



Department
for Environment
Food & Rural Affairs

Memorandum of Understanding (Food Standards Scotland) **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 Food Standards Scotland ("**FSS**") (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 FSS 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 FSS 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 FSS intend that FSS will assess and provide Certification for Traders who require such Certification in respect of their commercial activities. FSS wishes to support Defra's approach to Certification on a collaborative basis.
- 1.4 FSS 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, FSS is considered to have accepted the provisions of this MoU. The provisions of this MoU shall be considered repeated each time FSS submits an invoice for payment of Charges under the MAS Scheme.
- 1.8 All terms and conditions applicable to FSS'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 Export Health Certificate (EHC) certification dated from and including 1 January 2021 by FSS to

	a Trader in respect of the movement by that Trader of goods and/or products requiring such certification, from Great Britain to Northern Ireland;
"Certification Requirement"	means the requirement for Certification as communicated to FSS via EHCO or by a relevant competent authority;
"Charges"	means the charges for Certifications invoiced by FSS 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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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;
"EHCO"	means Export Health Certificate Online, the digital online application service used by Defra to process the requirements of Traders for EHC Certification through: <ul style="list-style-type: none"> (a) the completion by a Trader of an online application; (b) provision of the application to FSS; and (c) the completion of a Certification by FSS;
"MAS Scheme"	means the charging remuneration scheme implemented by Defra to cover the direct costs Traders would otherwise have incurred in respect of certain inspections and certifications (including the Certifications) connected to the movement of certain agri-food goods and/or products from Great Britain to Northern Ireland (as is further detailed at http://apha.defra.gov.uk/official-

	vets/Guidance/MAS/index.htm);
"Purchase Order Number"	means Defra's unique number relating to any claims for Charges to be made by FSS in accordance with this MoU;
"State Aid and Subsidy Control Rules"	means (i) 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) to the extent it continues to apply in the United Kingdom; (ii) the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (as that agreement may be modified or supplemented from time to time in accordance with any provision of it or of any other future relationship agreement); (iii) the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement, to the extent applicable; and (iv) any other applicable international or domestic laws relating to subsidy controls in force from time to time (and "State Aid or Subsidy" 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. FSS Responsibilities

3.1 In respect of the Certifications for which FSS is seeking payment by Defra, FSS 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, where in the case of live animals “final destination” means that the animal is to remain in Northern Ireland for a minimum period of 30 consecutive days, except in the case of equines that will be returning directly from Northern Ireland to Great Britain, where the minimum period the animal must remain in Northern Ireland before returning to Great Britain shall be 48 consecutive hours;
- 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 FSS 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. FSS shall be responsible for the acts and omissions of any such third parties as though those acts and omissions were its own.
- 3.3 It is a requirement of the MAS Scheme that each Certification for which payment is sought from Defra must specify Northern Ireland as the place of destination in Sections 1.9 and 1.12 of the certificate.

4. Charges, Payment and Recovery of Sums Due

- 4.1 Subject to paragraphs 3.3 and 4.2, FSS shall be entitled to invoice Defra in respect of its Charges for the Certifications as follows:
 - 4.1.1 in respect of all Certifications other than those referred to in paragraph 4.1.2 below, FSS may charge up to a maximum amount of £150 per Certification, together with:
 - a) for Certifications provided in respect of sheep and dated from and including 1 September 2022, an additional amount equal to the costs charged to FSS in respect of any laboratory genotype tests for scrapie disease which were required as part of the Certification Requirement (providing that such tests were carried out by APHA, Scotland’s Rural College (SRUC) or any other body approved by the Authority from time to time);
 - b) for Certifications provided in respect of uncastrated male sheep (rams) and dated from and including 1 September 2022 where brucella ovis testing is required as part of the Certification Requirement:

- i. an additional charge up to a maximum amount of £150 per Certification to cover any additional time incurred by FSS veterinary staff in respect of such brucella ovis testing; and
 - ii. an amount equal to the laboratory testing costs charged to FSS for brucella ovis testing (up to a maximum of £34 per Certification), providing that such tests were carried out by APHA or any other body approved by the Authority from time to time; and/or
- c) an additional amount up to a maximum of £34 per Certification where FSS was required to carry out any blood test(s) and/or laboratory test(s) as part of the Certification Requirement; or

4.1.2 for Certifications provided in respect of equines, FSS shall be entitled to charge up to a maximum amount of £500 per Certification.

