

Research Briefing

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By Claire Mills

Amendments to the UK-US Mutual Defence Agreement



- 1 History and purpose of the Mutual Defence Agreement
- 2 2024 amendments
- 3 Parliamentary Scrutiny
- 4 Criticisms of MDA renewal

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Summary

Authors note: The amendments to the Mutual Defence Agreement [entered into force on 14 November 2024](#).

For more than 65 years the UK and the United States have cooperated on defence nuclear issues.

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 does not provide for the transfer of nuclear weapons or control over such weapons. It was the result of an amendment to post- second world 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.

While the MDA as a whole is not time limited, one of the most important parts of the treaty which allows for the exchange of nuclear materials and non-nuclear components (Article III bis) is time limited and is due to expire at the end of 2024. An amendment to the treaty extending this deadline must therefore be ratified by both States Parties and brought into force by 31 December 2024.

Proposed changes

The Government [published its amendments to the MDA as Command Paper 1135](#) on 25 July 2024.

Many of the proposed changes are minor technical amendments relating to outdated language, definitions and terminology and to reflect the different classifications of information that may be exchanged under the MDA. There are three amendments, however, which are worthy of note:

- Article 4 which makes the provisions on naval nuclear propulsion cooperation reciprocal and allows the UK to transfer technology to, and share information with, the US.
- Article 5 which removes the expiry provisions that relate to article III bis and allows for the MDA, as a whole, to remain in force on an “enduring basis”. As such, the agreement will not require renewal every ten years.
- Article 13 adds new final provisions to the agreement that will ensure that information, material or equipment shared or transferred under the MDA will continue to be protected should the agreement be terminated by either party in the future.

The treaty amendments come at a time when the international security environment is becoming more volatile and the UK, and the US, continue to modernise their strategic nuclear deterrents.

Parliamentary scrutiny

Under the Constitutional Reform and Governance Act 2010 both Houses can oppose ratification should they so wish, but only the House of Commons has the theoretical potential to block the treaty indefinitely. If neither House passes a resolution opposing ratification within 21 sitting days, the Government can go ahead and ratify the treaty. The deadline for passing a resolution opposing ratification is 23 October 2024.

Criticisms of the MDA

Critics argue that continuation of the MDA contravenes the parties' disarmament obligations under the Treaty on the Non-Proliferation of Nuclear Weapons 1968 (NPT). Others have suggested that it perpetuates a cycle of dependence that the UK has on the United States with respect to nuclear weapons.

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](#) (PDF), generally referred to as 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. According to the Ministry of Defence it forms “the basis for UK-US cooperation on the safe and reliable maintenance of the UK’s nuclear deterrent” and has allowed the UK to “significantly reduce costs while maintaining an operationally independent nuclear deterrent”.¹ It does not provide for the transfer of nuclear weapons or control over such weapons.

1.1 Background to the agreement

Under the [United States Atomic Energy Act 1946](#) (PDF), 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 and successfully tested its first atomic bomb in October 1952.²

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 ([Treaty Series 055/1955](#) (PDF)), permitted the supply of uranium 235 for civil purposes, while the military agreement ([Treaty Series 052/1955](#) (PDF)) allowed for an expanded dialogue on intelligence issues and planning.

In 1958 the McMahon Act was amended again to allow greater cooperation with US allies, in particular those considered to have made substantial progress in the development of nuclear weapons, which was taken to mean [the development of a thermonuclear device](#) (or H bomb). The UK was recognised as the only state fulfilling the criteria having successfully tested thermonuclear weapons in 1957 and 1958 ([Operation Grapple](#)).

¹ Ministry of Defence, Explanatory memorandum: [UK/USA: Amendment to the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defence Purposes](#), July 2024

² For a history of the UK nuclear deterrent see HM Government, [The History of the UK nuclear weapons programme](#) (PDF), 2006

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"](#) (PDF) 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.

1.2 Purpose of the MDA

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 authorised the sale to the UK of one complete nuclear submarine propulsion plant, plus the uranium needed to fuel it over a ten-year period (Article III). It did not, however, allow for the transfer of atomic weapons (Article V). 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.³

Alongside the [Polaris Sales Agreement 1963](#) (PDF) and its subsequent amendments in 1980 ([Treaty Series 086/1980](#)) and 1986 ([Treaty Series 008/1983](#)) which provided for the US transfer of the Polaris and later the Trident nuclear missile system to the UK, the MDA has been described as "the cornerstone" of the UK-US nuclear relationship for over 65 years.⁴

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 several times throughout its history. One of the most significant amendments was the introduction of Article III bis in 1959, which in contrast to the rest of the treaty is time limited (see below). In 2014, article III, relating to the transfer of a submarine nuclear propulsion plant and materials, was also amended for the first time in the treaty's history.

Article III bis

Article III bis (a new article to go after the existing article III) was introduced in an amendment in 1959 ([Treaty Series 072/1959](#)). It allows for the transfer of

³ [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for Co-operation on the Uses of Atomic Energy for Mutual Defence Purposes](#) (PDF), Treaty Series 041/1958, Cmnd 537, July 1958

⁴ HM Government, [The History of the UK nuclear weapons programme](#) (PDF), 2006

special nuclear materials⁵ and non-nuclear components between the US and the UK, and as such is regarded as the most important and 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.

