

MEMORANDUM OF UNDERSTANDING

Between the
FOOD STANDARDS AGENCY
and
FOOD STANDARDS SCOTLAND



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This Memorandum of Understanding (MoU) sets out the principles for the working relationship between the Food Standards Agency (FSA) and Food Standards Scotland (FSS) and principles that FSA and FSS will follow in the course of day-to-day working relationships.

The MoU between the FSA and FSS recognises and upholds the *Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee*¹, referred to as the 'Devolution MoU' which will have primacy over the MoU between the FSA and the FSS in all matters of interpretation and effect.

This MoU serves as an agreement between the Scottish Government and the FSA on matters relating to food and feed for which the FSA is the relevant UK Government Department. It is underpinned by five protocols which set out in more detail operational considerations of how the bodies will work together. This agreement has been drafted to allow the protocols identified within it to be amended over time to reflect future trends, needs and external drivers of change.

The principles underpinning this MoU are:

- **Effectiveness:** Ensuring that interests of consumers are protected in all parts of the UK.
- **Mutual respect for obligations:** Ensuring that both the FSA and FSS are able to discharge their respective responsibilities as competent authorities.
- **Efficiency:** Ensuring that public money is spent efficiently through the encouragement of joint working between the FSA and FSS, wherever appropriate.
- **Reciprocity:** Ensuring that arrangements for sharing information and resources are fully reciprocal, unless otherwise agreed.
- **Cordiality:** Ensuring that officials of the FSA and FSS at all levels maintain positive relationships with their counterparts based on shared aims and mutual understanding of the differing political environments within which each body operates.

Commented [SD(1): The only change to this section has been to add 'transparency' as a new principle to align with commitments to transparency made in the Food and Feed Safety and Hygiene (FFSH) framework outline

¹ October 2013: <http://www.scotland.gov.uk/Resource/0043/00436627.pdf>

- **Transparency:** Where possible, the FSA and FSS will share information openly to ensure effective joint working practices.

SUMMARY

Both the FSA and FSS recognise that each has a contribution to make to an effective food and feed safety regime in the United Kingdom (UK), whilst recognising that their policy, priorities and objectives may not always be identical.

The FSA and FSS agree to:

- Co-operate and work closely to ensure that consumers in Scotland and across the rest of the UK remain protected.
- Co-operate in the management and communication of food and feed incidents that may pose a risk to consumers, including food and feed standards incidents.
- Cooperate and collaborate with regards to science and evidence gathering to ensure there is a coherent evidence base across Scotland and the rest of the UK to underpin policy development and support incident handling.
- Identify and share outputs from horizon scanning, intelligence gathering and other food and feed data sources.
- Share and discuss initiatives to identify opportunities to collaborate during policy and strategy development.
- Facilitate appropriate food and feed safety and standards control measures where food products pose, or may pose, a risk to consumers.
- Co-operate and work collaboratively to ensure that, when working internationally, the UK position is arrived at in a way that takes account of the interests of all parts of the UK.
- To work collaboratively to reduce the impact of food crime in Scotland and the rest of the UK and investigate jointly where necessary and appropriate.
- Work collaboratively on risk assessment, risk management and risk communication as part of UK risk analysis arrangements.
- Pay any significant costs for services provided by one body to another providing those costs have been agreed in advance by both bodies.
- Work together to meet the commitments made under the Common Framework for Food and Feed Safety and Hygiene.

Commented [SD(2)]: Revision Note
Each dot point in this list summarises the content of one of the sections and protocols of the MoU.

Sections which are new have had dot points summarising the relevant content added.

Others have been updated to reflect significant changes.

Some section summary points have stayed the same.

ENGAGEMENT AND LIAISON

- The FSA and FSS agree to co-operate and closely collaborate at all levels across both organisations to ensure that consumers in Scotland and the rest of the UK and more widely remain protected.
- The senior officials responsible for the following areas will meet at least once a quarter (or more frequently, if required):
 - a. Communications
 - b. Operations
 - c. Policy
 - d. Science
 - e. Executive
- “Senior officials” refers to the director or head of each area; in the case of ‘executive’, it refers to the Chief Executive Officer of each organisation.
- The location of each meeting will alternate between England and Scotland (or otherwise, as agreed by both FSA and FSS senior officials).
- The FSA Chair and FSS Chair will meet at least once a year and the location of each meeting will alternate between England and Scotland (or otherwise, as agreed by both Chairs).

Commented [SD(3)]: Revision Note

1. The meeting timing and location requirements have been made more flexible in order to reflect the actual working practices of staff. This has been done primarily by adding ‘or as agreed’ to meeting specifications.
2. Specific references to job titles have been replaced with references to work areas. This is so that the section does not need to be updated whenever staff change roles or the names of the roles themselves change.

INCIDENT HANDLING AND RESILIENCE

- Both the FSA and FSS agree to ensure they have the capability and capacity to handle food and feed incidents and that they will work in partnership and share resources as necessary to ensure the robust detection, response, recovery and prevention to all food and feed incidents in Scotland and in the rest of the UK, working at a four country level.
- Both bodies agree to ensure that the other is notified, at the earliest possible opportunity, of the details of actual or potential food or feed incidents. This includes receipt and management signals.
- Both bodies agree to arrange necessary incident management data sharing arrangements as soon as practical. This includes providing each organisation access to the other’s internal databases, where possible and within the technical ability of each organisation.

Commented [SD(4)]: Revision Note

This section has been edited to further clarify the range of areas the Incidents teams collaborate on. A key change has been the merging of the previously separate ‘Testing’ section into this one. This is because both form parts of the same overall work area.

- Details of the management of, and communications associated with, food incidents and alerts are contained in the 'Protocol on Incident Handling' (Annex A) and 'Communications Protocol' (Annex E). Both bodies agree to follow the guidance set out in the protocols.
- Both the FSA and FSS agree to co-operate and work collaboratively with each other to ensure a robust response to all food and feed safety incidents and, where necessary, to review such incidents and complete 'lessons learnt' exercises.
- Where food or feed products pose (or may pose) a risk to consumers, both the FSA and FSS agree to facilitate appropriate food or feed control measures, and, where necessary, to do so in line with the guidance contained in the Protocol on Incident Handling (in Annex A).
- To ensure the incident response protocol is robust, the FSA and FSS will liaise on emergency exercises to test the integrity and effectiveness of incident response plans.
- The emphasis of the resilience exercises will be to test the arrangements set out in the incident handling protocol to provide assurance that there is effective co-ordination between the FSA and FSS and to provide assurance that consumer safety in the UK has not been compromised.

DATA AND INFORMATION SHARING

- The 'Data Sharing Protocol' (Annex B) sets out the mechanisms to ensure food and feed safety and standards intelligence, data and information are shared promptly, efficiently and in a way that complies with legislation. Both the FSA and FSS agree to follow the guidance set out in the protocol to ensure the free flow of food and feed data, information, knowledge and intelligence between the two organisations.
- Further information on how FSA and FSS will work collaboratively to share data and intelligence generated through research and surveillance activities, risk assessment and horizon scanning activities is provided in the Science and Evidence Protocol (Annex C), Food Crime Protocol (Annex F) and Risk Analysis Protocol (Annex G).

COLLABORATION ON SCIENCE, EVIDENCE AND ADVICE

- The FSA and FSS will co-operate and collaborate on collecting, developing and sharing scientific research, surveillance and the analysis of evidence in line with the guidance contained in the 'Science and Evidence Protocol' (Annex C). Furthermore, both bodies

Commented [SD(5)]: Revision Note

The key change to the Data Sharing section is to ensure that the MoU captures the new requirements for the protection of personal identifiable information under the GDPR and Data Protection Act 2018. The requirement for data sharing agreements to be drawn up was emphasised, where the sharing of data between the two authorities is likely to result in a high risk to individuals.

Commented [SD(6)]: Revision Note

Changes made to this section aim to better reflect current ways of working and procedures in place at both FSA and FSS for commissioning science and evidence, updates to the structures of scientific advisory committees, and also to ensure read across to the new risk analysis process.

agree to encourage close working relationships and strong co-ordination and collaboration between the FSA and FSS staff.

- Further information on the collaborative working arrangements for undertaking risk assessment and analysing other forms of evidence needed to inform the risk management responsibilities of either or both parties is provided in the 'Risk Analysis Protocol' (Annex G).

