



# ADVISORY CIRCULAR

**NCAA-AC-GEN012**

**AUGUST, 2023**

## **EXEMPTION, DEVIATIONS, WAIVER OR AUTHORIZATIONS**

### **1.0 PURPOSE**

This Advisory Circular (AC) is issued to provide information and guidance on how to apply exemption, deviations, waiver or authorizations against Nigeria Civil Aviation Regulations.

### **1.1 STATUS OF THIS ADVISORY CIRCULAR**

This is the first AC to be issued on this subject.

### **1.2 APPLICABILITY**

This AC applies to all persons requiring and exemption, deviations, waiver or authorizations against Nigeria Civil Aviation Regulations.

### **1.3 REFERENCE**

Nig. CARs Part 1:

### **1.4 DEFINITIONS**

1.4.1 For the purpose of this AC, the following definitions shall apply:

Public interest. The concept of public interest has no fixed meaning in law and its scope may be broadened or narrowed according to the circumstances. It is clear, however, that the simple protection of a "private interest" will not satisfy the public interest test. Consideration must be given to how the exemption will impact on other members or segments of the regulated community as well as on the public at large. (Please refer to Appendix 1 for factors to consider in the determination of "public interest" during the decision-making process of whether to grant or deny an exemption request.)

### **1.5 BACKGROUND**

The Director General is empowered under the Civil Aviation Act and Nig. CARs Part 1.4 to grant an exemption from compliance with regulatory requirements only in

exceptional situations when a regulation cannot apply, and if certain conditions are met.

It is a fundamental requirement under the Nigeria legal system that regulatory provisions will be applied universally and governs all members of the affected public equally. This enables each person to know what is required by the law and to act with the expectation that all persons to whom the law applies will be obeying the known requirements of that law.

However, it has long been recognized that, due partly to the dynamics and complexities of aviation and its impact on the operating environment, in certain situations governed by law, there may be occasions when the regulation cannot or ought not to apply. In such cases, it may be appropriate to issue an exemption.

The essence is to ensure the exemption process is applied in an equitable manner to all those who come forward with a request, while simultaneously ensuring the best interests of the public are protected.

Request for Exemptions do not be apply in respect of deviations from regulatory amendments in progress. Such exemptions can only be considered after the applicable amendments have been made to the regulations.

## **2.0 BASIC STEPS TO EXEMPTION PROCESS**

### **2.1 Step 1 – Exemption Request**

The written application can be submitted by mail, telefacsimile or email.

Details are as follows:

Phone:

Fax:

Email:

Postal:

Ideally, an application for an exemption should be submitted no less than sixty (60) days before the intended date of commencement. The Authority, whilst examining all documentation submitted and all the surrounding facts, will endeavor to process all exemption applications in due time. However, it is the responsibility of the applicant to ensure that his application is complete and includes all required information. Any incomplete applications may delay the process or result in a denial of the application for exemption.

Once the Authority receives the application and relevant documentation, at any time during the evaluation of the application, it can revert to the applicant to request further documentation, or clarification.

The exemption request package is to include:

Signed cover letter. The applicant must prepare a covering letter addressed to the Director General and signed in original. In the covering letter the applicant must outline the reasons behind his request for an exemption and reproduce accurately the specific

regulatory obligations / provisions / requirements for which the applicant is seeking an exemption from as stated in the Exemption Application Form. The applicant must also state when full compliance is intended to be resumed. It is important that the covering letter does not contain any discrepancies with the information provided in the Exemption Application Form as this could delay the process.

Completed Exemption Application Form (NCAA Form AC-GEN012)

Information and documentation to support their argument that the exemption is not likely to affect aviation safety and is in the public interest;

Documentation should include the safety assessment/aeronautical study report. The report should specify conditions that would mitigate any risk that could be created by virtue of the exemption to ensure that aviation safety will not be affected.

Supporting argument on how the exemption would be in the public interest, where necessary

The proposed plan for monitoring implementation of the mitigating actions, if the exemption is granted

Any licenses/certificates belonging to the Applicant. Any relevant licenses or certificates covering facility/equipment for which an exemption is sought or held by the person or organization seeking an exemption, must be attached to the Exemption application for submission to the Authority. They must be submitted either in original or authenticated copies.

