



Department for
International Trade

Open General Export Licence

Software and Source Code for Military Goods – from June 2019

June 2019

Open General Export Licence (Software and Source Code for Military Goods – from June 2019)

Dated 17 July 2019, granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Article 26 of the Export Control Order 2008¹ (the Order), hereby grants the following Open General Export Licence.

Licence

1. Subject to the following provisions of this licence:
 - (1) software and source code as specified in Part A of Schedule 1, other than any specified in Part B, may be exported from the United Kingdom to any destination other than a destination in any country specified in Schedule 2, providing the software or source code being supplied is;
 - (a) in support of previously supplied goods, software or source code, including support, training, repair and maintenance, for delivery to that entity and in accordance with an individual export licence granted by the Secretary of State and the export takes place within 2 years of the date of expiry of that export licence; or
 - (b) for evaluation.

Exclusions

2. This licence does not authorise the export of software or source code:
 - (1) if the exporter has been informed by the Secretary of State that the software or source code is or may be intended, in its entirety or in part, to be used in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons, or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;
 - (2) if the exporter is aware that the software or source code is intended, in its entirety or in part, to be used in connection with one of the activities referred to in sub-paragraph 2(1);
 - (3) if the exporter has grounds for suspecting that the software or source code is or maybe intended, in its entirety or in part, for any uses referred to in sub-paragraph 2(1), unless they have made all reasonable enquiries as to its proposed use and satisfied themselves that the software or source code will not be soused;
 - (4) to a destination within a Customs Free Zone;
 - (5) if their export is controlled by virtue of any entry specified in Annex I to

¹ S.I.2008/3231, as amended

Council Regulation (EC) No. 428/2009² or Schedule 3 to the Order, not specified in Schedule 1;

- (6) if the exporter has been informed by a competent authority, or is otherwise aware, that the equipment or information has been classified by the Ministry of Defence as OFFICIAL-SENSITIVE or above (including UK material classified RESTRICTED or above, graded prior to 2 April 2014, and internationally security classified material), **unless:**
- a. The proposed export has been approved by the Ministry of Defence under MOD Form 680 and a written letter of clearance has been issued, and
 - (i). the clearance is not time expired at the time the export takes place, and
 - (ii). the goods are identical to those for which the clearance was given, **or**
 - b. if the proposed export is in support of any sub-contracting or collaborative activity that directly contributes towards a United Kingdom Government defence contract where the approval has been provided by:
 - (i). the Ministry of Defence under 'F1686' (Application to sub-contract or collaborate with an overseas contractor on work involving OFFICIAL-SENSITIVE and above classified information) as identified in the Security Policy Framework issued by the Cabinet Office (and included in the UK Government OFFICIAL-SENSITIVE Security Conditions), **or**
 - (ii). the Ministry of Defence Contracting Authority under a letter delegating authority up to an OFFICIAL-SENSITIVE level to an identified company Security Controller to approve the export, **or**
 - (iii). any written letter of approval as identified in any applicable Project Security Instructions (PSI) approved by collaborating partner nations governments, **and**
 - c. For all goods classified CONFIDENTIAL, for material classified by the UK prior to 2 April 2014, or internationally security classified CONFIDENTIAL equivalent material, or SECRET or above, the exporter has a current written Security Transportation Plan that has been approved in a current written letter of clearance issued by MOD Defence Equipment and Support (DE&S) Principal Security Advisor.

²O.J. No. L134, 29.5.2009

- (7) In the case of intangible technology transfers it is prohibited to export technology classified OFFICIAL-SENSITIVE or above (including UK material classified RESTRICTED or above, graded prior to 2 April 2014, and internationally security classified material)
- unless:**
- a. the method of transmission is protected by encryption appropriate to the classification of the data, **and**
 - b. the exporter holds any necessary clearance from a government accreditation authority which can be provided to the Compliance Officer.
- (8) Software or source code provided for evaluation shall be returned to the United Kingdom within 12 months of the date of exportation or the exporter can choose to limit the validity of the software or source code to 12 months by:
- (a) technically adapting the computer programme so that it expires at a pre-determined time (time bombing);
 - (b) issuing a time limited evaluation contract to the end-user; or
 - (c) the software or source code is subsequently authorised for supply to the end-user through the issue of a valid licence;
- (9) where the exporter has, at the time of export, been served with a notice which suspends or revokes their ability to use this licence pursuant to article 32(1) of the Order, unless the period of suspension or revocation has expired.

