



CIVIL AVIATION AUTHORITY OF BOTSWANA

GENERAL

ADVISORY

CIRCULAR

CAAB Document GAC-019

GUIDELINES FOR SUBMITTING AN APPLICATION FOR EXEMPTION

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Disclaimer

Disclaimer: The “Guidelines for Submitting a Petition for Exemption” materials are for informational purposes only and do not guarantee the CAAB will grant your petition. The CAAB will evaluate your petition and send you its decision based on a full review of your request. A CAAB grant or denial of exemption is based on the specifics of each situation.

1. BACKGROUND

This brief program is designed to help you submit an application that will meet CAAB requirements. Following this guidance will help you avoid common pitfalls and increase the likelihood of your success.

The Civil Aviation Act 2011 contains rules issued by the Minister governing all civil aviation in Botswana. You are entitled to submit an application for exemption from these rules. If you believe following a rule will burden you, you can provide a level of safety at least equal to that provided by the rule from which you seek the exemption, and your request is in the public interest.

2. HOW TO SUBMIT AN APPLICATION FOR EXEMPTION

You may submit your application for exemption electronically (recommended) or by paper.

- **Electronically**

- Submit your application for exemption to the CAAB through the use of email to the relevant department.

- **By Paper**

- Send the original signed copy of your application for exemption to the following address:
Civil Aviation Authority of Botswana, Plot 61920, Letsema Office Park, Fairgrounds, P O Box 250, Gaborone, Botswana

3. GUIDANCE ON WHAT YOU MUST INCLUDE IN YOUR APPLICATION

AIC 06/2014 of 6th May 2014

If you have completed your research and determined you need an exemption, you must send an application for exemption 60 days before you need the exemption to take effect. Your application for exemption must include—

- Your name and mailing address. Include other contact information such as a fax number, telephone number, or email address;
- The specific part of the Regulations from which you seek an exemption;
- The extent of relief you seek and the reason you seek the relief;
- How your request would benefit the public as a whole; Reasons why the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to the existing rule;
- A summary we can publish in the *Gazette* stating—
 - The rule from which you seek the exemption; and
 - A brief description of the exemption you seek;
- Any additional information, views, or arguments available to support your request; and
- If you want to exercise the privileges of your exemption outside Botswana, you must state the reason.

Note: Anyone can apply for an exemption on behalf of an affected party but they must have the authority to do so. For example, a law firm may submit an application on behalf of its client.

Specific Regulation(s) you seek relief

"The specific Regulation(s) from which you seek an exemption"

Be as specific as possible when you reference the rule. Identify the regulation and part including the text involved — this should eliminate any possible confusion.

- Example of a specific request

I seek relief from Civil Aviation (Aircraft Operations) Regulations 2013, Regulation 18(1)(b), which specifically states that to be eligible to operate an aircraft, within the preceding 12 months, the aircraft has been "issued with a certificate of airworthiness by the Authority".

This example would meet the CAAB's requirement because the applicant is being very specific about the regulation involved. Citing the Regulation, its sub-regulation and including the complete text should prevent any confusion about what regulation is involved.

- Example of an incomplete request

I seek relief from the regulation that says an aircraft should have a certificate or airworthiness.

The extent and reason for relief

"The extent of relief you seek and the reason you seek the relief"

Provide a complete description of what you plan to do instead of following the requirement and the reason you cannot follow the requirement. The more information you can provide assists the analyst in comprehending exactly what you plan to do and to what extent.

Reasons why exemption would not adversely affect safety

"Reasons why the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to the existing rule"

To show a level of safety at least equal to that provided by the rule you must—

- Provide and explain with specific details how you will operate at a level of safety as good or better than the level of safety provided by following the rule; or
- Explain why an exemption would not compromise (adversely affect) safety.

Reasons why exemption would not adversely affect safety

"Reasons why the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to the existing rule"

To show a level of safety at least equal to that provided by the rule from which you seek exemption, you could describe how you would meet the intent of the rule and improve on it. For example, you might describe the use of new technology and/or techniques not envisioned during the rulemaking process. Include as much information as possible to demonstrate to the CAAB that safety will not be compromised should you be granted an exemption.

