

# PRACTICE DIRECTION - ADMIRALTY

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 49 AND REPLACES, WITH MODIFICATIONS, ORDER 75 OF THE RULES OF THE SUPREME COURT

### GENERAL

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- 1.1 This practice direction applies to all Admiralty proceedings.
- 1.2 The provisions of the Civil Procedure Rules and the Practice Directions that supplement them apply to Admiralty proceedings subject to the provisions of this practice direction, any other Admiralty practice direction and, where applicable, the Commercial Court Guide (see paragraph 16 below).
- 1.3 “Admiralty proceedings” means proceedings in the Admiralty Court of the Queen’s Bench Division of the High Court of Justice and in any other court exercising Admiralty jurisdiction.
- 1.4 In this Practice Direction:-
  - (a) “the Admiralty Court” includes:-
    - (i) the Admiralty Court of the Queen’s Bench Division of the High Court of Justice; and
    - (ii) any other court exercising Admiralty jurisdiction.
  - (b) “claim *in rem*” means an Admiralty claim *in rem*;
  - (c) “claim *in personam*” means an Admiralty claim *in personam*;
  - (d) a “collision claim” means a claim falling within section 20(3)(b) of the Supreme Court Act 1981, namely any action to enforce a claim for damage, loss of life or personal injury arising out of-
    - (i) a collision between ships; or
    - (ii) the carrying out or omission to carry out any manoeuvre in the case of one or more of two or more ships; or
    - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
  - (e) a “salvage claim” includes any claim in the nature of salvage, any claim for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995, any claim for the apportionment of salvage and any claim arising out of or connected with any contract for salvage services;
  - (f) “caveat against arrest” means a caveat entered in the caveat book under paragraph 6.3(1);
  - (g) “caveat against release” mean a caveat entered in the caveat book under paragraph 6.5(2);

- (h) "caveat book" means the book kept in the Admiralty and Commercial Registry in which caveats under this practice direction are entered;
- (i) "limitation claim" means a claim by shipowners of other persons under the Merchant Shipping Act 1995 for the limitation of the amount of their liability in connection with a ship or other property;
- (j) "Marshal" means the Admiralty Marshal;
- (k) "ship" includes any description of vessel used in navigation.
- (l) "The Admiralty Registrar" means the Queen's Bench master with responsibility for Admiralty proceedings;
- (m) "*in rem* claim form" means a claim form which an *in rem* claim is brought.
- (n) Any references to the Merchant Shipping Act 1995 include any re-enactment thereof.
- (o) "the CPR" means the Civil Procedure Rules.

1.5 The following claims must be commenced in the Admiralty Court.

- (a) Any claim *in rem*;
- (b) Any collision claim;
- (c) Any limitation claim;
- (d) Any application to the court under the Merchant Shipping Act 1995;
- (e) Any salvage claim.

1.6 Any other claim within the admiralty jurisdiction of the High Court may be commenced either in the Admiralty Court or in the Commercial Court.

1.7 Any claim may be transferred to the Admiralty Court with the consent of the Admiralty Court.

1.8 A claim within paragraph 1.5 wrongly commenced in any other court will be transferred automatically to the Admiralty Court.

1.9 A claim form by which a claim within paragraphs 1.5 or 1.6 is begun may be issued out of the Admiralty and Commercial Court Registry or the registry of any Admiralty Court.

1.10 If a claim form referred to in paragraph 1.9 is issued out of a registry other than the Admiralty and Commercial Registry that other registry will immediately after issue send a copy of the claim by facsimile to the Admiralty and Commercial Registry, and will also send the original file to the Admiralty and Commercial Registry.

1.11 Subject to paragraph 1.13, the Admiralty Registrar shall, after the issue of a claim form referred to in paragraph 1.9 issue a direction in writing stating:

- (a) whether the claim should remain in the Admiralty Court or should be transferred to another court; and
- (b) if the claim is to remain in the Admiralty Court, whether it should be in the Admiralty Judge's list or should be placed in the Admiralty Registrar's list for trial in London or elsewhere.

In issuing these directions the Admiralty Registrar will have regard to the nature of the issues in dispute and the criteria set out in Rule CPR rule 26.8 insofar as they are applicable.

- 1.12 Where the Admiralty Registrar directs that the claim should be placed in the Judge's list, case management directions will be given and any case management conference or pre-trial review will be heard by the Admiralty Judge.
- 1.13 All matters concerning the arrest, detention, sale of property and the determination of priorities in a claim *in rem*, all proceedings concerning the ownership or the mortgage of a vessel registered under the Merchant Shipping Act 1995, all proceedings in a limitation claim and proceedings against the International Oil Pollution Compensation Fund under s.175 of the Merchant Shipping Act 1995 shall be dealt with only by the Admiralty Court of the High Court.
- 1.14 All Admiralty proceedings will be allocated to the multi-track and the CPR relating to allocation questionnaires and track allocation will not apply.

## CLAIMS IN REM

- 2.1(1) A claim *in rem* is begun by issuing an *in rem* claim form in Admiralty Form No. ADM1
- 2.1(2) Subject to paragraph 4, the particulars of an *in rem* claim must
  - (a) be contained in or served with the *in rem* claim form; or
  - (b) be served on the Defendant by the Claimant within 75 days after service of the *in rem* claim form.
- 2.1(3) The Claimant to a claim *in rem* may be named or may be described, but if not named in the *in rem* claim form shall upon the request of any other party, identify himself by name.
- 2.1(4) The Defendant must be described in the claim form.
- 2.1(5) An acknowledgement of service must be filed in every *in rem* claim. The period for filing the acknowledgement of service is 14 days after service of the claim form irrespective of whether the claim form contains particulars of claim. The acknowledgement must be in Admiralty Form No. ADM2. The person who acknowledges service must identify himself by name therein.

