



Cluster Munitions (Prohibitions) Act 2010

2010 CHAPTER 11

An Act to make provision for giving effect to the Convention on Cluster Munitions. [25th March 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Munitions to which Act applies

1 Munitions to which Act applies

- (1) This section applies for the purposes of this Act.
- (2) “The Convention” means the Convention on Cluster Munitions, signed by the United Kingdom at Oslo on 3 December 2008.
- (3) “Prohibited munition” means—
 - (a) a cluster munition, or
 - (b) an explosive bomblet that is specifically designed to be dispersed or released from dispensers affixed to aircraft (“a relevant explosive bomblet”).
- (4) “Prohibited munition” does not include a mine.
- (5) “Cluster munition”, “explosive bomblet”, “dispenser” and “mine” have the same meaning as in the Convention.
- (6) Schedule 1 sets out the definitions of “cluster munition”, “explosive bomblet”, “dispenser” and “mine” given by Article 2 of the Convention (together with definitions of related terms).

Offences

2 Offences

- (1) It is an offence for a person to—
 - (a) use a prohibited munition,
 - (b) develop or produce a prohibited munition,
 - (c) acquire a prohibited munition,
 - (d) make arrangements under which another person acquires a prohibited munition,
 - (e) have a prohibited munition in the person's possession,
 - (f) transfer a prohibited munition, or
 - (g) make arrangements under which another person transfers a prohibited munition.
- (2) It is an offence for a person to assist, encourage or induce any other person to engage in any conduct mentioned in paragraphs (a) to (g) of subsection (1).
- (3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine, or to both.

3 Meaning of acquisition and transfer

- (1) This section applies for the purposes of this Act.
- (2) A person acquires a prohibited munition if the person acquires it or enters into a contract to acquire it.
- (3) A person transfers a prohibited munition if the person—
 - (a) disposes of it,
 - (b) moves it into or from the United Kingdom, or
 - (c) enters into a contract to do anything mentioned in paragraph (a) or (b).
- (4) “Acquire” means buy, hire, borrow or accept as a gift, and “dispose” means sell, let on hire, lend or give.
- (5) A person is not to be taken to acquire or dispose of a prohibited munition by reason only of the person's acquisition or disposal of an interest in or right over land containing cluster munition remnants.
- (6) “Cluster munition remnants” has the same meaning as in the Convention.
- (7) Schedule 1 sets out the definition of “cluster munition remnants” given by Article 2 of the Convention (together with definitions of related terms).

4 Application of section 2

- (1) Section 2(1) applies to conduct in the United Kingdom or elsewhere.
- (2) Section 2(2) applies to assistance, encouragement and inducements in the United Kingdom or elsewhere.
- (3) But in their application to conduct, and to assistance, encouragement and inducements, outside the United Kingdom, subsections (1) and (2) of section 2 apply only to—

- (a) United Kingdom nationals,
 - (b) Scottish partnerships, and
 - (c) bodies incorporated under the law of any part of the United Kingdom.
- (4) Section 2(2) applies whether or not the conduct assisted, encouraged or induced takes place, or (if it takes place) will take place, in the United Kingdom or elsewhere.
- (5) Her Majesty may by Order in Council provide that this section is to have effect as if the list of persons in subsection (3) included bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any British overseas territory.
- (6) For the purposes of this section a United Kingdom national is an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject, or
 - (c) a British protected person within the meaning of that Act.
- (7) Proceedings for an offence under section 2 committed outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (8) In the application of subsection (7) to Scotland, any such proceedings against a person may be taken—
- (a) in any sheriff court district in which the person is apprehended or is in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine.
- (9) In subsection (8) “sheriff court district” is to be construed in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

