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Exchange of Notes

between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the United States of America
amending the Agreement of 27 May 1993 concerning Defence
Co-operation Arrangements

London, 12 March and 1 June 2007

[The Exchange of Notes entered into force on 1 June 2007]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 2011*

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**EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AMENDING THE AGREEMENT OF 27 MAY 1993 CONCERNING
DEFENCE CO-OPERATION ARRANGEMENTS**

No. 1

The Embassy of the United States of America in London to the Foreign and Commonwealth Office

The Embassy of the United States of America presents its compliments to the Foreign and Commonwealth Office and has the honor to refer to the Exchange of Notes Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Concerning Defense Co-operation Arrangements of May 27, 1993 (the Chapeau Defense Agreement)¹, and to recent discussions between officials of our two Governments concerning the desirability of amending the Chapeau Defense Agreement to insert provisions covering the assignment, exchange or liaison of national defense units and personnel between our respective national defense organizations, in the light of the mutual benefits to be obtained from such assignment, exchange or liaison.

As a result of these discussions, I have the honor to propose that the additional proposed provisions set forth below shall be interpreted in a manner consistent with the provisions of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (NATO SOFA)², signed at London on June 19, 1951, and in particular such provisions shall not be interpreted as applying to a wider class of persons than are currently covered under the NATO SOFA, Article I.

I have the further honor to propose that the Chapeau Defense Agreement be amended as follows:

1. The sentence that follows paragraph 5 is deleted and replaced by a new paragraph 6 that reads:
 - ‘6. In order for this agreement to apply to a written arrangement between our national defense organizations, it must be explicitly invoked by or for that arrangement. As regards the assignment, exchange or liaison of national defense units and personnel between our respective national defense organizations covered by a written arrangement invoking this agreement, these shall be in accordance with the terms and conditions set out in this agreement and such other provisions as may be set out in the written arrangement.’
2. New paragraphs 7, 8, 9, 10, 11 and 12 are inserted, as set out below:

¹ Treaty Series No.69 (1993), Cm 2361

² Treaty Series No.003 (1955), Cm 9363

7. The terms and definitions set out in this paragraph shall apply to paragraphs 8-11 below.
- (a) “Assignment” shall mean the assignment of national defense units and personnel of one Government to exchange, liaison, cooperative project, or other positions within the national defense organization of the other Government. The words “assigned” and “assigns” shall have a meaning corresponding with the meaning of the word “Assignment.”
 - (b) “Classified Information” shall, unless otherwise determined in written arrangements, mean official information that has been determined to require, in the interests of national security of the owning or releasing Government, protection against unauthorized disclosure and that has been so designated by the appropriate classification authority. This shall include Classified Information in any form, be it oral, visual, electronic or in the form of materiel.
 - (c) “Controlled Unclassified Information” shall, unless otherwise determined in written arrangements, mean unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations, including information that has been declassified but remains controlled. Whether the information is provided or generated under this agreement or any arrangement thereto, the information will be marked to identify its sensitive nature.
 - (d) “Host Government” shall mean the national Government of the Host Defense Organization, as well as all political subdivisions thereof.
 - (e) “Host Defense Organization” shall mean the national defense organization to which a national defense unit or personnel of the Parent Defense Organization is assigned pursuant to a written arrangement between the defense organizations of the two Governments.
 - (f) “National Defense Units and Personnel” shall be interpreted synonymously with the definitions of “force” and “civilian component” in Article I of the NATO SOFA. Employees and agents of contractors shall not be considered to be national defense personnel employed by a Government.
 - (g) “Parent Government” shall mean the national Government of the Parent Defense Organization, as well as all political subdivisions thereof.

