

SHIP ARREST IN NORTHERN IRELAND

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

An arresting party must first issue a writ *in rem*, which gives the arresting party standing to apply for the issue of a warrant for arrest, and then check the caveat book at the High Court in Belfast to ensure that no caveat against the vessel's arrest has been entered. The arresting party then files an application (called a praecipe) applying for issue of the arrest warrant, grounded by an affidavit containing the particulars set out in O.75 r.5 of the Rules of the Court of Judicature (NI) 1980 (as amended) ("the RCJ"). The application itself is made to the Admiralty Judge (or any other available High Court Judge in the absence of the Admiralty Judge). The mechanics of arresting a vessel are dealt with by the Admiralty Marshall, and the arresting party must undertake to meet the Admiralty Marshall's costs and expenses. The application is relatively straightforward and will be treated by the High Court as urgent. Once the warrant of arrest has been issued, it needs to be transmitted to the Admiralty Marshall who will then execute it by affixing it to the wheelhouse or other prominent part of the arrested vessel.

2. Which international convention applies to the arrest of ships in your country?

Northern Ireland is a part of the United Kingdom. As such it is bound by the Brussels Convention relating to the Arrest of Sea Going Ships, 1952.

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

No.

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

There is the possibility of obtaining a freezing (or Mareva) injunction, but this is uncommon, more uncertain, quite probably more expensive, and would require an applicant for such relief to give a cross undertaking in damages. In practice, if the remedy of arrest is available, it is preferable to pursue this.

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

The admiralty jurisdiction of the High Court in Northern Ireland is set out in the first schedule to the Administration of Justice Act 1956. This sets out nineteen types of maritime claims in respect of which the High Court may make an order of arrest of a vessel:

- a) Claims to possession or ownership of a ship or any shares in her;
- b) Questions arising between co-owners of a ship as to possession, employment or earnings of that ship;
- c) Claims in respect of a mortgage of or charge on a ship or any share in her;
- d) Claims for damage done by a ship;
- e) Claim for damage received by a ship;
- f) Claims for loss of life or personal injury sustained by reason of any defect in the ship or her apparel or equipment or the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship;

- g) Claim for loss of or damage to goods carried in a ship;
- h) Claims arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- i) Any claim in the nature of salvage;
- j) Any claim in the nature of towage;
- k) Any claim in the nature of pilotage;
- l) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- m) Claims in respect of the construction, repair or equipment of a ship, or dock charges/dues;
- n) Claims by a Master or member of the crew of a ship for wages;
- o) Claims by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- p) Claims arising out of an act claimed to be an act of general average;
- q) Any claim arising out of bottomry;
- r) Any claim for the forfeiture or condemnation of a ship or goods which are being or have been carried in a ship or for the restoration of a ship or any such goods after seizure, or for *droits* of Admiralty.

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

Yes.

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

Paragraph 3(4) of schedule 1 to the Administration of Justice Act 1956 provides that in the case of any such claim as is mentioned in paragraphs (d) to (r) in question 5 above (being a claim arising in connection with a ship), then where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship, the Admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against (a) that ship, if at the time when the action is brought, she is beneficially owned as respects all the shares in her by that person; or (b) any other ship which at the time when the action is brought, is beneficially owned as aforesaid (this is the “sister ship” provision).

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

Sister ships are liable to arrest (see 7 above) but not ships in associated ownership.

9. What is the position as regards bareboat and time chartered vessels?

It is a requirement that the person liable *in personam* must have a beneficial interest in the ship arrested: it is unclear (as the point has not been tested before the Northern Irish courts) whether a demise charterer of a vessel would be a person with a “beneficial interest” in her. The English authorities on the point were in conflict, and that conflict remained unresolved when English statute law was changed in 1981 to bring bareboat chartered vessels specifically into the scope of arrest jurisdiction in England. In Northern Ireland it has, however, been held that the court may look behind the register in order to determine where the true beneficial interest in the arrested ship lies (*The Star Viking* (No 1) [2014] NIQB 137). The status of a time charterer of a vessel is also untested in this context, but the better view is that a time charterer is not a “beneficial owner” for these purposes.

10. Do your courts require counter security in order to arrest a ship?

No.

11. Is there any difference in respect to arresting ship for a maritime claim and a maritime lien?

With regard to maritime claims a ship can only be arrested if the party who owned her at the time that the cause of action arose in respect of the maritime claim still owns her at the time of arrest. By contrast, maritime liens are enforceable against a vessel irrespective of ownership. The Plaintiff seeking to enforce a maritime lien can therefore issue a writ *in rem* against, and arrest, the ship even if her ownership has changed.

12. Does your country recognise maritime liens?

Maritime liens are recognised in respect of salvage, crew wages, damage done by a vessel, Master's wages and disbursements, and bottomry and *respondentia*. These last two are virtually redundant – they arise in theory where the vessel herself was pledged as security, and this rarely happens in today's conditions.

