



UK-US Mutual Defence Agreement

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The *Agreement between the UK and the USA for Cooperation in the Uses of Atomic Energy for Mutual Defence Purposes 1958*, also known as the Mutual Defence Agreement (MDA), allows the United States and the UK to exchange nuclear materials, technology and information. It was the result of an amendment to post-war US non-proliferation law, which exempted allies that had made substantial progress in developing nuclear weapons from the general ban on exchanges that might lead to nuclear proliferation.

The most important part of the MDA is time limited and is due to expire at the end of 2014. An amendment to the treaty, which will extend this deadline to 2024, must be ratified by both States and brought into force by the end of this year.

Critics argue that the MDA, as amended, contravenes the parties' obligations under the *Treaty on the Non-Proliferation of Nuclear Weapons 1968* (NPT).

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1 History and Purpose of the Mutual Defence Agreement

The [Agreement between the UK and the USA for Cooperation in the Uses of Atomic Energy for Mutual Defence Purposes 1958](#) (the Mutual Defence Agreement, or MDA) was drawn up in order to allow the UK and the USA to share classified nuclear information, nuclear technology and scientific knowledge in relation to each countries' respective nuclear weapons programmes.

Under the *United States Atomic Energy Act 1946*, usually known as the McMahon Act, the US was prohibited from sharing atomic energy information with other states, thus preventing any further collaboration with the UK on nuclear weapons in the aftermath of the Second World War. The UK subsequently pursued its own nuclear weapons programme.

In 1954 the McMahon Act was amended to allow exchanges of information on civil aspects of atomic energy and limited exchanges on defence aspects. In 1955 parallel US-UK civil and military agreements were signed. The civil agreement permitted the supply of uranium 235 for civil purposes, while the military agreement allowed for an expanded dialogue on intelligence issues and planning.¹

In 1958 the McMahon Act was amended again to allow greater cooperation in the military field with US allies, and in particular with those which had made "substantial progress" in the

¹ See <http://treaties.fco.gov.uk/docs/pdf/1955/TS0055.pdf> and <http://treaties.fco.gov.uk/docs/pdf/1955/TS0052.pdf>

development of nuclear weapons. The UK was recognised as the only state fulfilling the criteria.

The possibility of cooperation with the UK was prominent in the Eisenhower administration's thinking when it sought to amend the McMahon Act, and the necessary legislation was introduced to Congress shortly after Eisenhower and Macmillan had issued their "declaration of interdependence" in October 1957. The MDA, which had been negotiated in parallel to the US legislation, was signed by the parties on 3 July 1958, three days after the passage of the amendments to the McMahon Act.

In its original form the MDA allowed the sharing of classified information relating to defence planning; training for the use of, and defence against, atomic weapons; assessment of the atomic capabilities of potential enemies; the development of delivery systems and research in, and development and design of, military nuclear reactors. It also allowed the sale to the UK of one complete nuclear submarine propulsion plant, plus the uranium needed to fuel it over a ten year period. Technical co-operation arrangements under the MDA also allowed the UK to exchange data and conduct joint nuclear tests at US facilities from the early 1960s onwards. There were conditions on the use and protection of classified information, and on patenting of designs developed as a result of the transfer of such information.

Alongside the Polaris Sales Agreement, under which the US provided the Polaris and later the Trident nuclear missile system to the UK, the MDA has been the cornerstone of the UK-US nuclear relationship for nearly 60 years. Indeed, the Atomic Weapons Establishment, which is responsible for all aspects of the UK's nuclear weapons programme, describes the agreement as "fundamental" to the UK in maintaining its independent nuclear deterrent.²

The MDA as a whole is not time limited, and it therefore continues in force until both parties agree to terminate it. However, it has been amended a number of times throughout its history. What is regarded as the most significant amendment, was the introduction of Article III *bis* in 1959.