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, byproduct 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.

" C.-1. With respect to' by-product material, special nuclear material and other material transferred from one Party to the other under this Article, the recipient Party agrees not to use any such material for purposes other than those for which it was received, provided that material which has lost its identity as a result of commingling with other material of the recipient Party may be put to other uses if the recipient Party. retains an equivalent amount of its own material for the purpose for which the other Party's material was received.

" 2. For material or equipment transferred from one Party to the other Party, the recipient Party shall pay or reimburse, as may be agreed, all packaging, transportation and related costs. Packaging, shipping containers and methods of shipment shall be as may be agreed.

" 3. Should either Party desire to acquire materials or components for use in the manufacture or in preparation for manufacture of atomic weapons from any source within the jurisdiction of the other Party, the procuring Party shall

⁵ Plutonium or highly enriched uranium

inform the other Party of the proposed procurement in order that such other Party may determine whether the proposed procurement involves classified information and if so whether the proposed procurement is in compliance with its applicable laws and regulations.”⁶

The desire to continue these arrangements has resulted in Article III bis being extended several times. Since the mid-1980s those extensions have consistently been for a period of ten years.⁷ The last extension was agreed in 2014, which allowed for the transfer of nuclear materials and equipment, until 31 December 2024.⁸

A new amendment to the MDA will subsequently have to be ratified by both States’ Parties by the end of 2024 for Article III bis to remain in force. If ratification is not achieved by this date the MDA itself would 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.

Article III – nuclear propulsion technology

In 2014 amendments were made to article III of the MDA relating to the transfer of a submarine nuclear propulsion plant and materials. This was the first time that changes to Article III had been made.

When it was adopted in 1958, the MDA authorised the sale to the UK of one complete nuclear submarine propulsion plant, plus the uranium needed to fuel it over a ten-year period. The changes to Article III updated the language of the original provisions in order to allow any future transfer to the UK of submarine nuclear propulsion plants and/or parts, including replacement cores and fuel elements. In line with the original agreement, it also allows for the transfer of information necessary for the design, manufacture and operation of submarine nuclear propulsion plants.⁹

The amendment did not, however, require that any such transfer take place, but merely allowed for the possibility.

⁶ Foreign, Commonwealth and Development Office, [Amendment to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for Co-operation on the Uses of Atomic Energy for Mutual Defence Purposes of July 3, 1958](#) (PDF), Cmnd 859, Treaty Series 072/1959

⁷ Foreign, Commonwealth and Development Office, [Treaty Series 085/1969](#) (PDF); [Treaty Series 046/1970](#) (PDF); [Treaty Series 065/1975](#) (PDF); [Treaty Series 061/1980](#) (PDF); [Treaty Series 004/1985](#) (PDF); [Treaty Series 022/1995](#) (PDF); [Treaty Series 001/2005](#) (PDF) and [Treaty Series 002/2015](#) (PDF)

⁸ [Treaty Series 002/2015](#) (PDF)

⁹ House of Commons Library, [UK-USA Mutual Defence Agreement](#), October 2014

1 Key reading

An annotated text of the MDA, documenting changes made to the treaty since 1959, is available in a July 2024 briefing by the Nuclear Information Service: [US-UK Mutual Defence Agreement](#) (PDF). Articles IX and X are excluded from that document as they are largely unchanged since [the original treaty](#) (PDF) was signed in 1958.

1.3

Practical application of the MDA

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".¹⁰

The exchange of technical information and expertise is largely conducted, at all levels, through visits and Joint Working Groups which meet periodically to consider progress and to suggest further avenues of work. In the past the work of those Joint Working Groups has reflected the scientific, military and political priorities of the time and included: nuclear warhead physics, nuclear weapons engineering, environmental effects, safety assurance, accident response technologies, nuclear counter terrorism technologies, the operation of modern nuclear weapons facility complexes, and maturation of nuclear components, among others.¹¹

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 strategic goals and collaboration is issued.¹²

In answer to a parliamentary question in 2018, the MOD said:

The UK has benefited greatly from the long-standing collaboration on nuclear deterrence and nuclear propulsion with the US. Under the 1958 Mutual Defence Agreement, both nations are able to exchange information and material which enables us to maintain safe, secure and effective nuclear stockpiles, propulsion and weapons systems. Collaboration and co-operation brings enormous advantages for both parties.¹³

¹⁰ Article II of the Mutual Defence Agreement

¹¹ HC Deb 18 June 2012, c656W and US Department of Defence, [Nuclear Weapons Handbook: Chapter 10 international nuclear cooperation](#) (PDF), 2020

¹² US Department of Defence, [Nuclear Weapons Handbook: Chapter 10 international nuclear cooperation](#) (PDF), 2020

