

National Interest Analysis [2018] ATNIA 12

with attachment on consultation

**Agreement between the Government of Australia and
the Government of the United Kingdom of Great Britain and Northern Ireland
on Cooperation in the Peaceful Uses of Nuclear Energy**

(Canberra, 21 August 2018)

[2018] ATNIF 30

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland on Cooperation in the Peaceful Uses of Nuclear Energy (Canberra, 21 August 2018)

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Nature and timing of proposed treaty action

1. The proposed treaty action is the entry into force of the *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland on Cooperation in the Peaceful Uses of Nuclear Energy* (the ‘proposed Agreement’), done at Canberra on 21 August 2018.
2. The proposed Agreement would cover nuclear cooperation between Australia and the United Kingdom (UK) (the Parties), including the transfer of items (nuclear material, non-nuclear material, equipment, components and technology), following the UK’s exit from the European Union (EU) and the European Atomic Energy Community (Euratom). The proposed Agreement will largely mirror the obligations vis-à-vis Australia and the UK provided for under 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 (the ‘Australia-Euratom Agreement’) ([2012] ATS 3).
3. The Australia-Euratom Agreement will cease to apply to the UK once it formally withdraws from the EU and Euratom on 29 March 2019, or at the end of the proposed Brexit transition period, during which the UK would remain subject to EU laws and regulations until the end of 2020. The (extant) *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 (the ‘1979 Australia-UK Agreement’) will terminate upon entry into force of the proposed Agreement.
4. The proposed Agreement would enter into force on a date to be mutually specified in writing by the Parties, provided it is a date after the *Treaty establishing the European Atomic Energy Community* (‘the Euratom Treaty’) ceases to apply to the UK, and on or after a date that the UK’s new Bilateral Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency (Agency) enters into force. In the event that the planned Brexit transition period does not eventuate, the proposed Agreement would need to be ready to enter into force by 29 March 2019.

Overview and national interest summary

5. The UK has made clear that when it leaves the EU it will also withdraw from Euratom. While the UK will formally leave the EU on 29 March 2019, subject to final agreement between the UK and EU, a transition period will see the UK remain subject to the EU *Acquis Communautaire* (the total body of EU laws and regulations) including its

obligations stemming from the Australia-Euratom Agreement, from 30 March 2019 to 31 December 2020. Accordingly, transfers of Australian uranium to the UK could continue taking place under the Australia-Euratom Agreement until 31 December 2020. The proposed Agreement would provide the framework for cooperation between the Parties in the peaceful uses of nuclear energy (including the transfer of items), once the Australia-Euratom Agreement ceases to apply to the UK.

6. Australian uranium and nuclear material derived from its use is termed Australian obligated nuclear material (AONM). The Australian Government's longstanding uranium export policy limits the supply of AONM to countries with which we have a nuclear cooperation agreement, and which have a Safeguards Agreement and Additional Protocol in place with the Agency. Nuclear cooperation agreements serve Australia's national interests by ensuring our commercial position as a responsible supplier of uranium and by setting high international standards for its use through the application of strict conditions.

7. All of Australia's bilateral nuclear cooperation agreements, including the proposed Agreement, provide for stringent safeguards and security arrangements designed to ensure Australian uranium is used exclusively for peaceful purposes. By virtue of our extensive network of such agreements, Australia's strict conditions apply to a significant proportion of uranium in peaceful use worldwide, hence contributing to raising overall standards. At present, Australia has 25 bilateral nuclear cooperation agreements in place, providing for the transfer of AONM to up to 43 countries, plus Taiwan. These agreements complement the Agency's safeguards system in order to assure the peaceful and non-explosive use of AONM. The maintenance of multilateral, regional and bilateral arrangements that operate to counter nuclear proliferation is a matter of high priority for Australia.

8. The proposed Agreement is modelled closely on Australia's other bilateral nuclear cooperation agreements with nuclear-weapon states. It would largely mirror the Parties' obligations vis-à-vis each other under the Australia-Euratom Agreement and contains modernised versions of provisions in the 1979 Australia-UK Agreement.

Reasons for Australia to take the proposed treaty action

9. As set out above, the proposed Agreement would provide the framework for continued cooperation between the Parties in the peaceful uses of nuclear energy following the UK's exit from the EU and Euratom. Cooperation (such as the supply of uranium), already underway between Australia and the UK pursuant to the Australia-Euratom Agreement would continue in accordance with the provisions of the proposed Agreement, from the date that the proposed Agreement enters into force.

