



House of Commons  
Defence Committee

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# **UK/US Defence Trade Cooperation Treaty**

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**Third Report of Session 2007–08**





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**Third Report of Session 2007–08**

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by The House of Commons  
to be printed 4 December 2007*

## The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

### Current membership

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Mr David S Borrow MP (*Labour, South Ribble*)  
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Linda Gilroy MP (*Labour, Plymouth Sutton*)  
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Mr Colin Breed MP (*Liberal Democrat, South East Cornwall*)  
Derek Conway MP (*Conservative, Old Bexley and Sidcup*)  
Mr Mark Lancaster MP (*Conservative, North East Milton Keynes*)  
Mr Desmond Swayne MP (*Conservative, New Forest West*)

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: [www.parliament.uk/defcom](http://www.parliament.uk/defcom).

### Committee staff

The current staff of the Committee are Philippa Helme (Clerk), Eliot Wilson (Second Clerk), Ian Rogers (Audit Adviser), Stephen Jones (Committee Specialist), Richard Dawson (Committee Assistant), Anna Browning (secretary) and Stewart McIlvenna (Senior Office Clerk).

### Contacts

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## Summary

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In this report, we examine the UK/US Defence Trade Cooperation Treaty, laid before Parliament on 24 September 2007, which seeks to establish a new framework for arms trade and technology transfer between the US and the UK.

Arms and defence-related technologies cannot be exported from the US without an export licence issued by the US Government. The US and UK Governments and the defence industries in both countries have, since the 1990s, been searching for arrangements to ease the requirements for exports to the UK. The current system is unduly burdensome and time-consuming. It discourages UK/US industrial collaboration. It affects the speed at which equipment can be acquired for UK Forces in operational theatres. It is vital to the interests of both the US and the UK that the system should not prevent our Forces from getting access to the equipment they need to fight effectively alongside their US allies in current and future operations.

The Treaty between the UK and US would remove the requirement to obtain licences for certain categories of arms and technologies for defined purposes. Industry on both sides of the Atlantic firmly supports the Treaty. In principle, the Treaty should meet the Government's objective to deepen and strengthen UK/US cooperation and to provide greater interoperability for UK and US Armed Forces. We therefore support the principles and framework set out in the Treaty.

But the Treaty only provides the framework. The detailed operation will be set out in Implementing Arrangements. When we carried out our inquiry, these were still under negotiation. Still to be finalised are the criteria for membership of the Approved Community, to which arms and technologies could be exported, and the technologies which would be excluded. Provided that these Implementing Arrangements are not drawn too restrictively, excluding substantial goods and technologies or significant parts of the defence industry, we would expect the Treaty to bring benefit to the UK defence industry and to the UK Armed Forces.

Ratification in the US is subject to approval by a two-thirds majority of the Senate. We express confidence that Congressional scrutiny will show that the Treaty is in the US interest, as much as in the interest of the UK.

In the expectation that the UK and the US will agree satisfactory Implementing Arrangements, we support the UK's ratification of the UK/US Defence Trade Cooperation Treaty.



# 1 Introduction

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## Background to the Treaty

1. The UK/US Defence Trade Cooperation Treaty was signed by former Prime Minister Blair and President Bush in June 2007 and published on 24 September 2007.<sup>1</sup> The Treaty establishes a framework for defence trade cooperation between the United Kingdom and the United States of America.<sup>2</sup>

2. In the UK, treaties are ratified by the Government under the Royal Prerogative, without requirement for parliamentary approval; but, by Government undertaking (“the Ponsonby rule”), treaties are laid before Parliament for 21 sitting days before ratification, to enable Parliament to consider and, if necessary, to comment on them. At our request, the Government agreed to extend the period available to Parliament to scrutinise this Treaty until 12 December 2007.

3. Since the 1990s, both Democrat and Republican Administrations have sought to reform the US arms export control system. The US Arms Export Control Act gives authority to the President to make regulations regarding the export and import of defence articles and services. The items so designated constitute the US Munitions List. The regulations are the International Traffic in Arms Regulations (ITAR), which cover the control of arms exports, the registration of manufacturers and exporters and the administrative procedures for obtaining licences to export.

4. In May 2000, the Clinton Administration approved the US Defense Trade Security Initiative (DTSI), which was an attempt to harmonise export licensing procedures and to shorten the time needed to process US licences for NATO allies, Australia, Japan and Sweden.<sup>3</sup> In January 2001, the UK and the US released a joint statement on the progress of implementation of DTSI.<sup>4</sup> As outlined by that statement, one of the UK’s main objectives was to secure an exemption from ITAR for the export of certain equipment and services. Although proposed texts on an ITAR waiver were reportedly agreed in June 2003,<sup>5</sup> the US Congress repeatedly refused to approve a waiver for the UK. Opposition to granting the waiver has been strongest in the House of Representatives.

5. We and our predecessor committee supported the proposal for an ITAR waiver<sup>6</sup> but we now recognise that this is unlikely to receive approval in the US Congress, at least in the short term.

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1 *Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning defense trade cooperation: London and Washington, 21 June and 26 June 2007*, Cm 7213, September 2007

2 The United States has subsequently signed a similar agreement with Australia; see and *Explanatory Memorandum on the UK/US Defence Trade Cooperation Treaty*, Foreign and Commonwealth Office, September 2007, para 8

3 *Defense Trade Security Initiative*, Press Statement by Philip T. Reeker, Acting Spokesman for the U.S. Department of State, May 24, 2000

4 *Statement on UK–US Discussions On Defense Export Controls*, Ministry of Defence, 18 January 2001

5 HC Deb, 2 June 2003, col 39W

6 For example, Fifth Report from the Defence Committee, Session 2002–03, *Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC 474, para 155

