
Changes to legislation: Bankruptcy and Diligence etc. (Scotland) Act 2007, Cross Heading: Demise charters is up to date with all changes known to be in force on or before 16 September 2019. 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) View outstanding changes

SCHEDULE 4
MODIFICATIONS OF ENACTMENTS RELATING TO
ADMIRALTY ACTIONS AND THE ARRESTMENT OF SHIPS

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

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

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
 - (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.

Ranking of arrestments on sale of ship chartered by demise

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.

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

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.

Arrestment to found jurisdiction in action against demise charterer

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.”.

Commencement Information

I1 Sch. 4 para. 12 in force at 1.7.2010 by S.S.I. 2010/249, art. 2 (with art. 3)

- 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 ”.

Commencement Information

I2 Sch. 4 para. 13 in force at 1.7.2010 by S.S.I. 2010/249, art. 2 (with art. 3)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- [Act applied \(with modifications\) by S.I. 2018/1125 reg. 8](#)