¹³ PQ163023, [Trident submarines](#), 16 July 2018

Upgrade of the UK's Mk4 nuclear warhead

As part of the UK's Nuclear Weapons Capability Sustainment Programme (NWCSP), which began in 2005, the UK has been working with the US on nuclear warhead technologies, safety and manufacturing capabilities in order to underpin the UK's existing warhead and to inform the work on any future replacement programme.¹⁴

Part of that work has included refurbishing the UK's current Mk4/Holbrook warhead to replace obsolete non-nuclear components and incorporate the US-designed Mk4A arming, fusing, and firing system. In June 2016 the MOD said that this refurbishment did not equate to a new warhead and "does not change the destructive power of the weapon".¹⁵ That upgrade programme was reportedly completed in 2023.¹⁶

¹⁴ Through the UK-US Joint Technology Demonstrator project (Ministry of Defence, [The United Kingdom's Future Nuclear Deterrent: 2016 Update to Parliament](#), December 2016)

¹⁵ Ministry of Defence, [Defence in the media](#), 8 June 2016

¹⁶ Ministry of Defence, [Delivering the UK's nuclear deterrent as a national endeavour](#), CP1058, March 2024, p.28

2 2024 amendments

Since the introduction of article III bis in 1959, that specific clause has been subject to renewal, which since the 1980s has been on a ten-year basis. Article III bis was last approved in 2014 and will expire on 31 December 2024 unless it is extended.

The UK and US have occasionally used the opportunity presented by the need to approve article III bis, to make additional revisions to the MDA as a whole. While often technical, or focused on language, they have also reflected the changing context of UK-US nuclear cooperation. In 1985 for example, and only a few years after the decision of the UK government to purchase the Trident missile system from the US,¹⁷ the MDA was amended to allow for the transfer of enriched uranium to the UK for any military purpose as opposed to just improving weapon design.¹⁸ Changes have also been made to expand the scope of technology and information sharing and in 2014 changes were also made to acknowledge the concern felt by both countries at the potential spread of atomic weapons technology to both state and non-state actors.¹⁹

2.1 Context of the latest amendments

Replacement of the UK's nuclear deterrent

Since 2007, the UK has been undertaking a replacement programme which will see the introduction into service of a new class of Dreadnought SSBN, deployed with the existing Trident missile and Mk4/Holbrook warhead, in the early 2030s.²⁰ As outlined above, an upgrade programme for the UK's nuclear warhead has also been underway, along with preliminary work on future options.

As was the case in 2014, the 2024 amendments to the MDA are therefore made at a significant time for the UK's nuclear deterrent.

Successive governments have expressed the belief that the programme to replace the UK's nuclear deterrent is compatible with the UK's obligations under the Nuclear Non-Proliferation Treaty (NPT), arguing that the treaty

¹⁷ This decision is examined in greater detail in Library research briefing, [Replacing the UK's 'Trident' nuclear deterrent](#), July 2016

¹⁸ Foreign, Commonwealth and Development Office, [Treaty Series No8.4 \(1985\)](#) (PDF) Cm9434, article 2

¹⁹ Foreign, Commonwealth and Development Office, [Treaty Series 002/2015](#) (PDF), Cm8996, article 1

²⁰ See House of Commons Library research papers, [Replacing the UK's nuclear deterrent: Progress of the Dreadnought class](#) and [Replacing the UK's nuclear deterrent: The warhead programme](#)

contains no prohibition on updating existing weapons systems and gives no explicit timeframe for nuclear disarmament.²¹

The United States is also in the process of modernising its strategic nuclear deterrent.²²

The Dreadnought SSBN programme

The Dreadnought SSBN programme continues apace with the first of class, HMS Dreadnought, due to enter service in the early 2030s.

The nuclear propulsion unit for the Dreadnought class is a third generation Pressurised Water Reactor (PWR3). According to a declassified briefing on the successor programme (the original name for the Dreadnought SSBN replacement programme), “strong collaboration” on the PWR and other propulsion technology took place with the United States during the early design phase of the project, most likely under the auspices of the MDA. That briefing confirmed that the PWR3 was based on a modern US nuclear propulsion plant.²³

A Common Missile Compartment (CMC) for the Dreadnought SSBN, which will house the current Trident strategic weapons system, is also being developed in conjunction with the United States under the terms of the 1963 Polaris Sales Agreement.²⁴

Progress of the programme, including costs, is examined in Library research paper, [Replacing the UK’s nuclear deterrent: Progress of the Dreadnought class](#).

The replacement warhead programme

Within the context of the MDA, the more significant element of the UK’s nuclear deterrent replacement programme is the Replacement Warhead Programme, which the government acknowledged for the first time in February 2020.²⁵

In its [2020 Annual Report to Parliament](#), and in [subsequent parliamentary questions](#), the MOD confirmed that:

- The warhead will be designed, developed, and manufactured in the UK.
- The warhead will be housed in the US Mk7 aeroshell, which will also house the US W93 warhead. The Mk7 aeroshell will be procured from the US along with some other non-nuclear components under the terms of

²¹ Written Statement, [Treaty on the Non-proliferation of nuclear weapons: UK national report](#), 1 November 2021. See also Library research briefing, [Nuclear weapons at a glance: United Kingdom](#)

²² For further information see Library research briefing, [Nuclear weapons at a glance: United States](#)

²³ Ministry of Defence, [Defence Board, Successor Submarine Project \(PDF\)](#), (09)62, November 2009

²⁴ The US is replacing its current SSBN fleet with a new Columbia class SSBN, which is due to enter service within a similar timeframe to the UK’s Dreadnought programme (early 2030s).