Defences

5 Enabling destruction

- (1) It is a defence for a person (P) charged with an offence under section 2(1)(e) to show that P had the prohibited munition in P’s possession for the purpose of enabling it to be destroyed.
- (2) It is a defence for a person (P) charged with an offence under section 2(1)(f) to show that P transferred the prohibited munition for the purpose of enabling it to be destroyed.
- (3) It is a defence for a person (P) charged with an offence under section 2(1)(g) to show that P made the arrangements for the transfer of the prohibited munition for the purpose of enabling it to be destroyed.
- (4) It is a defence for a person (P) charged with an offence under section 2(1)(c) to show that—
- (a) the acquisition of the prohibited munition was by means of a transfer made for the purpose of enabling it to be destroyed, and
 - (b) P acquired the prohibited munition for that purpose.
- (5) It is a defence for a person (P) charged with an offence under section 2(1)(d) to show that —

- (a) at the time when P made the arrangements for the acquisition of the prohibited munition, P had reasonable cause to believe that the acquisition would be by means of a transfer made for the purpose of enabling it to be destroyed, and
 - (b) P made the arrangements for that purpose.
- (6) It is a defence for a person (P) charged with an offence under section 2(2) of assisting, encouraging or inducing any other person to engage in any conduct to show that, at the time of the assistance, encouragement or inducement, P had reasonable cause to believe that the other person would have a defence in respect of the conduct by virtue of any of subsections (1) to (5).

6 Other purposes permitted by Convention

- (1) It is a defence for a person (P) charged with an offence under section 2(1)(e) to show that—
- (a) P had the prohibited munition in P's possession with the intention that it would be used only for permitted purposes, and
 - (b) P's possession of the prohibited munition was in accordance with the terms of an authorisation given to P by the Secretary of State.
- (2) It is a defence for a person (P) charged with an offence under section 2(1)(f) to show that—
- (a) P transferred the prohibited munition with the intention that it would be used only for permitted purposes, and
 - (b) the transfer was in accordance with the terms of an authorisation given to P by the Secretary of State.
- (3) It is a defence for a person (P) charged with an offence under section 2(1)(g) to show that—
- (a) P made the arrangements for the transfer of the prohibited munition with the intention that it would be used only for permitted purposes, and
 - (b) the Secretary of State had authorised the transfer.
- (4) It is a defence for a person (P) charged with an offence under section 2(1)(c) to show that—
- (a) the acquisition of the prohibited munition was by means of a transfer which had been authorised by the Secretary of State, and
 - (b) P acquired the prohibited munition with the intention that it would be used only for permitted purposes.
- (5) It is a defence for a person (P) charged with an offence under section 2(1)(d) to show that—
- (a) at the time when P made the arrangements for the acquisition of the prohibited munition, P had reasonable cause to believe that the acquisition would be by means of a transfer which had been authorised by the Secretary of State, and
 - (b) P made the arrangements with the intention that the prohibited munition would be used only for permitted purposes.
- (6) It is a defence for a person (P) charged with an offence under section 2(2) of assisting, encouraging or inducing any other person to engage in any conduct to show that, at the time of the assistance, encouragement or inducement, P had reasonable cause to believe that the other person would have a defence in respect of the conduct by virtue of any of subsections (1) to (5).

- (7) The Secretary of State may not, for the purposes of this section, authorise the possession or transfer of prohibited munitions in numbers in excess of what is necessary for permitted purposes.
- (8) For the purposes of this section the following are “permitted purposes”—
- (a) the development of, and training in, techniques for the detection, clearance or destruction of cluster munitions, explosive submunitions and relevant explosive bomblets,
 - (b) the development of counter-measures in respect of cluster munitions, explosive submunitions and relevant explosive bomblets, and
 - (c) the purposes of any proceedings under this Act, or of any criminal investigation or other criminal proceedings (whether in the United Kingdom or elsewhere), in which the prohibited munition is or may be evidence.
- (9) In subsection (8) “explosive submunition” has the same meaning as in the Convention.
- (10) Schedule 1 sets out the definition of “explosive submunition” given by Article 2 of the Convention (as a term related to the definition of “cluster munition”).

