal welfare

1. What evidence is there that EU action on animal health and welfare benefits or disadvantages the UK?

The recent emergence of Schmallenberg virus in Northern European countries in 2011, highlights the benefits afforded to the UK of progressive EU action. We saw good co-operation and information sharing between the scientific communities and reseach laboratories amongst the 27 Member States, and the UK was able to benefit from this in terms of getting quick access to diagnostics and a better understanding of disease incidence trends, and potential control mechanisms.

The NFU was concerned that UK farmers affected by the disease lost their rights to privacy in the initial stages of the outbreak though as the UK was committed to abide by the edicts of the Commission and OiE in terms of reporting initial outbreaks. The UK was also affected by the early trade restrictions imposed on the EU by non-EU countries which were disproportionate to the levels and geographhic distribution of SBV throughout the UK.

There are times when the UK is more vulnerable to disease incursion by EU action. The UK is an island and therefore protection of our borders should be geographically quite straightforward. Being part of a trading block with measures to prevent anti-competitive behaviours amongst its Member States can however reduce our ability to protect ourselves. Recent outbreaks of FMD in Bulgaria involving wild pig and boar populations moving between Turkey and Bulgaria and mixing with farmed populations, or the ongoing issues with Rabies amongst wildlife populations in some Northern European countries are two such examples.

The UK should be able to protect itself and close its borders to high risk behaviours or trading practices of its EU counterparts, but the UK is bound to remain open for EU Member State trade.

In terms of regulation developments, we are currently working through the implementation of the Review of the Official Feed and Food Controls (including the new EU Animal Health Law). This task alone highlights the difficulties in trying to create a cost effective and efficient service harmonised across 27 countries with huge variations in rural and business development.

Many of the issues and threats facing the UK farming industry, in terms of animal health and welfare, are created by the willingness and / or ability of individual countries to implement and enforce EU actions. There have been instances where the UK has acted promptly to enforce new EU legislation while other Member States have failed to do so, e.g. the 2012 ban on conventional battery hen cages.

Such actions have the effect of disadvantaging UK farmers, who cannot recoup the costs often incurred through forced investment when they find their produce sharing shelf space with non-compliant, cheaper produce. It is the lack of EU action on enforcing its own regulations and failing to penalise non-compliance which causes the disadvantage.

In general, the NFU believes it is appropriate that action on animal welfare during transit is regulated from an EU level as this ensures consistency amongst Member States. There is a danger however, that further legislative developments, such as restriction of hours, could begin to inhibit the free movement of livestock within the UK.

Whilst the broad legislative strategy around animal transport is generally balanced, there have been

issues when European legislation attempts to lay down technical detail on livestock transportation. For example EC Regulation 1/2005 is transposed into domestic legislation through the Welfare of Animals (Transport) England Order 2006. The EU Regulation exempts farmers transporting their own animals, in their own means of transport for distances of less than 50km, from most of the requirements of the regulations (Article 1, 2(b)). Farmers exercising this exemption still have to ensure that animals are transported in such a way that is not likely to cause injury or undue suffering to them, but they do not have to comply with the more detailed requirements of the Technical Annexes. One of the requirements of Technical Annex 1 relates to the angle of ramps on trailers for different types of livestock (Annex 1, Chapter 3, 1.4 (a)). Consequently, if the journey undertaken is more than 50km, then requirements for the ramp angles apply. This is not logical.

The retrospective imposition of this EU legislation on existing animal transport vehicles has caused many issues for the UK agriculture industry. Many ramps on livestock trailers are steeper than the prescribed angles in EC1/2005. Modification costs are significant with internal ramps on dual layer vehicles posing a significant problem. In actual fact, the cost of modifying internal ramps has in some cases proved prohibitively expensive. This has effectively made the top layer of some trailers/vehicles unsuitable for transport over 50km, doubling transport costs over longer distances.

The problem is compounded with journeys to market. If you travel to a livestock market with your own animals, and the market is 25km away or more then transportation to the market with ramp angles above those specified is permitted, but transport back is prohibited if the animals are unsold (as the combined journey would be greater than 50km). Regardless of the length of journey the animals should only use the ramp twice; once to get on and once to get off. If ramp angles below those set are suitable for journeys below 50km; they should also be suitable for those over 50km. This regulation imposes cost on UK farmers, both for the modification of their vehicles, but also for increased transportation costs where modification is not possible.