²⁵ HCWS125, [Nuclear deterrent](#), 25 February 2020. Preliminary work on replacement options has been underway since 2007.

the MDA. The UK's replacement programme has since been designated the A21/ Mk7/ Astraea programme.²⁶

- The UK will continue to work with the US to ensure that the warhead remains compatible with the Trident missile system.²⁷

The Replacement Warhead Programme, including a timeline of decision making, is examined in Library research briefing, [Replacing the UK's nuclear deterrent: The warhead programme](#).

The AUKUS- SSN programme

In September 2021 the UK, Australia and the United States announced a new defence and security partnership (AUKUS).²⁸

A major part of that agreement (pillar 1) is to support Australia in acquiring its first conventionally armed, nuclear-powered submarine fleet. It does not involve the transfer of nuclear weapons to Australia.

The SSN-AUKUS submarine, which will be in service in the UK and Australia, will be based on the UK's next generation nuclear powered submarine design and incorporate cutting edge [US submarine technology](#), largely from the Virginia-class SSN, including nuclear propulsion technologies and components, a common vertical launch system and weapons. The AUKUS partners will also develop a joint combat system for the submarine.²⁹ Incorporating advanced, and proven, US technologies is intended to "optimise the capability, commonality and interoperability of all three nations' SSN platforms".³⁰

While in service with the Royal Navy and the Royal Australian Navy, submarine crews will train and patrol together and undertake joint maintenance and support. Components and parts will be shared with the US.³¹

²⁶ Ministry of Defence, [Delivering the UK's nuclear deterrent as a national endeavour](#), 25 March 2024, p.32

²⁷ Ministry of Defence, [Annual Report to Parliament 2020](#) and PQ166353, [USA: Nuclear weapons](#), 15 March 2021

²⁸ Prime Minister's Office, [Joint Leaders statement on AUKUS](#), 21 September 2021

²⁹ Ministry of Defence, [The AUKUS nuclear-powered submarine pathway \(PDF\)](#), March 2023, p.23 and PQ4789, [AUKUS: Submarines](#), 11 December 2023

³⁰ Prime Minister's Office, [Fact sheet: Trilateral Australia-UK-US Partnership on Nuclear-Powered Submarines](#), 13 March 2023

³¹ Downing Street, [Joint Leaders Statement on AUKUS](#), 13 March 2023, [PM statement at AUKUS trilateral press conference](#), 13 March 2023, [Press release](#), 13 March 2023, [Fact sheet: Trilateral Australia-UK-US Partnership on Nuclear-Powered Submarines](#), 13 March 2023 and Ministry of Defence, [The AUKUS nuclear-powered submarine pathway \(PDF\)](#), March 2023

While there are several agreements already in place which underpin AUKUS,³² the MDA also plays an important role in the sharing of nuclear propulsion technologies and information between the US and the UK.³³

The AUKUS-SSN programme is examined in greater detail in Library research briefing, [AUKUS submarine \(SSN-A\) programme](#).

Interdependence of the UK's defence nuclear enterprise

Over the last few years there has been an increasing interdependence across all the organisations, programmes and people that operate, support and renew the UK's nuclear deterrent and the Royal Navy's conventional submarine forces, including the new AUKUS-SSN programme. The complex architecture that has developed is referred to as the Defence Nuclear Enterprise and in 2023 changes were made to the funding arrangements for the UK nuclear deterrent in part to reflect this shift. All nuclear programmes and expenditure across the MOD have now been brought under one heading: the Defence Nuclear Enterprise (DNE), and ringfenced within the MOD's departmental budget.

The costs of the nuclear deterrent, and elements of the defence nuclear enterprise, are examined in Library research briefing, [The cost of the UK's strategic nuclear deterrent](#)

Changes in the strategic environment

The 2021 Integrated Review, and its subsequent refresh in 2023, recognised that the world is becoming more contested and competitive, defined by shifts in the distribution of global power, increasing inter-state competition over the nature of the international order, rapid technological change and worsening transnational challenges.³⁴

IR23 also came about from the acknowledgement that the “transition into a multipolar, fragmented and contested world has happened more quickly and definitively than anticipated”.