6. In the US, ratification of a treaty is subject to approval by a two-thirds majority in the Senate.<sup>7</sup> The UK/US Defence Trade Cooperation Treaty was received by the Senate on 20 September and referred to the Foreign Relations Committee. It is unclear how long the process of Congressional scrutiny will take but the UK Government is hopeful that the Senate will consider the Treaty by January 2008.<sup>8</sup> **While it cannot be taken for granted that the Treaty will be approved by the required two-thirds majority of the US Senate, we are confident that Congressional scrutiny of the Treaty will show that it is as much in the US interest as it is in the interest of the UK.**

## Our inquiry

7. Because of the timetable for ratification, our inquiry has been swift. We held a two-part evidence session on 21 November 2007: first with the Defence Industries Council (DIC), the Society of British Aerospace Companies (SBAC), the Export Group for Aerospace and Defence (EGAD), the US Aerospace Industries Association (AIA), General Dynamics UK and BAE Systems; and secondly with the Rt Hon Baroness Taylor of Bolton, Minister for Defence Equipment and Support, and officials from the Ministry of Defence and the Cabinet Office. We also received written memoranda from the Government, from industry, from campaigning groups, from individual commentators and from members of the public. We are grateful to all those who contributed evidence within the tight timetable for this inquiry.

8. The Government states that its aim in signing the Treaty is:

to further strengthen and deepen the UK and US defence relationship, allowing greater levels of cooperation and interoperability that will help support our Armed Forces operating side by side around the world. The Treaty will allow both nations to better leverage the respective strengths of their security and defence industries.<sup>9</sup>

9. In examining the Treaty we addressed three questions:

- How will the arrangements underpinning the Treaty work?
- Will the Treaty be effective in removing barriers to the arms trade and technology transfer from the US and in improving cooperation between the US and UK Armed Forces?
- What consequences will the Treaty have for UK defence manufacturers and UK defence industrial policy and arms export controls?

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7 An alternative approach is to seek the simple majority of both Houses of Congress, but there has been no mention of this approach being adopted.

8 Q 148

9 Ev 27, para 1

## 2 Operation of the Treaty

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### Proposals in the Treaty

10. The Treaty sets out a framework for arms trade and technology transfer between the US and the UK. The Government, in the Explanatory Memorandum accompanying the Treaty, states that it will:

- only apply to defence articles listed on the United States Munitions List for US or UK Government end-use;
- not cover the export to the UK of defence articles intended for use by other nations; and
- not cover certain highly-sensitive technologies.<sup>10</sup>

The defence goods and technologies which will be exempted from the provisions of the Treaty will be set out in Implementing Arrangements (Article 3), which are considered further below.<sup>11</sup>

11. The Government also states in its memorandum that the Treaty arrangements will be in addition to, not a replacement for, both countries' existing export control arrangements. Arms and defence technologies not covered by the Treaty could still be exported if they meet the requirements of the UK's and US's current export licensing systems.<sup>12</sup> Exporters to whom the Treaty arrangements apply may use either the existing export control licensing arrangements or the Treaty arrangements. Those to whom the Treaty arrangements do not apply will have no option other than to apply for a licence through the existing arrangements.

12. The main provisions in the Treaty are as follows:

- It provides for an "Approved Community" of companies and individuals in the UK and US. In the UK, the community will include Government facilities, Government personnel, companies and individuals; the eligibility requirements for inclusion in the Approved Community will be set out in the Implementing Arrangements (Articles 4 and 5).
- It removes the requirement for goods and technologies that are exported from the US to companies within the Approved Community in the UK to be granted an individual export licence (Article 6). The Treaty will also allow for the subsequent transfer of those articles within the Approved Community without further US authorisation (Article 7).
- It prevents goods and technologies exported to the Approved Community in the UK from being re-exported or transferred outside of that community without

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10 Explanatory Memorandum, para 5

11 See paras 19 and 27

12 Explanatory Memorandum, para 7

subsequent approval by both Governments. Certain exceptions to this provision, such as those for goods or services being used in support of the UK's deployed Armed Forces, will be mutually agreed and set down in the Implementing Arrangements (Article 9). In the UK, all relevant legislation, including the Official Secrets Act, will apply to the goods and technologies exported under the Treaty. Both Governments will be obliged to investigate any suspected violations and inform the other party of the result of such investigations. Each party shall also have the right to conduct end-use monitoring of exports or transfers conducted under this Treaty (Articles 11–13).

- Both parties will consult at least once a year on the cooperative aspects of export controls, and review the operation of this Treaty (Article 17). Any disputes arising out of, or in connection with, the Treaty are to be resolved on a bilateral basis and will not be referred to any court, tribunal or third party (Article 18).<sup>13</sup>

### The current US export control system

13. Arms and related technologies subject to US export control cannot be exported from the US without an export licence issued by the Department of State's Directorate of Defense Trade Controls. In its evidence to us, the UK defence industry identified two key difficulties in obtaining goods and technologies from the US: the excessive length of time it took to secure licences; and the restricted terms of US export licences and consents.<sup>14</sup>

14. Industry found the US export system to be an administrative burden that tied up "huge amounts of resource" every time an application was made.<sup>15</sup> It questioned the point of this procedure as over 99% of applications to the UK were eventually approved.<sup>16</sup> EGAD said that, even after a licence had been issued, it was "very, very narrow and prescriptive" and, if the recipient wanted to step outside its terms, he or she had to go through the whole licensing process again.<sup>17</sup> Dr Sandy Wilson, President and Managing Director of General Dynamics UK, explained that he had had problems in getting clearance for Urgent Operational Requirements (UORs). UORs might be very short programmes, of perhaps four or nine months, and that was "almost outwith the timescale for getting TAA [Technology Assistance Agreement] approval".<sup>18</sup> While General Dynamics UK had been successful in negotiating with the US State Department a one-off waiver, it had taken "a long effort" and "the next time a programme appears with the same kind of timescales that process will not apply".<sup>19</sup> In UK industry's view, the US system was not capable of responding in the time required by modern business and modern defence requirements.<sup>20</sup>

