



Australia No. 1 (2018)

Agreement

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia on Cooperation in the peaceful uses of Nuclear Energy

Canberra, 21 August 2018

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 2018*



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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF AUSTRALIA ON COOPERATION IN THE
PEACEFUL USES OF NUCLEAR ENERGY**

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (“THE UNITED KINGDOM”) AND THE GOVERNMENT OF AUSTRALIA (“AUSTRALIA”) (hereinafter referred to as “the Parties” and each a “Party”);

MINDFUL of the respective rights and obligations of each Party under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968 and which entered into force generally on 5 March 1970, (hereinafter referred to as “NPT”);

CONSIDERING the Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Nuclear Transfers between Australia and the United Kingdom done at London on 24 July 1979 (hereinafter referred to as “the 1979 Australia-United Kingdom Agreement”);

ACKNOWLEDGING their close cooperation in the development and application of the peaceful uses of nuclear energy pursuant to the Agreement between the Government of Australia and the European Atomic Energy Community (Euratom) for Cooperation in the Peaceful uses of Nuclear Energy done at Canberra on 5 September 2011 (hereinafter referred to as “the Australia-Euratom Agreement”), and desiring to continue such cooperation following the United Kingdom’s withdrawal from the European Atomic Energy Community (“Euratom”);

REAFFIRMING the desire of the Parties to cooperate in the use of nuclear energy for peaceful purposes;

REAFFIRMING their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes will further the objective of the non-proliferation of nuclear weapons;

REAFFIRMING their support for the International Atomic Energy Agency of which both Parties are members (hereinafter referred to as the “Agency”) and the Agency’s safeguards system, and their desire to work together to ensure its continued effectiveness;

RECOGNISING that Australia, as a non-nuclear-weapon State under the NPT, has undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and has concluded the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 done at Vienna on 10 July 1974 and the Protocol Additional to that Agreement done at Vienna on 23 September 1997 (hereinafter collectively referred to as the “Australia-Agency Safeguards Agreement”);

RECOGNISING that the United Kingdom, as a nuclear-weapon State under the NPT, has voluntarily entered into the Agreement between the United Kingdom of Great Britain and Northern Ireland and the International Atomic Energy Agency for the Application of Safeguards in the United Kingdom of Great Britain and Northern Ireland in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons and the Protocol Additional to that Agreement both done at Vienna on 7 June 2018 (hereinafter collectively referred to as the “United Kingdom-Agency Safeguards Agreement”);

REAFFIRMING their support for the objectives of the NPT and their desire to promote universal adherence to the NPT;

RECALLING their commitment to the secure use of nuclear material as States Parties to the Convention on the Physical Protection of Nuclear Material, done at Vienna and at New York on 3 March 1980 and which entered into force generally on 8 February 1987, and to the amendment to that Convention done at Vienna on 8 July 2005 and which entered into force generally on 8 May 2016 (hereinafter collectively referred to as the “Amended CPPNM”);

REAFFIRMING their commitment to the safe use of nuclear material and facilities and the protection of people and the environment from the harmful effects of ionising radiation; the importance to the international community of ensuring that the use of nuclear energy is safe, well regulated and environmentally sound; and the importance of bilateral and multilateral cooperation for effective nuclear safety arrangements, and for enhancing such arrangements;

DESIRING to continue the established conditions, consistent with their commitment to non-proliferation under which nuclear material, non-nuclear material, equipment, components and technology can be transferred between their two countries for peaceful purposes;

HAVE AGREED as follows:

ARTICLE I

Definitions

For the purpose of this Agreement:

- a) “competent authority” means: in the case of Australia, the Australian Safeguards and Non-Proliferation Office; in the case of the United Kingdom, the Department for Business, Energy and Industrial Strategy and the Office for Nuclear Regulation; or any other such authority as the Party concerned may at any time notify in writing to the other Party;
- b) “component” means a component part of equipment or other item, so determined by the Parties in writing through diplomatic channels;
- c) “equipment” means the items listed in the Agency document INFCIRC/254/Rev.13/Part 1, as revised from time to time. Any such revision shall apply to this Agreement unless either Party has informed the other Party in writing through diplomatic channels that they do not accept the revision;
- d) “information” means scientific, commercial or technical data or information in any form, or any other data or information provided or exchanged under this Agreement;
- e) “intellectual property” shall have the meaning set out in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967, as amended on 28 September 1979, and may include other subject matter as mutually determined by the Parties;
- f) “military purpose” shall include, but is not limited to, direct military applications of nuclear energy such as nuclear weapons or other nuclear explosive devices (including research and development or production of tritium for use in nuclear weapons and other nuclear explosive devices). It shall also include military nuclear propulsion, munitions including depleted uranium munitions, military nuclear rocket engines, or military nuclear reactors; but shall not include indirect uses such as the provision of power for a military base drawn from a civil power network, the production of radioisotopes which might later be used for diagnosis in a military hospital, or other similar purposes as may be mutually determined by the Parties in writing through diplomatic channels;

