

**54th CONFERENCE OF
DIRECTORS GENERAL OF CIVIL AVIATION
ASIA AND PACIFIC REGIONS**

*Ulaanbaatar, Mongolia
07 — 11 August 2017*

**AGENDA ITEM 3: AVIATION SAFETY AND
AIR NAVIGATION**

**PROVISIONS OF EXEMPTION IN ICAO DOCUMENTS
NEED TO BE REVIEWED**

(Presented by Nepal)

SUMMARY

The practices of exemption or exception are widely used to facilitate the civil aviation operations. ICAO Doc 9734 'Safety Oversight Manual, Part A', which is the main source of the USOAP Protocol Questions relating to the exemption, is confined to the exemption relating to the Aerodrome operations. There are a number of Protocol Questions in USOAP those are relating to the exemption in audit areas of PEL, OPS, AIR and AGA. However, there are not any clear provisions outlined in ICAO documents that could reflect the exemptions in PEL, OPS and AIR. ICAO PQs needs to be congruent to the existing provisions of applicable Annexes and other associated documents.

PROVISIONS OF EXEMPTION IN ICAO DOCUMENTS NEED TO BE REVIEWED

1. INTRODUCTION

1.1 Exemptions or exceptions are widely used terminologies in civil aviation field. However, there is not any such definition of this word available in ICAO documents. However, USOAP Protocol Questions relating to the exemption in the area of Legislation (LEG) has clarified that the term “exemptions” also includes exceptions, deviations and prolonged extensions.

1.2 Oxford dictionary defines exemption as "the action of freeing or state of being free from an obligation or liability imposed on others". Cambridge dictionary defines exemption as "the fact of not having to obey a rule or do something that other people have to do.

1.3 In aviation, exemptions are issued when operators or service providers are unable to comply with certain provision of State regulations or procedures. States have to issue exemptions in different areas of aviation operations to facilitate the air transport activities.

2. DISCUSSION

2.1 USOAP Protocol Question in LEG 1.027 under CE2 and PQ1.028 under CE5 are related to exemptions. Both of these PQs are based on para 3.3.7 of ICAO Doc 9734 *Safety Oversight Manual Part A 'The establishment and management of a State's Safety Oversight System'*.

2.2 PQ 1.027 is related to the provision of exemption in State's primary legislation and/or the specific operating regulations. This PQ is not applicable to the ANS and AIG.

2.3 PQ 1.028 is related to the State policy and procedures for granting of exemptions. This PQ requires criteria for the conduct and review of risk assessments, analyses, aeronautical studies, limitations or other conditions imposed, recording and publication of exemptions granted.

2.4 Guidance for review of evidence in PQs 1.027 and 1.028 has outlined additional PQs relating to the implementation in the area of PEL, OPS, AIR and AGA. These PQs are PEL 3.015 and 3.529, OPS 4.107 and 4.392, AIR 5.013 and AGA 8.099.

2.5 Provision of Exemption or exception in Doc 9734 Part A is dedicatedly related to the aerodrome operations (AGA). Para 3.3.7 of Doc 9734 outlines the grant of exemptions in exceptional circumstances especially involving "insurmountable geographical or other physical problems".

2.6 In practice, exemptions/exceptions are more frequently granted in the area of PEL, OPS and AIR. However, neither Doc 9734, which is the source of LEG PQs on exemptions, nor any other ICAO documents provides necessary guidance on exemptions/exceptions in PEL, OPS and AIR areas.

2.7 The objective of USOAP audit is to assess the compliance of ICAO SARPS and associated guidance among Contracting States. USOAP PQs reflects the provision of applicable Articles of Chicago Convention, SARPs of the Annexes, provision of guidance materials and relevant procedures. In this light, PQs relating to the exemptions are not in congruence to the existing provisions and guidance of ICAO documents.

3. ACTION BY THE CONFERENCE

3.1 The Conference is invited to:

- a) note the information presented in this paper and;
- b) recommend ICAO to provide more guidance on exemption covering all relevant areas.