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13 Cm 7213

14 Q 2

15 Q 3

16 Qq 2 (Mr Godden), 4 and see also Q 124

17 Q 4

18 Q 7

19 *Ibid.*

20 Q 9

15. Dr Jerry McGinn from the AIA said that “the frustrations that we have had on the US side are similar to those in the UK industry in that trying to meet the operational demands for the war fighter”.<sup>21</sup> He described the system as it applied to exports to the UK as cumbersome and not reflective of the close UK/US bilateral relationship.<sup>22</sup> He said that in trying to meet the Armed Forces’ operational demands:

speaking for my company [Northrop Grumman] [...] we have had challenges of getting [...] systems’ TAAs or licences through fast enough to meet the needs of UK forces in the field.<sup>23</sup>

16. The operation of the current US export control system affects the speed at which equipment can be acquired for UK Forces in theatre—diminishing their ability to fight effectively alongside their US allies. The Government stated that there had been “some occasions when the ability to address problems on the ground has been delayed as the information that needs to be transferred at the operational level has been subject to licence”.<sup>24</sup>

17. The primary purpose of arms export controls is to prevent goods and technology falling into the wrong hands. We asked industry how the US system operated and how much flexibility it could offer for exports to close allies such as the UK. EGAD considered that the operation of the system was “fundamentally [...] a function of the rules rather than the number of people applied to the licensing system”<sup>25</sup> and that it was “an awkward mixture of legislation and [...] regulatory practice.”<sup>26</sup> In contrast to the UK export control system, the US system does not appear to take into account an assessment of risk.<sup>27</sup>

**18. The US export control system imposes a large administrative burden on defence exports from the US to the UK. While we respect the wish of the US to control its defence exports, we consider that its current system of controls for exports from the US to the UK is unduly burdensome and time-consuming. The US and the UK are very close allies, cooperating closely on defence and security. Our soldiers are fighting side by side in Iraq and Afghanistan. It is vital to the interests of both the US and the UK that the system should not prevent our Forces from getting access to the equipment they need to fight effectively alongside their US allies in current and future operations.**

## Will the Treaty make a difference?

19. The Treaty will remove the requirement for certain categories of defence export to be processed through the US export control system. These categories will be set out in the Implementing Arrangements. When we took evidence from the Government, the Implementing Arrangements were still under negotiation with two key areas still

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21 Q8 (Dr McGinn)

22 Ev 44

23 Q 8 (Dr McGinn)

24 Q 132

25 Q 4

26 Q 9

27 Q 4

undecided: the criteria for membership of the Approved Community; and the technologies that would be excluded from the scope of the Treaty.<sup>28</sup>

### ***The UK Approved Community***

20. Under the Treaty, goods and technology covered by the Treaty will be able to transfer without further authorisation from the US to the UK Government or to companies and other bodies, forming part of an Approved Community.<sup>29</sup> UK companies or other bodies wishing to use the Treaty will need to apply to join the Approved Community and will be assessed against several criteria. According to the UK Government, these criteria will include:

- current membership of the UK “List X” group, the group of establishments that have been cleared by the UK Government as being able to handle classified material;
- an appropriate level of Foreign Ownership, Control or Influence (FOCI), as decided by the UK and US Governments;
- past performance on export controls, judged against UK and US records of violations; and
- any potential national security risks for the US, due to interactions with countries proscribed in US law and regulation.<sup>30</sup>

21. The ambition of industry was that the UK Approved Community should be “as inclusive a list as possible”.<sup>31</sup> Industry’s concerns focused on the position of two groups: small and medium-sized enterprises (SMEs); and companies under FOCI.

22. Dr Wilson believed that it was important that SMEs were allowed into the Approved Community “because otherwise the supply chain [of goods and technologies from the US] will suddenly stop at the top level” when for full implementation the Treaty arrangements needed “to apply right down through the supply chain to the SME level”.<sup>32</sup>

23. On foreign-owned companies, Dr Wilson considered that “it is essential that foreign-owned companies get onto the approved list because we cannot imagine working without them in the UK”.<sup>33</sup> It was the SBAC’s ambition that companies such as Thales, Finmeccanica and MBDA became members of the Approved Community.<sup>34</sup> Mr Hayes, Chairman of EGAD, pointed out that where a US company had FOCI then arrangements were agreed with the Defense Security Service in the US to mitigate that foreign interest. He envisaged a similar sort of system operating under the Treaty “whereby if there are

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28 Qq 89, 100, 104, 151

29 Ev 28, para 5

30 Ev 28, para 8

31 Q 24

32 Q 22

33 Q 42

34 Qq 44 (Mr Godden), 46 (Mr Godden)

concerns over foreign ownership, control and interest of a company in the UK, then a means is found to address those concerns which would satisfy both Governments and enable the company to participate within the constraints of that agreement”.<sup>35</sup>

24. In written evidence Finmeccanica UK put the case for inclusion of FOCI companies in the Approved Community:

It would not be in the spirit of the Treaty, and would be irrational, to exclude from the Implementation Arrangements companies in the UK’s domestic defence capability landscape simply because of third-country ownership. This is exemplified by Finmeccanica’s sales in the UK of £1.7 billion exclusively in support of the UK’s armed forces and those of allies. Finmeccanica could not accept, given its place in major UK equipment programmes such as Typhoon, Tornado, Merlin and Apache, that we might be treated as some special case, amounting to being labelled as a second class citizen. [...] Finmeccanica has made significant inward investment decisions based on the principle that, because of our position in key UK domestic programmes, we would be afforded the same treatment as other companies in this community, regardless of ownership. It was on this basis that Finmeccanica has invested £1.5 billion in high technology facilities in the UK and maintains a high-skill workforce of some 9,000 or 12,000 if our interest in MBDA is included. The creation of a two-tier industrial landscape would undermine the rationale for this very significant investment and high level of activity.<sup>36</sup>