Nuclear cooperation with the UK

10. The UK is a key ally and trading partner for Australia. Of Australia's total uranium exports, Australia supplies around 25 per cent to the UK for use and processing on behalf of third countries, and the UK holds almost one third of the total AONM inventory in the EU. The UK is a major supplier of enrichment services for our uranium customers, and therefore would play a crucial role in accounting for the movement of AONM through the fuel cycle globally, and providing assurances that AONM is used only for peaceful purposes.

11. The proposed Agreement underlines the strong joint commitment of Australia and the UK to nuclear non-proliferation, nuclear security and nuclear safety. To enable the

uninterrupted transfer of Australian uranium to the UK and to maintain smooth commercial operations for Australian mining companies, it is imperative to facilitate continued cooperation with the UK under the proposed Agreement. In addition to maintaining strict safeguards and security arrangements concerning nuclear material and technology transferred under the Australia-Euratom Agreement or 1979 Australia-UK Agreement, the Australian Government considers that enabling continued cooperation with the UK under the proposed Agreement would provide clear economic benefits to Australia.

Nuclear Safeguards

12. Australia's bilateral nuclear cooperation agreements are designed to provide assurance that AONM is used solely for peaceful purposes and is not diverted to nuclear weapons or other military uses. These bilateral agreements require that AONM be subject to Agency safeguards for the full life of the AONM.

13. It is an Australian Government policy requirement that any country with which Australia concludes a nuclear cooperation agreement has an Agency Safeguards Agreement and an Additional Protocol in place. While the UK currently meets this requirement by being party to the UK-Euratom-Agency Safeguards Agreement and Additional Protocol (the 'UK-Euratom-Agency Safeguards Agreement'), these instruments will cease to apply to the UK once the UK withdraws from Euratom. In anticipation of Brexit, the UK negotiated and signed a new Bilateral Safeguards Agreement and Additional Protocol with the Agency (the 'UK-Agency Safeguards Agreement'), on 7 June 2018. Additionally, the *Nuclear Safeguards Act 2018* to establish a domestic nuclear safeguards regime in the UK received Royal Assent in June 2018. The Australian Government is confident that the UK-Agency Safeguards Agreement essentially replicates the provisions and obligations outlined in the current UK-Euratom-Agency Safeguards Agreement and meets our uranium export policy requirements. The proposed Agreement stipulates that the proposed Agreement can only enter into force on a date after which the Euratom Treaty ceases to be applicable to and in the United Kingdom, and on or after the date that the UK-Agency Safeguards Agreement has entered into force.

14. The proposed Agreement includes all the key elements of Australia's policy for the control of nuclear materials. These elements are:

- a) an assurance that AONM supplied to the UK would be used exclusively for peaceful purposes and would not be used for any military purpose (Article V);
- b) an assurance that AONM supplied to the UK would be subject to the Safeguards Agreement and Additional Protocol established by the UK with the Agency (Article VI);
- c) the provision for arrangement of fallback safeguards which would apply in the unlikely event that, for any reason, Agency safeguards no longer apply (Article VII);
- d) an assurance that adequate and effective physical protection measures (including security) which satisfy accepted international standards would be applied to all AONM during use, storage and transport (Article VIII);
- e) the requirement for prior Australian consent before any transfer by the UK of AONM to a third party (Article X) and for any enrichment to 20 per cent or more in the isotope uranium-235, or reprocessing of, AONM (Article XI);
- f) the provision for an administrative arrangement to be established between the

competent authorities of the Parties to ensure the effective fulfilment of the obligations of the proposed Agreement (Article XIII) (including to set out a system of accounting and control for nuclear material, non-nuclear material, equipment, technology and components subject to the proposed Agreement (Article VI)); and

- g) the right to suspend or cancel in whole or in part further transfers of items, including the right of the supplier Party to require the return of items subject to the proposed Agreement in the event of non-compliance (Article XVI).

Obligations

15. Article V obliges the Parties to ensure that items subject to the proposed Agreement, together with all items produced as a by-product, are used only for peaceful purposes and not for any military purpose. Article II defines the scope of cooperation covered by the proposed Agreement as including: the supply of items subject to the proposed Agreement; research; nuclear safety and radiation protection; safeguards and nuclear security; management of spent fuel and radioactive waste; nuclear forensics; and, commercial cooperation between legal entities. Article XV obliges the Parties to ensure the adequate and effective protection of intellectual property created and technology transferred pursuant to cooperation under the proposed Agreement.

16. Article III obliges the Parties to apply the requirements of the proposed Agreement to all items transferred between the Parties, regardless of whether transferred directly or through a third country. Article III also applies to derived nuclear material in direct proportion to the amount of nuclear material subject to the Agreement involved in its generation; or, where non-nuclear material, components, technology or equipment had a direct or substantial connection to the production, processing or use of the nuclear material. This provision also provides that the proposed Agreement would cover all items that are subject to the Australia-Euratom Agreement and the 1979 UK-Australia Agreement in the UK at the time of entry into force of the proposed Agreement.

