

## **Misconduct and Discipline**

### Regulation 35

A submission from the Executive Committee

#### **Purpose or Objective**

To modernise ISAF's regulations relating to how misconduct and disciplinary issues by ISAF Representatives are dealt with, how misconduct reports by competitors are handled and to set out examples of sanctions that may be applied

#### **Proposal**

Delete existing Regulation 35 and replace with the following text:

#### **35 MISCONDUCT AND DISCIPLINE**

- 35.1 Except as otherwise provided by these Regulations, the disciplinary functions of ISAF shall be exercised by the Disciplinary Commission (subject to any right of appeal to the Review Board).

#### ***Obligations not to commit misconduct***

- 35.2 Competitors are obliged not to commit gross misconduct under RRS 69.1(a).
- 35.3 An ISAF Representative or an ISAF Race Official, whilst at an event or whilst undertaking or acting in that role, shall not:
- (a) commit a gross breach of:
    - (i) the ISAF Constitution or the ISAF Regulations; or
    - (ii) good manners; or
    - (iii) ethics; or
  - (b) bring the sport of sailing into disrepute.

#### ***Initial reports to ISAF***

- 35.4 The following reports to ISAF shall be sent promptly in writing to the Secretary General:
- (a) a report under RRS 69.3(a) alleging a breach of RRS 69.1(a) (*gross misconduct*) by a competitor; or
  - (b) a report alleging a breach of ISAF Regulation 35.3 (*misconduct by an ISAF Representative or ISAF Race Official*); or
  - (c) a report alleging a Violation of the Betting and Anti-Corruption Rules.
- 35.5 On receipt of a report under Regulation 35.4, the Secretary General shall acknowledge receipt. The Secretary General and two Vice-Presidents shall assess the report and decide whether or not there is a case to answer. If a majority of them decide there is a case to answer, the Secretary General shall forward the report to the Disciplinary Commission for investigation, and if appropriate, a hearing. If a report concerns the President, a Vice-
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President or the Treasurer, the Secretary General shall forward the report directly to the Disciplinary Commission.

- 35.6 If it is decided there is no case to answer, the Secretary General shall inform the submitter of the report. The submitter of the report may appeal the decision to the Chairman of the Disciplinary Commission, whose decision is final.

### ***Other reports to ISAF***

- 35.7 The following reports to ISAF shall be sent promptly in writing to the Secretary General:
- (a) a report under RRS 69.2(d) (*a report by an ISAF-appointed International Jury of a penalty imposed for gross misconduct by a competitor at an event*); or
  - (b) a report under RRS 69.2(f) (*a report by an ISAF-appointed International Jury when a hearing cannot be held*); or
  - (c) any report required to be sent to ISAF under ISAF Regulation 19 (*Eligibility Code*); or
  - (d) a report from the Ethics Commission under Regulation 36; or
  - (e) a report from the Chairman of the Race Officials Committee and its sub-chairmen under Regulation 32.9.

On receipt of the report, the Secretary General shall acknowledge receipt and forward the report directly to the Disciplinary Commission.

### ***Re-categorisation of reports***

- 35.8 If upon reviewing a report, a majority of the Secretary General and the two Vice-Presidents conclude that the report should properly have been made under a different Regulation or provision of the Racing Rules of Sailing, they may certify the report is made under the another Regulation or Racing Rule and it shall then be regarded as a report under that provision.

### ***Role of the Disciplinary Commission***

- 35.9 Upon receipt of a report from the Secretary General, the Disciplinary Commission shall conduct any investigation or hearings and, if appropriate, shall apply any sanctions on behalf of ISAF under the applicable rules or regulations.

