

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT AMENDMENT
BILL**

*(As agreed to by the Portfolio Committee on Sport, Arts and Culture)
(The English text is the official text of the Bill)*

(MINISTER OF SPORT, ARTS AND CULTURE)

[B 41B—2023]

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‘**international sports federation**’ means any group of national sports bodies involved in the overseeing and co-operation of the playing and administration of any particular sport at international level;

‘**International Standard**’ means International Standard as defined in Appendix 1;

‘**Minister**’ means the Minister responsible for sport;

‘**National Anti-Doping Organisation (NADO)**’ means the National Anti-Doping Organisation as defined in Appendix 1;

‘**national sports federation**’ means any number of people involved in the overseeing and co-ordination of the playing and administration of any particular sport in any particular country;

‘**person**’ means a natural person or an organisation or other entity;

‘**Prohibited List**’ means the Prohibited List as defined in Appendix 1;

‘**prohibited substance**’ means a Prohibited Substance as defined in Appendix 1;

‘**public entity**’ means a public entity as defined in section 1 of the Public Finance Management Act;

‘**Public Finance Management Act**’ means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

‘**Results Management**’ means Results Management as defined in Appendix 1;

‘**testing**’ means testing as defined in Appendix 1;

‘**the Sports Confederation**’ means the Sports Confederation as defined in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998);

‘**Therapeutic Use Exemption (TUE)**’ means Therapeutic Use Exemption as defined in Appendix 1;

‘**UNESCO Convention**’ means the UNESCO (United Nations Educational, Scientific and Cultural Organisation) Convention as defined in Appendix 1;

‘**WADA**’ means the World Anti-Doping Agency; and

‘**WADA-accredited laboratory**’ means a laboratory accredited by WADA according to the International Standard for Laboratories.

(2) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the Code must be preferred over any alternative interpretation which is inconsistent with the Code.”

Substitution of section 2 of Act 14 of 1997

2. The following section is hereby substituted for section 2 of the principal Act:

“Establishment of South African Institute for Drug-Free Sport

2. (1) There is hereby established a [**corporate body**] public entity in terms of the Public Finance Management Act to be known as the South African Institute for Drug-Free Sport.

(2) The Institute is the National Anti-Doping Organisation in the Republic of South Africa.”

Amendment of section 10 of Act 14 of 1997, as amended by section 5 of Act 25 of 2006

3. Section 10 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) to promote and ensure the adoption of a centralised doping control programme, which [**may subject any athlete to**] focuses on implementing intelligent testing, [with or without advance notice,] both in and out of competition, on athletes over whom it has authority;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The Institute shall operate independently, but may co-operate with [SASCOC] the Sports Confederation and [SRSA] the Department from time to time as the need arises in order to achieve the objects of the Institute as contemplated in this Act.”.

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Amendment of section 11 of Act 14 of 1997, as amended by section 6 of Act 25 of 2006

4. Section 11 of the Principal Act is hereby amended—

(a) by the deletion of paragraphs (b) and (c) of subsection (2);

(b) by the substitution for paragraph (f) of subsection (2) of the following paragraph:

“(f) collect samples from athletes and secure the safe and tamper-free transit of samples to WADA-accredited laboratories in accordance with the Code [’s **International Standard for Testing**];”;

(c) by the substitution for paragraph (m) of subsection 2 of the following paragraph:

“(m) require that athletes who have been included in the testing pools provide accurate information on their current whereabouts which shall be made available to WADA and to other Anti-Doping Organisations having authority to test the athletes; and”;

(d) by the substitution for paragraph (n) of subsection (2) of the following paragraph:

“(n) ensure that there is a process for all athletes with documented medical conditions requiring the use of a prohibited substance or method [**may**] to request a [therapeutic use exemption: Provided that such requests shall be evaluated by a therapeutic use exemption committee in accordance with the International Standard for Therapeutic Use: Provided further that the Institute shall promptly report in writing to the WADA such granting of therapeutic use exemptions] Therapeutic Use Exemption (TUE).”; and

(e) by the insertion after subsection (2) of the following subsection:

“(2A) (a) A request contemplated in subsection (2)(n) shall be evaluated by a Therapeutic Use Exemption Committee in accordance with the International Standard for Therapeutic Use Exemptions referred to in the Code; and;

(b) The Institute shall promptly report in writing to the WADA any Therapeutic Use Exemption (TUE) granted in respect of a request contemplated in subsection (2)(n).”.