Russia is identified as the most acute direct threat to UK security, with security of the Euro-Atlantic area now “intrinsically linked to the outcome of the conflict in Ukraine”, while IR23 also describes China as an “epoch-

³² Ministry of Defence, [Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Australia, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information](#) and Ministry of Defence, [AUKUS trilateral statement](#), 8 August 2024

³³ Ministry of Defence, [Explanatory memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Australia, and the Government of the United States of America for the Exchange of Naval Nuclear Propulsion Information](#), November 2021

³⁴ House of Commons Library, [The Integrated Review Refresh 2023: What has changed since 2021?](#)

defining and systemic challenge”.³⁵ Both countries are modernising, and in China’s case also expanding, their nuclear capabilities while nuclear arms control is increasingly under threat. The New START treaty, which is the only treaty in existence which currently limits the strategic arsenals of the US and Russia, is due to expire in 2026 and little progress has been made in negotiating a successor agreement. The nuclear aspirations of North Korea, and Iran, are also of concern.³⁶

Deterrence forms a key part of the UK’s approach to addressing such challenges and in 2021 the Integrated Review made several changes to UK nuclear policy, including an increase in the size of the UK’s nuclear stockpile.³⁷

In an article for the Georgetown Security Studies Review in March 2024, Shane Ward argued that, in the current security environment renewal of the MDA would be “the most critical in its history” and will take both countries through a defining period of modernization across their entire arsenals as the realities of competing with two near-peer nuclear adversaries are fully realized”.³⁸

Nick Childs at the International Institute for Strategic Studies agrees that “there is a certain logic to an indefinite extension of the treaty”, given the nuclear modernisation programmes underway in each country, the importance of the AUKUS programme and “the general state of the world”.³⁹

2.2

Proposed treaty changes

The amendment treaty contains 14 articles, many of which provide for minor technical changes throughout the text of the MDA to reflect:

- Changes in language, definitions and terminology used throughout the MDA, or to remove obsolete language and terms - article 1 and 2 amending the preamble and article I of the MDA (general provisions) respectively; article 7 amending article V of the MDA (conditions of the agreement); article 9 amending article VII of the MDA (dissemination); and article 12 which amends article XI of the MDA (definitions).

Article 11 of the amendment treaty is extensive and updates the terminology in article IX of the MDA relating to intellectual property (patents in the original 1958 version). The MOD has said that the extensive changes are necessary to “update obsolete intellectual

³⁵ HM Government, [Global Britain in a competitive age](#), March 2021 and [Integrated Review Refresh 2023: Responding to a more contested and volatile world](#), March 2023

³⁶ Nuclear capabilities are examined in a series of Library research briefings: [Nuclear weapons: At a glance](#)

³⁷ This is examined in greater detail in Library research briefing, [Integrated Review 2021: Increasing the cap on the UK’s nuclear stockpile](#)

³⁸ [“Why US-UK nuclear cooperation is more important than ever”](#), Georgetown Review, March 2024

³⁹ [“US and UK plan indefinite extension of nuclear weapons cooperation pact”](#), The Financial Times, 3 September 2024

property language to ensure the provisions remain flexible and relevant in the future”.⁴⁰ Article IX has not been substantially amended since the original agreement in 1958.

- Updated terminology and the different classifications of nuclear-related information and material exchanged or transferred under the MDA, and the processes for dealing with them - article 3 which amends article II of the MDA (exchange of information) and associated provisions in articles 7,8,9 and 10 of the amendment treaty which amend articles V (conditions of the agreement), VI (guaranties), VII (dissemination) and VIII (classification policies) of the MDA respectively; and article 12 which amends article XI of the MDA relating to definitions. Article 3 also makes clear that the purposes for which information is exchanged incorporates security of the nuclear enterprise and provides support for nuclear threat reduction capabilities.

Articles 4 and 5 of the amendment treaty, however, make significant changes to the text of articles III and article III bis relating to nuclear propulsion and the transfer of nuclear materials and equipment, respectively. Article 13 also introduces new final provisions into the MDA.

Reciprocal provisions on nuclear propulsion (article 4)

Article 4 amends article III of the MDA relating to naval nuclear propulsion. As outlined above, the article was previously amended in 2014 to allow for any future transfer to the UK of submarine nuclear propulsion plants and/or parts, including replacement cores and fuel elements and the exchange of information necessary for the design, manufacture and operation of submarine nuclear propulsion plants.⁴¹

Under the new amendments, the language has been amended to extend the provisions relating to nuclear propulsion from just submarines to “naval vessels” more broadly (changes to definitions are set out in article 12 of the amendment treaty).

Those arrangements also become reciprocal and allow for the UK to provide or exchange information with the US that is necessary for the research, development, design, manufacture and disposal of naval nuclear propulsion plants, along with the transfer, from the UK to the US, of naval nuclear propulsion plants and/or parts, including reactors cores, fuel elements and spares.

Those reciprocal arrangements also extend to paragraph B of article III of the MDA relating to the transfer of materials, including enriched uranium

⁴⁰ Ministry of Defence, Explanatory memorandum: [UK/USA: Amendment to the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defence Purposes](#), July 2024, para.6

⁴¹ The original agreement in 1958 had only allowed for the transfer of one nuclear propulsion plant and the uranium required to fuel it for a period of ten years.

required for nuclear propulsion plants, and to the ability to reprocess that material which may then be purchased or returned.

In its explanatory memorandum the Ministry of Defence says that the amendments “reflect the scale and scope of submarine nuclear propulsion cooperation under the MDA, including maintenance and regulation...”.⁴²

Liability

Existing paragraph E of article III, relating to the US’ exemption from liability for any damage or injury that occurs outside of the US as a result of items or information transferred or exchanged under the auspices of the MDA, is removed from this section under the new amendments.

