

POLICY STATEMENT 41 | EXEMPTIONS FROM AN(OT)O PROVISIONS AND DEVIATIONS FROM REQUIREMENTS

UNCONTROLLED DOCUMENT WHEN PRINTED

Effective Date of Implementation: 8 April 2014

Rationale:

1. Article 10 of the Air Navigation Order (Overseas Territories) Order 2013 provides, with certain exceptions, that the Governor may exempt from any of the provisions of the Order, or any regulations made thereunder, any aircraft or persons or classes of aircraft or persons, either absolutely or subject to such conditions as he thinks fit. The exceptions are in relation to articles 12, 13, 65, 66, 135, 136, 137, 186, and 193 of the Order.
2. An Exemption may only be granted against the Order. Alleviations against a requirement, such as an OTAR, may be granted but are referred to as Deviations.
3. The grant of an Exemption enables activities which would otherwise be impossible within the established provisions of the law. However, the power to exempt from regulations does not release the designated regulator from its statutory duties. Before granting an Exemption, the regulator must be satisfied that the risks to aircraft, persons and property are acceptable and are properly controlled and it is usual for appropriate conditions to be attached, so as to ensure a comparable level of safety is assured.
4. It is important to remember that the underlying principle of the Chicago Convention is that the right to fly in other States and the automatic recognition of certificates and licences set out in the Convention is dependent upon compliance with applicable ICAO standards.
5. The general policy relating to the granting of Exemptions and Deviations is set out below.

Policy Statement:

1. An Exemption allows an exception to the established law and should not be used as a means of circumventing legal requirements for commercial expediency. Before issuing an Exemption the regulator should be satisfied that no other course of action is possible or would be more appropriate.
2. In addition, during the transition to new requirements, an Exemption from the current legislation may be required pending a change to the legislation or to give an opportunity to achieve compliance with the new requirements. In such cases a general Exemption may be appropriate to ensure fairness, subject to the regulator being satisfied that a satisfactory standard is achieved and equivalent safety maintained in individual cases.
3. An applicant for an Exemption or a Deviation should provide an appropriate risk assessment relevant to the situation for which the Exemption or Deviation is sought, and a description of the manner in which the risks will be mitigated in accordance with its safety management system, where applicable.
4. In considering the application for an Exemption or a Deviation, and the conditions to be attached to it, the regulator shall assess the adequacy of the measures proposed to provide an equivalent level of safety.
5. Where a request for a Deviation from requirements is requested, it must be considered whether there are also applicable provisions in the AN(OT)O, in which case an Exemption would be required.

6. An Exemption should not be granted for longer than is necessary, and for no longer than twelve months, although a new Exemption may be reissued following a thorough review using the same criteria which are to be applied to a new Exemption. An Exemption shall include an 'effective from date' and an expiry date.
7. The Exemption document shall make reference to the legislation in force at the time of issue and be signed by a person authorised under the OTAA's or ASSI's quality system to do so in relation to the particular case.
8. Exemptions are not subject to Governor's review under Article 13 of the Order if refused or revoked. Rejection of an application for a Deviation may provide grounds for such a review if the consequence is a refusal of a licence, approval or certificate.
9. A copy of any Exemption issued shall be made readily available as a public record. Exemptions issued by ASSI will be placed on the ASSI website.
10. In granting any Exemption or agreeing to a Deviation, the regulator must assess whether this would lead to non-compliance with ICAO standards, and if so, to an appropriate notification being made by the State in accordance with Policy Statement number 2. If aircraft operations are authorised that do not fully comply with the applicable ICAO standards, the issued documentation must draw attention to the need for the operator to ensure that flight has been duly permitted by the appropriate aeronautical authorities of any State where the aircraft is to be flown.