25. The List X procedure is “well-known and understood”<sup>37</sup> by the UK defence industry. List X includes SMEs<sup>38</sup> and university facilities.<sup>39</sup> The Government explained that eligibility for List X status already took “account of a level of FOCI within companies, including the percentage of UK nationals at board levels overseeing the security-cleared facilities”.<sup>40</sup> There is, however, a difference of approach between the UK and US: on access to third-party nationals, for example, the UK approach is for risk management at the individual level whereas the US “tends to [...] a more blanket level of denying access”.<sup>41</sup> The Minister for Defence Equipment and Support was confident, however, that in the outstanding negotiations “we can convince those who are making decisions in the United States that the protections that we have on security and our vetting classification are very strong and very significant”.<sup>42</sup>

**26. We share the ambition of industry that the Approved Community should be as inclusive as possible. The current List X, the group of establishments that have been**

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35 Q 38

36 Ev 43 (Finmeccanica UK), see also Ev 42–43 (Thales UK) and Ev 45 (EADS UK)

37 Q 24 “List X” is a term that has been in existence for seventy years. It is the British term for what the rest of the world calls “FSC—Facility Security Clearance”. The term refers to contractors or subcontractors which have been formally placed on List X because they are undertaking work marked CONFIDENTIAL or above “on the Company Premises”.

38 Q 27

39 Q 106

40 Q 103 (Mr Lincoln)

41 Q 104

42 Q 151

cleared by the UK Government as being able to handle classified material, is tried and tested and forms a solid foundation on which to build eligibility for inclusion in the UK Approved Community. In our view a UK Approved Community which was drawn more tightly—by excluding SMEs or major foreign-owned defence companies—would seriously blunt the effectiveness of the Treaty. UK defence companies owned by overseas companies form a significant part of the UK defence industry and have a large footprint in the UK economy: they are in practice regarded by the MoD as UK defence companies. If European-owned UK defence companies were barred from membership of the Approved Community, it would create a two-tier industry and would risk discouraging European collaboration.

### **Excluded technologies**

27. Article 3 provides that the Treaty shall not apply to those goods and technologies that are identified in the Implementing Arrangements. The Government expects a small number of sensitive technologies to be excluded from the Treaty,<sup>43</sup> principally stealth and sensitive communications technology.<sup>44</sup> The Government's intention is that the "list of exclusions would be as small as possible, such that the benefits which can be derived from both Governments' Armed Forces on operations and industry, both on the UK and US side, can be maximised as far as possible".<sup>45</sup> The Minister was confident that agreement with the US could be reached on this issue.<sup>46</sup> Industry supported the Government's approach.<sup>47</sup> **We endorse the Government's approach that the list of technologies excluded by the Implementing Arrangements should be as short as possible. Given the reliance that today's Armed Forces place on technology, an extensive list of exclusions emerging from the negotiations on the Implementing Arrangements would undermine the purpose of the Treaty. In our view, the longer the list of exclusions, the less effective the Treaty will be.**

### **Joint Strike Fighter**

28. We have repeatedly raised concerns about technology transfer from the US to the UK on the Joint Strike Fighter (JSF) programme.<sup>48</sup> In December 2006, the then Minister for Defence Procurement, Lord Drayson, assured us that the UK would get all the technology transfer it required to operate the JSF independently.<sup>49</sup> We asked his successor whether the Treaty would cover technological transfer for the JSF. She replied:

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43 Ev 28, para 10

44 Q 107 (Mr Lincoln)

45 Q 100

46 Q 151

47 Q 11

48 Most recently in the Sixth Report of the Defence Committee, Session 2006–07, *The Defence Industrial Strategy: update*, HC 177, paras 81–86. The JSF is a supersonic, multi-role, stealth (radar-evading) fighter with a single engine and a single pilot. The prime contract to develop and produce the JSF was awarded to Lockheed Martin in October 2001. Full production is due to start in 2012. Lockheed Martin and its partners BAE Systems and Northrop Grumman, are facilitating the flow of work, with the development of the engines being managed by the Fighter Engine Team, comprised of General Electric and Rolls Royce.

49 HC (2006–07) 177, para 84

The Joint Strike Fighter is a multinational programme and, therefore, as such, as a whole, it is not covered by this Treaty. However, aspects of the Joint Strike Fighter are actually where we have bilateral projects with the Americans. If it is a UK/US aspect of the Joint Strike Fighter programme, in terms of any development, then it can come in with this Treaty—it does not have to but there is potential for that—but it is not, as a multilateral project, one that automatically all comes within this Treaty.<sup>50</sup>

**29. We note that the Treaty does not cover multi-national programmes and therefore does not provide the key to ensuring a comprehensive transfer of technology for the Joint Strike Fighter programme. The Treaty has, however, the potential to assist those parts of the JSF programme which are exclusively joint US/UK collaborative projects. We welcome this benefit. We will continue to monitor the JSF programme closely.**

## Consultation

**30. The Implementing Arrangements are fundamental to the scope and effectiveness of the Treaty. Until they are agreed, it is hard to judge to what extent the Treaty will reduce the barriers to US/UK defence exports. But the consensus of our industry witnesses was that the outcome was likely to be an improvement on the current arrangements.** As Ian Godden, Secretary of the DIC and Chief Executive Officer of the SBAC, said, “there is nothing that is going to be worse than today”.<sup>51</sup>

31. In its written evidence, the DIC expressed the wish that, “to safeguard against any unintended consequences”, the Government should “look to share with Industry the emerging draft implementation arrangements at the earliest possible opportunity, so that we can offer considered advice”.<sup>52</sup> We asked our witnesses from industry whether they had been satisfied with the consultation that the Government had carried out on the Treaty. Mr Godden believed that the Government had shared as much as it could, given the confidential nature of the Treaty negotiations. He was satisfied, from contact with his 260 members, that “they feel consulted and they feel they understand what is going on, but clearly they have not seen sight of implementation issues”.<sup>53</sup>

32. The Government envisaged that, once the negotiations on the Implementing Arrangements had been completed, there would be a Memorandum of Understanding between the two Governments which would not require further ratification. The Government drew a distinction between the Memorandum of Understanding entered by the two Governments (which might have to be kept confidential) and the requirements placed on industry as a result of this Treaty (to which industry would have public access).<sup>54</sup> In its oral evidence the Government explained that it was:

