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**HEALTH AND SAFETY EXECUTIVE (HSE)
AGRICULTURE INDUSTRY ADVISORY COMMITTEE (AIAC)**

Child Safety on Farms – Application of Health and Safety law.

Summary

- 1) At the meeting on 6 June 2018 AIAC members discussed a closed paper on child safety (Chairman's Thought Piece AIAC 18/06/05) and considered the application of health and safety law to the issue of children on farms. AIAC agreed that strict interpretation of legislation should conclude that children should not be involved in farm work activities and should be kept away from the workplace. HSE agreed to set out a more succinct proposal of the argument to challenge attitudes towards the presence of children on farms in British agriculture.
- 2) At around the same time the farm safety partnership (FSP) was starting work on their 2018/19 programme of work and intended to initiate activities with a focus on child safety over the summer period. This was the first step in this year's activities to change attitudes and behaviours on farms in order to achieve the FSP's April 2018 intention of reducing the fatal injury rate in agriculture by 50% within five years.
- 3) The key agreement of AIAC was a need to ensure that farms are seen as a workplace, differentiated from the farm house and garden as a home, and that children should be excluded from the workplace.
- 4) HSE's intervention strategy for agriculture underlines the need for strong industry ownership of farm safety, to change attitudes and behaviours to reduce the number of people killed on British farms. The strategy sets out to accelerate changes in attitudes and recognises that this will require some strong and consistent messages.

Background

- 5) For clarity this paper uses the common definitions of child and young person as:
 - a. Young person - anyone under 18
 - b. Child - anyone who has not yet reached minimum school leaving age (MSLA). Pupils will reach the MSLA in the school year in which they turn 16.
- 6) Specific health and safety requirements are imposed by the Health and Safety at Work Act 1974 (HSWA), the Management of Health and Safety at Work Regulations 1999 and in addition in agriculture, The Prevention of Accidents to Children in Agriculture Regulations 1998. The key provisions are set out in Appendix 1 and discussed below.
- 7) HSWA places duties in relation to those at work (HSWA, Section 2) and those affected by work (HSWA, Section 3). For the purpose of this paper and discussing protection of children both of these Sections are relevant and will have much the same application. For strict interpretation of being involved in work activities the Children and Young Persons Act

1933 states that a person who assists in a trade or occupation carried on for profit is considered as employed even though he or she may receive no payment.

Discussion

8) The Health and Safety at Work Act sets out a clear duty to ensure, so far as is reasonably practicable, the health and safety at work of employees and to protect those not at work who might be affected by the undertaking. It sets a high legal standard for compliance.

9) The Management of Health and Safety at Work Regulations (MHSWR) require assessment and management of risks in or from a work activity, the regulations also look specifically at ensuring that young people are not exposed to risk due to: lack of experience, being unaware of existing or potential risks and/or lack of maturity

10) The Prevention of Accidents to Children in Agriculture Regulations 1998 (PACAR) carry the remaining requirements of the Agriculture (Avoidance of Accidents to Children) Regulations 1958. These retain the specific prohibition to prevent children under the age of 13 driving or riding on certain classes of agricultural vehicle or machine. Other parts of the 1958 legislation were repealed as they were covered by newer legislative requirements.

11) Whilst PACAR expressly prohibits under 13s from driving or riding on machines such as tractors, self-propelled machines and trailed implements there are no express permissions that 'allow' children of 13 years and over to carry out any particular activities. The other relevant goal setting legislation (HSWA and MHSWR) continue to apply and determine the standards required.

12) In support of legislation, HSE guidance sets out application of the law and ways in which the industry can comply with the law. Current guidance is based primarily around PACAR (and the preceding regulations) and reflects the industry position that that should now be considered to be dated and out of step with other industries. Guidance produced by both HSE and the industry is therefore influenced by the older legislation and what was allowed in years gone by. It effectively perpetuates the long standing cultural and behavioural attitude that it is acceptable to have children in the workplace and as a result is having an impact on the prevention of injury to children and should be withdrawn or modified.

13) At the June 2018 meeting AIAC acknowledged that in all other sectors of work, and in all industries with comparable risk profiles to agriculture, children have been expressly prohibited from workplaces for over 100 years (Children and Young Persons Act 1908 and subsequent legislation). AIAC recognised that the exclusion of agriculture from that legislation was based on historic needs. This was further echoed by the need to reduce the toll of death and injury to children on farms with the 1958 legislation. Again, AIAC recognised that the legislative framework for agricultural safety in the 1950s and 1960s was far removed from modern farming activities.

14) AIAC agreed some attitudes and behaviours around children on farms date back to Victorian and Edwardian times, and that society's expectations on the controls to protect vulnerable people and children have moved forward significantly. AIAC agreed that a straightforward interpretation of health and safety legislation would conclude that it would be reasonably practicable to ensure the safety of the child by keeping them out of working areas of the farm. AIAC also acknowledged that farming businesses do not have a financial reliance on the children to play a part in the work as they may have done in bygone times. The arguments for involving children in work activities are not strong either in terms of the farm's financial viability or farm succession.

