

# SHIP ARREST IN ENGLAND & WALES (QUESTIONS 1 to 9)

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1. Please give an overview of ship arrest practice in your country.

An application on paper is made to the Admiralty Marshal. Evidence must be filed showing that the claim comes within the Court's Admiralty Jurisdiction. There is a sliding scale of fees; the fee on issuing proceedings for amounts up to £200,000 is 5% (i.e. a maximum of £10,000 court fee) plus a further £225 for issuing the arrest warrant. In addition the applicant must give an undertaking to pay the Admiralty Marshal's costs which should be recovered as they are a first charge on the proceeds of the vessel ranking before maritime liens.

2. Which International Convention applies to arrest of ships in your country?

The UK is a party to the Brussels Convention Relating to the Arrest of Seagoing Ships, 1952. The relevant provisions are contained in the Senior Courts Act 1981. Section 20 sets out the types of claims for which the ship may be arrested.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

It might be possible to obtain an injunction but this is more difficult and more expensive than an arrest.

5. For which types of claims can you arrest a ship?

Section 20(2) of the Senior Court Act 1981 lists 19 types of maritime claim within the admiralty jurisdiction of the High court in respect of which a vessel may be arrested.

These include claims relating to the possession or ownership of, or mortgage on, a ship, claims for damage done by or to a ship, claims for loss of life or personal injury due to a defect in a ship, claims for loss of or damage to goods carried on a ship, other claims relating to the carriage of goods on a ship, claims relating to the use or hire of a ship, claims for salvage, towage and pilotage, claims for goods and materials supplied to a ship, claims in respect of the construction or repair of a ship, claims by the master or crew for wages, claims arising out of a general average act, and claims arising out of bottomry and collisions. Notable exceptions to this list, i.e. where arrest is not possible include claims for insurance premiums and claims for legal costs. English law treats both English and foreign flag vessels equally and it does not distinguish between "Convention" and "non-convention" vessels either.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes.

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships but not ships in associated ownership. Sister ships are vessels that are owned at the time when action is brought by the person who was the owner of the ship in connection with which the claim arose.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

A bareboat-chartered ship may be arrested for a claim for which the bareboat charterer is contractually liable. Time chartered vessels cannot be arrested for claims of this nature, but where a time charterer owns a vessel, any vessel owned by the time charterer may be arrested for a claim under the charterparty.

\*Lewis Moore qualified as a solicitor in 1976. Lewis Moore joined Tony Swinnerton in partnership in 2001. They practice as Swinnerton Moore LLP. Lewis Moore acts for clients in relation to contentious and non-contentious work, joint venture disputes, commodity sale and purchase, ship sale and purchase and charterparties and is a CEDR Accredited Mediator. He acted for the successful charterers in *The Achilles* [2007] 1 Lloyd's Rep 19 a House of Lords decision regarding damages for late redelivery and for the successful appellants in *Star Reefers Pool Inc. v. JFC Group* [2011] EWCA, a Court of Appeal decision on anti-suit injunctions.

# SHIP ARREST IN ENGLAND & WALES (QUESTIONS 10 to 26)

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## 10. Is counter-security required in order to arrest a ship?

No. All that is required is an undertaking by the solicitor instructed to make the arrest to pay the Admiralty Marshal's reasonable costs in serving the arrest warrant. However, it may be necessary to pay expenses incurred as result of the ship being detained, including for example berthing charges throughout the period of arrest. These can be added to the claim and be recovered out of the proceeds of sale if the matter proceeds to that stage.

## 11. Is there any difference between an arrest for a maritime claim and an arrest for a maritime lien?

Maritime claims are dependant upon the ownership of the ship. The ship can only be arrested provided that the party who was the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to issue a claim and to arrest the ship despite a change of ownership. The procedure for arrest is the same however.

## 12. Does your county recognise maritime liens?

Yes, but only in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia - which are claims in which the ship is pledged as security in return for monetary advances and usually during times of distress and are uncommon today as a result of modern mortgage agreements.