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Repeal of sections 11A to 11C of Act 14 of 1997

5. Sections 11A to 11C of the principal Act are hereby repealed.

Substitution of section 17 of Act 14 of 1997, as amended by section 10 of Act 25 of 2006

6. The following section is hereby substituted for section 17 of the principal Act:

“Results Management

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17. (1) Results Management shall be the responsibility of, and shall be governed by the procedural rules and anti-doping rules of the Institute aligned with the principles of the Code and relevant International Standards.

(2) (a) There is hereby established by the Institute a first instance hearing panel named the Independent Doping Hearing Panel which has jurisdiction in the first instance to hear and determine whether an athlete or other person subject to the anti-doping rules of the Institute has committed an anti-doping rule violation and if applicable to impose relevant consequences.

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(3) (a) There is hereby established an independent board which shall be known as the Anti-Doping Appeal Board.

(b) The Minister shall appoint an Appeal Board, which shall consist of not fewer than eight persons possessing special knowledge and expertise relevant to anti-doping and dispute resolution.

(c) The members of the Appeal Board are appointed for a period of five years and are eligible for re-appointment.

(d) The Appeal Board must consist of no fewer than four practising attorneys or advocates, two sports medical physicians and two sports administrators.

(e) The Minister may terminate the appointment of an Appeal Board member for serious misconduct, incapacity or incompetence.

(4) A party to an appeal shall be entitled to be represented by a person of his or her own choice.

(5) The procedure to be followed in connection with appeals shall be determined by the Appeal Board.

(6) Appeals involving International-Level Athletes shall be heard by the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the Code.

(7) Any proceedings, pending before the Independent Doping Hearing Panel at the commencement of this Act must be continued and concluded in terms of this Act in the Independent Doping Hearing Panel and, for that purpose those proceedings are deemed to have been instituted in terms of this Act in the Independent Doping Hearing Panel.”.

Substitution of section 17A of Act 14 of 1997

7. The following section is hereby substituted for section 17A of the principal Act:

“Punitive measures

17A. (1) [SRSA] The Department, on the written recommendations of [SASCOC] the Sports Confederation, may cause an investigation to be conducted [as it deems fit] in a fair, transparent, just and equitable manner to ascertain whether all national sports federations have complied with the provisions [contained in] of this Act.

(2) [SRSA] The Department must, after consultation with the Institute and [SASCOC] the Sports Confederation, and after any national sports federation is found, subsequent to an investigation as contemplated in subsection (1) above to be non-compliant identify any non-compliant national sports federations whereafter it may, amongst others—

(a) withdraw or reduce its or the Government’s funding of any such federation;

(b) bar any such federation from administering its sport in the Republic; or

(c) recommend that [SASCOC] the Sports Confederation refuse to award national colours to the members of any such federation.

(3) [SRSA] The Department may only act against a federation in terms of subsection (2) after it has given that federation an opportunity to make oral or written representations with regard to any proposed action.”.

Substitution of long title of Act 14 of 1997

8. The following long title is hereby substituted for the long title of the principal Act:

“To promote the participation in sport free from the use of prohibited substances or methods intended to artificially enhance performance, thereby rendering impermissible doping practices which are contrary to the principles of fair play and medical ethics, in the interest of the health and well-being of sportspersons; to provide for the establishment of the South African Institute for Drug-Free Sport; to provide for the composition of the Institute; to provide for its meetings and staff; to provide for the remuneration and allowances of members of the Institute; to provide for its expenditure, finances and accountability; to

provide for the objects, powers and duties of the Institute; to provide for Results Management; to provide for punitive measures and to provide for matters connected therewith.”.

Amendment of Arrangement of section of Act 14 of 1997

- 9.** The Arrangement of Sections of the principal Act is hereby amended by— 5
- (a) the substitution of item 1 of the following item:
“1. Definitions and Interpretation”
 - (b) the deletion of items 11A-11C; and
 - (c) the substitution of item 17 of the following item:
“17. [**Appeals**] Results Management”.
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Amendment of Principal Act

10. The principal Act is hereby amended by the substitution of the expression “SASCOC”, wherever it occurs, with the expression “the Sports Confederation”.