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50 Q 110

51 Q 37

52 Ev 31

53 Q 17

54 Q 93

still in discussion with the US on exactly the form in which we will place those implementing arrangements to either the Senate or to the Committee here. Clearly, we are prepared to share that. Of course, the difference is—and there will be concerns by industry on whether or not we need to share those as well—the implementing arrangements set out the commitments between the two governments are not necessarily the commitments which we place directly to industry. We will, of course, share and work up in detail with industry the exact requirements which need to be put in place with them. So, clearly, those will be done in detail with those who will be affected by this.<sup>55</sup>

33. The Minister indicated that she was keen to keep us “fully in the picture” on the progress of the negotiations on the Implementing Arrangements and would be content for us to receive an informal briefing from officials on the latest negotiating session in Washington.<sup>56</sup> **We expect the Government to keep us fully informed of the content of the Implementing Arrangements and of the progress of implementation of the Treaty, once it is brought into force.**

34. We take assurance from the comments that industry made in oral evidence that it has, within the limitations of the process, been kept informed by the Government of negotiations on the Treaty and on the Implementing Arrangements. **We recommend that the Government continue to keep industry as informed as it is able within the constraints of the negotiating process on the Treaty, and that, once the Implementing Arrangements are agreed, the Government ensure that industry is fully involved in discussions on the practical implementation of the Treaty.**

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55 Q 90 (Mr Lincoln)

56 Ev 42 (Ministry of Defence)

## 3 The wider effects of the Treaty

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### Interoperability and collaboration

35. The Government's primary aim for the Treaty is "to further strengthen and deepen the UK and US defence relationship, allowing greater levels of cooperation and interoperability that will help support our Armed Forces operating side by side around the world".<sup>57</sup> We asked ourselves two questions:

- Will the Treaty lead to greater interoperability and collaboration?
- Is there a risk that the Treaty might cause greater dependence on US technology, a loss of UK operational sovereignty and the movement of research and development from the UK to the US?

36. In welcoming the Treaty, UK industry considered that it would contribute to "enhanced interoperability on the battlefield, now and in the future".<sup>58</sup> Dr Wilson described how the defence market currently worked in the UK and how it might change after implementation of the Treaty:

if you are producing a system in the UK you do have a choice of where you go for that technology. It might be indigenous to the UK, it might be from Europe, it might be from the US. Currently there are many advantages to not using US technology because [of] the administrative burden [...] We consciously have made decisions not to [...] use US technology coming from the greater GD in certain programmes in the UK. [...] Sometimes the US has fantastically good technology and it would be very useful and beneficial to the UK to have that here, and it would still be fought for in the competitive market-place that is UK defence but [...] it is a sensible way of getting rid of a barrier that has prevented us from offering some things into the UK because it is such a difficult process.<sup>59</sup>

37. On collaboration, Alison Wood, Group Strategic Development Director, BAE Systems, explained that one of the reasons that industry considered it was important that:

when the UK procures weapons systems and military platforms from the US we need to make sure that we have the industrial capability, whether it be in BAE Systems, Lockheed Martin UK, Northrop [Grumman] UK or GD [General Dynamics] UK, to actually do the through-life support of those aircraft and weapons in this country, and to do that you need to have transferred the technology so that the skills and the individuals and the resources are here to then support the Armed Services. That requires a different way of trying to tackle the technology transfer regime.<sup>60</sup>

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57 Ev 27, para 1

58 Ev 30 (Defence Industries Council)

59 Q 54 (Dr Wilson)

60 Q 2 (Ms Wood)

38. The AIA strongly supported the Treaty.<sup>61</sup> Dr McGinn said that the Treaty “will allow US companies to work with our UK branches to do collaborative research and development for both US and UK forces and likewise for UK companies and their US subsidiaries, so the collaboration potentials from this are really substantial”.<sup>62</sup>

39. Defence industry on both sides of the Atlantic sees the Treaty as providing potential for greater UK/US cooperation and collaboration. As defence industry becomes more global and multinational and armaments become increasingly hi-tech, the UK defence industry will need to work more closely with its allies to develop new systems collaboratively for the UK’s and its allies’ Armed Forces. **We fully support the Government’s objective of greater levels of cooperation and interoperability between the US and UK that will assist our Armed Forces. Industry welcomed the Government’s approach. We conclude that the faster and less restrictive flow of goods and technologies between the US and the UK is likely to foster greater cooperation between our industries and that, in turn, should facilitate interoperability between our Armed Forces.**

### **Research and development**

40. We asked whether the Treaty risked creating an incentive for the defence industry to move research and development facilities from the UK to the US. Ms Wood thought that the Treaty would lead to more bilateral cooperation and that, rather than losing UK scientists to the US, it would encourage US scientists to cooperate with those in the UK and help move technology and research partnerships to the UK.<sup>63</sup> Ms Wood recognised that this approach was “not without risk”: here again it was important “that the whole of the UK defence industrial footprint is able to participate in this Treaty because that is the way we will be able to preserve critical mass”.<sup>64</sup> Whether this will happen will depend on the outcome of the negotiations on the Implementing Arrangements, particularly on the membership of the Approved Community.

41. The Government saw the Treaty as offering opportunity for the UK defence industry. It pointed out that the US was the largest foreign investor in the UK and in the defence industry, and that the US exploited British technology on both sides of the Atlantic. The Government expected “that there would be some expertise and knowledge which comes here too”.<sup>65</sup>

**42. The Treaty has the potential to enhance defence research and development in both the UK and the US. We share industry’s concern that a narrowly-drawn Approved Community would allow only a few to take advantage of the Treaty’s provisions and share in the benefits of greater cooperation and collaboration. If, instead, the Approved Community in the UK is large, it will build the critical mass to sustain collaborative projects across the Atlantic.**

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61 Ev 43 (Aerospace Industries Association); see also Ev 40–42 (Northrop Grumman UK).