Amendments are instead made to article IV of the MDA (article 6 of the amendment treaty) to provide for a waiver of claims applicable to both parties, and its employees, in relation to “the application or use of information, material or equipment transferred pursuant to the MDA”.⁴³

Removal of the time limits on article III bis (article 5)

In contrast to previous amending treaties which extended article III bis for a further ten years, article 5 of this amendment treaty removes the expiry provisions relating to article III bis in their entirety. If adopted the amendment would ensure that the whole MDA treaty remains in force on an “enduring basis”, thereby securing continued nuclear cooperation with the US indefinitely, or until either Party withdraws from the agreement.

Future amendments to the MDA (article 14)

Article 14 of the amendment treaty specifies that these amendments will enter into force once both governments confirm completion of their domestic or constitutional requirements for entry into force.

The MDA, as a whole, does not contain amendment provisions. As outlined above, the opportunity to make changes has been taken in the past along with the requirement to renew article III bis every ten years. Going forward, the Ministry of Defence says in its explanatory memorandum that the MDA agreement may, however, “continue to be amended by agreement between the Parties”, the terms of which will be determined by both governments. The explanatory memorandum confirms that the UK government will “comply with the requirements of the Constitutional Reform and Governance Act 2010 in relation to any amendments to the MDA which requires ratification”.⁴⁴

⁴² Ministry of Defence, Explanatory memorandum: [UK/USA: Amendment to the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defence Purposes](#), July 2024, para.4

⁴³ Ministry of Defence, Explanatory memorandum: [UK/USA: Amendment to the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defence Purposes](#), July 2024, section 4, para.4

⁴⁴ Ministry of Defence, Explanatory memorandum: [UK/USA: Amendment to the Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defence Purposes](#), July 2024, section 4, para.

Final provisions (article 13)

Article 13 of the amendment treaty makes new provision in article XII of the MDA relating to the duration of the treaty and withdrawal arrangements.

Those existing provisions are not themselves subject to amendment. New paragraphs are included however, which ensures that information, material or equipment shared or transferred under the MDA will continue to be protected should the agreement be terminated by either party in the future. Any disagreements arising from the implementation of interpretation of the MDA will also be resolved through mutual consultation, and without recourse to any dispute settlement mechanism.

2.3

Status of the amendment treaty in the United States

On 16 July 2024 the US administration issued a Presidential Determination recommending approval of the proposed amendments to the MDA. In that Determination President Biden said that, under the MDA, the UK was “making substantial and material contributions to our mutual defense and security” and that continued cooperation would “further improve our mutual defense posture and support our interests under the North Atlantic Treaty Organization”.⁴⁵

In a Message to Congress on 29 July 2024, he went on to say:

Based on our steadfast partnership with the United Kingdom, and the United Kingdom’s continued commitment of nuclear forces to the North Atlantic Treaty Organization (NATO), I have concluded it is in the national interest of the United States to continue to assist the United Kingdom in maintaining a credible nuclear deterrent, which will further improve our mutual defense posture and support our collective interests under NATO [...]

Accordingly, I have approved the Amendment, authorized its execution, and urge that the Congress give it favorable consideration.⁴⁶

The US Congress must now pass enabling legislation to give effect to the amendment treaty. At the time of writing, the amendment treaty [is before the House Committee on Foreign Affairs](#).

⁴⁵ White House, [Presidential Determination No. 2024-07](#), 16 July 2024

⁴⁶ White House, [Letter to the Speaker of the House and the President of the Senate](#), 29 July 2024

3 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 following section) and in the lack of parliamentary scrutiny afforded to it.⁴⁷

3.1 Treaty ratification process

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.

The amendment treaty was laid before Parliament on 26 July 2024.

The deadline for objections is 23 October 2024.

Prior to the [Constitutional Reform and Governance Act 2010](#) (CRAG), Parliament had no formal role in the ratification of treaties in the UK.⁴⁸

Under Section 20 of CRAG, 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.⁴⁹

CRAG does not require parliamentary approval of treaties. Rather, both Houses have the opportunity to pass a resolution during that 21 sitting days 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, theoretically blocking a treaty indefinitely.

⁴⁷ See Campaign for Nuclear Disarmament, [US-UK Mutual Defence Agreement](#)

⁴⁸ Prior to 2010, under the Ponsonby Rule treaties requiring ratification were laid before the House for a 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.

⁴⁹ Sitting days are those on which both Houses sit.

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 House of Lords therefore does not have the power to block ratification on its own.⁵⁰

No requirement for a government debate or vote

Throughout this process, however, there is no statutory requirement for the government to hold a debate or vote on the proposed treaty, and Parliament cannot amend treaties.

In the absence of a government debate, scrutiny therefore falls to the relevant select committees in both the House of Commons and Lords, including the [International Agreements Committee](#), and through parliamentary questions and any debates that are secured in backbench time.

