

Summary: Intervention & Options

Department /Agency:

Foreign and
Commonwealth Office

Title:

Impact Assessment of the Cluster Munitions
(Prohibitions) Bill

Stage: Final/Implementation

Version: 1

Date: 15 October 2009

Related Publications: Convention on Cluster Munitions; Draft Legislative Programme 2009-10; and BIS's July 2008 Impact Assessment for Review of Export Control Legislation

Available to view or download at:

<http://www.fco.gov.uk/en/fco-in-action/counter-terrorism/weapons/conventional-weapons>

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What is the problem under consideration? Why is government intervention necessary?

The purpose of the bill is to implement international obligations to address the humanitarian impact of cluster munitions which the Government committed itself when the Foreign Secretary signed the Convention on Cluster Munitions on 3 December 2008. New Legislation is required to create the necessary criminal offences to enforce the Conventions prohibitions set out in Article 1. This Article prohibits the use, development, production, stockpiling and transfer of cluster munitions; and assistance to anyone else to engage in any prohibited activity.

What are the policy objectives and the intended effects?

The Bill will enable the Government to proceed with ratifying the Convention on Cluster Munitions, which it is committed to doing as soon as possible. The intended effect of the bill is to prohibit the use, development, production, stockpiling and transfer of cluster munitions on UK territory, or by any UK national. In doing so, the bill will also advance the wider policy goal of tackling the humanitarian and security threats posed by conventional weapons to the UK, to regional and global security, to human security and to sustainable development.

What policy options have been considered? Please justify any preferred option.

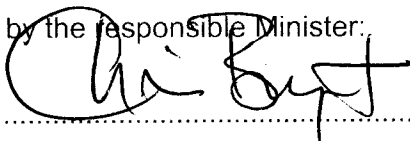
Article 9 of the Convention on Cluster Munitions states that "each state party shall take all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control." There is no existing legislation that can implement the Convention's prohibitions.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 5 years (to tie in with the Convention on Cluster Munitions first Review Conference)

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date:

26/10/2009

Summary: Analysis & Evidence

Policy Option:

Description:

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The cost for business is negligible as there has been minimal involvement of UK persons or entities in the trade, development or production of cluster munitions in the last ten years.
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups' Other costs could be incurred by the Government through awareness-raising and enforcement of extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Benefits from these prohibitions are not readily quantifiable in monetary terms. The Government's aim is to have an effective and transparent framework in place to ensure the prohibitions in the Convention on Cluster Munitions are upheld under UK law in support of international obligations.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0		Total Benefit (PV) £ N/A
Other key non-monetised benefits by 'main affected groups' The humanitarian benefit in contributing to efforts to prevent the proliferation and the use of cluster munitions is significant but not possible to monetarise.			

Key Assumptions/Sensitivities/Risks The annual enforcement costs below relate to small arms and light weapons, Man Portable Air Defence Systems (MANPADS) and Cluster Munitions as a whole.

Price Base Year 2009	Time Period Years 5	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?		UK territory & nationals		
On what date will the policy be implemented?		6 April 2010		
Which organisation(s) will enforce the policy?		HMRC, HO and MOJ		
What is the total annual cost of enforcement for these organisations?		£ 500, 000		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Summary of intended effect of legislation

The purpose of the bill is to implement international obligations to address the humanitarian impact of cluster munitions which the Government committed itself to when the Foreign Secretary signed the Convention on Cluster Munitions (CCM) on 3 December 2008. Article 9 of the CCM obliges all States Parties to *“take all appropriate legal, administrative and other measures to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.”* New Legislation is required to create the necessary criminal offences to enforce the Convention’s prohibitions set out in Article 1. This Article prohibits the use, development, production, stockpiling and transfer of cluster munitions; and assistance to anyone else to engage in any prohibited activity.

The bill will advance the wider policy goal of tackling the humanitarian and security threats posed by conventional weapons to the UK, to regional and global security, to human security and to sustainable development.

This legislation builds on the Export Control Order 2008 that placed cluster munitions in Category A, making them subject to the most stringent trade controls. This decision was taken because the Government recognised the concerns that had been raised about the humanitarian impact of cluster munitions and supported the February 2007 Oslo Declaration that committed the UK to seeking by the end of 2008 a legally binding international agreement on cluster munitions.

Content of the Bill

The Bill defines what a prohibited munition is. It then goes on to:

- create offences to enforce the prohibitions in Article 1 of the CCM;
- create defences for certain permitted purposes as set out in the CCM. These include the retention or acquisition of cluster munitions for training in disposal techniques, and their transfer for the purposes of destruction (as permitted under Article 3 of the CCM); and for certain conduct during the course of military cooperation and operations with non-States Parties (reflecting Article 21 of the CCM);
- include necessary ancillary provisions to enforce the offences i.e. conferring power to enter premises, and to destroy and remove cluster munitions; and
- include general provisions related to the Bill’s application and scope, and providing for the Act to be modified (to reflect any future amendments to the CCM).