2. How might the UK benefit from the EU taking more or less action on animal health and welfare in future?

The EU Veterinary Medicines Directive is currently under review with an impact assessment and draft legislation expected in early summer 2013. The UK has a very good record of veterinary use and has not yet experienced the incidences of antimicrobial resistance occurring in some of our mainland European counterparts. The UK's system of tiered prescribing and distributing veterinary medicines is different to that of other Member States. The NFU therefore believes that the UK would benefit most from retaining autonomy in its prescribing and distribution of veterinary medicines as this provides benefits of availability and price, without creating issues of overuse or resistance.

The UK would benefit from a more harmonised system of veterinary medicine authorisation across the EU. The NFU is aware, and supportive of, calls for a single licensing system for veterinary medicines across the EU and believes that in this case, greater European action would be preferential as it would improve competitiveness in the pharmaceutical market, reduce administrative burden and improve veterinary medicine availability.

3. What advantages or disadvantages might there be in the EU having exclusive competence for negotiating trade agreements with third countries?

This is an issue of scale and independence. A larger trading group may have greater power in negotation with 3rd countries but this imposed situation does remove the right of individual Member States to restrict 3rd country imports in favour of protecting their own industry from (perceived) lower standards of animal health and welfare.

4. How might the national interest be served by action on animal health and welfare being taken e.g. at regional or national level, in addition to or as an alternative to action at EU level?

The national interest may be served by additional action being taken to eradicate endemic diseases at a national level. For example, the UK could take greater action to eradicate BVD or Sheep Scab, diseases which impact on the profitabilty and market value of our domestic farmed animals but carry no legislative controls at an EU level.

5. Does EU legislation on animal health and welfare provide the right balance between protecting animal and public health and the interests of UK businesses?

EU legislation on animal health and welfare can be very inclined towards a precautionary approach, rather than an evidence based approach. This can place farmers in the UK (and the rest of the EU) at an economic disadvantage relative to their global competitors, and can sometimes introduce unintended consequences in terms of regulatory infringements.

6. Could action be undertaken differently e.g. are there ways of improving EU animal health and welfare law, for example, to focus more on required outcomes using a more evidence and risk-based approach? Would this deliver more in the national interest?

Evidence based legislation calls for the use of the best available scientific evidence and systematically collected data, when available, to be used as a basis for the formulation and writing of law. One of the current weaknesses across the EU (when discussing animal health and welfare) is the lack of mutually recognised data across all the Member States relating to animal health, animal welfare and the responsible use of veterinary medicine. The EU should look to enable and encourage systems across its Member States, which support harmonised data collection in these areas before reacting to legislative demands informed only by hazard analysis and precautionary principles.

7. What future challenges or opportunities might we face on animal health and welfare and what impact might these have on the national interest?

Climate change and global population growth will place increasing demands on the UK and its EU counterparts to 'step up' production of safe and affordable food whilst impacting less on dwindling resources such as land and water. This demand will only be met using new technologies and progressive farming systems. Health improvements through innovative animal genetics, better use of rapid diagnostics and vaccines, and genuinely fair market environments must be encouraged.

8. What impact might any future enlargement of the EU have on animal health and welfare?

Many of the answers to previous questions relate to greater needs for market harmonisation and progressive technologies, all challenged by potential expansion of the EU. Future enlargement of the EU will also bring the risk of increasing translocation of disease, expanding human and animal populations and the contraction of resources available to monitor, enforce and develop strategies to cope.

9. Are there any general points you wish to make which are not captured above?

The National Farmers Union welcomes this opportunity to comment on the balance of competencies review with respect to animal health, welfare and food safety. 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.

Regulation is a key issue for farm businesses who regularly report (see NFU Confidence Survey http://www.nfuonline.com/Our-work/Economics-and-International/News/Weather-and-costs-cast-cloud-on-confidence/) that administrative burdens and bureaucracy are stifling their ability to become more productive and competitive. Much of the regulation that impacts on farmers' and growers' businesses stems from policy and legislation set in Brussels, so this review is an important opportunity to re-establish clear boundaries between domestic and EU competency.

The Government's review should recognise that farmers and growers operate in a single market with the principles of equal access at its heart. This is especially important for primary food producers as the European single market in food is the bedrock of the European Union. There is a persuasive logic to establishing common rules that remove barriers to the free movement of goods and services within this single market and facilitate fair competition. However these common rules should apply the principles of better regulation (see the Better Regulation Task Force principles).

Questions in relation to food safety (including feed safety), labelling, food quality and compositional standards

1. What evidence is there that EU action to create the single market for food has been advantageous or disadvantageous for the UK?

2. What evidence is there that the national interest in terms of trade is best served by action at the EU level, national level or by action being taken at a different level, e.g. in Codex Alimentarius?