- g) “non-nuclear material” means deuterium and heavy water and nuclear grade graphite listed in the Agency document INFCIRC/254/Rev.13/Part 1, as revised from time to time. Any such revision shall apply to this Agreement unless either Party has informed the other Party in writing through diplomatic channels that they do not accept the revision;
- h) “nuclear material” means any “source material” or “special fissionable material” as those terms are defined in Article XX of the Statute of the Agency done on 26 October 1956. Any determination by the Board of Governors of the Agency under Article XX of the Statute that amends the list of material considered to be “source material” or “special fissionable material”, shall apply to this Agreement unless either Party has informed the other Party in writing through diplomatic channels that they do not accept that determination;
- i) “peaceful purposes” includes the use of nuclear material, non-nuclear material, equipment, components and technology in such fields as electric power generation, medicine, agriculture, research and industry, but does not include research on or development of any explosive devices, or any military purpose; and
- j) “technology” has the meaning provided in the Agency document INFCIRC/254/Rev.13/ Part 1, as revised from time to time. Any such revision shall apply to this Agreement unless either Party has informed the other Party in writing through diplomatic channels that they do not accept the revision.

ARTICLE II

Scope of Nuclear Cooperation

1. The intent of the Parties is to cooperate in the use and development of nuclear energy for peaceful purposes, and any such cooperation shall be in accordance with this Agreement and applicable international agreements and arrangements, and national laws and regulations in force in Australia and in the United Kingdom.
2. Cooperation under this Agreement may be undertaken directly between the Parties or through legal entities of the Parties. Where cooperation is undertaken through legal entities, it shall be appropriately authorised by the competent authorities of the relevant Party and shall be subject to this Agreement and to any additional terms and conditions as may be mutually determined by the Parties or the legal entities.
3. Cooperation under this Agreement shall require the application of Agency safeguards, as applicable:
 - (a) with respect to all nuclear activities within the territory of Australia or under its jurisdiction or carried out under its control, in accordance with the provisions of the Australia-Agency Safeguards Agreement; and

- (b) with respect to all civil nuclear activities within the territory of the United Kingdom, or under its jurisdiction or carried out under its control, in accordance with the provisions of the United Kingdom-Agency Safeguards Agreement.

4. The nuclear cooperation envisaged between the Parties under this Agreement may include:

- (a) the supply of nuclear material, non-nuclear material, equipment, components and technology;
- (b) basic and applied research;
- (c) scientific, technical and industrial research and development;
- (d) development, design, construction, operation and decommissioning of research reactors, nuclear power plants and other nuclear fuel cycle facilities;
- (e) utilisation of nuclear reactors for electric power production, sea water desalination and heat production;
- (f) access to and use of equipment and facilities;
- (g) management of spent fuel and radioactive waste;
- (h) health, nuclear safety, emergency preparedness and response (including medical countermeasures development and availability) and radiation protection of people and the environment;
- (i) safeguards and nuclear security (including information security and research cooperation);
- (j) use of radioisotopes and radiation in agriculture, industry, medicine and environmental research;
- (k) nuclear forensics;
- (l) geological and geophysical exploration, development, production, further processing and use of uranium resources;
- (m) regulatory aspects of the peaceful uses of nuclear energy;
- (n) commercial cooperation between legal entities in the United Kingdom and Australia;

- (o) technical training and education, including access to and use of equipment; and
- (p) other areas relevant to the subject of this Agreement, insofar as they are covered by the Parties' respective programmes, as may be mutually determined by the Parties in writing through diplomatic channels.