- Provide the following—

- Charts;
- Data;
- Drawings; and
- Any risk analysis conducted to support your reasoning.

How would relief benefit the public

"How your request would benefit the public as a whole"

You must explain how an exemption would not only help your specific situation but would have a positive impact on the public as a whole.

Do not confuse public interest with personal or financial interest. Often applicants state it is very expensive for them to meet the requirements of the rule. Applicants may say they do not have time to do what is asked of them to comply with a regulation, this is not acceptable. The failure to do proper planning is not a matter of public interest. Explain who else will benefit.

- The public as a whole?
- Your local community?
- For example, an airline having to ground its fleet if not granted an exemption would negatively affect the public interest by reducing the number of available flights.

Here are some concepts that help demonstrate public interest:

- Reducing environmental pollution.
- Benefitting the aviation industry and the flying public by improving a CAAB process or procedure.
- Providing a good or service that would be unavailable to the public otherwise.
- Positive economic impacts to the community.

Summary to publish in *Gazette*

"A summary we can publish in the *Gazette* stating — the rule from which you seek the exemption and a brief description of the exemption you seek"

If the CAAB decides to publish your application for exemption in the *Gazette*, it will also determine the number of days in which comments will be accepted. The CAAB frequently allows 20 days for comments on an application for exemption. A summary is published for those rules that have never been granted or denied an exemption.

Information the CAAB will publish in the *Gazette* includes—

- The docket (or Docket Folder) — A collection or repository of documents related to a rulemaking or other action.
- The docket number (Docket ID) — A number or unique identifier assigned to each new application for exemption. The docket number or docket ID is retained for any subsequent modifications, comments, or amendments to the application or document of the application;
- The citation to the rule or rules from which the applicant requested relief; – The name of the applicant;
- The applicant's summary of the action requested and the reasons for requesting it; and – A request for comments to assist the CAAB in evaluating the application.

The four factors the CAAB considers when deciding whether or not to publish an application in the *Gazette* are contained in the Civil Aviation Act.

Are there circumstances in which CAAB may decide not to publish a summary of my application for exemption?

The CAAB may not publish a summary of your application for exemption and request comments if you present (or it finds) a good reason it should not delay action on your application. The factors the CAAB considers include—

- a. Whether granting your application would set a precedent-setting — “precedent-setting” is defined as the first time requested relief is granted from a regulatory section. Other exemptions that may be considered precedent-setting are those that provide relief from a particular regulation from which relief has already been granted, but with conditions different than in the original exemption. An exemption would set a precedent if it would be the first exemption from a specific regulation — A regulation written by the CAAB to enact a statute.
- b. Whether the relief requested is identical to exemptions granted previously.
- c. Whether the CAAB delaying action on your application would affect you adversely. For example: You could request the CAAB to process your application quickly by a certain time to prevent disruption of scheduled passenger service and to avoid unnecessary burdens and costs.
- d. Whether you filed your application in a timely manner. For example: You filed your request as soon as your local CAAB office or principal inspector informed you an application for exemption would be required.

Exemptions are processed by the CAAB Legal Office. The Legal Office reviews all applications for exemption and all comments submitted on an application for exemption.

- The four factors the CAAB considers when deciding whether or not to publish a application are contained in Civil Aviation Act.

Are there circumstances in which CAAB may decide not to publish a summary of my application for exemption?

- The CAAB may not publish a summary of your application for exemption and request comments if you present (or it finds) a good reason it should not delay action on your application. The factors the CAAB considers include—
 - a. Whether granting your application would set a precedent-setting — Other exemptions that may be considered precedent-setting are those that provide relief from a particular regulation from which relief has already been granted, but with conditions different than in the original exemption.

An exemption would set a precedent if it would be the first exemption from a specific regulation — A regulation written by the CAAB to enact a statute. The CAAB may grant an exemption from a rule, but not from a statute or regulations, or it would present a new set of circumstances.

- b. Whether the relief requested is identical to exemptions granted previously.
- c. Whether the CAAB delaying action on your application would affect you adversely.

For example: You could request the CAAB to process your application quickly by a certain time to prevent disruption.

d. Whether you filed your application in a timely manner.