Considering the EU is a major market for UK farmers' produce, and given the existence of the single market, we consider that harmonised legislation at the EU level is most appropriate for ensuring food safety. However, implementation or enforcement at the national level that takes into account national circumstances must meet the spirit of the legislation. For food businesses to trade on a level footing, the practical implementation must be common across the free trade area. At the global level, our limited experience suggests that Codex involves a highly bureaucratic process that takes a long time to produce very broad standards.

3. Has EU action in food law provided the right balance between protecting the consumer and protecting the interests and reputation of UK businesses?

Overall, we believe the balance has been right. However, it is critical for both consumer protection and competitiveness that the enforcement of food law is as common as possible across the EU; that it is periodically reviewed to take account of changing evidence and commercial/market activity; and that it is firmly science- and risk-based. For example, we had concerns that because there was existing on-farm dairy hygiene inspection in the UK, the FSA was not willing to match the risk to the controls as with other primary production sectors.

The general principles under General Food Law are generally appropriate, although there is significant potential for the precautionary principle to be misused as a justification to demand, for example, lower levels of certain food contaminants than are necessary for protecting health. Also, it is important that the FIR does in practice enable the General Food Law provision to not mislead the consumer to be

met. For example, we believe that not extending mandatory origin labelling to processed meat and dairy products means consumers could be misled by the way such products are presented for sale. Where there are overlapping areas of legislation there must not be contradictions inconsistency.

The establishment of EFSA has been positive, although there are clearly significant pressures on resources for the work they have to do leading to huge backlogs e.g. for authorisations. It can also be problematic that EFSA has no role in risk management and its advice is constantly questioned by other EU institutions and members states for political reasons.

Legislators at all levels must ensure they understand how the industry sectors operate in practice and apply this from the start of the process. Legialislation based on principles, with flexibility built in to enable practical implementation, is most appropriate

In terms of feed law, generally, the balance between protecting the health of the consumer and preventing monetary cost and reputational damage to industry, is at the right level. The recent dioxin incidents in the Republic of Ireland and Germany demonstrate the need for robust legislation and it is also appropriate that this is regulated on a European level due to the ubiquitous nature of the feed chain.

EU Regulation 183/2005 on feed hygiene requires most feed businesses involved in making, marketing or using feed to be registered or approved. This legislation is generally appropriate. However, the requirement of farmers to implement HACCP plans when undertaking on-farm mixing of feed additives is one area where we consider that the measure is disproportionate to the risk posed.

Regulation 178/2002 on the general principles of food law (which includes feed law), is also felt to be appropriate if regulated at a European level to ensure harmonisation of the open market. However, there is a need to ensure that official controls at all entry points for imported feeds into the EU are consistently enforced, although we have no evidence that this is a particular issue at this stage.

For feed consituent materials, we consider that it is also appropriate that this is regulated at a European level. We consider that EFSA provides generally good information which helps to ensure that decisions are based upon scientific knowledge. However, the emphasis on the precautionary principle in legislation could mean there is a tendency to over-restrict certain substances on political grounds. Centralised regulation may be disadvantageous where UK wishes to permit feed materials in future, which may otherwise be restricted by the EU on these political grounds. This could have an impact on UK agriculture if the EU passes inappropriate or over cautious limits for feed for livestock sectors where the UK has a majority market, such as those feed materials required for upland sheep..

4. Is there evidence that legislating for consumer protection at the European level has been advantageous or disadvantageous to the UK national interest?

The simplification and harmonisation of the food hygiene regulation package 2004, and the responsibility being on the food business operator, was positive for the UK in ensuring the same rules for all businesses in the single market, given that UK farmers directly trade with and compete with EU farmers.

It is important that voluntary schemes that include hygiene standards, such as Red Tractor, continue to be acceptable under EU law to enable point of difference and competitive advantage within the market, and to give the basis for targeted enforcement. However, the minimum standards must still ensure safety and transparency for those consumers purchasing 'economy' lines.

5. What evidence is there that the principle of science based food legislation at the European level has served the national interest well? Are there any concerns about the principle and its application? Are there any examples of where it was not followed?

It is certainly positive for the UK that food legislation is meant to be science-based. It does require the science to be available on which to base decisions, and for the political/emotive nature of decision making to be kept to a minimum and carefully managed. The rules must fit the risk so that unecessary cost to authorities, industry and consumers is avoided.

The insistence by the FSA and DHI (from about 2007) that on-farm dairy hygiene inspection should continue unchanged after the food hygiene package came in, as mentioned in question 3, is an example of risk/science-based legislation principles not being followed. We were given no evidence that there was a greater food safety risk on dairy farms compared to other sectors so the recognition of Red Tractor membership as an indication of lower risk should have simply been applied equally.