Conditions and Requirements

3. The authorisation in paragraph 1 is subject to the following conditions:
- (1) software or source code exported under paragraph 1(1)(a) must not be intended to significantly enhance the military capability of the end-user beyond what was originally supplied under the original licence issued by the Secretary of State within the previous two years;
 - (2) on exportation of any software or source code pursuant to paragraph 1(1)(a) to this licence, the exporter shall produce to an officer of UK Border Force, if so requested:
 - (a) a copy of the original licence under which the goods, software or source code were exported from the UK; **or**
 - (b) if not the original supplier, an assurance from the end-user that the export is in support of goods, software or source code previously supplied to them from the UK under a valid export licence;

before an exporter first exports software or source code under this licence, they shall have informed the Secretary of State of their intention to export under this licence, specifying the name of the exporter and the address at which records of their export may be inspected under condition 3(6) below;

(3) except in the case of an export of software or source code by telephone, fax or other electronic media, official and commercial export documentation accompanying the software or source code shall include a note stating **either**:

(a) “the software or source code is being exported under the OGEL (Software and Source Code for Military Goods)”; **or**

(b) the SPIRE reference (in the form ‘SPIRE reference GBOGE 20??/?????’) of the exporter’s registration in respect of this licence,

which shall be presented to an officer of UK Border Force if so requested;

(4) prior to audit, the Department for International Trade (DIT) will issue a pre-visit questionnaire (PVQ). This must be completed, in full, and returned by the date given.

(5) the exporter shall maintain records of every export made under this licence including the following information:

(a) in so far as it is known to them, the name and address of any consignee of the software or source code, and any person to whom the software or source code is to be, or has been, delivered;

(b) their address;

(c) the date of exportation;

(d) a description of the software or source code exported;

(e) any MOD Form 680, F1686, MOD Contracting Authority letter, or Security Transportation Plan clearance letter necessary as referred to in 2(6)(a) above;

(f) for supplies under paragraph 1(1)(a), a copy of the licence originally issued by the Secretary of State relating to the original export to which this supplementary export relates and/or an appropriate assurance from the end user as set out in 3(4)(b) above; and

any such records shall be kept for at least four years from the date of the relevant export and the exporter shall permit them to be inspected, and copied, by any person authorised by the Secretary of State;

(6) the exporter shall notify the Secretary of State of any change in the

address referred to in paragraph 3(3) above within 30 days of that change; and subject to the provisions of this licence, Article 29 of the Order shall apply to any export under this licence.

- (7) where the exporter has received a warning letter sent on behalf of the Secretary of State which identifies failure to comply with this licence or a provision of applicable export control legislation, the exporter shall take such steps as are identified in that warning letter (within the timescale stated) in order to restore compliance with the licence. Without prejudice to article 34 of the Order, failure to comply with this condition may result in this licence being revoked or suspended until the exporter can show compliance to the satisfaction of the Department for International Trade (DIT). The exporter will be notified in writing of any such suspension or revocation and the initial period of such suspension or revocation. If at the end of this initial period, the exporter has not shown compliance to DIT's satisfaction, the period of suspension or revocation may be extended. The exporter will be notified of such an extension in writing.
- (8) the Secretary of State has the power to vary or withdraw export licences at any time. If you do not use this licence within any 24-month period for an export allowed by this licence, your entitlement to use it will **automatically run out** at the end of that 24-month period and your registration details will be removed from SPIRE. However, you can register for this licence again if you want to use it after your registration has ended.

