

SHIP ARREST IN SCOTLAND

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

The right to arrest a ship in Scotland derives from Part V of the Administration of Justice Act 1956. This part is headed “Admiralty Jurisdiction and Arrestment of Ships in Scotland”. This has been amended over the years, most recently by the Bankruptcy and Diligence etc. (Scotland) Act 2007 which is an Act of the Scottish Parliament.

For the ship to be capable of being arrested in Scotland in security of a claim it must be the very ship with which the dispute is concerned and the defender must either own at least one share in the ship or be the bareboat charterer. Alternatively, a ship can be arrested where the defender owns all the shares even if it is not the ship with which the dispute is concerned. If the Scottish courts would not otherwise have jurisdiction, the ship can be arrested in a Scottish Port “to found jurisdiction”. Arresting in this way however merely gives the court jurisdiction, but does not create any security over the ship itself.

A Claimant (Pursuer/Plaintiff) can often obtain a significant advantage by being able to arrest a ship at the outset of a court action for payment. This is one of the few instances in Scots Law where it is feasible for a Claimant to obtain security pre judgement. It is necessary to go to the court (either the Court of Session in Edinburgh or the local Sheriff Court) to seek the permission of the Judge to arrest the ship if the case can be brought within one of the many categories listed in the 1956 Act. If the Judge grants the permission then the ship can be arrested by Court Officers even without the alleged debtor (or anyone else associated with the ship) necessarily being aware up to that point that an arrest is being contemplated, far less that it is imminent. The court papers then require to be served on the Defender (Defendant) albeit that the papers can be served on the ship itself if what is raised is an action in rem in respect of a maritime lien such collision, salvage or for crew wages. The Defender then has an opportunity to challenge the arrest with the Pursuer being liable in damages if it is found to be an unlawful arrest.

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

The United Kingdom (of which Scotland forms part) is a signatory to the International Convention Relating to the Arrest of Seagoing Ships 1952. This was brought into UK domestic law by the 1956 Act. Jurisdiction is governed by the Brussels Convention 1968 and the Lugano Convention 1988. These were introduced into UK Law by the Civil Jurisdiction and Judgements Act 1982 as amended.

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

Port Authorities in Scotland have the right to detain a ship for non-payment of harbour dues in terms of the Harbours, Docks and Piers Clauses Act 1847. Detention under the 1847 Act is the equivalent of arrestment. It is also possible to arrest a ship in a Scottish port in implementation of an order of a foreign court. Such an arrestment must comply with the Civil Jurisdiction and Judgements Act 1982. In certain circumstances, arbitration judgements can also result in ship arrest in Scotland.

4. Are there alternatives, for example saisie conservatoire or freezing orders?

Scots Law does not provide any alternatives beyond arrestment under the 1956 Act, detention by a Port Authority and in respect of a foreign action, all as referred to above.

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

A ship can be arrested in a Scottish port in implementation of a Court or Arbitration Judgement. More common, however, is an attempt to arrest on the dependence of an on-going court action. Where the entrance requirements set out at number 1 above apply, 47 (2) of the 1956 Act lists various circumstances in which arrestment on the dependence is permissible. These categories include damage done or received by any ship, loss of life or personal injury relating to the ship, salvage, any agreement relating to the use or hire of any ship, loss of or damage to goods carried in any ship, towage, pilotage, liability for dock charges or dues and Master's disbursements.

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

The question of flag is irrelevant to arrest in Scotland except that UK ships owned by the Crown and ships which themselves are owned by foreign states cannot be arrested unless they have been contracted for commercial purposes.

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

Scots Law recognises the exercise of a right in rem in certain specific circumstances, for example in relation to collision damage and salvage. Where there is a right in rem a court action can be raised directly against the ship with the court papers served on the ship itself. This can create a significant advantage for a Claimant since it obviates the need which would otherwise exist to serve the court papers on the owner which of course might be abroad in a remote jurisdiction.

