



Cluster Munitions (Prohibitions) Act 2010

2010 CHAPTER 11

Securing destruction of prohibited munitions

11 Suspicious objects

- (1) This section applies where—
 - (a) the Secretary of State has grounds to suspect that an object is a prohibited munition, and
 - (b) it does not appear to the Secretary of State that the only persons in possession of the object (assuming it is a prohibited munition) are persons who, if charged with an offence under section 2(1)(e), would have a defence under section 5 or 6.
- (2) The Secretary of State may serve a notice on—
 - (a) any person who appears to the Secretary of State to have possession of the object;
 - (b) any other person who appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected if the object were to be destroyed.
- (3) The notice must—
 - (a) describe the object and state its location,
 - (b) state that the Secretary of State suspects that the object is a prohibited munition and give the reasons for that suspicion,
 - (c) state that the Secretary of State is considering whether to secure the destruction of the object under sections 14 to 16,
 - (d) refer to the obligation imposed by subsection (4) and specify a date for the purposes of that subsection, and
 - (e) refer to the right conferred by subsection (5).
- (4) A person on whom a notice is served under this section and who, at the time the notice is served, has possession of the object must not relinquish possession before the date specified in the notice.

Status: Point in time view as at 25/03/2010.

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- (5) A person on whom a notice is served under this section may make representations to the Secretary of State that—
- (a) the object is not a prohibited munition;
 - (b) the only persons in possession of the object (assuming it is a prohibited munition) are persons who, if charged with an offence under section 2(1)(e), would have a defence under section 5 or 6.

12 Power to enter premises and search for prohibited munitions

- (1) The Secretary of State may authorise a person to enter and search premises if the Secretary of State has reasonable cause to believe that conditions A to C are satisfied.
- (2) A justice of the peace may issue a warrant authorising a person acting under the authority of the Secretary of State to enter and search premises if the justice of the peace is satisfied, on information on oath, that there is reasonable cause to believe that conditions A and B are satisfied.
- (3) Condition A is that there is an object on the premises that is a prohibited munition.
- (4) Condition B is that the case is not one where the only persons in possession of the object (assuming it is a prohibited munition) are persons who, if charged with an offence under section 2(1)(e), would have a defence under section 5 or 6.
- (5) Condition C is that—
 - (a) the public has access to the premises, or
 - (b) the premises are occupied by a person who consents to the premises being entered and searched.
- (6) Subsections (1) and (2) apply whether or not a notice has been served under section 11.
- (7) An application for a warrant under subsection (2)—
 - (a) may be made by any person acting under the authority of the Secretary of State, and
 - (b) must specify the premises in respect of which the application is made.
- (8) A warrant issued under subsection (2) may authorise entry on one occasion only.
- (9) A warrant issued under subsection (2)—
 - (a) continues in force for the period of one month beginning with the date on which it was issued, and
 - (b) may be executed by any person acting under the authority of the Secretary of State.
- (10) In the application of subsection (2) to Scotland—
 - (a) the references to a justice of the peace are to be read as including references to the sheriff, and
 - (b) the reference to information on oath is to be read as a reference to evidence on oath.

13 Removal or immobilisation of prohibited munitions

- (1) A person authorised by a warrant issued under section 12(2) to enter premises may, if necessary, use force to enter the premises.

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- (2) A person who enters premises under an authorisation given under section 12(1) or a warrant issued under section 12(2) may take such other persons and such equipment on to the premises as appear to that person to be necessary.
- (3) If a person enters premises under such an authorisation or warrant and a prohibited munition is found on the premises, the person may make the prohibited munition safe.
- (4) Where subsection (3) applies, the person may also—
 - (a) if it is reasonably practicable to do so, seize and remove the prohibited munition, or
 - (b) in any other case, affix a warning to the prohibited munition, or in a conspicuous position to something near the prohibited munition, stating that the prohibited munition is not to be moved or interfered with before the date specified in the warning and that the warning is not to be interfered with before that date.
- (5) But a person may not exercise the powers under subsections (3) and (4) if satisfied that—
 - (a) the prohibited munition is in the possession of one or more persons, and
 - (b) that person, or each of those persons, is a person who, if charged with an offence under section 2(1)(e), would have a defence under section 5 or 6.
- (6) An authorisation given under section 12(1) or a warrant issued under section 12(2) may provide that the person who exercises the powers conferred by the authorisation or the warrant may, if that person is not a constable, do so only in the presence of a constable.
- (7) For the purposes of subsection (3) a prohibited munition is made safe if, without being destroyed, it is prevented from being an immediate danger.

