



Department for
International Trade

Open General Export Licence

Cryptographic Development – from December 2019

December 2020

Open General Export Licence (Cryptographic Development - from December 2019)

dated 31 December 2020, granted by the Secretary of State.

The Secretary of State hereby grants the following Open General Export Licence under article 26(4) of the Export Control Order 2008 (S.I. 2008/3231, as amended) and Article 9(2) and (4) of,—

(a) in relation to England and Wales and Scotland, Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (EUR 2009/428, as amended).

(b) in relation to Northern Ireland, Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ No. L 134, 29.5.2009, p. 1, as amended) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

In this licence where there is reference to “the Regulation”, in respect of items located in England, Wales or Scotland it means (a) above and in respect of items located in Northern Ireland it means (b) above.

Licence

1. Subject to the following provisions of this licence, any item specified in Schedule 1 may be exported from the United Kingdom by any person established in the United Kingdom, to any country specified in Schedule 2, provided the item is only for use:
 - (1) by the exporter, or by any subsidiary or parent undertaking of the exporter in their own commercial cryptographic product development activities, or
 - (2) by a business or academic collaborator of the exporter in their own commercial cryptographic product development activities and pursuant to the agreement establishing the collaboration.

Exclusions

2. This licence does not authorise the export of items if:
 - (1) the exporter has been informed by the Secretary of State that the items in question are or may be intended, in their entirety or in part:
 - (a) for use 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; or

- (b) for a military end use and the purchasing country or country of destination is subject to an arms embargo imposed through its listing as an embargoed destination in Part 1 or 2 of Schedule 4 to the Export Control Order 2008 as amended from time to time, or by a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, and additionally in the case of goods being exported from NI an arms embargo imposed by a decision or a common position adopted by the Council of the European Union', or
 - (c) for use as parts or components of military items listed in Schedule 2 to the Export Control Order 2008 that have been exported from the United Kingdom without authorisation or in violation of an authorisation.
- (2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in sub-paragraph 2(1); or
 - (3) the exporter has grounds for suspecting that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in sub-paragraph 2(1)(a), unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that the items will not be so used; or
 - (4) to a destination within a Customs Free Zone; or
 - (5) their export is controlled by virtue of any entry in Annex I to the Regulation not specified in Schedule 1; or
 - (6) the items in question are intended for the development of military products.
 - (7) where the exporter has, at the time of export, been served with a notice which suspends or revokes his 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) except in the case of an export of technology by telephone, fax or other electronic media, official and commercial export documentation accompanying the items shall include a note stating either;
 - (a) “the items are being exported under the OGEL (Cryptographic Development – from December 2019)”; or

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

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

- (2) 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.
- (3) 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.
- (4) 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 DIT’s satisfaction. The exporter will be notified in writing of any such suspension or revocation and the initial period of such suspension or revocation. Where 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.
- (5) 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.

Registration

4. An exporter who exports items under the authority of this Licence must, before the first occasion he/she makes use of the licence, provide details to the Secretary of State of his/her name and the address where copies of the records referred to in article 29 of the Order may be inspected.

Prohibitions not affected by this licence

5. Nothing in this licence affects any prohibition or restriction on the export of any items other than under the Regulation or the Order, and this licence does not confer any licence or permission under, or for the purposes of, any enactment other than the Regulation and the Order.

Interpretation

6. For the purposes of this licence:

- (1) “business or academic collaborator” means a person who is either working by way of business in research and development of cryptography or cryptographic products or is teaching, or undertaking research as a member of/at a university or institution of higher education into, cryptography or cryptographic products and with whom an exporter has previously entered into an agreement for the carrying out of work comprising or related to research into or development of cryptography or cryptographic products;
- (2) “parent undertaking” and “subsidiary undertaking” have the same meanings assigned by sections 258 and 259 of the Companies Act 1985 (as substituted by sections 21 and 22 of the Companies Act 1989);
- (3) “Customs Free Zone” means 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;
- (4) unless the context otherwise requires, any other expression used in this licence has the same meaning as in the Regulation or the Order as appropriate.