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

As set out above, it is possible to arrest sister ships and ships in associated ownership so long as all the shares in the ship being arrested are owned by the Defender in the court action. Common ownership is however now relatively unusual.

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

Bareboat chartered ships can be arrested in Scotland where the alleged debtor is the bareboat charterer. Ships under time charter can however only be arrested in respect of an action in rem.

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

In Scotland, no counter-security is required except in an extreme case.

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

Yes. Where Scots law identifies a claim as a maritime lien a court action can be raised "in rem" i.e. directly against the ship itself. Maritime liens apply to 4 different categories of claim - collision damage, salvage, seamen's wages, and master's wages and disbursements. Other claims where it is possible to arrest are claims "in personam" and are taken against the vessel's owner or the bareboat charterer.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. The 4 maritime liens are collision damage, salvage, seamen's wages, and master's wages and disbursements. These liens apply at common law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

If the party seeking to arrest is able to provide all the necessary paperwork right at the start, it can be possible to get the case into court within a few hours. If the court is then willing to grant the necessary warrant, the arrest can be put in place as soon as the process servers can get to the vessel.

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

It is not necessary to provide a Power of Attorney. The judge will however want to see prima facie evidence of ownership (for example the Transcript of Registry) and paperwork backing up the basis of the claim.

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

It is possible to file documentation electronically. With a view to persuading the judge to allow arrest, we will need to show a copy of the Transcript of Registry or, if applicable, a copy of the bareboat charter. If the arrest is disputed and the case goes to Proof (Trial) the court would expect to see principal documentation or certified copies.

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

It is possible to arrest "to found jurisdiction" even if the only link between the case and the Scottish courts is the fact that the vessel has been arrested in a Scottish port. Generally, the court will accept jurisdiction but there are exceptions for example if there is a substantive dispute forum non conveniens can apply. Also, if the basis of the dispute is a contract which provides exclusive jurisdiction elsewhere the arrest remains valid even although the substantive dispute is litigated elsewhere.

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

An arrestment can be released in one of two ways. If the arrestment is disputed and the judge decides to release it then the court order is sufficient to release it. Secondly, if there is agreement between the parties either to release the arrestment unconditionally or because for example a bank/P&I Club guarantee has been put in place it is sufficient for the arresting party to advise the harbour master that the vessel is no longer under arrest.

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

Security is ordinarily by way of a guarantee/letter of undertaking from one of the P&I Clubs or a UK bank.

19. Does security need to cover interest and costs?

Security does require to cover interest and costs. If there is a dispute between the parties the judge will set the level of security required.

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

Yes, P&I Club letters of undertaking are accepted as sufficient to lift the arrest – except in exceptional circumstances.

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

If agreement is reached between the parties the arrest can be immediate. If matters are in dispute the lawyers for the vessel can get the case into court within a few days (sometimes within a few hours) and argue that the ship should be released.

22. Is there a procedure to contest the arrest?

When an arrestment is put in place the court will fix a hearing for a few court days later and the arrestment will only last until then unless the judge is persuaded at the hearing that the arrest should continue. A lawyer on behalf of the ship can make representations at that hearing.

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

A defender has 21 days from service of the court papers to enter appearance (42 days if outwith Europe) and either another 7 or 14 days after (depending on which court the case is in) to lodge a written defence. The case will then proceed through the court system but it may be many months before an evidential hearing takes place, if needed.

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

Yes. Wrongful arrest resulting in damages applies if it transpires the proceedings are incompetent or there has been a procedural irregularity by the arresting party.

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

Yes, it is possible to lift the corporate veil in appropriate circumstances.

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

No, this is not possible in Scotland.

****Bruce Craig** is a Partner in the International Law Firm Pinsent Masons. He is based in Aberdeen and acts throughout Scotland and abroad. He deals primarily with marine claims and litigation including ship arrest. He is highly experienced in offshore and shipboard accident and casualty investigation. He regularly acts for shipowners, charterers, offshore drilling contractors, P&I Clubs and marine insurers.*