

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2012 No. 188**

**Act of Sederunt (Sheriff Court Rules)  
(Miscellaneous Amendments) 2012**

**Ordinary Cause Rules: Admiralty actions**

**10.**—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 5.1 (signature of warrants)(1)—

(a) in subparagraph (2)(b), at the end, insert “(including the arrestment of a ship)”;

(b) after subparagraph (2)(d) insert—

“(e) a warrant for arrestment of a ship to found jurisdiction;

(f) a warrant for arrestment of a ship or cargo *in rem*;

(g) a warrant for arrestment of cargo.”.

(3) Rule 6.3 (movement of arrested property) is omitted.

(4) After Chapter 48 (reporting restrictions under the Contempt of Court Act 1981)(2) insert—

“CHAPTER 49

ADMIRALTY ACTIONS

**Interpretation of this Chapter**

**49.1.** In this Chapter—

“Admiralty action” means an action having a crave appropriate for the enforcement of a claim to which section 47(2) of the Administration of Justice Act 1956(3) applies;

“ship” has the meaning assigned in section 48(f) of that Act(4).

**Forms of action**

**49.2.**—(1) An Admiralty action against the owners or demise charterers of, or other parties interested in, a ship or the owners of the cargo may be brought—

(a) *in rem*, where the crave of the initial writ is directed to recovery in respect of a maritime lien against the ship or cargo or the proceeds of it as sold under order of the sheriff or where arrestment *in rem* may be made under section 47(3) of the Administration of Justice Act 1956;

---

(1) Rule 5.1 was last amended by [S.S.I. 2006/207](#).

(2) Chapter 48 was inserted by [S.S.I. 2011/386](#).

(3) [1956 c. 46](#). Section 47 was amended for Scotland by the 2007 asp, schedule 4.

(4) Section 48 was amended for Scotland by the 2007 asp, schedule 4.

(b) *in personam*, where the crave of the initial writ is directed to a decree against the defender; or

(c) both *in rem* and *in personam*, where sub-paragraphs (a) and (b) apply.

(2) When bringing an Admiralty action, the pursuer shall use Form G1 (initial writ) and insert the words “Admiralty Action *in rem*”, “Admiralty Action *in personam*” or “Admiralty Action *in rem* and *in personam*”, as the case may be, immediately below where the Sheriffdom and court are designed, above the instance.

### **Actions *in rem***

**49.3.**—(1) In an Admiralty action *in rem*—

(a) where the owners or demise charterers of, or other parties interested in, the ship or the owners of the cargo against which the action is directed are known to the pursuer, they shall be called as defenders by name;

(b) where such owners or demise charterers or other parties are unknown to the pursuer—

(i) the pursuer may call them as defenders as “the owners of or parties interested in the ship (*name and identify by its port of registry*) or the owners of the cargo”; and

(ii) the master, if known, shall also be called as a defender representing the owners or demise charterers.

(2) In an Admiralty action *in rem*, the ship or cargo shall be arrested *in rem* and a warrant for such arrestment may include warrant to dismantle where craved in the initial writ.

### **Actions *in personam***

**49.4.**—(1) In an Admiralty action *in personam* directed against the owners or demise charterers, or other parties, interested in a ship, or the owners of cargo, the defenders shall, if known to the pursuer, be called as defenders by name.

(2) In such an action, where—

(a) the vessel is not a British ship, and

(b) the names of the owners or demise charterers are not known to the pursuer,

the master of the ship may be called as the defender representing the owners or demise charterers.

(3) In an action to which paragraph (2) applies, any warrant to arrest to found jurisdiction shall be executed against the master of the ship in his or her representative capacity.

(4) In an action to which paragraph (2) applies, any decree shall be pronounced against the master in his or her representative capacity.

(5) A decree in an Admiralty action *in personam* may be pronounced against an owner or demise charterer of, or other party interested in, the ship or the owner of the cargo only where that owner or demise charterer or other party interested, as the case may be, has been called or added as a defender.

### **Sale of ship or cargo**

**49.5.**—(1) This rule shall not apply to the sale of a cargo arrested on the dependence of an Admiralty action *in personam*.

(2) Where, in an Admiralty action or an action of declarator and sale of a ship—

- (a) the sheriff makes a finding that the pursuer has a claim which falls to be satisfied out of an arrested ship or cargo, or
- (b) a decree for a sum of money has been granted in an action in which a ship has been arrested on the dependence,

the pursuer may apply by motion for an order for the sale of that ship or a share in it, or the cargo, as the case may be, by public auction or private bargain.

(3) Before making such an order, the sheriff shall remit to a reporter for the purpose of obtaining—

- (a) an inventory of,
- (b) a valuation and recommendation upset price for, and
- (c) any recommendation as to the appropriate advertisement for the sale of, the ship, share or cargo.

(4) Where a remit is made under paragraph (3), the pursuer shall instruct the reporter within 14 days after the date of the interlocutor making the remit and be responsible, in the first instance, for payment of his or her fee.

(5) On completion of a report following a remit under paragraph (3), the reporter shall send the report and a copy for each party to the sheriff clerk.