14 Power to destroy removed prohibited munitions

- (1) This section applies if a prohibited munition is removed from premises under section 13(4)(a).
- (2) Before the end of the first six-month period, the Secretary of State must serve a notice on—
 - (a) any person who appears to the Secretary of State to have had possession of the prohibited munition immediately before its removal, and
 - (b) any other person who appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the destruction of the prohibited munition.
- (3) The notice must—
 - (a) describe the prohibited munition and state its location,
 - (b) state that the Secretary of State proposes to secure its destruction and give the reasons for this proposal,
 - (c) refer to the right of objection conferred by subsection (4), and
 - (d) refer to the conditions to which the exercise of that right is subject by virtue of subsection (5) and specify a date for the purposes of that subsection.
- (4) A person on whom a notice is served under subsection (2) may object to the Secretary of State's proposal to secure the destruction of the prohibited munition.

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- (5) Any objection made under subsection (4) must—
 - (a) be made in writing to the Secretary of State before such date as is specified in the notice, and
 - (b) state why the prohibited munition should not be destroyed.
- (6) The Secretary of State may, at any time during the second six-month period, decide that the prohibited munition should be destroyed, and if the Secretary of State so decides the Secretary of State may authorise a person to destroy it.
- (7) Before reaching a decision under subsection (6) the Secretary of State must—
 - (a) allow any person on whom a notice has been served under subsection (2) time to respond, and
 - (b) take into account any objections to the proposed destruction of the prohibited munition (whether made in response to a notice or otherwise).
- (8) If a prohibited munition is destroyed under this section the Secretary of State may recover from any person who had possession of the prohibited munition immediately before its removal any costs reasonably incurred by the Secretary of State in connection with the removal and destruction.
- (9) Subsection (10) applies where—
 - (a) the Secretary of State has not, by the end of the second six-month period, authorised the destruction of the prohibited munition, and
 - (b) a person had possession of the prohibited munition immediately before its removal.
- (10) The Secretary of State must return the prohibited munition to the person mentioned in subsection (9)(b) or, if there is more than one such person, to such of them as the Secretary of State thinks appropriate.
- (11) For the purposes of this section—
 - (a) the “first six-month period” is the period of six months beginning with the day after the removal of the prohibited munition, and
 - (b) the “second six-month period” is the period of six months beginning with the day after the first six-month period ends.

15 Destruction of immobilised prohibited munitions

- (1) This section applies if a warning relating to a prohibited munition has been affixed under section 13(4)(b).
- (2) Before the end of the first six-month period, the Secretary of State must serve a notice on—
 - (a) any person who appears to the Secretary of State to have had possession of the prohibited munition immediately before the warning was affixed, and
 - (b) any other person who appears to the Secretary of State to have an interest which the Secretary of State believes would be materially affected by the destruction of the prohibited munition.
- (3) The notice must—
 - (a) describe the prohibited munition and state its location,
 - (b) state that the Secretary of State proposes to secure its destruction and give the reasons for this proposal,

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- (c) refer to the right of objection conferred by subsection (4), and
 - (d) refer to the conditions to which the exercise of that right is subject by virtue of subsection (5) and specify a date for the purposes of that subsection.
- (4) A person on whom a notice is served under subsection (2) may object to the Secretary of State's proposal to secure the destruction of the prohibited munition.
- (5) Any objection made under subsection (4) must—
 - (a) be made in writing to the Secretary of State before such date as is specified in the notice, and
 - (b) state why the prohibited munition should not be destroyed.
- (6) The Secretary of State may, at any time during the second six-month period, decide that the prohibited munition should be destroyed, and if the Secretary of State so decides the prohibited munition may be destroyed in accordance with section 16.
- (7) Before reaching a decision under subsection (6) the Secretary of State must—
 - (a) allow any person on whom a notice has been served under subsection (2) time to respond, and
 - (b) take into account any objections to the proposed destruction of the prohibited munition (whether made in response to a notice or otherwise).
- (8) If a prohibited munition is destroyed in pursuance of a decision taken under subsection (6) the Secretary of State may recover from any person who had possession of the prohibited munition immediately before the warning was affixed any costs reasonably incurred by the Secretary of State in connection with the destruction.
- (9) For the purposes of this section—
 - (a) the “first six-month period” is the period of six months beginning with the day after the warning was affixed, and
 - (b) the “second six-month period” is the period of six months beginning with the day after the first six-month period ends.

