

EXPORT LICENCE

Open General Export Licence (Military and Dual-Use Goods : UK Forces deployed in embargoed destinations)

dated 22nd March 2010 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'); Articles 5 and 6 of the Iraq (United Nations Sanctions) Order 2003^(b) ('the Iraq Sanctions Order'); Article 3 of the United Nations Arms Embargoes (Liberia, Somalia and the Former Yugoslavia) Order 1993^(c); Articles 3 and 4 of the Liberia (United Nations Sanctions) Order 2004^(d) ('the Liberia Sanctions Order'); Article 3 or 4 of Council Regulation (EC) No 234/2004^(e) ('the EC Liberia Regulation') and Article 5 of the Export Control (Liberia) Order 2006^(f); Article 3 of Council Regulation (EC) No 889/2005^(g) ('the EC Democratic Republic of Congo Regulation') and Article 5 of the Export Control (Democratic Republic of Congo) Order 2005^(h); Article 4 of Council Regulation (EC) No 131/2004⁽ⁱ⁾ ('the EC Sudan Regulation') and Regulation 3 of the Sudan (Technical Assistance and Financing and Financial Assistance)(Penalties and Licences) Regulations 2004^(j); and Article 3 of Council Regulation (EC) No 1412/2006 ('the EC Lebanon Regulation')^(k) and Regulation 3 of the Lebanon (Technical Assistance, Financing and Financial Assistance)(Penalties and Licences) Regulations 2006^(l) hereby grants the following Open General Export Licence:

^(a) S.I. 2008/3231. as amended

^(b) S.I. 2003/1519 to which there are amendments not relevant to this Licence.

^(c) S.I. 1993/1787; relevant amending instruments are S.I. 1996/1629, 1997/273, 1998/1501, 2000/1106, 2001/947, 2002/2628, 2008/3128.

^(d) S.I. 2004/348.

^(e) OJ L 40, 12.1.2004, p1, amended by Council Regulation (EC) No 866/2007 (OJ L 192, 24.7.2007, p1); there are other amending measures but none is relevant.

^(f) S.I. 2006/2065.

^(g) OJ L 152, 15.6.2005, p1; relevant amending measures are Council Regulation (EC) No 1377/2007 (OJ L 309, 27.11.2007, p1) and Council Regulation (EC) No 666/2008 (OJ L 188, 16.7.2008, p1).

^(h) S.I. 2004/1677, amended by S.I. 2008/131, 2008/1964.

⁽ⁱ⁾ OJ L 21, 28.1.2004, p1, amended by Council Regulation (EC) No 838/2005 (OJ L 139, 2.6.2005, p3); there are other amending measures but none is relevant.

^(j) S.I. 2004/373, amended by S.I. 2005/3389.

^(k) OJ L 267, 27.9.2006, p2.

^(l) S.I. 2006/2681.

Licence

1. Subject to the following provisions of this Licence:

- (1) goods, software or technology specified in Schedule 2 to the Order, other than any goods, software or technology specified in Schedule 1 to this Licence, may be exported or transferred by electronic means from the United Kingdom to any UK armed forces, or the MOD notified civilian contingent, in a country specified in Schedule 2 to this Licence;
- (2) exportation or transfer of goods, software or technology that would otherwise be prohibited by article 4, 5, 6, 7, 10, 11 or 12 of the Order is permitted to the extent that it is to any UK armed forces, or the MOD notified civilian contingent, in a country specified in Schedule 2 to this Licence;
- (3) any person may provide technical assistance, the provision of which would otherwise be prohibited by Article 19 of the Order, to any person or place in a country specified in Schedule 2 to this Licence; and
- (4) any goods may be exported, technical assistance provided or software or technology transferred in a manner identified in paragraph 1(1) to (3) to any warship or Naval Auxiliary of the United Kingdom or Government Service ship provided the vessel confirms it is in the territorial waters of a country specified in Schedule 2 to this Licence;

provided that the exporter, transferor or provider, as the case may be, knows at the time of export, transfer or provision that the goods, software or technology or technical assistance are for the sole use of UK armed forces or the MOD notified civilian contingent in a country specified in Schedule 2 to this Licence.