15) AIAC also strongly agreed that, even though child care in some rural areas was not straightforward, there was no justifiable argument for children being taken into the workplace as a substitute for adequate child care arrangements. The practical and financial cost of child care or the provision of a safe and secure play area would not be disproportionate to preventing the risks that farming poses to children in the workplace.

16) AIAC discussion also considered circumstances akin to “work experience” in which it may be desirable for children to be exposed to work situations on farms and how that may be accommodated. The discussions have also been rehearsed in the (England)FSP and distilled into simple messages around the need for direct supervision by someone that is not directly involved in the work activity. (Appendix 2 and 3)

17) MHSWR acknowledges that from time to time young persons/children may be involved in work activities (across all industries) notwithstanding specific prohibitions that stem from other legislation. The regulations give due cognisance to children’s vulnerability and state that they must never carry out work that involving the following risks whether employed or under training or undertaking work experience:

- Tasks beyond their physical or psychological capacity
- Involves harmful exposure to substances that are toxic, can cause cancer, can damage or harm an unborn child, or can chronically affect human health in any other way
- involves **harmful** exposure to radiation
- involves risk of accidents **that cannot reasonably be recognised or avoided** due to their insufficient attention to safety or lack of experience or training
- has a risk to health from **extreme** cold, heat, noise or vibration

18) In an agriculture setting, for all but the simplest of tasks, children on the farm will be at risk of accidents and won’t have enough experience training or attention to safety to remain safe. It is difficult to conclude from any risk assessment, required by the Management of Health and Safety Regulations that it is appropriate for children to be present on the farm unless fully supervised by someone not involved in work and where they observe activities from a safe distance in a safe location.

19) HSE therefore proposes that guidance on applying health and safety legislation to farms better reflects this position, and the messages being promoted by the FSP. It should clearly show how the required hierarchy of control starts with ‘avoid or eliminate’ the risk. In the case of children, this would mean the starting point should be prevention of children being involved in farming activities and kept out of the farm work areas. Additional measures currently set out in guidance, such as removing ladders, fencing lagoons and removing propped up articles, are still necessary but should only be seen as ‘mitigation’ in the event of a child straying onto the farm unexpectedly.

20) We should be clear that the amended guidance will clarify expectations that children up to minimum school leaving age, must not be employed (engaged in work) or assist with agricultural operations and must be kept out of work areas. The guidance will be drafted to take account of the value of ‘work experience’ and how this can be done safely and with the appropriate level of control. Such situations should be considered a controlled exception and must be kept under constant review.

Recommendation

21) That AIAC support the proposal to issue straightforward messaging and guidance to make the legal position relating to children on farms clear: i.e. in common with other industries, children must not be on the working farm and sufficient physical measures and other controls must be taken to ensure they don’t stray into working areas.

22) That AIAC members continue to promote the child safety messages set by the Farm Safety Partnership while new guidance is drafted, and the industry is more widely consulted while this is developed.

AIAC action

23) AIAC members are asked to consider how these messages can be used to change attitudes and behaviours on farms and contribute to the FSP goal of halving the death rate within five years. These messages should reflect the broadest consideration of child safety to show the industry adapting to protect children and establish this as the norm in modern professional farming.

24) AIAC should ensure that the older approach to piecemeal isolation of specific risks to children is replaced by a firm understanding of the legal obligations of HSWA and MHSWR and advocate an industry wide approach to keeping children out of workplaces.

25) AIAC members are invited to submit any further thoughts and comments, beyond the meeting discussion, to HSE to address both the approach to child safety and how these messages can best be communicated.

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Appendix 1

Law

The Health and Safety at Work etc Act 1974

Section 2

General duties of employers to their employees.

(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular—

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

Section 3

General duties of employers and self-employed to persons other than their employees.

(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person [who conducts an undertaking of a prescribed description and Agriculture is one of these] to conduct [the undertaking] in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

The Management of Health and Safety at Work Regulations 1999

Definitions - "young person" means any person who has not attained the age of eighteen and this therefore includes children. The Regulations revoked the Health and Safety (Young Persons) Regulations 1997

Regulation 19.—(1) Every employer shall ensure that young persons employed by him are protected at work from any risks to their health or safety which are a consequence of their lack of experience, or absence of awareness of existing or potential risks or the fact that young persons have not yet fully matured.

(2) Subject to paragraph (3), no employer shall employ a young person for work—

(a) which is beyond his physical or psychological capacity;

(b) involving harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health;

(c) involving harmful exposure to radiation;

(d) involving the risk of accidents which it may reasonably be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or

(e) in which there is a risk to health from—

(i) extreme cold or heat;

(ii) noise; or

(iii) vibration,

and in determining whether work will involve harm or risks for the purposes of this paragraph, regard shall be had to the results of the assessment. [This means a risk assessment to identify the hazards, the risks that arise from those and suitable control measures that eliminate or reduce the risk to acceptable levels.]