POLICY DEVELOPMENT

- Both the FSA and FSS agree to share and discuss policy initiatives at an early stage to help identify scope for joint working and areas where agreed approaches may have to be tailored to meet devolved considerations. This collaboration should not be limited to retained EU and national legislation and could include, for example, sharing intelligence aimed at safeguarding consumers' interests.
- In working together, both bodies will take into account the differing remits in the four countries, such as the fact that responsibility for food labelling, composition standards and nutrition advice varies across the UK.
- Both the FSA and FSS agree to work together in order to fulfil the UK's international obligations. This includes international engagement on food and feed safety and hygiene standards with the EU and in wider international fora such as Codex and the WTO as well as bilateral discussions (see Annex D for more information). Close collaboration between the FSA and FSS will also be needed to support areas where the UK has taken the lead at the international level (see Annex D).

Commented [SD(7)]: Revision Note

This section has been reworked to cover the breadth of the work covered by policy teams. The emphasis is on continued positive working relationships between the FSA and FSS through collaboration.

OPERATIONAL DELIVERY

- The FSA and FSS agree to share best practice and expertise to ensure official controls are sufficiently robust and to make certain that consumers' interests with regard to food safety and standards in Scotland and across the UK and, more widely, remain protected, within the remit of EU and UK legislation. This includes taking into account capability and capacity where the FSA and FSS directly provide resource for the delivery of controls.
- In particular, the FSA and FSS agree to collaborate in the following ways. They will:
 - a. Include and share with regard to Technical Portfolio work and events and provide technical support when required on ongoing or emerging issues affecting both organisations.

Commented [SD(8)]: Revision Note

Revisions for this section meet the aim for inclusiveness and collaboration in technical, policy and business areas, with regular updates on emerging issues and lessons learnt. In addition to this, the frequency of liaison and engagement for operations has been updated.

- b. Mutually consult each other during the development of Manuals of Official Controls.
- c. Meet regularly - annually to discuss and share information produced in the areas of business planning, risk management and performance management.
- d. Meet monthly to share approvals and audits lessons learnt.

INTERNATIONAL MATTERS

- The FSA and FSS agree to collaborate on international matters to enable the free flow of information and ensure that UK positions and lines take into account Scottish interests.
- In doing this, they will not only follow the established processes for interdepartmental liaison on matters of international relations laid out in The Memorandum of Understanding and Supplementary Agreements on Devolution but also the general guidance setting out the roles and responsibilities of FSA and FSS in Annex D.

Commented [SD(9)]: Revision Note

The exact nature of the UK and EU's future relationship is yet to be determined. As a result, the text in this section has been updated to cover the general principles for collaborative working on international matters which will hold true no matter what the final relationship between the UK and EU might be.

COMMUNICATIONS

- Both bodies agree to collaborate with one another to ensure a 'no surprise approach' to external communications. Details of how both bodies will collaborate and share communication strategies are set out in the 'Communications Protocol' (Annex E).
- When working with other parts of government and Scottish equivalents on communications issues of mutual interest the FSA and FSS will keep each other informed and/or work together.

Commented [SD(10)]: Revision Note

The FSA and FSS have worked together on the new MOU to make our relationship deeper and closer. For example, as well as putting in place strict 'no surprises' arrangements for both teams, we have also, where appropriate, laid out how we might work together on campaigns and marketing activity – pooling resources and ideas to meet joint objectives. We have also improved our digital co-operation and agreed ways of working across borders on food incidents.

FOOD CRIME

- The FSA and FSS are committed to assisting each other in the fight against food crime and, in doing so, demonstrate their understanding of the importance of collaborative working to protect the general public. In doing this, both will recognise the clear lines of jurisdiction that are present within the UK and dictate how food crime investigations are led. Further information on how the FSA and FSS will work together in this area can be found in the Protocol on Food Crime (Annex F).

Commented [SD(11)]: Revision Note

This is a new section (an accompanying protocol – Annex F – has also been added). Food crime was not originally established as a work stream when the MoU was first written and signed in 2015. The new section and protocol reflects the fact that it is now a distinct area of work.

RISK ANALYSIS

- The risk analysis process provides for a four country model to support delivery of food and animal feed safety risk management recommendations for the UK Government and devolved administrations in Wales, Northern Ireland, and Scotland, that are effective for the UK as a whole, or for individual countries as needed.
- Both bodies will undertake risk analysis functions in accordance with the principles, guidelines and working arrangements set out in the Protocol on Risk Analysis at Annex G and supporting Working Level Agreement.

Commented [SD(12)]: Revision Note
This is a new section (an accompanying protocol – Annex G – has also been added). The updated risk analysis process will be implemented after the transition period ends in December 2020. The new section and protocol sets out the collaborative working arrangements required for this updated area of work.

COSTS

- Costs fall into one of two categories: significant or minor.
- When one body incurs significant cost(s) to provide goods or services which benefit the other, the benefitting body will contribute to the costs associated with these goods or services, provided they have been agreed in advance by both parties. Whether or not a cost is significant is to be agreed between representatives of both organisations.
- Each body will be expected to cover minor costs associated with collaborative activities between the two organisations.

Commented [SD(13)]: Revision Note
The revised text as it currently stands was amended for clarity only.

DISPUTE RESOLUTION

- Where disputes do arise, they should be managed with adherence to the following principles:
 - a. Commitment to evidence-based approaches to resolution
 - b. Transparency
 - c. Timely resolution
 - d. Compliance with process
- Where officials are unable to reach agreement on an issue, the following dispute resolution process will be followed:
 - a. Officials will raise the issue to a senior officials group overseeing four country working, or to the relevant Director or Head of Department for resolution, depending on the issue in question.
 - b. Should it not be possible to resolve an issue at senior official or Director or Head of Department level the dispute will be raised for discussion or agreement between Chief Executive Officers and/or the respective Chairs of each Board.

Commented [SD(14)]: Revision Note
The revised text as it currently stands was amended for clarity only.

WORKING LEVEL AGREEMENTS (WLAS)

- The FSA and FSS agree to supplement this MoU with working level agreements when both bodies agree that:
 - a. Their relationship would be enhanced through greater collaboration in areas not covered by the MoU and associated protocols.
 - b. Aspects of collaborative working within the post-transition period environment which have not been finalised before the MoU is signed in 2020 are confirmed.
- A list of current WLAs will be set out in Annex H of this MoU and reviews of this MoU and associated protocols should include a review of WLAs.

Commented [SD(15)]: Revision Note

This section has been updated to reflect the way in which the WLAs may be used in the period immediately following the end of the transition period – see point b in the text. Additional information has been added on the location of and review process for WLAs.

FOOD AND FEED SAFETY AND HYGIENE FRAMEWORK

- The Common Framework on Food and Feed Safety and Hygiene is an agreement between the UK Government and devolved administrations to work together in developing food and feed safety policy approaches.
- The Framework is implemented through two agreements. One of these agreements is this MoU.
- The Framework therefore underpins those FSA-FSS collective working arrangements outlined in this MoU which also fall within the scope of the Framework.
- Limited MoU sections are out of scope of the Framework and are not subject to its processes. These are, however, areas where the FSA and FSS wish to establish formal collaborative working approaches and do so through this MoU. The full summary of framework scope can be found in the Framework's outline document.
- For areas in this MoU within scope of the Framework, the Framework offers joint approaches in various areas of policy development. These areas include making decisions, managing divergence and resolving disputes. The principles underpinning all these approaches include early engagement, joint working and, where it is appropriate to do so, arriving at consistent outcomes.

Commented [SD(16)]: Revision Note

This is a new section. It sets out the nature of the link between this MoU and the Food and Feed Safety and Hygiene Framework, which will be agreed and implemented by the end of the transition period (December 2020).

MOU REVIEW

- Whilst this MoU includes matters out of the scope of the FFSH framework, FSA and FSS will include the MoU within regular joint framework reviews once the framework itself has been agreed.

Commented [SD(17)]: Revision Note

This section has been updated to set out the updated approach to reviewing the MoU document. The new approach will be influenced by the fact that the MoU will form one of the two implementing agreements within the Food and Feed Safety and Hygiene Framework.

- The review process will involve:
 - a. The joint FSA and FSS Frameworks Management Group (FMG) will commission section leads to review the MoU on an annual basis.
 - b. Section leads will consider the MoU content with a view to establishing if existing aspects of the MoU require amendment or new content should be added to the MoU.
 - c. The FMG will collate suggested changes and send the revised MoU to the FSA and FSS CEOs for final approval and sign-off.