### ***Procedures***

- 35.10 Subject to the Regulations, the Disciplinary Commission shall determine the procedures to be adopted by it when considering reports, conducting investigations and hearings, and applying sanctions and shall publish these procedures on the ISAF website. The Constitution Committee shall be consulted on the procedures before they are adopted or amended. The Commission shall also publish guidance on the sanctions that are available to it and the general principles it will adopt when determining sanctions.
- 35.11 The Disciplinary Commission shall exercise its functions in a fair manner and in accordance with the principles of natural justice. In particular, any respondent has:
- (a) The right to at least 15 days' notice of the time and place of any hearing and to receive a copy of all evidence considered by the Commission.
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- (b) The right to be present, with or without a representative (who may be a lawyer) at his own cost, throughout any hearing of evidence.
  - (c) The right, if necessary and on notice given in writing, to an interpreter (the liability for the cost of which shall be determined by the Commission).
  - (c) The right to call witnesses and to present any relevant evidence, and the right to cross-examine any witnesses.
- 35.12 The standard of proof in all cases shall be the comfortable satisfaction of the Disciplinary Commission, having regard to the seriousness of the allegations made.

### ***Sanctions***

- 35.13 The sanctions that may be imposed by the Disciplinary Commission include, but are not limited to, the following:
- (a) no action;
  - (b) warnings, admonishments or reprimands;
  - (c) a direction not to compete or officiate in a particular event or class (or types of event or classes);
  - (d) suspension or revocation of Competition Eligibility and/or ISAF Eligibility (or the imposition of conditions on such Eligibility);
  - (e) suspension or removal from office in the case of ISAF Representatives;
  - (f) suspension or removal of a certificate of appointment in the case of ISAF Race Officials (or the imposition of conditions on such appointment);
  - (g) for a breach of the Code of Ethics, any sanction set out in that Code; and
  - (h) make a report to a Member National Authority, ISAF Class, ISAF (under another Regulation or Racing Rule of Sailing) or any other appropriate organisation.
- 35.14 The Disciplinary Commission may impose a fine, but only if the Executive Committee has previously approved the level of fines that may be imposed by the Commission and these have been published on the ISAF website prior to the date of the offence in question.
- 35.15 Any sanction imposed by the Disciplinary Commission may be suspended or have conditions imposed on it if thought appropriate by the Commission. The Commission may also provisionally impose a sanction pending the outcome of a case if it believes it appropriate to do so in all the circumstances.

### ***Appeals***

- 35.16 A person who has had a sanction imposed on him by the Disciplinary Commission has the right of appeal against that decision to the ISAF Review Board. Any appeal must be lodged in writing with the Secretary General within 30 days of the publication of the written decision of the Commission.
- 35.17 Appeals to the Review Board shall be governed by its rules of procedure.
- 35.18 Until the determination of any appeal, the decision of the Disciplinary Commission shall remain in force.
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***Publication of decisions***

- 35.19 After a decision has become final, the decision of the Commission or the Review Board (as appropriate) shall be published by the Secretary General, unless the Commission or the Board believe it is inappropriate to do so.

Current Position

Current Regulation 35.

Reasons

1. ISAF has a significant number of disciplinary functions, both in terms of reviewing decisions made at events and by MNAs, and 'first instance' decisions in certain areas. Each function currently brings with it its own set of procedures, which are all different to each other, and these now need rationalization. The number of areas has increased over the years and with the recent increased emphasis on ethics, betting and gaming and classification discipline.
  2. Disciplinary procedures must be clear, concise and easily understood by those subject to the procedures and those administering them. Any ambiguity may damage the validity of any proceedings.
  3. The role of MNAs will not change under RRS 69 and ISAF will, except in limited cases, retain its review function and not become a 'first instance' body.
  4. The new Regulation maintains the current position that Race Officials can be subject to the disciplinary procedure, but any complaints about their performance at events remain to be dealt with by ROC under Regulation 32.
  5. From 1 January 2013, ISAF is required by the RRS (RRS 69.3(a)) to have "established procedures" for RRS 69 cases and so these procedures must be in place. Having them in the Regulations is the best and safest option for ISAF.
  6. These proposals were presented in draft to the 2012 Annual Conference for feedback and comment. The Race Officials Committee, Constitution Committee and Racing Rules Committee approved the documents in principle and any detailed feedback has been incorporated into the documents.
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