

# ADMIRALTY CLAIMS

## Contents of this Part

- Rule 61.1 Scope and interpretation
- Rule 61.2 Admiralty claims
- Rule 61.3 Claims in rem
- Rule 61.4 Special provisions relating to collision claims
- Rule 61.5 Arrest
- Rule 61.6 Security in claim in rem
- Rule 61.7 Cautions against arrest
- Rule 61.8 Release and cautions against release
- Rule 61.9 Judgment in default
- Rule 61.10 Sale by the court, priorities and payment out
- Rule 61.11 Limitation claims
- Rule 61.12 Stay of proceedings
- Rule 61.13 Assessors

## 61.1 Scope and interpretation

- (1) This Part applies to admiralty claims.
- (2) In this Part –
  - (a) ‘admiralty claim’ means a claim within the Admiralty jurisdiction of the High Court as set out in section 20 of the Supreme Court Act 1981<sup>1</sup>;
  - (b) ‘the Admiralty Court’ means the Admiralty Court of the Queen’s Bench Division of the High Court of Justice;
  - (c) ‘claim in rem’ means a claim in an admiralty action in rem;
  - (d) ‘collision claim’ means a claim within section 20(3)(b) of the Supreme Court Act 1981;
  - (e) ‘limitation claim’ means a claim under the Merchant Shipping Act 1995<sup>2</sup> for the limitation of liability in connection with a ship or other property;
  - (f) ‘salvage claim’ means a claim –
    - (i) for or in the nature of salvage;
    - (ii) for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995;
    - (iii) for the apportionment of salvage; and
    - (iv) arising out of or connected with any contract for salvage services;
  - (g) ‘caution against arrest’ means a caution entered in the Register under rule 61.7;
  - (h) ‘caution against release’ means a caution entered in the Register under rule 61.8;

<sup>1</sup> 1981 c. 54; section 20 was amended by the Merchant Shipping (Salvage and Pollution) Act 1994 (c. 28), section 1(6) and Schedule 2, paragraph 6; the Merchant Shipping Act 1995 (c. 21), section 314(2) and Schedule 13, paragraph 59 and by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 29(1) and Schedule 6, paragraph 2.

<sup>2</sup> 1995 c. 21.

- (i) 'the Register' means the Register of cautions against arrest and release which is open to inspection as provided by Practice Direction 61;
  - (j) 'the Marshal' means the Admiralty Marshal;
  - (k) 'ship' includes any vessel used in navigation; and
  - (l) 'the Registrar' means the Queen's Bench Master with responsibility for Admiralty claims.
- (3) Part 58 (Commercial Court) applies to claims in the Admiralty Court except where this Part provides otherwise.
- (4) The Registrar has all the powers of the Admiralty judge except where a rule or practice direction provides otherwise.

## 61.2 Admiralty claims

- (1) The following claims must be started in the Admiralty Court –
- (a) a claim –
    - (i) in rem;
    - (ii) for damage done by a ship;
    - (iii) concerning the ownership of a ship;
    - (iv) under the Merchant Shipping Act 1995;
    - (v) for loss of life or personal injury specified in section 20(2)(f) of the Supreme Court Act 1981;
    - (vi) by a master or member of a crew for wages;
    - (vii) in the nature of towage; or
    - (viii) in the nature of pilotage;
  - (b) a collision claim;
  - (c) a limitation claim; or
  - (d) a salvage claim.
- (2) Any other admiralty claim may be started in the Admiralty Court.
- (3) Rule 30.5 applies to claims in the Admiralty Court except that the Admiralty Court may order the transfer of a claim to –
- (a) the Commercial list;
  - (b) a Mercantile Court;
  - (c) the Mercantile list at the Central London County Court; or
  - (d) any other appropriate court.

## 61.3 Claims in rem

- (1) This rule applies to claims in rem.
- (2) A claim in rem is started by the issue of an in rem claim form as set out in Practice Direction 61.
- (3) Subject to rule 61.4, the particulars of 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.
- (4) An acknowledgment of service must be filed within 14 days after service of the claim form.
- (5) The claim form must be served –
- (a) in accordance with Practice Direction 61; and
  - (b) within 12 months after the date of issue and rules 7.5 and 7.6 are modified accordingly.

- (6) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service.