TERMS OF AGREEMENT

Commented [SD(18)]: Revision Note
This section has not been altered.

These arrangements are to work within:

- the legal framework for devolution;
- the UK and Scottish Government's obligations under international law and treaties; and
- the 2013 MoU on Devolution, the Memorandum on Europe and associated protocols and any agreements that amend or supersede it.

_____ Date XX XXXX 2020

XXXX, Chief Executive Officer, Food Standards Agency



_____ Date XX XXXX 2020

Geoffrey M Ogle, Chief Executive Officer, Food Standards Scotland

ANNEX A: PROTOCOL ON INCIDENT HANDLING

1. PURPOSE AND SCOPE

- 1.1. The Food Standards Agency (FSA) and Food Standards Scotland (FSS) undertake to ensure the greatest achievable protection to consumers, across the full geographical scope of the UK, from any food or feed incident. This will be achieved through agreed protocols for management of such incidents.
- 1.2. This protocol provides guidance on the respective roles and responsibilities of the FSA and FSS in relation to:
 - The management of incidents with actual or potential impact within the jurisdiction of both the FSA and FSS.
 - Development and updating of detailed Incident Management Plans (IMP). For the purposes of this document, IMP refers to all IMPs and Incident Management Frameworks (IMFs) in use by the FSA and FSS. FSA's IMP outlines their communications processes, and FSS have a separate Incident Communications Plans (ICP).
 - Maintenance of relationships and collective resilience.
 - Sharing information relating to ongoing incidents, signal detection, and all other information relating to the effective prevention, detection, management and recovery of incidents with information and data sharing agreements in place.

2. GENERAL PRINCIPLES

- 2.1. Incidents have the potential to have an impact on any individual nation within the UK or any combination of two or more. For the purposes of this protocol, only two jurisdictions are distinguished: the FSA's (which covers England, Wales and Northern Ireland) and the FSS' (which covers Scotland).
- 2.2. The scope of any individual incident will therefore be classified as FSA, FSS or UK-wide. UK-wide incidents include those potentially affecting the FSA and FSS as well as any incident with impact beyond the UK or any incident involving a radiological hazard.
- 2.3. Radiological incidents will be led by the FSA, with the FSA being responsible for the provision of policy and technical expertise to the response. However, incidents in Scotland may be led by FSS by mutual agreement in individual cases.
- 2.4. The FSA and FSS will maintain and share compatible IMPs and ICPs during UK-wide incidents. Each organisation will consult the other ahead of any change to its respective IMPs or means of communication/ICP.
- 2.5. The FSA and FSS will maintain mutual assistance and resilience capability through:
 - Ongoing liaison between officials in a way that maintains mutual understanding. This will be achieved using the four country framework, as set out in section 3.4.
 - Reviews of selected incidents with a view to improving procedures.

Commented [SD(19)]: Revision Note

This section has been edited to further clarify the range of areas the Incidents teams collaborate on. Edits have also been made to future-proof the document, reflect changes in legislation, and incorporate work relating to SHE-RAM and food crime.

- Participation and collaboration in UK emergency exercises, including radiological exercises, run on behalf of other government departments, including the Ministry of Defence and the Department of Business, Energy and Industrial Strategy.
- Information and resource sharing in response to changing demands as required, including FSA Receipt and Management functions.
- Sharing training where applicable and ensuring that Standards Operating Procedures are compatible.

3. SPECIFIC PROVISIONS

3.1. The IMPs of the FSA and FSS will incorporate:

- Incident definitions.
- Alerting, Activation, Escalation and Closure.
- Procedures for incident management, including risk assessment and internal and external communications. In FSS, the specific internal and external communications protocols are referenced in the separate ICP.

3.2. Responsibilities between FSA and FSS on management of incidents

- 3.2.1. Incidents that originate in England, Wales or Northern Ireland will be led by the FSA.
- 3.2.2. If an incident is initially led by the FSA and escalates to incorporate Scotland (i.e. it becomes a UK wide incident), then the FSA will continue to lead the incident, unless it is mutually agreed that it is more appropriate for FSS to lead (For example, when the implicated FBO is discovered to be in Scotland).
- 3.2.3. Incidents that originate in Scotland will be led by FSS.
- 3.2.4. If an incident originates in Scotland or is initially led by FSS and escalates to a UK-wide incident, the FSS will continue to lead the incident, unless it is mutually agreed that it is more appropriate for the FSA to lead. (For example, when the implicated FBO is discovered to be in England).
- 3.2.5. Information about in-country incidents will be shared on a regular basis. Where an incident is deemed to be UK-wide, all relevant FSA and FSS officials should be notified without delay.

3.3. Communication and information management

- 3.3.1. As set out in the Data Sharing Protocol (Annex B), the FSA and FSS agree that all information sharing must be compliant with the General Data Protection Regulation (Regulation (EU) 2016/679, the Data Protection Act 2018 (DPA) and the Human Rights Act 1998 (HRA). Both bodies shall be responsible for ensuring individual compliance with all articles and principles of the above legislation at all times. The terms on how this will be achieved are set out in a separate information sharing agreement regarding incidents and food crime.

- 3.3.2. The FSA and FSS will communicate as quickly as possible any information required to ensure that both organisations can perform their respective responsibilities relating to management of UK-wide, FSA-only or FSS-only incidents. This may not just include incidents information but may also include outputs from FSA Receipt and Management functions or information related to food crime.
- 3.3.3. Both organisations will share up to date organisation charts and staff contact details, including contacts for out of hours assistance and support.
- 3.3.4. Both organisations will also share unique, cross-referenced FSA or FSS reference numbers for each incident, where relevant.
- 3.3.5. The FSA and FSS will work under a four-country framework to draft, issue and publish food alerts as appropriate to each organisation's jurisdiction. The FSA and FSS will also share relevant food alerts and consult on any other areas on incident reporting and any incident management performance information.
- 3.3.6. The FSA and FSS will notify each other in advance of any communications with Ministers, Local Authorities, the public or wider industry regarding an incident, to enable co-ordinated communications.
- 3.3.7. The FSA and FSS will be independently responsible for ensuring that email addresses supplied by each body to the other for purposes of inter-agency communication are appropriately secure for that purpose.
- 3.3.8. Responsibility for the storage and retention of records of incidents that each organisation is involved in will rest with each organisation independently.
- 3.3.9. The FSA and FSS will ensure provisions for a secure collaborative forum to share specific information for the duration of any incident, (for example, incident situation reports, distribution lists, press releases etc.) as necessary. The extent, nature and format of such information sharing should be determined by incident managers on a case by case basis, according to the nature of the incident.
- 3.3.10. These provisions will include ensuring that the FSA and FSS have access to relevant information systems.
- 3.4. **Four Country Collaboration**
- 3.4.1. The FSA and FSS will continue to work on a four country level, with formal quarterly meetings, attended by Incidents and Resilience Team leaders. These meetings will be run according to the Four Country Terms of Reference, which includes the tactical and strategic consequences of incidents detection, management, recovery and prevention.
- 3.4.2. Further operational meetings will take place on a weekly basis. Additional meetings will be held as needed, in line with the FSA and FSS IMPs.
- 3.4.3. The FSA and FSS should arrange liaison meetings and collaborate in incident exercises as necessary. These will take place in line with the requirements set out in the 'Engagement and Liaison' and 'Incident Handling and Resilience' sections. Regular meetings will ensure that officials handling incidents are familiar with the relevant organisational arrangements and know their respective counterparts.

- 3.4.4. The four country approach acknowledges the implications of the Northern Ireland Protocol. In the event that the Protocol comes into effect, the FSA and FSS agree to work together to ensure that consumer safety and confidence are not compromised by compliance with the protocol.
- 3.4.5. The general principles for FSA and FSS collaboration on international engagement are set out in the International Protocol (Annex D).
- 3.4.6. The FSA and FSS will cooperate on international stakeholder engagement planning in relation to incidents prevention, detection, response and recovery. This engagement includes the negotiation of international MOUs, and engagement with the International Food Safety Authorities Network (INFOSAN). These MOUs will relate to information sharing and cooperation on international food incidents.
- 3.4.7. The FSA is the Emergency Contact Point for INFOSAN. The FSS will be an INFOSAN Focal Point. Both organisations agree to undertake the responsibilities those roles entail, as outlined in the INFOSAN Member's Guide.
- 3.4.8. The FSA will be the UK contact point for the European Commission's Rapid Alert System for Food and Feed (RASFF). The FSA will notify the FSS of any RASFF notification relevant to Scotland as soon as possible.
- 3.4.9. The FSA and FSS will cooperate when participating in international meetings regarding food incidents. Where either organisation cannot attend such a meeting, the FSA and FSS agree to meet beforehand to ensure that the both parties agree on the UK's position. Both organisations will provide updates after any international meeting. Both organisations will keep each other updated on any ad-hoc international engagement.

