

# **CLUSTER MUNITIONS (PROHIBITIONS) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 12: Power to enter premises and search for prohibited munitions***

66. The purpose of this section is to provide a procedure whereby persons authorised by the Secretary of State can obtain access to premises and search for prohibited munitions in cases where there is reasonable cause to believe there are prohibited munitions present.
67. The term “premises” is defined in section 30 and includes land, moveable structures, vehicles, vessels, aircraft and hovercraft.
68. *Subsection (1)* stipulates the conditions which the Secretary of State must have reasonable cause to believe are satisfied before authorising a person to enter and search premises. The conditions referred to as A to C are set out in *subsections (3), (4) and (5)* respectively. The conditions to be satisfied are:
- Condition A: that there is a prohibited munition present on the premises.
  - Condition B: the persons in possession of the prohibited munition would not have a defence under section 5 or 6 (possession for destruction or permitted purposes).
  - Condition C: that the public has access to the premises, or the occupier of the premises consents to the premises being entered and searched.
69. *Subsection (2)* stipulates the conditions under which a justice of the peace may issue a warrant authorising persons acting under the authority of the Secretary of State to enter and search premises. The justice of the peace must be satisfied, based on information given on oath, that there is reasonable cause to believe that a prohibited munition is present on the premises and that the persons in possession of the prohibited munitions would not have a defence under section 5 or 6. This power is necessary for authorising access to private premises when the occupier does not consent to entry and search i.e. where only conditions A and B are met, not condition C.
70. The effect of *subsection (6)* is that the use of the powers of entry and search in *subsections (1) and (2)* does not depend on first serving a notice under section 11. *Subsection (7)* provides that any person acting under the authority of the Secretary of State can apply for a warrant and the application must specify the relevant premises. *Subsection (8)* provides that a warrant can authorise entry on only one occasion.
71. Under *subsection (9)* the warrant can be executed by anyone authorised by the Secretary of State during the period of one month from the date of issue.
72. *Subsection (10)* addresses how in their application to Scotland the references to “justice of the peace” and “information on oath” in *subsection (2)* should be interpreted.