Since November 2000, the Foreign, Commonwealth and Development Office has been expected to send a copy of each treaty laid before Parliament to the departmental select committee that it considers relevant. That committee can then decide whether to scrutinise the treaty and publish a report bringing the treaty to the special attention of the House.⁵¹

The government has committed to facilitating a debate on a treaty of requested by any relevant parliamentary committee.⁵²

For further detail see Library research briefing, [How Parliament treats treaties](#).

3.2

Previous parliamentary scrutiny

In 1994, 2004 and 2014 amendments to the treaty were not subject to a debate in government time.⁵³ Neither were the amendments the subject of a select committee report.

In November 2014 Jeremy Corbyn MP did, however, [secure a backbench business debate](#) which examined the MDA and the principles of nuclear

⁵⁰ House of Commons Library, [How Parliament treats treaties](#)

⁵¹ EU International Agreements Sub-Committee, [Treaty scrutiny under the Constitutional Reform and Governance Act 2010](#), 5 January 2020

⁵² EU International Agreements Sub-Committee, [Treaty scrutiny under the Constitutional Reform and Governance Act 2010](#), 5 January 2020

⁵³ 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)

cooperation and nuclear disarmament more broadly. In opening the debate, Mr Corbyn questioned the lack of a debate in government time:

Why do we have to debate something as fundamental as a mutual defence agreement with the United States in time allocated by the Backbench Business Committee? The answer is that Governments of all hues—this applies to my party, as well as the coalition Government and previous Conservative Governments—have been reluctant to have parliamentary debates on this subject [...]

It is interesting that parliamentary scrutiny of the mutual defence agreement and nuclear weapons has been in short supply going back to the end of the second world war.⁵⁴

Responding to the debate, the then Minister for Europe, David Lidington did not address the issue of a debate on the treaty amendments in government time but focused instead on the purpose and importance of the MDA:

We are a responsible nuclear weapons state. The mutual defence agreement helps to provide the maintenance and servicing required to ensure the safety, security and reliability of the system, and at a substantial reduction on the costs that would otherwise be incurred. It is fully compliant with our international obligations, it does not hinder the operational independence of the deterrent and it is a key aspect of our defence co-operation with our closest ally. It is clearly in the national interest of the United Kingdom and the United States to continue this co-operation, and the Government's clear view is that the mutual defence agreement should be renewed.⁵⁵

3.3 Criticism of the amendment to article III bis

As outlined above, the 2024 amendment treaty will remove the ten-year time limit on article III bis and allow the MDA to remain in force indefinitely.

Disarmament advocates have long criticised the lack of parliamentary scrutiny afforded to the MDA. Speaking to this new amendment, Kate Hudson of the Campaign for Nuclear Disarmament goes one step further, arguing that it “spells farewell to even the smallest notion of parliamentary responsibility for Britain’s foreign and defence policies.”

Suggesting that parliament “at least nominally” had the opportunity to debate the US’ role in Britain’s nuclear programme once a decade, she says “This amendment, introduced in the most undemocratic fashion by the government – at a time when it will be lost in the recess and party conference season – will eradicate those opportunities. This must not go unchallenged”.⁵⁶

⁵⁴ [HC Deb 6 November 2014](#), c291WH

⁵⁵ As above, c315WH

⁵⁶ Richard Norton-Taylor, “[Starmer permanently ties UK nuclear arsenal to Washington](#)”, Declassified UK, 3 September 2024

On 2 September 2024, Jeremy Corbyn MP tabled an early day motion calling for a “substantial debate to be held on such a significant agreement”, arguing:

That this House notes the expiry this year of the 10-year extension of the Agreement between the UK and the USA for Cooperation in the Uses of Atomic Energy for Mutual Defence Purposes; further notes that the published proposed amendments presented to the House in July 2024 extend the Agreement permanently, removing the current regular review and opportunity for amendment and expiry; believes that the relationship and activities enshrined by the Agreement confirm an indefinite commitment by the US and UK to collaborate on nuclear weapons; further believes that this violates both countries’ obligations 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 Agreement and the Treaty; and urges that a substantial debate be held on such a significant Agreement.⁵⁷

⁵⁷ EDM 123, [Mutual Defence Agreement](#), Session 2024-25

4 Criticisms of MDA renewal

Over the years, a number of British parliamentarians and anti-nuclear campaign groups have argued that the renewal of Article III bis contravenes Articles I and VI of the [Treaty on the Non-Proliferation of Nuclear Weapons 1968 \(NPT\)](#).

Others have argued that the MDA and the Polaris Sales Agreement lock the UK into a cycle of dependence with the US which “constrains the UK’s ability to develop independent national security policies for fear of destabilising its relationship with the USA and jeopardising the nuclear alliance”.⁵⁸ Discussing the amendments to the MDA in an article on 3 September 2024, journalist Richard Norton-Taylor said that “in one of its first, and little-noticed foreign policy moves”, the new Labour government has made Britain’s nuclear weapons “forever reliant on US military scientists”.⁵⁹

4.1 Alleged violations of the NPT

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 (the US, UK, Russia, France and China). 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.

