

POLICY YEAR 2021/22

Changes to the Rules of the P&I, FD&D and War Risks Classes

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CIRCULAR

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Changes to the Rules of the P&I, FD&D and War Risks Classes

Following consultation with the Members Board, the changes to the Rules of the P&I, FD&D and War Risks Classes detailed in this Circular, were approved by the Directors of North of England P&I Association Limited and North of England P&I DAC, and will be effective from noon GMT on 20 February 2021.

The amended Rule Books will be available on North's website from 20 February 2021. Should any Member wish to discuss issues arising out of these amendments, they should contact their Underwriter.

PAUL JENNINGS
CHIEF EXECUTIVE / EXECUTIVE DIRECTOR
The North of England P&I Association Limited / North of England P&I DAC

AMENDMENTS FOR 2021/2022 TO THE RULES OF THE PROTECTING & INDEMNITY CLASS

Explanatory notes have been provided for the proposed changes and consequential renumbering and any cross referencing which will also be required. In the proposed new Rules, new wording is in **bold** and existing wording to be deleted is shown as [.....].

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P&I RULE 2 - DEFINITIONS

“Knock for Knock” Note – the reference to approval of contracts containing a reciprocal “wilful misconduct” carve-out will be removed from the Note to avoid any suggestion that the exclusion of liabilities arising as a result of wilful misconduct contained in Rule 26 will not apply to claims arising under a knock for knock agreement.

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P&I – RULE 9(2) CO-ASSURED

Additional wording is being added to this Rule to reflect an amendment made to App I of the Pooling Agreement. The amendment makes it clear that Co-assureds (who are not liable for premium and who are intended only to benefit from restricted cover) are only entitled to a recovery limited to the amount that a Member or Joint Member would be able to recover. This ensures that a Co-Assured who does not have the benefit of limitation of liability is in no more favourable a position than a Member or Joint Member who would be able to limit liability. The amended Rule will read:

(B) notwithstanding paragraph (c) of this Rule 9(2), the liability of the Association to persons falling within proviso (A) above shall only be in respect of liabilities, costs and expenses which are to be borne by the Senior Member or any joint member falling within Rule 9(1)(d)(i) under the terms of the contract and which would, if borne by such Senior Member or Joint Member, be recoverable by them from the Association **and to the extent only that they would be recoverable by them;**

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P&I - RULE 19(2) - LIABILITIES IN RESPECT OF SUPERNUMERARIES AND 19(3) - LIABILITIES IN RESPECT OF PASSENGERS

The reference to cover including “other expenses necessarily incurred” which is already contained in Rule 19(1) will be added to Rules 19(2) and 19(3) to reflect existing practice and to ensure consistency across these related Rules.

The amended Rules will read:

19(2) Liabilities In Respect Of Supernumeraries

Liabilities to pay damages or compensation for death, personal injury or illness and loss of or damage to the personal effects of any supernumerary carried on board an Entered Ship **and other expenses necessarily incurred in relation to such liabilities.**

19(3) Liabilities In Respect Of Passengers

(a) Liabilities to pay damages or compensation for death, personal injury or illness of any Passenger on an Entered Ship **and other expenses necessarily incurred in relation to such liabilities.**

(b) Liabilities to pay damages or compensation for loss of or damage to the luggage or accompanied vehicles of any Passenger on an Entered Ship **and other expenses necessarily incurred in relation to such liabilities,** save that there shall be no cover in respect of specie, bullion, precious or rare

metals or stones, plate, jewellery, works of art or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments.

(c) Liabilities to pay damages or compensation in respect of any Passenger on board the Entered Ship arising as a consequence of a casualty to that Ship, including the cost of forwarding such Passenger to destination or return to port of embarkation and of maintenance of such Passenger ashore, **and other expenses necessarily incurred in relation to such liabilities**. For the purposes of this Rule 19(3)(c) a casualty shall mean an incident involving either:

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19 (4) Liabilities In Respect Of Third Parties

Liabilities to pay damages or compensation for death, personal injury or illness of any person (other than those specified in Rules 19(1), (2) and (3)) **and other expenses necessarily incurred in relation to such liabilities**.