1.1 Article III *bis*

Article III *bis* (a new Article to go after the existing Article III) was introduced in an [amendment in 1959](#).³ It allows for the transfer of special nuclear materials⁴ and non-nuclear components between the US and the UK, and as such is regarded as the most important substantive part of the treaty. Initially the amendment provided for the transfer of nuclear materials for a period of ten years, up to 31 December 1969.

² Atomic Weapons Establishment *Annual Review 2012*

³ Treaty Series (No.72) 1959

⁴ Plutonium or highly enriched uranium

Article III *bis* states:

Transfer of Materials and Equipment

“ A.—The Government of the United States shall transfer to the Government of the United Kingdom the following in such quantities, at such times prior to December 31, 1969, and on such terms and conditions as may be agreed:

- “ 1. non-nuclear parts of atomic weapons which parts are for the purpose of improving the United Kingdom’s state of training and operational readiness;
- “ 2. other non-nuclear parts of atomic weapons systems involving Restricted Data which parts are for the purpose of improving the United Kingdom’s state of training and operational readiness when in accordance with appropriate requirements of applicable laws;
- “ 3. special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and
- “ 4. source, by-product and special nuclear material, and other material, for research on, development of, or use in atomic weapons when, after consultation with the Government of the United Kingdom, the Government of the United States determines that the transfer of such material is necessary to improve the United Kingdom’s atomic weapon design, development or fabrication capability.

“ B.—The Government of the United Kingdom shall transfer to the Government of the United States for military purposes such source, by-product and special nuclear material, and equipment of such types, in such quantities, at such times prior to December 31, 1969, and on such terms and conditions as may be agreed.

The desire to continue these arrangements has resulted in Article III *bis* being extended several times since then. Since the 1980s those extensions have consistently been for a period of ten years.⁵ The last extension was agreed in 2004, which allowed for the transfer of nuclear materials and equipment until 31 December 2014.⁶

As such a new amendment to the MDA will have to be ratified by both States’ Parties by the end of 2014 for Article III *bis* to remain in force. If ratification is not achieved by this date the MDA itself would still remain in force, but the transfer of special nuclear materials and equipment under Article III *bis* would be prohibited until a subsequent amendment treaty was adopted.

⁵ Treaty Series (No.85) 1969; Treaty Series (No.46), 1970; Treaty Series (No.65) 1975; Treaty Series (No.61) 1980; Treaty Series (No.4) 1985; Treaty Series (No.22) 1995; Treaty Series (No.1) 2005

⁶ <http://www.acronym.org.uk/docs/0406/doc14.htm#01>

1.2 Practical Application

Over the years co-operation has taken place on a broad range of nuclear issues with the aim of improving each party's "atomic weapon design, development and fabrication capability".⁷

The exchange of technical information and expertise is largely conducted through visits (for example, over 2,000 visits by AWE staff were made to US nuclear facilities between 2007 and 2009)⁸ and Joint Working Groups which meet periodically to consider progress and to suggest further avenues of work. In the past Joint Working groups have examined issues such as nuclear warhead physics, nuclear weapons engineering, environmental effects, safety assurance, and accident response technologies, among others. More recently working groups have also examined nuclear counter terrorism technologies and the operation of modern nuclear weapons facility complexes. In 2012 there were 33 groups operating under the MDA.⁹

As part of the management arrangements of the MDA representatives from the US and British governments meet approximately every 18 months to conduct a "stocktake" of the agreement, whereby its long-term strategic direction is reviewed and guidance on future collaboration is issued. The last stocktake meeting took place in the UK in January 2014.

2 2014 Amendment

As outlined above a new amendment to Article III *bis* is required before the end of 2014 in order for the Article to remain in force.

The intention is for the new amendment treaty to extend the provisions of Article III *bis* until the end of 2024. A number of revisions to the classified annexes are also expected to be made.

