



Department for
International Trade

Open General Export Licence

Exports in Support of Joint Strike Fighter (F-35 Lightning II)

December 2020

Open General Export Licence (Exports in Support of Joint Strike Fighter (F-35 Lightning II))

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

The Secretary of State grants this Open General Export Licence under article 26 of the Export Control Order 2008 (SI 2008/3231 as amended).

Section 1. Purpose

- (1) The purpose of this Open General Export Licence (OGEL) is to allow you to export or transfer goods, software or technology for the Joint Strike Fighter (F-35 Lightning II) (JSF) Programme from the United Kingdom to any of the destinations or countries listed in this licence. This includes re-exporting goods, software or technology to and from permitted destinations, even if they have been incorporated into other products.
- (2) This OGEL can only be used by exporters who supply military goods, software and technology to:
 - a. any person or entity in a Partner Nation or an Export Customer for development, production or 'use' of the JSF; or
 - b. any person or entity in a specified destination for re-exportation, including after the JSF is processed or incorporated into other products, for development, production, trials and testing or 'use' of the JSF.
- (3) However, as with any OGEL, there are limits to what it covers. It is limited to a number of low-risk destinations. Some goods, software and technology are excluded, and you will have to provide certain documents before exporting the components and keep records so that the Department for International Trade (DIT) can carry out audits to confirm you have used the OGEL correctly. **If you fail to use this OGEL correctly DIT may suspend or withdraw your authorisation to use this licence.**
- (4) You should only register to use this licence if you have **fully considered** the terms and conditions that follow and are able to meet them **all**.

Section 2. Goods, software and technology you can export or transfer under this licence

- (1) The description of the goods, software or technology listed in the table below has the same meaning as those described in Schedule 2 (Military Goods) of the Export Control Order 2008 as amended.
- (2) You **may only export or transfer** any of the goods, software and technology listed in the first column, unless we tell you otherwise in the second column, for developing, producing or maintaining, or for trials and testing or 'use' of **the JSF**, but **not** the complete aircraft.

Control list classification

ML4 b.1.	All goods under this category.
ML5	All goods under this category.
ML10a ML10d ML10e ML10f ML10g ML10 h	All goods under these categories, but not including: <ul style="list-style-type: none"> • complete aircraft.
ML11	All goods under this category, but not including: <ul style="list-style-type: none"> • any items relating to goods whose export is not allowed in this table.
ML14	Goods under this category for the Joint Strike Fighter to be used in: <ul style="list-style-type: none"> • training equipment; and • training simulators.
ML15	All goods under this category.
ML16	All goods under this category.
ML17c ML17f	All goods under these categories.

ML17h ML17l ML17n	
ML18a ML18b	All goods under these categories.
ML21	All software under this category, but not including software for: <ul style="list-style-type: none"> any items relating to goods whose export is not allowed in this table.
ML22a	All technology under this category, but not including technology for: <ul style="list-style-type: none"> any items relating to goods whose export is not allowed in this table.
ML22b1	All technology under this category. <ul style="list-style-type: none"> the technology is to develop or produce installations for the equipment listed within this table.

Section 3. Countries or destinations allowed under this licence

(1) The Partner Nations:

Australia
Canada
Denmark
Italy
Netherlands
Norway
Turkey
United Kingdom
USA

Note: The UK is included as a destination for goods, software or technology which have been initially exported from the UK to one of the destinations listed above and in section 3(2) below and are then re-exported to the United Kingdom including after being incorporated into other products.

(2) Export Customers:

Israel
Japan
South Korea

(3) Countries which may develop, produce, trial and test or ‘use’ the goods, software or technology this licence applies to:

Austria
Belgium
Finland
France
Germany
Japan
Singapore
Switzerland
Poland
Romania

(4) You **must not** export or transfer goods, software or technology to a ‘customs free zone’. A ‘customs free zone’ is a part of the territory of a country where any goods introduced are generally regarded, as far as import duties and taxes are concerned, as being outside the customs territory of that country, and so the usual customs controls do not apply.

Section 4. Who you can export goods, software and technology to

You must only export or transfer goods, software or technology:

- (1) to any person or entity in a Partner Nation or an Export Customer as long as they are in one of the countries or destinations listed in section 3(1) or 3(2) **and** the goods, software or technology is for developing, producing or maintaining, or for trials and testing or ‘use’ of the JSF; or
- (2) to any person or entity (consignee) in a Partner Nation or an Export Customer in

one of the destinations listed in section 3(1) or 3(2) as long as the goods, software or technology will be re-exported to one of the countries or destinations listed in section 3(1) or 3(2) for the development, production or use of the JSF; or

- (3) to any person or entity (consignee) as long as they are in one of the destinations listed in section 3(3) **and** the items are for processing or incorporating into other products and then re-exporting to a destination listed in section 3(1) for the development, production, trials and testing or use of the JSF.

