



Administration of Justice Act 1956

1956 CHAPTER 46 4 and 5 Eliz 2

PART V

ADMIRALTY JURISDICTION AND ARRESTMENT OF SHIPS IN SCOTLAND

Modifications etc. (not altering text)

C1 Part V extended, with modifications, by [Hovercraft Act 1968 \(c. 59\), s. 2](#)

45 Jurisdiction in relation to collisions, etc.

- (1) Subject to the provisions of this Part of this Act, any court having Admiralty jurisdiction shall have jurisdiction to entertain, as against any defender, an action to which this section applies if, but only if,—
- (a) the defender has his habitual residence or a place of business in the area for which the court acts, or
 - (b) the cause of action arose in the area for which the court acts and either within inland waters or within the limits of a port, or
 - (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined by the court, or
 - (d) the defender has prorogated the jurisdiction of the court, or
 - (e) a ship in which the defender owns one or more shares has been arrested (whether ad fundandam jurisdictionem or on the dependence of the action) within the area for which the court acts.
- (2) Where an action to which this section applies is raised in a court having jurisdiction by virtue only of one or more of the provisions of the preceding subsection other than paragraph (d) thereof, and it appears to the court that cognate proceedings are depending in a competent court outside Scotland, the first mentioned court shall sist the action if so moved by any party thereto, and shall not recall the sist until satisfied that the cognate proceedings have been discontinued or have otherwise come to an end:

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Provided that nothing in this subsection shall prevent the first mentioned court from entertaining any application as to diligence in the action.

In this subsection “cognate proceedings”, in relation to any action, means proceedings instituted, before the granting of warrant for service in the action, by the pursuer in the action against any other party to the action, being proceedings in respect of the same incident or series of incidents as those with which the action is concerned.

- (3) This section applies to actions for payment of reparation arising out of one or more of the following incidents, that is to say—
- (a) any collision between ships, or
 - (b) the carrying out of, or the omission to carry out, a manoeuvre in the case of one or more of two or more ships, or
 - (c) the non-compliance, on the part of one or more of two or more ships, with the collision regulations.

- (4) In this section—

“inland waters” includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of State to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters;

“port” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act or charter to make charges in respect of ships entering it or using the facilities therein, and “limits of a port” means the limits thereof as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom;

“charges” means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

- (5) For the avoidance of doubt it is hereby declared that any reference in this section to an action for payment of reparation does not include a reference to an action to make good a lien.
- (6) Section six of the ^{M1}Sheriff Courts (Scotland) Act 1907 (as amended by any subsequent enactment), shall cease to have effect in relation to actions to which this section applies.

Marginal Citations

M1 1907 c. 51.

46 Exclusion of jurisdiction in cases falling within Rhine Convention.

No court shall have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions thereof.

In this section “the Rhine Navigation Convention” means the Convention of the seventh of October, eighteen hundred and sixty-eight, as revised by any subsequent Convention.

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47 Arrest of ships on the dependence of an action or in rem.

- (1) Subject to the provisions of this section and section fifty of this Act, no warrant issued after the commencement of this Part of this Act for the arrest of property on the dependence of an action or in rem shall have effect as authority for the detention of a ship unless the conclusion in respect of which it is issued is appropriate for the enforcement of a claim to which this section applies, and, in the case of a warrant to arrest on the dependence of an action, unless either—
- (a) the ship is the ship with which the action is concerned, or
 - (b) all the shares in the ship are owned by the defender against whom that conclusion is directed.
- (2) This section applies to any claim arising out of one or more of the following, that is to say—
- (a) damage done or received by any ship;
 - (b) loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, unloading or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
 - [^{F1}(c) the Salvage Convention, 1989;
 - (ca) any contract for or in relation to salvage services;]
 - (d) any agreement relating to the use or hire of any ship whether by charterparty or otherwise;
 - (e) any agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
 - (f) loss of, or damage to, goods carried in any ship;
 - (g) general average;
 - (h) any bottomry bond;
 - (i) towage;
 - (j) pilotage;
 - (k) the supply of goods or materials to a ship for her operation or maintenance;
 - (l) the construction, repair or equipment of any ship;
 - (m) liability for dock charges or dues;
 - (n) liability for payment of wages (including any sum allotted out of wages under section one hundred and forty-one of the ^{M2}Merchant Shipping Act 1894, or adjudged under section three hundred and eighty-seven of that Act by a superintendent to be due by way of wages) of a master or member of the crew of a ship;
 - (o) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
 - (p) any dispute as to the ownership or right to possession of any ship or as to the ownership of any share in a ship;
 - (q) any dispute between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
 - (r) the mortgage or hypothecation of any ship or any share in a ship;

