

EXPORT LICENCE

Open General Export Licence (CRYPTOGRAPHY) dated 14th October 2010 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Articles 9(2) and (4) of Council Regulation (EC) No. 428/2009 ("the Regulation")^(a) and Article 26 of the Export Control Order 2008 ("the Order")^(b), hereby grants the following Open General Export Licence:

Community Licence

1. This is general export authorisation under the terms of Article 9(2) of Council Regulation (EC) No. 428/2009. This authorisation, in accordance with Article 9(2) of that Regulation, is valid in all Member States of the European Community and is a Community Licence for the purposes of the Order.
2. Subject to the following provisions of this Licence, any items specified in the Schedule 1 hereto, may be exported from the United Kingdom, or from any other Member State by any person established in the United Kingdom, to any destination in Schedule 2.

Exclusions

3. This Licence does not authorise the export of items:
 - (1) if the exporter has been informed by a competent authority of the Member State where he is established that they are or may be intended, in their entirety or in part

(a) O.J. No. L134 29.5.09. p.1.

(b) S.I. 2008/3231

- (a) for use in connection with the development, production, handling, operation, 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,
 - (b) for a military end use and the purchasing country or country of destination is subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council of the European Union or a decision of the OSCE or imposed by a binding resolution of the Security Council of the United Nations, or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in violation of an authorisation prescribed by national legislation of that Member State;
- (2) if the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (1);
 - (3) if the exporter has grounds for suspecting that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (1)(a), unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that the items will not be so used;
 - (4) to a destination within a Customs Free Zone; or

- (5) if their export is controlled by virtue of any entry in Annex I to the Regulation not specified in Schedule 1; or
- (6) 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

4. The authorisation in paragraph 1 is subject to the following conditions:
 - (1) except in the case of an export of technology by telephone, fax or other electronic media, official and commercial export documentation accompanying the items shall include a note stating either:
 - (a) "These items are being exported under the Open General Export Licence (Cryptography)"; or
 - (b) the SPIRE reference (in the form '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;
 - (2) 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.

- (3) Under Article 29 of the Order, any person established in the United Kingdom who exports items from the United Kingdom or another Member State under the authority of this Licence must maintain and retain certain records relating to each such export for at least three years from the end of the calendar year in which the export takes place, and must permit such records to be inspected and copied by any person authorised by the Secretary of State.

Registration

5. The requirements of Article 28 of the Order **shall** apply to this licence.

Prohibitions not affected by this Licence

6. Nothing in this Licence affect any prohibition or restriction on the export of any items other than under the Regulation or the Order, and this licence does not confer any licence or permission under, or for the purposes of, any enactment other than the Regulation and the Order.

Interpretation

7. For the purpose of this Licence:

(1) "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;

(2) "entry" includes part of an entry;

(3) unless the context otherwise requires, any other expression used in this Licence has the same meaning as in the Regulation or the Order as appropriate.

Entry into Force

8. This Licence comes into force on 22nd October 2010 and will expire on 31st December 2011.

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

SCHEDULE 1

ITEMS CONCERNED

1. Goods described in Category 5–Part 2 incorporating or using "cryptography" and meeting all of the following:
 - a. The primary function or set of functions is not any of the following:
 1. "Information security";
 2. A computer, including operating systems, parts and components therefor;
 3. Sending, receiving or storing information (except in support of entertainment, mass commercial broadcasts, digital rights management or medical records management); or
 4. Networking (includes operation, administration, management and provisioning);
 - b. The cryptographic functionality is limited to supporting their primary function or set of functions;
2. "Software" specially designed or modified for the "development", "production" or "use" of equipment specified by 1 above.
3. "Technology" according to the General Technology Note for the "development", "production" or "use" of equipment specified 1 above or "software" specified by 2 above.

Definitions

"Cryptography" means the discipline which embodies principles, means and methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorized use.

"Cryptography" is limited to the transformation of information using one or more 'secret parameters' (e.g., crypto variables) or associated key management.

N.B.: 'Secret parameter': a constant or key kept from the knowledge of others or shared only within a group.

"Information security" is all the means and functions ensuring the accessibility, confidentiality or integrity of information or communications, excluding the means and functions intended to safeguard against malfunctions. This includes "cryptography", 'cryptanalysis', protection against compromising emanations and computer security.

N.B.: 'Cryptanalysis': analysis of a cryptographic system or its inputs and outputs to derive confidential variables or sensitive data, including clear text.

"Software" means a collection of one or more "programmes" or 'microprogrammes' fixed in any tangible medium of expression.

N.B.: 'Microprogramme' means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"Programme" means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Development" is related to all phases prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

"Production" means all production phases, such as: construction, production, engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

"Use" means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

"Technology" means specific information necessary for the "development", "production" or "use" of goods. This information takes the form of 'technical data' or 'technical assistance'.

N.B.: 1: 'Technical assistance' may take forms such as instructions, skills, training, working knowledge and consulting services and may involve the transfer of 'technical data'.

N.B. 2: 'Technical data' may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

SCHEDULE 2

DESTINATIONS CONCERNED

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

All destinations other than in:

- Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden,

Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA,

Iran and North Korea,

NOTE:

Exports of items covered by this licence may be made under the authority of the Community General Export Authorisation, subject to conditions and restrictions, to the following destinations:

Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA.

EXPLANATORY NOTE

(This note is not part of the licence)

1. This Open General Export Licence permits, without further authority but subject to certain conditions, the export from the United Kingdom, or from any other Member State of the European Community (EC) where the exporter is established in the United Kingdom, the export of items described in Schedule 1 to the licence to any destination other than a destination listed in Schedule 2 to the Licence.

2. The licence is intended to allow the export of certain cryptographic items which the UK agreed as a Member State to the Wassenaar Arrangement (WA) should be subject to a de-control note.

3. The control on the export of dual-use items is applied via the Council Regulation (EC) No.428/2009 which is currently being amended to take into account changes agreed By EU Member States in the international non-proliferation regimes during 2009/10. Therefore this licence is intended to provide interim licence cover until an amending Regulation enters into force.

4. The Export Control Order 2008 (“the Order”) contain certain registration and record keeping requirements which apply to persons using this Licence.

(a) Under Article 28 of the Order, an exporter who exports items under the authority of this Licence must, before or within 30 days after the first occasion he makes use of the licence, provide details to the Secretary of State of his name and the address where copies of the records referred to above may be inspected.

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

(b) Under Article 29 of the Order, any person established in the United Kingdom who exports items from the United Kingdom or another Member State

under the authority of this Licence must maintain and retain certain records relating to each such export for at least three years from the end of the calendar year in which the export takes place, and must permit such records to be inspected and copied by any person authorised by the Secretary of State.

5. 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 4(2)).

6. 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.

7. 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.

8. This Licence does not extend to any prohibition under legislation other than Council Regulation (EC) No. 428/2009 or the Order: in particular it does

not extend to prohibitions in other legislation implementing United Nations sanctions.