#### **61.4 Special provisions relating to collision claims**

- (1) This rule applies to collision claims.
- (2) A claim form need not contain or be followed by particulars of claim and rule 7.4 does not apply.
- (3) An acknowledgment of service must be filed.
- (4) A party who wishes to dispute the court's jurisdiction must make an application under Part 11 within 2 months after filing his acknowledgment of service.
- (5) Every party must –
- (a) within 2 months after the defendant files the acknowledgment of service; or
  - (b) where the defendant applies under Part 11, within 2 months after the defendant files the further acknowledgment of service, file at the court a completed collision statement of case in the form specified in Practice Direction 61.
- (6) A collision statement of case must be –
- (a) in the form set out in Practice Direction 61; and
  - (b) verified by a statement of truth.
- (7) A claim form in a collision claim may not be served out of the jurisdiction unless –
- (a) the case falls within section 22(2)(a), (b) or (c) of the Supreme Court Act 1981<sup>1</sup>; or
  - (b) the defendant has submitted to or agreed to submit to the jurisdiction; and the court gives permission in accordance with Section IV of Part 6.
- (8) Where permission to serve a claim form out of the jurisdiction is given, the court will specify the period within which the defendant may file an acknowledgment of service and, where appropriate, a collision statement of case.
- (9) 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 obtain security,
- the party bringing the Part 20 claim or cross claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.
- (10) The consequences set out in paragraph (11) apply where a party to a claim to establish liability for a collision claim (other than a claim for loss of life or personal injury) –
- (a) makes an offer to settle in the form set out in paragraph (12) not less than 21 days before the start of the trial;
  - (b) that offer is not accepted; and

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<sup>1</sup> 1981 c. 54.

- (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer.
- (11)** Where paragraph (10) applies the parties will, unless the court considers it unjust, be entitled to the following costs –
  - (a) the maker of the offer will be entitled to –
    - (i) all his costs from 21 days after the offer was made; and
    - (ii) his costs before then in the percentage to which he would have been entitled had the offer been accepted; and
  - (b) all other parties to whom the offer was made –
    - (i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but
    - (ii) will not be entitled to their costs thereafter.
- (12)** An offer under paragraph (10) 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 remain open for 21 days after the date it is made; and
  - (d) a term that, unless the court orders otherwise, 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.

## **61.5 Arrest**

- (1)** In a claim in rem –
  - (a) a claimant; and
  - (b) a judgment creditor
 may apply to have the property proceeded against arrested.
- (2)** Practice Direction 61 sets out the procedure for applying for arrest.
- (3)** A party making an application for arrest must –
  - (a) request a search to be made in the Register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and
  - (b) file a declaration in the form set out in Practice Direction 61.
- (4)** 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 in any jurisdiction exercising admiralty jurisdiction in rem, has changed since the claim form was issued.
- (5)** A warrant of arrest may not 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 –
  - (a) notice in the form set out in Practice Direction 61 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 arrest the ship; and
  - (b) a copy of that notice is attached to any declaration under paragraph (3)(b).
- (6)** Except –
  - (a) with the permission of the court; or
  - (b) where notice has been given under paragraph (5),
 a warrant of arrest may not be issued in a claim 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<sup>1</sup>, until the expiration of 2 weeks from appropriate notice to the consul.

- (7) A warrant of arrest is valid for 12 months but may only be executed if the claim form –
  - (a) has been served; or
  - (b) remains valid for service at the date of execution.
- (8) Property may only be arrested by the Marshal or his substitute.
- (9) Property under arrest –
  - (a) may not be moved unless the court orders otherwise; and
  - (b) may be immobilised or prevented from sailing in such manner as the Marshal may consider appropriate.
- (10) Where an in rem claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

#### **61.6 Security in claim in rem**

- (1) This rule applies if, in a claim in rem, security has been given to –
  - (a) obtain the release of property under arrest; or
  - (b) prevent the arrest of property.
- (2) The court may order that the –
  - (a) amount of security be reduced and may stay the claim until the order is complied with; or
  - (b) claimant may arrest or re-arrest the property proceeded against to obtain further security.
- (3) The court may not make an order under paragraph (2)(b) if the total security to be provided would exceed the value of the property at the time –
  - (a) of the original arrest; or
  - (b) security was first given (if the property was not arrested).

#### **61.7 Cautions against arrest**

- (1) Any person may file a request for a caution against arrest.
- (2) When a request under paragraph (1) is filed the court will enter the caution in the Register if the request is in the form set out in Practice Direction 61 and –
  - (a) the person filing the request undertakes –
    - (i) to file an acknowledgment of service; and
    - (ii) to give sufficient security to satisfy the claim with interest and costs; or
  - (b) where the person filing the request has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976<sup>2</sup> he –
    - (i) states that such a fund has been constituted; and
    - (ii) undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request.
- (3) A caution against arrest –
  - (a) is valid for 12 months after the date it is entered in the Register; but
  - (b) may be renewed for a further 12 months by filing a further request.