To date, the Government has not laid the amendment treaty before the House. On 12 September 2014 FCO Minister, David Lidington, confirmed that "the proposed amendments will be laid before Parliament for scrutiny later in the year".¹⁰

However, in July 2014 the US President presented both a classified and an unclassified version of the intended amendments to Congress for their consideration and approval.¹¹ His message to Congress suggested that additional revisions to the treaty have been made with respect to nuclear threat reduction, naval nuclear propulsion and personnel security. There is no further detail however. The message states:

The Amendment extends for 10 years (until December 31, 2024), provisions of the 1958 Agreement that permit the transfer between the United States and the United Kingdom of classified information concerning atomic weapons; nuclear technology and controlled nuclear information; material and equipment for the development of defense plans; training of personnel; evaluation of potential enemy capability; development of delivery systems; and the research, development, and design of military reactors. Additional revisions to portions of the Amendment and Annexes have been made to ensure consistency with current United States and United Kingdom policies and

⁷ Article II of the Mutual Defence Agreement

⁸ HC Deb 20 January 2011, c909W

⁹ HC Deb 18 June 2012, c656W

¹⁰ PQ208730, 12 September 2014

¹¹ The Senate has 60 sitting days within which to approve or reject the amendment treaty.

practice regarding nuclear threat reduction, naval nuclear propulsion, and personnel security.¹²

To date the Senate Foreign Relations Committee has not considered the amendment treaty.¹³

2.1 Context of the 2014 Amendment

The latest amendment to the MDA will come at a significant time for the UK's nuclear deterrent. Following a Parliamentary vote in 2007, the UK has been committed to the replacement of the current nuclear deterrent from 2028 onwards.

The procurement of complex weapons systems such as the Trident successor is a lengthy process and as such concept and design work began almost immediately after the 2007 vote. The 2010 Strategic Defence and Security Review subsequently made several changes to the timetable of the successor programme. Under current proposals the Government is expected to make the following key decisions within the next ten years (the timeframe for the proposed amendment to the MDA):

- Main Gate on the successor programme, and the point at which the major investment decision will be taken, is scheduled for 2016.
- A decision on a replacement warhead will be taken in 2019.

The current forecast costs for the successor programme remain within the estimates initially set down in the Government's 2006 White Paper, i.e. £15-20bn, including £11-14bn for the successor platform, £2bn to £3bn for the warhead and £2bn to £3bn for the infrastructure (2006/2007 prices).¹⁴ The overall figure equates to approximately £17.5bn -23.4bn in 2013/14 prices.

The 2013 *Update to Parliament* stated that the forecast cost to Assessment Phase completion (i.e. the period up to Main Gate in 2016) "remains within the £3 billion envelope" approved at Initial Gate and that assessment phase spending is expected to represent approximately 15% of the total value of the programme (if based on a four boat fleet).¹⁵

On that basis, a further £15bn -20bn (2013/14 prices) remains to be spent up until completion of the programme. The majority of that money will be spent during the next decade, and the period which the forthcoming amendment to the MDA will cover. Indeed, according to the latest MOD [Equipment Plan](#), approximately one quarter of total committed MOD spending on equipment over the next ten years will be on submarine and deterrent systems.¹⁶

The MOD also announced in May 2012 its commitment to continue investing £1bn a year in facilities at the Atomic Weapons Establishment under the Nuclear Weapons Capability Sustainability Programme, until 2020.¹⁷ This programme does not relate to any replacement

¹² White House, [Message to the Congress](#), 24 July 2014

¹³ See <http://www.foreign.senate.gov/hearings> for updates

¹⁴ HC Deb 13 February 2014, c850W

¹⁵ Ministry of Defence, [The United Kingdom's future nuclear deterrent: 2013 update to Parliament](#), 16 December 2013

¹⁶ Malcolm Chalmers of RUSI has suggested that this could rise to one third of the overall equipment spend if unallocated spending and contingency provisions are attached to the programme at any point in the future. See: "Towards the UK's Nuclear Century", *RUSI Journal*, December 2013

¹⁷ The NWCSP was agreed in 2005 for a 25-year period.

warhead programme but is considered necessary “to ensure we can maintain our existing nuclear warhead in service for as long as necessary, and to ensure we retain the capability to design and manufacture a replacement warhead should that be necessary”.¹⁸

2.2 Parliamentary Scrutiny

In the past amendments to the MDA have attracted considerable criticism from disarmament advocates, both in terms of the perceived violation of the Non-Proliferation Treaty (NPT) that it represents (see below), and in the lack of parliamentary scrutiny afforded to it.