ANNEX B: DATA SHARING PROTOCOL

4. PURPOSE AND SCOPE

- 4.1. The Food Standards Agency (FSA) and Food Standards Scotland (FSS) acknowledge that in order for both bodies to operate effectively, each should provide the other with as full and open as possible access to food and feed safety and standards intelligence, data, knowledge and information.
- 4.2. This protocol will provide guidance as to how the FSA and FSS will share information and data and sets out the roles and responsibilities of each body.
- 4.3. Although initially most information shared will be from the FSA to FSS, the principles outlined apply to transfers of information in both directions.
- 4.4. This protocol contains agreement on how historical information on FSA activities in Scotland will be handled.
- 4.5. This protocol reflects the ethos of the Information Commissioner's Code of Practice on Data Sharing.

5. GENERAL PRINCIPLES

- 5.1. In all data sharing activities, both bodies will have due regard to relevant provisions on data governance and ethics, data protection, confidentiality, intellectual property and information security.
- 5.2. Both the FSA and FSS agree to provide any information reasonably requested by the other body; provided that it:
 - is lawful;
 - is accurate;
 - is practicable;
 - would not involve disproportionate cost;
 - is available in a reasonably accessible format.
- 5.3. Where any of the above provisos is not met, resolution will be sought on a case-by-case basis.
- 5.4. **Sharing Personal and/or Special Category Data**

Where the data contains personal data, it will only be shared where there is a lawful basis under Article 6 of the General Data Protection Regulation (GDPR) for doing so.

Commented [SD(20)]: Revision Note

The key change to the Data Sharing section is to ensure that the MoU captures the new requirements for the protection of personal identifiable information under the GDPR and Data Protection Act 2018. The requirement for data sharing agreements to be drawn up was emphasised, particularly where the sharing of data between the two authorities is likely to result in a high risk to individuals.

Each party agree that all sharing under this MoU must be compliant with the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), the Data Protection Act 2018 (DPA) and the Human Rights Act 1998 (HRA). In particular, both parties acknowledge the need to comply with the seven key principles set out in Article 5(1) of the GDPR. These key principles are listed below.

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality (security)
- Accountability

5.4.3 If the FSA or FSS becomes aware of any actual or potential Data Security Breach, it should inform the other body immediately (no later than 12 hours from the time of discovery) by emailing the FSA Data Protection team at: informationmanagement@food.gov.uk and for FSS Data Protection Team at: dataprotection@fss.scot. Where there is a joint controllership, the single point of contact will notify data subjects and the ICO of the security breach depending on the severity of the data that is lost or compromised. Where personal data is being processed for the prevention or detection of a crime, Schedule 2 Part 1 of DPA 2018 provides exemption for the communication of the data breach to effected individuals.

5.5. The FSA and FSS agree to treat any data shared with appropriate discretion. In particular, both bodies accept that:

- it is for the body providing the information to state what, if any, restrictions there should be upon its usage;
- unless legally prohibited from doing so, each body will treat information which it receives in accordance with the restrictions which are specified as to its usage;
- the body that is in receipt of the information may be subject to a legal obligation to disclose the information in certain circumstances, for example, where it receives a request under access to information legislation (primarily the Freedom of Information Act 2000 / Freedom of Information (Scotland) Act 2002, Environmental Information Regulations 2004 / Environmental Information (Scotland) Regulations 2004 and the GDPR/Data Protection Act 2018). In cases where it is proposed to release information, the originator must be consulted, as soon as practicable, allowing sufficient time to respond, about the appropriateness of disclosing information. Where the originator of the information is a Minister of the Crown or a department of Government of the United Kingdom and the information is held in confidence, the final decision as to whether there is a lawful bases/ legal obligation to disclose the information

will rest with the originator but, in any other case, the final decision will rest with the body to whom the request has been made;

- some information will be subject to statutory or other restrictions which may mean restrictions on the category of persons who may have access to the material (for example to ensure the Official Secrets Act 1989 and the GDPR/Data Protection Act 2018 are not breached);
- where personal data is shared, a data sharing agreement will be drawn up setting out the respective responsibilities for compliance with GDPR regulations in relation to the sharing in question. A list of data sharing agreements in development and operation at the time this MOU was finalised is included in this Annex.

5.6 Each body will ensure that the information it supplies to the other is subject to appropriate safeguards. In particular, both parties agree to ensure they have measures in place meet the minimum HM Government security standards and that disposal of information at the end of retention periods will follow the latest advice from CPNI (Centre for Protection of National Infrastructure) and NCSC (National Cyber Security Centre).

6. SPECIFIC PROVISIONS

6.1. Business and Historically Significant Information

6.1.1. FSA will make business and historically significant information available to FSS (subject to the general principle set out in section 5.2 above). In the first instance any request for information should be channelled through the Information & Knowledge Management Team via their mailbox Informationmanagement@food.gov.uk who will cascade the request to the relevant information asset owner for action.

6.1.2. Data and reports from historic FSA funded science and evidence gathering activities are open access and published on the FSA website.

6.1.3. Where an FSA funded science and evidence gathering project is underway or complete but no data or outputs have been published, a request from FSS should be made to the FSA Director of Science, Evidence and Research to access the data. The FSA Director will take into account the provisions referred to in 5.2 when making available the information.

6.2. Local Authority Data

6.2.1. Local Authorities will continue to have access to the following web-based systems, until otherwise agreed by the FSA and FSS:

- Scottish Food Sampling Database (SFSD).
- Scottish National Database (SND).
- Food Hygiene Rating Scheme / Food Hygiene Information Scheme (FHRS/FHIS).
- Guidance and Regulatory Advice on Import Legislation (GRAIL).

6.2.2. Any subsequent changes to the system that benefit only the FSA or FSS will be funded by the body requesting the change. Where the benefit is shared, the FSA and FSS will agree how costs are distributed.

6.2.3. The FSA will grant web access rights to FSS to use the FSA's FHRS platform to publish FSS's FHIS results. The full cost of granting and amending access and providing IT support will be met by FSS (subject to agreed terms set out in a separate Service Level Agreement). The FSA may require a proportionate financial contribution to the maintenance of the FHRS system.

6.2.4. FSS will provide anonymised data from FSS's SND and SFSD systems to FSA where appropriate and as requested, in line with FSS data sharing agreement with Scottish Local Authorities.

6.3. **Operational Data**

6.3.1. On request, the FSA will provide relevant Operational and HR data in an agreed format to FSS, the cost of which will be borne by the Scottish Government.

6.3.2. On request, FSS will provide reports and analysis on Scottish operations data to FSA and FSA will provide reports and analysis on non-Scottish operations data to FSS. The full cost of providing these reports and analysis will be met by the requesting body, subject to agreement in advance.

6.4. **Data standards and systems development**

6.4.1. The FSA and FSS will keep each other informed of potential development of information systems and data standards with a view to avoiding unnecessary incompatibilities between data sets retained by either body.

6.4.2. A process has been put in place to ensure that FSS is consulted on proposed amendments to the FSA Manual of Official Controls and notified when new versions are published.

6.4.3. The FSA and FSS will each adopt the FAIR Data Principles to promote the maximum use of research data either published jointly or separately, to make the data Findable, Accessible, Interoperable and Reusable.