Prohibitions not affected by this licence

4. Nothing in this licence shall affect any prohibition or restriction on the exportation or carrying out of any other act with respect of the exportation of any technology concerned under, or by virtue of, any enactment other than a prohibition or restriction in the legislation under which this licence was issued, as set out in the licence itself.

Interpretation

5. For the purpose of this licence:
 - (1) "the Act" means the Export Control Act 2002²
 - (2) "cluster munitions" means conventional munitions designed to disperse or release "explosive submunitions";
 - (3) "explosive submunitions" means conventional munitions, weighing less than 20 kilograms each, which in order to perform their task are dispersed or released by another conventional munition and are designed to function by detonation of an explosive charge prior to, on or after impact;

"explosive bomblets" means conventional munitions, weighing less than 20 kilograms each, which are not self-propelled and which, in

² 2002 c.28

order to perform their task, are specially designed to be dispersed or released by a dispenser affixed to an aircraft, and are designed to function by detonating an explosive charge prior to, on or after impact;

- (4) sub paragraphs (2) and (3) above do not include the following conventional munitions,
 - (a) a munition or submunition designed to disperse flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
 - (b) a munition or submunition designed to produce electrical or electronic effects;
 - (c) a munition that has all of the following characteristics:
 - (i) each munition contains fewer than ten explosive submunitions;
 - (ii) each explosive submunition weighs more than four kilograms;
 - (iii) each explosive submunition is designed to detect and engage a single target object;
 - (iv) each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) each explosive submunition is equipped with an electronic self-deactivating feature.
- (5) a "Customs Free Zone" is a part of the territory of a country where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory of that country, and are not subject to the Customs controls that would otherwise apply;
- (6) "entry" includes part of an entry;
- (7) "evaluation" means the temporary use (including testing) of software or source code by either potential customers (or intermediaries) outside of the exporter's control (i.e. not a demonstration) or a national subsidiary (or partner) of a UK Company, prior to potential supply;
- (8) "software" means one or more "programmes" or "microprogrammes" fixed in any tangible medium of expression;
- (9) "programme" means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer;
- (10) "microprogramme" means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register;

- (11) "source code" (or source language) is a convenient expression of one or more processes which may be turned by a programming system into equipment executable form;
- (12) "MOD Form 680" is the means by which the Government assesses proposals by companies to release information or equipment classified OFFICIAL-SENSITIVE or above to foreign entities. An MOD Form 680 approval is not an approval to use an Open General Export Licence; it is a separate security requirement;
- (13) "F1686" is the means by which exporters can obtain clearance to sub-contract or collaborate on aspects classified OFFICIAL-SENSITIVE or above on MOD projects with overseas companies. F1686 approval is not an approval to use an Open General Export Licence; it is a separate security requirement. An approved F1686 can be considered a written letter of clearance from MOD;
- (14) "MANPADS" – Man-Portable Air Defence Systems – surface-to-air missile systems designed to be man-portable and carried and fired by a single individual; and other surface-to air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals; and
- (15) unless the context otherwise requires, any other expression used in this licence shall have the meaning it bears in the Act or in the Order.

Entry into Force

6. This licence shall come into force on 17 July 2019.

An Official of the Department for International Trade authorised to act on behalf of the Secretary of State

SCHEDULE 1 GOODS CONCERNED

PART A

Any software in Schedule 2 to the Order falling within entry:

ML21.a. **other than** development or up-dating of software embedded in military weapons systems;

ML21.b.1

ML21.b.4

ML21.c (as it relates to ML5.ML7.g. ML9.ML10.e.ML14. ML15. ML17.i.);

ML21.d.

Any source code relating to the above listed software in Schedule 2 to the Order falling within entry ML22.

