



Department
for Environment
Food & Rural Affairs

Memorandum of Understanding (Local Authorities)

Movement Assistance Scheme (MAS)

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The purpose of the memorandum of understanding set out below ("**MoU**") is to document the arrangement between the Secretary of State for Environment Food & Rural Affairs ("**Defra**") and the Local Authority (as defined in paragraph 2 below) (each a "**Party**" and together the "**Parties**") in respect of the MAS Scheme defined in paragraph 2 below. Capitalised terms used in this MoU have the meaning ascribed to them in this paragraph or in paragraph 2 below.

1. Background

- 1.1 The Local Authority acts as a local certifier on behalf of the competent authority, the Food Standards Agency, in respect of various certifications, including the Certifications.
- 1.2 As part of the UK Government's effort to facilitate continued trade within the United Kingdom this MoU contains the relevant provisions for the purpose of the Local Authority receiving remuneration under the MAS Scheme in respect of its role as a provider of Certifications. The MAS Scheme is administered by APHA on behalf of Defra, and so references to "Defra" in this MoU will, as the context requires, be understood to mean Defra acting through APHA for the purposes of this MoU.
- 1.3 Defra and the Local Authority intend that the Local Authority will assess and provide Certification for Traders who require such Certification in respect of their commercial activities. The Local Authority wishes to support Defra 's approach to Certification on a collaborative basis.
- 1.4 The Local Authority shall provide the Certifications in accordance with the terms of this MoU and this MoU applies to the payment of the Charges by Defra in respect of the Certifications.
- 1.5 This MoU establishes the responsibilities of the Parties and the general principles for their cooperation and collaboration with regard to the MAS Scheme.
- 1.6 This MoU is not intended to be legally binding or to create legal obligations or legal rights between the Parties. However, the Parties intend to honour all their obligations as described in this MoU.
- 1.7 By submitting its invoice for payment of Charges in respect of one or more Certifications, the Local Authority is considered to have accepted the provisions of this MoU. The provisions of this MoU shall be considered repeated each time the Local Authority submits an invoice for payment of Charges under the MAS Scheme.
- 1.8 All terms and conditions applicable to the Local Authority's use of EHCO are unaffected by this MoU and shall continue to apply.

2. Definitions and Interpretation

2.1 The following definitions apply in this MoU:

Term	Description
"APHA"	means the Animal and Plant Health Agency;
"Certification"	means the provision of any of the following certifications by the Local Authority to a Trader in respect of the movement by that Trader of goods and/or products requiring such certification(s), from Great Britain to Northern Ireland: (a) Export Health Certificates (EHCs) dated from and including 1 January 2021; (b) High Risk Food Not of Animal Origin health certificates (HRFNAOs) dated from and including 1 April 2021;
"Certification Requirement"	means the requirement for Certification as communicated to the Local Authority by a Trader or (in the case of EHC Certifications) via EHCO;
"Charges"	means the charges for Certifications invoiced by the Local Authority to Defra in accordance with paragraph 4 of this MoU;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which: (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;
"Data Protection Legislation"	means: (a) the UK GDPR as amended from time to time; (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (c) all applicable law about the processing of Personal Data and privacy;

"Data Subject", "Personal Data", "Personal Data Breach" and "Processor"	have the meanings given in the Data Protection Legislation;
"EHC Certification"	means Certification falling under limb (a) of the definition of Certification;
"EHCO"	means Export Health Certificate Online, the digital online application service used by Defra to process the requirements of Traders for EHC Certification through: (a) the completion by a Trader of an online application; (b) provision of the application to the Local Authority; and (c) the completion of a Certification by the Local Authority;
"HRFNAO Certification"	means Certification falling under limb (b) of the definition of Certification;
"Local Authority"	means the UK local authority submitting an invoice for Charges in respect of one or more Certifications carried out pursuant to a Certification Requirement;
"MAS Scheme"	means the charging remuneration scheme implemented by Defra to cover the direct costs Traders would otherwise have incurred in respect of Certifications;
"Purchase Order Number"	means Defra's unique number relating to any claims for Charges to be made by the Local Authority in accordance with this MoU;
"State Aid Rules"	means those rules embodied in Articles 107-109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01) (" EC Rules ") and any laws substantially amending, replacing or superseding the EC Rules following the United Kingdom's exit from the European Union (and "State Aid" shall be construed accordingly);
"Trader"	means an individual, a partnership, a corporation, a limited or unlimited liability company, a trust or an unincorporated organisation that requires Certification in respect of its commercial activities; and

"UK GDPR"

means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679), as transposed into UK national law by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

2.2 In this MoU, unless the context otherwise requires:

2.2.1 references to this MoU must be construed as a reference to this MoU as varied or amended in accordance with its terms;

2.2.2 reference to a person includes a legal entity; and

2.2.3 words importing a gender include all genders and words importing the singular include the plural and vice versa.

