



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 642

14

December
Desember

2018

No. 42115

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ISSN 1682-5843



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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 1388

14 DECEMBER 2018



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018

The Independent Communications Authority of South Africa ("ICASA or the Authority") hereby declares its intention to amend the Sport Broadcasting Services Regulations, 2010 in line with the provisions of section 4 (3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("ICASA Act"), as amended and section 60(1) and (2) of the Electronic Communications Act No. 36 of 2005 ("the ECA"), as amended and invites interested parties to make written representations on the draft Sports Broadcasting Services Amendment Regulations, 2018 ("Draft Regulations").

A copy of the Draft Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at No. 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion between 09h00 and 16h00, Monday to Friday.


Written representations must be submitted to the Authority by no later than 16h00 on 04 February 2019 by post, hand delivery or electronically and marked specifically for attention: Violet Molete.

Delivery address: Block B, 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion; or by email at vmolete@icasa.org.za and pcokie@icasa.org.za or by facsimile at: 012 568 3716. Telephonic enquiries should be directed to 012 568 3715 between 10h00 and 16h00, from Monday to Friday.

Written representations received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library and such copies will be obtainable upon payment of the prescribed fee.

When a person submits information to the Authority, such person may request that specific information be treated as confidential information in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"). The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential in terms of section 4D(4)(a) to (e) thereof. The Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral presentations.



Rubben Mohlaloga

Chairperson

Date: 13 December 2018

SCHEDULE

1. Definitions

In these Regulations “the Regulations” means the Sport Broadcasting Services Regulations, 2010 as published under Government Notice No. R.275 in Government Gazette No. 33079 of 7 April 2010.

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended—

- (a) by the substitution for the definition of “Act” of the following definition:
" '**Act**' means the Electronic Communications Act, 2005 (Act No.36 of 2005), as amended";
- (b) by the substitution for the definition of “Confederation sporting event” of the following definition:
" '**Confederation sporting event**' means an official sporting event arranged by a recognised international sports body that governs a particular sport which involves national federation as contemplated in terms of section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998) and does not include friendly games";
- (c) By the insertion after the definition of “Confederation sporting event” of the following definition:
" '**COSAFA**' Council of Southern Africa Football Association";
- (d) By the insertion after the definition of “Delayed Live” of the following definition:
" '**Developmental Sports**' means sports aimed at promoting social change and enlarging the population's choices and increasing opportunities to all members of the society";

- (e) By the insertion after the definition of “Minister” of the following definition:
- “ **‘Minority Sports’** means any sport that does not have majority of the population’s following or a sport having a less distinctive presence within a larger society”;
- (f) By the insertion after the definition of “National Sporting Representative” of the following definition:
- “**‘National Sporting Representative’** means any individual representing South Africa in a confederation sporting event”
- (g) By the insertion after the definition of “National Sporting Events” of the following definition:
- “**‘National Sporting Events’** means the broadcasting of sporting events that are deemed to be of national interest and include the South African National Senior Team.
- (h) By the insertion after the definition of “Sports of National Interest” of the following definition:
- “**‘Sports of National Interest’** means an event that does not necessarily involve a Senior National Team but appeal to the majority of South African populace.
- (i) By the insertion after the definition of “National Senior Team” of the following definitions:
- “ **‘National Senior Team’** means the highest-ranking team in a specific sporting age group; and
- (j) **‘Subscription broadcasting service licensee’** means a licensee who provides a broadcasting service to a subscriber upon payment of a fee”.

3. AMENDMENT OF REGULATION 2

Regulation 2 of the Regulations is hereby amended-

- (a) by the substitution for sub-regulation (a) of the following sub-regulation:

“(a) Regulate the broadcasting of national sporting events in the public interest, within the Republic”; and

- (b) by the insertion after sub-regulation (d) of the following sub-regulation:

”(e) Reach a wider audience and to strike a balance between audience and revenue”.

4. AMENDMENT OF REGULATION 4

Regulation 4 of the Regulations is hereby amended by the substitution for sub-regulation 1(a) of the following sub-regulation:

“(1) The Authority has used the following criteria in determining national sporting events that are of public interest:

- a) a confederation sporting event involving a national team or a national sporting representative”;

5. AMENDMENT OF REGULATION 5

Regulation 5 of the Regulations is hereby amended by the substitution for regulation 5 of the following regulation:

“Listed Sporting Events and Codes

5.1 Group A: Compulsory Listed National Sporting Events for a Free-to-air licensee with full live coverage;

5.1.1 Subject to the criteria provided in regulation 4 (1) (a) the following are listed national sporting events which must be broadcast on full live coverage on Free-to-air:

- a) Summer Olympic Games;
b) Paralympics;
c) FIFA World Cup;

- d) Africa Cup of Nations (Male and Female Soccer)
- e) Rugby World Cup;
- f) ICC Cricket World Cup;
- g) ICC T20 Cricket World Championships;
- h) International Boxing Federations;
- k) National Netball;
- j) Commonwealth Games; and
- k) International Association of Athletics Federation (IAAF).