7 Defences relating to state of mind of defendant etc.

- (1) It is a defence for a person (P) charged with an offence under section 2(1)(a) or (c) to (g) to show that, at the time of the conduct constituting the offence, P neither knew nor suspected, nor had reason to suspect, that the object in question was a prohibited munition.
- (2) It is a defence for a person (P) charged with an offence under section 2(1)(e) to show that, having come to know or suspect while the object in question was in P’s possession that it was a prohibited munition, P took all reasonable steps, as soon as reasonably practicable after P first had that knowledge or suspicion, to inform the Secretary of State, or a constable or member of a service police force, of P’s knowledge or suspicion.
- (3) It is a defence for a person (P) charged with an offence under section 2(1)(e) to show that P did not have any knowledge or suspicion that the object in question was a prohibited munition, nor any reason for such a suspicion, until P became aware of the Secretary of State’s exercise in the case of that object of a power conferred on the Secretary of State by this Act.
- (4) It is a defence for a person (P) charged with an offence under section 2(2) to show that, at the time of the assistance, encouragement or inducement, P neither knew nor suspected, nor had reason to suspect, that the conduct assisted, encouraged or induced related, or might relate, to a prohibited munition.
- (5) In subsection (2), “service police force” means—
- (a) the Royal Navy Police,
 - (b) the Royal Military Police, or
 - (c) the Royal Air Force Police.

8 Visiting forces

- (1) It is a defence for a person (P) charged with an offence under section 2(1)(e) to show that—

Status: This is the original version (as it was originally enacted).

- (a) at the time when P had possession of the prohibited munition, P was a member of a visiting force of a State that was not a party to the Convention or was working with such a force, and
 - (b) P's possession of the prohibited munition was in accordance with the terms of an authorisation given to that State by the Secretary of State.
- (2) It is a defence for a person (P) charged with an offence under section 2(1)(f), which is alleged to have been committed by moving a prohibited munition into or from the United Kingdom or entering into a contract to move a prohibited munition into or from the United Kingdom, to show that—
- (a) at the time when P moved the prohibited munition or entered into the contract to move it, P was a member of a visiting force of a State that was not a party to the Convention, and
 - (b) the movement was or (as the case may be) would be in accordance with the terms of an authorisation given to that State by the Secretary of State.
- (3) It is a defence for a person (P) charged with an offence under section 2(1)(g), which is alleged to have been committed by making arrangements under which a member of a visiting force of a State that was not a party to the Convention moves a prohibited munition into or from the United Kingdom or enters into a contract to move a prohibited munition into or from the United Kingdom, to show that at the time when P made the arrangements—
- (a) P was a member of a visiting force of a State that was not a party to the Convention or was working with such a force, and
 - (b) P had reasonable cause to believe that the movement would be in accordance with the terms of an authorisation given to that State by the Secretary of State.
- (4) It is a defence for a person (P) charged with an offence under section 2(2) of assisting, encouraging or inducing any other person to engage in any conduct to show that at the time of the assistance, encouragement or inducement—
- (a) P was a member of a visiting force of a State that was not a party to the Convention or was working with such a force, and
 - (b) P had reasonable cause to believe that the other person would have a defence in respect of the conduct by virtue of any of subsections (1) to (3).
- (5) For the purposes of this section, a person is working with a visiting force at any time when the person is providing a service to the force under a contract or helping it in any other way.
- (6) In this section—
- (a) “visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of Part 1 of the Visiting Forces Act 1952, and
 - (b) “member”, in relation to a visiting force, has the meaning given by section 12(1) of that Act.

9 International military operations and activities

- (1) It is a defence for a person charged with an offence specified in any of paragraphs 1 to 6 of Schedule 2 to show that the person's conduct took place in the course of, or for the purposes of, an international military operation or an international military co-operation activity.