(3) Nothing in paragraph (2) shall prevent the employment of a young person who is no longer a child for work—

(a) where it is necessary for his training;

(b) where the young person will be supervised by a competent person; and

(c) where any risk will be reduced to the lowest level that is reasonably practicable.

The Prevention of Accidents to Children in Agriculture Regulations 1998

The Regulations prohibit the riding by a child on certain classes of vehicle or machine used in agricultural operations or going to and from the site of such operations, and the riding on agricultural implements while towed or propelled, or on animal-drawn rollers.

2.—(1) In these Regulations, unless the context otherwise requires—

“agricultural” means relating to agriculture, which includes dairy-farming, the production of consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds;

“child” means a child who is under the age of 13 years;

“trailer” means a vehicle used as a trailer whether or not designed to be so used, but does not include a vehicle drawn by an animal.

(2) In these Regulations any reference to a tractor, machine, trailer, implement or other vehicle includes any drawbar, tow bar or coupling which may be used for the purpose of towing or propelling.

Prohibition on riding on vehicles, machines or implements

3.—(1) Subject to paragraph (2) of this regulation no person shall cause or permit a child to ride on a—

- (a) tractor;
 - (b) self-propelled agricultural machine;
 - (c) trailer;
 - (d) machine or agricultural implement mounted in whole or in part on, or towed or propelled by a tractor or other vehicle;
 - (e) machine or agricultural implement drawn by an animal,
- while it is being used in the course of agricultural operations or is going to or from the site of such operations.

(2) Paragraph (1) of this regulation shall not apply to a trailer in circumstances where the child rides—

- (a) on its floor; or
- (b) on a load carried by it,

and where it possesses adequate means for preventing the child's falling from it.
Prohibition on driving vehicles and machines

4. No person shall cause or permit a child to drive a tractor, or self-propelled vehicle or machine while it is being used in the course of agricultural operations or is going to or from the site of such operations.
Defence

Employment legislation

Employment of children is tightly controlled and governed by legislation and byelaws see <https://www.gov.uk/government/publications/guidance-on-the-employment-of-children>. In general, there are restrictions on the hours of work and type of work as well as minimum age requirements. These ensure children are protected and only given 'light' work that is appropriate for their age and maturity.

In relation to agricultural or horticultural work, some Authorities' byelaws may still appear to allow this type of work without restriction. Other authorities' byelaws may allow light agricultural or horticultural work on an occasional basis under the direct supervision of the child's parent. In addition, some authorities' byelaws may still state that they allow the employment of children aged 10 or over on an occasional basis in light agricultural or horticultural work under the direct supervision of the child's parent. However, following a change in the law in 2000, which had the effect of amending many of these historic byelaws, all employment of children under 13 in any type of work is now illegal

Appendix 2: Child safety messages agreed by the Farm Safety Partnership for promulgation to the industry:

Safety Messages for Children to be actively communicated

1. Children should not be allowed in the farm work place (and for young children they should enjoy outdoor space in a secure fenced area).
2. Any access to the work area by children under 16, for example for education, or knowledge experience, should be planned and fully supervised by an adult not engaged in any work activity.
3. Children under the age of 13 years are specifically prohibited from driving or riding on any agricultural machine.

Appendix 3: FSP Board considered that point 3 may prompt questions about children over 13 and prepared the following simplified guidance to use in response:

Safety and Older Children

The law does not strictly prohibit children over the age of 13 years from driving some agriculture machines and do some work activities on farm but there shouldn't be an automatic assumption that just because they are over 13 they can. Children between 13 and 16 years are still CHILDREN. They must be protected. They cannot carry out the whole range of work activities performed by adults.

Law

- There is a legal responsibility to assess all risks to the health and safety of children on farm and protect them from harm at all times
- By law any work must be light work and must not be inherently dangerous – this is the rule for children helping out on the family farm and children employed and paid for their work
- Children employed on farm must have a permit from the local authority

Guidance on your legal responsibilities is available [here](#).

Guidance on young workers and the law is available [here](#).

Risk

No two children are the same in their physical and mental maturity and capabilities. This means that what a child is allowed to do or not do must be assessed on an individual basis. The law says that children should not be allowed to perform work beyond their physical or psychological capabilities or which is inherently dangerous. Many farm activities fall into the inherently dangerous category. Risk assessments for the whole of the work place which take into account an individual child's characteristics must be completed. A one size fits all approach is not acceptable.

Guidance on what a child between the ages of 13 and 16 years may be able to do and most importantly cannot do on farm is available on the HSE web site [here](#).

Remember the work children are allowed to carry out must be individually assessed and will differ from child to child according to individual capabilities.

Responsibility

Everyone in a farm work place has a responsibility to protect children who are vulnerable because of their age and physical and mental immaturity. Every employer is required by law to manage risks: Children must be kept away from significant risk and where risks exist they must be very carefully managed and controlled. Normally this means children (under 16) are not in the workplace. If they are taken in to the workplace they must be fully supervised and if given tasks these must be simple and appropriate for their maturity and capability.

Guidance on managing risk is available [here](#).

As well as a legal responsibility to protect children, there is a moral responsibility to protect and nurture children.