5.1.2 If a Free-to-air licensee cannot acquire the above sporting rights, the Free-to-air licensee must inform subscription service broadcasters, to allow an opportunity for the latter to bid for the rights on a non-exclusive basis.

5.2 Group B: National Sporting Events offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions;

5.2.1 The following sporting events fall within this group:

- a) Super 14 Rugby;
- b) All Africa Games;
- c) COSAFA Cup;
- d) CAF Champions League;
- e) CAF Confederations Cup;
- f) Charity Cup (Soccer);
- g) Supa 8 Cup (Soccer);
- h) Knockout (Soccer);
- i) Soccer Championship Cup;
- j) Currie Cup (Rugby);
- k) Two Oceans Marathon;
- l) Comrades Marathon;
- m) Domestic Boxing Tournaments;
- n) Premier Soccer League;
- o) Domestic Cricket Championships; and
- p) Premier Hockey League.

5.2.2 These Amendment Regulations will continue to apply to the listed national sporting events in Group A and B irrespective of any changes in the name of the competition or the sponsorship of the listed event.

5.3 Group C: Minority and Developmental Sporting Events to be broadcast by subscription and Free-to-air broadcasters.

5.3.1 The following sporting codes fall within this group:

- a) Ice Hockey;
- b) Tennis;
- c) Water Polo;
- d) Dance;
- e) Martial Arts;
- f) Wrestling;
- g) Indigenous Games;
- h) Basketball;
- i) Volleyball;
- j) Squash;
- k) Chess;
- l) Gymnastics;
- m) Varsity sports;
- n) Golf; and
- o) Motor sport.

5.3.2 In respect of the sporting codes listed in Group C, Free-to-air and subscription service broadcasters must broadcast events of at least two (2) of the listed sporting codes per annum.

6. AMENDMENT OF REGULATION 6

Regulation 6 of the Regulations is hereby amended by the substitution for regulation 6 of the following regulation:

“BROADCASTING OF NATIONAL SPORTING EVENTS UNDER GROUP B

- 6.1** A broadcasting *service licensee* who has acquired rights or failed to acquire rights in terms of regulation 5.2 must inform other broadcasting service licensees within five (5) days of acquiring such rights or failure to do so, for the opportunity by other broadcasters to tender for same if the rights are not acquired.

- 6.2 A listed national sporting event may be broadcast live, delayed live or delayed by a free-to-air broadcasting service licensee.
- 6.3 A broadcasting service licensee must under no circumstances prohibit another from advertising a national sporting event.
- 6.4 Consistent with regulation 6 (3) the actual time periods or scheduling of advertisements of national sporting events shall be determined by the parties in their commercial agreement."

7. AMENDMENT OF REGULATION 7

Regulation 7 of the Regulations is hereby amended by the substitution for regulation 7 of the following regulation:

"7 Review of the Listed Events

(1). A national sporting event may be removed from or added to the list subject to the following conditions:

- (a) Following the publication of the current list for public input every three (3) years from the date the Regulations come into effect.
- (b) When a stakeholder applies to the Authority to add or remove a national sporting event and provides reasons for such application.
- (c) The application to add or remove a national sporting event shall be subjected to a public process.
- (d) Consistent with section 60(1) of the Act, any changes to the criteria used in the listing of national sporting events and the list itself shall be effected after consultation with the Minister of Communications, Telecommunications and Postal Services and Minister of Sports and Recreation.
- (e) Following the review of the Regulations."

8. AMENDMENT OF REGULATION 8

Regulation 8 of the Regulations is hereby amended by-

- (a) the insertion of sub-regulation (3A) after sub-regulation (3) of the following

Sub- regulation:

“(3A) A broadcasting service licensee entering into a commercial agreement in terms of these Regulations may report any unresolved dispute and/ or non-compliance with regulation 8(1) and 8(2) to the Authority.”

- (b) by the substitution of sub-regulation 4 of the following sub-regulation:

“(4) The Authority shall refer any failure to comply with regulation 8 (1) and 8 (2) to the CCC which shall hear the matter and make recommendations to the Authority on the action to be taken against the parties for their lack of compliance.”

