

Status: Point in time view as at 01/04/2008. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, SCHEDULE 4 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 01/07/2010

SCHEDULE 4

(introduced by section 213)

MODIFICATIONS OF ENACTMENTS RELATING TO ADMIRALTY ACTIONS AND THE ARRESTMENT OF SHIPS

Definition of “maritime lien”

1 In section 48 of the Administration of Justice Act 1956 (c. 46) (in this Act, the “1956 Act”)—

- (a) the existing words become subsection (1);
- (b) paragraph (d) is repealed; and
- (c) at the end insert—

“(2) In this Act and in any other enactment (including an Act of the Scottish Parliament and any enactment comprised in subordinate legislation under such an Act), “maritime lien” means a hypothec over a ship, cargo or other maritime property.”

2 In sections 45(5) and 47(3)(b), (4)(b) and (5) of the 1956 Act, before the word “lien” in each place where it occurs, insert the word “ maritime ”.

3 In section 47(2)(r) of the 1956 Act, for “or hypothecation of” substitute “ , hypothecation of or existence of any other charge on ”.

The term “admiralty action”

4 In section 47 of the 1956 Act—

- (a) in subsection (2)(h), after “bond” insert “ or contract of respondentia ”;
- (b) after subsection (2), insert—

“(2A) An action having a conclusion appropriate for the enforcement of a claim to which subsection (2) above applies shall be known as an “admiralty action”.”;

- (c) in subsection (3), for “the last preceding subsection” substitute “ subsection (2) above ”.

5 (1) In paragraph 7 of schedule 5 to the Civil Jurisdiction and Judgements Act 1982 (c. 27), for “Admiralty cause” substitute “ admiralty action ”.

(2) In paragraph 6 of schedule 9 to that Act, for “causes” substitute “ actions ”.

Arrestment in rem granted by the sheriff

6 After section 47 of the 1956 Act, insert—

“47A Execution of warrant to arrest in rem and of order for sale

- (1) A warrant for the arrestment in rem of a ship, cargo or other maritime property granted by the sheriff may be executed—

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- (a) within the sheriffdom in which the warrant was granted; or
- (b) where the ship, cargo or other maritime property was situated within that sheriffdom when the warrant was granted, anywhere in Scotland.

(2) For the avoidance of doubt, where a warrant for arrestment in rem granted by the sheriff has been executed, an order for the sale of the arrested ship, cargo or other maritime property may be made notwithstanding that it is not situated within the sheriffdom when the order is made.”.

Arrestment on the dependence

7

(1) Section 47 of the 1956 Act is amended as follows.

(2) In subsection (1)—

- (a) after “arrest”, where it second occurs, insert “ a ship or other maritime property which is not cargo ”;
- (b) after “unless”, where it second occurs, insert “ at the time when the arrestment is executed ”;
- (c) in paragraph (a), after “concerned” insert “ and the defender against whom that conclusion is directed owns at least one share in it or is the demise charterer of it ”; and
- (d) in paragraph (b), the words “against whom that conclusion is directed” are repealed.

(3) After subsection (1), insert—

“(1A) Where a warrant to arrest on the dependence referred to in subsection (1) above (an “initial arrestment”) has been executed, then, subject to subsection (1B) below, no further warrant may be granted to arrest on the dependence—

- (a) the subjects of the initial arrestment; or
- (b) while the initial arrestment continues to have effect, any other ship in which the defender owns at least one share,

in respect of the claim to which the initial arrestment relates.

(1B) A further warrant to arrest on the dependence may be granted if—

- (a) the further arrestment complies with the requirements of subsection (1) above; and
- (b) cause is shown for granting the further warrant.”.

(4) In subsection (3)—

- (a) in paragraph (a), after “ship” insert “ or of any share in it ”; and
- (b) after “ship”, where it last occurs, insert “ or, as the case may be, any share in a ship other than in the ship, ”.

Liability for losses and expenses

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After section 47A of the 1956 Act (as inserted by paragraph 6 above), insert—

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“47B Expenses

- (1) Subject to subsection (3) below, a pursuer shall be entitled to such expenses as are incurred—
 - (a) in obtaining warrant for the arrest of a ship, cargo or other maritime property on the dependence of an action; and
 - (b) in executing the arrestment.
- (2) Subject to subsection (4) below, a defender shall be entitled, where—
 - (a) warrant for the arrest of a ship, cargo or other maritime property on the dependence of an action is granted; and
 - (b) the court is satisfied that the pursuer was acting unreasonably in applying for it,
 to such expenses as are incurred in opposing that warrant.
- (3) The court may modify or refuse such expenses as are mentioned in subsection (1) above if it is satisfied that—
 - (a) the pursuer was acting unreasonably in applying for the warrant; or
 - (b) such modification or refusal is reasonable in all the circumstances and having regard to the outcome of the action.
- (4) The court may modify or refuse such expenses as are mentioned in subsection (2) above if it is satisfied as to the matter mentioned in subsection (3)(b) above.
- (5) Subject to subsections (1) to (4) above, the court may make such findings as it thinks fit in relation to such expenses as are mentioned in subsections (1) and (2) above.
- (6) Expenses incurred as mentioned in subsections (1)(a) and (2) above shall be expenses of process.
- (7) Subsections (1) to (4) above are without prejudice to any enactment or rule of law as to the recovery of expenses chargeable against a debtor as are incurred in executing an arrestment on the dependence of an action.
- (8) Where warrant is granted for the arrest of a ship in rem in proceedings to which section 47(3)(b) of this Act applies, the court may make such findings as it thinks fit in relation to expenses incurred—
 - (a) in obtaining the warrant and, as the case may be, executing the arrestment;
 - (b) in opposing the application for the warrant.
- (9) For the avoidance of doubt, expenses incurred in applying for and executing the arrest of a ship, cargo or other maritime property in rem in respect of a conclusion appropriate for the making good of a maritime lien shall be expenses of process.”