5. The nuclear cooperation referred to in paragraph 4 of this Article may be undertaken in the following forms:

- (a) transfer of nuclear material, non-nuclear material, equipment, components and technology;
- (b) exchange of information and personnel;
- (c) training of personnel, including professional and advanced training for administrative, scientific and technical personnel;
- (d) organisation of symposia and seminars;
- (e) organisation of, and participation in, joint projects and establishment of joint ventures;
- (f) establishment of bilateral working groups for implementation of joint projects;
- (g) trade and commercial cooperation relating to the nuclear fuel cycle;
- (h) supply of nuclear fuel cycle services including uranium conversion and isotopic enrichment;
- (i) education in nuclear-related fields, including between academic institutions;
- (j) provision of relevant technical assistance and services;
- (k) participation by scientific and technical staff of one Party in research and development activities conducted by the other Party; and
- (l) other forms of cooperation as may be mutually determined by the Parties in writing through diplomatic channels.

6. The cooperation outlined in paragraphs 4 and 5 of this Article may be implemented as necessary through arrangements between legal entities. Either Party may authorise legal entities to undertake such cooperation. The relevant competent authority shall notify the other competent authority of legal entities appropriately authorised.

ARTICLE III

Items Subject to this Agreement

1. This Agreement shall apply to:
 - (a) all nuclear material, non-nuclear material, equipment, components or technology transferred between Australia and the United Kingdom whether directly or through a third country, unless otherwise mutually determined by the Parties in writing;
 - (b) all forms of nuclear material prepared by chemical or physical processes or by isotopic separation from nuclear material subject to this Agreement, provided that the quantity of nuclear material so prepared shall only be regarded as falling within the scope of this Agreement in the same proportion as the quantity of nuclear material used in its preparation, and which is subject to this Agreement, bears to the total quantity of nuclear material so used;
 - (c) all generations of nuclear material produced by neutron irradiation provided that the quantity of nuclear material so produced shall only be regarded as falling within the scope of this Agreement in the same proportion as the quantity of nuclear material used in its production and which is subject to this Agreement and which, used in its production, contributes to this production;
 - (d) nuclear material, where non-nuclear material, equipment, components or technology subject to this Agreement have had a direct and substantial connection to the production, processing or use of that nuclear material;
 - (e) equipment produced by the use of equipment so transferred, or by the use or application of technology so transferred;
 - (f) nuclear material, material, equipment or technology as defined in and subject to the 1979 Australia-United Kingdom Agreement at the time this Agreement enters into force;
 - (g) nuclear material, non-nuclear material, equipment or components that were subject to the Australia-Euratom Agreement, that are within the territory, jurisdiction of under the control of either Party, and that the Parties have mutually determined will be subject to this Agreement; and

- (h) nuclear material recovered for nuclear purposes from ores or concentrates, other than uranium ore concentrates, transferred between the Parties directly or through a third country, where the transfer has been notified by the transferring Party as being of relevance to this Agreement. If such nuclear material cannot be subject to all of the conditions set out in Article VI, then such nuclear material shall not be used until the Parties have mutually determined the necessary safeguards and physical protection measures to apply.

2. Nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement and transferred between the territory, jurisdiction or control of the Parties shall be transferred only to legal entities, under the jurisdiction of the receiving Party and authorised by it.

ARTICLE IV

Extent of Application of Agreement

1. Any nuclear material, non-nuclear material, equipment, components and technology that is subject to this Agreement under Article III shall remain subject to the provisions of this Agreement until:

- (a) it is no longer usable for any nuclear activity relevant from the point of view of safeguards referred to in Article VI;
- (b) it has been transferred beyond the territory, jurisdiction or control of the recipient Party, in accordance with the provisions of Article X of this Agreement;
- (c) it is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity; or
- (d) the Parties otherwise mutually determine in writing through diplomatic channels that it should no longer be subject to this Agreement.

2. For the purpose of determining when nuclear material subject to this Agreement is no longer usable for any nuclear activity relevant from the point of view of safeguards referred to in Article VI or is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity, both Parties shall apply any relevant determination made by the Agency in accordance with the provisions for the termination of safeguards of the relevant safeguards agreement between the Party concerned and the Agency. In the absence of a determination by the Agency, a determination may be made by mutual decision of the competent authorities, in accordance with the principles applied by the Agency for this purpose.

ARTICLE V

Peaceful Use

Nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement shall only be used for peaceful purposes and shall not be used to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, for research on or development of nuclear weapons or other nuclear explosive devices, or any military purpose or in any way to further any military purpose.

ARTICLE VI

Safeguards

1. Where nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement is within the territory of Australia or under its jurisdiction or control, compliance with Article V of this Agreement shall be ensured by a system of safeguards applied by the Agency in accordance with the Australia-Agency Safeguards Agreement.
2. Where nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement is within the territory of the United Kingdom or under its jurisdiction or control, compliance with Article V of this Agreement shall be ensured by a system of safeguards applied by the Agency in accordance with the United Kingdom-Agency Safeguards Agreement.
3. Each Party shall establish and maintain a system of accounting for, and control of, all nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement.