6.5 EU reporting requirements on official controls

- 6.5.1 Following the Transition Period, Regulation (EU) 2017/625 will become retained law in GB, which requires that we produce and publish a Multi-Annual National Control Plan (MANCP) covering official controls systems in respect of food and feed law. We are also required to produce and publish annual reports detailing progress towards implementation of the MANCP by 31 August of each year. The FSA will continue to lead on the production of these for the UK until the end of the transition period, after which responsibility will be handed to Defra.
- 6.5.2 FSS will ensure that its statutory obligations on behalf of Scottish Ministers to facilitate and maintain the areas of the MANCP for which it is responsible will be properly discharged to allow the Defra to discharge its responsibilities on behalf of UK Ministers.
- 6.5.3 Regulation (EU) 2017/625 requires Member States to produce Multi-Annual National Control Plans (MANCP) covering official controls systems in respect of food and feed law and to provide the EU Commission Annual Reports detailing progress towards implementation of the MANCP. The FSA will continue to lead on the production of these for the UK until the end of the transition period, after which a decision will be made on how the data in the MANCP is produced.

6.6 FOI/ Communication of Historical Information on FSA Activities in Scotland

- 6.6.1 The FSA will respond to information requests and queries relating to the activities of the FSA in Scotland. This includes queries from food business operators on charges and invoices issued by FSA in Scotland.

6.7 Dispute Resolution

- 6.7.1 Where either the FSA or FSS decide that it is not possible to provide data to the other body because:
- it is impracticable;
 - it is not lawful;
 - it would involve a disproportionate cost;
 - the information is not available in an accessible format.

The providing body will explain to the requesting body as to why the data cannot be provided.

- 6.7.2 Disputes concerning the provision of data will be resolved through the dispute resolution process outlined in the body of this MoU on page 9.

6.8 Data Sharing Agreements

S/No	Agreement Title	Description	Agreement Date
1	Information Sharing Protocol for the transfer of Food Crime and Incidents Information	Information relating to criminal convictions or offences	July 2017 revised Sept 2020
2	Data Sharing Agreement for Regulated Products Service	Information related to risk assessment of new products	TBA
3	Data Sharing Agreement for risk tracker	To collate and store evidence packages containing risk assessments and reports on 'other legitimate factors' such as economic impact and consumer perception.	TBA

ANNEX C: SCIENCE AND EVIDENCE PROTOCOL

7 PURPOSE AND SCOPE

7.1 The Food Standards Agency (FSA) and Food Standards Scotland (FSS) undertake to collaborate on their respective activities relating to the commissioning, analysis and publication of scientific research, surveillance and other forms of evidence needed to support their work. Both parties will promote co-operation in the development of new requirements for research and surveillance and ensure that opportunities for collaboration and joint funding are identified and exploited wherever possible. The FSA and FSS will also seek to share evidence and the outputs of research across all areas that are relevant to the remits of both parties.

7.2 This collaboration will cover all science and evidence relating to the natural, physical and the analytical disciplines (social sciences, economics, statistics and data science) and will ensure co-operation in each of the areas of work set out below. Section 9 provides further detail on working arrangements needed to support these areas of work.

- Sharing the development, implementation and review of the science governance and assurance strategies of each organisation.
- Developing requirements for research and other evidence-gathering activities.
- Sharing the outputs of research, surveillance and horizon scanning activities relevant to the remits of both organisations.
- Collaborating and engaging with other research funders and the wider scientific community in the UK and internationally.
- Referring issues to Scientific Advisory Committees and their sub-groups and joint expert groups.
- Undertaking risk assessment functions in line with the approaches described in the Risk Analysis Protocol (Annex G).

8 GENERAL PRINCIPLES

8.1 In all of these areas the FSA and FSS will ensure:

- That there are processes and cultures in place within both organisations which promote information sharing and collaboration in the planning and development of new science activities;

Commented [SD(21)]: Revision Note
Changes made to this section aim to better reflect current ways of working and procedures in place at both FSA and FSS for commissioning science and evidence, updates to the structures of scientific advisory committees, and also to ensure read across to the new risk analysis process. A new section on laboratories has also been added to this annex.

- That their plans for commissioning science activities, and any data, evidence and information generated by these activities are shared with the other organisation in an open and timely manner;
- That approaches for identifying and commissioning of new science activities, and the analysis of evidence required to support the functions of both organisations, are mutually supportive and take full account of the interests of both parties.

8.2 When undertaking these activities, both parties will have due regard for the relevant provisions on data governance and ethics, data protection, confidentiality, intellectual property and information security. These provisions are outlined in detail within Data Sharing Protocol in Annex B.

9 DETAIL ON SPECIFIC CONSIDERATIONS RELATING TO COLLABORATIVE WORKING ARRANGEMENTS

9.1. Mechanisms for commissioning research and other evidence gathering activities

9.1.1 The FSA and FSS will share information on all of their activities relating to the identification, prioritisation, planning and commissioning of new scientific research and other evidence-gathering activities. Where appropriate, both parties will also co-operate in any administrative procedures required to support these activities such as tendering and evaluation/peer review.

9.1.2 This covers all evidence gathering and analytical functions undertaken within FSA and FSS in addition to activities commissioned externally including; research, surveillance, monitoring, secondary analysis, and data-gathering. It also includes the provision of support for science expertise and capabilities (through official control and national reference laboratories, centres of excellence, fellowships, studentships, secondments etc.); and participation in work to be undertaken by either organisation jointly with or through other funders.

9.1.3 Both organisations will engage on the development of their respective evidence prioritisation cycles and on *ad hoc* proposals for new work. This will be done according to timescales and format that allow each body to comment on ideas and priorities for new work planned by the other, to identify:

- existing data that are capable of addressing evidence needs;
- opportunities for collaboration, co-ordination or joint funding;
- scope to refine specifications and approaches to new work based on the knowledge and expertise of both organisations;

- appropriate procedures for commissioning new evidence needs.

9.1.4 The FSA and FSS will similarly consult and collaborate to identify opportunities for co-ordinating their food and feed surveillance and monitoring programmes, sampling strategies and horizon scanning activities to ensure effective use of resources and adequate coverage of UK wide interests.

9.2 **Sharing the outputs of research and other evidence gathering activities**

9.2.1 Wherever possible, the FSA and FSS will collaborate to ensure a consistent, UK wide approach to the synthesis, evaluation and review of evidence generated by research, surveillance and horizon scanning activities undertaken by either organisation.

9.2.2 FSA and FSS will establish systems that allow the sharing of information, data and analysis arising from research, surveillance and horizon scanning work, and the results and underpinning data generated by the activities listed in 7.2 above.

9.2.3 Both organisations will always consider mechanisms for sharing the data and evidence when planning new data and evidence-gathering activities.

9.3 **Accessing Scientific Advisory Committees (SACs) and Joint Expert Groups**

9.3.1 These provisions apply to the SACs for which FSA is sole or lead sponsor and leads the Secretariat as set out below, and any Joint Expert Groups which have been convened from these Committees to support specific areas of work as described in the Risk Analysis guidelines. They will also apply to any new SACs set up to provide advice to UK food authorities for which FSA becomes sole or lead sponsor and leads the Secretariat:

- Advisory Committee on the Microbiological Safety of Food (ACMSF);
- Advisory Committee on Novel Foods and Processes (ACNFP);
- Advisory Committee on Animal Feedingstuffs (ACAF);
- Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT).

9.3.2 For regulated products, three new Joint Expert Groups (JEGs) were established to take on the bulk of this work:

- Food contact materials;
- Additives, flavourings, enzymes and other regulated products;
- Animal feed and feed additives.

The first two are joint expert groups of COT and ACMSF, and the third is currently reports to COT, consistent with the existing remits of those parent committees. ACNFP will provide advice on approvals of novel foods and GM (food and feed).

9.3.3 These provisions do not apply to the FSA's Advisory Committee for Social Sciences (ACSS) and the Science Council. The ACSS provides expert strategic advice to the FSA on its use of the social sciences including new and emerging methods, processes and systems to interrogate data, to deliver the FSA's objectives. The function of the Science Council is to advise the FSA on the FSA's use of science to deliver FSA objectives, and as such is not directly applicable to any other body. Notwithstanding, the ACSS and Science Council Secretariats will ensure regular communication with FSS on its work programme and outputs as appropriate.

9.3.4 SAC Secretariats will share information with the FSS on:

- committee agendas, forward work plans and new agenda items;
- recruitment and reappointments;
- Triennial Reviews of SACs.

9.3.5 FSS may nominate an observer to attend SAC meetings and will be invited by the secretariat to represent Scottish interests where appropriate.

