

## **SUPPLEMENTARY GUIDANCE NOTE ON OPEN GENERAL LICENCES AND THE COMMUNITY GENERAL EXPORT AUTHORISATION (CGEA)**

### **What are Open General Licences (OGLs) ?**

Open General Export Licences, (OGELs) allow the export of specified controlled items by any exporter, removing the need for exporters to apply for an individual licence, provided the shipment and destinations are eligible and the conditions are met. Exporters must register with the Export Control Organisation before they make use of most OGELs. There are also a small number of Open General Transshipment Licences (OGTLs), for which registration is not required. All Open General Licences remain in force until they are revoked.

### **What is the Community General Export Authorisation (CGEA)?**

The Community General Export Authorisation is the Community equivalent to the system of OGELs issued under UK law. Although as with OGELs, the CGEA allows the export of specified dual-use items to listed destinations by any exporter providing the conditions are met, unlike OGELs the CGEA is not issued by national authorities but is published as Annex II of the new Council Regulation (EC) No.1334/2000. Exporters established in the UK must register with the Export Control Organisation to use the CGEA.

### **How do I register to use a particular OGL or the CGEA?**

As noted above, exporters must register with the Export Control Organisation before they make use of most OGELs or the CGEA. To register, you should write to the address given at the end of this Guidance Note or fax no 020 7215 0531, and give the following information:

- Title of the OGEL that you wish to register to use, or state that you wish to use the CGEA;
- Full name and VAT number if applicable;
- Address at which copies of the records of shipments made under the OGEL or CGEA may be inspected;
- Named contact point, with telephone number and e-mail address if available.

### **What restrictions and conditions apply to OGLs and CGEA ?**

The restrictions and conditions, that exporters must comply with vary from licence to licence. However, they are likely to include at least the following:

- a) End-use - The licence does not authorise the export of items in respect of which the exporter has been informed, knows or suspects that they are intended in their entirety or in part to be used 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 (weapons of mass destruction) or development, production, maintenance or storage of missiles capable of delivering such weapons;
- b) Customs Control - The licence does not authorise exports to any destination within a customs free area;
- c) Documentation - The licence requires (except in the case of an export of technology or software in intangible form) the official and commercial export documentation accompanying items to include a note stating that "the goods are being exported under Open General Export Licence....", and shall be presented to a Customs Officer if requested.
- d) For exports of dual-use items the licences will not authorise the export where the items in question are intended for a military end-use as defined under Article 4(2)&(3) of the EC Regulation.
- e) Registration and reporting requirements and any additional information which Member States might require in respect of the CGEA are defined by each Member State from which the export takes place. Details of the information to be kept in relation to certain cryptographic items when exported from the UK under the CGEA, which is in the persons possession or other information as that person can reasonable be expected to obtain, can be found in Part II of Schedule 4 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 ("the Order") and are re printed below:

**1.** A general description of the "goods" and "software"(as defined in "the Regulation"), such as might be contained in a product brochure;

**2.** Descriptions of all relevant encryption algorithms and key management schemes, and descriptions of how they are used by the "goods" and "software"(e.g., which algorithm is used for authentication, which for confidentiality and which for key exchange); and details (e.g., source code) of how they are implemented (e.g., how keys are generated and distributed, how key length is governed and how the algorithm and keys are called by the "software");

**3.** Details of any measures taken to preclude user modification of the encryption algorithm, key management scheme or key length;

**4.** Details of pre- or post-processing of data, such as compression of plain text or packetisation of encrypted data;

**5.** Details of programming interfaces that can be used to gain access to the cryptographic functionality of the "goods" and "software"; and

**6.** A list of any standards or protocols to which the "goods" and "software" adhere.

### **Can OGLs and the CGEA be used to export goods from other EU Member States?**

Any OGEL covering dual-use items listed in Annex I to the Council Regulation (EC) No.1334/2000 is a Community licence and is valid throughout the Community. This also applies in respect of the CGEA. However, OGELs covering military goods listed in Schedule 1 part 1 of the Order (the Military List) and OGTLs are not Community licences and are only valid for exports from the UK or transshipments through the UK.

### **Do I need to submit an application for an OGL or the CGEA ?**

No. OGELs, OGTLs and the CGEA are not issued to individual exporters but are valid for any exporter wishing to export the goods listed to the destination(s) allowed, providing the exporter meets the restrictions and conditions of the licence. However, exporters must register with the Export Control Organisation, see above, before they make use of the CGEA and most OGELs; registration is not required for OGTLs.

### **How long are OGLs and the CGEA valid ?**

All OGELs and OGTLs remain in force until they are revoked or in the case of the CGEA amended.