(6) On receipt of such a report, the sheriff clerk shall—

- (a) give written intimation to each party of receipt of the report;
- (b) request the pursuer to show to him or her a discharge in respect of the fee for which the pursuer is responsible under paragraph (4); and
- (c) after sight of such a discharge—
  - (i) lodge the report in process;
  - (ii) give written intimation to each party that this has been done and that he or she may uplift a copy of the report from process; and
  - (iii) cause the action to call for a procedural hearing.

(7) Where the sheriff orders the sale of a ship, share or cargo, the conduct of the sale, including any advertisement of it, shall be under the direction of the sheriff clerk.

(8) Where such a sale is the sale of a ship or a share in it, the interlocutor ordering the sale shall include a declaration that the right to transfer the ship or share to the purchaser is vested in the sheriff clerk.

(9) Where, in such a sale, no offer to purchase the ship, share or cargo, as the case may be, has reached the upset price, the pursuer may apply by motion for authority to expose such ship, share or cargo for sale at a reduced upset price.

(10) The proceeds of such a sale shall be consigned into court, under deduction of all dues to the date the sheriff adjudges the ship, share or cargo to belong to the purchaser under paragraph (11)(a), payable to Her Majesty's Revenue and Customs or to the port or harbour authority within the jurisdiction of which the ship or cargo lies and in respect of which such port or harbour authority has statutory power to detain the ship or cargo.

(11) On consignment being made under paragraph (10), the sheriff shall—

- (a) adjudge the ship, share or cargo, as the case may be, declaring the same to belong to the purchaser, freed and disburdened of all bonds, mortgages, liens, rights of retention and other incumbrances affecting it and ordering such ship, share or cargo to be delivered to the purchaser on production of a certified copy of the interlocutor pronounced under this subparagraph; and

- (b) order such intimation and advertisement, if any, for claims on the consigned fund as the sheriff thinks fit.
- (12) The sheriff shall, after such hearing or inquiry as the sheriff thinks fit—
  - (a) determine all questions of expenses;
  - (b) rank and prefer any claimants in order of preference; and
  - (c) make such other order, if any, as the sheriff thinks fit.

### **Ship collisions and preliminary acts**

**49.6.**—(1) Subject to rule 49.7 (applications to dispense with preliminary acts), this rule applies to an Admiralty action of damages arising out of a collision between ships at sea.

(2) An action to which this rule applies may be brought *in rem*, *in personam* or *in rem* and *in personam*.

(3) An initial writ in such an action shall not contain a condescence or pleas-in-law.

(4) Where such an action is brought *in personam*, the crave of the initial writ shall contain sufficient detail to enable the defender to identify the date and place of and the ships involved in the collision.

(5) Where a notice of intention to defend has been lodged Rule 9.2 shall, subject to paragraph 11 of this rule, not apply.

(6) Within 7 days after the expiry of the period of notice, the pursuer shall lodge in process a sealed envelope containing—

- (a) a preliminary act in Form 49.6; and
- (b) a brief condescence and appropriate pleas-in-law.

(7) Within 28 days after the preliminary act for the pursuer has been lodged under paragraph (6), the defender shall lodge in process a sealed envelope containing a preliminary act in Form 49.6.

(8) A party who lodges a preliminary act under paragraph (6) or (7) shall not send a copy of it to any other party.

(9) On the lodging of a preliminary act by the defender under paragraph (7) the sheriff clerk shall—

- (a) open both sealed envelopes;
- (b) mark the contents of those envelopes with appropriate numbers of process; and
- (c) give written intimation to each party that subparagraphs (a) and (b) have been complied with.

(10) On receipt of the written intimation under paragraph (9)(c), the pursuer and defender shall exchange copies of the contents of their respective envelopes.

(11) Within 7 days after the sealed envelopes have been opened up under paragraph (9), the sheriff clerk shall fix a date and time for an Options Hearing and send parties Form G5 in terms of Rule 9.2.

(12) When the pursuer lodges a record in terms of Rule 9.11 he or she shall do so with a copy of each of the preliminary acts appended to it.

(13) No amendment, adjustment or alteration may be made to a preliminary act except by order of the sheriff.

### **Applications to dispense with preliminary acts**

**49.7.**—(1) Within 7 days after the expiry of the period of notice, any party may apply for an order to dispense with preliminary acts in an action to which rule 49.6 applies.

(2) An application under paragraph (1) shall be made by minute craving the sheriff to dispense with preliminary acts and setting out the grounds on which the application is made.

(3) Before lodging such a minute in process, the party making the application shall intimate a copy of the minute, and the date on which it will be lodged, to every other party.

(4) Any other party may lodge in process answers to such a minute within 14 days after such a minute has been lodged.

(5) After the expiry of the period mentioned in paragraph (4), the sheriff may, on the motion of any party, after such further procedure, if any, as the sheriff thinks fit, dispense with preliminary acts.

(6) Where the sheriff dispenses with preliminary acts, the pursuer shall lodge a condescence with appropriate pleas-in-law within such period as the sheriff thinks fit; and the action shall thereafter proceed in the same way as an ordinary action.