9. AMENDMENT OF REGULATION 10

Regulation 10 of the Regulations is hereby amended by the substitution for regulation 10 of the following regulation:

“10. Penalties”

A broadcasting service licensee that contravenes or fails to comply with the provisions of these Regulations shall be referred to the CCC.

10. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Sports Broadcasting Services Amendment Regulations, 2018 and shall come into force upon publication in the Government Gazette.

**Independent Communications Authority of South Africa**

350 Witch-Hazel Avenue, Eco Point Office Park

Eco Park, Centurion.

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Telephone number: (012) 568 3000/1

EXPLANATORY MEMORANDUM ON THE REVIEW OF THE "SPORT BROADCASTING SERVICES REGULATIONS, 2010"

1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK

- 1.1 The Independent Communications Authority of South Africa ("ICASA / the Authority") is enjoined in terms of section 2 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"), amongst others, to regulate broadcasting in the public interest.
- 1.2 Section 60(1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA") provides that "subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting event, as identified in the public interest from time to time, by the Authority, after consultation with the Minister and the Minister of Sport and in accordance with the regulations prescribed by the Authority".
- 1.3 Section 60(2) of the ECA provides that "in the event of a dispute arising concerning subsection (1) any party may notify the Authority of the dispute in writing and such dispute must be resolved on an expedited basis by the Authority in accordance with the regulations prescribed by the Authority".

- 1.4 On 7 April 2010, the Authority prescribed the Sport Broadcasting Services Regulations, 2010¹ ("the 2010 Regulations") which repealed the Sports Broadcasting Right Regulations, 2003 promulgated in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999).
- 1.5 Regulation 7(a) of the 2010 Regulations contemplates that the criteria used in the listing of national sporting events and the list of national sporting event will be reviewed after every four years from the date of the publication of the 2010 Regulations.
- 1.5 Considering the above, the Authority has decided to amend the 2010 Regulations. The Authority has prepared the Draft Sports Broadcasting Services Amendment Regulations, 2018, ("the Draft Regulations") and invites interested parties to make written representations thereon. The Draft Regulations introduce the new listing and divided this into three groups, namely:
- a) Group A is a list of sporting events to be broadcast by the Free to Air (FTA) broadcasters;
 - b) Group B is a list of sporting events to be offered to Subscription broadcasters on a non-exclusive basis under sub-licencing conditions; and
 - c) Group C is geared at sporting events deemed as minority and developmental sports.
- 1.6 The Draft Regulations advance equality, human dignity through access to sport of National interest to all citizens. This will further ensure that sports continue to promote social inclusion, equity and sustainability by ensuring that even minority sports are given prominence on broadcasting system to create opportunities provided by sports for the current generation as well as generations to come.

¹ Published in Government Notice R. 275 under Gazette No. 33079 of 7 April 2010.

2. SUMMARY OF THE DRAFT REGULATIONS

2.1 Regulation 2: Amendment of regulation 1 of the 2010 Regulations

The definitions contained in the 2010 Regulations are amended as follows:

- A definition of "Act" is amended by addition of the words "as amended" to consider the subsequent amendments to the Act;
- A definition of "Confederation sporting event" is amended to effect editorial changes;
- A definition for "COSAFA" is inserted to refer to the Council of Southern Africa Football Association;
- A definition for "Developmental Sports" is inserted to mean sports aimed at promoting social change and enlarging the population's choices and increasing opportunities to all members of the society. This definition was inserted to provide clarity and a description on what constitutes the type of sporting events listed in the proposed Group C. The definition was informed by the United Nations' definition of "development" in the context of Sport for Development and Peace.
- A definition for "Minority Sports" is inserted to mean any sport that does not have majority of the population's following or a sport having a less distinctive presence within a larger society. The proposed definition is based on the ordinary meaning of the word "minority". The definition as proposed by the Authority is in line with the current broadcasting environment where a clear distinction exists between the coverage and following of sports events listed in Group A and B with those sporting codes that the Authority has identified in Group C.
- A definition for "National Sporting Representative" is inserted to mean any individual representing South Africa in a confederation sporting event. This definition was derived from the definition of the terms "Olympian"

and "Paralympian" in the SASCOC Constitution². The term *National Sporting Representative* was chosen to incorporate all athletes as well as sporting events in one definition.

- A definition for "Senior" is inserted to mean the highest-ranking team in a specific sporting age group.
- A definition for "Subscription broadcasting licensee" is inserted to mean a licensee who provides a broadcasting service to a subscriber upon payment of a fee.