4.2 The Charges stated in paragraph 4.1 above:

4.2.1 represent the maximum value payable by Defra to FSS in respect of each Certification, and FSS 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 FSS to Defra in writing or otherwise made available at all times), which FSS acknowledges may be lower than the maximum amount claimable as stated in paragraph 4.1 above; and

4.2.2 may be supplemented by such additional amounts to be paid by the Trader as may be agreed separately between FSS and the Trader, but FSS shall, in no circumstances, issue the Trader with any invoice, bill or demand of any kind in respect of the Charges which it has invoiced to Defra.

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

4.4 FSS 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 FSS during that invoice period. From 1 September 2022, any Charges for Certifications completed on or after that date must be invoiced by FSS to Defra within 90 days of the date of such completion, otherwise FSS shall be deemed to have waived its right to be paid by Defra for such Certification(s). Invoices for Certifications completed prior to 1 September 2022 must be submitted to Defra prior to 30 November 2022 in order to be eligible for payment. For the purposes of this clause 4.4, a Certification shall be considered complete when either: (i) FSS has confirmed completion of the certification process in EHCO for that Certification; or (ii) if EHCO is not applicable, when the Certification has been certified by an appropriate certifying officer. For the avoidance of doubt, any invoice submitted outside of the applicable timeframe set out above shall be deemed invalid and will not be paid by Defra. 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 FSS in order to verify the validity of any invoice.

- 4.5 Defra shall pay FSS 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 A previous version of this MoU was applicable from 1 January 2021. The provisions of this MoU supersede and replace the provisions of that previous version with effect from 1 September 2022 and shall continue until they are terminated by Defra in accordance with this MoU.
- 5.2 Defra may terminate the provisions of this MoU at any time and for any reason, with or without providing prior notice to FSS, and shall incur no liability to FSS in doing so.

6. Intellectual Property Rights

- 6.1 All intellectual property rights in any materials provided by Defra to FSS for the purposes of this MoU shall remain the property of Defra but Defra hereby grants FSS 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 FSS to perform its obligations under this MoU.
- 6.2 All intellectual property rights in any materials created or developed by FSS pursuant to this MoU shall vest in FSS. If, and to the extent, that any intellectual property rights in such materials vest in Defra by operation of law, Defra hereby assigns to FSS 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 FSS hereby gives its consent for Defra 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 FSS 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. FSS shall not, and shall take reasonable steps to ensure that any FSS 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:
 - d) 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);
 - e) 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
 - f) 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 FSS 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 and Subsidy Control 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 FSS 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 and Subsidy Control Rules as may, in Defra's view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require FSS to provide legal advice subject to privilege to Defra, and FSS shall be given adequate time to provide the information.
- 10.4 If FSS is deemed by a court of competent jurisdiction to be a beneficiary of unlawful State Aid or Subsidy, then, unless an earlier date has been specified by that court, FSS 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 FSS 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 or Subsidy 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 FSS to be the beneficiary in breach of State Aid and Subsidy Control Rules in connection with this MoU, FSS acknowledges that paragraph 10.4 shall apply regardless of whether:
- 10.5.1 FSS is in default and irrespective of FSS's financial circumstances; and
- 10.5.2 in Defra's view, the State Aid or Subsidy granted in connection with this MoU complies with the State Aid and Subsidy Control 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

EHCO (where applicable, 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 FSS:** to the address and/or email address provided by FSS 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.