- (2) A military operation is an international military operation if—
- (a) both members of Her Majesty’s armed forces and members of the armed forces of one or more States other than the United Kingdom participate in the operation,
 - (b) at least one of the other States is not a party to the Convention, and
 - (c) the operation involves or might involve conduct by members of the armed forces of a State that is not a party to the Convention, or by other persons acting under the authority of such a State, which would be in contravention of the Convention if it were conduct by members of the armed forces of a State that is a party to the Convention or by other persons acting under the authority of such a State.
- (3) An activity is an international military co-operation activity if—
- (a) it is an activity, other than a military operation, undertaken in pursuance of co-operation between the government of the United Kingdom and the government of one or more States other than the United Kingdom for any purpose related to—
 - (i) the defence of the United Kingdom or any of those States, or
 - (ii) Her Majesty’s armed forces or the armed forces of any of those States,
 - (b) at least one of the other States is not a party to the Convention, and
 - (c) the activity involves or might involve conduct by members of the armed forces of a State that is not a party to the Convention, or by other persons acting under the authority of such a State, which would be in contravention of the Convention if it were conduct by members of the armed forces of a State that is a party to the Convention or by other persons acting under the authority of such a State.
- (4) Subsection (5) applies if a question arises in any proceedings as to whether—
- (a) subsection (2)(a) applies in relation to a military operation, or
 - (b) subsection (3)(a) applies in relation to an activity.
- (5) A certificate issued by or under the authority of the Secretary of State stating any fact relating to that question is conclusive evidence of that fact.
- (6) Paragraphs 7 and 8 of Schedule 2 make further provision about the application of the defence under subsection (1) in relation to particular offences specified in that Schedule.
- (7) In this section—
- “Her Majesty’s armed forces” means any of Her Majesty’s forces within the meaning of the Armed Forces Act 2006;
 - “military operation” includes any naval or air force operation.

10 Supplementary provision: evidential burden and authorisations

- (1) Subsection (2) applies where a person relies on a defence under this Act.
- (2) If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

- (3) For the purposes of sections 6 and 8, an authorisation given before the coming into force of this Act has the same effect as one given on or after its coming into force.

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.
- (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 Care 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.
- (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.
- (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,
 - (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).
- (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.

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.

Information and records

20 Information and records for Convention purposes

- (1) The Secretary of State may serve a notice on any person requiring the person to give such information as is described in the notice.
- (2) The information required to be given by a notice served under subsection (1)—
- (a) must be information that the Secretary of State has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Convention;
 - (b) may relate to a state of affairs subsisting before the coming into force of this Act or the entry into force of the Convention.
- (3) A notice served under subsection (1) may specify—
- (a) the form in which the information must be given;
 - (b) the period within which the information must be given.
- (4) The Secretary of State may also serve a notice on any person requiring the person to keep such records as are specified in the notice.
- (5) The records required to be kept by a notice served under subsection (4) must be records that the Secretary of State has reasonable cause to believe will facilitate the giving of information which that person may at any time be required to give under subsection (1).

- (6) The power conferred by subsection (1) may not be exercised so as to require a person to give information which might incriminate the person or, if that person is married or a civil partner, the person's spouse or civil partner.
- (7) The power conferred by subsection (1) may not be exercised so as to require a person to give information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (8) A person who without reasonable excuse fails to comply with a notice served under subsection (1) or (4) 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 a fine.
- (9) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it 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.

21 Power to search and obtain evidence: issue of warrant

- (1) 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 either condition A or condition B is satisfied in relation to those premises.
- (2) Condition A is that there are reasonable grounds for suspecting that an offence under this Act is being, has been or is about to be committed on the premises.
- (3) Condition B is that there are reasonable grounds for suspecting that evidence of the commission of an offence under this Act is to be found on the premises.
- (4) An application for a warrant under this section—
 - (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.
- (5) A warrant issued under this section may authorise entry on one occasion only.
- (6) A warrant issued under this section—
 - (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.
- (7) In the application of subsection (1) 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.