9.3.6 Where FSS wishes to refer an issue to the relevant SAC for inclusion on its work plan:

- The Secretariat and FSS will discuss the approach, scheduling and priority, with the aim of ensuring that such issues have a fair allocation of Committee time and resource, within the overall work plan of the Committee.
- FSS will be responsible for drafting and presenting relevant papers, and will do so in consultation with the Secretariat to ensure that these are consistent with the Committee's remit, its approach to defining new Committee tasks and to the presentation and assurance of work, and the agreed timescale.
- FSS will be responsible for SAC costs that relate to any meetings specifically held to consider issues that only affect Scotland.

9.3.7 Reciprocal arrangements will be agreed in the event that the FSS establishes any SACs or other expert advisory mechanisms in areas of interest to the FSA.

10 DESIGNATION AND MANAGEMENT OF LABORATORY SERVICES TO SUPPORT LEGAL OBLIGATIONS WITH REGARD TO THE DELIVERY OF OFFICIAL CONTROLS ON FOOD AND FEED

- 10.1 As Competent Authorities for the delivery of food and feed official controls in the UK, the FSA and FSS are responsible for the designation and oversight of laboratory services needed to carry out analyses, tests and diagnoses on samples taken for this purpose, and for establishing National Reference Laboratories (NRLs).
- 10.2 The FSA and FSS will jointly designate official control laboratories (OCLs) across the UK to facilitate co-ordination and access to scientific services for all food and feed enforcement functions. Both parties will also co-operate on arrangements for auditing OCLs to ensure the reliability and consistency of analytical and diagnostic tests and results.
- 10.3 FSA and FSS will collaborate jointly to designate national reference laboratories for the UK.

11 WORKING ARRANGEMENTS

11.1 Three levels of working arrangements will support implementation and review of this Science and Evidence protocol:

- FSA and FSS science and risk assessment teams will maintain regular contact at working level in each of the six areas outlined at 7.2 above, and in accordance with procedures outlined in the Risk Analysis Protocol (Annex G).
- FSA and FSS senior science leads will meet quarterly to review cross-cutting strategic and governance matters. These meetings will:
 - a. share forward planning of research, surveillance and horizon scanning activities to be taken forward by each organisation;
 - b. review the operation of the MOU Science and Evidence Protocol across the six areas outlined in 7.2 above;
 - c. identify any amendments that need to be made to the protocol and the updating of WLAs listed in Annex H and ensure these are undertaken during the annual MoU review process (see 'MoU Review' section in the body of the MoU);
 - d. agree actions and the resolution of issues raised at working level.
- FSA and FSS Chief Scientific Advisors will meet biannually to discuss strategic issues around science collaboration and governance.

11.2 If either the FSS or FSA wishes to commission scientific services from the other body in support of work falling within its own areas of responsibility, then the two bodies will discuss and agree in advance the arrangements for this in a separate agreement (for example, a Service Level Agreement or WLA). Such arrangements will also cover services procured by either organisation to support risk assessment functions (any such WLAs will be listed in Annex H).

ANNEX D: INTERNATIONAL PROTOCOL

12 PURPOSE AND SCOPE

- 12.1 UK representation at an international level is a reserved matter, as is the regulation of international trade and import and export controls generally. However, there are exceptions to these reservations which include the implementation of international obligations, as well as public health controls in relation to the import and export of food and feed. Food and feed imports will be subject to agreed risk analysis processes (Annex G) in line with UK frameworks, alongside the principles outlined in this section.
- 12.2 The FSA and FSS therefore acknowledge a shared interest in international policy matters, where the development of international policy, positions or objectives falls into our respective remits.
- 12.3 This protocol will enable good working relationships and strong collaboration between FSA and FSS staff on international matters. The roles and responsibilities of each body with regards any new obligations or protocols arising in an international context will be developed as future relationships are established.

13 GENERAL PRINCIPLES

- 13.1 The FSA and FSS agree to:
- share information on EU and International activities in an open and timely manner;
 - develop collaborative or mutually supportive approaches to the development of international policy, objectives, and positions;
 - ensure the interests of stakeholders and administrations across the UK are taken into account when arriving at an agreed UK position; and

14 SPECIFIC PROVISIONS

14.1 International policy development and liaison

- 14.1.1 The FSA will involve FSS directly and fully as possible in discussions about the formulation of the UK Government's policy position on reserved international issues, including those which touch on devolved matters (and non-devolved matters, particularly where there may be a distinctive impact in Scotland). Where the matter is devolved (e.g. the development of food safety standards for imported food which may affect future trade discussions), the FSA and FSS will work collaboratively and in line with agreed risk analysis processes where appropriate (see Annex G).
- 14.1.2 The FSA will co-ordinate the agreement of UK food and feed positions and lines with FSS, allowing for consultation in respective countries to take place.

Commented [SD(22)]: Revision Note

This section has been significantly amended. In particular, much of the detail regarding the UK's relationship with the EU has been removed and more general, high-level text covering the UK's broad international duties has been added in. This is because the nature of the UK-EU post-transition relationship is still under negotiation. Once further detail about the UK's relationship with the EU is known, either this text itself will be updated (if the annual review is imminent) or a WLA will be added to this MoU (if the review process is not imminent).

14.1.3 Where expertise on an issue lies predominately within Scotland, subject to agreement by the lead UK Government Department, FSA agree that FSS will provide UK representation. The role of FSS will be to support and advance the UK negotiating position.

14.1.4 The FSA will work collaboratively with FSS to develop third country Memoranda of Understanding where the FSA is the UK Government lead. Where either FSA or FSS seek to develop any formal relationships with institutions within third countries, they will actively inform and seek input where appropriate from each other at an early stage in order to ensure parties are fully sighted.

14.1.5 International liaison for individual policy areas is undertaken across both FSS and FSA as part of their core work. More details of how FSS and FSA have agreed to work together in these areas can be found in the following annexes:

- Annex A: Protocol on Incident Handling.
- Annex C: Science and Evidence Protocol.
- Annex F: Protocol on Food Crime.
- Annex G: Protocol on Risk Analysis.

14.1.6 Central international coordination leads within FSA and FSS will meet at least once every quarter to share international information, take stock of emerging and developing international issues and discuss areas that may require further collaborative working.

14.2 Third country audits

14.2.1 The Department for Environment, Food & Rural Affairs (Defra) is the first point of contact for inward Santé F and other third country inward audits. Upon receipt of such requests, Defra will contact the relevant Central Competent Authorities (CCAs) to coordinate inward audits. In the FSA, the Regulatory Compliance Division is responsible for co-ordinating FSA related inward audits, liaising with policy leads and devolved nations as appropriate. In FSS, the international assurance lead will co-ordinate FSS input to this process. The teams will liaise as required to co-ordinate requests as necessary on a case by case basis.

14.2.2 Outward inspections required to assess third country Sanitary and Phytosanitary (SPS) regimes and provide assurance on third country imports entering the UK are expected to be coordinated by Defra's biosecurity office (the exact remit of which is subject to further discussions) and the CCAs will be contacted as required to support this.

14.3 Listing of UK establishments eligible for export of Products of Animal Origin (POAO)

13.3.1 Our relationship with the EU beyond the Transition Period with regards to conditions for exports of POAO is not yet known, this section will be amended when the details of our relationship with the EU in this area is understood. Both FSA and FSS will

continue to liaise regarding any activity required at a UK level, where required by 3rd countries and confirmed by Defra, with regards the listing of establishments and classified shellfish areas for export purposes.

14.4 Codex Alimentarius Commission (CODEX)

14.4.1 Defra is the UK Contact Point for CODEX and some CODEX Committees. The FSA represents the UK at the following CODEX Committees on food and feed matters:

- Food hygiene.
- Food additives.
- Contaminants in foods.
- Methods of analysis and sampling.
- Food import and export inspection and certification systems.

14.4.2 Information on the CODEX forward work programme including details of upcoming meetings and papers are available from the CODEX website. The quarterly meetings between FSS and FSA to discuss International matters will provide an opportunity for a forward look and to share any issues arising.

14.5 World Health Organisation (WHO)

14.5.1 FSA engagement with the WHO is undertaken through the Department of Health and Social Care (DHSC). FSS will engage with the DHSC through Scottish Government Health Directorates with regard to Scottish issues that may require WHO representation.

14.6 World Trade Organisation (WTO)

14.6.1 Defra is the National Notification Authority (NNA) for the WTO SPS) Committee while Department for International Trade (DIT) is the NNA for the Technical Barriers to Trade (TBT) Committee. The NNAs will notify new or amended measures to the relevant Committee on behalf of FSA and FSS, coordinating with devolved WTO SPS/TBT teams as appropriate. FSA and FSS will work together to ensure that Defra and DIT are briefed and supported as necessary to defend FSA and FSS interests at the WTO.