Prohibited Munition

The Bill applies to a cluster munition, and an explosive bomblet that is specifically designed to be dispersed or released from dispensers affixed to an aircraft, as defined in Article 2 of the CCM.

Enforcement Powers

The power to enter premises and to destroy and remove cluster munitions may be exercised by a person authorised by the Secretary of State, or by a warrant issued by a Justice of the Peace. These enforcement powers fit with existing actions and mirror those under the Landmines Act 1998, that implemented the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and On Their Destruction (Ottawa Convention).

Costs to Business

As indicated above prior to this Bill cluster munitions were not unchecked items, but subject to the most restrictive export and trade controls. Given the existing restrictions a minimal cost is anticipated from the comprehensive set of prohibitions on cluster munitions introduced by the Bill.

The estimated cost to business is based on the findings of the impact assessment completed in July 2008 prior to the introduction of the Government's new three tiered structure of trade controls with the Export Control Order 2008; and additional analysis carried out by UKTI DSO. We assess that this analysis remains valid for the current situation and the costs are negligible.

The July 2008 impact assessment concluded that on the available evidence the costs to business were likely to be negligible, as over the past ten years there has been minimal involvement of UK persons or entities in trading cluster munitions, and no evidence of any persons/entities being involved in extra-territorial trading of cluster munitions. The evidence available from the July 2008 impact assessment is that that no standard individual trade control licenses (SITCLs) were processed in 2006 for cluster munitions, and no Open Individual Trade Control Licences (OITCLs) were processed in 2006 or 2007 for cluster munitions. And, whilst major defence manufacturers do routinely move general military components and equipment between overseas linked companies or subsidiaries to support their production process, the responses to BIS's consultation, which informed the July 2008 impact assessment, indicated that they did not do so for cluster munitions.

Costs to Government

The estimated cost to Government is based on the findings of the impact assessment completed in July 2008 prior to the introduction of the Government's new three tiered structure of trade controls with the Export Control Order 2008; and additional analysis of the costs based on the additional provisions in the Bill. We assess that the analysis of the July 2008 impact assessment remains valid for the current situation and the costs are negligible.

Enforcement, administration of, and any necessary awareness-raising, would be the costs involved for Government:

Administrative and business case load: The evidence available from the July 2008 impact assessment is that that no standard individual trade control licenses (SITCLs) were processed in 2006 for cluster munitions, and no Open Individual Trade Control Licences (OITCLs) were processed in 2006 or 2007 for cluster munitions. The system provided for in the Bill under which cluster munitions in the UK may be located and destroyed will incur administrative costs; but based on the July 2008 impact assessment, and the precedent of the Landmines Act (its similar provisions have incurred no costs) these costs are anticipated to be negligible. Administrative expenses may be incurred in issuing authorisations for permitted purposes, and gathering information for Convention purposes (the CCM includes an annual reporting requirement). The Landmines Act 1998 put in place a mechanism for anti-personnel mines, the scope of this mechanism will be extended to cover cluster munitions. Based on the experience

to date of operating this mechanism the administrative burden will be minimal and can be costed at around £600 per year.

Enforcement: In the July 2008 impact assessment the additional resource costs of enforcing the new trade controls for small arms and light weapons, Man Portable Air Defence systems (MANPADS) and cluster munitions was expected to be around £500, 000 in total. Given the existing restrictions on cluster munitions, and that this figure was calculated for a wider range of items, we would in fact expect costs of enforcement to be noticeably lower for cluster munitions alone, and this is given as a maximal figure. There has been no need to enforce the existing controls in place for cluster munitions.

Awareness: the costs to Government were assessed to be minimal in the July 2008 impact assessment. We plan a similar awareness strategy as was carried out with the introduction of the new trade controls. This included: drafting new guidance, website updates, using overseas embassies to disseminate awareness material among UK persons operating in the local business community; plus some adjustments to the material used in existing awareness seminar programmes for UK exporters and traders.

Conclusion

The bill is not expected to incur significant costs. Prior to making cluster munitions subject to the most stringent trade controls in October 2008 BIS carried out an impact assessment. The conclusion was that the cost is likely to be negligible: over the past ten years there has been only minimal involvement of UK persons or entities in trading cluster munitions. Related public expenditure therefore (in terms of administrative and business case load, and enforcement and awareness costs) was also assessed to be negligible: this was also based on the fact that no standard individual trade control licenses (SITCLs) were processed in 2006 for cluster munitions, and no Open Individual Trade Control Licence (OITCLs) were processed in 2006 or 2007 for cluster munitions.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

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