

November 2012

Item 5 Constitution Committee Agenda
Item: 31 Race Officials Committee Agenda
Item:14 Racing Rules Committee Agenda

Report and Proposals on the Review of the Disciplinary Process of ISAF together with Submissions

In accordance with the Meeting Exec Ctee Feb 2012 Minutes

i) A report on the Disciplinary Procedures issues was received.

Decision

Eric Tulla, the Secretary General, Antony Matusch and Jon Napier will review the entire disciplinary process

25 July 2012

Introduction

Following the decision of the Executive Committee in February 2012 and our initial internal paper of 29 March 2012 we have prepared the attached proposals and draft regulations for Submissions to the November 2012 Meeting.

We have liaised with Jerome Pels, David Tillett and Jan Stage throughout the process. Philip Tolhurst will be recommending approval of the submissions to the Constitution Committee.

Overview of ISAF disciplinary functions

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. 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.

A description of the current areas and the relevant bodies within ISAF is set out below. Where there is no specified body in the ISAF Regulations, then the Constitution provides it is the ISAF Executive Committee that has operational responsibility (although it can delegate this to a panel).

The role of MNAs will not change under RRS 69 and ISAF will, except in limited cases, retain a review function and not become a 'first instance' body.

However, from 1 January 2013, MNAs (as well as ISAF) are required by the RRS (RRS 69.3(a)) to have "established procedures" for RRS 69 cases. It is proposed that ISAF will offer template procedures on the ISAF website for the use of MNAs as a service to MNAs.

Current disciplinary functions and bodies

Function	Investigation body	Hearing body	Appeal body
RRS 69.2(a) – report received direct by ISAF		Executive	Review Board
RRS 69.2(a) – classification report received by ISAF	Classification Commission	Classification Disciplinary Tribunal*	
Regulation 19.5 – report of suspension of eligibility by MNA – decisions whether to revise or annul the penalty **		Executive	
Regulation 35 – report of misconduct by ISAF Representative	Executive	Hearing Committee	
Regulation 32 – report into conduct (not performance) of ISAF Race Officials	ROC-appointed Panel	ROC&SC Chairmen ***	
Regulation 21.7.5(b) – decision to provisionally suspend pending doping hearing		Executive	CAS
Regulation 21.10.4(c) – decision to suspend a doping ban		Executive	CAS
Regulation 21.10.9(b) – decision to restart ban after a breach		Executive	CAS
Breach of Ethics Code	Ethics Commission	Hearing Committee	Review Board
Breach of Betting & Gaming Regulations	Executive Committee	Hearing Committee	CAS

* Classification Disciplinary Tribunal - delegated authority on behalf of Executive

** The suspension of eligibility can be imposed for (1) a breach of RRS 69.2 (2) a breach of RRS 5 (anti-doping) or (3) for competing in a prohibited event.

*** There is no hearing before the ROC & SC Chairmen but they make the decision on sanction

Current procedures

Most of ISAF's disciplinary functions, with the exception of betting and gaming and classification, do not have detailed procedures laid down for the investigation and hearing of cases. This is a legal weakness as ISAF effectively makes up the procedure in each case where the Regulations are silent.

In cases where the Executive Committee is the appropriate body, there usually must be a meeting of the Executive to make any formal decision or the Executive's functions must be delegated on behalf of the Executive to ad hoc panels or individuals. In cases involving a member of the Executive Committee, this can also call in question the independence of the process. Further there may also be other cases where it is inappropriate for the executive officers of ISAF to be seen to be conducting a 'judicial' investigation.

ISAF does not maintain a list of appropriate panel members with the necessary experience to investigate, hear and decide cases (and when appropriate, to investigate them). This can add unacceptable delay to the process and means ISAF has to locate suitable members for each case.

The May 2012 minute of the Executive Committee with respect to the membership of the Review Board should also be noted.

Proposal

A new, independent Disciplinary Commission should be established to develop standard procedures and carry out the investigation and hearing of disciplinary complaints. The new Commission can be appointed and governed in the same way as the new Ethics Commission in order to preserve its independence.