Entry into Force

7. This licence comes into force at 23:00 on 31 December 2020.
8. The Open General Export Licence (Cryptographic Development – from December 2019) that came into force on 04 August 2020 is hereby revoked.

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

SCHEDULE 1
ITEMS CONCERNED

This export authorisation covers the following items:

1. Software as specified in entry 5D002 of Annex I to the Regulation, other than:
 - (a) Software as specified in entry 5D002.c.3.; or
 - (b) Software specially designed or modified for the development, production or use of equipment as specified in entry 5A004 or software as specified in entry 5D002.c.3.

2. Technology as specified in entry 5E002 of Annex I to the Regulation, other than technology for the development, production or use of:
 - (a) Equipment as specified in entry 5A004; or
 - (b) Software as specified in entries 5D002.a.3. or 5D002.c.3.

SCHEDULE 2 DESTINATIONS CONCERNED

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

- Afghanistan, Angola, Armenia, Australia, Azerbaijan, Bahrain, Bosnia and Herzegovina, Burundi, Canada, Central African Republic, China, Democratic Republic of the Congo, Egypt, Ethiopia, Eritrea, Hong Kong, Iran, Iraq, Japan, Jordan, Kuwait, Libya, Montenegro, Myanmar (Burma), New Zealand, Nigeria, North Korea, Norway, Rwanda, Saudi Arabia, Serbia, Sierra Leone, Somalia, Sudan, Switzerland, Syria, Tanzania, Uganda, United Arab Emirates, USA, Venezuela, Yemen and Zimbabwe.

European Union Member States as follows: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

NOTE 1:

For exports from England, Wales or Scotland the Open General Export Licence (export of dual-use items to EU member states) permits exports of the items on this licence to EU member States and The Channel Islands.

For exports from Northern Ireland an export licence is NOT required for dual-use goods being exported to EU destinations BUT you must state on export documents that your items require a licence if exported outside the EU and you must keep records (as specified in Articles 22(8) and 22 (10) of the EU Dual Use Regulation).

NOTE 2:

Exports of items from England, Wales or Scotland covered by this licence may be made under the authority of the European Union General Export Authorisation (EU GEA 001), subject to certain conditions and restrictions, to the following destinations:

Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein), USA.

Exports of items from Northern Ireland covered by this licence may be made under the authority of the European Union General Export Authorisation (EU GEA 001), subject to certain conditions and restrictions, to the following destinations:

Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Liechtenstein), USA, United Kingdom.

EXPLANATORY NOTE

This note is not part of the licence

1. This Open General Export Licence has been revised to take into account changes in legislation following the end of the transition period and updates to the list of controlled items
2. This Open General Export Licence permits, without further authority but subject to certain conditions, the export of the items specified in Schedule 1 from the United Kingdom if the exporter is established in the United Kingdom, to any destination specified in Schedule 2.
3. The licence enables the exporter to collaborate through established relationships on commercial cryptographic product development.
4. The Export Control Order 2008 (the Order) contains certain registration and record keeping requirements which apply to persons using this licence.
 - a. Under Article 28 of the Order, an exporter who exports items under the authority of this licence must, before or within 30 days after the first occasion he makes use of the licence, provide details to the Secretary of State of his name and the address where copies of the records referred to above may be inspected. This notification must be made via DIT's electronic licensing system, [SPIRE](#).
 - b. Under Article 29 of the Order, any person established in the United Kingdom who exports items from the United Kingdom or another Member State under the authority of this licence must maintain and retain certain records relating to each such export for at least three years from the end of the calendar year in which the export takes place, and must permit such records to be inspected and copied by any person authorised by the Secretary of State.
5. Persons who registered to use previous versions of this licence do not need to re-register. Registrations are carried over to the current in force version of this licence.
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 he thinks 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(3)).
7. 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.

8. The exporter may apply for Standard Individual Export Licences during the period of suspension. Suspension will not automatically prevent use of another OGEL so long as all its terms and conditions are met, and the licence has not been suspended or revoked.

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