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- (s) any forfeiture or condemnation of any ship, or of goods which are being, or have been, carried, or have been attempted to be carried, in any ship, or for the restoration of a ship or any such goods after seizure.
- (3) In any proceedings having a conclusion appropriate for the enforcement of any claim such as is mentioned in paragraphs (p) to (s) of the last preceding subsection a warrant may be issued—
 - (a) if the conclusion is a pecuniary conclusion, for the arrest of the ship on the dependence of the action; or
 - (b) in any other case (whether or not the claimant is entitled to a lien over the ship), for the arrest of the ship in rem;

but there shall not be issued in respect of any such conclusion as aforesaid (whether pecuniary or otherwise) a warrant to arrest, either in rem or on the dependence of the action, any ship other than the ship to which the conclusion relates.

- (4) Subject to the preceding subsection, nothing in this section shall be taken to authorise—
 - (a) the use of an arrestment on the dependence of an action otherwise than in respect of a pecuniary conclusion, or
 - (b) the use of an arrestment in rem otherwise than in respect of a conclusion appropriate for the making good of a lien.

- (5) A warrant for the arrest of a ship in rem issued by virtue of paragraph (b) of subsection (3) of this section in a case where the person in whose favour it is issued is not entitled to a lien over the ship shall have effect as authority for the detention of the ship as security for the implementation of the decree of the court so far as it affects that ship:

Provided that the court may, on the application of any person having an interest, recall the arrestment if satisfied that sufficient bail or other security for such implementation has been found.

- (6) Nothing in this section shall authorise the arrest, whether on the dependence of an action or in rem, of a ship while it is on passage.
- (7) Nothing in this section shall authorise the arrest, whether on the dependence of an action or in rem, of a ship in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty’s ships or Her Majesty’s aircraft.

In this subsection “Her Majesty’s ships” and “Her Majesty’s aircraft” have the meanings assigned to them by subsection (2) of section thirty-eight of the ^{M3}Crown Proceedings Act 1947.

- (8) F2

[^{F3}(8) In—

- (a) paragraph (c) of subsection (2) above, the “Salvage Convention, 1989” means the International Convention on Salvage 1989 as it has effect under section 1 of the Merchant Shipping (Salvage and Pollution) Act 1994;
- (b) paragraph (ca) of that subsection, the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim arising out of any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of such services,

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and the claims mentioned in subsections (2)(c) and (ca) shall be construed as including claims available by virtue of section 87 of the Civil Aviation Act 1982.]

Textual Amendments

- F1** S. 47(2)(c)(ca) substituted (1.1.1995) for s. 47(2)(c) by 1994 c. 28, s. 1(6), **Sch. 2 para. 4(2)(a)**; S.I. 1994/2971, art. 2, **Sch.**
- F2** S. 47(8) repealed by **Statute Law Revision Act 1963** (c. 30)
- F3** S. 47(8) added (1.1.1995) by 1994 c. 28, s. 1(6), **Sch. 2 para. 4(2)(b)**; S.I. 1994/2971, art. 2, **Sch.**

Marginal Citations

- M2** 1894 c. 60.
- M3** 1947 c. 44.

VALID FROM 01/07/2010

[^{F4}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—
- within the sheriffdom in which the warrant was granted; or
 - 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.]