- 2.1(6) The period within which an *in rem* claim form must be served is, subject to CPR rule 7.6, 12 months from the date of issue.
- 2.2 Service of an *in rem* claim form must be made in one of the following ways:
- (a) Upon the property against which the claim *in rem* is brought by fixing the *in rem* claim form, or a copy of it, on the outside of the property proceeded against in a position which may reasonably be expected to be seen.  
  
Where the property is freight, service may be made either on the cargo in respect of which the freight was earned or on the ship upon which that cargo was carried.
  - (b) If the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the *in rem* claim form with that person.
  - (c) Where the property has been sold by the Marshal, by filing the *in rem* claim form in the Admiralty and Commercial Registry.
  - (d) Where there is a caveat against arrest, on the person named in the caveat as being authorised to accept service.
  - (e) On any solicitor who has authority to accept service.
  - (f) On such person and in such manner as is stated to constitute effective service in any agreement providing for service of the proceedings;
  - (g) In any other manner directed under CPR rule 6.8 provided that the res or part thereof is within the jurisdiction of the Court; or
  - (h) In such other manner as may be provided by rule or by practice directions.
- 2.3 In cases where the property is to be arrested, or in cases where the property is already under arrest in current proceedings, the Marshal will effect service of the *in rem* claim form if the Claimant requests the Court to do so. In all other cases Admiralty *in rem* claim forms are to be served by the claimant, not the Registry.
- 2.4 Where an *in rem* claim form has been issued, any person who wishes to defend the claim may file an acknowledgement of service notwithstanding that the *in rem* claim form has not been served.
- 2.5 Except as otherwise provided in this practice direction, after acknowledgment of service has been filed, the procedure relating to the claim shall be the procedure applicable to a claim *in personam*, but the claim also continues to be a claim *in rem*.
- 2.6 Where the defendants are described and not named on the claim form, for example as “The Owners of the Ship X”, any acknowledgement of service in addition to stating the description appearing on the claim form shall also state the full names of the persons acknowledging service and the nature of their ownership. In the event of there being insufficient space on the acknowledgement of service form itself, such additional information shall

appear on a separate document to accompany and be lodged with the acknowledgement of service form.

- 2.7 A Defendant who files an acknowledgement of service to an *in rem* claim form does not by doing so lose any right that he may have to dispute the Court's jurisdiction. (see CPR10.1(3)(b) and Part 11).
- 2.8 Any person who pays the prescribed fee may, during office hours, search for, inspect and take a copy of any claim form *in rem* whether or not it has been served.

## CLAIMS IN PERSONAM

- 3.1(1) A claim form by which a claim *in personam* is brought (an *in personam* claim form in Admiralty Form ADM1A) may be served within the jurisdiction as provided in CPR Part 6 and, except in the case of a collision claim, may be served out of the jurisdiction as provided RSC Order 11 (Schedule 1 to the CPR).
- 3.1(2) An *in personam* claim form may also be served out of the jurisdiction where:
  - (a) the Defendant has agreed to submit the claim to the jurisdiction of the court; or
  - (b) the claim is in the nature of salvage and any part of the services took place within the jurisdiction; or
  - (c) the claim is to enforce a claim under sections 153 and/or 154 and/or 175 of the Merchant Shipping Act 1995,

and the Court grants permission to serve the claim form out of the jurisdiction on an application in accordance with RSC Order 11, rule 4 (Schedule 1 to the CPR).
- 3.1(3) *In personam* claim forms are to be served by the claimants, not by the Registry.
- 3.2(1) An *in personam* claim form may seek judgment on liability alone and request that the amount of the claim be referred to the Admiralty Registrar, or be dealt with as the Admiralty Registrar may direct.
- 3.2(2) The Claimant in a claim *in personam* may be named or may be described in the claim form, but if not named, shall, upon the request of any other party, identify himself by name.
- 3.2(3) The Defendant in a claim *in personam* must be named in the claim form.
- 3.2(4) Subject to paragraph 4, the particulars of an *in personam* claim must
  - (a) be contained in or served with the claim form; or
  - (b) be served on the Defendant by the Claimant within 75 days after service of the claim form.

- 3.2(5) The person who files a defence must identify himself by name in the defence.
- 3.3 An acknowledgement of service must be filed in every *in personam* claim. Subject to paragraph B7.4 of the Commercial Court Guide, the period for filing the acknowledgement of service is 14 days after service of the claim form irrespective of whether the claim form contains particulars of claim.