Multiple Exemption. In case of multiple exemptions being sought i.e. if an applicant seeks an exemption from more than one regulatory obligation/requirement, a separate Exemption Application Form, together with separate Attachments, including a separate Cover letter, all as described above, must be filled in

## **2.2 Notification of Decision to the Applicant**

The operator making the request is notified in writing of its decision. If the Authority refuses to grant an exemption, or imposes conditions not sought by the applicant, then Authority will give reasons for its decision.

Decision to Grant. The applicant is issued the document granting the exemption if it is concluded that the applicant's arguments support a grant of exemption. The conditions and procedures under which the exemption is granted shall be outlined in the Exemption document.

A decision to deny the exemption is based on the determination that the exemption would not be in the public interest, would adversely affect safety, or, if applied, would not provide a level of safety equal intended by the regulation. Under such circumstances, the reasons will be cited in the denial of the exemption document.

Partial Grant of an Exemption. If the Authority determines that part of the applicant's request meets the criteria for granting the application, it may issue a partial grant of exemption. The document must fully discuss those parts of the request that are being denied and those that are being granted.

## **2.3 Renewal of Exemptions**

Specific expiry date for exemption is up to 18 months

The period extending from the date of signature to the specific expiry date set out in line a) under the Validity heading must not extend beyond 18 months.

For the expiry date, the date and the time, in that order, must be indicated clearly. The date is expressed “date, month, year”, (for example 25 June, 2017). The time is expressed in hours and minutes separated by a colon. Note that “00:01” is used for the beginning of the day and “23:59” is used for the end of the day. Refrain from using “00:00” or “24:00” which could lead to ambiguity.

An exemption may be renewed. The process for renewal of an exemption is much the same as for its original issue. An applicant for renewal of an exemption must set out in writing the details of the exemption, but does not need to give the Authority information or documents previously supplied and which have not changed since the previous exemption was issued. However, the applicant should be aware that a renewal application does not automatically entitle the person to the granting of a further exemption in the same or similar terms. Each application will be assessed on its merits at the time of the application. After processing the exemption, the Authority will issue a grant or denial letter which will include the following

The applicable regulation  
Grant or denial statement; and  
Exemption number (after signed)

A copy of the extension or denial shall be filed on the Register of exemptions.

## **2.4 Exemptions Are Not Transferable**

An exemption is not transferable. They are not property and cannot be handed from person to person. This includes exemptions which may be issued in relation to fixed or mobile facilities which, as property, can be transferred.

If an exemption is granted in relation to a certificate holder and the person who was granted the exemption no longer operates the certificate, the exemption will also cease.

## **2.5 Revocation of an Exemption**

The Authority may revoke an exemption on request by its holder. The Authority may at any time revoke an exemption in the interests of safety. This may occur as a result of the applicant not complying with the conditions of the exemption, or special circumstances arising and the Authority becoming aware that continuation of the exemption may threaten air safety.

If the Authority decides to revoke an exemption other than on request, it will normally give the holder of the exemption reasonable notice of its intention to do so and provide them with the opportunity to respond. The Authority will take the exemption holder’s response into account in deciding whether or not to revoke the exemption. The Authority may not provide prior notice of its intention to revoke an exemption in circumstances of serious and imminent risk to air safety, or where the applicant has

been found guilty of breaching a condition of the exemption or a related provision of the regulations.

Where the Authority revokes an exemption, it will do so in writing and will state the reasons for the revocation.

## **2.6 PUBLICATION**

The Authority maintains a register of all conditions, publish the details of each exemption on the NCAA website (website address) and the AIP and endorse in the applicant operating certificate. The details include the duration of the exemption and any condition or limitations of the exemption

## **2.6 MONITORING OF THE EXEMPTION/DEVIATION**

### **2.6.1 General**

After a grant of the exemption, the NCAA must ensure that the Certificate Holder monitors the status of the deviation and ensure that the implemented recommendations have been effectively carried out, and that the level of safety is not compromised at any time. This assessment is to allow feedback into the safety assessment process, if required.