In the UK, treaties are ratified by the government, acting under the Royal Prerogative. This is because under international law it is the government that is bound by treaties.

Prior to the 2010 *Constitutional Reform and Governance Act 2010* Parliament had no formal role in the ratification of treaties in the UK.¹⁹ The last amendment to the MDA in 2004 was approved under these previous arrangements and as such there was no government debate on the treaty prior to its ratification.²⁰

Under Section 20 of the *Constitutional Reform and Governance Act 2010* the government now has a general statutory requirement to publish a treaty that is subject to ratification or its equivalent, and lay it before Parliament for 21 sitting days.²¹

During the 21 sitting days, both Houses have the opportunity to pass a resolution that the treaty should not be ratified. If neither does so, the government can go ahead and ratify the treaty. If either the Commons or the Lords votes against ratification, the government cannot immediately ratify the treaty, but must instead lay a statement giving the reasons why it wants to proceed with ratification.

If the Commons has voted against ratification, laying this statement triggers a further 21 sitting day period before ratification. The Commons can then vote against ratification during this subsequent 21 sitting days, in which case the government can lay its statement again – and the process can be repeated, potentially blocking a treaty indefinitely.

If the House of Lords votes against ratification, but the Commons do not, then a ministerial statement must be laid before Parliament explaining why the treaty should nevertheless be ratified, but the additional 21 sitting day periods are not triggered. The Lords therefore does not have the power to block ratification on its own.

However, there is no statutory requirement for the Government to hold a debate or vote, and Parliament cannot amend treaties.

The forthcoming amendment to the MDA will be subject to this new procedure for the ratification of treaties.

¹⁸ HC Deb 14 May 2012, c21WS

¹⁹ Under the Ponsonby Rule treaties requiring ratification were laid before the House for period of 21 sitting days. Under the rule successive governments undertook to submit “important treaties” to the House for discussion within the 21 sitting days, although only a few were debated in this way. Since 2000 successive governments have also provided the opportunity for the debate of a treaty involving major political, military or diplomatic issues if the relevant select committee and the Liaison Committee so requested.

²⁰ See [HL Deb 22 June 2004, c1119](#). Prior to that in 1994 the then amendment to the MDA was discussed in the House but only within the context of the Consolidated Fund Bill (HC Deb 15 December 1994, c1236 onwards)

²¹ Sitting days are those on which both Houses sit.

2.3 Calls for a Debate

Several members have called for a Parliamentary debate on the proposed amendments to the MDA. On 10 September 2014 Jeremy Corbyn argued in the House:

The mutual defence agreement between Britain and the USA on the sharing of nuclear information, originally signed in 1958, comes up for renewal this year. There is no date set for Parliament to debate it, and apparently the Government do not seem terribly keen on that, yet President Obama sent a message to Congress on 24 July saying that he approved of the renewal of the agreement and hoped that Congress would approve it. If it is good enough for Congress to debate the mutual defence agreement, surely it is good enough for us to debate it as well.²²

He also tabled EDM 153 in June 2014 which states:

That this House notes the expiration later in 2014 of the 10-year extension to the US-UK Mutual Defence Agreement (MDA); understands that the role of MDA is to improve UK atomic weapon design; believes that the extension of this bilateral treaty undermines US and UK commitments under Article I and Article VI of the 1968 Non-Proliferation Treaty, which states that each nuclear-weapon State Party to the Treaty shall not transfer nuclear weapons or explosive devices and shall pursue negotiations in good faith on effective measures relating to nuclear disarmament; is concerned that the Government does not see a potential conflict of interest between the MDA and the NPT; and urges that a debate be held in Government time on any proposal to renew the MDA prior to ratification.