Short title and commencement

11. This Act is called the South African Institute for Drug-Free Sport Amendment Act, 15 2023 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT AMENDMENT BILL, 2023

1. BACKGROUND

On 31 October 2022, the World Anti-Doping Agency (“WADA”), wrote to the South African Institute for Drug-Free Sport (the “Institute”), advising the Institute that WADA had reviewed the South African Drug-Free Sport Act, 1997 (Act No. 14 of 1997) (the “principal Act”), as amended by the South African Drug-Free Sport Amendment Act, 2006 (Act No. 25 of 2006), and identified a number of provisions which do not comply with the World Anti-Doping Code (the “Code”), 2021.

WADA compiled and provided a Corrective Action Report to the Institute identifying the outdated provisions and noncompliant aspects in the principal Act that require to be updated or amended.

2. PURPOSE OF BILL

The purpose of the Bill is, therefore, to—

- (a) update and amend various provisions of the principal Act in order to remedy the noncompliance and address the issues identified by WADA;
- (b) amend some of the provisos in some of the provisions of the principal Act so as to make those provisos to be separate provisions themselves concerning some of the matters provided for in the Code and to make the principal Act user friendly; and
- (c) ensure that South Africa does not only have a Statute that implements the Code, but also a Statute that is consistent with the Code.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 of the Bill amends section 1 of the principal Act. It seeks to delete, insert and substitute certain definitions in section 1 of the principal Act. The changes made to section 1 are substantial. Therefore, instead of dealing with the affected definitions individually, clause 1 substitutes section 1 of the principal Act in its entirety. The words in the definitions are now defined so as to bear the meaning contained in the Code.

3.2 Clause 2

In terms of section 2 of the principal Act, the Institute is established as a corporate body which essentially means that it is a juristic person. In terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the “PFMA”), the institute is a national public entity and is listed in Part A of Schedule 3 to the PFMA.

Clause 2 of the Bill, therefore, seeks to replace the phrase “corporate body” with the phrase “public entity” and to provide that the Institute is a National Anti-Doping Organisation of the Republic. This seeks to make it express and convenient for the reader of the principal Act to know that the Institute is a public entity and a National Anti-Doping Organisation.

3.3 Clause 3

Clause 3 of the Bill amends section 10, (which deals with the objects of the Institute), of the principal Act by substituting subsection (1)(d) and also substituting subsection (2). In paragraph (d), it is clarified that one of the objects of the Institute is to promote and ensure the adoption of a centralised doping control programme which focuses on intelligent testing both in and out of competition, while in subsection (2) the words “the Department” and “Sports Confederation” are inserted. These are consequential amendments caused by the amendments made in section 1 of the principal Act.

3.4 **Clause 4**

Clause 4 of the Bill amends section 11, (which deals with the powers and duties of the Institute), of the principal Act by deleting paragraphs *(b)* and *(c)* and substituting paragraphs *(f)*, *(m)* and *(n)* of subsection (2) thereof. The words “International Standard for Testing” in paragraph *(f)* are deleted. The proviso in subsection (2)*(n)* is deleted and captured in subsection (2A)*(a)* and *(b)* which has been inserted after subsection (2) of section 11(2) of the principal Act.

3.5 **Clause 5**

Clause 5 of the Bill provides for the repeal of section 11A to 11C of the principal Act.

3.6 **Clause 6**

Clause 6 of the Bill provides for the substitution of section 17 of the principal Act with a new section 17 which deals with Results Management.

3.7 **Clause 7**

Clause 7 of the Bill provides for the substitution of section 17A of the principal Act with a new section 17A wherein the acronym “SRSA” is substituted with the words “the Department”, and the substitution of “SASCOC” with “Sports Confederation”.

3.8 **Clause 8**

Clause 8 of the Bill provides for the substitution of the long title of the principal Act.

3.9 **Clauses 9–10**

Clauses 9–10 provides for consequential amendments.

3.10 **Clause 11**

Clause 11 of the Bill provides for the short title and commencement.