## SPECIAL PROVISIONS RELATING TO COLLISION CLAIMS

- 4.1(1) A collision claim is begun by issuing a claim form. The claim form need not contain or be followed by particulars of claim and CPR rule 7.4 will not apply.
- 4.1(2) An acknowledgment of service must be filed in every collision claim.
- 4.2(1) In any collision claim each party shall, within 2 months after the filing by the Defendant of the acknowledgment of service or, in the event that the Defendant makes an application under CPR Part 11 (disputing the jurisdiction or the exercise by the court of its jurisdiction), within 2 months of the determination of the Defendant's application, file in the Registry a completed Admiralty Form No. ADM3 ("a Preliminary Act").
- 4.2(2) A Preliminary Act shall contain-
  - (a) in Part One of the Form, answers to the questions set out in that Part; and
  - (b) in Part Two of the Form, a statement-
    - (i) that the information in Part One is incorporated in Part Two;
    - (ii) of any other facts and matters upon which the party filing the Preliminary Act relies;
    - (iii) of all allegations of negligence or other fault which the party filing the Preliminary Act makes;
    - (iv) of the relief or remedy which the party filing the Preliminary Act claims.
- 4.2(3) A Preliminary Act is to be treated as a statement of case and must be verified by a statement of truth.
- 4.2(4) Upon filing their Preliminary Act each party must give notice that he has done so to each other party. Within 14 days after the last Preliminary Act is filed each party must serve on every other party a copy of his Preliminary Act.
- 4.2(5) After each party has filed his Preliminary Act, the claim shall proceed as any other Admiralty claim.
- 4.3 In any collision claim an application under CPR Part 11 disputing the Court's jurisdiction must be made within 2 months of the filing of the acknowledgment of service.
- 4.4 A claim form in a collision claim may not be served out of the jurisdiction unless-
  - (a) the case falls within section 22(a) to (c) of the Supreme Court Act 1981; or

- (b) the defendant has submitted to or agreed to submit to the jurisdiction of the court,

and the Court grants permission in accordance with RSC Order 11, rule 4 (Schedule 1 to the CPR). If permission is granted the court will specify the period within which the defendant may file an acknowledgment of service and a Preliminary Act. RSC Order 11, rule 4(4) does not apply.

4.5 Where, in a collision claim *in rem*, (“the original claim”) -

- (a) (i) a Part 20 claim; or
  - (ii) a cross claim *in rem* arising out of the same collision or occurrence is made; and
- (b) (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and
  - (ii) the party bringing the Part 20 claim or cross claim is unable to arrest a ship or otherwise to obtain security,

then the party bringing the Part 20 claim or cross claim may apply to the Admiralty Court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

4.6 In collision claims the skeleton argument of each party should be accompanied by a plot or plots of that party’s case or alternative cases as to the navigation of vessels during and leading to the collision. All plots must contain a sufficient indication of the assumptions used in the preparation of the plot.

4.7 Where the authenticity of any document or entry in any document is challenged or where it will be suggested at trial that a document or entry in a document was not made at the time or by the person stated or is in any other way challenged in a manner which may require a witness to be produced at trial to support the document or entry in the document, such challenge must be raised in good time in advance of the trial to enable any such witness to be produced. In addition, the skeleton argument should make it plain what challenges to documents or entries in documents will be made.

## OFFERS TO SETTLE IN COLLISION CLAIMS

- 4.8 (1) If a party to proceedings to establish liability for a collision claim (other than a claim for loss of life or personal injury)-
- (a) makes an offer to settle the proceedings in the form set out in paragraph (2) not less than 21 days before the start of the trial;
  - (b) that offer is not accepted; and
  - (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer,

the maker of the offer shall, unless the court considers it unjust, be entitled to-

- (i) all his costs from 21 days after the date the offer was made; and
  - (ii) any costs incurred before the date from which the maker of the offer will be entitled to all his costs under paragraph (i) in the percentage to which he would have been entitled had the offer been accepted.
- (2) The offer must be in writing and must contain-
  - (a) an offer to settle liability at stated percentages;
  - (b) an offer to pay costs in accordance with the same percentages;
  - (c) a term that the offer remains open for 21 days after the date it is made; and
  - (d) a term that on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance.

## PROCEEDINGS AGAINST OR CONCERNING THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND\*

- 5.1 For the purposes of section 177 of the Merchant Shipping Act 1995 and the corresponding provision of Schedule 4 to the Act, any party to proceedings against an owner or guarantor in respect of liability under section 153 and/or section 154 of the said Act or the corresponding provisions of Schedule 4 to the Act may give the Fund notice of the proceedings by serving a notice in writing on the Fund together with a copy of the claim form and copies of the statements of case (if any) served in the proceedings.
- 5.2 The court will, on application by the Fund made without notice, grant permission to the Fund to intervene in any proceedings to which paragraph 5.1 applies, whether notice of the proceedings has been served on the Fund or not.
- 5.3 Where a judgment is given against the Fund in any proceedings under section 175 of the Merchant Shipping Act 1995 or the corresponding provision of Schedule 4 to the Act, the Admiralty Registrar will arrange for a stamped copy of the judgment to be sent to the Fund by post.
- 5.4 Notice by the Fund to the Admiralty Registrar of the matters set out in section 176(3)(b) of the Merchant Shipping Act 1995 and the corresponding section of Schedule 4 to the Act shall be in writing sent by post to, or delivered at, the Registry.

\*See Chapter IV, Merchant Shipping Act 1995.

## ARREST, RELEASE, INTERVENERS ETC.

- 6.1 Except as provided in this Practice Direction, the Claimant in a claim *in rem* and a judgment creditor in a claim *in rem* is entitled to have the property proceeded against arrested by the Admiralty Court by filing an application to



arrest in Admiralty Form No. ADM4 (which shall also contain an undertaking) accompanied by a declaration in Admiralty Form No. ADM5 upon which the Admiralty Court will issue an arrest warrant.