- (h) “Parent Defense Organization” shall mean the defense organization of the Parent Government that assigns a national Defense Unit or Personnel to the Host Defense Organization, pursuant to a written arrangement between the defense organizations of the two Governments.
8. All Classified Information or Controlled Unclassified Information exchanged with or disclosed to assigned National Defense Units and Personnel who are assigned pursuant to a written arrangement between the United States Department of Defense (DOD) and the United Kingdom Ministry of Defence (MOD), shall be subject to the provisions of that arrangement concerning the treatment of disclosed or exchanged Classified Information or Controlled Unclassified Information as appropriate. In the absence of such provisions within the written arrangement, the exchange and disclosure of Classified Information or Controlled Unclassified Information shall be subject to, and protected in accordance with, the General Security Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland of 14 April 1961¹, as amended, and including the Industrial Security Implementing Arrangement thereto of 27 January 2003. Access to Classified Information and Controlled Unclassified Information by assigned National Defense Units and Personnel of the Parent Defense Organization shall be authorized by the Host Defense Organization, and use thereof by those units and personnel shall be granted only as necessary to fulfill the purpose of the Assignment in accordance with commitments entered into under the written arrangement.
9. Without prejudice to any commitment made by the Host Defense Organization to make Classified Information or Controlled Unclassified Information available to the Parent Defense Organization under the written arrangement, any disclosure of such information by the assigned National Defense Units and Personnel to the Parent Defense Organization shall be only as authorised by the Host Defense Organization. Authorized disclosures through the assigned National Defense Units and Personnel of Classified Information or Controlled Unclassified Information owned or provided by the Host Defense Organization to the Parent Defense Organization, or of Classified Information or Controlled Unclassified Information owned or provided by the Parent Defense Organization to the Host Defense Organization, shall be treated as disclosures of such information between our two national defense organizations under the written arrangement.

¹ Not published

10. Duties, privileges, and exemptions shall be applicable to assigned National Defense Units and personnel in accordance with Articles II to XIV, inclusive, of the NATO SOFA, provided such units or personnel are entities or persons falling within the [definitions of “force” and civilian component” in] Article I of the NATO SOFA.
 11. The Host Defense Organization shall provide, upon request and subject to availability, such office facilities, communication services, access to and use of facilities, base operations support, and other administrative or logistic support addressed in applicable written arrangements between the Host Defense Organization and the Parent Defense Organization as is necessary to execute the purposes set out therein. All costs associated with the provision of administrative, logistic, or training support provided pursuant to a written arrangement between DOD and MOD shall be subject to reimbursement by the Parent Defense Organization to the Host Defense Organization, as required by the laws, regulations or policies of the Host Government, and as set out in applicable written arrangements.
 12. Financial arrangements shall be set out in written arrangements between the DOD and the MOD and shall be subject to authorization and the availability of appropriated funds for such purposes.’
3. The penultimate paragraph of the Chapeau Defense Agreement beginning “Any difference of view...” is numbered paragraph 13.

I have the honor to propose that, if the foregoing is acceptable to your Government, the present Note and Your Excellency’s reply to that effect shall constitute an agreement between our two Governments to amend the Chapeau Defense Agreement of May 27, 1993, which shall enter into force on the date of your Excellency’s reply and shall remain in force until six months after the date of the receipt of notice of termination by either Government.

The Embassy of the United States of America avails itself of this opportunity to renew to Her Majesty’s Government the assurances of its highest consideration.

Embassy of the United States of America,
London 12 March 2007

No. 2

The Ministry of Defence to the Embassy of the United States of America in London

I have the honour to refer to Your Excellency's Note dated 12 March 2007 concerning the amendment of the Chapeau Defense Agreement of 27 May 1993 between our two Governments which reads as follows:

[As in No. 1]

I have the further honour to confirm that the proposals set forth in Your Excellency's Note are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and accordingly that Note and this Note in reply shall constitute an agreement between our two Governments which shall enter force on this date and shall remain in force until six months after the receipt of notice of termination by either Government.

I avail myself of the opportunity to renew to Your Excellency the renewed assurances of my highest consideration.

Ministry of Defence
London, 1 June 2007



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