Exceptions to these processes might be:

- 1 Ethics – the investigation of ethics complaints would remain under the Ethics Commission but the Disciplinary Commission would still conduct hearings as they are conducted under Regulation 35 (the Ethics Commission does not hear cases).
- 2 Race official performance and competence will remain with Race Officials Committee under the terms of Regulation 32.

It should be noted that Football, Cricket, Equestrian and Fencing are among the sports that have a Commission along these lines and the IOC also has a Disciplinary Commission

Reports

On receipt of an initial complaint the Secretary General and two Vice-Presidents will review it. If they decide the report merits investigation, then it is referred to the Commission. If they refuse, there is a right of appeal to the Commission's Chairman. A report can also be re-designated as being more properly made under a different Regulation (for example, a complaint about race official made under Regulation 35 but more properly dealt with under Regulation 32).

Reports that have already been investigated (for example, reports from the Ethics Commission) will be automatically forwarded to the Commission.

Investigation and hearings

Investigations and hearings before the Disciplinary Commission will follow standard procedures, issued by the Commission from time to time (for example, see the tried and tested CDT procedures- see appendix 1). As with the current CDT, decisions can be made in writing or by a hearing – at the sole choice of the defendant. If a hearing is opted for, then the panel will decide the most appropriate way of conducting the hearing (i.e. in person or by telephone).

Appeals

With the exception of doping, any appeal from a decision of the Disciplinary Commission will be to the Review Board.

For betting and gaming complaints, appeals will be changed to also go to the Review Board and not to CAS as currently provided.

Further appeals

For Olympic-related decisions, the jurisdiction of CAS derives from the Olympic Charter and also Article 82(a) for competitors.

Article 82(b) of the ISAF Constitution provides that a right of appeal to CAS exists "*in which a competitor consents to the jurisdiction of the Court of Arbitration for Sport in respect of the appeal*".

We do not propose any change to this provision, which would mean that competitors but not anyone else such as race officials or ISAF Representatives would have a further right of appeal to CAS.

If these proposals are adopted, then ISAF may wish to review the right of appeal to CAS more generally within ISAF to avoid disputes being taken to court.

Regulations

The proposals require new Regulations 8.15, 19 and 35. Consequential amendments to Regulations 32, 36 and the Betting and Anti-Corruption Rules will also be required. See below.

Regardless of whether the Executive approves of the idea of a Disciplinary Commission, the amended Eligibility Code is widely regarded as being very necessary due to problems with the current Code.

Proposed model

The new disciplinary model would look like this:

Function	Investigation body	Hearing body	Appeal body
RRS 69.2(a) – report received direct by ISAF		Disciplinary Commission	Review Board
RRS 69.2(a) – classification report received by ISAF	Classification Commission	Disciplinary Commission	
Regulation 19.5 – report of suspension of eligibility by MNA – decisions whether to revise or annul		Disciplinary Commission	
Regulation 35 – report of misconduct by ISAF Representative		Disciplinary Commission	
Regulation 32 – report into conduct (not performance) of ISAF Race Officials	ROC-appointed Panel	ROC&SC Chairmen*	CAS
Regulation 21.7.5(b) – decision to provisionally suspend pending doping hearing		Disciplinary Commission	
Regulation 21.10.4(c) – decision to suspend a doping ban		Disciplinary Commission	
Regulation 21.10.9(b) – decision to restart ban after a breach		Disciplinary Commission	Review Board
Breach of Ethics Code	Ethics Commission	Discipline Commission	
Breach of Betting & Gaming Regulations		Disciplinary Commission	

*There is no hearing before the ROC & SC Chairmen but they make the decision on sanction.

Submissions

Four Submissions have been prepared to cover the four areas of the regulations that need to be amended :

1. A submission establishing a Disciplinary Commission

This sets up a Commission on the same lines as the Ethics Commission. The Commission will be independent from the Executive, but report its decisions to it. The belief is that a Commission is more appropriate than a Committee.