### **How does the Government monitor compliance with the conditions of OGLs and the CGEA ?**

Where an exporter has registered to use the CGEA or a particular OGEL, the ECO's Compliance Unit will monitor the exporter's compliance with the conditions of the licence by visiting the exporter's premises from time to time. The Unit ensures that exporters are aware of their responsibilities with regard to export control and helps exporters set up and maintain procedures which are necessary to avoid breaches of export control regulations. HM Customs & Excise is of course the enforcement authority responsible for carrying out documentary and physical controls at UK ports and airports.

### **Are Open General Licences ever amended ?**

Yes. Any licence issued by the Secretary of State may be amended at any time. Notices to Exporters detailing changes to Open General Licences are published in Lloyd's Register and elsewhere and, of course, are published on ECO's Internet website. Any changes made to the CGEA will require an amendment of the Council Regulation and will be published in the Official Journal of the European Communities as well as in Notices to Exporters and on the ECO's website.

### **Where can I obtain copies of the current OGLs and the CGEA?**

All current Open General Licences, including a version of the CGEA, can be downloaded from ECO's Internet website, and copies are also available from the Helpline. The CGEA is also published in the Official Journal of the European Communities as Annex II to the Council Regulation No. 1334/2000 (O.J. L.159, 30.6.2000, pp.200-201), as amended.

### **Further information**

For further information on OGLs and CGEA, the role of ECO's Compliance Unit or strategic export controls in general please contact:

ECO Helpline  
Export Control Organisation  
Department of Trade and Industry  
3rd Floor, Kingsgate House  
66-74 Victoria Street  
London  
SW1E 6SW  
Tel: 020 7215 8070  
Fax: 020 7215 0531  
e-mail: [eco.help@dti.gsi.gov.uk](mailto:eco.help@dti.gsi.gov.uk)

### **Last revised June 2004**

**This Note is for guidance only. It is NOT a statement of the law. Before exporting, you should refer to the legal provisions in force at the time.**

## **List of Frequently Asked Questions:**

### **Q1: Do I have to quote a licence number?**

A1: No. However, you should indicate on commercial or Customs declarations the name of the OGEL you are intending to use.

### **Q2: Does a copy of the OGEL need to accompany to the goods?**

A2: There is no requirement for a copy of the OGEL to accompany the goods, however, if you are intending to export dual-use goods from another EU Member State their Customs authorities may wish to see a copy of the relevant licence.

### **Q3. Why do I have to keep records?**

A3: Legislation requires records of exports to be maintained and exporters using OGELs will be visited by compliance officers to ensure that exporters are compliant with the restriction and conditions of OGELs. This involves checking records of exports made.

### **Q4: How do I find out more about the antiques OGEL?**

A4: The Antiques OGEL is issued by the Department of Culture Media and Sport (DCMS). A link to the OGEL is available on the ECO's website at <http://www.dti.gov.uk/export.control/ogelicences.htm> Further information can be obtained direct from DCMS (<http://www.culture.gov.uk>).

### **Q5: What is meant by Condition 5 (d) of the OGEL For Exhibition Military Goods and condition 5 (e) of the OGEL After Exhibition Military Goods?**

A5: This condition excludes from its interpretation of the word "exhibition" demonstration or evaluation. However this does not exclude demonstration or evaluation at the site of the exhibition that the goods have been exported to. The exclusion covers goods exported for the purpose of demonstration or evaluation elsewhere e.g. at a company site or government building.

### **Q6: Why isn't there an OGEL for Exhibition to cover Dual-use items?**

A6: There is a wide range of OGELs available covering controlled dual-use goods, which do not specify end-use, as such they can be used to cover exports for exhibition. In addition the Community General Export Authorisation (CGEA) is also available for 7 countries. The wide availability of OGELs reduces the need for a specific OGEL to cover overseas exhibitions.

**Q7: What is covered by Council Directive 91/477/EEC on the control of the acquisition and possession of Weapons?**

A7: This refers to a European Directive, which outlines procedures EU Member States should take when transferring firearms to another Member State. In particular it stipulates the types of licences and procedures to follow when transferring firearms, which does not include the use of Open General Export Licence (OGELs) i.e., OGELs which include reference to the fact that 'this licence does not authorise the export of goods...which fall within the scope of Council Directive 91/477/EEC..', cannot be used for the export of firearms and related ammunition within the European Union.

**Q8: What are the requirements of Article 13?**

A8: Article 13 of the Order, deals with use of Open General Licences and the requirement to register with the Department exporters details and the need to maintain records of exports made.

