

A BILL

entitled

SUPERYACHTS AND OTHER VESSELS (MISCELLANEOUS) ACT 2019

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WHEREAS it is expedient to amend the Marine Board Act 1962 in relation to superyachts; to amend the Passenger Ships Act 1972 to introduce transit and cruising permits for pleasure craft and superyachts and charter permits for superyachts, with fees prescribed in the Government Fees Regulations 1976; to amend the Miscellaneous Taxes Act 1976 by repealing passenger departure tax for pleasure craft; to amend the Fifth and Sixth Schedules to the Customs Tariff Act 1970; to amend the Customs Department Act 1952; and to make consequential amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Superyachts and Other Vessels (Miscellaneous) Act 2019.

Amends Marine Board Act 1962

2 (1) The Marine Board Act 1962 is amended as follows.

(2) In section 2(1), insert in alphabetical order the following definition—

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“superyacht” has the meaning given in the Passenger Ships and Other Vessels Act 1972;”.

(3) In section 2, after subsection (2) insert—

“(3) Subsection (2) does not apply to a superyacht, chartered in accordance with a permit granted under section 3C of the Passenger Ships and Other Vessels Act 1972; accordingly Part V and the Marine Board (Island Boats) Regulations 1965 shall not apply to such a superyacht.”

(4) In section 25(2) (exemptions from light tolls), after paragraph (e) insert—

“(ea) superyachts, chartered in accordance with a permit granted under section 3C of the Passenger Ships and Other Vessels Act 1972;”.

(5) In section 48 (compulsory pilotage), at the end insert—

“(5) The Minister may issue a certificate exempting a superyacht from subsection (1) if, on the advice of the Director, he is satisfied—

- (a) that the master of the superyacht is competent to navigate it in the waters of Bermuda without a pilot on board;
- (b) as to the safety and navigational equipment on the superyacht;
- (c) as to the extent of public liability insurance held in respect of the superyacht.

(6) A certificate issued under subsection (5) may be subject to such terms and conditions as the Minister considers appropriate.

(7) No fee shall be payable for the issue of a certificate under subsection (5).”

Amends Passenger Ships Act 1972

3 (1) The Passenger Ships Act 1972 is amended as follows.

(2) The title of the Act is amended to “Passenger Ships and Other Vessels Act 1972”.

(3) In section 1—

- (a) in the definition of “Minister”, delete “tourism” and substitute “transport”;
- (b) in the definition of “passenger ship”, delete the words “but does not include” to the end and substitute—

“ but does not include—

- (a) a ship whose primary function is the transportation of freight where the number of passengers carried does not exceed twelve;
or

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- (b) a pleasure craft or superyacht;”;
- (c) in the definition of permit, delete “under section 3” and substitute “under this Act”;
- (d) insert in alphabetical order the following definitions—
 - “pleasure craft” means a vessel which at the time of its arrival is being used for private recreational purposes; but does not include a superyacht;
 - “prescribed fee” means the fee prescribed in the Government Fees Regulations 1976;
 - “superyacht” means a vessel measuring in length in excess of 24 metres, irrespective of tonnage, with passenger accommodation not exceeding twelve persons (excluding crew); but does not include a passenger ship or any vessel used for the transportation of goods for commercial purposes;”.
- (4) In section 3—
 - (a) in subsection (1), delete “such fees” to the end and substitute “the prescribed fee”;
 - (b) subsection (3) (including its proviso), the proviso to subsection (4), and subsection (5) are repealed.
- (5) After section 3 insert the following new sections—

“Transit permit for pleasure craft and superyachts

3A (1) Except in case of emergency, no pleasure craft or superyacht shall visit Bermuda unless the Minister has granted a transit permit and the prescribed fee has been paid.

(2) A transit permit may be subject to such conditions as the Minister thinks fit, including the periods when any pleasure craft or superyacht may enter the waters of Bermuda or remain at any specified port or anchorage within Bermuda and the duration of any stay, which shall not exceed five days.

(3) A pleasure craft or superyacht in the waters of Bermuda which has been granted a transit permit shall not—

 - (a) remain in Bermuda for more than five days (unless a cruising permit under section 3B is granted); or
 - (b) provide chartering services.

(4) If the owner or operator of a pleasure craft or superyacht granted a transit permit seeks to extend the vessel’s visit beyond five days, the owner or operator shall apply for a cruising permit under section 3B; and in calculating the prescribed fee, credit shall be given for the fee already paid in respect of the transit permit.

Cruising permit for pleasure craft and superyachts

- 3B (1) Except in case of emergency, no pleasure craft or superyacht shall—
- (a) enter the waters of Bermuda for the purpose of putting ashore any passengers;
 - (b) put ashore any passengers; or
 - (c) remain in the waters of Bermuda for more than five days,

unless the Minister has granted a cruising permit subject to such conditions as he may impose.

(2) Subsection (1) does not apply in the case of a superyacht in respect of which a charter permit is granted under section 3C.

(3) A cruising permit shall be in such form as the Minister may determine, contain the information under subsection (5) and may be granted by the Minister upon application and payment of the prescribed fee.

(4) A cruising permit shall be valid for such period, not exceeding six months, as the Minister may determine.