2. Subject to the other provisions of this Licence:

Democratic Republic of Congo

(1) a person may carry out an act otherwise prohibited by Article 20(2)(b) or (c) of the Order if at the time of the act that person knows the supply or delivery of the goods subject to trade controls is to UK armed forces or the MOD notified civilian contingent in Democratic Republic of Congo;

Iraq

(2) a person may carry out an act otherwise prohibited by Article 5(1)(b) or (c) of the Iraq Sanctions Order if at the time of the act that person knows the supply or delivery of the restricted goods (as defined in that Order) is to UK armed forces or the MOD notified civilian contingent in Iraq;

Lebanon

(3) a person may carry out an act otherwise prohibited by Article 20(2)(b) or (c) of the Order if at the time of the act that person knows the supply or delivery of the goods subject to trade controls is to UK armed forces or the MOD notified civilian contingent in Lebanon;

Liberia

(4) a person may carry out an act otherwise prohibited by Article 3(1)(b) or (c) of the Liberia Sanctions Order if at the time of the act that person knows the supply or delivery of the restricted goods (as defined in that Order) is to UK armed forces or the MOD notified civilian contingent in Liberia;

Sierra Leone

(5) a person may carry out an act otherwise prohibited by Article 3(1)(b) or (c) of the Sierra Leone Sanctions Order if at the time of the act that person knows the supply or delivery of the prohibited goods (as defined in that Order) is to UK armed forces or the MOD notified civilian contingent in Sierra Leone;

Sudan

(6) a person may carry out an act otherwise prohibited by Article 20(2)(b) or (c) of the Order if at the time of the act that person knows the supply or delivery of the goods subject to trade controls is to UK armed forces or the MOD notified civilian contingent in Sudan;

provided the goods supplied or delivered are goods referred to in paragraph 1(1) of this Licence.

3. Subject to the provisions of this Licence:

Democratic Republic of Congo

(1) A person may carry out an act falling within the prohibition in Article 2 of the EC Democratic Republic of Congo Regulation, provided that:

- (a) the person knows at the time of the act that:
 - (i) it is only in relation to goods referred to in paragraph 1(1) of this Licence; and
 - (ii) the goods are for use by UK armed forces or the MOD notified civilian contingent in the Democratic Republic of Congo; and
- (b) Article 3 of the Regulation allows an authorisation to be granted.

Lebanon

(2) A person may carry out an act falling within the prohibition in Article 2 of the EC Lebanon Regulation, provided that:

- (a) the person knows at the time of the act that:
 - (i) it is only in relation to goods referred to in paragraph 1(1) of this Licence; and

- (ii) the goods are for use by UK armed forces or the MOD notified civilian contingent in Lebanon; and
- (b) Article 3 of the Regulation allows an authorisation to be granted.

Liberia

- (3) A person may carry out an act falling within the prohibition in Article 2 of the EC Liberia Regulation, provided that:
- (a) the person knows at the time of the act that:
 - (i) it is only in relation to goods referred to in paragraph 1(1) of this Licence; and
 - (ii) the goods are for use by UK armed forces or the MOD notified civilian contingent in Liberia; and
 - (b) Article 3 or 4 of the Regulation allows an authorisation to be granted.

Sudan

- (4) A person may carry out an act falling within the prohibition in Article 2 or 3 of the Sudan Regulation, provided that:
- (a) the person knows at the time of the act that:
 - (i) it is only in relation to goods referred to in paragraph 1(1) of this Licence; and
 - (ii) the goods are for use by UK armed forces or the MOD notified civilian contingent in Sudan;
 - (b) Article 4 of the Regulation allows an authorisation to be granted.

Exclusions

4. This Licence does not authorise the export of goods, provision of technical assistance or transfer, by any means, of software or technology:

(1) if the exporter, provider or transferor has been informed by a competent authority, or is otherwise aware (e.g. from information received from the manufacturer), that they have been classified by the Ministry of Defence as having a protective marking of CONFIDENTIAL or above, **unless**:

- (a) the exporter has, where appropriate, a current written Security Transportation Plan and has obtained a written letter of clearance issued by MOD DPA Security Advisor's Office which relates to all "Goods" associated with the particular export of the protectively marked "Goods" which are CONFIDENTIAL or above;
- (b) Technology in tangible form protectively marked CONFIDENTIAL or above is exported against procedures laid down in the Manual of Protective Security, issued by the Cabinet Office, appropriate to the grading of the material.

(2) In the case of intangible technology transfers it is prohibited to export technology with a protective marking Restricted or above **unless**:

- (a) the transmission medium is protected by approved encryption appropriate to the protective marking of data, and
- (b) the exporter holds clearance from a government accreditation authority which can be produced to the Compliance Officer.