62 Q 10 (Dr McGinn)

63 Q 58

64 *Ibid.*

65 Q 137 (Mr Lincoln)

### **UK operational sovereignty**

43. Most of the evidence we received was favourable to the Treaty. There were, however, some critical voices. The British American Security Information Council (BASIC) and Saferworld suggested that, as the UK would inevitably be the junior partner in joint UK/US procurement projects, “the Treaty may well have the consequence of eroding UK operational sovereignty”.<sup>66</sup> In other words, the Treaty would give the US a veto on the UK’s use of goods supplied from the US and on UK-produced equipment that used US technology. Industry did not share this view. It considered that the framework set by Government’s Defence Industrial Strategy with its focus on through-life sovereign control of technology and capability gave us a framework for managing that control. Dr Wilson pointed out that, compared to three or four years ago:

we are in a much stronger position because the Defence Industrial Strategy, with its focus on through-life sovereign control of technology and capability and the link of that to the Defence Technology Strategy, gives us a framework for managing it. It is now firmly in everybody’s minds that having the R&D and the management of capability in-country is the right thing to have. I think that is a good framework.<sup>67</sup>

**44. The current US export control arrangements, with their tightly drawn licences and consents, work against UK sovereign control. Any change that allows a less prescriptive transfer of technology can only assist the UK. We do not believe that the Treaty will erode operational sovereignty.**

45. The Minister considered that the tests—whether interoperability was improved and whether British companies secured advantage—had to be judged in the longer term.<sup>68</sup> **It will take several years before it is possible to assess whether the Treaty has achieved its objectives of greater levels of cooperation and interoperability. As a Committee we will return to this issue once the Treaty has been implemented.**

### **EU and international aspects of the Treaty**

46. We asked whether the Treaty was in accordance with European law. The Government replied that it had been careful in all its negotiations to make sure that it did not discriminate against any commitments the UK had with the European Union (EU), and “the Treaty itself says that we will maintain our international obligations and commitments to any international body”.<sup>69</sup> The Treaty will not apply to dual-use goods, that is, goods that could be used for both a civilian and military use. The UK Government was not able to enter into negotiations on these goods as they form an EU competence and therefore not a matter that the UK can negotiate on its own.<sup>70</sup> **We note the Government’s assurance that the Treaty is compatible with European law.**

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66 Ev 32; Ev 35, para 4.1

67 Q 59 (Dr Wilson)

68 Q 140

69 Q 105

70 Q 123 (Mr Lincoln)

47. We wondered whether the Treaty—by facilitating defence collaboration with the US—might have the effect of discouraging European collaboration. Mr Hayes, the Chairman of EGAD, told us that industry had discussed this possibility and did not think that it would happen: industry would still be “free to shop in whatever market-places we choose”.<sup>71</sup> **If European-owned UK defence companies are included in the UK Approved Community, we can see no reason why the Treaty should discourage European defence collaboration; but this will need to be monitored closely.**

### Effect on the UK’s export control system

48. The Government has presented the Treaty as a two-way system, covering UK exports to the US, as well as US exports to the UK.<sup>72</sup> Saferworld and BASIC suggested that the Treaty was asymmetrical in that, in a number of areas, the Treaty restricted UK freedom of action more than that of the US, and appeared to privilege US interests over those of the UK. They argued that the US would have discretion over which items were covered by the Treaty, and that the US would be permitted to monitor the end-use of weapons developed under the Treaty whereas the UK would not.<sup>73</sup> The Government’s Explanatory Memorandum states that the provisions of the Treaty in relation to transfers from the US to the UK mirror the effect of current practice for authorising UK defence exports to the US, the vast majority of which are covered by UK open licensing arrangements.<sup>74</sup> In its evidence the Government said that the Treaty created for the “US system something [...] very akin to our open general export licensing system”.<sup>75</sup> **While the Treaty appears to be asymmetrical in giving the US more control over UK exports than vice versa, the practical effect of the Treaty will be to bring US and UK exporting arrangements closer together.**

49. BASIC and Saferworld expressed concern that the US is more likely than the UK to export arms to Colombia and Israel.<sup>76</sup> We consider that to safeguard UK export control policy there should be limitations on the ability of the US Government to re-export goods and technology that has come from the UK to the US. **In order to ensure that the Treaty is in accordance with UK export control policy, the UK Government should restrict any open or general licences it issues, to meet the requirements of the Treaty, to exclude the re-export or transfer from the US of UK goods and technology to third countries other than to US or UK forces.**

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71 Qq 51–53

72 Q 121

73 Ev 32; Ev 34–35, paras 3.1–3.4

74 Explanatory Memorandum, para 2

75 Q 121

76 Ev 32; Ev 34, para 5.4

## 4 Conclusion

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50. The US export control system, as currently administered, discourages collaboration between UK and US industry and inhibits the swift supply of urgently needed equipment to our Forces in theatres of operation. Given how closely UK and US Forces cooperate in theatre, this is clearly in the interests of neither the UK nor the US.

51. We, like many others, considered that an ITAR waiver might be a way of preserving the close relationship between the UK and the US. The Treaty offers an alternative route. We have scrutinised the Treaty and we conclude that the principles it sets out offer the opportunity for the UK and US to strengthen further and deepen their defence relationship and allow greater levels of cooperation and interoperability. Industry on both sides of the Atlantic firmly supports the Treaty and we believe the Treaty accords with the Government's Defence Industrial Strategy.

52. The extent and nature of the benefits to the Government and the defence industry in the UK will depend on the Implementing Arrangements. In the expectation that the UK and the US will agree satisfactory Implementing Arrangements, we support the UK's ratification of the UK/US Defence Trade Cooperation Treaty.

