



HOUSE OF LORDS

International Agreements Committee

14th Report of Session 2021–22

**Scrutiny of
international
agreements: AUKUS
Information Exchange
Agreement**

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

Contact details

All correspondence should be addressed to the International Agreements Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 4840. Email HLIntlAgreements@parliament.uk

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SUMMARY

This report addresses the following Agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), which we report for the special attention of the House:

- 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 (CP 575, 2021)

We report the Agreement in this way on the grounds that it is politically important and gives rise to issues of public policy that the House may wish to debate prior to ratification. In particular, the Agreement is strategically significant in that it is part of the wider trilateral AUKUS partnership and will permit the exchange of sensitive information during the initial 18-month exploratory phase of the partnership's nuclear-powered submarine programme. A debate will give the Government the opportunity to set the Agreement in the wider context of its policy towards the Indo-Pacific region and China, affording members of the House the opportunity to consider and ask questions about that wider context.

A motion which would provide for a debate on the AUKUS Information Exchange Agreement will be tabled in the Committee Chair's name.

Scrutiny of international agreements: AUKUS Information Exchange Agreement

AGREEMENT REPORTED FOR THE SPECIAL ATTENTION OF THE HOUSE

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 (CP 575, 2021)¹

1. 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 (the AUKUS Information Exchange Agreement) was laid on 29 November 2021, and the scrutiny period is scheduled to end on 18 January 2022. It was considered by the Committee on 13 January 2022.

Background

2. The AUKUS Information Exchange Agreement forms part of a broader trilateral defence and security partnership, commonly referred to as AUKUS, which was announced by the Prime Ministers of the United Kingdom and Australia and the President of the United States on 15 September 2021.² On 16 September, Prime Minister Boris Johnson MP told the House of Commons:

“Yesterday I joined President Biden and Prime Minister Morrison to create a new trilateral defence partnership between our countries known as AUKUS. Australia has, for the first time, taken the momentous decision to acquire a fleet of nuclear-powered submarines, and it has asked for our help in achieving this ambition. I am delighted to tell the House that we have agreed to this request and we shall place the UK’s expertise in this field, amassed over decades, at the assistance of our Australian friends. The first task of AUKUS will be an 18-month trilateral collaboration to determine the best way of delivering advanced nuclear submarines for Australia—emphasising, of course, that they will be powered by nuclear reactors, not armed with nuclear weapons, so the nuclear non-proliferation treaty places no prohibition on that work. The House will understand how Australia’s future possession of that capability will help safeguard the peace and security of the Indo-Pacific.”³

1 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, CP 575, 29 November 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036009/MS_8.2021_Agreement_UK_USA_Australia_Naval_Nuclear_Propulsion.pdf [accessed 13 January 2022]

2 House of Commons Library, The AUKUS Agreement, Research Briefing, [CBP-9335](#), October 2021

3 HC Deb, 16 September 2021, [col 1119](#)

3. The Leader of the Opposition, Sir Keir Starmer MP, welcomed the announcement, but posed questions about how it would impact on the UK's relationship with China, NATO, and the Five Eyes intelligence sharing agreement between the UK, US, Australia, Canada and New Zealand. He also questioned whether the new arrangement would bring significant economic opportunities for the UK.⁴
4. The announcement of the trilateral pact was unexpected and AUKUS has proved controversial in some quarters. It led Australia to cancel a deal with France to purchase diesel-powered submarines valued at up to \$90 billion.⁵ France initially recalled its ambassadors to the United States and Australia. France's Foreign Minister, Jean-Yves Le Drian, described the AUKUS deal as a "stab in the back".⁶
5. The Chinese Government described AUKUS as "extremely irresponsible" and suggested that it was a result of a "cold war mentality" and "ideological prejudice".⁷ By contrast, Japan welcomed the creation of AUKUS. Foreign Minister Toshimitsu Motegi said it would strengthen engagement in the region.⁸
6. When the deal was announced, the Royal United Services Institute (RUSI) noted that, by 2019, Australia had become the second largest arms importer in the world (behind Saudi Arabia) and that the arrangement should be seen as part of an extensive and ongoing defence partnership between Australia and the United States.⁹
7. Chatham House noted that AUKUS would not over-extend Britain, as there was no military commitment involved in the arrangement.¹⁰ Its director and chief executive, Dr Robin Niblett CMG, argued that "the AUKUS announcement showed that China's growing hard power is now eliciting a genuinely tough and structural political-military reaction".¹¹

