

RYA GUIDANCE

RISK STATEMENT

For many years the RYA has recommended that organising authorities insert additional wording in their notices of race and sailing instructions to remind competitors of their own responsibilities for the safety of their boats and crew while racing, and in an effort to reduce the exposure of the organisers to potential liability should a competitor or third party suffer injury or loss during the event.

The RYA has updated the additional wording that it recommends to be inserted into notices of race and sailing instructions and this revised wording is now referred to as a “risk statement”. This revised wording is set out in Addendum A (RYA) to Appendix J of the RYA edition of the Racing Rules of Sailing 2013-2016 (page 115) and is repeated below.

The principal difference between the new “risk statement” and the previous wording is that, whereas the previous wording was intended to be used *in addition to* the “disclaimer of liability” clause in paragraph 20 of the model notice of race in Appendix K of the Racing Rules of Sailing 2013-2016, the new “risk statement” is intended to be used *instead of* the “disclaimer of liability” clause.

The purpose of this note is to explain why the RYA has recommended the change.

When competitors enter a race they enter into a contract with the organisers. Like every contract, there are two sides to the bargain. The competitor pays an entry fee and expects the organisers to put on a race or a series of races and to run it for them efficiently and reasonably safely. The organisers expect the competitors to act reasonably, to comply with the racing rules and not to do anything dangerous to themselves or to others.

The terms of the contract between competitors and the organisers are set out in the notice of race and, because the organisers prepare the notice of race, in practice the conditions in it are laid down by the organiser. The sailors have to accept them if they want to compete, and do so by signing a declaration on the entry form, the suggested wording for which is also in Addendum A (RYA).

Whenever an organisation undertakes to perform a service, it runs the risk that if it performs the service badly there will be someone who will not only be unhappy, but who could also suffer an injury or loss.

It has been standard practice for very many years for companies and organisations that provide such services to try to limit their liability for negligence as far as they can. However, the courts and the judges have increasingly restricted the ability of companies and organisations to limit their liability and over the years they have made such provisions virtually ineffective or at least very difficult to impose conditions that succeed. The work of the judges has been assisted by legislation for the past forty years and in 2008 some was passed that may well make any attempt in a contract to exclude liability for negligence unlawful.

While it is not entirely clear at the moment that this would be the case, it is no longer sensible to include “disclaimer clauses” in notices of race.

The RYA has therefore updated its advice and it is important that clubs and race organisers follow its recommendation, which is that competitors are informed that an element of risk is inherent in our sport and those who participate may get hurt. This information should go both into the notice of race and the sailing instructions under the heading of “risk statement”.

If a club has already published its notice of race using a disclaimer notice, it is quite in order to update the notice of race in accordance with rule 89.2(a).

None of this reduces the need for clubs and event organisers to take reasonable steps to reduce the exposure of competitors, officials and third parties to unacceptable risks as well as to have full and effective liability insurance cover when running events. The RYA promotes some excellent policies providing this cover and can provide full information on request.

A more detailed explanation of the legal position can be found in the RYA publication ‘Race, Training and Event Management – The Legal Aspects’¹.

RISK STATEMENT

Rule 4 of the Racing Rules of Sailing states: “The responsibility for a boat’s decision to participate in a race or to continue racing is hers alone.”

Sailing is by its nature an unpredictable sport and therefore involves an element of risk. By taking part in the event, each competitor agrees and acknowledges that:

- a) They are aware of the inherent element of risk involved in the sport and accept responsibility for the exposure of themselves, their crew and their boat to such inherent risk whilst taking part in the event;
- b) They are responsible for the safety of themselves, their crew, their boat and their other property whether afloat or ashore;
- c) They accept responsibility for any injury, damage or loss to the extent caused by their own actions or omissions;
- d) Their boat is in good order, equipped to sail in the event and they are fit to participate;
- e) The provision of a race management team, patrol boats, umpires and other officials and volunteers by the organiser does not relieve them of their own responsibilities;
- f) The provision of patrol boat cover is limited to such assistance, particularly in extreme weather conditions, as can be practically provided in the circumstances;
- g) [*For offshore races*] They are responsible for ensuring that their boat is equipped and seaworthy so as to be able to face extremes of weather; that there is a crew sufficient in

¹ ‘Race, Training and Event Management – The Legal Aspects’ can be found on the RYA website at www.rya.org.uk/infoadvice/clubsclass/healthandsafety/Pages/organisingandmanagingevents.aspx

number, experience and fitness to withstand such weather; and that the safety equipment is properly maintained, stowed and in date and is familiar to the crew]; and

- h) *[[If not covered elsewhere in the Notice of Race]* Their boat is adequately insured, with cover of at least [£#] against third party claims].