2. A submission amending Regulation 19 (Eligibility Code)

Recent rule 69.2 cases have highlighted a confusion between "eligibility" and "ISAF Eligibility". There are also provisions in Regulation 24 about required nationality that are more appropriately located here.

It should be born in mind that Regulation 19 is a racing rule, so an important provision that confers on ISAF jurisdiction over competitors. It is also not easy to just use the word "eligibility" on its own, as this can denote a wider concept such as NOR requirements.

It should be noted that Philip Tolhurst's wording proposals on Nationality (19.22 onwards) have not been changed

3. A submission amending Regulation 35

This will be the main Regulation setting out the process for receiving complaints, investigating them and hearing them by the Commission. We do not want to set out detailed procedures, but allow the Commission to set these up.

4. Consequential amendments to amend references in other Regulations

This tidies up some drafting in Regulation 32 and 36.

Note

All References to the Rules are to the 2013-2016 edition

**The Working Group
25 July 2012**

Appendix 1 is available from The Secretary General, Jon Napier or Antony Matusch

Draft Submission for Consideration

Establishing the ISAF Disciplinary Commission

New Regulation 8.15

A submission from the Executive Committee

Purpose or Objective

To establish a specialist commission to deal with disciplinary matters within ISAF.

Proposal 1

Insert new Regulation 8.5:

Disciplinary Commission

8.15 Disciplinary Commission

Constituting the Commission

- 8.15.1 The Disciplinary Commission has been established by the Executive Committee in accordance with Regulation 8 in order to carry out ISAF's disciplinary functions under the Racing Rules of Sailing and the ISAF Regulations.
- 8.15.2 Regulation 8.2 does not apply to the appointment or removal of members of the Commission. Council shall appoint the members of the Commission on the nomination of the Executive Committee. The membership of the Commission shall include a sufficient number of legally qualified members to enable it to discharge its functions. Council shall appoint the Chairman and Vice-Chairman of the Commission on the nomination of the Executive Committee.
- 8.15.3 Notwithstanding Regulation 8.2, Council may remove a member of the Commission for good cause.
- 8.15.4 Reserved for future use
- 8.15.5 Reserved for future use

Terms of Reference

- 8.15.6 The Commission shall independently exercise the functions allocated to it by the ISAF Regulations, including Regulations 19, 35, 36 and Appendix 5. Regulation 8.5 does not apply to the Commission, but it shall report to the Executive Committee on how it has carried out its functions.
- 8.15.7 The Commission shall adopt and publish its own rules of procedure to govern its meetings, hearings and operations. The Commission shall publish its decisions unless it believes it is inappropriate to do so.
- 8.15.8 The Disciplinary Commission shall:

- (a) exercise ISAF's disciplinary functions under the Racing Rules of Sailing and the ISAF Regulations (where those functions are allocated to it by ISAF Regulation);
- (b) publish guidance on dealing with misconduct and discipline in the sport of sailing and guidelines for sanctions for misconduct;
- (c) ensure ISAF's disciplinary procedures are fit for purpose and kept up to date, reflecting best practice across other Olympic sports;
- (d) operate in a transparent and fair manner;
- (e) issue advice and guidance to MNAs and ISAF Race Officials on the investigation and hearing of misconduct cases; and
- (f) promote fair sailing and the principles of sportsmanship.

Current Position

1. At present, there is no body responsible for dealing with reports to ISAF under RRS 69. This means the Executive Committee, as the body under the Constitution responsible for dealing with 'operational issues' must deal with cases referred to ISAF.
2. There are no regulations or rules within ISAF as to how RRS 69 cases are to be dealt with.

Reasons

1. Disciplinary cases, especially involving competitors, require specialist knowledge and experience. Disciplinary cases often need to be dealt with quickly, in between the quarterly meetings of the Executive Committee.
2. Disciplinary decisions by ISAF should be taken by an independent body, separate from the Executive Committee. This will strengthen ISAF's position in the event of challenge by an aggrieved competitor or official and will also promote good governance.
3. The composition of the Commission and its appointment mechanism follows the model for the Ethics Commission already approved by Council.

