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United Kingdom
Shipping

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This country-specific Q&A provides an overview of shipping laws and regulations applicable in United Kingdom.

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United Kingdom: Shipping

1. What system of port state control applies in your jurisdiction? What are their powers?

The UK has voluntarily committed to the 1982 Paris Memorandum of Understanding. At the moment, this is in force by means of Directive 2009/16/EC of the European Parliament and of the Council. The relevant agency in the UK is the Maritime and Coastguard Agency (MCA), which has said that it does not expect the Port State Control regime to change, despite Brexit. As things stand, the MOU is incorporated into English law by the Merchant Shipping (Port State Control) Regulations 2011.

The MCA may inspect vessels without warning. If it finds deficiencies it may issue a prohibition notice (prohibiting certain activities), or a detention notice (preventing the vessel from leaving until the deficiency is corrected). The MCA also has the power to issue access refusal notices, preventing a vessel from entering the jurisdiction.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

The Nairobi Convention on the Removal of Wrecks 2007 was implemented by the Wreck Removal Convention Act 2011, which came into force on 14 April 2015.

The International Convention for the Prevention of Pollution from Ships 1973, as amended by the 1978 and 1997 Protocols, is in force. As also are the International Convention on Civil Liability for Oil Pollution Damage 1992, the Fund Convention 1992 and the Supplementary Fund Protocol 2003.

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 is also in force.

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

The revised Annex VI to MARPOL came into force on 1 July 2010 and imposed increasingly stringent limits of the sulphur content of fuel oil. The current limit in the UK is 0.1%.

The North Sea ECA has been in effect since November 2007.

Amendments to MARPOL Annex VI now require all existing ships (that are over 400 GT and fall within Annex VI) to calculate their 'Energy Efficiency Existing Ship Index' (EEXI) and the data will form the basis of the ship's annual operational carbon intensity indicator (CII) and CII rating.

The requirement for EEXI and CII certification came into effect on 1 January 2023.

A number of standard clauses are now being seen (e.g. from BIMCO) which seek to address various issues arising from the CII regulations.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

The Collision Convention 1910 and the Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGS) are in force by virtue of the Merchant Shipping Act 1995.

The International Convention on Salvage 1989 applies, as incorporated by the Merchant Shipping (Salvage and Pollution) Act 1994.

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

The UK is party to the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the 1996 Protocol. Shipowners and Salvors can rely on the limitation of liability provisions.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention,

will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

The UK is party to the Convention Relating to the Arrest of Sea-going Ships 1952. But the Convention has not been adopted verbatim or given the force of law. The Administration of Justice Act 1956 was enacted to give effect to the 1952 Convention in English law. That was replaced by the Senior Courts Act 1981 (SCA), see sections 20 and following.

It is possible to arrest a ship to obtain security for a claim that will be determined in arbitration or in another jurisdiction.

The right of arrest is limited to the maritime claims defined in the SCA.

It is possible to detain a vessel to obtain security for other types of claim by means of a freezing injunction, but this is a much more complicated process.

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

There are no special formalities apart from the application to the court. A lawyer does not need a power of attorney in order to represent his client.

All that is required is a straightforward application to the court with documents in support of the claim. A declaration must also be provided regarding the ownership of the ship, the level of security sought and providing confirmation that the claim has not been satisfied. This declaration must be verified by a statement of truth.

Before the ship is arrested, the arresting party must also check to ensure that no caution (caveat) against arrest has been lodged with the court.

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

Five maritime liens are recognised in English law: salvage; crew's wages; master's wages and disbursements; damage done by a ship; bottomry or respondentia (obsolete methods of raising money against the security of a ship or her cargo).

The recognition of maritime liens will be determined in accordance with English law, as the law of the forum (*The Halcyon Isle* [1981] AC 221). That is, a claim will only be granted the status of maritime lien if it would qualify as such as a matter of English law.

9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

Yes. A ship may only be arrested if the person liable in personam is either her owner or demise charterer.

In English law, the supply of bunkers or other necessaries does not give rise to a maritime lien, and thus claims against a time charterer who contracted for the bunkers or other necessaries do not give a right to arrest the ship.

10. Are sister ship or associated ship arrests possible?

A sister ship arrest is possible where the ship to be arrested is owned by the person who is liable in personam, and was the owner or charterer of the ship in connection with which the claim arose.

Note 1: It is not sufficient that the person liable in personam is the demise charterer of the sister ship. An arrest is only possible where that person **owns** the ship to be arrested.

Note 2: As long as the person liable in personam is the owner of the sister ship, it is liable to arrest although that person was only the time or voyage charterer of the ship in connection with which the claim arose.

Associated ship arrests are not possible.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

An arresting party is not required to post counter-security, see for example *The Alkyon* [2018] EWCA Civ 2760, although they will have to undertake to pay the Admiralty Marshal's costs of arresting and maintaining the arrest.

An owner is not entitled to compensation for the detention of his ship simply because the arrest is subsequently set aside. In order to claim damages, they must show that the arrest was applied for in bad faith or that the arresting party was grossly negligent (*The Evangelismos* (1858) 12 Moo PC 352 (PC) / *The Kommunar* (No. 3) [1997] 1 Lloyd's Rep 22).