## 13. What period of time is required in order to arrest a ship following receipt of instructions by your law firm?

Subject to the receipt of all documentation relevant to the claim, the application to the court can take place within a matter of hours. The actual arrest will be dependent on the availability of local court marshals and bailiffs in the area that the ship is located but should be effected within 24 hours of the warrant being issued.

## 14. Do you need to provide a POA, or any other documents in support of the claim to the Court?

A Power of Attorney is not required in order to arrest a ship. Documents in support of the claim should be filed with the claim form, together with details of the ship's location and port of registration. Prior to the arrest, the arrestor should determine whether there is a caution against arrest in force against the ship in question.

## 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All original court documents (the warrant of arrest and a claim form) must be filed with the court before the arrest. The warrant of arrest must be accompanied by an admiralty claim form detailing the particulars of the claim, together with a signed declaration to confirm the ownership of the ship, the level of security sought and confirmation that the claim has not been satisfied. A signed undertaking from the solicitor must also be submitted to cover the Admiralty Marshal's expenses in serving the arrest and claim form. At present, no documents can be filed electronically. Certification or apostille by a Notary is not required although if supporting documents need translating then the translations should be certified by a Notary.

## 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

This will depend on the circumstances. If the claim arises out of a contract which contains an exclusive foreign jurisdiction clause, it may be the case that the proceedings are stayed in favour of the relevant foreign court. However, for most other claims the Court will usually accept jurisdiction.

17. What is the procedure to release a ship from arrest?

Once security has been agreed all that is required in order to release a ship from arrest is the filing of a request for release with the Admiralty Marshal together with a further undertaking to be responsible for any costs he may incur in effecting the release. The Admiralty Marshal will then arrange for one of his officers to remove the arrest papers from the ship.

18. What type of security needs to be placed for the release?

It is up to the parties to agree appropriate security.

19. Does security need to cover interest and costs?

No but it would be wise to ensure that it does.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Usually but it may depend upon the circumstances.

21. How long does it take to release the ship?

Once security has been provided the request for release can be lodged with the Admiralty Marshal immediately but it will depend upon the availability of local officers of the court where the ship is located. Outside of normal office hours it may therefore take a little longer.

22. Is there a procedure to contest the arrest?

Not as such. A ship owner could include a counterclaim for damages in respect of losses suffered as a result of the arrest being brought on an improper basis as part of the defence to the substantive action but provided security is given in timely fashion such losses should be minimal and be limited to the costs, if any, of providing the security. If adequate security is offered but an arresting party refuses to accept that security, thereby extending the period of arrest, a claim for damages for detaining the vessel without just cause may have more chance of success.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claim form must be issued at the same time as the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced. The defendant has 14 days to acknowledge service and a further 14 days to file a defence if settlement is not concluded immediately.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, but damages will only be recoverable if the defendant can show that the arrest was made in bad faith or with gross negligence.

25. Do the Courts of your country acknowledge piercing and lifting of the corporate veil?

The courts will be prepared to accept the piercing and lifting of the corporate veil in very limited circumstances. Usually there must be an element of improper conduct with intent to defraud. The use of the corporate structure must have been established to evade liabilities imposed by the law.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, but the court will only make an order for sale if there is good reason to do so. The fact that the costs of maintaining the arrest may exceed the value of the claim and therefore diminish or extinguish the value of the claimant's security may be deemed to be sufficient grounds for a sale pendente lite.

\*Russell Kelly qualified as a solicitor in 1986 and worked for 12 years with a well known shipping law firm in London before moving to Southampton and establishing LA Marine, the shipping and marine law team at Lester Aldridge. Russell's practice encompasses both the commercial shipping and the leisure marine and yachting markets, advising in particular on vessel sale, purchase and finance and on new building and repair disputes as well as dealing with crew and passenger personal injury claims, vessel arrests and criminal prosecutions. He also conducts on board investigations following incidents on vessels, collecting evidence and advising owners and crew members in relation to investigations by the MAIB and MCA. Russell is a supporting member of the London Maritime Arbitrators Association (LMAA) and a regular speaker at various industry conferences and seminars.