

EXPORT LICENCE

Open General Export Licence (Access Overseas to Software and Technology for Military Goods: Individual Use Only) dated 28th June 2011 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Article 26 of the Export Control Order 2008^(a) ("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 hereto, other than any specified in Part B thereof, may be transferred or exported from the United Kingdom to any destination other than a destination in any country specified in Schedule 2 hereto 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 his 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 authorised by their UK employer to do so; and
- (3) the software and technology, as described in 1(1) and (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 technology is or may be intended, in its entirety or in part, for any uses referred to in sub-paragraph (1), unless he has made all reasonable enquiries as to their proposed use and satisfied himself 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 his ability to use this Licence pursuant to article 32(1) of the Order, unless the period of suspension or revocation has expired.

^(a) S.I.2008/3231

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;
 - (2) All transfers or exports at the UK protective marking of RESTRICTED or above must be carried out in accordance with the Cabinet Office Manual of Protective Security (MOPS).
 - (3) before an exporter first transfers or exports software and technology under this licence, he shall have informed the Secretary of State of his 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 him, maintain records made under this Licence, to demonstrate that he has in place systems and procedures that adequately control access to his 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;and any such records shall be kept for at least 3 years and the exporter shall permit them to be inspected, and copied, by any person authorised by the Secretary of State;

- (5) 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
- (6) An internal compliance procedure must be in place (refer to compliance Guidance).
- (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 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.

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', ('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 (e.g., 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 2002^(b) or in the Order.

Entry into Force

- 6. This Licence shall come into force on 6th July 2011.
- 7. The Open General Export Licence (Access Overseas to Technology for Military Goods: Individual Use Only) dated 22nd March 2010 is hereby revoked.

**An Official of the Department for Business,
Innovation and Skills authorised
to act on behalf of the Secretary of State**

^(b) 2002c.28

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., d., g., h., and i.

SCHEDULE 2

DESTINATIONS CONCERNED

This export authorisation is valid for exports or transfers to the following destinations:

All destinations other than in:

Armenia
Azerbaijan
Belarus
Burma (otherwise known as the Union of Myanmar)
Democratic Republic of Congo
Eritrea
Guinea
Iran
Iraq
Ivory Coast
Korea, Democratic People's Republic of (otherwise known as North Korea)
Lebanon
Liberia
Libya
Rwanda
Somalia
Sudan
Syria
Zimbabwe

EXPLANATORY NOTE

(This Note is not part of the Licence)

1. This Licence has been amended following a review of the permitted destinations.
2. This Open General Export Licence permits, subject to certain conditions, the transfer or export to any destination other than in any country specified in Schedule 2 to the Licence of software or technology specified in Part A of Schedule 1, excluding software or technology specified in Part B thereof, where it is 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, authorised by their employer to access their technology and information technology systems in the UK, includes 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.
3. 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 said records may be inspected.

This notification must be made via the Export Control Organisation's electronic licensing system, SPIRE, at www.spire.bis.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 he thinks fit. If an exporter receives written notice to this effect, he 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 him from using another OGEL so long as he meets all its terms and conditions and that he has not received a letter suspending or revoking his 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 under contractual obligations). In addition, this Licence does not extend to prohibitions in other legislation implementing United Nations sanctions.