

Advisory Circular

CAA-AC-GEN015

June, 2023

EXEMPTIONS POLICY AND PROCEDURES

1.0 PURPOSE

- 1.1 The Purpose of this Advisory Circular is to provide guidelines and procedure for the application and processing of exemptions from provisions of the Civil Aviation Regulations.
- 1.2 This Advisory Circular also provides information on the criteria for granting exemptions from regulatory provisions while ensuring that the exemptions from regulatory requirements are not the norm for operations and that they are only applied for and used as relief, additionally applicant for exemptions are required to ensure that public interests are protected, and safety is not compromised.
- 1.3 The Authority is committed to implementing regulatory requirements and procedures for the consistent processing of exemption requests and a rationale in the development of criteria to either grant or deny exemptions from regulatory requirements.
- 1.4 This Order applies to all inspectors and officers involved in the consideration, evaluation and recommendation of exemptions from any (appropriate) provisions of the civil aviation exemption regulations.

2.0 REFERNCE

- 2.1 The Civil Aviation Act, 2013 (as amended).
- 2.2 Kenya Civil Aviation Regulations.

3.0 POLICY STATEMENT

- 3.1 The Civil Aviation Act No.21 of 2013 (as amended) provides for the issuance of exemptions. Section 49 of the Act provides that:

That the Authority may upon an application by an operator, a license or a certificate holder or a holder of any authorization, as the case may be, on aviation safety or security matters, grant

exemptions on such terms and conditions as may be necessary, with respect to the application of any regulations made under the Act provided that any such exemptions granted shall not compromise aviation safety and security standards. The Authority in issuing exemptions shall ensure that such an exemption is in the public interest.

- 3.2 The Kenya Civil Aviation Regulations (KCARS) specify conditions under which an application for specific exemptions may be made to the Authority.
- 3.3 The Authority is committed to ensuring that civil aviation operations in Kenya meet national regulatory requirement which are drawn from the international standards and recommended practices as provided for in Article 37 of the Convention on International Civil Aviation and that operations are conducted in a manner that does not compromise aviation safety and security.
- 3.4 This Policy statement covers all types of exemptions issued by the Authority and forms the guiding principles for the issuance of exemptions by the Authority to ensure that whenever issued, such exemptions shall in no way compromise the safety and security of air transport in Kenya.
- 3.5 A person (a certificate, license, authorization, or approval holder) may apply to the Authority for exemption from the application of any of the provisions of the regulations and/or directives issued by the Authority.
- 3.6 The Authority, in considering applications for exemptions, shall require that an applicant for an exemption provide a comprehensive risk assessment and propose appropriate/acceptable mitigation measures to ensure preservation of safety and security.
- 3.7 The Authority shall ensure that any exemption granted is endorsed on the relevant certificate, licence, approval, or authorization including any limitations and conditions on the certificate, licence, approval, or authorization.
- 3.8 The Authority shall require regulated entities that have been granted exemption(s) to review and amend all relevant documentation in their operations to reflect the exemption and its effects. Additionally, holders of exemptions shall be required to submit to the Authority (without delay) any operational difficulties specifically associated with the exemption and provide detailed mitigations measures put in place to prevent degradation of aviation safety and security.
- 3.9 An exemption granted by the Authority does not absolve the entity to which it is granted from obligations conferred by other laws. Where an exemption has been granted touching on matters of aviation safety and security the position of the Authority shall prevail.
- 3.10 Nothing in this policy is intended to inhibit the planning or provision of facilities for larger aeroplane, facilities, or equipment where appropriate additional safeguards may be required to cater for more demanding aircraft that may be introduced later.

3.11 An exemption granted shall continue to apply until its expiry or the expiry date specified in the relevant certificate, license, approval, or authorization.

4.0 GENERAL

4.1 Exemptions are utilized as a means of facilitating regulated entities (operators) to continue to offer their services despite not meeting certain provisions of the regulations. These are considered exceptional rather than the norm and are only to be granted after careful consideration and review.

4.2 It is the responsibility of a license, certificate, approval, or authorization holder to determine the need to apply for an exemption and not the responsibility of the Authority or persons acting on behalf of the Authority to initiate requests for exemptions.

4.3 Whenever there is an application for exemption by a certificate, license, authorization, or approval holder the application shall be evaluated and granted or denied in accordance with the prescribed procedures.

4.4 Noting that exemptions are only meant to facilitate operators and not an excuse to avoid compliance, exemptions shall, therefore, only be granted for a period prescribed by law and the applicant shall endeavor to comply with regulatory requirement as the end of such period unless it is otherwise prescribed.

4.5 Applicants for exemptions are required to submit their application in the prescribed format and avail the following:

- 4.5.1 a citation of the specific requirement from which the applicant seeks exemption.
- 4.5.2 an explanation why the exemption is needed.
- 4.5.3 a description of the types of operations to be conducted under the proposed exemption.
- 4.5.4 the duration of the exemption.
- 4.5.5 an explanation on how the exemption would be in public interest.
- 4.5.6 a detailed explanation of how the applicant will ensure that the safety standards are not compromised with the approval of the proposed exemption.
- 4.5.7 a review of known safety concerns that arise from granting the proposed exemption.