In response to Mr Corbyn's comments on 10 September the Home Secretary, Theresa May, stated that "in accordance with the Constitutional Reform and Governance Act 2010, proposed amendments will be laid before Parliament for scrutiny later in the year".²³

However, as outlined above the Government is not obliged, under the new arrangements, to hold a debate or a vote prior to ratification. The onus will be on the Commons and the Lords to pass resolutions opposing ratification should they so wish.

3 Criticisms OF MDA Renewal

A number of British parliamentarians and anti-nuclear campaign groups have argued over the years that the renewal of Article III *bis* contravenes Articles I and VI of the *Treaty on the Non-Proliferation of Nuclear Weapons 1968*.

The objective of the NPT is to prevent the spread of nuclear weapons and weapons-related technology, further the goal of nuclear disarmament, and promote cooperation in the peaceful uses of nuclear energy. Significantly, the treaty represents the only binding commitment in a multilateral treaty to the goal of disarmament by the recognised nuclear weapon states. At the heart of the treaty is an implicit bargain between the five recognised nuclear weapon states and the other, non-nuclear weapon states. Under the terms of the treaty, the non-nuclear weapon states are able to access peaceful nuclear technology but pledge to forego the acquisition of nuclear weapons. In return, the five recognised nuclear weapon states are permitted to possess nuclear weapons, but only if they commit themselves to the principles of nuclear arms control and eventual disarmament.

²² HC Deb 10 September, c989

²³ *Ibid*, c1010

3.1 Alleged violation of Article I of NPT

It has been claimed that the renewal of the MDA would violate Article I of the NPT, under which states already in possession of nuclear weapons undertake:

not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly, and not in any way to assist, encourage or induce, any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

The organisation BASIC has argued that:

The fundamental purpose of the NPT is set out in the Preamble: “The prevention of wider dissemination of nuclear weapons”. In reality, this is exactly what the MDA provides – an open-ended arrangement for two named states to ‘disseminate’ information, technology and materials in their pursuit of more sophisticated weaponry.²⁴

This position was supported by Dr Miguel Marin Bosch, the Head of Mexico’s delegation to the NPT review conference in 1995. He argued at the time that “the MDA is inconsistent with the spirit and letter of the NPT. There should be a full and transparent public debate before the UK government decides to renew it. Perhaps an advisory opinion from the International Court of Justice would help the UK government in its decision”.²⁵

In May 2001 the then Defence Secretary, Geoff Hoon, stated in response to these arguments that:

The terms and conditions of the 1958 UK/US MDA, and subsequent amendments, allow for the transfer of special nuclear materials between the UK and US. These movements are carried out in accordance with stringent safety procedures and, since they do not involve nuclear weapons or devices, they do not contravene the NPT.²⁶

That position was reiterated by Lord Bach in June 2004 when he stated that “Movements under the MDA do not involve nuclear weapons or nuclear explosive devices; hence they do not contravene the treaty”.²⁷

Supporters of the MDA have also referred to Article V of the MDA itself, which prohibits the transfer of atomic weapons by either party (the UK or US). On that basis they argue that the MDA remains consistent with Article I of the NPT.²⁸

3.2 Alleged violation of Article VI of NPT

The aim of the MDA, essentially, is to improve each party’s “atomic weapon design, development and fabrication capability”.²⁹

This emphasis upon improvement, as opposed to seeking a diminishing role for nuclear weapons, has led many opponents to argue, therefore, that the MDA contravenes Article VI

²⁴ BASIC, *US-UK Nuclear Weapons Collaboration under the MDA*, June 2004

²⁵ See “Renewal of US-UK nuclear cooperation ‘in breach of NPT’ says eminent lawyers”, *Acronym Institute for Disarmament Diplomacy*, 31 August 2008

²⁶ HC Deb 2 May 2001, c644W

²⁷ HL Deb 22 June 2004, c1119

²⁸ The terms “nuclear weapon” and “other nuclear explosive device” are not defined in the NPT, although “atomic weapon” is defined in the MDA.