Proposal 2

If Council approves the creation of a Disciplinary Commission, the following Regulations will need amending in order to transfer the disciplinary functions above to the Commission and to fit in with its functions:

32. RACE OFFICIALS PERFORMANCE

- 32.8 Where formal action is to be taken, the Chairman of the Race Officials Committee shall either appoint a panel of three people to investigate the report ~~or act as a petitioner to the Executive Committee in accordance with Regulation 35.1~~. The panel, if appointed, shall include two members who will be members of the Race Officials Committee or its sub-committees and may include one member of other ISAF committees and sub-committees if appropriate.

- 32.9 The panel shall investigate the report and recommend to the Chairman of the Race Officials Committee and all its Sub-committees either that no further action is taken, or that sanctions shall be imposed ~~or that that matter shall be referred to the Executive Committee or that a report be made to the Secretary General for referral to the Disciplinary Commission under Regulation 35.~~ The Race Official concerned shall be informed of the investigation at its inception and the complaints concerned shall be supplied with all relevant documents. He shall be entitled to answer the allegations in writing or before the panel as he elects. If sanctions are recommended they shall be specified. The Chairman of the Race Officials Committee and its sub-committee chairmen shall confirm the recommendation or decide that the sanction to be imposed shall be less than that recommended. On confirmation the Chairman shall report the decision to the Executive Committee.
- 32.11 If the recommendation is that the appointment be terminated, the matter will be referred to the Executive Committee which shall be the only body with authority to terminate an appointment ~~and shall treat the recommendation as a grievance under regulation 35.~~
- 32.12 ~~Except where Regulation 32.11 applies, the~~ A Race Official can appeal against any sanction, except a referral to the Disciplinary Commission, imposed under Regulation 32 to the ISAF Review Board

36. ETHICS

Report

- 36.9 The report of the Ethics Commission shall be sent to the Secretary General, who shall refer it to the Executive Committee. The Executive Committee shall consider the report and may then refer the case to ~~a Hearing Committee~~ the Disciplinary Commission under Regulation 35. If the Complaint concerns a member of the Executive Committee, the report shall instead be referred to Council.
- 36.10 After the conclusion of any case, the report of the Ethics Commission and the decision of the Executive Committee shall be published and brought to the attention of Council.

Sanctions

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

APPENDIX 5 – BETTING & ANTI CORRUPTION CODE

- 2.3 Each Participant submits to the exclusive jurisdiction of any Hearing Panel convened under these Rules to hear and determine charges brought by ~~ISAF [the International Federation]~~ and to the exclusive jurisdiction of CAS to determine any appeal from a Hearing Panel decision.
- 7.2.1 The Hearing Panel shall be the Disciplinary Commission acting in accordance with its procedures. ~~be appointed by the ISAF in accordance with the principles set out in Rule 7.1 Error! Reference source not found.~~ below, under Regulation 35 the members of the Hearing Panel shall have had no prior involvement with the case and shall not, unless otherwise agreed between the parties, be from the same country as the Participant alleged to have violated these Rules.

RIGHT OF APPEAL

- 9.1 The following decisions made under these Rules may be appealed either by the International Sailing Federation or the Participant who is the subject of the decision exclusively to **the Review Board CAS** in accordance with this Rule:
- (a) a decision that a charge of breach of these Rules should be dismissed on procedural or jurisdictional grounds;
 - (b) a decision that a Violation has been committed;
 - (c) a decision that no Violation has been committed;
 - (d) a decision to impose a Sanction, including a Sanction that is not in accordance with these Rules;
 - (e) a decision not to impose a Sanction;
 - (f) any other decision that is considered to be erroneous or procedurally unsound.
- 9.2 The time for filing an appeal to **the Review Board CAS** shall be twenty-one days (21) from the date of receipt of the decision by the appealing party.
- 9.3 Any decision and any Sanctions imposed shall remain in effect while subject to the appeal process, unless **the Review Board CAS** directs otherwise.
- 9.4 ~~The decision of CAS shall be final and binding on all parties and on all National Federations and there shall be no right of appeal from the CAS decision. No claim may be brought in any other court, tribunal or via any other dispute resolution procedure or mechanism.~~

Current Position

As above.