14.7 European Union (EU)

14.7.1 Our relationship with the EU beyond the Transition Period is currently not known. FSA and FSS agree to continue to collaborate to achieve agreed outcomes and develop guidance on roles and responsibilities as future relationships are established.

14.8 EU and International Dispute Resolution

14.8.1 Where a dispute relating to international liaison arises that is not within the remit of this MoU's dispute resolution process FSA and FSS agree to abide by the dispute

resolution process as set out in the Concordat on International Relations between the United Kingdom Government and Scottish Ministers.

ANNEX E: COMMUNICATIONS PROTOCOL

15 Guiding Principles for Communications

- 15.1 Both organisations will ensure consumers and stakeholders, including the media, across the UK receive consistent, evidenced and factually correct information via their respective communications strategies and channels, in their respective countries of responsibility.
- 15.2 Where there is divergence of policy, strategy or organisational approach, the FSA and FSS communications teams will work together to ensure the differences are clearly understood and articulated, and the potential impact on the other organisation is considered in communications handling.
- 15.3 The FSA and FSS will respect the jurisdiction of each organisation in the development and delivery of communications priorities that support each organisations' respective objectives. This will include consideration of media buying, branding, media relations and research as expanded upon below.
- 15.4 In communications with one another, the FSA and FSS will be open, transparent, helpful, collaborative, timely and proactive in alerting one another to communications issues which may impact the other organisation.
- 15.5 In all communications, both organisations will be mindful of the fact that there are two competent authorities in the UK and will ensure that this is clear to the public and stakeholders.

16 Media and Communications

- 16.1 The FSA and FSS will collaborate on communications, particularly involving each other in the development of planned press material, such as releases and statements, and digital content, web stories and social media, where there is common interest to both organisations and the publics they serve.
- 16.2 The FSA and FSS will ensure that the other body receives:
 - drafts of any planned publications with specific implications for either organisation three days in advance wherever this is possible; and
 - drafts of any announcements including press releases and web stories with specific implications for either body approximately 24 hours before they are released to the media where practicable or otherwise as soon as possible
 - early intimation of any press engagement that could potentially impact, or which might be better handled by, the other organisation to allow as much time as possible for preparedness.
- 16.3 The FSA and FSS will respect the confidentiality of any documents shared in advance of publication and will not cause the content of those documents to be made public ahead of the planned publication date.

Commented [SD(23)]: Revision Note
FSA and FSS have worked together on the new MOU to make our relationship deeper and closer. For example, as well as putting in place strict 'no surprises' arrangements for both teams, we have also, where appropriate, laid out how we might work together on campaigns and marketing activity – pooling resources and ideas to meet joint objectives. We have also improved our digital co-operation and agreed ways of working across borders on food incidents.

16.4 While the FSA and FSS will endeavour to produce consistent communications, should the need arise both bodies reserve the right to tailor messaging for use in Scotland by FSS and in the rest of the UK by FSA whilst having due regard for the potential impact of differential messaging on each other and the public.

16.5 The FSA will issue communications to the media in England, Wales and Northern Ireland, including national news outlets. FSS will issue communications to the Scottish media and national news outlets in cases where there is a communications issue of wider, UK-wide interest but which is generated in Scotland and where FSS is the lead authority, to ensure that the Scottish public is fully informed of Scotland-specific issues and advice. The FSA and FSS commit not to issue communications to the same news outlets on the same issues. In these cases, both FSA and FSS will share key messages, lines to take and Q&A with each other to ensure consistency of messaging. The FSA and FSS reserve the right to use their own spokespeople for their own media but will ensure they are briefed according to the agreed communications plan.

17 Marketing Campaigns and Media Buying

17.1 The FSA and FSS will advise one another at an early planning stage of the development of relevant marketing campaigns in their respective geographical areas. Each organisation will have the opportunity to discuss running those campaigns on a case-by-case basis in their own locale should there be shared objectives as appropriate. Any financial contribution to joint campaign development and delivery will be agreed at the outset. The lead organisation will keep the other body apprised of development and provide sight of materials but will ultimately retain control over creative output and strategy regardless of any financial contribution from the other body.

17.2 Should it be agreed that both organisations will run the same campaign, all related campaign materials, whether physical or online, must be jointly branded and/or branded FSS in Scotland and the FSA in the rest of the UK as agreed at the time.

17.3 When planning and buying media for campaigns, crossover into the other organisation's geographical area should be avoided, with media agencies being briefed on this requirement as a matter of course. Where there will be unavoidable crossover, for example via social media channels and some digital TV channels, the organisation buying the media must advise the other body as early as possible. This extends to partnerships marketing activity, where, for example, UK-wide organisations and bodies may use materials in the other organisation's locale.

18 Social Media and Alerts

18.1 The FSA and FSS maintain separate social media channels but where there is a rationale for joint social media activity, this should be discussed and agreed at as early a stage as practicable.

18.2 Allergy and Food Alerts will be issued by each organisation according to the protocols set out in Incidents Handling in Annex A. Templates and approaches for these should

be agreed as part of the Efficacy of Recalls project to ensure consistency of communications approach across the UK and to avoid confusion amongst the public.

- 18.3 FSS will use the FSA's APIs for Allergy and Food Alerts for FSA-led incidents where there is distribution to Scotland.

19 Branding and Publications

- 19.1 Where publications, reports and other communications materials are to be jointly developed, consideration must be given at an early stage of dual branding, including overall 'look and feel' and use of brand colours, fonts etc as well as both organisation's logos, to ensure joint publications are clearly distinguishable as being from both the FSA and FSS and adhere to both organisations' brand guidelines as far as practicable. Templates for such instances should be developed and signed off by both organisations to ensure a consistent approach.
- 19.2 In such cases, any cost-sharing and the percentage split between the two organisations will be agreed at the outset of a project.

20 Social Science and Consumer Research

- 20.1 The FSA and FSS will keep each other apprised regarding forthcoming social science and consumer research and offer to work jointly on areas of mutual interest. Where a research project may involve respondents from within each organisation's geographical area, the rationale for this should be discussed at an early planning stage and agreement reached as to whether this is appropriate or not between the FSA's Head of Social Science and FSS's Head of Communications and Marketing.

21 Stakeholder Communications

- 21.1 Each body will communicate with stakeholders within its jurisdiction regarding matters of joint and separate interest. Where one body will be communicating with UK-wide bodies, it should apprise the other in advance and share the outputs from the meeting/discussion with the other body.

22 Digital and Websites

- 22.1 Where it is appropriate to do so, each organisation will allow the other to link to pages and sections on each other's websites.
- 22.2 Digital assets, such as interactives, education resources and training tools, remain the property of the organisation which developed them, but sharing and rebranding of those assets for use by the other organisation should be considered on a case-by-case basis, with financial contribution agreed as appropriate to offset development and resource costs.
- 22.3 Joint digital projects should be considered at an early planning stage where doing so will be to the benefit of consumers across the UK. The organisation which proposes the activity will generally be the lead organisation and will retain control over the

process and outputs, with input from the other organisation to ensure these are mutually agreeable and beneficial. This will be discussed and agreed at the outset.

22.4 FHRIS and FHIS data should be searchable on both FSS's and the FSA's websites.

23 Incident Communications

23.1 Details of specific communications protocols related to the management of incidents are contained in the Incidents Handling protocol at Annex A.

24 Risk Communications

24.1 Details of specific risk communications protocols related to the risk analysis process are contained in the Risk Analysis protocol in Annex G.

ANNEX F: PROTOCOL ON FOOD CRIME

25 Introduction

- 25.1 The FSA and FSS have similar responsibilities to prevent and detect food crime. Both work to a similar definition of food crime as “serious fraud and related criminality within the food supply chain that affects its authenticity and integrity”.
- 25.2 Fraud offences are prescribed within statute and common law effective in each jurisdiction.

26 Current arrangements for the investigation of food crime

- 26.1 Both the FSA and FSS apply established National Intelligence Model (NIM) principles to identify threats, assess risks from a law enforcement perspective, and deploy resources to meet demand.

