

## **ISAF Disciplinary Review**

### New Disciplinary, Appeals and Review Code

A submission from the Executive Committee

#### **Purpose or Objective**

To adopt new regulations concerning ISAF's disciplinary, appeal and review processes following an external legal review of them and to ensure they are in line with best practice for international federations.

#### **Proposal 1**

1. Delete current Regulation 35 and insert:

**35. DISCIPLINARY, APPEALS AND REVIEW CODE (see Appendix 6)**

2. Insert the document found at the following link as new Appendix 6 of the Regulations:

<http://www.sailing.org/40660.php>

#### **Proposal 2**

If Proposal 1 is approved, make the following consequential amendments to the Regulations:

1. Amend Regulation 8.13 as follows:

~~8.13 Review~~ **Judicial Board** *Note: The ~~Review~~ **Judicial** Board is authorized by, and its functions and procedures are provided for in Articles 77-82. It does not therefore operate under a delegation of power from the Council. This is appropriate because it exercises quasi-judicial functions.*

2. Delete Regulation 8.14.4 and replace as follows:

**A member of the Commission shall not hear any case before the Judicial Board concerning an investigation carried out by the Ethics Commission.**

3. Delete Regulation 8.15 (Disciplinary Commission).

4. In Regulation 19, delete Regulations 19.16 through to 19.23 and replace with:

#### ***Subsequent review and appeals***

**19.16 The procedures for reviewing and appealing decision of a National Authority or ISAF under this Regulation are set out in ISAF Regulation 35.**

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**19.17** **After a decision to suspend or revoke, or to impose conditions on, Competition Eligibility and/or ISAF Eligibility has become final, the Chief Executive Officer shall report the decision to all National Authorities, ISAF Class Associations and other ISAF affiliated organizations, which may also suspend eligibility for events held within their own jurisdiction. The Chief Executive Officer may do this by publishing an appropriate notice on the ISAF website.**

5. In Regulation 19, amend Regulation 19.24 and 19.25 as follows:

19.24 A competitor may apply to **the ISAF Judicial Board** for his Competition Eligibility and/or ISAF Eligibility to be reinstated, or have any conditions imposed upon it removed or amended, if

- (a) he establishes substantial, changed circumstances justifying the change; and
- (b) a minimum of three years has passed since the original decision.

~~19.25 A competitor may appeal a refusal to grant such an application to the Review Board, in which case the procedures set out in Regulations 19.19 to 19.23 shall apply.~~

6. In Regulation 19.26, change references of "Review Board" to "Judicial Board".

7. Amend Regulation 21.11.4 as follows:

The boat and its crewmembers may be subject to such further disciplinary action by the Protest Committee, Jury or ISAF ~~Disciplinary Commission~~ as deemed appropriate, when satisfied that there has been a breaching Racing Rule of Sailing 2 (Fair Sailing).

8. Amend Regulation 21.11.5(c) as follows:

The boat and its crewmembers may be subject to such further disciplinary action by the protest committee, jury or ISAF ~~Disciplinary Commission~~ as deemed appropriate, when satisfied that there has been a breaching Racing Rule of Sailing 2 (Fair Sailing).

9. Amend Regulation 31.25 as follows:

This appeal shall be decided by the **Judicial Board in accordance under Regulation 35.** ~~ISAF Review Board or by an ISAF arbitration court established by the Review Board.~~

10. In Regulations 32.7 and 33.9, change the references of "Review Board" to "Judicial Board".

11. Amend Regulation 32.9 as follows:

Recommendations and decisions under this Regulation may be either that no further action is taken, that sanctions shall be imposed or that a report shall be made to the Chief Executive Officer ~~for referral to the Disciplinary Commission~~ under Regulation 35. The following are examples of sanctions that may be imposed:

12. Amend Regulation 32.12 as follows:

A Race Official may appeal against any sanction imposed under Regulation 32, except a **report to the Chief Executive Officer under Regulation 35** ~~referral to the Disciplinary Commission~~, to the ISAF ~~Review~~ **Judicial** Board.

13. Amend Regulation 36.9 as follows:

The report of the Ethics Commission shall be sent to the Chief Executive Officer, who shall refer it to the Executive Committee. The Executive Committee shall consider the report and may then refer the case to the ~~Disciplinary Commission~~ **Judicial Board** under Regulation 35. If the Complaint concerns a member of the Executive Committee, the report shall instead be referred to Council.

14. Amend Regulation 36.11 as follows:

The sanctions that may be applied by the **Judicial Board** ~~Disciplinary Commission or the Review Board~~ for a breach of the Code shall be set out in the Code itself.

15. Amend Regulation 37.5.1 as follows:

Any report concerning a Violation (or alleged Violation) shall be made to the Chief Executive Officer. ISAF Regulation 35 shall then apply to the report. ~~The Disciplinary Commission~~ **ISAF** may investigate the report, conduct any relevant hearing and impose sanctions on a Participant for any proven Violations in accordance with Regulation 35.

### Proposal 3

If Proposal 1 is approved, make the following consequential amendments to the Racing Rules of Sailing and to make this as an urgent rule change with effect from 1 January 2016 pursuant to Regulation 28.1.2:

1. Add the relevant references to ISAF Regulation 35 in Online Rules Documents and the ISAF Codes section of the Introduction.
2. Add ISAF Regulation 35 to the list of Regulations in clause (b) of the Definition Rule.

### Current Position

As above

### Reason

1. As reported in the Executive Committee's minutes of February and May 2015, an external legal review of ISAF's disciplinary and judicial procedures has been undertaken following a recent decision of the Court of Arbitration for Sport.
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2. The proposed new structures will maintain the autonomy of MNAs in deciding their own disciplinary issues, whilst granting to ISAF appropriate oversight of the disciplinary process at major international events.
  3. The Disciplinary Commission and Review Board will be combined into one body as this reduces the duplication of process in having internal appeals.
  4. The Introduction section of the new Code explains in summary how the new process will work.
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