P&I – RULE 19(19) – FINES

The changes to this rule are required following a recent International Group consultation on, and approval of, proposals to restrict the scope of cover for fines arising out of acts of smuggling. The amended rule will read:

Fines or other penalties, together with costs and expenses incidental thereto, imposed in respect of an Entered Ship by any court, tribunal, or authority of competent jurisdiction, upon a Member or upon any person whom the Member may be legally liable to reimburse or reasonably reimburses with the approval of the Managers:

- (a) for short or over delivery of cargo or for failure to comply with regulations relating to the declaration of goods or to documentation of the cargo (**other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat**): but subject always to the Member having cover for his liabilities in respect of the cargo under Rule 19(17);
- [(b) for smuggling or for any infringement of customs laws or regulations;]
- (b) [(c)] for contravention of immigration laws or regulations;
- (c) [(d)] in respect of the accidental escape or discharge of oil or any other substance or threat thereof; but subject always to the Member having cover for his liabilities in respect of pollution under Rule 19(13);
- (d) [(e)] any fine (other than those specified in Rules 19(19)(a) to [(d)] (c) inclusive of this Rule) to the extent that:
 - (i) the Member has satisfied the Members Board that he took such steps as appear to the Members Board to be reasonable to avoid the event giving rise to such fine or penalty, and
 - (ii) the Members Board in its absolute discretion decides that the Member should recover.
- (e) [(f)] notwithstanding the terms of Rule 27(1) the Members Board in its discretion may authorise the payment in whole or in part of a Member's claim for loss of an Entered Ship following confiscation of that Ship by any legally empowered court, tribunal or authority by reason of the infringement of any customs law or customs regulation.

Provided always that in Rule 19(19)(e) [(f)]:

- (A) the total aggregate amount recoverable from the Association shall under no circumstances exceed the market value of the Ship without commitment at the date of confiscation;
- (B) the Member shall have satisfied the Members Board that he took such steps as may appear to the Members Board to be reasonable to prevent the infringement of the customs law or regulation giving rise to the confiscation;
- (C) any amount claimed under this paragraph shall be recoverable to such extent only as the Members Board in its sole discretion may determine without having to give any reasons for their decision;
- (D) no such claim shall be considered by the Members Board until such time as the Member has been deprived of his interest in the Entered Ship.

Provided always that in Rule 19(19) the Association shall not in any event indemnify a Member against a fine or penalty imposed upon him for the overloading of an Entered Ship or for illegal fishing or against the legal costs and expenses relating thereto.

P&I – RULE 27 (1) DAMAGE TO THE ENTERED SHIP

An amendment to Rule 27 is required due to the changes to Rule 19(19) and will read:

loss of or damage to the Entered Ship or any part thereof except as may be allowed under paragraph (e) [(f)] of Rule 19(19), or specifically covered by agreement in writing under Rule 19(25) (Charterer's Entry);

P&I – RULE 33(2) – MITIGATION OF LOSS

A recent claim highlighted that whilst the majority of IG clubs have a specific Rule forbidding Members from admitting liability, North's rules do not. An admission of liability can obviously prevent the defence of a claim or may hinder, prevent or delay the proper investigation of loss or damage, potentially exposing the Association to increased liabilities.

In order to bring North in line with the other clubs, the following amendment will be made to Rule 33(2):

33(2) MITIGATION OF LOSS

Upon the occurrence of any incident which may give rise to a claim under these Rules, the Member shall take such steps as at the time shall appear proper for the purpose of averting or minimising any loss, damage, expense or liability in respect of which the Member may be insured under these Rules. **A Member shall neither settle nor make any admission in respect of liabilities, costs or expenses for which it is insured without the prior written consent of the Managers.**

This will provide the Managers with the ability to reduce or reject a claim pursuant to the powers given to them in Rule 33(3) in response to any admission made.

P&I POOLING AGREEMENT AMENDMENTS

These amendments set out below reflect changes to the Pooling Agreement already approved by the IG Group Managers following debate and discussion within the specialist IG Sub-Committees looking at various areas involved. The amendments are by way of clarification and/or are made to reflect the agreed approach to particular aspects of cover.

P&I RULE 2 – DEFINITIONS - CONVENTION LIMIT

The reference to Convention limits will be amended to reflect the updated Pooling Agreement App X wording. The updated Pooling Agreement wording has been introduced to remove a deemed minimum tonnage for vessels below 500gt. The new wording will read:

In respect of an Entered Ship, the limit of liability of the shipowner of that Entered Ship for claims (other than claims for loss of life or personal injury) at the Overspill Claim Date, calculated in accordance with Article 6 paragraph 1(b) **(but applying 334 Units of Account to each ton up to 500 tons)** of the International Convention on Limitation of Liability for Maritime Claims 1976 (the "Convention") and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Association as being the rate prevailing on the Overspill Claim Date, provided that,.....

