



Department for
International Trade

Open General Export Licence

Access Overseas to Software and Technology for Military
Goods: Individual Use Only

January 2017

REVOKED

Open General Export Licence (Access Overseas to Software and Technology for Military Goods: Individual Use Only) dated 20 January 2017 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, any software and technology specified in Part A of Schedule 1, other than any specified in Part B, may be transferred or exported from the United Kingdom to any destination other than a destination in any country specified in Schedule 2 by an individual who has authorisation to access the same information remotely (under 1(1) below), providing;
 - (1) the person who it is intended will access the information from outside the UK is;
 - (a) employed in the UK but temporarily outside the UK, for a period not exceeding three calendar months, on business for their UK employer; and
 - (b) authorised by the employer to use the employer's technology and information technology systems within the UK; and
 - (2) the person exporting the information from the UK is authorized by their UK employer to do so; and
 - (3) the software and technology, as described in 1.(1) and 1.(2) above, will not be passed or disclosed at the time or subsequently to any other person, other than another person, as authorised in 1.(1) above, without first obtaining an appropriate licence from the Secretary of State.

Exclusions

2. This licence does not authorise the transfer or export of software and technology;
 - (1) if the exporter has been informed by a competent authority that the software and technology is or may be intended, in its entirety or in part, to be used in connection with the development, production, operation, maintenance, storage 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 and technology is intended, in its entirety or in part, to be used in connection with one of the activities referred to in sub-paragraph (1).
 - (3) if the exporter has grounds for suspecting that the software and

¹ S.I. 2008/3231, as amended

technology is or may be intended, in its entirety or in part, for any uses referred to in sub-paragraph (1), unless they have made all reasonable enquiries as to their proposed use and satisfied themselves that the goods will not be so used.

- (4) for the immediate purpose of upgrading or production of goods or software overseas, without first obtaining an appropriate licence from the Secretary of State.
- (5) 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.
- (6) it is prohibited to export at OFFICIAL-SENSITIVE or above (including UK material classified RESTRICTED or above 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 transferor holds any necessary clearance from a government accreditation authority, which can be produced to the Compliance Officer.

Conditions and Requirements

3. The authorisation in paragraph 1 is subject to the following conditions:
 - (1) the information software and technology systems on which the transfer or export takes place must be such that all transfers or exports are protected from being received by any unauthorised users; if the transfer or export is OFFICIAL-SENSITIVE or above (including UK material classified RESTRICTED or above, prior to 2 April 2014, and internationally security classified material), then those systems must comply with:
 - (a) for CONFIDENTIAL or above, the requirements identified in the Security Policy Framework (issued by the Cabinet Office),
or
 - (b) for OFFICIAL-SENSITIVE (including UK material classified RESTRICTED, graded prior to 2 April 2014, and its equivalent internationally security classified material), the OFFICIAL-SENSITIVE Security Conditions issued as a condition of contract;
 - (2) all transfers or exports at the classification of OFFICIAL-SENSITIVE or above (including UK material classified RESTRICTED or above prior to 2 April 2014, and internationally security classified material) must be carried out in accordance with the procedures appropriate to the grading of the material (this includes technology in tangible form), as identified in the Security Policy Framework (issued by the Cabinet

Office) for material classified CONFIDENTIAL or above, or the OFFICIAL-SENSITIVE Security Conditions issued as a condition of contract for material classified OFFICIAL-SENSITIVE (including UK material classified RESTRICTED, prior to 2 April 2014, and equivalent internationally security classified material).

- (3) before an exporter first transfers or exports software and technology under this licence, they shall have informed the Secretary of State of their intention to transfer or export software and technology under this licence, specifying the name of the exporter and the address at which records may be inspected under condition 3(4) below;
- (4) the exporter shall, in so far as the following information is known to them, maintain records made under this licence, to demonstrate that they have in place systems and procedures that adequately control access to their information software and technology systems, including the following information as a minimum:
 - (a) records of the names of those persons, who travel overseas, and who have been authorised to access the information software and technology systems;
 - (b) records of any countries which have been visited by any authorised persons on business for their UK employer and from which the software and technology may have been accessed;
 - (c) any necessary clearance from a Government accreditation authority referred to in paragraph 2(6)(b);
- (5) any such records shall be kept for at least 4 years 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
- (7) an internal compliance procedure must be in place (refer to compliance guidance published on the GOV.UK website).
- (8) prior to audit, the ECO will issue a pre-visit questionnaire (PVQ). This must be completed, in full, and returned by the date given
- (9) 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 Export Control Organisation. 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 the satisfaction of the Export Control Organisation, the period of suspension or revocation may be extended. The exporter will be notified of such an extension in writing.