ARTICLE VII

Fallback Safeguards

If nuclear material subject to this Agreement is present in the territory of a Party or under its jurisdiction or control, and notwithstanding the efforts of both Parties, the Agency fails to administer its safeguards functions in accordance with the applicable Agreement referred to in paragraph 1 or paragraph 2 of Article VI of this Agreement, the Parties shall forthwith arrange for the application of safeguards satisfactory to both Parties which conform with Agency safeguards principles and procedures and which provide reassurance equivalent to that intended to be secured by the safeguards system they replace. The Parties shall consult and assist each other in the application of such a safeguards system.

ARTICLE VIII

Nuclear Security

1. In addition to its obligations under the Amended CPPNM as amended from time to time for Australia and the United Kingdom, each Party shall take such measures as are necessary to ensure adequate nuclear security of nuclear material, non-nuclear material, equipment, components and technology within their territory, or under their jurisdiction or control. In regard to nuclear material the Parties shall apply, as a minimum, measures of physical protection which satisfy the requirements of Agency document INFCIRC/225/Rev.5 entitled “Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities” as revised from time to time. Any such revision shall apply to this Agreement unless either Party has informed the other in writing through diplomatic channels that they do not accept the revision.
2. The Parties shall consult at the request of either Party concerning matters relating to nuclear security, including the application for the purposes of this Article of recommendations which may be made from time to time by expert groups.

ARTICLE IX

Nuclear Safety

Nuclear safety and waste management shall be conducted in accordance with the following agreements, as amended from time to time for Australia and the United Kingdom: the Convention on Nuclear Safety, done at Vienna on 17 June 1994 and which entered into force generally on 24 October 1996 (Agency document INFCIRC/449), the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997 and which entered into force generally on 18 June 2001 (Agency document INFCIRC/546), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, done at Vienna on 26 September 1986 and which entered into force generally on 26 February 1987 (Agency document INFCIRC/336), and the Convention on Early Notification of a Nuclear Accident, done at Vienna on 26 September 1986 and which entered into force generally on 27 October 1986 (Agency document INFCIRC/335).

ARTICLE X

Retransfers

1. Nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement transferred by Australia to the United Kingdom shall not be transferred beyond the jurisdiction of the United Kingdom without the prior written consent of Australia.
2. Nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement transferred by the United Kingdom to Australia shall not be transferred beyond the jurisdiction of Australia without the prior written consent of the United Kingdom.
3. The Australian competent authority shall provide the United Kingdom competent authority with, and keep up to date, a list of countries to which transfers may be made and the nuclear fuel cycle processes that may apply in the third State to the nuclear material transferred in accordance with paragraph 1 of this Article.

ARTICLE XI

Consent to Engage in Enrichment and Reprocessing

1. Nuclear material subject to this Agreement shall not be enriched to 20 per cent or greater in the isotope uranium-235, or reprocessed, without the prior written consent of the Parties. Such consent shall describe the conditions under which the enrichment or reprocessing may take place and it shall also describe the conditions under which any uranium enriched to 20 per cent or more, or any separated plutonium subject to this Agreement, may be stored, used, transferred or transported. The Parties shall establish an arrangement to facilitate the implementation of this provision.
2. The Parties shall consult during the planning stages of new enrichment or reprocessing projects relevant to nuclear material subject to this Agreement.

ARTICLE XII

Consultation

1. The competent authorities of both Parties shall consult annually, or at any other time at the request of either Party, to ensure the effective implementation of this Agreement. The Parties may jointly invite the Agency to participate in such consultations.
2. If nuclear material subject to this Agreement is present in the territory of a Party, or under its jurisdiction or control, that Party shall, upon request, inform the other Party in writing of the results or overall conclusions of any report by the Agency on its verification activities of the requested Party.

ARTICLE XIII

Administrative Arrangement

1. The competent authorities of both Parties shall ensure an administrative arrangement is in place to ensure the effective fulfilment of the obligations of this Agreement. An administrative arrangement established pursuant to this paragraph may be amended as mutually determined by the competent authorities in writing.
2. Each Party shall provide reporting of all transfers and receipts, and an annual report on all transactions and inventories.