- 6.2(1) An application for arrest may be made by filing the application notice in the Admiralty and Commercial Registry or the registry of any Admiralty Court.
- 6.2(2) When the relevant registry is closed an application for arrest shall be dealt with in such manner (if any) as may be provided in Admiralty practice directions.
- 6.2(3) Any party making an application for arrest must (i) request a search to be made in the caveat book before the warrant is issued in order to ascertain whether there is a caveat in force with respect to that property and (ii) file a declaration in Admiralty Form No. ADM5 containing the particulars required in paragraph 6.2(4). However the Admiralty Court may, if it thinks fit, give permission for the issue of the arrest warrant notwithstanding that the declaration does not contain all those particulars.
- 6.2(4) The declaration required by paragraph 6.2(3) must state –
  - (a) in every case:
    - (i) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, the name of that ship; and
    - (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and
    - (iii) the amount of the security sought, if any.
  - (b) in the case of a claim against a ship by virtue of section 21(4) of the Supreme Court Act 1981:
    - (i) the name of the person who would be liable on the claim if it were commenced *in personam* (“the relevant person”); and
    - (ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose, specifying which; and
    - (iii) that at the time when the claim form was issued the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise, as the case may be; and
  - (c) in the cases set out in paragraphs 6.2(7) and 6.2(8) that the relevant notice has been sent or served, as appropriate; and
  - (d) in the case of a claim in respect of liability incurred under section 153 of the Merchant Shipping Act 1995, the facts relied on as establishing that the Court is not prevented from entertaining the claim by reason of section 166(2) of that Act.

and must be sworn as an affidavit.

- 6.2(5) No registry other than the Admiralty and Commercial Registry will issue an arrest warrant and where an application for arrest is made to any registry other than the Admiralty and Commercial Registry that registry will use its best endeavours to cause the application form and declaration and a copy of the form to be transmitted immediately to the Admiralty and Commercial Registry for consideration of the application and, if appropriate, the issue of the warrant. Thereafter the arrest shall be administered by the Marshal and all applications in respect thereof and in respect of the property under arrest other than an order for sale before judgment shall be made to and considered by the Admiralty Registrar himself or as he may direct.
- 6.2(6) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court exercising Admiralty jurisdiction, has changed since the claim form was issued.
- 6.2(7) No warrant of arrest will be issued against a ship owned by a State where, by any convention or treaty, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that State until notice in Admiralty Form No. ADM6 has been served on a consular officer at the consular office of that State in London or the port at which it is intended to cause the ship to be arrested and a copy of the notice is exhibited to the declaration filed under paragraph 6.2(3).
- 6.2(8) Except with the permission of the court or when notice has been given under paragraph (7), a warrant of arrest shall not be issued in proceedings *in rem* against a foreign ship belonging to a port of a State in respect of which an order in council has been made under section 4 of the Consular Relations Act 1968, until the expiration of two weeks from appropriate notice to the consul.
- 6.2(9) A warrant of arrest is valid for 12 months but may only be executed if the claim form has been served or remains valid for service at the date of execution.
- 6.3(1) Any person may file in the Admiralty and Commercial Registry a notice requesting a caveat against arrest in Admiralty Form No. ADM7, undertaking to file an acknowledgment of service and to give sufficient security to satisfy the claim with interest and costs. Upon filing the notice of request a caveat shall be entered in the caveat book. The record of such caveats shall be open for inspection as provided in the Admiralty practice directions. Caveats shall be valid for a period of 12 months but may be renewed for a similar period or periods. The entry of a caveat against arrest shall not be treated as a submission to the jurisdiction of the English Court.
- 6.3(2) Where a Claimant in a limitation claim has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 and desires to prevent the arrest of property for a claim which may be or has been made against the fund, he must file in the Admiralty and Commercial Registry a notice requesting a caveat, in Admiralty Form No. ADM8, signed by him or his solicitor –

- (a) stating that a limitation fund in respect of the damage arising from the relevant incident has been constituted; and
- (b) undertaking to acknowledge service of the claim form by which any claim may be begun against the property described in the notice;

and on the filing of the notice a caveat against the issue of a warrant to arrest the property described in the notice shall be entered in the caveat book.

- 6.3(3) Property may be arrested notwithstanding that a caveat against arrest has been filed, but in such a case the Admiralty Court may if it considers that it is appropriate to do so, order that the arrest be discharged and that the party procuring the arrest do pay compensation to the owner of or other persons interested in the property arrested.
- 6.4(1) The arrest of property may only be effected by the Marshal or his substitute.
- 6.4(2) Arrest is effected by service on the property of an arrest warrant in Admiralty Form No. ADM9 in the manner set out in paragraph 2.2(a) or, where it is not reasonably practicable to serve the warrant, by service of a notice of the issue of the warrant in that manner upon the property or by giving notice to those in charge of the property.
- 6.4(3) Property under arrest may not be moved without an order of the Admiralty Court and the property may be immobilised or otherwise prevented from sailing in such manner as the Marshal or his substitute may decide is appropriate.
- 6.4(4) Upon arrest, standard directions will be issued by the Admiralty Registrar in Admiralty Form No. ADM10.
- 6.5(1) Where property is under arrest an *in rem* claim form may be served upon it and, in addition, it may be arrested by any other person claiming to have an *in rem* claim against it.
- 6.5(2) Any person claiming to have an *in rem* right against any property under arrest who wishes to be given notice of any application to the court in respect of that property or its proceeds of sale may file in the Admiralty and Commercial Registry a notice requesting a caveat against release in Admiralty Form No. ADM11. Upon the filing of the notice of request, a caveat shall be entered in the caveat book. The record of such caveats shall be open for inspection as provided in the Admiralty practice directions.
- 6.6(1) Property will be released from arrest if:
  - (a) it is sold by the Admiralty Court; or
  - (b) the Admiralty Court orders release upon application made by any party; or
  - (c) the arresting party and all caveators, if any, file in the Registry a request for release in Admiralty Form No. ADM12, or

