

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Extension of the Cluster Munitions (Prohibitions) Act 2010 to the Overseas Territories

Paper No: 215/10

Date: 16 September 2010

Report of: Attorney General

1.0 Purpose

To seek the views of Executive Council on the extension of the Act to the Falkland Islands.

2.0 Recommendations

That Executive Council agree to the extension of the Act to the Falkland Islands.

3.0 Summary of Financial Implications

None

4.0 Background

4.1 The Convention on Cluster Munitions (CCM) prohibits the use, development, production, acquisition, stockpiling, retention or transfer of cluster munitions.

4.2 The CCM was the result of growing international concern about the danger posed to civilians by cluster munitions following their use in Kosovo (1999), Iraq (2003) and Lebanon (2006).

4.3 Cluster munitions are air or ground launched containers that open to dispense many smaller sub-munitions over a wide area. This widespread dispersal means it can be difficult to guarantee discrimination between military targets and civilian populations and infrastructure. Sub-munitions can also fail to detonate on impact as designed; as a result they can kill or wound people long after a conflict has ended.

4.4 On 30 May 2008 107 countries adopted the CCM and on 3 December 2008 the CCM was opened for signature. The UK was amongst the original signatories and on 4 May 2010 the

UK's instrument of ratification was deposited with the United Nations (the depository) in New York.

4.5 As stated in its preamble the purpose of the CCM is to “put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended and when they are abandoned.”

4.6 Article 1 of the CCM prohibits the use, development, production, acquisition, stockpiling, retention or transfer of cluster munitions. Any assistance or encouragement in carrying out these prohibited activities is also prohibited. Cluster munitions are defined in Article 2. Under Article 3 States Parties to the CCM will have eight years from the Convention's entry into force for them to destroy all cluster munitions under their jurisdiction and control.

4.7 To address the threat posed by cluster munitions that have failed to function as intended, or have been abandoned, Article 4 requires States Parties to clear all cluster munitions remnants located in areas under their jurisdiction or control at the date of entry into force of the CCM for them. States Parties will have ten years from the CCM's entry into force for them to complete this task. If the use of cluster munitions should result in cluster munition remnants being located in areas under the jurisdiction or control of a State Party after the CCM's entry into force for them that State Party will have ten years from the end of active hostilities to complete clearance.

4.8 The UK has long supported international action to address the humanitarian problem posed by cluster munitions. The UK were among the original 46 countries that supported the Oslo Declaration in February 2007 that initiated the negotiation process on the CCM. A month later (March 2007) the UK withdrew from service two types of cluster munitions that had neither target discrimination capability nor an in-built self-destruct mechanism.

4.9 In ending the use of cluster munitions and tackling the post-conflict legacy where they have been used the CCM advances the UK's wider policy goal of addressing the humanitarian and security threats posed by conventional weapons to regional and global security and stability, and to sustainable development.

4.10 Regarding implementation of the CCM, the UK concluded that legislation was needed to give effect in domestic law to the CCM's prohibitions: the Cluster Munitions (Prohibitions) Act received Royal Assent (and entered into force) on 25 March 2010. Other obligations the UK will have under the CCM do not require implementing legislation.

4.11 Article 9 of the CCM stipulates 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.*” This wording leads the UK to the view that the CCM should be extended to all Overseas Territories. If the application of the CCM is not extended there is a risk that the UK could be found to be in breach of the Convention. The language in Article 9 of the CCM is exactly the same as that used in the Ottawa Convention (on anti-personnel mines). The language is also similar to that in Article VII of the Chemical Weapons Convention that obliges States Parties to ensure that

persons “anywhere on its territory or in any other place under its jurisdiction as recognised by international law” is prevented from undertaking any prohibited activities. Both Conventions have been extended to all Overseas Territories. The UK is very keen therefore that the CCM should be extended to the Overseas Territories by the time it enters into force in November, or as soon as possible thereafter.

4.12 As mentioned in paragraph 4.10 above the UK has put in place legislation to enforce the Convention’s prohibitions: the Cluster Munitions (Prohibitions) Act 2010.

4.13 To reduce the burden on Overseas Territories of the Convention being extended to them, the Foreign and Commonwealth Office propose to make an Order in Council which will extend the 2010 Act to the Overseas Territories. The Attorney General’s Chambers have considered the draft Order and it seems well drafted to achieve its purpose without requiring any further legislative action in the Falkland Islands.

4.14 The Foreign and Commonwealth Office position is that the financial burden to both the UK and Overseas Territories as a result of enforcing the Convention’s prohibitions will be negligible. This was the conclusion of the impact assessment for the Cluster Munitions (Prohibitions) Act. The assessment was based on the fact that in the ten years before the UK signed the CCM there had been only minimal involvement of UK persons or entities in the trade or production of cluster munitions.

4.15 The Foreign and Commonwealth Office have confirmed that nothing else is required of Overseas Territories other than their agreement to the CCM being applied to them. The Foreign and Commonwealth Office have confirmed in the attached letter that HMG “will be fully responsible for all obligations under the Convention, including site clearance and reporting responsibilities”.

4.16 On that basis, there seems to be no downside to agreeing to the Convention being extended to the Falkland Islands.

5.0 Financial Implications

Given the Foreign and Commonwealth Office letter referred to in 4.15, there are no financial implications to Falkland Islands Government.

6.0 Legal Implications

None

7.0 Human Resources Implications

None



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HM Governor/ Commissioner
Government House
Stanley
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01 September 2010

Dear Governor/ Commissioner,

Extension of the Cluster Munitions Convention to the Falkland Islands, South Georgia and the South Sandwich Islands

With reference to e-mail correspondence between Martin Collins and David Pickup on the 26th and 30th of August, should the Convention on Cluster Munitions be extended to the Falkland Islands, South Georgia and the South Sandwich Islands please be assured that HMG will be fully responsible for all obligations under the Convention, including site clearance and reporting responsibilities. This is set out in paragraph 21 of the Consultation paper sent to Overseas Territories on 6 June 2010.

Yours Sincerely,

KLindsay

Kathryn Lindsay
SecPol

Cc: Ric Nye (Stanley)
Nick Pickard (SecPol)
Michael Clark (SecPol)
Nicholas Duvivier (OTD)