²⁹ Article II of the Mutual Defence Agreement

of the NPT, under which States Parties undertake to pursue in good faith negotiations towards the cessation of the nuclear arms race, nuclear disarmament and a treaty on general and complete disarmament. Critics point specifically to the outcome of the NPT review conference in 2000 when the nuclear powers gave “an unequivocal undertaking to accomplish the total elimination of their nuclear arsenals, leading to nuclear disarmament”. That commitment was reiterated by the NPT nuclear weapon states at the last NPT review conference in 2010.³⁰

A [legal opinion](#) commissioned by BASIC, the Acronym Institute for Disarmament Diplomacy and Peacereights, which was first published in 2004, expressed the view that “it is strongly arguable that the renewal of the MDA is in breach of the NPT”. Specifically the opinion argued that the NPT takes precedence over the MDA in international law and that the 2000 NPT review conference and the 1996 advisory opinion of the International Court of Justice (ICJ) make clear the obligations toward pursuing nuclear disarmament. In contrast, they argued, the MDA is directed towards the continuance and enhancement of the UK’s nuclear capability. As such they concluded that “it is strongly arguable that this is not in conformity with the obligations of Article VI and the commitments made in the 2000 Review Conference”.

Position of the British Government

The Government insists that the MDA is compatible with the UK’s obligations under the NPT, arguing that the NPT contains no prohibition on updating existing weapons systems and gives no explicit timeframe for nuclear disarmament. It also insists it has taken a number of steps in support of the NPT, pointing to the significant down-sizing of the British nuclear arsenal since the end of the Cold War. The UK has withdrawn all other nuclear weapons systems except for Trident, reduced to fewer than 180 warheads in the UK stockpile (of which no more than 120 will be operationally available) and reduced the operational status of the deterrent. It claims that, with the most recent reductions announced in 2010, the explosive power of the deterrent will have reduced by 75% since 1997.

In July 2014 then FCO Minister, Baroness Warsi, reiterated the Government’s position on the MDA and its relationship with the NPT:

We are committed to the goal of a world without nuclear weapons and firmly believe that the best way to achieve this is through gradual disarmament negotiated through a step-by-step approach within the framework of the Nuclear Non-Proliferation Treaty. The UK has a strong record on nuclear disarmament and continues to be at the forefront of international efforts to control proliferation, and to make progress towards multilateral nuclear disarmament. The UK-USA Mutual Defence Agreement is, and will continue to be, in full compliance with our obligations under the Nuclear Non-Proliferation Treaty.³¹

4 Suggested Reading

- Nuclear Information Service, [Reform not Renewal](#), June 2014
- Hugh Chalmers, [The Bang Behind The Buck](#), RUSI Occasional Paper, March 2014

³⁰ Further detail on the outcome of this conference is available in Library Research Paper RP10/42, [Progress towards Nuclear Disarmament?](#), June 2010

³¹ HL Deb 7 July 2014, cWA19

- Hugh Chalmers and Malcolm Chalmers, *The Future of the UK's Co-operative nuclear Relationships*, RUSI Occasional Paper, June 2013
- CSIS and Chatham House, *US-UK Nuclear Cooperation after 50 Years*, 2008
- Matrix Chambers on behalf of Peacerights, the Acronym Institute & BASIC, *Legal Opinion: Mutual Defence Agreement and the Nuclear Non-Proliferation Treaty*, 2004. It was subsequently re-published in 2008.
- BASIC, *US-UK Nuclear Weapons Collaboration under the MDA*, June 2004
- Library Research Paper, RP10/42, *Progress towards Nuclear Disarmament?*, June 2010