## Conclusions and recommendations

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1. While it cannot be taken for granted that the Treaty will be approved by the required two-thirds majority of the US Senate, we are confident that Congressional scrutiny of the Treaty will show that it is as much in the US interest as it is in the interest of the UK. (Paragraph 6)
2. The US export control system imposes a large administrative burden on defence exports from the US to the UK. While we respect the wish of the US to control its defence exports, we consider that its current system of controls for exports from the US to the UK is unduly burdensome and time-consuming. The US and the UK are very close allies, cooperating closely on defence and security. Our soldiers are fighting side by side in Iraq and Afghanistan. It is vital to the interests of both the US and the UK that the system should not prevent our Forces from getting access to the equipment they need to fight effectively alongside their US allies in current and future operations. (Paragraph 18)
3. We share the ambition of industry that the Approved Community should be as inclusive as possible. The current List X, the group of establishments that have been cleared by the UK Government as being able to handle classified material, is tried and tested and forms a solid foundation on which to build eligibility for inclusion in the UK Approved Community. In our view a UK Approved Community which was drawn more tightly—by excluding SMEs or major foreign-owned defence companies—would seriously blunt the effectiveness of the Treaty. UK defence companies owned by overseas companies form a significant part of the UK defence industry and have a large footprint in the UK economy: they are in practice regarded by the MoD as UK defence companies. If European-owned UK defence companies were barred from membership of the Approved Community, it would create a two-tier industry and would risk discouraging European collaboration. (Paragraph 26)
4. We endorse the Government's approach that the list of technologies excluded by the Implementing Arrangements should be as short as possible. Given the reliance that today's Armed Forces place on technology, an extensive list of exclusions emerging from the negotiations on the Implementing Arrangements would undermine the purpose of the Treaty. In our view, the longer the list of exclusions, the less effective the Treaty will be. (Paragraph 27)
5. We note that the Treaty does not cover multi-national programmes and therefore does not provide the key to ensuring a comprehensive transfer of technology for the Joint Strike Fighter programme. The Treaty has, however, the potential to assist those parts of the JSF programme which are exclusively joint US/UK collaborative projects. We welcome this benefit. We will continue to monitor the JSF programme closely. (Paragraph 29)
6. The Implementing Arrangements are fundamental to the scope and effectiveness of the Treaty. Until they are agreed, it is hard to judge to what extent the Treaty will reduce the barriers to US/UK defence exports. But the consensus of our industry

witnesses was that the outcome was likely to be an improvement on the current arrangements. (Paragraph 30)

7. We expect the Government to keep us fully informed of the content of the Implementing Arrangements and of the progress of implementation of the Treaty, once it is brought into force. (Paragraph 33)
8. We recommend that the Government continue to keep industry as informed as it is able within the constraints of the negotiating process on the Treaty, and that, once the Implementing Arrangements are agreed, the Government ensure that industry is fully involved in discussions on the practical implementation of the Treaty. (Paragraph 34)
9. We fully support the Government's objective of greater levels of cooperation and interoperability between the US and UK that will assist our Armed Forces. Industry welcomed the Government's approach. We conclude that the faster and less restrictive flow of goods and technologies between the US and the UK is likely to foster greater cooperation between our industries and that, in turn, should facilitate interoperability between our Armed Forces. (Paragraph 39)
10. The Treaty has the potential to enhance defence research and development in both the UK and the US. We share industry's concern that a narrowly-drawn Approved Community would allow only a few to take advantage of the Treaty's provisions and share in the benefits of greater cooperation and collaboration. If, instead, the Approved Community in the UK is large, it will build the critical mass to sustain collaborative projects across the Atlantic. (Paragraph 42)
11. The current US export control arrangements, with their tightly drawn licences and consents, work against UK sovereign control. Any change that allows a less prescriptive transfer of technology can only assist the UK. We do not believe that the Treaty will erode operational sovereignty. (Paragraph 44)
12. It will take several years before it is possible to assess whether the Treaty has achieved its objectives of greater levels of cooperation and interoperability. As a Committee we will return to this issue once the Treaty has been implemented. (Paragraph 45)
13. We note the Government's assurance that the Treaty is compatible with European law. (Paragraph 46)
14. If European-owned UK defence companies are included in the UK Approved Community, we can see no reason why the Treaty should discourage European defence collaboration; but this will need to be monitored closely. (Paragraph 47)
15. While the Treaty appears to be asymmetrical in giving the US more control over UK exports than vice versa, the practical effect of the Treaty will be to bring US and UK exporting arrangements closer together. (Paragraph 48)
16. In order to ensure that the Treaty is in accordance with UK export control policy, the UK Government should restrict any open or general licences it issues, to meet the requirements of the Treaty, to exclude the re-export or transfer from the US of UK

goods and technology to third countries other than to US or UK forces. (Paragraph 49)

17. The US export control system, as currently administered, discourages collaboration between UK and US industry and inhibits the swift supply of urgently needed equipment to our Forces in theatres of operation. Given how closely UK and US Forces cooperate in theatre, this is clearly in the interests of neither the UK nor the US.

We, like many others, considered that an ITAR waiver might be a way of preserving the close relationship between the UK and the US. The Treaty offers an alternative route. We have scrutinised the Treaty and we conclude that the principles it sets out offer the opportunity for the UK and US to strengthen further and deepen their defence relationship and allow greater levels of cooperation and interoperability. Industry on both sides of the Atlantic firmly supports the Treaty and we believe the Treaty accords with the Government's Defence Industrial Strategy.

The extent and nature of the benefits to the Government and the defence industry in the UK will depend on the Implementing Arrangements. In the expectation that the UK and the US will agree satisfactory Implementing Arrangements, we support the UK's ratification of the UK/US Defence Trade Cooperation Treaty. (Paragraphs 50–52)

## Annex: List of Abbreviations

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AIA	Aerospace Industries Association
BASIC	British American Security Information Council
DIC	Defence Industries Council
DTSI	Defense Trade Security Initiative
EGAD	Export Group for Aerospace and Defence
FOCI	Foreign Ownership, Control or Influence
ITAR	International Traffic in Arms Regulations
JSF	Joint Strike Fighter
NATO	North Atlantic Treaty Organisation
SBAC	Society of British Aerospace Companies
SME	Small or Medium-size Enterprise
TAA	Technology Assistance Agreement
UK	United Kingdom
US	United States
UOR	Urgent Operational Requirement

# Formal Minutes

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**Tuesday 4 December 2007**

AFTERNOON SITTING

Members present:

Mr James Arbuthnot, in the Chair

Mr David Crausby	Mr Kevan Jones
Linda Gilroy	Robert Key
Mr Adam Holloway	Willie Rennie
Mr Bernard Jenkin	John Smith
Mr Brian Jenkins	

Draft Report (*UK/US Defence Trade Cooperation Treaty*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 52 read and agreed to.