4. **DEPARTMENTS AND PARTIES CONSULTED**

The following parties and entities were consulted on the Bill:

- (a)* Aero Club of South Africa;
- (b)* South African Sport Angling and Casting Federation;
- (c)* South African National Archery Association;
- (d)* Athletics South Africa;
- (e)* Badminton South Africa;
- (f)* South African Baseball Union;
- (g)* Basketball South Africa;
- (h)* Body building South Africa;
- (i)* Bowls South Africa;
- (j)* South African National Boxing Organisation;
- (k)* Boxing South Africa;
- (l)* South African Bridge Federation;
- (m)* Canoeing South Africa;
- (n)* Chess South Africa;
- (o)* South African National Climbing Federation;
- (p)* Cricket South Africa;
- (q)* South African Confederation of Cue Sport;

- (r) Cycling South Africa;
- (s) Federation of Dance Sport South Africa;
- (t) Darts South Africa;
- (u) South African Equestrian Federation;
- (v) Federation Fencing of South Africa;
- (w) South African Figure Skating Association;
- (x) South African Football Association;
- (y) Golf RSA;
- (z) South African Gymnastics Federation;
- (aa) South African Handball Federation;
- (bb) South African Hockey Association;
- (cc) South African Ice Hockey Federation;
- (dd) Judo South Africa;
- (ee) Karate South Africa;
- (ff) South African Korfball Federation;
- (gg) South African Kickboxing Association;
- (hh) Lifesaving South Africa;
- (ii) Martial Art South Africa;
- (jj) South African Modern Pentathlon Association;
- (kk) Motorsport South Africa;
- (ll) Netball South Africa;
- (mm) South African Orienteering Federation;
- (nn) Powerboat Racing South Africa;
- (oo) South African Powerlifting Federation;
- (pp) Ringball South Africa;
- (qq) Roller Sport South Africa;
- (rr) Rowing South Africa;
- (ss) South African Rugby Union;
- (tt) South African Sailing;
- (uu) South African Shooting Sport Federation;
- (vv) Snow Sports South Africa;
- (ww) Softball South Africa;
- (xx) Squash South Africa;
- (yy) Surfing South Africa;
- (zz) Swimming South Africa;
- (aaa) South African Table Tennis Board;
- (bbb) South African Taekwondo Federation;
- (ccc) South African Tenniquoits Board;
- (ddd) Tennis South Africa;
- (eee) Tenpin Bowling Association of South Africa;
- (fff) South African Transplant Sports Association;
- (ggg) Triathlon South Africa;
- (hhh) South African Tug of War Federation;
- (iii) South African Underwater Sport Federation;
- (jjj) University Sport South Africa;
- (kkk) Volleyball South Africa;
- (lll) South African Water Ski Federation;
- (mmm) South African Weightlifting Federation;
- (nnn) South African Wrestling Federation;
- (ooo) South African Wushu Federation;
- (ppp) South African Deaf Sport Federation;
- (qqq) Sport for the Intellectually Impaired SA;
- (rrr) South African Masters Sports Association;
- (sss) South African Sport Association for Physically Disabled;
- (ttt) South African Sport Aerobics and Fitness Federation;
- (uuu) South African National Pigeon Organisation;
- (vvv) South African Majorette and Cheerleading Association;
- (www) Jukskei South Africa;
- (xxx) South African Sheep Shearing Federation;
- (yyy) South African Federation BOCCE; and
- (zzz) Mind Sports SA.

PROVINCIAL SPORTS CONFEDERATIONS

- (a) Eastern Cape Sports Confederation;
- (b) Free State Sports Confederation;
- (c) Gauteng Sports Confederation; and
- (d) KwaZulu-Natal Sports Confederation.

5. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill will not have any organisational and personnel implications for the Department and does not create any financial liabilities for the state.

6. PARLIAMENTARY PROCEDURE

The Bill was presented to and approved by the Cabinet. The Bill was also sent to the Office of the Chief State Law Advisor (the “OCSLA”), in the Department of Justice and Constitutional Development for scrutiny and legal opinion.

The Department and the OCSLA are of the opinion that—

- (a) the Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provisions to which the procedure set out in sections 74 or 76 of the Constitution applies.
- (b) it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), due to the fact that the provisions of the Bill do not—
 - (i) either expressly or implicitly pertain to customary law or customs of traditional or Khoi-San communities; and
 - (ii) pertain to any matter referred to in section 154(2) of the Constitution.