Reasons

Draft Submission for Consideration

Misconduct and Discipline

Regulation 35

A submission from the Chairman of the Constitution 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-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, the Disciplinary Commission shall conduct any investigation or hearings 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 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.
 - (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.
 - (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;
- (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;
- (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.

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.

Draft Submission for Consideration

Appendix 3 – Eligibility Code

Regulation 19

A submission from the Executive Committee

Purpose or Objective

To consolidate in one place all of the various regulations relating to the eligibility of sailors to compete under RRS, and to revise both the layout and text to give proper effect to the intention of the existing Regulations relating to Eligibility, and remove confusing text.

Proposal

1. Move regulations relating to nationality criteria, currently under Regulation 24.5, which also relate to the eligibility of a competitor for certain events, to the Eligibility Code.
2. Delete the existing text in its entirety and replace with the revised text below.

APPENDIX 3 – ELIGIBILITY CODE

19.1 Competition Eligibility

- 19.1 Any individual shall have ‘Competition Eligibility’ (that is a right to take part in any competition of the sport of sailing) unless that eligibility has been suspended or revoked.
- 19.2 An individual who does not have Competition Eligibility, or who is in breach of any condition imposed on his Competition Eligibility, shall not compete in any competition in the sport of sailing to which the RRS or these Regulations apply in whole or in part.
- 19.3 A boat that races with, as part of her crew, a competitor who is in breach of this Code shall be disqualified from all such races.

ISAF Eligibility

- 19.4 In addition to Competition Eligibility, a competitor has ‘ISAF Eligibility’ if he meets the following conditions:
 - (a) be a member of his/her Member National Authority or one of its affiliated organizations. Such membership to be established by the competitor either:
 - (i) by being entered by a national authority of the country of which the competitor is a national or ordinarily a resident; or
 - (ii) by presenting a valid membership card or certificate, or other satisfactory evidence of identity and membership;
 - (b) be registered as an ‘ISAF Sailor’ on the ISAF Website for those events listed under Regulations 19.6(a) to (c), Olympic Qualification Events and ISAF Graded Match Racing Events;

- (c) has agreed to be governed and bound by the Regulations and any other requirements issued by ISAF; and
 - (d) has not had either his Competition Eligibility or ISAF Eligibility revoked or suspended under Regulation 19.
- 19.5 In exceptional circumstances the Executive Committee may waive the requirements contained in paragraphs 19.2.1(a) and (b) for a sailor who, for good reason, is unable to comply with those requirements.

Events Requiring ISAF Eligibility

- 19.6 ISAF Eligibility is required for the following events:
- (a) the Olympic Sailing Competition;
 - (b) the sailing events of Regional Games recognized by the International Olympic Committee;
 - (c) events including "ISAF" in their titles;
 - (d) world and continental championships of ISAF classes and world championships of the IMS, Major Events and other events approved by ISAF as a World Championship;
 - (e) any event at which the Organizing Authority, Member National Authority or ISAF has appointed an International Jury or International Umpires, International Race Officers, International Measurers or ISAF Technical Delegates to serve in their capacity for which they hold a certificate of appointment issued by ISAF;
 - (f) any event approved by a Member National Authority of ISAF as an Olympic qualifying event;
 - (g) any event designated by a Member National Authority within its jurisdiction as requiring competitors to satisfy the requirements of Regulation 19.7; and
 - (h) any event designated by ISAF.
- 19.7 Additionally, with the prior approval of the relevant Member National Authority, an Organizing Authority may also impose the same requirements as above for an event and that fact shall be stated in the notice of race and the sailing instructions.