For temporary deviations, the certificate holder is also required to notify the Authority after the deviation has been corrected.

### **2.6.2 Developing A Monitoring Plan**

The certificate holder shall develop and implement a monitoring plan and submit to NCAA periodic reports regarding the status of implementation of the approved mitigation actions to determine whether they are effective in providing an acceptable level of safety.

The monitoring plan must be comprehensive to verify the predicted residual risk. A plan must be created for each hazard or deviation and must define:

Monitoring activities;

The frequency and duration of tracking monitoring results; and

How to determine, measure, and analyze any adverse effects on adjoining system

### **2.6.3 Monitoring activities**

The assigned inspector should verify that the controls and/or safety requirements were indeed put in place and are functioning as designed and that procedures must be stringently followed.

The operator must detail the method by which to gather the monitoring results. The assigned inspector should use the results to determine whether predicted residual risk was met.

The assigned inspector must ensure that the operator retains objective evidence that the safety requirements/controls have been implemented. Objective evidence is

simply documented proof. The evidence must not be circumstantial; it must be obtained through observation, measurement, testing, or other means.

#### 2.6.4 Frequency and duration of monitoring

When considering the frequency and duration of tracking monitoring results, the assigned inspector should ensure the following has been taken into account:

- The hazard's initial risk level,
- How often the hazard's effect is expected to occur (i.e., likelihood), Controls,
- The types of safety requirements that are being implemented (if any), and
- The amount of time needed to verify the predicted residual risk.

For example, when considering a hazard associated with the familiarity of a new procedure, a relatively short tracking period would be required until a person or population could reasonably be expected to adapt to the new procedure and the predicted residual risk could be verified.

Table A. Monitoring Plan (One Monitoring Plan Per Hazard/Deviation)

Monitoring Plan		
#	Item	Instructions
1	Initial Risk	Include the initial risk documented in the Hazard Log or Analysis Worksheet
2	Safety Requirement	Identify the controls that will be implemented to further reduce the risk
3	Organisation responsible for implementing Safety Requirement	Include information on the responsible Organisation
4	Predicted residual risk	Include the predicted residual risk documented in the Hazard Log or Analysis Worksheet
5	Monitoring Activity	Describe the task that will be performed to collect and analyse data to verify the predicted residual risk
6	Reporting Frequency	Specify how often the monitoring activity will be reported
7	Reporting Duration	Specify the total length of time for the monitoring effort

#### 2.6.5 Monitoring and current risk

A hazard's or deviation's current risk is updated at each monitoring interval (in accordance with stated monitoring frequency). Current risk provides an indicator of whether safety requirements are meeting the predicted residual risk. The assigned inspector must assess the current risk as often as prescribed for the duration of the monitoring plan.

#### 2.6.6 Predicted residual risk is not met

Through monitoring current risk it may become clear that the predicted residual risk is not being met. If this occurs, NCAA will officially request the safety analysis shall be revisited to assess the risk of the new hazards or develop additional safety requirements to lower the risk to an acceptable level. There are several reasons why the predicted residual risk may not be met:

The safety requirements or controls may not be properly mitigating the risk,  
The initial risk may have been assessed inaccurately,  
Unintended consequences may have occurred, or  
New hazards may be identified.

In either case, NCAA will request a reassessment to determine if changes to the risk management strategy are necessary. The Certificate holder's SRM team must be requested to assess the risk of the new hazards and/or develop additional safety requirements to lower the risk to an acceptable level.

### **2.6.7 Predicted residual risk is met**

The successful completion of monitoring is a prerequisite to the achievement of predicted residual risk.

The monitoring procedures used to verify the predicted residual risk should also be documented, The established monitoring requirements should be followed, even after meeting the goals of the monitoring plan.