- (d) any party files in the Registry a request for release in Admiralty Form No. ADM12(which shall also contain an undertaking) together with a consent to the release of the arresting party and all caveators, if any.
- 6.6(2) Any application for release made when the Registry is closed shall be made in the manner provided by paragraph 17.5.
- 6.7(1) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in the property may apply to the Admiralty Court for an order requiring the person who procured the entry of the caveat to pay damages to the applicant in respect of losses suffered by the applicant by reason of the delay and the Court may make such an order unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for doing so and for maintaining the caveat.
- 6.7(2) Where an *in rem* claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply to the Admiralty Court for an order specifying the amount and form of security to be provided.
- 6.7(3) Where in relation to a claim *in rem* security has been provided to obtain the release of property under arrest or to prevent the arrest of property the Admiralty Court may at any stage:
  - (a) order that the amount of security be reduced, and may stay the claim pending compliance with such order;
  - (b) order that the Claimant be permitted to arrest or re-arrest the property proceeded against for the purposes of obtaining further security, provided that the total security provided shall not exceed the value of the property at the time of the original arrest or at the time security was first given if the property was not arrested.
- 6.8 Any person interested in property under arrest or in the proceeds of sale of property sold by the Admiralty Court or whose interests are affected by any order sought or made may be made a party to any claim *in rem* against the property or proceeds of sale where the Court considers it would be just and convenient and upon such terms as the Court may think fit.
- 6.9 Any application to the Admiralty Court concerning the sale of the property under arrest or the proceeds of sale of property sold by the Court shall be heard in public and the application notice served on all parties to the claim and caveators against the property or the proceeds of sale.
- 6.10(1) Where a ship is not under arrest but cargo on board her is, and those interested in the ship wish to discharge the cargo which is under arrest, they may, without intervening in the action, request the Marshal to take the appropriate steps. If the Marshal considers the request reasonable and if the applicant gives an undertaking in writing satisfactory to the Marshal to pay on demand the fees of the Marshal and all expenses to be incurred by him or on his behalf in taking the desired steps, the Marshal will apply to the court for the appropriate order.

- 6.10(2) Where those interested are unable or unwilling to arrange for such an undertaking to be given they may intervene in the action in which the cargo is under arrest and apply to the Admiralty Registrar for an order for discharge of the cargo and for directions as to the fees and expenses of the Marshal in and about the discharge and storage of the cargo pursuant to such order.
- 6.11 Where a ship is under arrest but cargo on board her is not, and those interested in the cargo wish to secure its discharge, one or other of the procedures outlined in paragraph 6.10(1) and 6.10(2) may be followed.

## DEFAULT

- 7.1 If no acknowledgment of service and/or defence to a claim *in rem* (other than one to which paragraph 4 applies) is filed within the time required by this practice direction a Claimant may apply for judgment in default by filing an application in Admiralty Form No. ADM13, a certificate proving proper service of the claim form and evidence proving the claim to the satisfaction of the Admiralty Court. Where the claim form has been served by the Court it shall be presumed to have been properly served unless it is proved not to have been.
- 7.2 In the case of a claim to which paragraph 4 applies, where any party fails to file a Preliminary Act within the time specified any other party who has filed a Preliminary Act may apply for judgment in default:
- (a) in a claim *in rem*, by filing an application in Admiralty Form No. ADM13, a certificate proving proper service of the claim form and evidence proving the claim to the satisfaction of the Admiralty Court. Where the claim form has been served by the Court it shall be presumed to have been properly served unless it is proved not to have been.
  - (b) in a claim *in personam*, in accordance with the rules in CPR Part 12 so far as applicable.
- 7.3 In the case of any other claim *in personam*, the rules as to judgment in default in CPR Part 12 will apply so far as applicable.
- 7.4 The Admiralty Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of paragraphs 7.1 or 7.2
- 7.5 Where a claim form has been served upon a party at whose instance a caveat against arrest was issued the Claimant may, after filing evidence to the satisfaction of the Admiralty Court verifying the facts on which the claim is based, apply to the Court for judgment in default provided that:-
- (a) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of the caveat, and
  - (b) that party or his solicitor does not within 14 days after service of the claim form fulfil the undertaking given by him as aforesaid.

## SALE BY THE COURT, PRIORITIES AND PAYMENT OUT

- 8.1(1) An order for the survey, appraisalment, or sale of a ship may be made in a claim *in rem* at any stage of the proceedings on the application of any party.
- 8.1(2) An order for sale before judgment may only be made by the Admiralty Judge.
- 8.1(3) Unless the Admiralty Court otherwise orders, an order for sale will be in Admiralty Form No. ADM14.
- 8.1(4) In giving directions for sale the Admiralty Court may fix a time within which notice of claims against the proceeds of sale must be filed, and the time and manner in which notice of that time must be advertised.
- 8.2(1) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph 8.1(4) apply to the Admiralty Court for the determination of priorities. The application notice must be served on all persons who have filed a claim against the property.
- 8.2(2) Unless otherwise ordered by the Admiralty Judge, a determination of priorities may only be made by the Admiralty Judge.
- 8.3 Payment out of the proceeds of sale will be made only to judgment creditors and in accordance with the determination of priorities or as the Admiralty Court may otherwise order.
- 8.4(1) When proceeds of sale are paid into court by the Marshal and such payment is in a foreign currency, the funds will be placed on one day call interest bearing account unless otherwise ordered by the court.
- 8.4(2) An application to place foreign currency on longer term deposit unless made at the same time as the application for sale, or other prior application, may be made to the Admiralty Registrar. Notice of the placement of foreign currency in an interest bearing account shall be given to all parties interested in the fund by the party at whose instance the foreign currency is invested.
- 8.4(3) Any interested party who wishes to object to the mode of investment of foreign currency paid into court may apply to the Admiralty Registrar for directions.

