

# Laytime and free pratique



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Laytime commences once a valid NOR is tendered. This article discusses how the requirement for free pratique can affect the validity of an NOR, looking at relevant cases to provide guidance.

## Commencement of laytime

Owners will always seek to start laytime running from the moment they present their ship to charterers at the agreed port or berth so as to avoid responsibility for delays that are beyond their control.

In order for laytime to start, owners must tender a valid Notice of Readiness (NOR). The purpose of an NOR is to inform the charterer that loading or discharge operations are ready to commence and to provide a tangible starting point for laytime.

In order to be valid, the NOR must be tendered when the vessel is **in all respects** actually ready to load. This will depend on a number of factors, including whether the ship has complied with all the port health and documentary requirements.

## The effect of free pratique

One such factor is whether the vessel has been granted her *free pratique*. Free pratique is essentially the licence given to a ship to enter a port on the assurance that she is free from contagious diseases.

The granting of free pratique is seen as something of a mere formality and, at common law, will not prevent a valid NOR from being tendered, as noted by Longmore L.J. in *The*

*Eagle Valencia*<sup>1</sup>. However, in reality, although this may seem like an outdated concept, the free pratique still forms an important part of the ship's papers and can cause problems for owners if it is not obtained. In fact, the common law position is often superseded by express agreements between owners and charterers. For instance, clause 6.3 of the BPVOY4 form charterparty states that:

*'Notwithstanding tender of a valid NOR... such NOR will not be valid unless the following conditions have been met...*

*6.3.3 If free pratique is not granted within six (6) hours of the Master tendering NOR...the Master shall issue a protest in writing...to the port authority and the facility at the port ("Terminal")...*'

And clause 7.3.2 states:

*'Laytime or, if the Vessel is on demurrage, demurrage shall commence...upon the expiry of six (6) hours after a valid NOR has become effective as determined under Clause 6...'*

Therefore, on the assumption that free pratique is a requirement of a particular port, owners must ensure that it is granted within six hours of tendering an NOR in order for it to be valid and for laytime to commence.

<sup>1</sup> [2010] EWCA Civ 713.

# Laytime and free pratique continued

## Situations where free pratique is not granted

If free pratique is not granted in this period, owners can protect themselves from being penalised under clause 6 by issuing the appropriate Notice of Protest.

This is without question and was confirmed in the *Bow Cedar*<sup>2</sup>, where it was held, obiter, that an NOR becomes effective on the master issuing a protest. However, on the assumption that the appropriate protest has been registered, the key question is: when will laytime now start to run?

Clause 6.3.3 states that if free pratique is *not* granted and the master does *not* serve a Notice of Protest, laytime will not run until free pratique is in fact granted. Failing that, it will start

when loading/discharge operations commence. However, it does not say what is to happen if free pratique is not granted but the master does serve a Notice of Protest.

## Conclusion

There is no express authority on this point, but on the balance of probabilities, it is likely that laytime will start to run from the service of the Notice of Protest. This should therefore incentivise the master to serve his protest promptly after the six-hour time frame. Of course, if there is ever any doubt over the validity of an NOR, the master should be instructed to tender additional NORs at frequent intervals on a without prejudice basis in order to protect their position.



<sup>2</sup> [2004] EWHC 2929 (Comm).