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<sup>1</sup> 1968 c. 18.

<sup>2</sup> The text of the Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (c. 21).

- (4) Paragraphs (1) and (2) apply to a further request under paragraph (3)(b).
- (5) Property may be arrested if a caution against arrest has been entered in the Register but the court may order that –
  - (a) the arrest be discharged; and
  - (b) the party procuring the arrest pays compensation to the owner of or other persons interested in the arrested property.

## **61.8 Release and cautions against release**

- (1) Where property is under arrest –
  - (a) an in rem claim form may be served upon it; and
  - (b) it may be arrested by any other person claiming to have an in rem claim against it.
- (2) Any person who –
  - (a) claims to have an in rem right against any property under arrest; and
  - (b) wishes to be given notice of any application in respect of that property or its proceeds of sale, may file a request for a caution against release in the form set out in Practice Direction 61.
- (3) When a request under paragraph (2) is filed, a caution against release will be entered in the Register.
- (4) Property will be released from arrest if –
  - (a) it is sold by the court;
  - (b) the court orders release on an application made by any party;
  - (c) (i) the arresting party; and
    - (ii) all persons who have entered cautions against release
 file a request for release in the form set out in Practice Direction 61; or
  - (d) any party files –
    - (i) a request for release in the form set out in Practice Direction 61 (containing an undertaking); and
    - (ii) consents to the release of the arresting party and all persons who have entered cautions against release.
- (5) Where the release of any property is delayed by the entry of a caution against release under this rule any person who has an interest in the property may apply for an order that the person who entered the caution pay damages for losses suffered by the applicant because of the delay.
- (6) The court may not make an order under paragraph (5) if satisfied that there was good reason to –
  - (a) request the entry of; and
  - (b) maintain the caution.
- (7) Any person –
  - (a) interested in property under arrest or in the proceeds of sale of such property; or
  - (b) 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.
- (8) Where –
  - (a) (i) a ship is not under arrest but cargo on board her is; or
    - (ii) a ship is under arrest but cargo on board her is not; and
  - (b) persons interested in the ship or cargo wish to discharge the cargo,

they may, without being made parties, request the Marshal to authorise steps to discharge the cargo.

- (9) If –
  - (a) the Marshal considers a request under paragraph (8) reasonable; and
  - (b) the applicant gives an undertaking in writing acceptable to the Marshal to pay –
    - (i) his fees; and
    - (ii) all expenses to be incurred by him or on his behalf on demand,the Marshal will apply to the court for an order to permit the discharge of the cargo.
- (10) Where persons interested in the ship or cargo are unable or unwilling to give an undertaking as referred to in paragraph (9)(b), they may –
  - (a) be made parties to the claim; and
  - (b) apply to the court for an order for –
    - (i) discharge of the cargo; and
    - (ii) directions as to the fees and expenses of the Marshal with regard to the discharge and storage of the cargo.

### **61.9 Judgment in default**

- (1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of –
  - (a) an acknowledgment of service only if –
    - (i) the defendant has not filed an acknowledgment of service; and
    - (ii) the time for doing so set out in rule 61.3(4) has expired; and
  - (b) defence only if –
    - (i) a defence has not been filed; and
    - (ii) the relevant time limit for doing so has expired.
- (2) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 61.4(5) may obtain judgment in default of a collision statement of case only if –
  - (a) the party against whom judgment is sought has not filed a collision statement of case; and
  - (b) the time for doing so set out in rule 61.4(5) has expired.
- (3) An application for judgment in default –
  - (a) under paragraph (1) or paragraph (2) in an in rem claim must be made by filing –
    - (i) an application notice as set out in Practice Direction 61;
    - (ii) a certificate proving service of the claim form; and
    - (iii) evidence proving the claim to the satisfaction of the court; and
  - (b) under paragraph (2) in any other claim must be made in accordance with Part 12 with any necessary modifications.
- (4) An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register.
- (5) The court may set aside or vary any judgment in default entered under this rule.
- (6) The claimant may apply to the court for judgment against a party at whose instance a notice against arrest was entered where –
  - (a) the claim form has been served on that party;

- (b) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party in accordance with rule 61.7(2)(a)(ii); and
- (c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

#### **61.10 Sale by the court, priorities and payment out**

- (1) An application for an order for the survey, appraisalment or sale of a ship may be made in a claim in rem at any stage by any party.
- (2) If the court makes an order for sale, it may –
  - (a) set a time within which notice of claims against the proceeds of sale must be filed; and
  - (b) the time and manner in which such notice must be advertised.
- (3) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (2) apply to the court for the determination of priorities.
- (4) An application notice under paragraph (3) must be served on all persons who have filed a claim against the property.
- (5) Payment out of the proceeds of sale will be made only to judgment creditors and –
  - (a) in accordance with the determination of priorities; or
  - (b) as the court orders.