3. Local Authority Responsibilities

3.1 In respect of the Certifications for which the Local Authority is seeking payment by Defra, the Local Authority will:

3.1.1 use staff who are suitably skilled and experienced to perform the tasks assigned to them, and ensure that such staff hold all professional qualifications required in order to properly fulfil the relevant Certification Requirement and provide the relevant Certification;

3.1.2 use its best endeavours to verify that: (i) the information received from each Trader is accurate and complete; and (ii) Northern Ireland is the final destination of the goods and/or products in question under each Certification;

3.1.3 perform and issue each and every Certification in accordance with the requirements set out in the relevant Certification Requirement; and

3.1.4 comply with all applicable laws, regulations and requirements of the relevant Certification.

3.2 The Local Authority shall seek written consent from Defra before using any third party to perform any of the activities under this MoU, which Defra shall have the right to grant or deny. The Local Authority shall be responsible for the acts and omissions of any such third parties as though those acts and omissions were its own.

4. Charges, Payment and Recovery of Sums Due

4.1 Subject to paragraph 4.2, the Local Authority shall be entitled to invoice Defra in respect of its Charges for the Certifications as follows:

4.1.1 in respect of all EHC Certifications other than those referred to in

paragraph 4.1.2 below, the Local Authority may charge up to a maximum amount of £150 per EHC Certification with an additional amount up to a maximum of £34 per EHC Certification where the Local Authority was required to carry out any blood test(s) and/or laboratory test(s) as part of the Certification Requirement;

4.1.2 for EHC Certifications provided in respect of equines, the Local Authority shall be entitled to charge up to a maximum amount of £500 per EHC Certification; or

4.1.3 for HRFNAO Certifications, no maximum amount will apply.

4.2 The Charges stated in paragraph 4.1 above:

4.2.1 represent the maximum value payable to the Local Authority in respect of each Certification, and the Local Authority shall, in all circumstances, invoice Defra at its then-current prevailing rate for the relevant Certification (such rate to be notified and kept updated by the Local Authority to Defra in writing or otherwise made available at all times), which the Local Authority acknowledges may be lower than the maximum amount claimable as stated in paragraph 4.1 above; and

4.2.2 shall be the full and exclusive remuneration of the Local Authority in respect of the provision of the Certifications. Unless otherwise agreed in writing by Defra, the Charges shall include every cost and expense of the Local Authority directly or indirectly incurred in connection with the provision of the Certifications, and the Local Authority shall, in no circumstances, issue the Trader with any invoice, bill or demand of any kind in respect of the Certifications which it has charged to Defra.

4.3 All amounts stated are exclusive of VAT which (if applicable) shall be charged by the Local Authority at the prevailing rate, and paid by Defra following the receipt of a valid VAT invoice.

4.4 The Local Authority shall invoice Defra in accordance with Defra's instructions provided with the relevant Purchase Order Number and no less frequently than once per month in respect of all Certifications carried out by the Local Authority during that invoice period. Each invoice shall include such supporting information required by Defra to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Certifications carried out in the invoice period including all relevant certificate numbers and, where applicable, the amount of travel time charged (including details of the applicable hourly rate). Defra reserves the right to request further supporting information as it may require from the Local Authority in order to verify the validity of any invoice.

4.5 Defra shall pay the Local Authority the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. For the avoidance of doubt neither APHA or Defra shall be required to make payment in respect of any invoice which is found to be invalid. Defra may withhold or reduce payments in the event of unsatisfactory performance.

4.6 If there is a dispute between the Parties as to the amount invoiced, Defra shall pay the undisputed amount.

5. Commencement and Duration

- 5.1 The provisions of this MoU are applicable from 1 January 2021 and shall continue until they are terminated by Defra in accordance with this MoU. For the avoidance of doubt, HRFNAO Certification is included within the scope of this MoU from 1 April 2021.
- 5.2 Defra may terminate the provisions of this MoU at any time and for any reason, with or without providing prior notice to the Local Authority, and shall incur no liability to the Local Authority in doing so.

