

CAA Medical Certification Regime – how it works

In this edition of *The Legal Lounge*, I provide a general overview of the current civil aviation medical certification regime, and in particular how the flexibility provisions and Accredited Medical Conclusion (AMC) process works in practice.

1. A short history of the CAA medical certification regime

During 2000 to 2001 the CAA medical certification regime came under increasing criticism and scrutiny both in the courts, and from within industry, the CAA and the government. This prompted an extensive review of the system by Professors Sir John Scott and Des Gorman. As a result, the system was significantly overhauled. The introduction in April 2002 of Part 2A into the Civil Aviation Act and a subsequent rewrite of Rule Part 67 saw a return to a much more centralised model of medical certification, clearer identification of medical standards required for each level of certification, prescribed procedures for conducting medical examinations by MEs (contained in General Directions issued pursuant to Part 2A of the Act), disestablishment of the Aviation Medical Assessors (AMA) role and a return to centralised CAA control over the flexibility/AMC process, and new rules in Part 67 regarding certification and aviation medical training requirements for MEs. New provisions regarding rights of review to a medical convener or appeal to the Courts were also added.

2. How the current medical certification regime operates in practice

In principal, section 27D of the Act requires certified MEs who conduct a medical examination to forward a report to the Director, who is then required to assess and determine whether to issue a medical certificate to an applicant in accordance with section 27B of the Act. However, section 27O permits the delegation of the power to issue medical certificates under s 27B to private medical practitioners. In practice, the decision to issue a medical certificate therefore continues to be made (subject to greater CAA oversight and control over the flexibility/AMC process) by delegated MEs.

Once a medical examination report (MER) is completed, an appropriately delegated ME will make an assessment on whether to issue a medical certificate and any conditions or restrictions that may need to apply. This is required to be documented in a medical assessment report (MAR) and a copy is provided to the applicant. An ME with an appropriate delegation may carry out both parts of this process, or may receive a MER from another ME who does not hold a delegation.

There are three points of note about the delegated ME's role in certifying applicants:

- i) Under the revised rules, the ME may issue a certificate with appropriate conditions or restrictions for more minor variances from prescribed medical standards, without needing to go through the AMC process. This might apply for example to a condition requiring spectacles to be worn while flying or requiring an asthma inhaler to be carried in the aircraft
- ii) If an applicant has a medical condition of aeromedical significance, the applicant either will not be eligible for a medical certificate or the application may only be considered further under the flexibility provisions in s 27B(2) and (3) of the Act. If the ME considers the flexibility provisions to be applicable the ME must formally request an AMC from the CAA central medical unit (CMU).

- iii) Notwithstanding the delegation of the certification function to MEs, the CAA CMU retains oversight and ultimate control over this process. Section 27O(7) explicitly states that the delegation of the certification function does not affect or prevent the exercise of any function or power of the Director under the Act. Copies of MERs and MARs are sent to the CMU, and these are routinely reviewed and audited by that unit. If the CMU believes that an incorrect assessment has been made or that an ME has failed to identify a condition of aeromedical significance, the Principal Medical Officer (PMO) may intervene, for example by requiring the ME to amend the MAR and/or request an AMC. In cases where a medical certificate has already been issued, this could result in the certificate being suspended under section 27I(3) of the Act pending further investigation of the participant's medical condition.

3. How the flexibility provisions and Accredited Medical Conclusion (AMC) process works

If an applicant presents with a medical condition of aeromedical significance (defined as a condition which, having regard to any relevant General Direction, interferes or is likely to interfere with the safe exercise or performance of the privileges or duties of an aviation document) this will either result in the medical certificate being declined, or being considered further under the flexibility provisions in s 27B(2) and (3). As noted above, if an ME wishes to rely on flexibility, he or she must request an AMC from the CAA CMU.

There are three preliminary points to note about whether to request an AMC, and how a request for an AMC is initially processed by the CAA CMU:

- i) The ME should only request an AMC if the applicant first agrees to this. In some cases, it may be apparent at the outset that the AMC process would likely require expensive testing and/or would most likely result in the medical certificate being declined. In some such cases, particularly where the medical condition may improve or resolve itself over time, the applicant may instead decide to withdraw the medical application and apply again later.
- ii) Once a request is received for an AMC, the CAA medical officers will firstly assess whether they agree that the application may be considered further under the flexibility provisions. In a small minority of cases, it may already be apparent that the medical condition is so serious that the flexibility criteria in s 27B(3) cannot be met and the application should be declined.
- iii) If a request for an AMC is accepted, one or more experts will be appointed by the PMO to consider the AMC. The assessing ME may nominate him or herself as an appropriately qualified expert to conduct the AMC or may nominate another expert known to them. It should be noted that the PMO is not obliged to accept the ME or any other person nominated by the ME. However as a general rule, if the AMC is considered to be reasonably straight forward, this may result in the ME being appointed to carry out the AMC, and the process may be completed relatively quickly. In more complex cases which may require more in depth analysis, the PMO may decide to appoint experts independent of the initial assessment phase. In many such cases, the AMC panel will typically consist of two of the CAA's CMU medical personnel. Highly specialised external experts may also be appointed from time to time if considered necessary in particular cases.

How an AMC is assessed under the flexibility criteria

Under s 27B(2) and (3), the AMC panel may issue a medical certificate if in their medical judgment:

- an accredited medical conclusion indicates that in special circumstances the failure to meet a prescribed medical standard is not likely to jeopardise aviation safety in relation to the exercise of the privileges to which the medical certificate relates, and
- the relevant ability, skill and experiences of the applicant and operational conditions have been given due consideration, and
- appropriate conditions or restrictions are endorsed on the medical certificate if issued.

In forming its view on the AMC, the panel will consider the medical evidence including any relevant reports and test results provided to it about the medical condition of the applicant, and will have regard to accepted medical literature and studies by experts on the relevant medical condition. The panel may, but is not obliged to, consult with other experts in forming their AMC.

It is important in this regard for an applicant to ensure that the AMC panel has all of the relevant information. If the ME is not on the AMC panel, the ME should have provided all relevant information in relation to the application that was held by the ME at the time when the AMC was first requested. However, if an applicant has had further tests or follow up assessments done since that time, the ME may not have received or passed on this information. The applicant should check with the ME and if necessary forward the relevant information to the AMC panel directly, or ask the relevant medical specialist to do so.

The AMC panel will also then go on to consider the second and third criteria above. A report documenting the outcome of the accredited medical conclusion and any recommendations as to certification or any conditions or restrictions will then be sent to the delegated ME. This reflects the fact that the ME makes the final decision on whether or not to issue a certificate. The ME must provide a copy of the AMC to the applicant, together with the final decision of the ME declining or issuing the medical certificate. The ME may issue a certificate under more restrictive conditions than recommended in the AMC report but cannot issue a certificate on more liberal terms. Thus, if the AMC report concludes that the relevant flexibility conditions are not met (in particular in relation to the first criteria), the ME will be obliged to decline the application.

Ultimately, the flexibility process and the outcome of the AMC will depend on the medical judgment of the AMC panel. For this reason, rights of appeal and review exist. In the next edition of *The Legal Lounge*, I will address the options available to participants to challenge an adverse medical decision.

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