



CIVIL AVIATION PUBLICATION

CAP 31

EXEMPTIONS

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EXEMPTIONS

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1. GENERAL

1.1 Background

In accordance with San Marino Law, the CAA may exceptionally grant an exemption from the provisions of a regulation or policy when satisfied that there is a need and subject to compliance with any supplementary condition the CAA considers necessary in order to ensure an acceptable equivalent level of safety in the particular case. The CAA cannot grant an exemption from Laws or Decrees.

Variations can be processed in the same manner as an exemption but are issued on a one-off basis against a technical requirement or policy as opposed to a regulation. Exemptions are normally specific in nature and may be one off, temporary or permanent.

Note 1: "Exemptions/one-off approvals" are the terminology used by the CAA whereas other NAAs may use the terms "waivers, extensions, exceptions, derogation, deviations, dispensations".

Note 2: For the purpose of this CAP, whenever the term "exemption" is used, it may be taken to apply to the term "variation", as appropriate.

It is an operator/organisation's responsibility to plan for contingences within the latitude of the legislation and there is no obligation upon the CAA to grant an exemption. The granting of an exemption should always consider an equivalent safety provision, so that the safety of the aircraft, crew, passengers and persons on the ground is not compromised. Any exemption will only be granted on the basis of a robust rationale.

Therefore, the issuance of an exemption must include measures that are supported by appropriate, robust and documented safety risk assessments or aeronautical studies and imposition of limitations, conditions or mitigation measures, as appropriate.

Exemptions are not be used to overcome an unpopular requirement or to suggest that compliance with a requirement is optional. The use of the exemption mechanisms needs to be the exception to the rule, not the norm.

The exemption process should not be regarded by an operator/organisation as a means to circumvent the requirements nor be regarded as the primary solution to an operational/organisational difficulty faced by an operator.

Applications for exemptions shall, under no circumstance, be issued in retrospect as a means to alleviate against a breach of a requirement.

1.2 Publishing of Exemptions

In addition to the exemption, once granted, being sent by nominated email to those affected, information regarding permanent or general exemptions is published on the CAA website to ensure all persons, operators or organisations, whether affected or not, are informed to the publication of the exemption. This is to ensure that exemptions, and any conditions imposed, are exercised evenly and without favour.



The register of the exemption applied indicates the exemption details and conditions as well as aircraft type, MSN and registration, if applicable.

2. Types of Exemptions

2.1 Types

Exemptions are either temporary or permanent. Temporary may be a one-off event or last for a period of time before the exemption expires. Exemptions may require the CAA to file a difference with ICAO, amend a regulation or policy, or require the conditions to be documented in a specific operator/organisation manual. The most common types of temporary exemption are;

- (a) for flight operational areas, such as flight and duty time limitations;
- (b) for airworthiness areas, such as urgent maintenance issues although numerous exemptions may occur regarding extension of privileges or aircraft equipment;
- (c) safety related; or
- (d) general in nature.

2.2 Common Requests

2.2.1 Flight and Duty Time Limitation Exemptions

As a general guide, any request to increase the maximum hours or reduce the minimum rest will be considered on an individual basis, evaluating the specific flight operations to be conducted. Continual exemption requests regarding flight time limitations shall not be condoned or receive favourable consideration. Operators should limit requests for exemptions to those instances whereby the use of pilots beyond the limitation is unavoidable due to unforeseen circumstances and the only available option for the continuation of an operation.

2.2.2 Airworthiness Exemptions

The most commonly used forms of exemptions in Airworthiness areas are as follows:

- (a) To authorise an individual to issue a Certificate of Release to Service in a particular case.
- (b) To vary the work content to a check period of an Approved Maintenance Schedule (e.g. extension to repair interval).
- (c) To vary the requirement for compliance with Mandatory Modifications and Inspections or Airworthiness Directives.

