



Ministry of Defence

Our Ref: FOI2020/02823

Your Ref: 08/20

Ministry of Defence
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United Kingdom

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E-mail: DNO-SecretariatTeam@mod.gov.uk

Via email: [REDACTED]

13 March 2020

Dear [REDACTED],

Thank you for your email of 27 February 2020 requesting the following information:

"...relating to Article 36 reviews of new weapons (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977).

- Please can you advise me whether any Article 36 reviews have been conducted for the UK Trident nuclear warhead.*
- If so, please advise me on which date(s) any such reviews were completed.*
- Please can you advise me whether any Article 36 reviews have been conducted for the UK Trident Mark 4A warhead modification, and if so, on which date(s) any such reviews were completed."*

We have treated your correspondence as a request for information under the Freedom of Information Act 2000.

A search for the information has now been completed within the Ministry of Defence (MOD) and we can confirm that no Article 36 reviews have been conducted for the UK's nuclear warheads.

Under Section 16 of the Act (Advice and Assistance) you may find it helpful to note the following information.

The Diplomatic Conference on the Development of Humanitarian Law, 1974-1977, which adopted Protocol 1 Additional to the Geneva Conventions of 1949 (of which Article 36 is a part) did not discuss the legality of nuclear weapons. In submitting the draft Protocol 1 (and Protocol 2) to the Diplomatic Conference, the International Committee of the Red Cross (ICRC) stated:

"Problems relating to atomic, bacteriological and chemical warfare are subjects of international agreements or negotiations by governments, and in submitting these draft Additional Protocols the ICRC does not intend to broach those problems."

Protocol 1 was ratified by the United Kingdom (UK) in 1998. In a letter to the Swiss Government, as the depository of Protocol 1 for ratification, the UK outlined a number of reservations, the first of which is as follows:

“It continues to be the understanding of the United Kingdom that the rules introduced by the Protocol apply exclusively to conventional weapons without prejudice to any other rules of international law applicable to other types of weapons. In particular, the rules so introduced do not have any effect on and do not regulate or prohibit the use of nuclear weapons.”

This remains the UK’s position.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact us in the first instance at the address above. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on their website, <http://www.ico.org.uk>.

If you have any queries about this request do not hesitate to contact us. Please remember to quote the reference number above in any future communications.

Yours sincerely,

Defence Nuclear Organisation Secretariat