6. Intellectual Property Rights

- 6.1 All intellectual property rights in any materials provided by Defra to the Local Authority for the purposes of this MoU shall remain the property of Defra but Defra hereby grants the Local Authority a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the MoU for the sole purpose of enabling the Local Authority to perform its obligations under this MoU.
- 6.2 All intellectual property rights in any materials created or developed by the Local Authority pursuant to this MoU shall vest in the Local Authority. If, and to the extent, that any intellectual property rights in such materials vest in Defra by operation of law, Defra hereby assigns to the Local Authority by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

7. Governance and Records

- 7.1 The Parties may review the provisions of this MoU from time to time and whenever substantial changes occur to the policies, external relationships and structures of the Parties concerned. Defra reserves the absolute right, at its sole discretion, to vary the MAS Scheme and the provisions set out in this MoU in any way and at any time.
- 7.2 Each Party shall keep and maintain until six years after termination of the provisions set out in this MoU full and accurate records of the activities in relation to the MAS Scheme and all sums received in respect thereof. Each Party shall on request afford the requesting Party or their representatives such access to those records as may be requested in connection with the MoU or as otherwise required in connection with audit requirements.

8. Confidentiality, Transparency and Publicity and Freedom of Information

- 8.1 Each of the Parties understands and acknowledges that it may receive or become aware of Confidential Information of the other Party (which may include information where the other Party owes a duty of confidence to a third party) whether in the course of the performance of the activities under this MoU or otherwise.
- 8.2 Except to the extent set out in this paragraph 8 or where disclosure is expressly permitted elsewhere in this MoU, each Party shall treat the other Party's Confidential Information as confidential and safeguard it accordingly (which shall include complying with any protective markings on documents and instructions supplied by the other Party). In particular, neither Party shall do anything that may place the other in breach of a duty of confidence owed to a third party. A Party in receipt of Confidential Information from the other Party shall not disclose such Confidential Information to any non-Crown Body without the consent of the other Party.
- 8.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000, the content of this MoU is not Confidential Information and the Local Authority hereby gives its consent for the Authority to publish this MoU in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the Freedom of Information Act 2000 redacted) including any changes to the MoU agreed from time to time. Defra may consult with the Local Authority to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this MoU is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000.
- 8.4 Defra shall be responsible for handling media inquiries relating to the MAS Scheme. The Local Authority shall not, and shall take reasonable steps to ensure that any Local Authority staff shall not, make any press announcement or publicise this MoU or any part of this MoU in any way, except with the prior written consent of Defra.
- 8.5 Each Party shall provide to the other Party any information relevant to the MAS Scheme that may be reasonably requested by the other, subject to any confidentiality constraints, safeguards and statutory rules on disclosure. Each Party shall consult the other Party before making to any third party any disclosures of information under the Freedom of Information Act 2000.

9. Protection of Personal Data and Security of Data

- 9.1 It is the intention and understanding of the Parties that:
- 9.1.1 no Personal Data shall be processed by either Party as Processor on behalf of the other in the performance of this MoU;
- 9.1.2 obligations in respect of Trader's Personal Data shall be covered by the terms of use of EHCO, where applicable; and
- 9.1.3 each Party shall be a separate and independent data controller in respect of the Personal Data which it processes in the performance of this MoU. In carrying out such processing each Party shall comply with the obligations applicable to it under the Data Protection Legislation, including without limitation:
- a) ensuring that it has identified appropriate legal bases for its processing under Article 6, and if required, Article 9, of the UK GDPR (or as otherwise required by the Data Protection Legislation);
 - b) providing appropriate information to Data Subjects about the processing of their Personal Data that complies with the requirements of Articles 12-14 (as applicable) of the UK GDPR (or as otherwise required by the Data Protection Legislation); and
 - c) taking all measures required pursuant to Article 32 of the UK GDPR (or as otherwise required by the Data Protection Legislation) to ensure the security of processing of the Personal Data.
- 9.2 Each Party shall only process Personal Data received from the other for the purposes of performing this MoU.
- 9.3 If either Party becomes aware of a Personal Data Breach affecting the Personal Data it shall notify the other Party without undue delay and provide such information and assistance as the other Party may reasonably require.
- 9.4 Each Party shall provide reasonable assistance as may be requested by the other Party in connection with the requesting Party's obligation to:
- 9.4.1 respond to any Data Subject rights laid down in the UK GDPR (or as otherwise required by the Data Protection Legislation); and
- 9.4.2 comply with any assessment, enquiry, notice or investigation under any Data Protection Legislation in respect of the Personal Data or this paragraph 9.
- 9.5 In the event that the Local Authority is to act as a Processor on behalf of Defra the Parties shall, as soon as practicable, enter into a data processing agreement in the form reasonably required by Defra and which is compliant with the

requirements of Article 28 of the UK GDPR or as otherwise required in accordance with the Data Protection Legislation.