ARTICLE XIV

Confidentiality of Information

1. The Parties shall take all appropriate precautions to preserve the confidentiality of commercial and other confidential information received as a result of the operation of this Agreement.
2. Information transferred under this Agreement shall be used exclusively in accordance with this Agreement and not for any other purpose.

ARTICLE XV

Intellectual Property

1. The Parties shall ensure the adequate and effective protection of intellectual property created and technology transferred pursuant to the cooperation under this Agreement in accordance with written arrangements between the Parties and with applicable international agreements and arrangements, and the national laws and regulations in force in Australia and in the United Kingdom.
2. This Agreement is not intended to transfer any intellectual property rights. The intellectual property rights generated under the framework of the cooperation provided by this Agreement shall be allocated on a case-by-case basis in any specific agreements or contracts associated with this Agreement.

ARTICLE XVI

Cessation of Cooperation

1. A supplying Party shall have the right in the event of non-compliance with the provisions of Articles V to XIII of this Agreement or non-compliance with, or repudiation of, Agency safeguards arrangements by the recipient Party, to suspend or cancel further transfers of nuclear material, non-nuclear material, equipment, components and technology and to require the return of nuclear material, non-nuclear material, equipment, components and technology subject to this Agreement.
2. Before either Party takes any action described under paragraph 1 of this Article, the Parties shall consult with a view to reaching a decision on whether corrective or other measures are needed, and if so, the measures to be taken and the timeframes within which such measures shall be taken.

ARTICLE XVII

Ongoing Cooperation

1. The 1979 Australia-United Kingdom Agreement shall terminate on the date this Agreement enters into force. Cooperation that is already underway pursuant to the 1979 Australia-United Kingdom Agreement shall continue in accordance with the provisions of this Agreement.
2. Cooperation already underway between the Parties pursuant to the Australia-Euratom Agreement shall continue in accordance with the provisions of this Agreement, from the date of the entry into force of this Agreement.

ARTICLE XVIII

Settlement of Disputes

1. At the request of either Party, the Parties shall consult with each other on matters arising out of the application of this Agreement, to supervise its operation and to discuss arrangements for cooperation additional to those provided in this Agreement.
2. Any dispute arising out of the interpretation or application of this Agreement shall first be referred to good faith negotiation between the Parties, at the request of either Party.
3. Any dispute arising out of the interpretation or application of this Agreement which is not settled by good faith negotiation shall, at the request of either Party, be submitted to an arbitral tribunal, which shall be composed of three arbitrators appointed in accordance with the provisions of this Article.
4. Each Party shall designate one arbitrator who may be its national, and the two arbitrators so designated shall appoint a third arbitrator, who is a national of a NPT Member State, who shall be the Chair of the arbitral tribunal. The arbitration rules of the United Nations Commission on International Trade Law shall govern the arbitration, except as may be modified by mutual determination of the Parties in writing.
5. If within thirty days of the request for arbitration either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been appointed.
6. The arbitral tribunal award shall be executed in compliance with the domestic laws and regulations of the relevant Party and applicable international law.

ARTICLE XIX

Entry into Force, Amendment and Termination

1. Each Party shall inform the other Party in writing through diplomatic channels of the completion of its domestic requirements for entry into force of this Agreement. For the United Kingdom, this shall include confirmation of the date for entry into force of the United Kingdom-Agency Safeguards Agreement. This Agreement shall enter into force on a date to be mutually determined and specified in these notifications, provided that is a date after which the Treaty establishing the European Atomic Energy Community ceases to be applicable to and in the United Kingdom, and on or after the date that the United Kingdom-Agency Safeguards Agreement has entered into force.

2. This Agreement may be amended by agreement in writing between the Parties. Each Party shall inform the other Party in writing through diplomatic channels of the completion of its domestic requirements for entry into force of amendments to this Agreement. Amendments shall enter into force on the date of the latter of the notifications.

3. This Agreement shall remain in force for an initial period of thirty years. This Agreement may be terminated by either Party after this initial period of thirty years by giving no less than twelve (12) months' notice in writing to the other Party through diplomatic channels.

4. Unless otherwise agreed in writing through diplomatic channels between the Parties, termination, or suspension of this Agreement for any reason shall not release the Parties from obligations under Articles IV to XVI in respect of nuclear material, non-nuclear material, equipment, components and technology transferred while this Agreement was in force.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Canberra this twenty first day of August 2018.

**For the Government of the
United Kingdom of Great Britain
and Northern Ireland:**

MENNA RAWLINGS

**For the Government of
Australia:**

JULIE BISHOP

CCS1118934828

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