Section 5. Other restrictions that apply

- (1) You **must not** export or transfer goods, software or technology to be incorporated into other goods, software or technology that are to be exported, re-exported or transferred to a person or company in a country or destination **other than** one specified in section 3 of this licence. You must make sure that you keep to any relevant project security instruction (PSI).

(2) Security classified goods, software and technology

- a. You **must only** export or transfer goods, software and technology classified **OFFICIAL-SENSITIVE or above** (including UK material classified RESTRICTED or above, graded prior to 2nd April 2014, and internationally security classified material), if you have a MOD Form 680 approval. You may only export these goods, software and technology to the **named end-user** stated in the MOD Form 680 and you will need to keep a record of that end-user for inspection as described in sections 8(1) a to g. You can apply for a MOD Form 680 through SPIRE.
<https://www.spire.trade.gov.uk/spire/fox/espire/LOGIN/login>.
- b. For goods, software and technology classified CONFIDENTIAL, for material classified by the UK prior to 2nd April 2014 or internationally security classified CONFIDENTIAL-equivalent material, or SECRET or above, you will need a current written approval for a Security Transportation Plan. A Security Transportation Plan approval can be obtained from MOD Defence Equipment and Support (DE&S) Principal Security Advisor (please see below for contact details).

Note: To apply for Security Transportation Plan clearances, please contact:
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

- c You **must not** transfer software or technology **electronically** that is security classified '**OFFICIAL-SENSITIVE**' or **above** (including UK material classified RESTRICTED or above, graded prior to 2nd April 2014, and internationally security classified material), unless:
 - i. the method of transmission is protected by encryption appropriate to the security classification of the data; and
 - ii. you hold any necessary clearance from a government accreditation authority and you can make the clearance document available for inspection by any person authorised by the Secretary of State.

(3) Weapons of mass destruction (WMD)

- a You **must not** export or transfer all or part of goods, software or technology if you are aware or suspect they may be used, in whole or in part, for a WMD purpose. You may become aware of, or suspect, this in the following ways:
 - i. The Secretary of State tells you.
 - ii. You are already aware of this intended use.
 - iii. You have grounds for suspecting that the goods, software or technology may be used for this purpose unless you have made all reasonable enquiries about what the goods or software will be used for, and are satisfied that they will not be used for a WMD purpose.
- b If you have any concerns over the end use of the goods, software or technology you should contact the Export Control Joint Unit's End User Advice Service.

- (4) 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.

Section 6. Actions you must take before exporting or transferring goods, software and technology under this licence

- (1) You must be satisfied that you and the goods, software or technology you plan to export or transfer can meet all the requirements set out in this licence.
- (2) Before using this licence, you **must** register through DIT's electronic licensing system, 'SPIRE' (www.spire.trade.gov.uk), stating where you will keep records of the exports or transfers and where the ECO may inspect them. 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.

- (3) You must:
- a have an **original undertaking** from the person or entity (consignee) receiving the goods, software or technology which confirms the export is for a **permitted use** (this undertaking must remain in force for the period of the contract) and **which confirms the export is for the development, production or ‘use’ (or, where appropriate, for trials and testing) of the JSF**; or
 - b provide a document as evidence (for example, a purchase order, excerpt of contract) from the consignee receiving the goods, software or technology which **states** the export is for a **permitted use** (the document **must also include** the contract number and the name of the items which can be checked against the control list classification of the goods, software or technology being exported and **confirm that the export is for the development, production or ‘use’ (or, where appropriate, for trials and testing) of the JSF**); or
 - c **only** in the case of contracts directly from a **government in a destination** listed in section 3(1) or 3(2), provide documents as evidence (for example, a purchase order, excerpt of contract) that include the contract number and the name of the goods, software or technology, that can be checked against the control list classification of the goods, software or technology being exported and **which confirm that the export is for the development, production, trials and testing or ‘use’ of the JSF**.

Note: The undertaking is only valid as long as the circumstances under which the undertaking was given have not changed or modified over that period, including:

- the details of the person (consignee) receiving the goods, software or technology;
- the terms of the OGEL under which it was given;
- the destination of the goods, software or technology is not an embargoed destination; or
- for any reason which the ECO considers should result in that undertaking no longer being valid.

DIT considers it best practice that end-user undertakings are renewed every 12 months.