## LIMITATION CLAIMS

- 9.1(1) Limitation may be relied upon by way of defence to any claim.
- 9.1(2) A limitation claim may be brought by counterclaim with the permission of the Admiralty Court.
- 9.1(3) A limitation claim is begun by the issue of a claim form in Admiralty Form No. ADM15 ("a limitation claim form"). The limitation claim form must be accompanied by a declaration:
  - (a) proving the facts upon which the Claimant relies

- (b) stating the names and addresses (if known) of all persons who to the knowledge of the Claimant have claims against him in respect of the occurrence to which the claim relates, other than named defendants.

and sworn as an affidavit.

- 9.1(4) The Claimant and at least one of the Defendants must be named in the limitation claim form, but all other Defendants may be described.
- 9.1(5) The limitation claim form must be served on all named Defendants.
- 9.1(6) The limitation claim form may not be served out of the jurisdiction unless:
  - (a) the case falls within section 22(2)(a) to (c) of the Supreme Court Act 1981;
  - (b) the Defendant has submitted to or agreed to submit to the jurisdiction of the court; or
  - (c) the Admiralty Court has jurisdiction over the claim under any applicable Convention, and the court grants permission on an application in accordance with RSC Order 11, rule 4 (Schedule 1 to the CPR).
- 9.1(7) Every Defendant upon whom a limitation claim form is served must either:
  - (a) within 28 days of service file a defence to the limitation claim in Admiralty Form No. ADM16A or file a notice in Admiralty Form No. ADM16 that he admits the right of the claimant to limit liability; or
  - (b) if he wishes to dispute the jurisdiction of the court or to argue that the court should not exercise its jurisdiction file within 14 days of service or, if the limitation claim form is served out of the jurisdiction, within the time specified in RSC Order 11 rule 1A (Schedule 1 to the CPR), an acknowledgment of service in Admiralty Form No. ADM16B.
- 9.1(8) In the event that the Defendant files an acknowledgment of service pursuant to paragraph 9.1(7)(b) he will be treated as having accepted that the court has jurisdiction to hear the limitation claim unless he makes an application under CPR Part 11 within 14 days of filing his acknowledgment of service.
- 9.2(1) Where one or more named Defendants admits the right to limit, the Claimant may file in the registry an application for a restricted limitation decree in Admiralty Form No. ADM17 and the Court will issue a decree in Admiralty Form No. ADM18 limiting liability only against such named Defendants as have admitted the Claimant's right to limit liability.
- 9.2(2) A restricted limitation decree may be obtained against any named Defendant failing to file a defence within the time specified for doing so.
- 9.2(3) A restricted decree need not be advertised, but a copy must be served on the Defendants to whom it applies.
- 9.2(4) Where the right to limit is not admitted or the Claimant seeks a general limitation decree in Admiralty Form No. ADM19, he must within 7 days of the date of the filing of the defence of the named Defendant last served or the



expiry of the time for doing so, apply for an appointment before the Admiralty Registrar for a case management conference at which directions will be given for the further conduct of the proceedings.

- 9.3(1) When a limitation decree is granted the Admiralty Court:
- (a) may order that any proceedings relating to any claim arising out of the occurrence be stayed;
  - (b) may order the Claimant to establish a limitation fund if one has not been established or make such other arrangements for payment of claims against which liability is limited as the Court considers appropriate;
  - (c) may, if the decree is a restricted limitation decree, distribute the limitation fund;
  - (d) shall, if the decree is a general limitation decree, give directions as to advertisement of the decree and fix a time within which notice of claims against the fund must be filed or an application made to set aside the decree.
- 9.3(2) When the Admiralty Court grants a general limitation decree the Claimant must:
- (a) advertise it in such manner and within such time as the Court shall direct;
  - (b) file in the registry a declaration that the decree has been advertised in accordance with (a) and copies of the advertisements.
- 9.4 Any person other than a named Defendant may apply to the Admiralty Registrar within the time fixed in the decree to have a general limitation decree set aside. Any such application must be supported by a declaration proving that the person has a good faith claim against the Claimant arising out of the occurrence and sufficient grounds for contending that the Claimant is not entitled to the decree obtained, either in the amount of limitation or at all.
- 9.5(1) A limitation fund may be established before or after a limitation claim has been commenced.
- 9.5(2) If a limitation claim is not commenced within 75 days of the date the fund was established, the fund will lapse and all monies in court, including any interest accrued therein, will be repaid to the person making the payment into court. The lapsing of a limitation fund shall not prevent the establishment of a new fund.
- 9.6(1) The Claimant may constitute a limitation fund by paying into court the sterling equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability under the Merchant Shipping Act 1995 together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into court.
- 9.6(2) Where the Claimant does not know the sterling equivalent of the said number of special drawing rights on the date of payment into court he may calculate the same on the basis of the latest available published sterling equivalent of a



special drawing right as fixed by the International Monetary Fund, and in the event of the sterling equivalent of a special drawing right on the date of payment into court under paragraph (1) being different from that used for calculating the amount of that payment into court the Claimant may—

- (a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under paragraph (1), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into court, as if it has been made on the date of that payment into court, or
- (b) apply to the Admiralty Court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (1).

9.6(3) An application under paragraph 9.6(2) (b) may be made without notice to any party and must be supported by evidence to the satisfaction of the Court proving the sterling equivalent of the appropriate number of special drawing rights on the date of payment into court.

