

CLUSTER MUNITIONS (PROHIBITIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 4: Application of section 2

23. *Section 4* defines where the offences in section 2 apply. The conduct described in section 2 would be an offence by anyone if it took place in the UK. It would also be an offence if it took place anywhere in the world and was by a UK national or a UK legal entity.
24. *Subsection (1)* specifies that the offences in section 2(1) apply to conduct inside or outside the UK. *Subsection (2)* specifies that section 2(2) applies to assistance, encouragement and inducements in the UK or elsewhere. They must be read in conjunction with *subsections (3)* and *(4)*.
25. *Subsection (3)* provides that section 2(1) and (2) apply extraterritorially only to UK nationals and to legal entities formed under UK law, so that they would be liable to prosecution in the UK for acts committed abroad in contravention of section 2. This extraterritorial application is required by Article 9 of the Convention.
26. *Subsection (4)* provides that the offence in section 2(2), of assistance, encouragement and inducement, applies regardless of whether the principal offence (the conduct assisted, encouraged or induced) takes place inside or outside the UK.
27. *Subsection (5)* enables application of section 2 to be extended by Order in Council to acts done outside the UK by bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any Overseas Territory. Natural persons from these places are likely to be covered by *subsection (6)*.
28. *Subsection (6)* defines the expression “UK national” so that it covers all individuals over whom the UK has jurisdiction on the basis of nationality in accordance with international law. The following are UK nationals:
 - (a) British citizens, including:
 - (i) British overseas territories citizens (persons whose British nationality derives from their connection with a United Kingdom Overseas Territory),
 - (ii) British Nationals (Overseas) (Hong Kong British Dependent Territory Citizens who registered before 1 July 1997 to become a British National (Overseas)),
 - (iii) British Overseas citizens (persons who were citizens of the UK and Colonies immediately before the commencement of the British Nationality Act 1981 and did not at commencement become British citizens or British Dependent Territories citizens),

These notes refer to the Cluster Munitions (Prohibitions) Act 2010 (c.11) which received Royal Assent on 25 March 2010

- (b) British subjects under the British Nationality Act 1981,
 - (c) British protected persons within the meaning of the British Nationality Act 1981 (that is, persons connected with British protectorates, British protected states or UK trust territories).
29. *Subsection (7)* provides that proceedings for an offence committed under section 2 outside the UK may be taken in any convenient court in the UK and the offence may be treated as having been committed in any place in the UK. *Subsections (8)* and *(9)* deal with the operation of subsection (7) in Scotland.