- (3) 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

5. The exporter shall comply with the following conditions and requirements:

- (1) not later than 30 days after an exporter, provider or transferor first exports goods, provides technical assistance or transfers, by any means, software or technology under this Licence, he shall inform the Secretary of State, specifying his name and the address at which copies of records of his export, transfer or provision may be inspected under condition 5(2) below;
- (2) the exporter, provider or transferor shall maintain the following records under this Open General Export Licence:
 - (a) the date of the export, provision or transfer;
 - (b) the name and address of the individual to whom, or the Unit or ship to which, the goods, technical assistance or software or technology are being exported, provided or transferred;
 - (c) a description of the goods exported, technology transferred or technical assistance provided;
 - (d) MOD DPA Security Advisor's Office clearance letter referred to in 4(1) above (in the case of CONFIDENTIAL "Goods" or above);
 - (e) where appropriate the Operational Name/Code;

- (f) Unit (including UIN where known) that the goods are being exported to;
- (g) where appropriate a copy of UOR/MOD Contract

and any such records shall be maintained for at least ***three years*** after the date of the relevant export or transfer or provision and the exporter, transferor or provider shall permit the records to be inspected and copied by any person authorised by the Secretary of State;

- (3) official and commercial export documentation accompanying the export of goods or non-electronic transfer of software or technology shall include a note stating either:
 - (a) "the goods are being exported under the OGEL (Military and Dual Use Goods: UK Forces deployed in embargoed destinations)"; or
 - (b) the SPIRE reference (in the form 'SPIRE reference GBOGE 20XX/XXXXX') of the exporter's registration in respect of this licence

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

- (4) the exporter, transferor or provider shall notify the Secretary of State of any change in the address referred to in paragraph 5(1) above within 30 days of that change.
- (5) 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

6. This licence shall not affect a prohibition or restriction in any legislation other than the legislation under which this licence was issued.

Interpretation

7. For the purpose of this Licence:

- (1) "the Act" means the Export Control Act 2002^(d)
- (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;
- (4) "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;

- (5) 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”.
- (6) "entry" includes part of an entry;
- (7) "MOD notified civilian contingent" means civil servants, deployed contractors, and those contractors with UK Government defence contracts including Contractors on Deployed Operations (CONDO) or personnel directly employed or engaged by HMG;
- (8) unless the context otherwise requires, any other expression used in this Licence shall have the meaning it has in the Act or the Order (and in the event of any inconsistency, the meaning in the Order shall prevail)

^(d) 2002 c.28

Entry into Force

8. This Licence shall come into force on 26th March 2010.
9. The Open General Export Licence (Military Goods: UK Forces deployed in embargoed destinations) dated 31st March 2009 is hereby revoked.

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

SCHEDULE 1

GOODS CONCERNED

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 ML16 insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;
5. Goods falling within ML17.n 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.;
7. Technology, equipment and software specified in ML18, ML21 or ML22, related to equipment specified in (1) to (6) of this Schedule

SCHEDULE 2

DESTINATIONS CONCERNED

This export authorisation is valid for UK forces deployed to the following destinations:

Democratic Republic of Congo

Iraq

Lebanon

Liberia

Sierra Leone

Sudan

EXPLANATORY NOTE

(This Note is not part of the Licence)

1. This Licence has been amended to remove cluster munitions and related equipment software and technology from the scope of the licence.
2. This Open General Export Licence permits, without further authority but subject to certain conditions, the export of certain goods, software or technology, including their transfer by electronic means, and various acts calculated to promote the supply and delivery of such goods to UK armed forces, or MOD notified civilian contingent. In particular it covers exports and transfers of military and dual-use goods, software and technology to the countries specified in Schedule 2; the provision of technical assistance for “WMD purposes” to a country specified in Schedule 2; and provision of goods or services to any warship or Naval Auxiliary of the United Kingdom or Government Service ship. There are certain military items that are completely outside the coverage of this Licence (anti-personnel landmines and certain items that could be used for inhuman or degrading treatment or punishment and related software and technology). **The licence does not authorise the export or transfer of dual-use goods, software or technology to the extent that their export or transfer is prohibited by the Council Regulation (EC) No.428/2009.**
3. The goods, software, technology or technical assistance may only be exported, provided or transferred under this Licence if certain conditions are satisfied. These include that the goods, software or technical assistance are intended for use by UK Forces or the MOD notified civilian contingent including CONDO; and, if the goods, software, technology or technical assistance are classified as CONFIDENTIAL or above, prior written approval for their export, provision or transfer must have obtained from the Ministry of Defence.

Application forms can be obtained from:

Security Transportation Plan approvals can be obtained from:

Principal Security Adviser
Industrial Security Section
Defence Procurement Agency
Facilities Management Group
Ministry of Defence
Poplar - 1#2005
Abbey Wood
Bristol
BS34 8JH
Tel: 0117 913 3677
Fax: 0117 913 0629

4. Advice on approval for associated technology transfers in intangible form at a protective marking of RESTRICTED or above may be obtained from D DEF SY INFO SY COMSEC, Floor 6 Zone B, Main Building, London SW1A 2HB.

5 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.

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, 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 5(5)).

7. 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.

8. 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.