

EXPORT LICENCE

Open General Export Licence (Export For Repair/replacement under warranty: Military Goods) dated 22nd March 2010 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Articles 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 goods specified in Part A of Schedule 1 hereto, other than any goods specified in Part B, may be exported from the United Kingdom to any destination except a destination in a country specified in Schedule 2 provided the goods are being exported for the purpose of repair, and are to be returned to the United Kingdom after such repair, or for replacement under warranty; or being returned as unwanted goods, and are to:

- (1) a Government which sent them to the United Kingdom; or
- (2) the NATO Maintenance and Supply Agency provided that they had been previously sent to the United Kingdom by or on behalf of the said Agency; or
- (3) the original manufacturer, stockists or licensed manufacturer who first supplied them ("the original supplier"); or
- (4) an Approved Repair Centre.

Exclusions

2. This Licence does not authorise the export of goods:

- (1) if the exporter has been informed by a competent authority that they are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation,

^(a) S.I. 2008/3231

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;

- (2) if the exporter is aware that the goods are intended, in their 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 goods are or may be intended, in their entirety or in part, for any uses referred to in sub-paragraph (1), unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied himself that the goods will not be so used;
- (4) if the exporter 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 proposed export has been approved by the Ministry of Defence under F680 or F1686 and a written letter of clearance has been issued under the appropriate procedure, and
 - (i) the clearance is not time expired at the time the export takes place, and
 - (ii) the goods are identical to those for which the clearance was given and
 - b. the exporter has a current written Security Transportation Plan and has applied for and obtained a current written letter of clearance issued by MOD DPA Security Advisor's which relates to all the goods which are protectively marked at CONFIDENTIAL or above.

- c. Technology in tangible form protectively marked CONFIDENTIAL or above is exported against procedures laid down in the UK Government Manual of Protective Security appropriate to the grading of the material.
- (5) In the case of intangible technology transfers it is prohibited to export technology with a protective marking of 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 a clearance from a government accreditation authority which can be produced to the Compliance Officer.
- (6) which fall within the scope of Council Directive 91/477/EEC on Control of the Acquisition and Possession of Weapons^(b);
- (7) technology specified in Part 1 of Schedule 2 to the Order 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^(c); or
- (8) to a destination within a Customs Free Zone;
- (9) 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) before an exporter first exports goods under this Licence, he shall have informed the Secretary of State of his intention to export goods under

^(b) O.J. No. L256, 13.9.91, p.51

^(c) O.J. No.L134, 29.5.2009

this Licence, specifying the name of the exporter and the address at which copies of records of their export may be inspected under condition 3(6) below;

- (2) on exportation of any goods pursuant to this Licence the exporter shall produce to an officer of UK Border Agency, if so requested, documentary evidence of the date of their importation into the United Kingdom ;
- (3) on exportation of any goods pursuant to paragraph 1(3) of this Licence the exporter shall produce to an officer of UK Border Agency, if so requested:
 - (a) documentary evidence that the goods are being exported to the manufacturer, original supplier or Approved Repair Centre for repair or replacement under warranty and return to the United Kingdom; or as unwanted goods.
- (4) except in the case of an export of technology by telephone, fax or other electronic media, official and commercial export documentation accompanying the goods shall include a note stating either:
 - (a) "the goods are being exported under the OGEL (Export For Repair/replacement under warranty: Military Goods)"; or
 - (b) the SPIRE reference (in the form 'SPIRE reference GBOGE 20XX/XXXXX') of the exporters registration in respect of this licence

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

- (5) in respect of the export of goods under this Open General Export Licence, the exporter shall maintain the following records:
 - (a) the date and destination of each export;
 - (b) confirmation that:
 - (i) they are being returned to the manufacturer or original supplier as identified in 1(3); or

- (ii) they are going to an Approved Repair Centre, including a copy of their certification.
- (c) MOD F680 or F1686 clearance letter referred to in 2(4)(a) above (in the case of CONFIDENTIAL goods or above);
- (d) MOD DPA Security Advisors Office clearance letter (in the case of CONFIDENTIAL goods or above);

and any such records shall be maintained for at least four years after the date of the relevant export and the exporter shall permit the records to be inspected and copied by any person authorised by the Secretary of State; and

- (6) the exporter shall notify the Secretary of State of any change in the address referred to in paragraph 3(1) above within 30 days of that change.
- (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 or the carrying out of any act with respect of the exportation 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) "the Act" means the Export Control Act 2002^(a) ;
- (2) "Approved Repair Centre" means facility approved by the original equipment manufacturer and/or relevant national authority to repair/overhaul the goods being exported under this licence;
- (3) "cluster munitions" means conventional munitions designed to disperse or release "explosive submunitions";
- (4) "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;
- (5) "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;
- (6) sub paragraphs (3) and (4) 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”.