17. Article XI requires the prior written consent of the Parties before reprocessing nuclear material subject to the Agreement. Although consent for reprocessing is granted in the UK under the Australia-Euratom Agreement, the UK has agreed for written consent for reprocessing to be required under the proposed Agreement. It is intended that prior written consent would be provided for any necessary reprocessing of Magnox fuel in the UK that takes place after the proposed Agreement enters into force. Arrangements outlining the ongoing management of already separated plutonium in the UK would also be established.

18. Article XI further requires the prior written consent of the Parties before enriching uranium subject to the Agreement to 20 per cent or greater in the isotope uranium-235. Uranium-235 enriched to 20 per cent or greater is known as high-enriched uranium (HEU). Under Article XI of the proposed Agreement, the consenting Party must also stipulate any specific conditions under which the HEU may be used. This provision is included in all of Australia's nuclear cooperation agreements to provide additional controls on this proliferation-sensitive activity.

19. Article VI requires all nuclear material subject to the proposed Agreement is also subject to the Parties' respective safeguards agreements with the Agency. Under Article VII, in the unlikely event that Agency safeguards cease to apply in either Party's jurisdiction, the Parties are required to arrange for the application of alternative ('fallback') safeguards which

conform to Agency principles and procedures to provide reassurance equivalent to that intended to be secured by the Agency safeguards system they would replace.

20. Article VIII obliges the Parties to apply physical protection measures (including measures for cyber security) to ensure adequate nuclear security, in accordance with international guidelines. Under Article IX, nuclear safety and waste management would be conducted in accordance with relevant international conventions. Article X obliges the Parties not to transfer nuclear material subject to the proposed Agreement beyond their jurisdiction unless they have received prior written consent from the other Party.

21. Article XIV requires the Parties to take all appropriate precautions to preserve the confidentiality of commercial and other confidential information received as a result of the operation of the proposed Agreement.

22. Article XIII requires the Parties to establish an administrative arrangement – an instrument of less than treaty status – to ensure the effective fulfilment of the obligations of the proposed Agreement.

Implementation

23. The legislative framework already in place in relation to nuclear transfers would be sufficient to provide for the terms of the proposed Agreement. However, it would be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to add the proposed Agreement to the list of ‘prescribed agreements’ under that Act, which is subject to any modifications that are prescribed by regulations. No changes to the existing roles of the Commonwealth or the States and Territories would arise because of implementing the proposed Agreement.

Costs

24. The costs associated with the proposed Agreement would be limited to travel to the UK by Australian Safeguards and Non-Proliferation Office (ASNO) officers to facilitate proper operation of the nuclear material accounting system and to discuss other implementation matters. ASNO will manage these costs within its departmental allocation by the Department of Foreign Affairs and Trade.

Regulation Impact Statement

25. The Office of Best Practice Regulation, Department of the Prime Minister and Cabinet, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

26. Article XIX of the proposed Agreement provides that the Agreement may be amended by agreement in writing between the Parties. Amendments would enter into force on the date of the later written notifications exchanged between the parties confirming that the Parties have completed their respective domestic requirements for entry into force of such amendments. Such amendments would be subject to Australia’s domestic treaty-making processes, including approval of the Federal Executive Council, tabling in Parliament and consideration by JSCOT.

27. No future legally binding instruments connected with the proposed Agreement are

envisaged at this stage.

Withdrawal or denunciation

28. The proposed Agreement would remain in force for an initial period of thirty years. Either Party is able to terminate the proposed Agreement at the end of the initial thirty-year period or at a time after this initial period by giving no less than twelve months' notice in writing to the other Party. Any decision to terminate the proposed Agreement would be subject to Australia's domestic treaty processes, and termination would not release either Party from obligations in respect of nuclear material, non-nuclear material or equipment transferred while the proposed Agreement was in force.

Contact details

Bilateral Safeguards Section
Australian Safeguards and Non-Proliferation Office
Department of Foreign Affairs and Trade

ATTACHMENT ON CONSULTATION

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CONSULTATION

29. The Australian uranium industry was informed of the proposed Agreement. The proposed Agreement was discussed in meetings with the Uranium Council and industry stakeholders. The signature of the proposed Agreement was welcomed.

30. The State and Territory Governments were consulted on the proposed Agreement through the Commonwealth-State-Territory Standing Committee on Treaties. No comments were received from the State and Territory Governments. No action will be required from the State and Territory Governments to implement the proposed Agreement.