16 Power to enter premises and destroy immobilised prohibited munitions

- (1) Subsection (2) applies where—
 - (a) the Secretary of State decides under section 15(6) that a prohibited munition should be destroyed, and
 - (b) the prohibited munition is on premises to which the public has access or on premises which are occupied by a person who consents to action being taken under subsection (2).
- (2) The Secretary of State may authorise a person to enter the premises and destroy the prohibited munition if it is found there.
- (3) Subsection (4) applies where a justice of the peace is satisfied, on information on oath, that—
 - (a) the Secretary of State has decided under section 15(6) that a prohibited munition should be destroyed, and
 - (b) the prohibited munition is on premises where a warning relating to that prohibited munition was affixed under section 13(4)(b).

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- (4) The justice of the peace may issue a warrant authorising a person acting under the authority of the Secretary of State to enter the premises and destroy the prohibited munition if it is found there.
- (5) An application for a warrant under subsection (4)—
 - (a) may be made by any person acting under the authority of the Secretary of State, and
 - (b) must specify the premises in respect of which the application is made.
- (6) A warrant issued under subsection (4) may authorise entry on one occasion only.
- (7) A warrant issued under subsection (4)—
 - (a) continues in force for the period of one month beginning with the date on which it was issued, and
 - (b) may be executed by any person acting under the authority of the Secretary of State.
- (8) A person authorised by a warrant issued under subsection (4) to enter premises may, if necessary, use force to enter the premises.
- (9) A person who enters premises under an authorisation given under subsection (2) or a warrant issued under subsection (4) may take such other persons and such equipment on to the premises as appear to that person to be necessary.
- (10) An authorisation given under subsection (2) or a warrant issued under subsection (4) may provide that the person who exercises the powers conferred by the authorisation or the warrant may, if that person is not a constable, do so only in the presence of a constable.
- (11) In the application of subsections (3) and (4) to Scotland—
 - (a) the references to a justice of the peace are to be read as including references to the sheriff, and
 - (b) the reference to information on oath is to be read as a reference to evidence on oath.

17 Compensation for destruction

- (1) This section applies if a person (P) claims that—
 - (a) a prohibited munition has been destroyed under section 14 or 16,
 - (b) P had an interest which was materially affected by the destruction,
 - (c) P sustained loss as a result of the destruction, and
 - (d) no notice was served on P under section 14 or (as the case may be) section 15 (whether or not one was served on any other person).
- (2) P may make an application for compensation to the High Court or, in Scotland, the Court of Session.
- (3) If the Court finds that P's claim is justified, the Court may order the Secretary of State to pay to P such amount (if any) by way of compensation as the Court considers just.
- (4) If the Court believes that the prohibited munition would have been destroyed even if a notice had been served on P under the section concerned, the Court must not order compensation to be paid under this section.

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18 Offences relating to destruction etc.

- (1) A person (P) is guilty of an offence if, without reasonable excuse, P contravenes section 11(4) (relinquishing possession of suspicious object).
- (2) A person (P) is guilty of an offence if P wilfully obstructs another person in the doing by that other person of any of the following—
 - (a) entering or searching premises under an authorisation given or warrant issued under section 12(1) or (2);
 - (b) making a prohibited munition safe, seizing or removing a prohibited munition, or affixing a warning, under section 13(3) or (4);
 - (c) destroying a prohibited munition under an authorisation given under section 14(6);
 - (d) entering premises under an authorisation given or warrant issued under section 16(2) or (4);
 - (e) destroying a prohibited munition under an authorisation given or warrant issued under section 16(2) or (4);
 - (f) attempting to do anything mentioned in any of paragraphs (a) to (e).
- (3) A person (P) is guilty of an offence if—
 - (a) a warning relating to a prohibited munition has been affixed under section 13(4)(b),
 - (b) before the date specified in the warning, P moves or interferes with the prohibited munition or interferes with the warning, and
 - (c) P has no reasonable excuse for doing so.
- (4) A person guilty of an offence under any of subsections (1) to (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.
- (5) A person who knowingly makes a false or misleading statement in response to a notice served under section 11, 14 or 15 is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

19 Securing destruction of prohibited munitions: supplementary

The powers conferred by sections 11 to 16 are in addition to, and do not affect, any power exercisable in relation to an object otherwise than by virtue of those sections.

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