- (10) 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, transfer or carrying out of any other act with respect of the exportation or transfer of any goods 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) “cluster munitions” means conventional munitions designed to disperse or release explosive submunitions;
 - (2) “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;
 - (3) “explosive bomblets” means conventional munitions, weighing less than 20 kilograms each, which are not self-propelled and which, in 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 (1) and (2) 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) "competent authority" means the Secretary of State or any other competent authority empowered by a Member State to issue export authorisations for the purposes of Council Regulation (EC) No. 428/2009;
- (6) "entry" includes part of an entry;
- (7) "technology" means specific information necessary for the development, production or use of goods or software, (information may take forms including, but not limited to: blueprints, plans, diagrams, models, formulae, tables). 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, engineering designs or specifications, manuals or instructions written or recorded on other media or devices eg disk, tape, read-only memories except:
- (a) any document the information within which is in the public domain or relates to basic scientific research;
 - (b) any application for the grant of a patent (or any other form of protection for an invention) or for the registration of a design, or a semiconductor topography, in each case under the law of the United Kingdom or of any other country or under any treaty or international convention;
 - (c) any document necessary to enable any application in 5(7)(b) above to be filed, made or pursued.
- (8) "upgrading" means resulting in enhancement to the functional capabilities of the goods or provide goods with new or additional functions;
- (9) "individual use" means access by the person authorised to access the information in the UK or to other UK employees overseas with similar authorisation. (does not include demonstration or discussing in anyway with 3rd parties or allowing it to be placed on IT equipment that is controlled or owned by a 3rd party).

- (10) “information technology systems” means any electronic method for processing, storing, transferring or exchanging technology in intangible form to another country, including, but not limited to: intranets, shared data environments, file servers, telephones and e-mail;
- (11) “authorised by the employer” means any person who has been individually authorised by the employer to access its technology and information technology systems (e.g. by the issuing of a user name and password, digital token, digital certificate, etc.)
- (12) unless the context otherwise requires, any other expression used in this licence shall have the meaning it bears in the Export Control Act 2002² or in the Order.

Entry into Force

6. This licence shall come into force on 31 January 2017.
7. The Open General Export Licence (Access Overseas to Software and Technology for Military Goods: Individual Use Only) dated 8 October 2015 is hereby revoked.

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 and technology, other than any specified in Part B of this Schedule, whose transfer is controlled by virtue of any of the following entries in Part 1 of Schedule 2 to the Order:

ML21
ML22

PART B

Technology or software specified in Part A of this Schedule which relates to any of the following goods in Part 1 of 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) cluster munitions and specially designed components therefor;
 - (3) explosive bomblets and specially designed components therefor;
 - (4) explosive submunitions and specially designed components therefor.
3. Goods falling within ML11 insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
4. Goods falling within ML17.n insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
5. Production equipment falling within ML18 insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
6. Goods falling within entry PL5001 c. and f.

SCHEDULE 2
DESTINATIONS CONCERNED

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

Armenia, Azerbaijan, Belarus, Burma (Myanmar) Central African Republic,
Democratic Republic of Congo, Eritrea, Iran, Iraq, North Korea Lebanon, Libya,
Russia, Somalia, South Sudan, Sudan, Syria, Yemen, Zimbabwe.

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EXPLANATORY NOTE

(This note is not part of the licence)

1. This Open General Export Licence revokes the previous version dated 8 October 2015. This version has been amended to update Schedule 2 (Destinations Concerned). Guinea, Ivory Coast and Liberia have been removed from the list of excluded destinations following the revocation of EU sanctions in April 2014 and June 2016. Rwanda has been deleted from Schedule 2 and the Central African Republic has been added.
2. This Open General Export Licence permits, subject to certain conditions, the transfer or export of software or technology specified in Part A of Schedule 1. Transfer or export of software or technology specified in Part B is not permitted to any destination. This licence cannot be used to transfer or export of software or technology to any country specified in Schedule 2.
3. This licence can be accessed from overseas by persons, whilst temporarily abroad (for a period not exceeding three calendar months) but who would normally be based within the UK. They must be authorised by their employer to access their technology and information technology systems in the UK. Including where necessary the export of licensable software or technology on a portable computing device (e.g. a laptop), and for individual use in connection with the business of the exporter and will not be further disseminated to any unauthorised parties.
4. An exporter who exports goods under the authority of this licence must before his first exportation under the licence, inform the Secretary of State of his intention to export goods under this licence and of the address where copies of the records may be inspected.

This notification must be made via the Export Control Organisation electronic licensing system, SPIRE, at www.spire.trade.gov.uk.

4. 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(7)).
5. Where the ECO identifies failures in compliance with licence conditions or the legislation during a compliance visit, the ECO 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 for a period of time.
6. 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 that they have not received a letter suspending or revoking their ability to use that licence.

7. The provisions of this licence only apply for the purposes of the Order. They do not affect the need to obtain other consents that may be required for the transfer or export of particular software or technology, whether under other statutory provisions (such as the Official Secrets Act 1989) or otherwise (such as contractual obligations). This licence does not extend to prohibitions in other legislation implementing United Nations sanctions.

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