Nationality Criteria

- 19.8 When participating in an ISAF Event a competitor must be a national of the Member National Authority that enters the competitor or the competitor represents as determined under the guidelines set out below. However, the Notice of Race may specify that Regulation 19.8 does not apply to crew substitutes.
- 19.9 The following wording shall be included in the notice of race and sailing instructions:
"Any competitor in the championship must be a national of the country of the Member National Authority which is entering him/her or which he represents."
- 19.10 All applications or disputes relating to the determination of the country that a competitor may represent in the championship shall be determined by the Executive Committee.
- 19.11 The requirements of Regulation 19.8 shall not apply to competitors participating in the ISAF Open Match World Racing Championship or the ISAF Offshore Team World Championship.

- 19.12 On application, the Executive Committee may grant exemptions to Regulation 19.8 in case of a competitor being a permanent resident of the country he wishes to represent. The following conditions will apply:
- (a) a competitor must have been an ordinary resident of the country for more than three (3) consecutive years and must be able to establish his residency for this period;
 - (b) a competitor must have been member of the relevant Member National Authority of the Federation (ISAF), or a club or other organization affiliated to the relevant national authority for at least three (3) consecutive years;
 - (c) a competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognized by the Federation (ISAF), and who wants to represent another country, may represent this country provided that at least three (3) consecutive years have passed since the competitor last represented a different country in the events referred to above or the Executive Committee has reduced this period.

Nationality Criteria Guidelines

- 19.13 Based on the criteria used by the IOC for the Olympic Games and ISAF policy, the following guidelines shall be used by the Executive Committee in assessing an application:
- (a) A competitor who is a national of two or more countries at the same time may represent either one of them, as he/she may elect. However, after having represented one country in the Olympic Games, in ISAF events, in continental or regional games or in world or regional championships recognized by the ISAF, he may not represent another country unless he/she meets the conditions set forth in 19.12(b) that apply to persons who have changed their nationality or acquired a new nationality.
 - (b) A competitor who has represented one country in the Olympic Games, in ISAF events, in continental or regional games or in world or regional championships recognized by the ISAF, who has changed his nationality or acquired a new nationality, shall not participate in any of the events referred to above in this paragraph to represent his new country until three years after such change or acquisition. The Executive Committee may after taking into account the circumstances of each case, and with the agreement of the Member National Authorities concerned, reduce or even cancel this period.
 - (c) If a part of an existing country such as an associated state, province or overseas department, a country or colony acquires independence and becomes a new country or is incorporated into or is associated with another country recognized by the IOC, Paragraphs 19.12(a) and (b) shall not apply and a competitor may:
 - (i) continue to represent the former country if he remains a national of that country; or
 - (ii) represent the new country of the country into which the newly independent territory has been incorporated provided that country has a Member National Authority and the competitor becomes or applies to become a national of that country; and
 - (iii) the choice provided for in this paragraph may only be made once in respect of such change in national status.

- (d) In all cases not expressly addressed in these guidelines, in particular those cases in which a competitor would be in a position to represent a country other than that of which he/she is a national, or to have a choice as to the country which he/she intends to represent, the ISAF Executive Committee may take all decisions of a general or individual nature, and in particular issue specific requirements relating to nationality, citizenship, domicile or residence of the competitors, including the duration of any waiting period.
- (e) In the instance of applications that need to be decided in haste, possibly shortly before the start of a championship, the Executive Committee shall nominate two individuals to determine applications/disputes on its behalf for the specific championships only.

Suspension or revocation of Competitor Eligibility or ISAF Eligibility

- 19.14 Competition Eligibility or ISAF Eligibility, or both, may be suspended or revoked:
- (a) by a National Authority (for events within its own jurisdiction) or by ISAF:
 - (i) for a breach of RRS 69.1(a); or
 - (ii) for competing, within the preceding two years, in an event that the competitor knew or should reasonably have known was a Prohibited Event; or
 - (b) for a breach of RRS 5.
- 19.15 A 'Prohibited Event' means an event:
- (a) permitting or requiring advertising beyond that permitted by the ISAF Advertising Code;
 - (b) with prizes or other benefits referred to in Regulation 25.12.2 that is a national event not approved by the national authority of the venue or an international event not approved by ISAF;
 - (c) that is described as a world championship or uses the word "world", either in the title of the event or otherwise, and that is not approved by ISAF;
 - (d) that does not conform to the requirements of RRS 89.1 and is not otherwise approved by ISAF; or
 - (e) for which the Organizing Authority that has not paid the ISAF Event Fees,
 - (f) has been listed on the ISAF website on a list maintained for this purpose