4.6 Emergency Exemptions

- 4.6.1 The Authority recognizes the fact that operators may be strained during service delivery and require for operational reasons and provides for emergency exemption applications. Emergency exemption applications may be made with short timelines for consideration and issuance (this is to support operational challenges meant to be relieved by the exemption).
- 4.6.2 Applicants seek emergency exemption; are required to submit their application in the prescribed format which must contain supporting facts and reasons that justify the grounds for emergency which may include:

- 4.6.2.1 Unforeseen operational challenges.
- 4.6.2.2 Pandemics and natural disasters.
- 4.6.2.3 Operational constraints beyond applicants' control.
- 4.6.3 Such emergency applications shall be processed using the same procedures; however, the Authority shall endeavour to process and consider the applications expeditiously.

4.7 Consideration for exemptions

- 4.7.1 Noting that exemptions are to be used in exceptional circumstances and not the norm for oversight of the industry, the Authority shall consider the following general circumstances when exemptions may be warranted:
 - 4.7.1.1 When prevailing operational conditions do not allow for immediate full compliance.
 - 4.7.1.2 When unexpected conditions exist that prevent full compliance; and
 - 4.7.1.3 When the regulation(s) in question is drafted in a manner that its implementation is not practicable.

Note:

In the event of regulatory drafting challenges, the Authority shall consider issuance of general orders regarding the implementation of such regulations, or differ the implementation, or through the relevant process amend the regulations.

4.8 In considering applications for exemptions the Authority will ensure that:

- 4.8.1 The provisions against which the applicant has requested for an exemption are such that the exemption(s) can be issued without further risk to the aviation system. Regulations such as Rules of the Air may not be considered for exemptions, alternative means of accommodating the applicant such as segregation would, however, be considered.
- 4.8.2 Applicants have put in place acceptable and sound mitigation measures or alternative means of compliance that offer a similar if not more level of protection as that provided for in the regulations. A safety risk assessment of aeronautical study shall accompany applications for exemptions.
- 4.8.3 Exemption(s), if issued, shall not expose the Authority to undue litigation or enhanced liabilities. The Legal Office has the responsibility of evaluating the potential legal liabilities accruing to the Authority if the exemption(s) is issued. If so desired, the exemption may include a clause absolving the Authority from liability resulting from such exemption.

4.9 It is the responsibility of the inspector and the Manager responsible for the affected regulations to ensure appropriate evaluation, assuagement, and review of the application package to ensure that the issuance of such exemptions does not degrade aviation safety and security and does not introduce an unmitigated risk in the operational environment.

5.0 CONDITIONS, LIMITATIONS AND PUBLICATION OF EXEMPTIONS

- 5.1 Exemptions are approvals by the Authority for a regulated entity to deviate from or employ alternative means of compliance in respect of regulatory requirements. It is therefore inherent that exemptions introduce a certain level of risk that does not exist with full compliance.
- 5.2 To ensure that any risks introduced by an exemption are adequately mitigated, the Authority shall consider and impose appropriate conditions and limitations on each exemption granted.
- 5.3 Limitations shall be imposed on the licence, certificate, approval, or authorization affected by such exemptions to the extent that the continued exercise of the privileges of such licence, certificate, approval, or authorization does not introduce unnecessary risk.
- 5.4 Additionally, to ensure transparency in the granting of exemptions, the Authority will endeavor to publish all granted exemptions in an appropriate format for the general public's information.

6.0 IMPACT & FILLING OF DIFFERENCES

- 6.1 The Authority has commitments to ensure that aviation regulations and practice in the Country are compliant with the provisions of the Convention on International Civil Aviation and its associated Annexes. To this end the Authority is obliged to conduct an evaluation of exemptions granted and establish their impact on the level of compliance by the Kenya with ICAO provisions.
- 6.2 For physical characteristics, therefore, (in aerodrome and air navigation services), where the Authority has granted an exemption, publication in the Aeronautical Information Publication (AIP) shall be made as appropriate and necessary notifications made to ICAO.

7.0 MONITORING, SURVEILLANCE AND SAFETY REPORTING

- 7.1 Once exemptions have been granted the Authority shall undertake appropriate monitoring of the licence/approval/authorization holders who have been granted an exemption.
- 7.2 The monitoring is aimed at ensuring that the licence/approval/authorization holder continuously comply with the conditions and/or limitations imposed in respects of the exemption as well as ensure that there is no degradation of aviation safety beyond envisaged tolerable limits to pose imminent danger to aviation.

7.3 The Authority shall also enhance the risk prioritization for all licence/approval/authorization holders who have been granted an exemption. Additional surveillance activities may be planned to assess the performance of the licence/approval/authorization holders for the duration of the exemption.

7.4 Licence/approval/authorization holders granted exemptions shall be compelled to make appropriate reports to the Authority, such reports may include Mandatory Occurrence Reports as well as Voluntary Reports on operational challenges and occurrences related to their operations.

7.5 Comprehensive investigation of all reports shall be undertaken to provide root causes and ensure that existence of the exemptions does not contribute to operational challenges.



Civil Aviation Authority



FORM

FORM-AC-GEN015

June, 2023

EXEMPTION APPLICATION FORM

1. Name of applicant	2. Licence/approval/authorization & Number
.....
3. Address of applicant	4. Specific provisions from which exemption is sought
.....
5. Explanation why exemption is sought	6. Type of operations affected by the exemption
.....
7. Duration of the exemption	8. How is the exemption in public interest
.....
9. Safety Risk Assessment & Mitigation	
<i>Please complete the attached matrix.</i>	
10. Submitted by	
Applicant: Designation:	
Signature: Date:	

RISK ASSESSMENT MATRIX								
Risk No.	Risk	Risk Rank	Impact	Mitigation	Residual Risk(s)	Residual Risk Rank	Additional Action	Responsible