9.6(4) On making any payment into court under this rule, the Claimant shall give notice thereof in writing to every named Defendant, specifying the date of payment in, the amount paid in, the amount of interest included therein, the rate of such interest, and the period to which it relates.

The Claimant shall also give notice in writing to every Defendant of any excess amount (and any interest thereon) paid out to him under paragraph 9.6(2)(b).

9.6(5) Money paid into court under this paragraph shall not be paid out except under an order of the court.

9.7(1) A claim against the fund must be in Admiralty Form No. ADM20.

9.7(2) No later than the time fixed in the decree for filing claims, each of the Defendants must file and serve his statement of case on the limiting party and on all other Defendants. The statement of case must contain the particulars of the Defendant's claim. Any Defendant unable to do so must file a declaration in Admiralty Form No. ADM21 stating the reason for his inability. The declaration must be sworn as an affidavit.

9.7(3) Within 7 days of the time for filing claims or declarations, the Admiralty Registrar will fix a date for a case management conference at which directions will be given for the further conduct of the proceedings.

## REFERENCES TO THE ADMIRALTY REGISTRAR

10(1) The Admiralty Court may at any stage in the claim refer any question or issue for determination by the Admiralty Registrar (a "reference").

10(2) Unless otherwise ordered, where a reference has been ordered:

- (a) The Claimant must file and serve particulars of claim on all other parties within 14 days of the date of the order.

- (b) Any party opposing the claim must file a defence to the claim within 14 days of service of the particulars of claim upon him.
- 10(3) Within 7 days of the filing of the defence, the Claimant must apply for an appointment before the Admiralty Registrar for a case management conference at which directions will be given for the further conduct of the proceedings.
- 10(4) Any decision of the Admiralty Registrar on the hearing of the reference may be appealed to the Admiralty Judge, by Notice in Admiralty Form No. ADM22 filed within 28 days of the decision on the reference appealed against.

## INSPECTION OF SHIP ETC.

- 11 The Admiralty Court may, on the application of any interested persons or on its own initiative, make an order for the inspection by any person of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in a claim or proposed claim whether *in rem* or *in personam*.

## AGREEMENT OF SOLICITORS TO BE MADE AN ORDER OF THE COURT.

- 12 Subject to any restrictions contained in other Rules, any agreement in writing between the solicitors of the parties to any Admiralty claim dated and signed by those solicitors may, if the Admiralty Registrar thinks it reasonable, be filed in the Admiralty and Commercial Registry and the agreement shall then become an order of the Admiralty Court.

## UNDERTAKINGS

- 13(1) Where in this practice direction any undertaking to the Marshal is required it shall be given in writing and to his satisfaction or in accordance with such other arrangements as he may require.
- 13(2) Where any party is dissatisfied with a direction given by the Marshal in this respect he may apply to the Admiralty Registrar for a ruling.

## STAY OF PROCEEDINGS

- 14 Where the Admiralty Court orders a stay of any claim *in rem*, any property under arrest in the action shall remain under arrest and any security representing the res shall remain in force unless the Court otherwise orders.

## PROVISIONS FOR THE APPOINTMENT OF EXAMINERS IN ADMIRALTY ETC.

- 15(1) The Admiralty Court may make an order with the consent of the parties for a deposition to be taken as if before an examiner but without the examiner actually being appointed or being present.

- 15(2) Where an order is made under paragraph 15(1) provision may be made for any consequential matters, but in the absence of such provision the following provisions shall apply:
- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
  - (b) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness;
  - (c) the shorthand writer need not be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the Registry;
  - (d) unless the parties otherwise agree or the court otherwise orders, the transcript or a copy of it, shall be made available to the persons who acted as advocates at the examination before it is filed, and if any of those persons is of the opinion that the transcript does not accurately record the evidence he shall make a certificate specifying the corrections which in his opinion should be made and that certificate must be filed with the transcript.
- 15(3) In a collision claim no order shall be made under CPR Part 34 authorising the examination of a witness before the Preliminary Acts have been filed, unless the Admiralty Court considers that there are special reasons for doing so.
- 15(4) The Lord Chief Justice may appoint such number of barristers or solicitors as he thinks fit to act as examiners of the Admiralty Court in connection with Admiralty claims, and may revoke any such appointment.

## THE COMMERCIAL COURT GUIDE

- 16.1 The practice of the Commercial Court set out in the Commercial Court Guide should, except where inapplicable, be followed in Admiralty proceedings subject to the provisions of this or any other Admiralty practice direction and to any order that may be made in an individual case.
- 16.2 Part D of the Commercial Court Guide shall be modified as follows:
- (a) D3 shall not apply;
  - (b) In the Admiralty Court the Case Management Information Sheet should be in the form of Appendix 6 to the Commercial Court Guide but also include the following additional question:
- (20)a. Do any of the issues contained in the List of Issues involve questions of navigation or other particular matters of an essentially Admiralty nature which require the trial to be before the Admiralty Judge or is there any other reason why you consider trial before the Admiralty Judge to be necessary?

- b. Are you prepared to have the case tried before a deputy nominated by the Admiralty Judge who has experience of such questions or matters?
  - c. Do you consider that the court should sit with nautical or other Assessors? Are you intending to ask that the court sit with one or more Assessors who is not a Trinity Master? If so please state the reasons for such application.
- 16.3 One significant area of difference between practice in the Commercial Court and practice in the Admiralty Court is that in the Admiralty Court many interlocutory applications are normally heard by the Admiralty Registrar and this practice will continue, save as specifically mentioned elsewhere in this practice direction.