For example: You filed your request as soon as your local CAAB office or principal inspector informed you an application for exemption would be required.

Any additional information

"Any additional information, views, or arguments available to support your application"

Provide the CAAB with as much information as you can to support your rationale for needing an exemption. If possible, include relevant—

- Articles;
- Charts;
- Data;
- Drawings;
- Manufacturer's product descriptions;
- Medical documentation; and
- References to similar granted applications.

Exercise exemption outside Botswana

"If you want to exercise the privileges of your exemption outside Botswana, you must state the reason"

- Include a specific, direct statement requesting that the exemption apply outside Botswana and state the reason(s) why you seek this authority.

How can I operate under an exemption outside Botswana?

- If you want to be able to operate under your exemption outside Botswana, you must *specifically* request this in your application and give the CAAB the reason for this use.
- If you do not provide your reason or the CAAB determines that it does not justify this help, the CAAB will limit your exemption to use only within Botswana.
- Before the CAAB extends your exemption for use outside Botswana, it will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). However, a foreign country still may not allow you to operate in that country.

4. REQUEST EXTENSION OF GRANTED EXEMPTION

The CAAB typically grants an exemption for up to 6 months.

You may request to extend an exemption previously granted to you by following the submission process previously described.

To request an extension, you must—

- Request the extension *at least 30 days* before the exemption expires.
- If true, state that conditions and reasons regarding public interest and safety remain unchanged (why granting your request would be in the public interest; that is, how it would benefit the public as a whole and the reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule.
- If your circumstances have changed, the CAAB may request that you file a new application. The CAAB may publish the new application for public comment. The comment period is usually 20 calendar days.

5. FREQUENTLY ASKED QUESTIONS

I cannot comply with a CAAB regulation. What should I do?

How can I be certain I need to application for an exemption?

When does the CAAB grant an exemption?

What are some common mistakes applicants make?

Can I change my exemption?

What can I do if the CAAB denies my application for exemption?

I cannot comply with a CAA Regulation. What should I do?

- If you cannot comply with a CAAB regulation, you may ask the CAAB for an exemption from that regulation by filing an application. An exemption is permission excusing you from complying with a certain regulation or regulations. The CAAB may specify that you comply with certain conditions and/or limitations.
- The process for obtaining an exemption from in this document. Unless the CAAB grants you an exemption or a rule specifies that you may obtain an authorization, waiver, or deviation from the requirements, you *must* comply with the regulations.

How can I be certain I need to apply for an exemption?

- If complying with a regulation would cause a burden to you and you believe you could satisfy the spirit of the regulation while maintaining safety and providing a benefit to the public, you may submit an application for exemption to the CAAB and ask the CAAB to grant you relief from that regulation.
- A good starting point is to research what other applicants have done. The Gazette contains exemptions previously issued.
- You must submit your application as soon as you know you need an exemption.

When does the CAAB grant an exemption?

The CAAB grants an exemption when—

- The CAAB may grant an exemption from any bye-law, requirement, directive, notice or information made or issued under the Civil Aviation Act, if it's impracticable or

temporarily inappropriate for operational purposes to comply with a particular requirement, directive, notice or information.

Note: There must be something different about your situation as compared to others who must comply with the rule. The CAAB will not grant an exemption just because you do not want to comply with a regulation or it would be inconvenient.

- You are able to show that your circumstances would—
 - Allow you to operate with at least the same level of safety as people who comply with the regulation or not adversely affect safety; *and*
 - Be a benefit to the public as a whole, not just you. This is called a “public interest” statement.
- Consideration of your application is based on the information/data you provide to support the requirements for exemption. If you do not provide sufficient information/data, the CAAB may not grant your request.

What are some common mistakes applicants make?

Common mistakes include the following—

- Restating the words “adversely affect safety,” “equal level of safety,” and/or “public interest” thinking the mere mention of those key words meets the rule. The CAAB may grant an exemption from a rule, but not from a statute;
- Failing to clearly explain what you would do instead of following the rule;
- Not stating the reason you cannot follow the requirement;
- Not providing supporting data such as charts, drawings, flight patterns, and/or statistics;
- Explaining how an exemption would benefit you or your company instead of the public as a whole. This is a personal interest statement, not a public interest statement; or
- Asking for an exemption from a law, statute, or other rule from which the CAAB does not have the authority to issue an exemption.