PART B

Any software or source code specified in **PART A** of this Schedule which relate to any of the following goods in Schedule 2 to the Order:

1. Goods falling within entry ML3 as follows:
 - (1) Cluster munitions, explosive submunitions, and specially designed components therefor;
2. Goods falling within entry ML4 as follows:
 - (1) Anti-personnel landmines, and specially designed components therefor;
 - (2) Rockets or missiles capable of a range of at least 300 km;
 - (3) Components usable in item 2(2) above as follows:
 - (a) individual rocket stages;
 - (b) re-entry vehicles, and components therefor as follows:
 - (i). heat shields and components therefor;
 - (ii). heat sinks and components therefor; or
 - (iii). electronic equipment for re-entry vehicles;
 - (c) rocket engines;
 - (d) thrust vector control systems; and
 - (e) weapon or warhead safing, arming, fuzing and firing;
 - (4) Complete MANPADS (with or without missiles, including related launching equipment and rockets) and specially designed components therefor;
 - (5) Missiles for MANPADS (including missiles which can be used without

- modification in other applications);
- (6) “Cluster munitions” and specially designed components therefor;
 - (7) “explosive bomblets” and specially designed components therefor;
 - (8) “explosive submunitions” and specially designed components therefor.
3. Goods falling within entry ML10.c. as follows:
 - (1) Unmanned aerial vehicles (UAVs) and components specially designed or modified for unmanned aerial vehicles;
 4. Goods falling within entry ML11. as follows:
 - (1) Guidance sets capable of achieving a system accuracy of 3.33% or less of the range, usable in rockets or missiles capable of a range of at least 300 km;
 - (2) Test equipment for MANPADS;
 - (3) Goods insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
 5. Goods falling within entries ML13.a. and b.;
 6. Goods falling within entry ML14. as follows;
 - (1) Training equipment for MANPADS;
 7. Goods falling within ML16 insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
 8. Goods falling within entries ML17.f. and g.; and within ML17.n insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
 9. Goods falling within entry ML18. as follows,
 - (1) Production equipment for MANPADS;
 - (2) Production equipment for cluster munitions, explosive submunitions and explosive bomblets;
 10. Goods falling within entries PL5001.c. and f.

**SCHEDULE 2
DESTINATIONS CONCERNED**

This export authorisation is valid for exports to all destinations, except:

Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, China (including Hong Kong and Macau Special Administrative Region), Cuba, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, Georgia, Guinea, Indonesia, Iran, Iraq, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, , Moldova, Mongolia, Montenegro, Myanmar (Burma), Namibia, Nepal, Nigeria, North Korea, North Macedonia, Occupied Palestinian Territories, Pakistan, Russia, Saudi Arabia, Serbia, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Taiwan, Tajikistan, Tanzania, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Venezuela, Vietnam, Yemen and Zimbabwe.

EXPLANATORY NOTE

(This note is not part of the licence)

1. This Open General Export Licence has been issued to comply with our undertaking to the Court of Appeal not grant any new licences for exports to Saudi Arabia and its coalition partners (UAE, Kuwait, Bahrain and Egypt) which might be used in the conflict in Yemen.
2. This Open General Export Licence permits, subject to certain conditions, the exportation to any destination other than in any country specified in Schedule 2 of software and source code specified in Part A of Schedule 1, excluding that specified in Part B.
3. Where under paragraph 1(1)(a) of the licence, the software or source code is classified OFFICIAL-SENSITIVE or above (including UK material classified RESTRICTED or above, graded prior to 2 April 2014, and internationally security classified material) exports cannot be made under the authority of the licence unless the exporter has approval in writing from the Ministry of Defence. Where under paragraph 1(1)(b) of the licence, the software or source code is for evaluation, exports cannot be made under the authority of the licence unless the exporter has approval in writing from the Ministry of Defence.