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

As an independent QC, I cannot accept instructions directly to issue proceedings of any description. I am, however, instructed to appear in court in relation to these matters by solicitors with direct experience of arrest procedure in Northern Ireland. In my experience, provided that the solicitors are furnished with all the documents relevant to the claim, the application can be issued and brought before the court very quickly (the courts treat these matters as urgent). Once the warrant of arrest has been issued, the Admiralty Marshall acts as a matter of urgency to serve it upon the arrested vessel.

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

There is no need for a Power of Attorney in order to arrest a ship. The documents needed to support the application are set out in O. 75 of the RCJ, and copies of those documents should be sufficient as exhibits to the affidavit to lead arrest. Any such documents which are not in the English language may require a duly certified translation.

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

The court will expect the original writ *in rem*, a praecipe and a form of warrant of arrest to be filed before hearing the application to arrest. The matters of evidence on which an arresting party must satisfy the court are set out in O.75 r.5 of the RCJ. The arresting party must also undertake to meet the Admiralty Marshall's expenses in serving the writ *in rem* and the warrant of arrest. There is currently no facility for electronic filing of these documents. Certification or apostille by a notary is not required, although if any of the documents supporting the documentation are in a foreign language, then these will need to be translated and the translation duly certified by a notary.

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

The issue of the writ *in rem* invokes the court's jurisdiction, and this will be exercised unless circumstances dictate otherwise, such as where a claim arises out of a contract containing an exclusive jurisdiction clause, or an obligation to refer a dispute to arbitration.

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

If the ship is to be released from arrest because acceptable security has been procured which the arresting party is prepared to accept, then the release is brought about by filing a praecipe for release, together with a further undertaking to be responsible for any costs the Admiralty Marshall

may incur in dealing with the release. If the owners of the vessel dispute the arrest, they will need to make an independent application to the court to order the arrest to be lifted – see below.

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

This is a matter for the parties to agree – a very common form of security is the provision of a P & I Club letter of undertaking – see below.

19. Does security need to cover interest and costs?

An owner looking to post security in order to secure the release of an arrested vessel would be well advised to post security for the value of the arresting party's best reasonably arguable case (including interest and costs).

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

This will depend upon the level of P & I cover upon which a ship owner can call. If the vessel is entered for cover in respect of claims generally (and not merely freight, demurrage and defence), then generally yes. If not, some form of bank-backed security is likely to be needed.

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

This should happen virtually immediately, once acceptable security has been posted.

22. Is there a procedure to contest the arrest?

There is no specifically dedicated procedure, but it is open to the owner of the vessel who considers that she has been wrongly arrested (on the grounds either of gross negligence or bad faith) to bring an application before the court seeking an order releasing the vessel from arrest. If the court is not satisfied that the arrest has been procured through gross negligence and/or bad faith and finds that the arresting party was entitled to arrest the vessel, then the arrest will be maintained pending the provision of adequate security.

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

The issue and service of the writ *in rem* is the “gateway” to asking the court to arrest the vessel. In practice, these events are essentially simultaneous, and if the Northern Irish court is to accept jurisdiction on the merits of the claim, it proceeds accordingly, with the defendant being obliged to enter an appearance to the writ within 14 days of service. The plaintiff has six weeks from the date of entry of the appearance within which to serve a statement of claim. The defendant then has six weeks, running from the date of service of the statement of claim, in which to serve any defence. The court has power to alter these time limits, or even to order trial without pleadings, if appropriate.

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

Yes. Arrests are wrongful either if made in bad faith or by way of gross negligence.

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

This is highly unusual, but it is possible in very limited circumstances if the court has cogent evidence before it that there is an intention of deception in the way that corporate structures/registrations have been used in a particular case.

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

This is possible, and the Northern Irish court has made such an order (*Star Viking (No 3)* [2015] NIQB 70). If a vessel has remained under arrest for a considerable period of time, and the expenses of keeping her under arrest are mounting with a consequent loss of value to the vessel herself, then this may justify a sale. A judicial sale, under the direction of the Admiralty Marshall, (following a court order to this effect) will have the effect of cleansing the vessel from all claims against her including maritime liens.

**Craig Dunford has over thirteen years' experience specialising in commercial and chancery litigation, insolvency law and company disputes;*

Extensive experience in advising and representing government departments, insolvency practitioners and private clients in commercial and insolvency-related matters;

Author of Litigation in the Commercial List in Northern Ireland published in 2012;

In practice as a solicitor in England and Northern Ireland for nine years before being called to the Bar of Northern Ireland in 2000, and the Bar of Ireland in 2006;

Experience in England included three years in a City of London law firm undertaking major maritime and insolvency litigation;

Part-time tutor at the Institute for Professional Legal Studies in Belfast, and coaches and supports senior school students interested in the legal profession, and in providing training for expert witnesses in civil court cases.