



Cluster Munitions (Prohibitions) Act 2010

2010 CHAPTER 11

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).

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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

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- (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—
 - (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—

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- (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

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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.

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