22 Power to search and obtain evidence: supplementary

- (1) A person authorised by a warrant issued under section 21 to enter premises may, if necessary, use force to enter the premises.
- (2) A person who enters premises under a warrant issued under section 21 may—
 - (a) take such other persons and such equipment on to the premises as appear to that person to be necessary;
 - (b) inspect any document found on the premises which the person has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;
 - (c) take copies of, or seize and remove, any such document;
 - (d) require information which is stored in an electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form);
 - (e) take copies of, or seize and remove, anything produced in pursuance of paragraph (d) which the person has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;
 - (f) inspect, seize and remove any device or equipment found on the premises which the person has reasonable cause to believe may be required as such evidence;
 - (g) inspect, sample, seize and remove any substance found on the premises which the person has reasonable cause to believe may be required as such evidence.
- (3) Anything seized under subsection (2) may be retained for so long as is necessary in all the circumstances.
- (4) A person who seizes anything under subsection (2) must, if requested to do so by a person who occupied the premises at the time of the seizure or who had possession or control of the thing immediately before it was seized, provide a record of its seizure.
- (5) Subsection (2) does not authorise a person to take action in relation to anything in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (6) Subsection (7) applies where a constable enters premises—
 - (a) under a warrant issued under section 21, or
 - (b) by virtue of subsection (2)(a) of this section.
- (7) The constable may search any person found on the premises whom the constable has reasonable cause to believe to be in possession of any document, device, equipment or substance which may be required as evidence for the purposes of proceedings in respect of an offence under this Act.
- (8) No constable may, by virtue of subsection (7), search a person of the opposite sex.
- (9) A warrant issued under section 21 may provide that the person who exercises the powers conferred by the warrant may, if that person is not a constable, do so only in the presence of a constable.
- (10) A person who wilfully obstructs another in the exercise of any power under this section 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 a fine.

23 Disclosure of information

- (1) This section applies to information if—
 - (a) it was obtained under, or in connection with anything done under, this Act or the Convention, and
 - (b) it relates to a particular business or other activity carried on by any person.
- (2) So long as the business or activity continues to be carried on, the information must not be disclosed except—
 - (a) with the consent of the person for the time being carrying on the business or activity,
 - (b) in connection with anything done for the purposes of the Convention,
 - (c) in connection with anything done for the purposes of this Act,
 - (d) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (disclosure related to criminal investigation or criminal proceedings),
 - (e) in connection with the enforcement of any restriction on imports or exports, or
 - (f) with a view to ensuring the security of the United Kingdom.
- (3) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by subsection (2)(d) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.
- (4) A person who discloses information in contravention of this section 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.
- (5) Where any of paragraphs (b) to (f) of subsection (2) applies, the information may be disclosed notwithstanding any obligation not to disclose it that would otherwise apply.

Criminal proceedings

24 Consent to prosecution

Proceedings for an offence under this Act may not be instituted—

- (a) in England and Wales, except by or with the consent of the Attorney General;
- (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

25 Forfeiture in case of conviction

- (1) This section applies if a person is convicted of an offence under this Act.
- (2) The court by or before which the person is convicted may order that anything that is shown to the court's satisfaction to relate to the offence is to be—

- (a) forfeited, and
 - (b) destroyed, or otherwise dealt with, in the manner specified in the order.
- (3) The court may order under subsection (2) that the forfeited item is to be dealt with as the Secretary of State sees fit.
- (4) If the court so orders, the powers of the Secretary of State include—
- (a) the power to direct the destruction of the forfeited item, and
 - (b) the power to secure the disposal of the forfeited item in any other way that appears to the Secretary of State to be appropriate.
- (5) Subsection (6) applies where—
- (a) the court proposes to order under subsection (2) that a thing be forfeited, and
 - (b) a person claiming to have an interest in it applies to be heard by the court.
- (6) The court must not make the order unless the person has been given an opportunity to show why it should not be made.