P&I RULE 31 – MEMBER'S OTHER INSURANCES

Claims payable under blue cards and other statutory certificates are carved out of the war risks exclusion contained in Rule 24 to the extent that such liabilities are not or would not be recoverable under a standard P&I war risk policy. To clarify that this limitation applies whether or not a Member has actually taken out primary war risks cover, the relevant part of Rule 31(1) will be amended to reflect amendments to App IV of the Pooling agreement and will read:

(a) Where the liabilities, costs and expenses of a Member are discharged by the Association pursuant to a demand made under:

notwithstanding the exclusions in Rule 24(1) War Risks and/or Rule 25 Radioactive Materials, the Member shall indemnify the Association to the extent that any payment under such guarantee, undertaking or certificate in discharge of the said liabilities, costs and expenses is or would have been recoverable in whole or in part under a standard P&I war risk policy had the Member **entered into such policies of insurance and** complied with the terms and conditions thereof.

PROVIDED ALWAYS THAT:

(A) a standard P&I war risk policy shall mean an insurance against such risks and for such amounts as the Association in its discretion shall decide was reasonable for the Member to have obtained.....

P&I RULE 28 - SPECIALIST OPERATIONS

Amendments to the Specialist Operations exclusion to reflect the updated Pooling Agreement wording. The amended wording will read:

Liabilities, costs and expenses incurred by a Member during the course of performing specialist operations including but not limited to dredging, blasting, pile-driving, well intervention, cable or pipe laying, construction, installation or maintenance work, core sampling, depositing of spoil, power generation, **decommissioning** to the extent that such liabilities, costs and expenses arise as a consequence of:.....

AMENDMENTS FOR 2021/2022 TO THE RULES OF THE FREIGHT, DEMURRAGE AND DEFENCE CLASS

FD&D – RULE 25(2) – MITIGATION OF CLAIMS UNDER RULES

A recent claim highlighted that whilst the majority of IG clubs have a specific Rule forbidding Members from admitting liability, North’s rules do not. An admission of liability can obviously prevent the defence of a claim or may hinder, prevent or delay the proper investigation of loss or damage, potentially exposing the Association to increased liabilities.

In order to bring North in line with the other clubs, the following amendment will be made to Rule 25(2):

25(2) MITIGATION OF LOSS

Upon the occurrence of any incident which may give rise to a claim under these Rules, the Member shall take such steps as at the time shall appear proper for the purpose of averting or minimising any loss, damage, expense or liability in respect of which the Member may be insured under these Rules. **A Member shall neither settle nor make any admission in respect of liabilities, costs or expenses for which it is insured without the prior written consent of the Managers.**

This will provide the Managers with the ability to reduce or reject a claim pursuant to the powers given to them in Rule 25(3) in response to any admission made.

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AMENDMENTS FOR 2021/2022 TO THE RULES OF THE WAR RISKS CLASS

The following amendments will be made to Rule 4.D.7 Exclusion of Computer Viruses and the addition of a new Rule 4.D.9 Exclusion of Coronavirus will align the Club's rules with new market wordings included within the reinsurance terms of the War Risks Class for the 2021/2022 Policy Year.

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RULE 4.D.7 EXCLUSION OF COMPUTER VIRUSES

The Association shall not be liable for any losses, liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer virus.

Provided always that:

Rule 4.D.7 shall not operate to exclude losses (which would otherwise be covered under Rule 2 Parts B, C, D, E and F, Rule 3 and Rule 4.A.2) [arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance and/or firing mechanism of any weapon or missile.]

- 4.D.7.1** **arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance and/or firing mechanism of any weapon or missile.**
 - 4.D.7.2** **arising from the use or operation of any computer, computer system, computer software programme or any other electronic system.**
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RULE 4.D.9 EXCLUSION OF CORONAVIRUS

The Association shall not be liable for:

- 4.D.9.1** **any losses, liabilities, costs or expenses directly or indirectly caused by or contributed to by or arising from, or from any fear or threat of the transmission or alleged transmission of:**
 - 4.D.9.1.1** **Coronavirus disease (COVID-19);**
 - 4.D.9.1.2** **Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or**
 - 4.D.9.1.3** **any mutation or variation of SARS-CoV-2;**
 - 4.D.9.2** **any losses, liabilities, costs or expenses to identify, clean up, detoxify, remove, monitor, or test for such viruses;**
 - 4.D.9.3** **any liabilities, losses, costs or expenses arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of the above or the fear or the threat thereof.**
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