Factors affecting arrestments

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“47C Competence of arresting cargo

- (1) It is not competent to execute an arrestment of cargo unless the cargo is on board a ship when the arrestment is executed.
- (2) For the avoidance of doubt, it is competent to execute an arrestment of cargo where it is in the possession of the defender or of a person acting on behalf of the defender.

47D Arrestment of cargo: restriction on movement of ship

Where cargo is arrested, the ship is treated as if arrested until the cargo is unloaded.”.

Cargo on board a ship exempt from attachment

10 In section 11 of the 2002 Act (articles exempt from attachment), at the end insert—

- “(3) It is not competent to attach cargo which it is competent to arrest by virtue of section 47C of the Administration of Justice Act 1956 (c. 46) (competence of arresting cargo).”.

Location of a ship when arrestment executed

11 In section 47 of the 1956 Act—

- (a) after subsection (5), insert—

“(5A) Subject to subsection (6) below, it is competent to execute an arrestment of a ship, cargo or other maritime property regardless of whether the ship or other maritime property is in non-tidal or tidal waters or on land.

(5B) In subsection (5A) above, “tidal waters” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides.”; and

- (b) in subsection (6), for the words from “Nothing” to “of”, where it second occurs, substitute, “ It is not competent to execute an arrestment of a ship or cargo on board ”.

Demise charters

12 After section 47D of the 1956 Act (as inserted by paragraph 9 above) insert—

“Special provision in relation to charters by demise

47E Sale of ship arrested on the dependence of action against demise charterer

- (1) This section applies where—

- (a) a ship is arrested on the dependence of an admiralty action against the demise charterer of it; and

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- (b) the pursuer obtains decree for payment for all or part of a principal sum concluded for in the action.
- (2) Where the owner or demise charterer of the ship—
 - (a) pays the sum due under the decree to—
 - (i) the pursuer; or
 - (ii) any person who has authority to receive payment on behalf of the pursuer; or
 - (b) tenders that sum to any of those persons and the tender is not accepted within a reasonable time,
the arrestment ceases to have effect.
- (3) The court may, on the application of the pursuer, make an order for the sale of the ship.
- (4) Subject to sections 47F and 47G below, the court shall rank any claims made on the proceeds.
- (5) A ship sold under subsection (3) above vests in the purchaser free of any security or other encumbrance.
- (6) The Court of Session may, by Act of Sederunt, make provision relating to proceedings under this section.

47F Ranking of arrestments on sale of ship chartered by demise

In any ranking process relating to the proceeds of sale of a ship (or any share in a ship), an arrestment of the ship (or share) executed before the sale by a creditor of the owner of the ship (or share) shall rank in preference over any arrestment of the ship executed on the dependence of an admiralty action against the demise charterer of the ship.

47G Ranking of arresting creditor of demise charterer in sequestration or winding up of owner

- (1) This section applies where—
 - (a) a ship is arrested on the dependence of an admiralty action against the demise charterer of it; and
 - (b) at any time after the arrestment is executed—
 - (i) the owner of the ship's estate is sequestrated; or
 - (ii) where the owner is a company, it is wound up.
- (2) The creditor who executed the arrestment is entitled to rank on the proceeds of any sale of the ship resulting from the sequestration or, as the case may be, winding up.
- (3) Section 37(4) and (5) of the Bankruptcy (Scotland) Act 1985 (c. 66) (effect of sequestration on arrestment or attachment) and section 185(1) (a) and (2) (in so far as applying and modifying section 37(4) and (5)) of the Insolvency Act 1986 (c. 45) (application of sequestration provisions relating to diligence on winding up) shall apply to such an arrestment as they apply to any other arrestment.

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47H Arrestment to found jurisdiction in action against demise charterer

Where the defender in an admiralty action is the demise charterer of the ship with which the action is concerned, the court may, on the application of the pursuer, grant warrant to arrest the ship to found jurisdiction.”.

13

In section 6(c) of the Sheriff Courts (Scotland) Act 1907 (c. 51) (competence of arresting a ship to found jurisdiction in sheriff court), after “owner”, where it second occurs, insert “ or demise charterer ”.

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