26 Offences by bodies corporate etc.

- (1) Where an offence under this Act is committed by a body corporate and the offence is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on the part of an officer of the body corporate, the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Act is committed by a Scottish partnership and the offence is proved—
- (a) to have been committed with the consent or connivance of a partner of the partnership, or
 - (b) to be attributable to any neglect on the part of a partner of the partnership, the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (3) In this section—
- “officer”, in relation to a body corporate, means—
 - (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) any person who was purporting to act in any such capacity;
 - “partner”, in relation to a Scottish partnership, includes any person who was purporting to act as a partner of the partnership.
- (4) In subsection (3) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

General

27 Safeguards etc. in connection with exercise of powers of entry

- (1) A person who enters premises under an authorisation given under section 12(1) or 16(2) (“the authorised person”) must, if requested to do so by a person on the premises, produce evidence of the authorised person’s identity and entitlement to exercise the power.
- (2) Subsections (3) to (5) apply where a person (“the authorised person”) enters premises under a warrant issued under section 12(2), 16(4) or 21(1).
- (3) If the occupier of the premises is present, the authorised person must—
 - (a) produce evidence of the authorised person’s identity,
 - (b) produce a copy of the warrant, and
 - (c) supply the occupier with a copy.
- (4) If the occupier of the premises is not present, but another person appearing to the authorised person to be in charge of the premises is, subsection (3) applies as if any reference to the occupier were a reference to the person in charge of the premises.
- (5) If neither the occupier nor any other person appearing to the authorised person to be in charge of the premises is present, the authorised person must leave a copy of the warrant in a prominent place on the premises.
- (6) A person who enters premises under an authorisation given or warrant issued under section 12(1) or (2), 16(2) or (4) or 21(1) must do so at a reasonable hour unless it appears to the person that the purpose of entry would be frustrated by entry at a reasonable hour.
- (7) A person who enters premises which are unoccupied under an authorisation given or warrant issued under section 12(1) or (2), 16(2) or (4) or 21(1) must take all reasonable steps to ensure that the premises are left as secure against entry as they were when the person found them.
- (8) Subsections (2) to (6) do not apply where the authorised person is a constable who enters the premises under a warrant issued under section 12(2), 16(4) or 21(1).

28 Service of notices

- (1) A notice required or authorised by this Act to be served on a person other than a Scottish partnership or a body corporate may be served by—
 - (a) delivering it to the person, or
 - (b) sending it by post to the person at the person’s usual or last-known residence, or usual or last-known place of business, in the United Kingdom.
- (2) A notice required or authorised by this Act to be served on a Scottish partnership may be served by—
 - (a) delivering it to a partner of the partnership, or a person having control or management of the partnership business, at the principal office of the partnership, or
 - (b) sending it by post to such a partner or person at that office.

- (3) A notice required or authorised by this Act to be served on a body corporate may be served by—
- (a) delivering it to the secretary or clerk of the body corporate at its registered or principal office, or
 - (b) sending it by post to the secretary or clerk at the registered or principal office.
- (4) In the application of subsection (3) to a company registered outside the United Kingdom, the references to its principal office include references to its principal office within the United Kingdom (if any).

29 Power to modify Act

- (1) The Secretary of State may by order made by statutory instrument make such modifications of this Act as the Secretary of State considers necessary or desirable to give effect to any amendment of the Convention made in pursuance of the provisions of the Convention.
- (2) An order under subsection (1) may also make such modifications of any other enactment (whenever passed or made) as the Secretary of State considers necessary or desirable in consequence of the modifications of this Act made by that order.
- (3) A statutory instrument containing an order under subsection (1) may not be made unless a draft of the statutory instrument has been laid before and approved by resolution of each House of Parliament.
- (4) In this section—
- “enactment” means a provision contained in, or in an instrument made under—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, or
 - (d) Northern Ireland legislation;
- a “modification” includes an addition, repeal or revocation.