Article I

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:

⁵⁸ British Pugwash, [Briefing: Aspects of UK nuclear weapons possession](#), December 2023. See also Campaign for Nuclear Disarmament, [US-UK Mutual Defence Agreement](#)

⁵⁹ Richard Norton-Taylor, [“Starmer permanently ties UK nuclear arsenal to Washington”](#), Declassified UK, 3 September 2024

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.⁶⁰

In June 2004, the organisation BASIC argued that the MDA provides for the opposite:

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.⁶¹

This position was previously 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”.⁶²

In the backbench business debate on the MDA in November 2014, the then Minister, David Lidington, addressed the alleged violations of article I:

The Government regard the MDA as compliant with our obligations under article I for three reasons.

First, nuclear devices or weapons are not transferred to the United Kingdom under the terms of the MDA. As I described earlier, what we receive under the MDA is a certain amount of nuclear technological know-how and some non-lethal elements, such as propulsion systems, that are not prohibited under article I.

Secondly, article V of the original mutual defence agreement—not including the amendments—quite explicitly states that the transfer of nuclear weapons is not permitted.

Thirdly, article I of the NPT refers in particular to transfers from the recognised nuclear weapons states to non-nuclear weapons states. However, the MDA refers to transfers of things other than nuclear weapons or devices from one nuclear weapons state to another, both of which are party to the NPT. I think that that answers the challenge that the MDA is in some way incompatible with article I of the NPT.⁶³

⁶⁰ [Treaty on the Non-Proliferation of Nuclear Weapons](#), Article 1

⁶¹ BASIC, [US-UK Nuclear Weapons Collaboration under the MDA](#), June 2004

⁶² “Renewal of US-UK nuclear cooperation ‘in breach of NPT’ says eminent lawyers”, Acronym Institute for Disarmament Diplomacy, 31 August 2008

⁶³ [HC Deb 6 November 2014](#), c312-313WH

Article VI

The aim of the MDA, essentially, is to improve each party's "atomic weapon design, development and fabrication capability".⁶⁴

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 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 weapon states gave "an unequivocal undertaking to accomplish the total elimination of their nuclear arsenals, leading to nuclear disarmament".⁶⁵

A [legal opinion](#) commissioned by BASIC, the Acronym Institute for Disarmament Diplomacy and Peacemakers, 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".

More recently, the Campaign for Nuclear Disarmament suggested that:

The relationship and activities which are enshrined in the MDA confirm an indefinite commitment by the US and UK to collaborate on nuclear weapons technology and violate both countries' obligations as signatories to the NPT.⁶⁶

Within the context of the latest amendments, CND argues that "the government should be made to answer why they are contravening their legal obligation to work towards disarmament and instead renewing an agreement with the US that is designed to maintain both countries' nuclear weapons production capabilities. The government should be held accountable to international law".⁶⁷

In a briefing in July 2024, the Nuclear Information Service also called on Parliament to properly scrutinise the amendments to the MDA "in order to ensure that any extension of the treaty is geared towards both nations

⁶⁴ Article II of the Mutual Defence Agreement

⁶⁵ 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, [Final Document](#) (PDF), para 79

⁶⁶ Campaign for Nuclear Disarmament, [US-UK Mutual Defence Agreement](#)

⁶⁷ Campaign for Nuclear Disarmament, [US-UK Mutual Defence Agreement](#)

fulfilling their disarmament commitments under the Nuclear Non-Proliferation Treaty, rather than avoiding them”.⁶⁸

In its explanatory memorandum to the 2024 amendment treaty the government reiterates its position that the MDA is fully consistent with both the UK’s obligations under the NPT and [the Comprehensive Test Ban Treaty \(CTBT\)](#) which bans all nuclear explosions, whether for military or civilian purposes, and therefore the live testing of nuclear weapons.⁶⁹

2 Further reading

- [“US and UK plan indefinite extension of nuclear weapons cooperation pact”](#), The Financial Times, 3 September 2024
- Richard Norton-Taylor, [“Starmer permanently ties UK nuclear arsenal to Washington”](#), Declassified UK, 3 September 2024
- Nuclear Information Service, [US-UK Mutual Defence Agreement: A Nuclear Information Service briefing](#) (PDF), July 2024
- [“Why US-UK nuclear cooperation is more important than ever”](#), Georgetown Security Studies Review, 20 March 2024
- British Pugwash, [Briefing: Aspects of UK nuclear weapons possession](#), December 2023
- Backbench business debate, [US-UK Mutual Defence Agreement](#), 6 November 2014
- Paul Ingram, [Why does Britain need to feel special?](#), BASIC, 3 November 2014
- James McKeon, [US-UK Mutual Defence Agreement: A violation of international law?](#), BASIC, 27 October 2014
- Nuclear Information Service, [Reform not Renewal](#) (PDF), June 2014
- Hugh Chalmers, [The Bang Behind The Buck](#) (PDF), RUSI Occasional Paper, March 2014
- 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

⁶⁸ Nuclear Information Service, [US-UK Mutual Defence Agreement: A Nuclear Information Service briefing](#) (PDF), July 2024

⁶⁹ The CTBT has not entered into force, but the UK abides by its commitments and has maintained a moratorium on nuclear testing since 1998.

- 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

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