**Q 9: How much will an OGEL cost?**

A 9: There is no charge for applying for an export licence.

**Q10: What other documentation should accompany the goods?**

A10: Normal commercial documentation and/or Customs forms will be required. For details check with your local Customs and Excise Office. Some OGELs e.g., OGEL (Export for Exhibition: Military Goods), require extra documentation, refer to conditions of licence concerned.

**Q11: Can I send out replacement parts under the repair OGELs without having to return the faulty goods?**

A11: No. The repair OGELs require the importation of goods for repair and only when a repair is not possible for the supply of a replacement under warranty.

**Q12: Can I use an OGEL to export goods to a destination not covered via a destination that is covered by the OGEL?**

A12: No. The authority to use an OGEL is subject to the conditions and restrictions of each OGEL these will include such conditions as .." may be exported from the United Kingdom to any destination in a country specified in the Schedule...". If the items are intended for re-export to a destination in a country not on the Schedule you should apply for an individual export licence.

**Q13: Can the OGEL (Military Components) be used to send out replacement components which were previously supplied under a licence?**

A13: No. The OGEL is to allow exports of components as an integrated part of main equipment previously supplied under a licence.

**Q14: Can we use the OGEL (Military Components) if we were not the original supplier of the main equipment?**

A14: Yes providing you are able to satisfy the restriction and conditions of the licence, which includes providing an assurance from the Government end-user that the original goods were exported from the UK under a valid licence or supplied by the UK Government.

**Q15: Do I have to comply with all the provisions of paragraph 1 (i) to (iii) of the OGEL (Military Components)?**

A15: No. You have to comply with 1(ii) and (iii) but in 1(i) you only have to comply with 1(i)(a) or (b).

**Q16: Reference is made in the Computers OGEL to "retail selling points"; "without restriction"; etc what is meant by this?**

A16: The terms used in the OGEL (Computers) are the same as those which already apply in the General Software note (GSN) and Cryptographic Note. In general the terms are taken to mean the following;

- "from stock" - standard types, usually produced in bulk, that are really generally available rather than special, bespoke items made to order;
- "retail selling points" - are considered as places where the goods in question are readily available, such as, High Street and warehouse shops which facilitate over the counter sales; and companies which make sales via telephone, fax or internet transactions; purchases made with reference to a mail order catalogue, magazine or newspaper advertisement, etc; media which are of course generally available in their own right;
- "without restriction" - where any person whatever may acquire the goods by paying a standard price to the person selling it. "restriction" means, in this context, either that some persons are excluded from being allowed to buy or that purchasers are subject to conditions or limitations other than those arising from copyright;

**Q17: What is meant by "unwanted goods"?**

A17: As the term is not defined within the body of the licence the term may be given the broadest definition. For example the term is capable of covering goods being returned after demonstration, trial, evaluation or exhibition; goods received in error or to the wrong

specification or to goods damaged on receipt. However, in order to use the licence exporters must be able to meet the conditions and restrictions which are within the body of the licence including consignee and country limitations.

**Q18: Do I have to comply with all the provisions of paragraph 1 (i) to (iii) of the OGEL (Export After Repair/replacement under warranty: Military Goods)?**

A18: No, you need only comply with one of the provisions.

**Q19: Can I use the OGEL (Military Goods: Government or NATO End-Use) to supply components to Germany for incorporation into military equipment via a contractor for ultimate use by the Italian Government and then supply spares via the same route?**

A19: Yes, providing the goods are covered under Schedule 1 to the licence and the goods go via a contractor company engaged in a government project or government procurement in a country specified in Schedule 2 for the use of the Government of a country specified in Schedule 2.

**Q20: Can I use the OGEL (Military Goods: Government or NATO End-Use) to send components to the USA for incorporation into military equipment for return to the UK for the MOD?**

A20: Yes since the UK is specified in Schedule 2.

**Q21: Can I use the OGEL (Military Goods: Government or NATO End-Use) to demonstrate to a Government listed under Schedule 2?**

A21: No. The OGEL covers exports for the use of the government (which includes temporary export for testing and trial purposes), of the country to which they are exported but does not cover temporary exports for demonstrations.

**Q22: If I am exporting an aircraft to a country covered by an OGEL can I stop over in a country which is excluded e.g., for refuelling?**

A22: Generally No. If a country is excluded from the OGEL this would also apply to journeys through the country. Therefore, if you wish to route your journey through countries not covered by the OGEL an individual licence would need to be obtained for those destinations. However, specific provision is made in the OGEL (Export For Exhibition: Military Goods) to allow for en-route support, including refueling, in countries excluded from the licence providing the exporter has obtained prior written approval from MOD to do so.