#### **61.11 Limitation claims**

- (1) This rule applies to limitation claims.
- (2) A claim is started by the issue of a limitation claim form as set out in Practice Direction 61.
- (3) The –
  - (a) claimant; and
  - (b) at least one defendant
 must be named in the claim form, but all other defendants may be described.
- (4) The claim form –
  - (a) must be served on all named defendants and any other defendant who requests service upon him; and
  - (b) may be served on any other defendant.
- (5) The claim form may not be served out of the jurisdiction unless –
  - (a) the claim falls within section 22(2)(a), (b) or (c) of the Supreme Court Act 1981<sup>1</sup>;
  - (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 in accordance with Section IV of Part 6.
- (6) An acknowledgment of service is not required.
- (7) Every defendant upon whom a claim form is served must –
  - (a) within 28 days of service file –
    - (i) a defence; or
    - (ii) a notice that the defendant admits the right of the claimant to limit liability; or
  - (b) if the defendant wishes to –

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<sup>1</sup> 1981 c. 54.



- (i) dispute the jurisdiction of the court; or
  - (ii) argue that the court should not exercise its jurisdiction,

file within 14 days of service (or where the claim form is served out of the jurisdiction, within the time specified in rule 6.35) an acknowledgment of service as set out in Practice Direction 61.
- (8)** If a defendant files an acknowledgment of service under paragraph (7)(b) he will be treated as having accepted that the court has jurisdiction to hear the claim unless he applies under Part 11 within 14 days after filing the acknowledgment of service.
- (9)** Where one or more named defendants admits the right to limit –
  - (a) the claimant may apply for a restricted limitation decree in the form set out in Practice Direction 61; and
  - (b) the court will issue a decree in the form set out in Practice Direction 61 limiting liability only against those named defendants who have admitted the claimant's right to limit liability.
- (10)** A restricted limitation decree –
  - (a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and
  - (b) need not be advertised, but a copy must be served on the defendants to whom it applies.
- (11)** Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability –
  - (a) the claimant may apply to the Admiralty Registrar for a general limitation decree in the form set out in Practice Direction 61; and
  - (b) the court will issue a limitation decree.
- (12)** Where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant may apply for a general limitation decree in the form set out in Practice Direction 61.
- (13)** When a limitation decree is granted the court –
  - (a) may –
    - (i) order that any proceedings relating to any claim arising out of the occurrence be stayed;
    - (ii) 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; or
    - (iii) if the decree is a restricted limitation decree, distribute the limitation fund; and
  - (b) will, if the decree is a general limitation decree, give directions as to advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree.
- (14)** When the court grants a general limitation decree the claimant must –
  - (a) advertise it in such manner and within such time as the court directs; and
  - (b) file –
    - (i) a declaration that the decree has been advertised in accordance with paragraph (a); and
    - (ii) copies of the advertisements.
- (15)** No later than the time set in the decree for filing claims, each of the defendants who wishes to assert a claim must file and serve his statement of case on –
  - (a) the limiting party; and
  - (b) all other defendants except where the court orders otherwise.
- (16)** Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the decree to have a general limitation decree set aside.

- (17) An application under paragraph (16) must be supported by a declaration –
- (a) stating that the applicant has a claim against the claimant arising out of the occurrence; and
  - (b) setting out grounds for contending that the claimant is not entitled to the decree, either in the amount of limitation or at all.
- (18) The claimant may constitute a limitation fund by making a payment into court.
- (19) A limitation fund may be established before or after a limitation claim has been started.
- (20) If a limitation claim is not commenced within 75 days after the date the fund was established –
- (a) the fund will lapse; and
  - (b) all money in court (including interest) will be repaid to the person who made the payment into court.
- (21) Money paid into court under paragraph (18) will not be paid out except under an order of the court.
- (22) A limitation claim for –
- (a) a restricted decree may be brought by counterclaim; and
  - (b) a general decree may only be brought by counterclaim with the permission of the court.

#### **61.12 Stay of proceedings**

Where the court orders a stay of any claim in rem –

- (a) any property under arrest in the claim remains under arrest; and
- (b) any security representing the property remains in force, unless the court orders otherwise.

#### **61.13 Assessors**

The court may sit with assessors when hearing –

- (a) collision claims; or
- (b) other claims involving issues of navigation or seamanship, and the parties will not be permitted to call expert witnesses unless the court orders otherwise.