## USE OF FAX WHEN REGISTRY IS CLOSED

- 17.1 When the Registry is closed (and only when it is closed) and Admiralty claim form may be issued on the following designated fax machine: 0171-936 6667 and only on that machine.
- 17.2 The procedure to be followed is set out in paragraph B3.11 and Appendix 3 of the Commercial Court Guide.
- 17.3(1) When the Registry is closed (and only when it is closed) a notice requesting a caveat against release may be filed on the following designated fax machine: 0171-936 6056 and only on that machine. This machine is manned 24 hours a day by court security staff (telephone 0171-936 6000). The notice requesting the caveat should be transmitted with a note in the following form for ease of identification by security staff:
- “CAVEAT AGAINST RELEASE
- Please find notice requesting caveat against release of the ... (name ship/ identify cargo) ... for filing in the Admiralty Court and Commercial Registry.”
- 17.3(2) The notice must be in Admiralty Form No. ADM11 and signed by a solicitor acting on behalf of the intending caveator.
- 17.4(1) Subject to the provisions of paragraph 17.4(3) below, the filing of the notice takes place when the fax is recorded as having been received.
- 17.4(2) When the Registry is next open to the public, the filing solicitor or his agent shall attend and deliver to the Registry the document which was transmitted by fax together with the transmission report. Upon satisfying himself that the document delivered fully accords with the document received by the Registry, the court office shall stamp the document delivered with the time and date at which the notice was received, enter the same in the caveat book and retain the same with the faxed copy.
- 17.4(3) Unless otherwise ordered by the court, the stamped notice shall be conclusive proof that the notice was filed at the time and on the date stated.

- 17.4(4) If the filing solicitor does not comply with the foregoing procedure, or if the notice is not stamped, the notice shall be deemed never to have been filed.

## **OUT OF HOURS BUSINESS (ADMIRALTY MARSHAL)**

- 17.5 (1) This paragraph makes provision for release from arrest when the Registry is closed: see paragraph 6.6(2).
- (2) An application for release under paragraph 6.6(1)(c) or (d) may when the Registry is closed be made in, and only in, the following manner:
- (a) The solicitor for the arrestor or other party applying must telephone the security staff at the Royal Courts of Justice (020 7936 6260) and ask to be contacted by the Admiralty Marshal, who will then respond as soon as practicably possible.
  - (b) Upon being contacted by the Admiralty Marshal the solicitor must give oral instructions for the release and an oral undertaking to pay the fees and expenses of the Admiralty Marshal as required in Form No. ADM 12. The arrestor or other party applying must then send a written request and undertaking on Form No. ADM 12 by fax to a number given the Admiralty Marshal.
  - (c) The solicitor must provide written consent to the release from all caveators (and from the arrestor if the arrestor is not the party applying) by sending such by fax to the number supplied by the Admiralty Marshal.
  - (d) Upon the Admiralty Marshal being satisfied that no caveats against release are in force, or that all caveators, and if necessary the arrestor, have given their written consent to the release, the Admiralty Marshal shall effect the release as soon as practicable.
- (3) Practitioners should note that the Admiralty Marshal is not formally on call and therefore at times may not be available to assist. Similarly the practicalities of releasing a ship in some localities may involve the services of others who may not be available outside normal working hours.
- (4) This service is offered to practitioners for use during reasonable hours and on the basis that if the Admiralty Marshal is available and can be contacted he will use his best endeavours to effect instructions to release but without guarantee as to their success.

## **USE OF POSTAL FACILITIES IN THE REGISTRY**

- 18.1 Applications together with the requisite documents may be posted to:
- The Admiralty and Commercial Registry  
 Room E200  
 Royal Courts of Justice  
 Strand  
 London  
 WC2A 2LL

- 18.2 In addition to the classes of business for which the use of postal facilities is permitted by the CPR or the Commercial Court Guide, the filing of the following classes of documents shall also be permitted in Admiralty matters:
- (1) Requests for notices of caveats
  - (2) Preliminary Acts
  - (3) Claims in References
  - (4) Agreements between solicitors under paragraph 12 of this practice direction.
- 18.3 Documents sent by post for filing must be accompanied by two copies of a list of the documents sent and an envelope properly addressed to the sender.
- 18.4 On receipt of the documents in the Registry, the court officer will, if the circumstances are such that had the documents been presented personally they would have been filed, cause them to be filed and will, by post, notify the sender that this has been done. If the documents would not have been accepted if presented personally the court officer will not file them but will retain them in the Registry for collection by the sender and will, by post, so inform the sender.
- 18.5 When documents received through the post are filed by the court officer they will be sealed and entered as filed on the date on which they were received in the Registry.

## **DRAWING UP OF ORDERS**

- 19 All orders made in Admiralty proceedings will be drawn up by the parties unless otherwise ordered by the court.

## **ASSESSORS**

- 20.1 The usual practice in the Admiralty Court is to sit with Assessors when hearing collision claims or other cases involving issues of navigation or seamanship and the parties will not normally be permitted to call expert witnesses on matters of navigation or seamanship where the court sits with Assessors. The Assessors will usually be Trinity Masters. Parties should indicate at the Case Management Conference whether they consider that the case is suitable for Assessors and whether Assessors other than Trinity Masters would be appropriate.
- 20.2 Provision is made in CPR 35.15 for assessor's remuneration. The usual practice is for the court to seek an undertaking from the claimant (or appellant) to pay the remuneration on demand after the case has concluded.