Can I change my exemption?

You can apply to the CAAB to amend an exemption, or the CAAB may initiate a change.

- An amendment — A modification to a previously granted exemption can be used to—
 - Add or remove an aircraft;
 - Change a name; or
 - Change conditions and limitations.
- If your amendment would set a precedent, the CAAB must publish your application in the Gazette for comment. The comment period is usually 20 calendar days.
- A request for an amendment typically accompanies an application to extend an exemption.

What can I do if the CAAB denies my application for exemption?

If the CAAB denies your application—

- You may appeal the CAAB to reconsider its denial of your original application;
- You must submit your request to the same address as your original application; and
- The CAAB must receive your request within 60 days after the CAAB issued the denial.

For the CAAB to accept your application to reconsider its decision, you must show—

- You have a *significant* additional fact and a reason you did not present it in your original application;
- The CAAB made an important *factual error* in the denial of your original application; or
- The CAAB did not correctly interpret a law, regulation, or precedent. Other exemptions that may be considered precedent-setting are those that provide relief from a particular regulation from which relief has already been granted, but with conditions different than in the original exemption.

6. RELATED PUBLICATIONS

- ICAO Annex 1
- ICAO Doc 9734 Part A, 3.3.7
- AIC 6/2014

7. DEFINITIONS AND ACRONYMS

The following definitions are used in this circular

- **Authority** means the CAAB, unless otherwise specified.
- **Amendment** — A modification to a previously granted exemption.
- **Comment Period** — Period of time for public comment after publication of a summary of an application in the Gazette. The comment period is usually 20 calendar days.
- **Docket (or Docket Folder)** — A collection or repository of documents related to a rulemaking or other action.
- **Docket ID** — A number or unique identifier assigned to each new application for exemption. The docket number or docket ID is retained for any subsequent modifications, comments, or amendments to the application or document.
- **Exemption** — A formal document issued in response to an application that relieves or denies relief for the applicant from the requirements of a particular regulation and/or sub-regulation of CARs.
- **Civil Aviation Regulations** — Regulations published in the *Gazette* .
- **Gazette** — The daily government document that contains government/public documents such as:
Regulations (rules), proposed rules, notices, and Presidential documents, only to name a few. Rules published in the Gazette keep the Civil Aviation Regulations

current. Proposed rules solicit public comment on the Authority's rules and encourage public participation in the rulemaking process. Notices provide information of interest to the public.

- **Good Cause** — Reasons offered by an applicant to waive publication of a summary of its application in the Gazette. When an applicant requests that their application for exemption from a regulation not be published in the Gazette, the applicant must show good cause for not publishing it. The CAAB also may grant good cause even if the applicant does not request it.
- **Letter Grant of Amendment** — A formal letter issued to amend a previously granted exemption.
- **Letter Grant of Extension** — A formal letter issued to extend the expiration date of a previously granted exemption.
- **Person** — An individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.
- **Application** — A formal letter requesting an action from the CAAB that must be filed in accordance with the Exemption Application (CAAB-FORM-PEL 132).
- **Precedent-setting** — The CAAB defines “precedent-setting” as the first time requested relief is granted from a regulatory section. Other exemptions that may be considered precedent-setting are those that provide relief from a particular regulation from which relief has already been granted, but with conditions different than in the original exemption.
- **Public Interest** — Something that benefits the public as a whole. Contrast with “private interest”— something that primarily benefits you.
- **Regulation** — See “Rule.”
- **Request for Additional Information** — When an application does not meet the requirements of AIC 4/2014, the CAAB Office of Rulemaking may prepare a “request for additional information” letter and send it to the applicant. Applications for exemption and/or reconsideration must comply with AIC 4/2014.
- **Rule** — Includes a regulation made under the Civil Aviation Authority Act.
- **Act** — Act of Parliament means a law enacted by Parliament of Botswana or any law of an authority formerly exercising authority to make laws for the territory or any part of the territory comprised in Botswana.



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For/Civil Aviation Authority of Botswana

Date:



End of Advisory Circular