30 Interpretation

- (1) In this Act—
- “acquisition”, “disposal” (except in clause 25(4)(b)), “transfer”, and related expressions, are to be construed in accordance with section 3;
- “cluster munition”, “prohibited munition” and “relevant explosive bomblet” have the meanings given by section 1;
- “the Convention” has the meaning given by section 1(2);
- “premises” includes land, moveable structures, vehicles, vessels, aircraft and hovercraft.
- (2) For the purposes of this Act a cluster munition or a relevant explosive bomblet is to be taken to be destroyed if it is permanently prevented (by dismantling or any other means) from being used as a cluster munition or a relevant explosive bomblet.
- (3) For the purposes of this Act a State is a party to the Convention if it has ratified, accepted or approved the Convention, or has acceded to it, and either—
- (a) the Convention is in force in relation to the State, or

- (b) the State is applying Article 1 of the Convention on a provisional basis in accordance with Article 18 of the Convention.

31 Amendments of other Acts

Schedule 3 contains minor and consequential amendments of other Acts.

32 Crown application

- (1) This Act binds the Crown.
- (2) No contravention by the Crown of a provision of this Act makes the Crown criminally liable.
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.
- (4) The High Court or, in Scotland, the Court of Session may, on the application of a person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes a contravention of a provision of this Act.
- (5) Nothing in this section affects Her Majesty in her private capacity.
- (6) Subsection (5) is to be read as if section 38(3) of the Crown Proceedings Act 1947 (references to Her Majesty in her private capacity) were contained in this Act.

33 Extent

- (1) Subject to the following provisions of this section, this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) An amendment made by this Act has the same extent as that of the provision amended.
- (3) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with modifications (including additions or omissions) or without modifications, to any of the Channel Islands, the Isle of Man or any British overseas territory.

34 Commencement and short title

- (1) This Act comes into force on the day on which it is passed.
- (2) This Act may be cited as the Cluster Munitions (Prohibitions) Act 2010.

SCHEDULES

SCHEDULE 1

Sections 1(6), 3(7) and 6(10)

DEFINITIONS OF CLUSTER MUNITION, EXPLOSIVE BOMBLET ETC.

Definition of cluster munition and related terms

Article 2.2. “Cluster munition” means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

- (a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
- (b) A munition or submunition designed to produce electrical or electronic effects;
- (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
 - (i) Each munition contains fewer than ten explosive submunitions;
 - (ii) Each explosive submunition weighs more than four kilograms;
 - (iii) Each explosive submunition is designed to detect and engage a single target object;
 - (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) Each explosive submunition is equipped with an electronic self-deactivating feature.

Article 2.3. “Explosive submunition” means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact.

Article 2.5. “Unexploded submunition” means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended.

Article 2.9. “Self-destruction mechanism” means an incorporated automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated.

Article 2.10. “Self-deactivating” means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition.

Definition of explosive bomblet

Article 2.13. “Explosive bomblet” means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact.

Definition of dispenser

Article 2.14. “Dispenser” means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release.

Definition of mine

Article 2.12. “Mine” means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

Definition of cluster munition remnants and related terms

Article 2.7. “Cluster munition remnants” means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets.

Article 2.4. “Failed cluster munition” means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so.

Article 2.5. “Unexploded submunition” means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended.

Article 2.6. “Abandoned cluster munitions” means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use.

Article 2.15. “Unexploded bomblet” means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

SCHEDULE 2

Section 9(1) and (6)

OFFENCES TO WHICH SECTION 9 APPLIES

Specified offences

- 1 An offence under section 2(1)(e) or (g).
- 2 An offence under subsection (2) of section 2 of assisting, encouraging or inducing another person to engage in any conduct mentioned in paragraphs (a) or (e) to (g) of subsection (1) of that section.
- 3 An offence under Part 2 of the Serious Crime Act 2007 in relation to—
 - (a) an offence under section 2(1)(a) or (f), or
 - (b) an offence specified in this Schedule.
- 4 An offence committed by inciting the commission of—
 - (a) an offence under section 2(1)(a) or (f), or
 - (b) an offence specified in this Schedule.
- 5 An offence committed by aiding, abetting, counselling or procuring the commission of—
 - (a) an offence under section 2(1)(a) or (f), or
 - (b) an offence specified in this Schedule.
- 6 An offence of attempting to commit or conspiring to commit an offence specified in this Schedule.