Note: Whenever an exemption is granted which extends a check period of an Approved Maintenance Schedule, there may be repetitive mandatory requirements (such as ADs) which are also due. The extension of a check period does not automatically include such mandatory requirements.



2.2.3 Safety Related

On occasion there may be a request for an exemption, which is specifically safety related. For example;

- (a) a request to conduct low flying operations as part of a demonstration flight;
- (b) seats, which do not meet airworthiness requirements; or
- (c) equipment not meeting CAR OPS 1, Subpart K;

2.3 General Exemptions

There may be occasions where one exemption may apply to numerous persons, operators or organisations and this situation may be actioned as a general exemption. The issuance of a general exemption is unique and could be the consequence of a health or security alert, new ICAO Annex requirements or unforeseen circumstances. The COVID 19 pandemic required most States to issue general exemptions to address the difficulties experienced with training, maintenance and operations.

Note: As a general exemption may apply to numerous persons, operators or organisations, the exemption will firstly be sent to those affected by letter and also placed on the CAA website. Any affected person, operator or organisation must carry the letter of exemption when exercising the privileges of that exemption and that condition will be stated on the letter.

3. EXEMPTION POLICY IN RESPECT TO NEW ICAO LEGISLATION

With the timely amendment of the CARs based on ICAO Annex amendments, some existing operators/organisations may not be able to comply with the new requirements immediately. Also an aircraft being transferred from another Registry may not have had such a requirement under that Registry.

To give operators/organisations sufficient time to comply the CAA may grant an exemption in justifiable cases.

For example, where an ICAO Standard amendment involves the fitment of new equipment there may be times where major NAAs such as the FAA or EASA permit a delay for the introduction of that equipment. The justification may be that the equipment is not available from the manufacturer (e.g. CVR/FDR locator beacons or reinforced cockpit doors) or it could be for other reasons. The FAA or EASA may issue a general exemption, or just file a difference with ICAO, so it is reasonable for the CAA to adopt a similar methodology.

The CAA's policy is to offer up to a one-year exemption to affected operators/organisations upon application (Form SM 140) provided that operator submits an acceptable action plan to comply with the new legislation.



4. HAZARD IDENTIFICATION AND RISK ASSESSMENT

Where an operator/organisation is required under the CARs to have an SMS, a risk assessment must be conducted and evaluated by the CAA as one of the most important areas where an exemption may be granted is to identify hazards involved.

Note: The identification of hazards and risk assessment is described in CAP 15 para 2.2 and ICAO Doc.9859 and would be part of the operator/organisation's accepted SMS.

Exemptions, or extensions to them, will only be granted on the basis of a robust rationale and must be supported by documented safety risk assessments or aeronautical studies and if appropriate, the imposition of limitations, conditions or mitigation measures to demonstrate whether an equivalent level of safety or an alternative acceptable means of compliance can be achieved. The safety risk assessment must be conducted by one or more suitably qualified persons with sufficient domain knowledge and experience to take a balanced view of the likely operational/organisational impact.

The process starts with the identification of hazards and their potential consequences created by a departure from regulations or CAA policy. The safety risks are then assessed in terms of probability and severity, to define the level of safety risk.

If the assessed safety risks are deemed to be tolerable, appropriate mitigating action is taken, where appropriate, and the application Form SM 140 may be submitted. The completed hazard identification and safety risk assessment and mitigation process must be documented in the operator/organisation's SMS and sent to the CAA as supporting documentation.

5. APPROVAL PROCESS FOR EXEMPTIONS

5.1 Application

Requests for an exemption must be received from a senior key management person. This should be an approved Postholder for commercial air transport applications or the nominated airworthiness coordinator for general aviation applications. As these requests may be urgent an e-mail with Form SM 140 attachment would be acceptable. The supporting documentation must include;

- (a) justification for such a request;
- (b) documentation which clearly describes the need for an exemption;
- (c) a safety risk assessment in accordance with the operator/organisation SMS, if applicable;
- (d) risk mitigation measures, which could also indicate equivalent safety measures, if applied;
and
- (e) how your request would benefit the public as a whole, such as
 - (1) Reducing environmental pollution;



- (2) Benefitting the aviation industry and the flying public by improving a CAA process or procedure;
- (3) Providing goods or services that would be unavailable to the public otherwise; or
- (4) Positive economic impacts to the community.