Annexes (Summary and List of Abbreviations) agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Tuesday 11 December at 10.00 am.]

## Witnesses

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### Wednesday 21 November 2007

Page

<p><b>Mr Ian Godden</b>, Secretary of the Defence Industries Council and Chief Executive Officer of the Society of British Aerospace Companies;  <b>Mr David Hayes</b>, Chairman of Export Group for Aerospace and Defence and Director of Export Controls;  <b>Mr Jerry McGinn</b>, US Aerospace Industries Association and Northrop Grumman UK;  <b>Dr Sandy Wilson</b>, President and Managing Director of General Dynamics UK; and  <b>Ms Alison Wood</b>, Group Strategic Development Director, BAE Systems.</p>	Ev 1
<p><b>Rt Hon Baroness Taylor of Bolton</b>, a Member of the House of Lords, Minister for Defence Equipment and Support,  <b>Mr Stephen French</b>, Director General Acquisition Policy,  <b>Mr Tony Pawson</b>, Head Defence Export Services and  <b>Ms Gloria Craig</b>, Director General International Security Policy, Ministry of Defence; and  <b>Mr Paul Lincoln</b>, Head of Defence and Security Policy, Cabinet Office.</p>	Ev 11

## List of written evidence

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1	Dr Alexandra Ashbourne	Ev 23
2	BAE Systems UK	Ev 24
3	Royal Aeronautical Society	Ev 25
4	Ministry of Defence	Ev 27, 42
5	Defence Industries Council	Ev 30
6	British American Security Information Council and Saferworld	Ev 31
7	Export Group for Aerospace and Defence	Ev 38
8	Mr Austin Crick	Ev 38
9	Northrop Grumman UK	Ev 40
10	Confederation of British Industry	Ev 42
11	Thales UK	Ev 42
12	Finmeccanica UK	Ev 43
13	Aerospace Industries Association	Ev 43
14	EADS UK	Ev 45

## List of unprinted evidence

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The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Andrew Robins  
Robert Davis  
Ben Hardwick  
Paul Watson

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2005–06

First Report	Armed Forces Bill	HC 747 ( <i>HC 1021</i> )
Second Report	Future Carrier and Joint Combat Aircraft Programmes	HC 554 ( <i>HC 926</i> )
Third Report	Delivering Front Line Capability to the RAF	HC 557 ( <i>HC 1000</i> )
Fourth Report	Costs of peace-keeping in Iraq and Afghanistan: Spring Supplementary Estimate 2005–06	HC 980 ( <i>HC 1136</i> )
Fifth Report	The UK deployment to Afghanistan	HC 558 ( <i>HC 1211</i> )
Sixth Report	Ministry of Defence Annual Report and Accounts 2004–05	HC 822 ( <i>HC 1293</i> )
Seventh Report	The Defence Industrial Strategy	HC 824 ( <i>HC 1488</i> )
Eighth Report	The Future of the UK's Strategic Nuclear Deterrent: the Strategic Context	HC 986 ( <i>HC 1558</i> )
Ninth Report	Ministry of Defence Main Estimates 2006–07	HC 1366 ( <i>HC 1601</i> )
Tenth Report	The work of the Met Office	HC 823 ( <i>HC 1602</i> )
Eleventh Report	Educating Service Children	HC 1054 ( <i>HC 58</i> )
Twelfth Report	Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny	HC 873 ( <i>Cm 6954</i> )
Thirteenth Report	UK Operations in Iraq	HC 1241 ( <i>HC 1603</i> )
Fourteenth Report	Armed Forces Bill: proposal for a Service Complaints Commissioner	HC 1711 ( <i>HC 180</i> )

**Session 2006–07**

First Report	Defence Procurement 2006	HC 56 (HC 318)
Second Report	Ministry of Defence Annual Report and Accounts 2005–06	HC 57 (HC 376)
Third Report	Costs of operations in Iraq and Afghanistan: Winter Supplementary Estimate 2006–07	HC 129 (HC 317)
Fourth Report	The Future of the UK's Strategic Nuclear Deterrent: the Manufacturing and Skills Base	HC 59 (HC 304)
Fifth Report	The work of the Committee in 2005 and 2006	HC 233 (HC 344)
Sixth Report	The Defence Industrial Strategy: update	HC 177 (HC 481)
Seventh Report	The Army's requirement for armoured vehicles: the FRES programme	HC 159 (HC 511)
Eighth Report	The work of the Defence Science and Technology Laboratory and the funding of defence research	HC 84 (HC 512)
Ninth Report	The Future of the UK's Strategic Nuclear Deterrent: the White Paper	HC 225-I and -II (HC 551)
Tenth Report	Cost of military operations: Spring Supplementary Estimate 2006–07	HC 379 (HC 558)
Eleventh Report	Strategic Lift	HC 462 (HC1025)
Twelfth Report	Ministry of Defence Main Estimates 2007–08	HC 835 (HC 1026)
Thirteenth Report	UK operations in Afghanistan	HC 408 (HC 1024)
Fourteenth Report	Strategic Export Controls: 2007 Review	HC 117 (Cm 7260)
Fifteenth Report	The work of Defence Estates	HC 535 (HC 109)

**Session 2007–08**

First Report	UK land operations in Iraq 2007	HC 110
Second Report	Costs of operations in Iraq and Afghanistan: Winter Supplementary Estimate 2007–08	HC 138