(1) **MOD Form 680:** Applications should be submitted electronically via SPIRE

(2) **Security Transportation Plan approvals can be obtained from:**

Defence Equipment & Support (DE&S)
Principal Security Advisor
Security Advice Centre
Poplar - 1
MOD Abbey Wood
Bristol,
BS34 8JH
Tel: 030 67934378
Fax: 030 67934925
e-mail: desinfra-securityadvicecentre@mod.uk

4. F1686 Procedure:

F1686 is the means by which exporters can obtain clearance to sub-contract or collaborate aspects classified OFFICIAL-SENSITIVE or above on MOD projects with overseas companies. This procedure is laid out in the Security Policy Framework, issued by the Cabinet Office (and included in the UK Government OFFICIAL-SENSITIVE Security Conditions). It is properly known as, “Application to subcontract or collaborate with an overseas contractor on work involving OFFICIAL-SENSITIVE and above classified information (also known as F1686)”. For more information contact the DE&S Principal Security Advisor.

- 5 An exporter who exports goods under the authority of this licence must before their first exportation under the licence, inform the Secretary of State of their intention to export goods under this licence and of the address where copies of the said records may be inspected.

This notification must be made via DIT's digital licensing system, SPIRE, at www.spire.trade.gov.uk.

6. The Secretary of State has the power to suspend or revoke licences at any time and in such circumstances and on such terms as they think fit. If an exporter receives written notice to this effect, they will be prevented from relying on this licence. The power to suspend may be used in addition to criminal prosecution or as an alternative. Suspension may occur for example where an exporter is being investigated or prosecuted in relation to a possible criminal offence or has been found guilty of a criminal offence under the export control legislation. It may also be used in situations where an exporter has breached the conditions of the licence and failed to take corrective action within a reasonable period (see condition 3(9)).

Where DIT identifies failures in compliance with licence conditions or the legislation during a compliance visit, DIT may send a warning letter to the exporter listing the improvements that need to be made to ensure compliance. The letter will set out the timeframe within which these improvements must be completed. Failure to complete these improvements may lead to the exporter's ability to use the licence being suspended.

7. The exporter may apply for Standard Individual Export Licences during the period of suspension. Suspension will not automatically prevent them from using another OGEL so long as they meet all its terms and conditions and they have not received a letter suspending or revoking their ability to use that licence.
8. The provisions of the licence only apply for the purposes of the Export Control Order 2008. They do not affect the need to obtain other consents that may be required for the export of particular software or source code whether under other statutory provisions (such as the Official Secrets Act 1989) or otherwise (such as under contractual obligations). In addition, the licence does not extend to prohibitions in other legislation implementing United Nations sanctions.

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ANNEX: EXAMPLES OF SUPPLIES COVERED BY THIS OGEL

NB: coverage below is always limited to a supply in support of a previous export that has been authorised under a valid UK SIEL or OIEL (to the same end user, but from any UK exporter provided the linkage can be proven) during the last two years.

After the event scenario	OGEL coverage extends to;
<p><i>Training;</i> either on "software" or "source code" previously supplied or of a more generic nature. Either to overseas employees of company or independent parties such as training colleges.</p>	<p>For <u>basic or static state training</u>, i.e. where it enables people to train on a capability that has already been given, where the training is to supplement a previous supply of "software", "source code" or hardware.</p>
<p><i>Inconsequential improvements;</i> a range of improvements to previously supplied "software" or "source code", which do not enable the end user to do anything substantively different, but will make the "software" or "source code" more user-friendly.</p>	<p>For example;</p> <ul style="list-style-type: none"> • conversion to local language, • adding drop down menus so that users can navigate around the system better; • presentational alterations to screen displays (colour changes, type size etc) • shifting "software" or "source code" from one platform to another without changing its particulars <p>If a new release of "software" or "source code" does no more than wrap up a number of inconsequential improvements, then the OGEL may be used; if it enhances the "software" or "source code" beyond that, then it may not be.</p>
<p><i>Support, repair and maintenance;</i> a range of situations in which previously supplied software is not working properly and needs to be returned to its working state without enhancing beyond what was originally supplied.</p>	<p>Allow coverage to, same state support, repair and maintenance. Examples include;</p> <ul style="list-style-type: none"> • bug fixes • provision of patches to overcome operating problems • installation/re-installation • telephone support to user and remote diagnosis