(7) Where the sheriff refuses to dispense with preliminary acts, the sheriff shall ordain a party or parties, as the case may be, to lodge preliminary acts under rule 49.6 within such period as the sheriff thinks fit.

(8) An interlocutor dispensing or refusing to dispense with preliminary acts shall be final and not subject to review.

### **Ship collision and salvage actions**

**49.8.**—(1) Without prejudice to rule 29.11 (lodging productions), in an Admiralty action arising out of a collision between ships at sea or salvage, the parties shall—

- (a) within 4 days after the interlocutor allowing proof,
- (b) within 4 days before the taking of evidence on commission, or
- (c) on or before such other date as the sheriff, on special cause shown, shall determine,

lodge in process the documents, if any, mentioned in paragraph (2).

(2) The documents to be lodged under paragraph (1) are—

- (a) the log books, including scrap log books, of the ships concerned;
- (b) all *de recenti* written reports in connection with the collision or salvage, as the case may be, by the masters or mates of the vessels concerned to their respective owners; and
- (c) reports of any surveys of the ship in respect of which damage or salvage is claimed.

### **Arrestment of ships and arrestment *in rem* of cargo on board ship**

**49.9.**—(1) An arrestment of a ship *in rem* or on the dependence, or an arrestment *in rem* of cargo on board ship, may be executed on any day by a sheriff officer who shall affix the schedule of arrestment—

- (a) to the mainmast of the ship;
- (b) to the single mast of the ship; or
- (c) where there is no mast, to some prominent part of the ship.

(2) In the execution of an arrestment of a ship on the dependence, the sheriff officer shall, in addition to complying with paragraph (1), mark the initials “ER” above the place where the schedule of arrestment is fixed.

(3) On executing an arrestment under paragraph (1), the sheriff officer shall deliver a copy of the schedule of arrestment and a copy of the certificate of execution of it to the master of the ship, or other person on board in charge of the ship or cargo, as the case may be, as representing the owners or demise charterers of, or parties interested in, the ship or the owners of the cargo, as the case may be.

(4) Where the schedule of arrestment and the copy of the certificate of execution of it cannot be delivered as required under paragraph (3)—

- (a) the certificate of execution shall state that fact; and
- (b) either—
  - (i) the arrestment shall be executed by serving it on the harbour master of the port where the ship lies; or
  - (ii) where there is no harbour master, or the ship is not in a harbour, the pursuer shall enrol a motion for such further order as to intimation and advertisement, if any, as may be necessary.

(5) A copy of the schedule of arrestment and a copy of the certificate of execution of it shall be delivered by the sheriff officer to the harbour master, if any, of any port where the ship lies.

#### **Arrestment of cargo**

**49.10.**—(1) An arrestment of cargo on board a ship shall be executed by a sheriff officer who shall serve the schedule of arrestment on—

- (a) the master of the ship;
- (b) any other person in charge of the ship or cargo; or
- (c) other proper arrestee.

(2) Where the schedule of arrestment cannot be executed in accordance with paragraph (1), the arrestment may be executed as provided for in rule 49.9(4) and (5).

#### **Forms for diligence in admiralty actions**

**49.11.**—(1) In the execution of diligence in an Admiralty action, the following forms shall be used—

- (a) in the case of—
  - (i) an arrestment to found jurisdiction (other than the arrestment of a ship), a schedule in Form 49.11-A and a certificate of execution in Form 49.11-E;
  - (ii) an arrestment of a ship to found jurisdiction, a schedule in Form 49.11-AA and a certificate of execution in Form 49.11-F;
- (b) subject to subparagraph (e), in the case of an arrestment on the dependence, a schedule in Form G4B and a certificate of execution in Form 49.11-E;
- (c) in the case of an arrestment *in rem* of a ship, cargo or other maritime *res* to enforce a maritime hypothec or lien, a schedule in Form 49.11-B and a certificate of execution in Form 49.11-G;
- (d) in the case of an arrestment *in rem* of a ship to enforce a non-pecuniary claim, a schedule in Form 49.11-C and a certificate of execution in Form 49.11-G;
- (e) in the case of an arrestment on the dependence of—

- (i) a cargo on board a ship, a schedule in Form G4B;
  - (ii) a ship, a schedule in Form 49.11-D,
- and a certificate of execution in Form 49.11-H.

(2) Where two or more of the arrestments mentioned in paragraph (1)(a), (b) and (c) are to be executed, they may be combined in one schedule of arrestment.

#### **Movement of arrested property**

**49.12.**—(1) Any person who has an interest in a ship or cargo which is the subject of an arrestment under this Chapter may apply by motion for a warrant authorising the movement of the ship or cargo.

(2) Where the sheriff grants a warrant sought under paragraph (1), the sheriff may make such further order as the sheriff thinks fit to give effect to that warrant.

#### **Arrestment before service**

**49.13.** Before the service of an Admiralty action, where it is craved in the initial writ, the pursuer may apply by motion for warrant for arrestment of any of the types of arrestment mentioned in this Chapter.”.

(5) In Appendix 1, after Form OFT1 (Form of notice of intimation to the Office of Fair Trading)(5), insert the Forms set out in Schedule 2 to this Act of Sederunt.