



POST-LEGISLATIVE SCRUTINY OF THE CLUSTER MUNITIONS (PROHIBITIONS) ACT 2010

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty



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MEMORANDUM TO THE FOREIGN AFFAIRS COMMITTEE AND THE COMMITTEES ON ARMS EXPORT CONTROLS: POST-LEGISLATIVE SCRUTINY OF THE CLUSTER MUNITIONS (PROHIBITIONS) ACT 2010

Introduction

1. The process of post-legislative review is a timely one, given the five year anniversary of the Convention on Cluster Munitions (hereafter ‘the Convention’) coming into force on 1 August 2015, and the five year anniversary of the Royal Assent being granted to the Cluster Munitions (Prohibitions) Act 2010 (hereafter ‘the Act’), which will occur on 25 March 2015.

Background – the Convention on Cluster Munitions

2. The Convention was agreed at Dublin on 30 May 2008. The UK signed on 3 December 2008, ratified on 4 May 2010 and the Convention entered into force on 1 November 2010. The Convention now has 89 States Parties and an additional 27 signatories, making a total of 116 states from across the world.¹ It is the only international convention which deals specifically with cluster munitions.
3. The purpose of the Convention is to address the suffering and casualties caused by cluster munitions, both at the time of their use, and when persisting after use as unexploded sub-munitions. To that end, the Convention prohibits the use, production and transfer of cluster munitions, as well as requiring destruction of stockpiles and clearance of cluster munition remnants on any territory under the jurisdiction or control of a State Party.
4. As of August 2014, a total of 22 States Parties had enacted legislation to implement the Convention. A further 19 were in the process of producing such legislation, and a further 26 considered that existing legislation was sufficient to implement the Convention.²

Objectives of the Act

5. The purpose of the Act is to implement the provisions of the Convention into United Kingdom domestic law by creating criminal sanctions for a number of prohibited activities, thus paving the way for the UK’s ratification of the Convention and its entry into force. To that end, the Act contains the following elements:
6. Definitions: the terms ‘cluster munition’, ‘explosive bomblet’ and other relevant terms are defined in the same manner in which they are defined in the Convention. Those

¹ Figures correct as of 2 January 2015. Please note that the total of 89 States Parties includes the Occupied Palestinian Territories, which are not recognised as a state by the United Kingdom, and the use of this figure should not be taken to imply recognition.

² ‘Cluster Munition Monitor 2014’, *International Campaign to Ban Landmines – Cluster Munitions Coalition*, August 2014, p. 8.

whose use is prohibited under the Convention are designated in the Act as 'prohibited munitions'.

7. Prohibitions: the Act prohibits the use, development, production, acquisition, facilitation of acquisition, possession, transfer, and facilitation of transfer of a prohibited munition. Likewise the Act prohibits any person from assisting, encouraging or inducing any person to engage in any of the above activities. All of these actions are also defined within the act where necessary.
8. Jurisdiction: The Act defines that the actions in Paragraph 4 are prohibited both in the UK and elsewhere, but outside the UK they apply only to:
 - a.) United Kingdom nationals,
 - b.) Scottish partnerships, and
 - c.) Bodies incorporated under the law of any part of the United Kingdom.
9. Penalties: a person guilty of one of the offences listed in Paragraph 4 is liable to up to 14 years' imprisonment, a fine, or both.
10. Defences: the Act indicates the existence of a number of *bona fide* reasons for possession of prohibited munitions. These are: a.) Possession for the purpose of enabling destruction, and associated transfer/support etc enabling such destruction to occur b.) Possession and associated transfer/support etc for permitted purposes, including: retention or acquisition of a limited number of prohibited munitions for the purpose of training in detection, clearance, or development of counter-measures; and to facilitate criminal proceedings in which the item may be a piece of evidence. Those engaged in the activities listed in 'b.)' need additionally to have been granted authorisation by the Secretary of State. The Act also indicates a number of defences for those who: were not aware that an item in their possession was a prohibited munition; were visiting members of a non-State Party to the Convention authorised by the Secretary of State to possess, transfer, move etc a prohibited munition; were a member of HM armed forces engaged in an international military operation with at least one non-State Party to the Convention.
11. Powers of Entry: the Act provides the Secretary of State with recourse to Powers of Entry in order to facilitate entry into premises to search for a prohibited munition. If a prohibited munition is found, an authorised person may make it safe, remove it, or affix a warning near it. The Act also provides an appropriate legal mechanism for items seized to be destroyed.

Implementation

12. The Cluster Munitions (Prohibitions) Act 2010 received Royal Assent on 25 March 2010 and gave effect in UK law to the Convention's prohibitions. The Act paved the way for the UK's ratification of the Convention by creating the criminal offences required to enforce the Convention's prohibitions.
13. In order to comply with the Convention's requirements, and in line with the Act's provisions, the United Kingdom has removed all cluster munitions from operational service, and in December 2013 completed the destruction of its stockpile of over 38

million sub-munitions. The United Kingdom reserves the right to retain a number of prohibited munitions for permitted purposes, in line with the Convention and the Act.

14. During the passage of the Bill, there was interest expressed by parliamentarians and civil society groups regarding its implications for investment in cluster munitions manufacturers. A Written Ministerial Statement of 7 December 2009 clarified that under the terms of the Bill, the direct financing of cluster munitions production would be illegal. However, the Bill did not prohibit indirect financing of cluster munitions production.

Secondary legislation

15. The Act allows for the extension of its provisions to any of the Channel Islands, the Isle of Man, and any British overseas territory. To date, the application of the Act has been extended to include the Isle of Man.

Legal issues

16. There are no outstanding legal issues.

Preliminary assessment of the Act

17. The Act has been effective in achieving its desired outcomes, and clearly demonstrates the UK's commitment to implementing in full the Convention's provisions. The use, development, acquisition, ownership and transfer of cluster munitions have been effectively prohibited through the creation of criminal sanctions. As such, it ensures that the UK's obligations under the Convention are implemented at a domestic level.
18. The Act is an important element of the UK's membership of the Convention, and complements annual funding to mine action as well as a range of diplomatic activity pursuant to the Convention's aims.

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