Textual Amendments

- F4** S. 47A inserted (1.7.2010) by **Bankruptcy and Diligence etc. (Scotland) Act 2007** (asp 3), ss. 213, 227(3), **Sch. 4 para. 6** (with s. 223); S.S.I. 2010/249, art. 2

VALID FROM 01/07/2010

[^{F5}47B Expenses

- (1) Subject to subsection (3) below, a pursuer shall be entitled to such expenses as are incurred—
- in obtaining warrant for the arrest of a ship, cargo or other maritime property on the dependence of an action; and
 - in executing the arrestment.
- (2) Subject to subsection (4) below, a defender shall be entitled, where—
- warrant for the arrest of a ship, cargo or other maritime property on the dependence of an action is granted; and

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- (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.]

Textual Amendments

- F5** S. 47B inserted (1.7.2010) by *Bankruptcy and Diligence etc. (Scotland) Act 2007* (asp 3), ss. 213, 227(3), **Sch. 4 para. 8** (with s. 223); S.S.I. 2010/249, **art. 2**

VALID FROM 01/07/2010

[^{F6}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.

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Textual Amendments

F6 Ss. 47C, 47D inserted (1.7.2010) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 213, 227(3), [Sch. 4 para. 9](#) (with s. 223); S.S.I. 2010/249, [art. 2](#)

VALID FROM 01/07/2010

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.]

Textual Amendments

F6 Ss. 47C, 47D inserted (1.7.2010) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 213, 227(3), [Sch. 4 para. 9](#) (with s. 223); S.S.I. 2010/249, [art. 2](#)

48 Interpretation of Part V.

In this Part of this Act, unless the context otherwise requires,—

- (a) references to an action, a pursuer and a defender include respectively references to a counter-claim, the person making a counter-claim and the person against whom a counter-claim is made;
- (b) any reference to a conclusion includes a reference to a crave, and “pecuniary conclusion” does not include a conclusion for expenses;
- (c) any reference to a warrant to arrest property includes a reference to letters of arrestment and to a precept of arrestment;
- (d) any reference to a lien includes a reference to any hypothec or charge; and
- ^{F7}(e)
- (f) the following expressions have the meanings hereby assigned to them respectively, that is to say—

“collision regulations” means regulations under section four hundred and eighteen of the ^{M4}Merchant Shipping Act 1894, or any such rules as are mentioned in subsection (1) of section four hundred and twenty-one of that Act or any rules made under subsection (2) of the said section four hundred and twenty-one;

“goods” includes baggage;

“master” has the same meaning as in the ^{M5}Merchant Shipping Act 1894, and accordingly includes every person (except a pilot) having command or charge of a ship;

“ship” includes any description of vessel used in navigation not propelled by oars;

“towage” and “pilotage” in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

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Textual Amendments

F7 S. 48(e) repealed (1.1.1995) by 1994 c. 28, ss. 1(6), 10(3), Sch. 2 para. 4(3), Sch. 4; S.I. 1994/2971, art. 2, Sch.

Marginal Citations

M4 1894 c. 60.

M5 1894 c. 60.

49

(1) Section one hundred and sixty-five of the Merchant Shipping Act, 1894, (which imposes restrictions on proceedings for the recovery of wages of seamen and apprentices) shall cease to have effect and is hereby repealed.

(2) **F8**

Textual Amendments

F8 S. 49(2) repealed by Animal Health Act 1981 (c. 22, SIF 4:4), s. 96(2), Sch. 6

Modifications etc. (not altering text)

C2 The text of s. 49 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

50 Application and commencement of Part V.

(1) This Part of this Act shall apply to Scotland only.

(2) This Part of this Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument.

(3) Nothing in this Part of this Act shall affect any action in respect of which warrant for service has been granted before the commencement of this Part of this Act.

Modifications etc. (not altering text)

C3 1.1.1957 appointed under s. 50(2) by S.I. 1956/2099 (1956 I, p. 558), art. 2

Status:

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Changes to legislation:

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