Status: This is the original version (as it was originally enacted).

Application of defence under section 9(1): offences relating to use or transfer

- 7 (1) This paragraph applies where a person is charged with—
- (a) an offence under section 2(1)(g) (making arrangements under which another person transfers a prohibited munition),
 - (b) an offence specified in any of paragraphs 2 to 5 where the conduct constituting the offence relates to the use or transfer of a prohibited munition, or
 - (c) an offence specified in paragraph 6 where the conduct constituting the offence consists of attempting or conspiring to commit an offence mentioned in paragraph (a) or (b).
- (2) The defence under section 9(1) applies in relation to the offence only if the person also shows that—
- (a) the use or transfer was (or was to be) only by members of the armed forces of a State that was not a party to the Convention or by other persons acting under the authority of such a State, or
 - (b) the person had reasonable cause to believe that the use or transfer was (or was to be) only as mentioned in paragraph (a).

Application of defence under section 9(1): offences relating to conduct by visiting forces etc.

- 8 (1) The defence under section 9(1) does not apply where a person is charged with an offence under section 2(1)(e) if it is proved that, at the time of the conduct constituting the offence, the person was a member of a visiting force of a State that was not a party to the Convention or was working with such a force.
- (2) The defence under section 9(1) does not apply where a person is charged with an offence under section 2(1)(g) if it is proved that—
- (a) at the time of the conduct constituting the offence, the person was a member of a visiting force of a State that was not a party to the Convention or was working with such a force, and
 - (b) the conduct consisted of the person making arrangements under which a member of such a visiting force moves a prohibited munition into or from the United Kingdom or enters into a contract to move a prohibited munition into or from the United Kingdom.
- (3) The defence under section 9(1) does not apply where a person is charged with an offence specified in paragraphs 2 to 6 if it is proved that—
- (a) at the time of the conduct constituting the offence, the person was a member of a visiting force of a State that was not a party to the Convention or was working with such a force, and
 - (b) the conduct was related to anything to which sub-paragraph (4) applies.
- (4) This sub-paragraph applies to—
- (a) the possession of a prohibited munition by a member of a visiting force of a State that was not a party to the Convention or a person working with such a force,
 - (b) the movement of a prohibited munition into or from the United Kingdom by a member of such a visiting force,
 - (c) the entering into a contract by a member of such a visiting force to move a prohibited munition into or from the United Kingdom,

- (d) the making of arrangements by a member of such a visiting force or a person working with such a force under which a member of such a force—
 - (i) moves a prohibited munition into or from the United Kingdom, or
 - (ii) enters into a contract to move a prohibited munition into or from the United Kingdom.
- (5) In this paragraph “member of a visiting force” and “person working with such a force” are to be construed in accordance with section 8.

SCHEDULE 3

Section 31

AMENDMENTS OF OTHER ACTS

Criminal Justice and Police Act 2001 (c. 16)

- 1 In Schedule 1 to the Criminal Justice and Police Act 2001 (powers of seizure), at the end of Part 1 (powers to which section 50 applies) insert—

“Cluster Munitions (Prohibitions) Act 2010 (c. 11)

- 73M Each of the powers of seizure conferred by the provisions of section 22(2)(c), (e), (f) and (g) of the Cluster Munitions (Prohibitions) Act 2010 (seizure of evidence of offences under that Act).”

Serious Crime Act 2007 (c. 27)

- 2 In Schedule 3 to the Serious Crime Act 2007 (listed offences that are to be disregarded), at the end of Part 1 (offences common to England and Wales and Northern Ireland) insert—

“Cluster Munitions (Prohibitions) Act 2010 (c. 11)

- 24A An offence under section 2(2) of the Cluster Munitions (Prohibitions) Act 2010 (assisting, encouraging or inducing another to engage in conduct mentioned in section 2(1) of that Act).”