2.2 Regulation 3: Amendment of regulation 2 of the 2010 Regulations

Regulation 2 (a) is amended to align the object of the Regulations with section 60(1) of the ECA and section 2 of the ICASA Act, by the addition of the words "in the public interest".

A new object is inserted which reads as follows: "Reach a wider audience and to strike a balance between audience and revenue". The proposed insertion is to indicate the Authority's aim in encouraging the financial sustainability of broadcasters whilst ensuring access to sports is provided to most of the South African population.

2.3 Regulation 4: Amendment of regulation 4 of the 2010 Regulations

Regulation 4(1)(a) of the 2010 Regulations is amended to substitute the term "an individual" with "a national sporting representative" in relation a confederation sporting event. A national sporting representative means any individual representing South Africa in a confederation sporting event.

² Constitution of the South African Sports Confederation and Olympic Committee, Page 8 & paragraphs 4.41 and 4.42: Olympian and Paralympian are defined as follows:

"Olympians" means such athlete or athletes who have represented South Africa at the Olympic Games.

"Paralympians" means such athlete or athletes who have represented South Africa at the Paralympic Games.

2.5 Regulation 5: Amendment of regulation 5 of the 2010 Regulations

Regulation 5 of the 2010 Regulations is amended by grouping the sporting events and codes according to the level of public interest warranted by each sporting event or code.

- Group A - compulsory Listed National Sporting Events for Free-to Air with full live coverage: are the events that the Authority deems to be accessible to most South Africans. These sporting rights to the events are already held by the Free-to-air and are therefore accessible to the public.
- Group B - National Sporting Events offered to subscription on a non-exclusive basis under sub-licencing conditions.
- Group C - Minority and Developmental Sporting Events to be broadcast by subscription and Free-to-Air.

2.6 Regulation 6: Amendment of regulation 6 of the 2010 Regulations

Regulation 6 of the 2010 Regulations is amended to take into the proposed amendments to regulations 5 in relation to broadcasting of national sporting events under Group B.

2.7 Regulation 7: Amendment of regulations 7 of the 2010 Regulations

Regulation 7 of the 2010 Regulations is amended to add the review of the Regulations as one of the conditions to update the listed events. Regulation 7 is also amended to effect editorial changes.

2.8 Regulations 8: Amendment of regulation 8 of the 2010 Regulations

Regulation 8 of the 2010 Regulations is amended to insert a new provision empowering broadcasting service licensee entering into a commercial agreement in terms of these Regulations to report any unresolved dispute and/ or non-

compliance with regulation 8(1) and 8(2) to the Authority. This provision provides an avenue for licensees to redress their dispute on an expedited basis by the Authority. Regulation 8 is also amended to effect editorial changes.

2.9 Regulations 9: Amendment of regulation 10 of the 2010 Regulations

Regulation 10 of the 2010 Regulations is amended to ensure alignment with sections 17(E) and (H) of the ICASA Act.

3. THE PROCESS

3.1 Consultation with the Ministers

3.1.1 Section 60(1) of the ECA empowers the Authority to identify national sporting events in the public interest from time to time, after consultation with the Minister of Communications, Telecommunications and Postal Services and the Minister of Sport and Recreation. Regulation 7(1)(d) of the 2010 Regulations requires that any changes to the criteria used in the listing of national sporting events and the list thereof shall be affected after consultation with the Ministers.

3.1.2 The Ministries of Communications, Telecommunications and Postal Services and Sports and Recreation were consulted during the development of draft regulations and will again be consulted prior to the finalisation of the regulations.

3.2 Public Consultation

3.2.1 Section 4(4) of the ECA requires the Authority to publish a notice declaring its intention to make Regulations and inviting interested parties to make written representation on the draft Regulations, in no less than thirty (30) days before any Regulation is made. The publication of these Draft Regulations on the Sports Broadcasting Services, marks the consultation process envisaged in terms of section 4(4) of the ECA.

- 3.2.2 The Authority may hold public hearings on the Draft Regulations if deemed necessary. The Authority will, if it deems it necessary to hold public hearings, notify stakeholders of the date, time and the venue of the hearings.

3.3 Final Regulations

The Authority will publish the final Regulations in the Government Gazette after the conclusion of the consultation process and its consideration of representations received on this matter.

3.4 Timelines

- 3.4.1 The process to review the 2010 Regulations is envisaged to be finalised by 31 March 2019.
- 3.4.2 The Authority may however amend the above timelines and will notify stakeholders to this effect.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065