- (4) If the condition given in section 5(2) of this licence applies to your export, you must also have written approval from the Ministry of Defence before exporting goods, software or technology.

Section 7. Actions you must take when exporting or transferring goods, software or technology under this licence

- (1) For all physical exports of goods, software or technology, you must make sure that the commercial documents that go with the goods, software or technology include a declaration stating either:
- a ‘the goods (software or technology) are being exported under the OGEL (Exports in Support of Joint Strike Fighter (F-35 Lightning II))’; or

- b your SPIRE licence reference (in the form GBOGE 20??/?????).
- (2) You should present these documents to officials of HM Revenue & Customs when asked, together with the information and documents listed in section 8(1) f or g below.
- (3) You **must** update the '**Open licensing returns**' within SPIRE, for **all** exports or trade carried out within each calendar year. You **must** update the returns by the last day of the following January at the latest (for example, you would need to update the January to December returns by the end of the following January) and include **all** the information required. You do **not** have to report on technology transfers.

Section 8. Records that you must keep

- (1) You must keep the following records relating to exporting or transferring goods and software under this licence for **four years** and you must make them available for any person authorised by the Secretary of State to inspect. The detailed requirements are set out in article 29 of the Export Control Order 2008. In summary, you must keep a record of the following.
 - a The date and destination of export or transfer.
 - b The name and address of the company (the consignee) you are exporting or transferring the goods, software or technology to.
 - c A description of the goods, software or technology.
 - d The **original undertaking** from the company (consignee) receiving the goods, software or technology, **or** documents described in 6(3) b or c above (for example a purchase order, an excerpt of the contract).
 - e The classification in Schedule 2 of the Export Control Order.
 - f Documents referred to in section 7 above that include either of the declarations described in section 7(1) a. or b.
 - g The written approval from the Ministry of Defence, if this is needed to meet the requirements of sections 5(2) a., b. and c.
- (2) For goods, software and technology which have any of the functions or characteristics of information security described in Category 5 Part 2 of Annex 1 to Council Regulation (EC) No.428/2009 (EUR 2009/428, as amended), every 12 months you must present a copy of the records set out in section 8(1) a, b and c above to a representative of the Secretary of State (in this case, the National Cyber Security Centre (NCSC) and send a copy to the ECJU) for inspection. You can contact the NCSC at the following email address:
export.returns@ncsc.gov.uk:

Section 9. Other legal requirements

- (1) You must complete, in full, the pre-visit questionnaire (PVQ) which you receive before an audit visit by the ECO and return it by the date given in the letter that came with it.

- (2) You **must not** export or transfer goods, software or technology if their use would be inconsistent with the terms of a United Nations (UN), Organisation for Security and Co-operation in Europe (OSCE) or a United Kingdom national arms embargo.
- (3) As well as keeping to the requirements of this licence, you must also keep to any other relevant laws and acts which are in force. There may be restrictions or limits under other laws which apply when exporting these goods, software or technology.

Section 10. If you fail to meet the terms and conditions of this licence

- (1) If, following an audit visit, DIT send you a 'failure to comply' warning letter, you must take the steps set out in that letter and within the timescale given. If you do not do this, DIT may **suspend or withdraw your authorisation** to use this licence until you can satisfy DIT that you are able to meet the terms and conditions of this licence.
- (2) DIT may suspend or withdraw this licence if you do not satisfy the requirements of all the terms and conditions of this licence. If this is the case, you may (along with anyone who has exported or transferred goods, software or technology for you) be prosecuted.
- (3) You **must not** export or transfer goods, software or technology under this licence at any time once DIT have suspended or withdrawn your authorisation to use this licence by serving a notice on you under article 32(1) of the Export Control Order 2008.

Entry into Force

1. This licence shall come into force at 23:00 on 31 December 2020.
2. The Open General Export Licence (Exports in Support of Joint Strike Fighter (F-35 Lightning II) dated 11 April 2018 is hereby revoked.

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

Glossary

Expressions used in this licence and in the Export Control Act 2002 (2002 C.28) or in the Export Control Order 2008 have the same meaning here as they do in that Act and Order. The legislation referred to in this licence is updated from time to time and you will need to check that you have the most up-to-date version when using this licence. For the legislation that applies to UK exports, please visit: www.Legislation.gov.uk/

You can see the original Export Control Order at

<http://www.legislation.gov.uk/ukxi/2008/3231/contents/made> .

You can see the original Schedule 2 at

<http://www.legislation.gov.uk/ukxi/2008/3231/schedule/2/made>

The following terms and acronyms used in this licence have the following meanings.