Meat hygiene inspections have been subject to considerable scrutiny and change in recent years. It is essential these are risk based and proportionate, given the cost of these and the need to target inspections to ensure consumer protection.

The insistence for ever lower levels of certain elements and contaminants e.g. nitrates in leafy vegetables, often simply because testing methods improve, is not beneficial to industry or consumers and is not risk-based.

It is essential that 'risk' and not 'hazard' is the basis for legislation. Although not covered in this review, the change to a hazard based approach for pesticide legislation is extremely disadvantageous for the UK. We are very concerned that this may set a precedent for other emotive and political areas of competence. Please refer to the NFU submission to the Macdonald review for more detail (see response from Lee Osborne, NFU).

There must be regular review built into the process, including consideration of new knowledge and changes to the market and business activities. Historical arrangements must not be kept just because they already exist: For example, specific beef labelling rules set following BSE should be brought in to the new FIR rather than kept separate.

Our general experience is that UK government has a high-level commitment to and appreciation of scientific evidence as a vital factor in policy making. The quality of scientific advice through CSAs and advisory committees is generally encouraging. We can therefore have more confidence that UK competence would lead to science-based principles being followed than in the EU. The fact that the

Commission has only recently appointed a Chief Scientific Adviser, and that her advice does not seem to be having much influence on entrenched views in areas such as pesticides and GM, is symbolic of our concerns about unscientific and highly politicised decision making at EU level.

It is important that legislation does not stifle innovation and new product development, and it must take into account these developments both by EU businesses and globally. The politicisation of GM law and its poor operation in the EU has certainly led to companies withdrawing R&D facilities and discontinuing development of products for the EU market e.g. BASF.

In terms of the process of policy-making and legislating, there is a tendency at both UK and EU level for policy-based science rather than science-based policy i.e. deciding the policy and then looking for the science to back it up.

6. What impact has the EU taking on the representational role at the Codex Alimentarius Commission had on the UK national interest?

It has to be positive that the EU is a strong negotiating bloc at Codex. However, the bureaucratic and time-consuming nature of Codex processes will represent significant cost for EU and national institutions. Such cost should be commensurate with the value to the EU and UK interest. It is important that food imported from third countries is as safe as that produced in the UK and that the EU has the ability to cease imports if there is a problem.

7. How might the UK benefit from the EU taking more or less action on food law in the future?

In food law we see regulation as preferable to directive, given the single market. So harmonisation is beneficial but regulations must be based on principles rather than prescription to enable enough flexibility for workable national implementation and enforcement. At each review of existing legislation and for each new area policy makers should consider whether EU rules are necessary or whether national competence or even volunatary market-based actions might be sufficient to achieve the objective.

8. Could action be undertaken differently e.g. are there ways of improving EU food law?

Implementation and enforcement are key to ensuring the objectives of food law are achieved, consumers are protected and that food businesses in the single market can operate on a level playing fields. The process of drafting and negotiating EU laws can be very lengthy and convoluted, with national politics, personal agendas and protecting positions often getting in the way of truly science- and risk-based legislation. The make-up of committees and nationality or personal views of rapporteurs can make a significant difference to the process and outcome.

Better coordination of the timescales of national reviews of delivery or implementation with changes to EU legislation would make it easier for stakeholders to understand and get involved with the process. The OFFC delivery exercise in the UK and the review of OFFC legislation currently ongoing present a confusing picture for those asked to input.

From the very earliest stages and right through the legislative process, the UK must argue strongly for the national interest. On a number of occasions we have been told by negotiating officials that they have limited influence as they are only one of 27 member states.

There should certainly be a provision for industry to demonstrate lower risk or indicate compliance through adherence to voluntary standards i.e. the concept of earned recognition.

8. What future challenges or opportunities might we face in the area of food law and what impact might these have on the national interest?

The food supply chain is very complex and it can take scandals such as horsemeat in beef products, Sudan I or e coli in bean sprouts to highlight how food moves around the EU and world. Despite some trends towards 'clean label' products, multiple ingredient processed foods are likely to remain a significant part of the market. Novel ingredients and processes will continue to be used and may need a reassessment of existing rules.

Current review of official controls legislation is likely to lead to significant change in how food, plant health and animal health legislation works in practice. The impact of charging for official controls could have implications for UK competitiveness, depending on national implementation.

New members states may have an impact on food supply chains as they enter the single market and become involved in EU decision making. It is likely there will be considerable differences in current practices, culture and priorities in these countries. They may also represent new markets for UK products.

The impacts of stresses such as weather, economic difficulties and politics will continue and the potential for food fraud, accidental contamination and supply constraints under such stresses will need to be considered in food law.

9. Are there any general points you wish to make which are not captured above?