

CLUSTER MUNITIONS (PROHIBITIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 6: Other purposes permitted by Convention

32. *Section 6* reflects Article 3 of the Convention which provides for limited exceptions to the general prohibition on retention, acquisition and transfer for the purposes of developing detection, clearance and destruction techniques in relation to cluster munitions, explosive bomblets and explosive submunitions, training in such techniques and developing cluster munition counter-measures.
33. *Subsection (1)* provides a defence to the offence in section 2(1)(e) of possessing a prohibited munition if the person charged can show that he possessed the prohibited munition with the intention that it would be used only for 'permitted purposes' (as defined in *subsection (8)*) and that the possession was in accordance with the terms of an authorisation given by the Secretary of State. *Subsection (2)* provides an equivalent defence in the case of the offence in section 2(1)(f) of transferring a prohibited munition.
34. *Subsections (3) to (5)* make defences available to persons charged with the offences in section 2(1)(c), (d) and (g) of acquiring a prohibited munition and making arrangements under which another acquires or transfers a prohibited munition. Again, the defendant must show an intention, at the time of the conduct in question, that the prohibited munition would be used only for permitted purposes. The defendant must also show that the transfer which led to the acquisition (section 2(1)(c) offence) or for which the defendant made arrangements (section 2(1)(g) offence) had been authorised by the Secretary of State or that the defendant had reasonable cause to believe that the acquisition would be by means of a transfer which had been authorised by the Secretary of State (section 2(1)(d) offence).
35. *Subsection (6)* provides that a person charged under section 2(2) with assisting, encouraging or inducing conduct mentioned in section 2(1), will have a defence if they had reasonable cause to believe that the person assisted, encouraged or induced would have had a defence under subsections (1) to (5) to a charge against them.
36. The intent of *subsection (7)* is that the amount of prohibited munitions retained or acquired should not exceed the number necessary for permitted purposes.
37. *Subsection (8)* defines what are the permitted purposes for this section:
 - for development of techniques for the detection, clearance, and destruction of prohibited munitions and explosive submunitions;
 - for training in those techniques;
 - for development of counter-measures to be used against prohibited munitions and explosive submunitions;

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

- for any criminal proceedings or investigation in which the prohibited munition is or may be evidence: this includes proceedings and investigations overseas as well as in the UK.
38. *Subsection (9)* defines “explosive submunition” as having the same meaning as in the Convention:
- “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.
39. *Subsection (10)* provides that this definition is set out in Schedule 1 to the Act.