## **3.0 DEVIATIONS, WAIVERS, AND AUTHORIZATIONS**

### **3.1 General**

Certain Nig. CARs sections allow the Authority to issue a Certificate of Waiver, a Certificate of Authorization, or OpSpecs which authorize a deviation. These actions permit a person or an organization to either deviate from a specific regulation or comply with special alternative provisions, conditions, or limitations. This regulatory flexibility is available to the Authority when the specific regulatory section stipulates that it is available. There are three options available, which are referred to as follows:

**Deviation.** When a regulatory section contains phrases such as “unless otherwise authorized by the Authority;” “the Authority may...;” “if the Authority finds...;” “the Authority may authorize ...;” “the Authority allows a deviation...;” “notwithstanding the Authority may issue operations specifications...;” or other similar words, the regulatory flexibility is referred to as a deviation.

**Waiver.** When the regulatory section contains phrases such as “the Authority may issue a certificate of waiver ...;” “in accordance with the terms of a certificate of waiver issued by the authority;” or other similar words, the regulatory flexibility is referred to as a waiver.

**Authorization.** When the regulatory section contains words such as “in violation of the terms of an authorization issued under this section;” “unless a certificate of authorization...;” or other similar words, the regulatory flexibility is referred to as an authorization.

**NOTE:** If the specific regulatory section does not stipulate that a deviation, waiver, or authorization may be granted or issued, compliance with the regulation is mandatory.

In these cases, the only method of obtaining relief from the regulation is through the exemption process.

### **3.2 Deviations**

When a regulatory section stipulates that a deviation is permitted, any person or organization may apply for a deviation. Deviations may be granted and issued to operators conducting operations under Nig. CARs Part 9, maintenance organization conducting activities under Nig. CARs Part 6 and service providers conducting activities under Nig. CARs Part 14, 15, 17, 21.

To apply for a deviation, an operator or service provider must submit a letter to NCAA identifying the specific regulatory sections from which a deviation is requested. The letter and attachments, if appropriate, must contain the specific reasons the deviation is requested, information to show that an equivalent level of safety will be maintained, and any other information the NCAA may require.

The types of information that must be submitted with the request for a deviation are described in other ACs that relate to the specific subject matter.

**Director General of Civil Aviation  
Nigeria Civil Aviation Authority**





**NIGERIA CIVIL AVIATION AUTHORITY**  
 Corporate Headquarters  
 Nnamdi Azikiwe Int'l Airport, Domestic Wing, Abuja, Nigeria

**EXEMPTION REQUEST FORM****FORM: AC-GEN012**

1. Name/Company of Applicant:	2. Address of Applicant:
2a. Mailing Address ( <i>if different</i> ):	
2b. Telephone:	2c. Email:
3. Agent of Service ( <i>if applicable</i> ):	
4. Nig. CARs Provision(s):	
5. Technical Guidance Provision(s):	
6. Description of the type of operations to be conducted under the proposed exemption  (Attach sheets if necessary)	
7. The proposed duration of the exemption:	
8. Have you considered the Public Interest if Exemption is granted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
9. If Yes, What factors were considered in the determination of Public Interest?  (Attach sheets if necessary)	
10. Have you considered the effect on Aviation Safety if Exemption is granted? <input type="checkbox"/> Yes <input type="checkbox"/> No	
11. If Yes, What factors were considered to make sure Aviation Safety is not affected?  (Attach sheets if necessary)	
12. Proposed Conditions by Applicant to mitigate risks if Exemption is granted:	
13. Name of Authorised Person	14. Signature and Date

<b>For Official Use</b>		
1. Are Considerations by Applicant for Public Interest and Aviation Safety Satisfactory?	Yes	No
2. Based on the above, is it recommended that the Exemption be approved?	<input type="checkbox"/>	<input type="checkbox"/>
3. Name of Inspector:.....	Signature &	<input type="checkbox"/>
4. Recommending Directorate:		
5. Name of Director:.....		
Signature &		
6. Has the Legal review been carried out and found satisfactory?		
<input type="checkbox"/>	Yes	No
7. Legal Remarks:		
<input type="checkbox"/> <input type="checkbox"/>		
8. Legal Adviser:.....		
Signature &		