10. Compliance

- 10.1 The Parties shall comply with all applicable laws in carrying out the activities pursuant to this MoU in relation to the MAS Scheme and perform such activities using reasonable skill and care.
- 10.2 The Parties acknowledge that it is Defra's responsibility to comply with the State Aid Rules and that Defra shall not be required to fund or deliver anything pursuant to this MoU which would be in breach of such requirements.
- 10.3 The Local Authority shall provide such assistance, information and/or support as Defra may reasonably require from time to time in connection with Defra's responsibilities pursuant to the State Aid Rules as may, in Defra's view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require the Local Authority to provide legal advice subject to privilege to Defra, and the Local Authority shall be given adequate time to provide the information.
- 10.4 If the Local Authority is deemed by a court of competent jurisdiction to be a beneficiary of unlawful State Aid, then, unless an earlier date has been specified by that court, the Local Authority shall within two months of a written notice from Defra at any time (where such notice shall include a copy of the relevant court judgment) repay an amount equivalent to the unlawful and incompatible aid of which the Local Authority is beneficiary (plus interest, as applicable) which the court requires to be repaid pursuant to its decision to Defra, provided that where the court's decision does not specify the precise amount of unlawful State Aid to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.
- 10.5 If a court of competent jurisdiction finds the Local Authority to be the beneficiary in breach of State Aid Rules in connection with this MoU, the Local Authority acknowledges that paragraph 10.4 shall apply regardless of whether:
 - 10.5.1 the Local Authority is in default and irrespective of the Local Authority's financial circumstances; and
 - 10.5.2 in Defra's view, the State Aid granted in connection with this MoU complies with the State Aid Rules.

11. Dispute Resolution

Any dispute between the Parties arising out of or in connection with this MoU shall in the first instance be resolved amicably between the Parties through its nominated authorised representatives and, if no resolution is reached, escalated to the relevant senior personnel of each Party.

12. General

- 12.1 Each of the Parties acknowledges that it has full capacity and authority, and all necessary consents, licences and permissions to comply with and perform its obligations under this MoU.
- 12.2 This MoU does not confer any rights on any third party. Nothing in this MoU shall be interpreted as limiting, superseding, or otherwise affecting any Party's normal operations in carrying out its statutory, regulatory or other duties. This MoU does not limit or restrict any Party from participating in similar activities or arrangements with other entities.
- 12.3 Except as otherwise expressly provided, this MoU constitutes the entire agreement between the Parties with respect to its subject matter and this MoU supersedes all prior agreements, communications and representations, whether oral or written, concerning its subject matter.
- 12.4 Defra reserves the right to modify or discontinue, temporarily or permanently, the MAS Scheme (or any part or feature thereof) at any time after giving prior notification where practicable, or otherwise, without any prior notification if such notification is not practicable.
- 12.5 Without prejudice to the generality of paragraph 12.4 above, Defra may terminate the MAS Scheme and thereby the provisions of this MoU at any time with immediate effect in the event that, in Defra's reasonable opinion, the continued performance of the MAS Scheme and/or this MoU ceases to be compliant with applicable law.
- 12.6 Nothing in this MoU:
- 12.6.1 creates or is intended to create a partnership or joint venture between the Parties;
- 12.6.2 constitutes one Party as the agent of another Party nor the employees, contractors or consultants of one Party as those of another Party;
- 12.6.3 gives either Party authority to enter into any contract, warranty or representation as to any matter on behalf of the other Party; and
- 12.6.4 causes one Party to be bound by the acts or conduct of the other Party.

13. Notices

Any notice to be given under this MoU shall be in writing and may be served via EHC (in relation to EHC Certification and in the case of Defra only) or by personal delivery, first class recorded or e-mail to the address of the relevant Party set out below, or such other address as that Party may from time to time notify to the other Party.

- 13.1 **For Defra:** Animal and Plant Health Agency, Finance & Business Support, Lutra House, Bamber Bridge, Preston PR5 8BX
Email: ServiceDeliveryVetandExportInvoices@apha.gov.uk
- 13.2 **For the Local Authority:** to the address and/or email address provided by the Local Authority when submitting its invoice for payment under this MoU.

14. Governing law and jurisdiction

The provisions of this MoU shall be governed by and construed in accordance with English law. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.