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

Historically, an arresting party could insist either on payment of cash into court, or the provision of a bail bond. Nowadays, a ship will normally be released against a letter of undertaking issued by a P&I Club or other acceptable financial institution.

While these are usually matters of negotiation between the parties, there are recent indications that a party may not be permitted unreasonably to refuse security the court considers is satisfactory.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

An order for sale can be made upon application at any time after an arrest, and will usually be granted once it is reasonably clear that security will not be voluntarily posted. This applies before and after judgment on the merits. (A sale prior to judgment is described as "pendente lite").

The Admiralty Marshal will obtain valuations, and will then offer the ship for sale by way of sealed tender. (Other options are possible, but this is the normal route).

The order of priority is:

1. Admiralty Marshal's charges and expenses, and costs of the arrest and the sale
2. Claims that attract maritime liens
3. Salvage will generally rank above other maritime liens, and damage done by a ship ranks after crew wages and master's wages and disbursements. But the ranking may be altered on equitable grounds.
4. Mortgages and similarly secured claims
5. All other claims

14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

The contractual carrier is liable under a bill of lading. This will usually be the owner (or bareboat charterer) of the vessel, unless there is a clear statement that someone else is the carrier (which may well be so, for example, in container liner services).

Identity of carrier or "demise" clauses will usually be given effect.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

The proper law of a bill of lading is always relevant, but unless evidence is brought as to what that proper law provides, then the court will assume it is the same as English law.

English law will normally recognise and apply choice of law provisions in a contract.

If there is no choice of law expressly stated, then until Brexit the governing law would be determined by applying the principles in the Rome I Regulation (EC/593/2008). The Rome I Regulation ceased to apply at the end of 2020, and was replaced by The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (UK Exit) Regulations 2019 (SI 2019/834)(UK Regulations). The UK Regulations provide for the continued application of the retained EU law version of Rome I (UK Rome I) as domestic law in all parts of the UK, to determine the law applicable to contractual obligations and to amend UK Rome I.

16. Are jurisdiction clauses recognised and enforced?

Yes. See above.

17. What is the attitude of your courts to the

incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

If a charter is identified specifically in the bill of lading then its terms will be incorporated into the bill.

If there is a blank or unspecific reference to a charter being incorporated, then it will usually be taken to mean the voyage charter at the bottom of the chain, which will normally be more appropriate to a bill of lading contract than a time charter.

It is not necessarily the case, however, that all terms of the charter will be incorporated. Usually, it is only those that are appropriate to the carriage and delivery of the goods.

In particular, an arbitration clause in a charter will not be taken to apply to the bill of lading contract unless it is expressly incorporated (as it is in, for example, in most recent Congenbill forms).

18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

The UK enacted the Hague Visby Rules (HVR) by means of the Carriage of Goods by Sea Act 1971, which gave HVR the force of law.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

The UK is party to the Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958. See section 66 and Part III of the Arbitration Act 1996.

Section 103 of the Arbitration Act confirms that recognition and enforcement will only be refused in limited circumstances, which are:

- a party was under an incapacity;
- the arbitration agreement was invalid;
- no proper notice was given;
- the award covers matters falling outside the scope of the arbitration agreement;
- the composition of the tribunal was improper; or
- that the award is not yet binding.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

The Limitation Act 1980 provides for the time limits that apply in most cases:

- Simple contract – 6 years from the time the cause of action arose
- Claims under deeds (or other "specialties") – 12 years from the time the cause of action arose
- Death and personal injury torts – 3 years from the time the cause of action arose
- Other torts/delicts – 6 years from the time the cause of action arose

But other time limits apply in other cases and disapply the Limitation Act provisions:

- Cargo claims governed by the Hague Rules or the HVR – one year from the time the goods were or should have been delivered
- Collision claims under the MSA 1995 – two years from the date the loss or damage was caused
- Personal Injury claims under the Athens Convention – two years
- Salvage claims under the Salvage Convention – two years from the date the services terminate

A contract may contain other time limits. Short time limits will often be seen in bunker supply contracts, and in tanker charters in respect of demurrage claims. Such time limits will usually be respected by the court.

Parties may agree to extend time limits, and such agreements will also be respected.

21. Does your system of law recognize force majeure, or grant relief from undue hardship?

Force majeure is not a free-standing concept in English law.

In order to excuse performance because of an event like the Covid-19 pandemic, either the contract must contain an express force majeure or hardship clause, or it must be possible to show that the contract has been frustrated.

It is unusual for charterparties or bills of lading to contain force majeure or hardship clauses.

Such clauses are usually construed narrowly, and will often contain notification provisions. It is unlikely that additional expense or difficulty will trigger a force majeure clause, but that will, of course, depend on its proper interpretation.

Frustration is a free-standing concept in English law, but it applies only where performance has become impossible because of an unforeseen and un-provided for event. Again, difficulty or additional expense are not grounds to claim frustration. It is a rare case that will see a frustration defence succeed.

A number of standard clauses are now being seen (e.g. from BIMCO) which seek to address various issues arising from the Covid pandemic and port states' responses to it.

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