All requests, with an accompanying risk assessment from the operator/organisation, will be thoroughly scrutinised by the CAA before issuance of an exemption or refusal of the application.

5.2 Approval

If approval is granted, the operator/organisation will receive a written exemption from the CAA. It is explicit in nature, and for example, may include each pilot crewmember by name or the applicable maintenance issue, as well as the aircraft type and registration number if necessary. The exemption, unless permanent, will expire at a specific time limit.

Note: Should the exemption be denied then a written advice will be sent by the CAA to this effect.

5.3 Extensions or Changes to an Exemption

There may be occasions when an operator/organisation needs to commence the privileges of the exemption at a later date than applied for or where circumstances have changed that require a minor amendment to an existing exemption. The Form SM 140 is also used to apply for an extension or minor change and should be submitted indicating the reasons and including any additional supporting documentation.

Any change to an existing exemption, which was based on a scenario not originally applied for, must be considered as a new application.

6. RECORDING OF EXEMPTIONS

A copy of each exemption issued must be retained by the operator/organisation, together with the supporting justification. The documentation must be available in the SMS and should be minuted in future SMS/SRB/SAG meetings, as applicable. The terms of an exemption must be notified to the person, operator or organisation affected and, depending on the exemption, may need to be distributed by a temporary or permanent revision to an appropriate manual.

7. FOLLOW UP ACTION

7.1 Operator/Organisation

Some exemptions will need to be followed up by the operator/organisation to ensure the terms of the exemption have been complied with. A need for subsequent applications may indicate adverse trends or deficiencies within the organisation.

Furthermore, the operator/organisation must regularly review any exemption with a view to removing the need for such exemption, where possible, as well as check the validity and robustness of any mitigating measures in place.



Permanent exemptions must be included in the Operations Manual as part of the approval process. In the case where the exemption is temporary, it may be acceptable for the terms of the exemption to be placed in the operator's crew notification system.

7.2 CAA

The CAA will follow up all exemptions granted to ensure the terms of the exemption have been complied with. For example, when a flight and duty time exemption has been granted, the operator will be requested to submit to the CAA a photocopy of required documentation to determine the correct administration of the exemption.

The required documentation may include the technical log used during the exemption period, inclusive of all flights flown by the crew as well as the pilot log book or company records. Where an exemption has been granted for an airworthiness issue the CAA may review the aircraft maintenance documentation

7.3 Non Compliance

Non-compliance with an exemption is equivalent to non-compliance with the applicable regulation/policy upon which exemption action was taken and may result in enforcement action.

8. APPEAL PROCESS

Where an applicant for an exemption has had the application denied, or a condition/limitation placed on the exemption, which adversely affects the applicant, he/she may apply to the CAA within 30 days to appeal the CAA's decision.

A separate investigation will be conducted by an inspector appointed by the Director General, who is experienced with the subject matter, and a decision would be made either to reverse the previous decision, or to accept the previous decision, or to amend any exemption. The CAA would then notify the applicant of the decision within 7 days.

It should be noted that, under Law, the Director General may exceptionally grant an exemption from the provisions of aviation safety regulations when satisfied that there is a need and subject to compliance with any supplementary conditions considered necessary in order to ensure an acceptable level of safety in the particular case.

9. PUBLISHING OF EXEMPTIONS

In addition to the exemption, once granted, being sent by nominated email to those affected, information regarding permanent or general exemptions is published on the CAA website under the "Exemptions" tab to ensure all persons, operators or organisations, whether affected or not, are informed of the publication of the exemption. This is to ensure that exemptions, and any conditions imposed, are exercised evenly and without favour.