Section 1 – Purpose

- 1 ‘Joint Strike Fighter’ (also known as F-35 Lightning II) means the fifth-generation strike aircraft weapons platform developed by Lockheed Martin, Northrop Grumman, BAE Systems and Pratt & Whitney.
- 2 ‘Re-export’ means to export goods, software or technology listed in section 2, from an allowed destination, listed in section 3(1) or 3(2), back to the UK or to another destination allowed under this licence, including after processing or incorporating the goods, software or technology into other products or for trial and testing purposes.
- 3 ‘The Partner Nations’ are the countries the USA has invited to be involved with the international co-development programme to take part in designing, building and testing the strike aircraft weapons platform.
- 4 Export Customers’ are the countries the USA has agreed to supply the strike aircraft weapons platform to.
- 5 ‘Countries which may develop, produce, trial and test or use the goods, software or technology this licence applies to’ are the countries that currently have licence agreements in place with the UK businesses to supply goods, software or technology to develop or produce the JSF, but not complete aircraft.
- 6 ‘Use’ means operation, installation (for example, on-site installation), maintenance, checking, repair, overhaul and refurbishment.
- 7 ‘You’ means someone who has registered as a user with SPIRE, the electronic licensing system of the Export Control Organisation (ECO), a part of the Department for International Trade.

Section 5 – Other restrictions that apply

1. 'Security classified' means that information or other assets are given a security classification marking when assessed against a security classification marking scheme. A security classification marking scheme is an administrative system to make sure that access to information and other assets is correctly managed and that assets are protected to an agreed and proportionate security classification level throughout their life. Other governments and organisations such as NATO and OCCAR have their own security classification marking schemes.
2. 'Collaborate' means to work together on an activity or project either under a contract, agreement or other form of arrangement.
3. 'Project security instructions' are the specific security instructions for a particular project. They are generated either after the signature of a project memorandum of understanding (MoU) involving more than one country or as part of a contractual arrangement. They bring together the security regulations of everyone involved in the project and often provide extra security instructions on classification, marking, release and other security arrangements for that project. A MoU is a document describing an agreement between more than one individual or organisation. It sets out the intended common line of action but does not imply a legal commitment.
4. 'MOD Form 680' is the way in which the Government assesses proposals by companies to release security classified marked goods, software and technology to foreign organisations (for example, individuals, companies partnerships or governments). An MOD Form 680 approval is not an approval to use an Open General Export Licence or to export without a licence. It is a separate security requirement.
5. 'Transferring software or technology electronically' means, in relation to this licence, sending software or technology by fax, phone, email or other electronic media. (Sending software or technology by phone is included only where the technology is contained in a document and the relevant part of the document is read out over the phone, or is described over the phone in such a way as to achieve substantially the same result as if it had been read).
6. 'WMD purposes', as defined in article 2(1) of the Export Control Order 2008, means used in connection with developing, producing, handling, operating, maintaining, storing, detecting, identifying or spreading (disseminating) chemical, biological or nuclear weapons or other nuclear explosive devices, or developing, producing, maintaining or storing missiles capable of delivering such weapons.
7. 'Competent authority' means in the UK the Secretary of State or

anybody acting under their authority and, in the EU, anyone authorised by a member state to grant export or trade licences for military goods, software or technology or dual-use items.

8. The 'End User Advice Service' is provided by the UK Government and can be accessed through SPIRE. The Service is the process by which you can obtain advice from the ECO about any concerns you may have with the overseas entities (businesses or individuals) involved with your export transactions.

Section 6 – Before exporting or transferring goods or software

- 1 'SPIRE' is the UK licensing authority's online licence application and registration system. You will need to register yourself and your business on SPIRE before you can apply for a licence to export controlled goods.
Website: www.spire.trade.gov.uk/
- 2 A 'consignee' may be an individual, a company, organisation, a government or NATO.
- 3 An 'original undertaking' means one that has a person's original signature and has not been copied, faxed or converted into an electronic format. For an undertaking template, please visit:
<https://www.gov.uk/government/publications/military-goods-ogel-undertaking-template>
- 4 'Government' as it relates to a contract includes direct contracts with governments, armed forces of a government, government agencies and companies working on behalf of government (and there is evidence of them doing so).
- 5 'Permitted use' means use of the items specified in section 2 of this licence, by a person or entity (for example, company or partnership) in a destination specified in section 3 and which meets the conditions set out in sections 4, 5, and 9(2) and other relevant conditions, restrictions or requirements set out in this licence.

Section 7 - When exporting or transferring goods of software

1. 'Declaration' means a commercial document completed for an official of Her Majesty's Government (HMG) which meets the conditions set out in section 7(1).

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