Review by ISAF

- 19.16 A Member National Authority must report all of its decisions made under RRS 69.3 or Regulation 19.8 to ISAF, including the suspension or revocation of Competition Eligibility and/or ISAF Eligibility. The decision of the Member National Authority (together with its reasons) shall be made promptly in writing to the Secretary General.
- 19.17 On receipt of such a report, ISAF may confirm, revise or annul the penalty (or remit it to the Member National Authority for reconsideration in accordance with the ISAF's directions).
- 19.18 After a decision to suspend or revoke, or to impose conditions on, Competition Eligibility and/or ISAF Eligibility has become final, the Secretary General shall report the decision to all Member National Authorities, ISAF Class Associations and other ISAF affiliated

organizations, which may also suspend eligibility for events held within their own jurisdiction.

Appeals

- 19.19 A competitor may appeal a decision to suspend, revoke, or impose conditions on his Competition or ISAF Eligibility to the Review Board. The competitor shall be advised of the right to appeal and be provided with a copy of the Review Board Rules of Procedure.
- 19.20 A Member National Authority or ISAF may ask for a review of its decision by the Review Board. The Review Board Rules of Procedure shall govern all appeals and requests for review.
- 19.21 Upon an appeal or request for review, the Review Board may confirm, revise or annul the decision, or require a hearing or rehearing.
- 19.22 Decisions of the Review Board may be appealed in accordance with Article 82.
- 19.23 The Secretary General shall promptly notify all Member National Authorities, ISAF Class Associations and other ISAF affiliated organizations of all Review Board decisions made pursuant to this Regulation.

Reinstatement of Competition and/or ISAF Eligibility

- 19.24 A competitor may apply to the ISAF for his Competition Eligibility and/or ISAF Eligibility to be reinstated, or have any conditions imposed upon it, if
 - (a) he establishes substantial, changed circumstances justifying reinstatement; and
 - (b) he has completed a minimum of three years of suspension.
- 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.

Class Eligibility

- 19.26 Any competitor whose eligibility has been suspended, denied, or revoked by an ISAF Class may appeal that decision to the Review Board in accordance with Articles 79, 81 and 82 and the procedures set out in the Review Board Rules of Procedure
-

Important Notes:

1. Much of the current text of Appendix 3 is replicated in this new version, but with modifications to give it clarity.
2. Similarly Regulation 24.5 appears almost unchanged but incorporated into the new text.
3. Various parts of the current text have been re arranged to improve clarity.
4. References to Articles by number have been updated

Current Position

Current Appendix 3 – Eligibility Code, Regulation 19 and current Regulation 24.5

Reasons:

1. The existing text has been found confusing by sailors, administrators and lawyers alike. Bad rules encourage non observance in whole or part and are similarly badly and inconsistently administered, which is bad for the sport. Recent cases dealt with by ISAF have demonstrated flaws in the current wording.
2. The existing appears to be an amalgam of various concepts without any logical connection, which in itself has caused confusion. The expressions 'eligibility' (as a defined term in Article 79.1 of the Constitution) and 'ISAF Eligibility' have been used with different meanings and intentions.
3. The existing text has prompted several request for clarification, and an interpretation.
4. Sailors should be able to find all rules relating to eligibility in one part of the Regulations and not have to hunt through the Regulations to find relevant parts. Consolidating them in one appendix will be a major improvement.
5. The provisions relating to reports, appeals and reinstatement all needed revising.
6. This revised text is required now so that it is consistent with the 2013-16 RRS. The new edition of the RRS requires ISAF to have in place '*established procedures*' by 1 January 2013. As Regulation 19 is a 'rule' under the RRS, it is an important source of jurisdiction for ISAF.