27 Intelligence

- 27.1 The FSA and FSS will separately manage information and intelligence and lawfully share intelligence for law enforcement purposes.
- 27.2 Both bodies commit to continue regular intelligence sharing to promote collaborative working to protect the public and have worked together to produce a strategic assessment on food crime across the United Kingdom.
- 27.3 Both bodies will continue to work with other countries independently where specific enquiries require it.

28 Operating Model

- 28.1 Each body prepares their control strategy, identifying their tactical priorities and intelligence gathering requirements. Such strategies develop from the strategic assessments. They are independently prepared, likely to be complimentary and will be shared to promote interoperability.
- 28.2 Both the FSA and FSS will work to jointly lead on OPSON (a Europol and Interpol joint operation targeting fake and substandard food and beverages) and this offers a model for cross border collaboration between the two units within the UK.

29 Tasking

- 29.1 The FSA's and FSS' food crime units has an established Tactical Tasking and Co-ordination Group (TTCG) structure in line with NIM that meets their respective needs. TTCG drives tactical activity and the tactical assessments prepared ahead of each meeting measure progress against identified tactical priorities as set out in the respective control strategies. Those strategies are derived from strategic assessments. The suite of tactical tasking documents will be mutually shared when published.
- 29.2 Strategic documents are shared appropriately in the course of preparation to ensure that each unit is maximising the intelligence capture ahead of finalisation of such documents.

Commented [SD(24)]: Revision Note

This is a new protocol, included because the food crime work area was established after the MoU was first agreed in 2015. This revised MoU is the first time content on food crime has been included.

29.3 Colleagues are invited appropriately to respective TTCG meetings. This will promote interoperability and enable opportunities for specific joint tasking, particularly in Border regions.

29.4 The sharing of such tactical documents enables each unit to identify areas of common interest. This MOU strongly recommends agrees that officers proactively engage with respective departments in such circumstances to share good practice, intelligence and work together to jointly develop and deliver consistent strategies, and with other agencies where appropriate, to protect the public and disrupt such criminality.

30 Investigations

30.1 Each body has investigation capacity and capability. They will continue to lead on their own investigations.

30.2 It is recommended that at the outset of any new investigation, the lead officer in charge of that investigation considers the potential for evidence to be gathered in either jurisdiction. They will also consider, based on known facts and intelligence at that time, the potential for that investigation to recover evidence of criminality in another jurisdiction e.g. Scotland or one of the other three countries.

30.3 That lead officer will record considerations and decision making as to how to progress that and in any event, it is recommended that early consultation is had with colleagues in the FSA and FSS food crime units to discuss and agree how to progress such enquiries. This will promote joint working, maximise recovery of evidence in an expeditious manner and demonstrate audit trail of decision making in the event of investigations becoming complex.

30.4 Where joint investigations are run there will be a GOLD structure with an officer in overall command of the investigation. That will ensure clarity around jurisdictional issues and ensure evidence is lawfully and expeditiously preserved and secured and address disclosure requirements from the outset.

31 Existing MOUs with national partners

31.1 Both the FSA and FSS food crime units have established existing MOUs with relevant LA partners e.g. Chief Environmental Health Officers in Scotland, and Association of Chief Trading Standards officers in England, Wales and Northern Ireland. Each unit will continue to consolidate those existing relationships and look to develop new ones with relevant national partners. This MOU will compliment such agreements, and inform new ones, rather than replace them.

32 Relationships

32.1 The independence of each agency is reflected in their involvement in established national, international forums and groups. This includes public sector partners, other law enforcement and business. The FSA and FSS food crime units will continue to so engage as they independently see fit and will look to mutually and appropriately share the developments from those engagements.

- 32.2 Both units will continue to work with international partners through the new arrangements that will develop. Ensuring a SPOC from each organisation represents maintains the independence of their unit/agency in such forums The SFCIU currently has adopted the Chair of the Global Food Alliance and will continue so to do, whilst the NFCU remain a key member thereof.
- 32.3 The MOU agrees that both units will look to affirm good practice, deliver UK wide, intelligence led proactive joint working and identify and share that through the year in line with TTCG meetings when officers attend the partner by invitation.

ANNEX G: PROTOCOL ON RISK ANALYSIS

32.4 Risk analysis is the process by which the FSA and FSS assess, manage and communicate food and animal feed safety risks. Key high-level principles for the process are that:

- risk analysis comprises risk assessment, risk management and risk communication;
- risk assessment and risk management functions should be separate;
- the risk analysis process is open and transparent. We will publish our risk management advice and the evidence and analysis on which that advice is based;
- advice and recommendations presented to Ministers will be risk, science and evidence-based and independent;
- the risk analysis process has the capacity to provide for 4-country working and deliver, where appropriate to do so, unified food and feed safety risk management recommendations for the UK.

32.5 Both bodies agree to close working relationships and strong co-ordination and collaboration between the FSA and FSS staff involved in risk analysis. There will be cross departmental and devolved administration engagement throughout the risk analysis process to ensure all relevant issues and interests of other government departments with responsibilities for food and agriculture, health and trade are taken into account.

33 Risk assessment

33.1 Risk assessment involves using a scientific approach to identify hazards and estimate the potential risk to human and/or animal health. This includes evaluating the likely exposure to risks from food and other relevant sources.

33.2 The FSA and FSS will collaborate on risk assessments in areas of agreed FSA expertise where there is a foreseeable UK-wide impact. In doing this, the FSS will notify the FSA with regard to any issues, evidence or analysis specific to Scotland, with the aim of ensuring that assessments properly reflect the situation in Scotland, as far as the evidence allows.

33.3 The FSA will be responsible for any risk assessments within its remit that apply exclusively in England, Wales or Northern Ireland.

33.4 FSS will be responsible for any risk assessments within its remit that apply exclusively in Scotland. Depending on the circumstances and expertise required, FSS will either:

- undertake risk assessment in-house;
- collaborate with FSA risk assessors; or

Commented [SD(25)]: Revision Note

This is a new work area due to be implemented once the transition period ends. The detailed content is yet to be finalised and will be included in a supplementary WLA.

- request risk assessments from specialist scientists within FSA in areas where this expertise does not exist within FSS.

- 33.5 FSS will ensure FSA is notified at the earliest opportunity when it requires support from FSA on risk assessments that apply in Scotland. The FSA will advise on any resource implications associated with the type of support requested and whether it is possible to be provided by FSA scientists or will require FSS to seek alternative sources of expertise.
- 33.6 The FSA and FSS will undertake risk assessments according to agreed protocols including procedures outlined in the Food and Feed Safety Risk Analysis Guidelines. FSA and FSS will collaborate on any updates to these protocols to ensure methodologies applied for undertaking risk assessment are consistent and in line with international standards.
- 33.7 The FSA and FSS will also work collaboratively in evidencing other legitimate factors related to consumers' wider interests in relation to food, as circumstances may require, in accordance with the arrangements set out above.

34 Risk management

- 34.1 Risk management is the consideration of potential measures to either prevent or control the risk. It takes into account the findings of risk assessment and other legitimate factors related to consumers' wider interests in relation to food to identify an appropriate response.
- 34.2 Co-ordination and collaboration between FSA and FSS staff involved in risk management will be through agreed forums/groups that will facilitate:
- prioritisation and triage of issues in the process;
 - working level discussion on specific and/or routine issues, building on existing good policy practice across the four nations;
 - SCS level discussion between FSA, FSS and with other government departments from across the UK on developing risk management recommendations for non-routine issues and assurance on routine matters.

35 Risk Communication

- 35.1 Risk communication is the exchange of information and opinions throughout the risk analysis process between risk assessors, risk managers, consumers, industry, the academic community and other interested parties. It includes understanding the concerns of consumers and other stakeholders, the publication of risk assessment findings and other supporting evidence, and the distribution of final advice.
- 35.2 Risk communication is integrated throughout the risk analysis process.

- 35.3 FSA and FSS agree to share the plans and details of any relevant communications associated with risk analysis as soon as possible. This includes communication across science, policy and communications teams as issues progress through the risk analysis process, and early sharing of the associated developing communications plans around the publication of information/outputs for issues progressing through the risk analysis process and risk management advice and recommendations.
- 35.4 Both bodies are committed to consulting on and publishing the risk management advice we provide to others, and the analysis and evidence on which that advice is based.

ANNEX H: WORKING LEVEL AGREEMENTS

35.5 No working level agreements (WLAs) are currently available.