Purpose of the AUKUS Information Exchange Agreement

8. The Explanatory Memorandum (EM) published alongside the AUKUS Information Exchange Agreement explains that the treaty will permit the exchange of sensitive information between the Parties during the 18-month scoping phase of the nuclear-powered submarine programme.

4 HC Deb, 16 September 2021, cols 1120–21

5 'Australia nuclear submarine deal: Aukus defence pact with US and UK means \$90bn contract with France will be scrapped', *The Guardian* (16 September 2021): <https://www.theguardian.com/australia-news/2021/sep/16/australia-nuclear-submarine-deal-contract-france-scrapped-defence-pact-us-uk> [accessed 13 January 2022]

6 "Stab in the back": French fury as Australia scraps submarine deal', *The Guardian* (16 September 2021): <https://www.theguardian.com/world/2021/sep/16/stab-in-the-back-french-fury-australia-scraps-submarine-deal> [accessed 13 January 2022]

7 China warns US-UK-Australia pact could 'hurt their own interests', *The Guardian* (16 September 2021): <https://www.theguardian.com/world/2021/sep/16/cold-war-mentality-china-criticises-aukus-us-uk-australia-submarine-pact> [accessed 13 January 2022]

8 Motegi Toshimitsu, Speech at Ministry of foreign Affairs Japan, 21 September 2021: https://www.mofa.go.jp/press/kaiken/kaiken25e_000038.html [accessed 13 January 2022]

9 RUSI, 'AUKUS is a Big Deal, but Needs to be Put in Perspective', (20 September 2021): <https://rusi.org/explore-our-research/publications/commentary/aukus-big-deal-needs-be-put-perspective> [accessed 13 January 2022]

10 Chatham House, 'AUKUS reveals much about the new global strategic context', (18 September 2021): <https://www.chathamhouse.org/2021/09/aukus-reveals-much-about-new-global-strategic-context> [accessed 13 January 2022]

11 *Ibid.*

The Agreement establishes the framework governing the exchange of naval nuclear propulsion information, and sets out the types of information that may be exchanged and the circumstances in which this may be done.¹² It does not, however, provide for the transfer of naval nuclear propulsion equipment.

9. The EM explains that, following the conclusions of the 18-month scoping programme, “a follow-on agreement would be put in place to support such transfers as needed to then deliver the submarine capability to Australia”.¹³
10. Article V and a series of technical annexes set out certain guarantees on the security protection which should be accorded to classified information.¹⁴ The Agreement also makes provision on dissemination of information,¹⁵ mutually determined classification policies,¹⁶ and intellectual property.¹⁷
11. The EM states that the AUKUS Information Exchange Agreement is fully consistent with the obligations of the UK, Australia and the US under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). This is also referenced in the preamble to the Agreement.¹⁸

Entry into force

12. The Agreement will enter into force once the Parties have confirmed that they have completed their respective internal procedures.¹⁹ The EM confirms that no legislation or other necessary implementing measures are required before the Agreement can enter into force.