- (7) a “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;

- (8) “entry” includes part of an entry;

- (9) “government” includes any person appointed by a Government to act on its behalf;

- (10) “MOD F680 or F1686 procedure” is a means by which exporters can become informed of any objections or problems associated with the marketing or supply of particular military goods, and to be advised of the protective security grading of the goods and provide clearance to sub contract or team on projects with overseas companies;

- (11) “repair” means making good any remediable defects and work of maintenance or restoration. This may involve coincidental improvement upon the original goods, e.g. resulting from the use of modern replacement components or from use of a later standard for

^(a) 2002 c.28.

reliability or safety reasons; provided that this does not result in any enhancement to the functional capability of the goods or provide the goods with new or additional functions. It may involve improvements of a purely cosmetic nature, e.g. paint finish;

(12) “replacement under warranty” shall not include any enhancement to the functional capability of the original goods or provide new or additional functions;

(13) unless the context otherwise requires, any other expression used in this Licence shall have the meaning it has in the Act or the Order.

Entry into Force

6. This Licence shall come into force on 26th March 2010.

7. The Open General Export Licence (Export For Repair/replacement under warranty: Military Goods) dated 8th January 2010 is 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

PART A

Any goods specified in Part 1 of Schedule 2 to the Order:

PART B

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 ML10 c. as follows:
 - (1) Unmanned aerial vehicles (UAVs) and goods specially designed or modified for unmanned aerial vehicles;

4. Goods falling within ML11 insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;

5. Goods falling within ML16 insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;

6. Goods falling within ML17.n insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;

7. Goods falling within entry PL5001 c., d., g., h., and i.;

8. Technology equipment and software specified in entries ML18, ML21 or ML22, related to equipment specified in 1 to 7 of Part B of this Schedule.

SCHEDULE 2

DESTINATIONS CONCERNED

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

All destinations other than in:

Afghanistan, Argentina, Armenia, Azerbaijan, Bosnia and Herzegovina, Burma (Myanmar), Burundi, Cyprus, Democratic Republic of the Congo, Guinea, Indonesia, Iran, Iraq, Ivory Coast, Lebanon, Liberia, Libya, Nigeria, North Korea, People's Republic of China (including Macau Special Administrative Region but excluding Hong Kong Special Administrative Region), Rwanda, Sierra Leone, Somalia, Sri Lanka, Sudan, Uzbekistan and Zimbabwe.

EXPLANATORY NOTE

(This Note is not part of the Licence)

This Licence has been amended to remove cluster munitions and related equipment software and technology from the scope of the licence.

2. This Licence permits, without further authority but subject to certain conditions, exportation to certain destinations of goods specified in Part A of Schedule 1 to the licence, other than those specified in Part B of that Schedule, which have been previously imported into the United Kingdom and subsequently exported for the purpose of repair/replacement under warranty and return to the UK, or as unwanted goods.

3. If the goods are exported under this licence and subsequently found to be beyond repair, the repairer shall issue an unequivocal statement that the goods were beyond repair and the exporter shall produce a copy of the statement to an officer of UK Border Agency or any other person authorised by the Secretary of State if so requested.

4. The Licence does not permit exportation of any goods which fall within the scope of Council Directive 91/477/EEC on the control of the acquisition and possession of weapons or to any goods or technology which have certain functions or characteristics of information security; or which carry a UK protective marking of CONFIDENTIAL or above unless the exporter has approval in writing from the Ministry of Defence.

MOD application forms can be obtained from:

(a) Reference MOD F680:

Ministry of Defence
DESO
St. George's Court
2-12 Bloomsbury Way
London WC1A 2SH

(b) Overseas Government site clearances, F1686 and 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

5. 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.

6. 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.

7. 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)).

8. 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.

9. 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.

10. The provisions of this Licence only apply for the purposes of the Export Control Order 2008. They do not affect the need to obtain other consents that may be required for the export of particular military goods, 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.