

INTERPRETATION 002-20
REQUEST FROM YACHTING NEW ZEALAND

Question 1

In [Regulation] 35.2.1(a), are the persons referred to those who are / were at the event where the alleged misconduct occurred?

Answer 1

No, as Regulation 35.2.1(a) does not contain any express limitations, it may be any competitor, boat owner and/or support person bound by Regulation 35.

Question 2

Does the Disciplinary Investigating Officer have the authority to interview anyone who was not a “Participant” at the event where the alleged infringements took place?

Answer 2

Yes, as Regulation 35.3.4 does not contain any express limitations, a Disciplinary Investigating Officer (“DIO”) may interview any competitor, boat owner and/or support person, or any other person bound by the Regulations. A DIO’s authority to interview is not limited to the occasion of “any event” to which they may be appointed under Regulation 35.3.3(a) and (b). Under Regulation 35.3(c), a DIO’s authority to interview includes in respect of “reports received by World Sailing which require investigation”. This could occur after “any event”.

Question 3

When a complaint contains accusations that a competitor at an event that is not covered in Regulation 35.4.1 broke a rule(s) that were contained in the Notice of Race and or the Sailing Instructions for an event, should have been a protest(s) lodged at the event?

Answer 3

Competitors are not required to lodge a protest, but that is the usual recourse during an event and within the spirit of the Basic Principle, Sportsmanship and the Rules. However, it is not mandatory. RRS 60 sets out who may make a report at a Part D event, and Regulation 35.6.2(d) sets out who may make a complaint under Part E (extracts at Attachment 1 to this Interpretation).

Question 4

Would the person(s) making the complaint have needed to have been a “Participant” at the event?

Answer 4

See the answer to question 3.

Question 5

In the absence of any complaints, allegations or an RRS 69 hearing at an event, what would be the grounds for proceeding under Regulation 35?

Answer 5

There is no prohibition against making a complaint under Regulation 35 as opposed to under RRS 69. However, if the complaint relates to an event covered by Parts C or D, it must be dealt with in accordance with those Parts (i.e. effectively under RRS 69).

Question 6

Would the time barring referred to in Regulation 35.6.2 apply in this situation?

Answer 6

It is not clear which situation is being referred to however, the time limit in Regulation 35.6.2 only applies to Part E cases. In terms of Regulation 35.4.1, there is no time limit to Part C or Part D reports.

Question 7

Under Part E, could someone lodge a complaint against a person who is a frequent “Participant” at events, when the evidence for the complaint have been gathered over a long period and not related to particular event, with information from freely available sources?

Answer 7

Yes, the only limitations on who can lodge a complaint are those set out in Regulation 35.6.2(d). That is, a complaint may be made by any race official, competitor, technical delegate, National Authority or authorised member of an organising authority or an

international class association, Participant or other person or body with sufficient standing or relationship to the alleged Misconduct as is permitted by the person authorised by the rules of procedure to determine standing.

Question 8

Should a complaint that a boat is alleged to have broken a rule(s) while competing in an event run under the RRS been sent to the MNA of the competitor?

Answer 8

Regulation 35.5.1 provides that events conducted under the RRS are covered by Part D, and Regulation 35.5.2 states that 'all complaints, allegations or reports of Misconduct shall be considered and adjudicated upon by the protest committee in accordance with the procedures in RRS 69'.

The procedure under RRS 69 similarly provides that allegations of a breach of the Rule must be resolved in accordance with the provisions within the Rule, and the Rule requires the protest committee to determine the complaint.

However, if the protest committee considers it impractical to conduct a hearing, it may make a report to the national authority of the person or, for specific international events listed in the World Sailing Regulations, to World Sailing (RRS 69.2(k)).

Question 9

In the event that there is no [Chief Executive Officer] at the time the complaint is received, who is authorised to pass the complaint on to the Judicial Board and where do they get that authority?

Answer 9

There is a Chief Executive Officer ("CEO") appointed at all times – either a permanent CEO or one or more interim CEOs appointed by the Board in accordance with Article 87 of the Constitution. Any person so appointed may act in place of the CEO if there is no CEO, or no CEO capable of acting.

Question 10

Is there a requirement in the Regulation for World Sailing to notify the complainant when the allegation is originally received so they are aware that an investigation will take place and of the alleged charges?

Answer 10

We assume the question is meant to ask “is there a requirement in the Regulation for World Sailing to notify the person who is the subject of the complaint when the allegation is originally received so they are aware that an investigation will take place and of the alleged charges?”

No, it is a matter for the DIO to determine how the investigation is conducted.

Question 11

If the answer is no, how does the complainant become aware that an investigation is being undertaken?

Answer 11

We assume the question is meant to ask “how does the person who is the subject of the complaint become aware that an investigation is being undertaken?”

While the DIO is not required to notify the person under investigation, as a matter of practice and in the interests of procedural fairness, the DIO should seek to speak to the person in all but clear-cut cases. However, they are not required to do so as there may be legitimate reasons for the DIO to not speak to the person, or delay advising them of the investigation (for example, if evidence may be destroyed).

If charges are laid, further to Regulation 35, the DIO is required to provide full particulars in the charge sheet, including the rule(s) alleged to have been breached and copies of relevant documents and materials.

Note: Charlie Manzoni and David Tillett did not take part in the preparation of this interpretation.

**Constitution Committee
World Sailing**

12 August 2020

Attachment 1

RRS 60 (2017 – 2020)

60. RIGHT TO PROTEST; RIGHT TO REQUEST REDRESS OR RULE 69 ACTION

60.1.

A boat may:

- a. protest another boat, but not for an alleged breach of a rule of Part 2 or rule 31 unless she was involved in or saw the incident;
- b. request redress
- c.

60.2.

A race committee may:

- a. protest a boat, but not as a result of information arising from a request for redress or an invalid protest, or from a report from a person with a conflict of interest other than the representative of the boat herself;
- b. request redress for a boat; or
- c. report to the protest committee requesting action under rule 69.2(b).

60.3.

A protest committee may:

- a. protest a boat, but not as a result of information arising from a request for redress or an invalid protest, or from a report from a person with a conflict of interest other than the representative of the boat herself. However, it may protest a boat:
 - a. if it learns of an incident involving her that may have resulted in injury or serious damage, or
 - b. if during the hearing of a valid protest it learns that the boat, although not a party to the hearing, was involved in the incident and may have broken a rule;
- b. call a hearing to consider redress;
- c. act under rule 69.2(b); or
- d. call a hearing to consider whether a support person has broken a rule, based on its own observation or information received from any source, including evidence taken during a hearing.

60.4.

A technical committee may:

- a. protest a boat, but not as a result of information arising from a request for redress or an invalid protest, or from a report from a person with a conflict of interest other than the representative of the boat herself. However, it shall protest a boat if it decides that:
 - a. a boat has broken a rule of Part 4, but not rules 42, 44 and 46, or
 - b. a boat or personal equipment does not comply with the class rules;
- b. request redress for a boat; or
- c. report to the protest committee requesting action under rule 69.2(b).

60.5.

- a. However, neither a boat nor a committee may protest for an alleged breach of rule 6, 7 or 69.

Regulation 35.6.2

35.6.2 All such complaints must be made:

- (d) by a race official, competitor, technical delegate, National Authority or authorised member of an organising authority or an international class association, Participant or other person or body with sufficient standing or relationship to the alleged Misconduct as is permitted by the person authorised by the rules of procedure to determine standing.