Governance, extensions and amendments

13. Article X of the AUKUS Information Exchange Agreement provides that the Parties “shall settle any disagreements arising in the implementation or interpretation of this Agreement through mutual consultations and negotiations without recourse to any dispute settlement mechanism”.
14. The Agreement will remain in force until 31 December 2023, with provision for four automatic extensions of six months each, unless superseded by a subsequent agreement.²⁰ Any Party may terminate the Agreement by giving six months’ written notice to the other Parties.²¹ Notably, in the event of termination, or a material breach of the terms of the Agreement, the other

12 Articles I and II

13 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, 29 November 2021, para 3.3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036092/EM_MS_8.2021_Agreement_UK_Aus_USA_Naval_Nuclear_Propulsion.odt [accessed 13 January 2022]

14 The Annexes include material on the security arrangements between the Parties for the protection of naval nuclear propulsion information communicated or exchanged pursuant to the Agreement. These include, amongst other things, personnel security; physical security and control of classified information.

15 Article VI

16 Article VII

17 Article VIII

18 Article IV also sets out additional conditions and notes that cooperation under this Agreement shall require the application of International Atomic Energy Agency safeguards with respect to all nuclear material in all peaceful nuclear activities within the territory of Australia, under its jurisdiction, or carried out under its control anywhere.

19 Article X

20 Article X

21 *Ibid.*

Parties may require the return or destruction of the information exchanged under the Agreement.²²

15. The EM notes that the AUKUS Information Exchange Agreement does not include an express mechanism for its amendment, and states that amendment of the Agreement would be by mutual agreement of the Parties. It does not, however, explain whether any amendments to the Agreement would be subject to ratification under the Constitutional Reform and Governance Act 2010 (CRAG) and therefore subject to Parliamentary scrutiny. Nor does the EM provide any information as to how any amendments to this Agreement might relate to any follow-on agreement which might be necessary to facilitate the transfer of naval nuclear propulsion equipment.
16. **We regret that the Government has, again, failed to spell out in its Explanatory Memorandum the circumstances in which amendments would be subject to Parliamentary scrutiny. In an Agreement of this significance, where follow-on agreements may well be necessary, this is particularly problematic. We reiterate our recommendation made in recent reports²³ that the Government should review its quality assurance processes to ensure that all EMs address whether amendments will be subject to scrutiny under Constitutional Reform and Governance Act 2010, in line with existing Government guidance.**

Territorial scope and consultation

17. The Agreement applies to the UK only, and not to any Crown Dependencies or Overseas Territories. The EM explains that the Agreement relates fully to a reserved matter with no direct implications for the Devolved Administrations, Crown Dependencies or Overseas Territories. It notes that the UK Government has not, therefore, consulted the Devolved Administrations, Crown Dependencies or Overseas Territories on the drafting of this Agreement.
18. **We report the AUKUS Information Exchange Agreement to the special attention of the House on the grounds that it is politically important, and gives rise to issues of public policy that the House may wish to debate prior to ratification. In addition, we note the concerns which we raised at paragraph 16 about the failure to provide adequate information about the circumstances in which Agreement can be amended, and whether such amendments would be the subject of Parliamentary scrutiny.**
19. **We make our report on this Agreement for debate.**

²² *Ibid.*

²³ See, for example, International Agreements Committee, *Scrutiny of international agreements: UK-Ukraine Credit Support Agreement and ILO Violence and Harassment Convention*, (13th Report, Session 2021–22, HL Paper 127) and *Scrutiny of international agreements: Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Council of Ministers of the Republic of Albania on the Readmission of Persons*, (9th Report, Session 2021–22, HL Paper 92).

APPENDIX: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Baroness Hayter of Kentish Town

No relevant interests

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Director, H&O Communications Ltd

Lord Razzall

Director, North Atlantic Mining Associates Limited

Director, ZeU Technologies Inc

Shareholdings, ZeU Technologies Inc

Shareholdings, St-Georges Eco-Mining Corporation

Shareholdings, Tintra plc

Lord Robathan

No relevant interests

Earl of Sandwich

No relevant interests

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

Specialist Adviser

Alex Horne acted as Specialist Adviser to the Committee and declared the following interests:

Counsel, Hackett & Dabbs LLP; Visiting Professor at Durham University; and Special Adviser, United Nations Development Programme (Pacific Region).