(5) An application for a cruising permit shall be accompanied by the following—

- (a) the pleasure craft's or superyacht's certificate of registration;
- (b) the outward clearance form from the pleasure craft's or superyacht's previous port;
- (c) information on the passport details of all passengers and crew as required under section 51 of the Bermuda Immigration and Protection Act 1956;
- (d) the completed manifest required by section 37 of the Bermuda Immigration and Protection Act 1956;
- (e) the appropriate customs traveller declaration form as required under the Revenue (Customs Traveller Declaration) Notice 2010 for each passenger and crew member;
- (f) the Maritime Declaration of Health form as may be required under regulation 3(4)(a) of the Quarantine (Maritime and Air) Regulations 2017;
- (g) in the case of a superyacht, the name of the local agent; and
- (h) the prescribed fee.

(6) A pleasure craft in the waters of Bermuda which has been granted a cruising permit shall not provide chartering services.

(7) A superyacht in the waters of Bermuda which has been granted a cruising permit shall not provide chartering services while in Bermuda unless the

owner or operator is granted a charter permit under section 3C; and, in calculating the prescribed fee, credit shall be given for the fee already paid in respect of the cruising permit.

Charter permit for superyachts

3C (1) No superyacht shall provide chartering services while in Bermuda unless a charter permit has first been obtained from the Minister, subject to such conditions as he may impose.

(2) The master of a superyacht originating outside Bermuda, or his local agent, may apply for a charter permit in respect of the superyacht as provided by this section.

(3) A charter permit shall be valid for such period, not exceeding six months, as the Minister may determine; and where a cruising permit has first been granted under section 3B in respect of a superyacht, any charter permit for that superyacht in respect of the same visit shall be valid for a maximum period of six months beginning with the date of the cruising permit.

(4) An application for a charter permit shall be accompanied by the following—

- (a) all information listed in section 3B(5)(a) to (f) that would be required for a cruising permit;
- (b) the qualifications, permits and licences of the superyacht's master;
- (c) an indemnity insurance policy relating to the charter of the superyacht;
- (d) the name of the local agent; and
- (e) the prescribed fee.

(5) A charter permit issued to a superyacht under this section shall apply to any smaller vessel on board the superyacht if—

- (a) the proposed usage of the smaller vessel has been disclosed in the application for the charter permit for the superyacht; and
- (b) the Ports Authority has determined in writing that the smaller vessel has the appropriate safety equipment and facilities.

(6) Any chartering services provided under this section in accordance with a charter permit shall be—

- (a) for a maximum of twelve passengers; and
- (b) for a minimum of 24 hours.

Exemptions from permit fees

3D No fee shall be payable for a transit permit or cruising permit in respect of a pleasure craft or superyacht—

- (a) arriving in Bermuda solely by reason of distress or emergency;
- (b) travelling on behalf of, or at the expense of, the Government of Bermuda or the Government of the United Kingdom or any foreign Government;
- (c) for the time being used solely for scientific research or nautical exploration;
- (d) which is a sail-training pleasure craft or superyacht;
- (e) participating either as a competitor or support vessel in a sailing race or event approved by the Minister for the purposes of this section;
- (f) arriving solely for the purpose of obtaining fuel, water or ships' stores; or
- (g) arriving solely by reason of assisting in the salvage of another vessel.

Revocation of permit

3E If the Minister has reason to believe that an offence against this Act has been committed in respect of any pleasure craft or superyacht belonging to any person holding a permit (whether or not a prosecution has been brought in respect of such offence under section 5) he may by order in writing under his hand revoke such permit; and, if he thinks fit, any other permit granted to such person, whether granted in respect of that or any other pleasure craft or superyacht.

Appeals against refusal, revocation or conditions

3F (1) Subsection (2) applies—

- (a) if the applicant for the grant of a permit under section 3, 3A, 3B or 3C is aggrieved by a refusal of the Minister to grant it or, where a permit is granted, is aggrieved by any condition or limitation specified in the permit;
- (b) if the holder of a permit granted under section 3 is aggrieved by the revocation of the permit by the Minister under section 3(4); and
- (c) if the holder of a permit granted under section 3A, 3B or 3C is aggrieved by the revocation of the permit by the Minister under section 3E.

(2) The applicant or permit holder may appeal to the Supreme Court on a point of law within 21 days after receipt of notification of such decision, or such longer period as the Supreme Court may allow.

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(3) On any appeal under this section the Supreme Court may make such order, including an order for costs, as it thinks fit.

(4) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.”

(6) In section 5—

- (a) the first paragraph is renumbered as subsection (1);
- (b) the words “Punishment” to the end are repealed;
- (c) after subsection (1) insert—

“(2) If any pleasure craft or superyacht enters the waters of Bermuda or puts ashore any passengers in contravention of section 3A or 3B or, being a pleasure craft or superyacht in respect of which a transit permit, cruising permit or charter permit has been granted under section 3A to 3C, does anything not authorised by that permit, or if any member of the crew of such pleasure craft or superyacht does any act in contravention of the permit or any condition thereof, the master of the pleasure craft or superyacht shall be deemed to be guilty of an offence against this Act.

(3) A person convicted of an offence under this section is liable on summary conviction to a fine of \$25,000 and, in the case of a continuing offence, a fine of \$5,000 in respect of each day during which the contravention occurs.”

Amends Government Fees Regulations 1976

4 In the Schedule to the Government Fees Regulations 1976, after Head 51 insert the following new Head—

“Head 51A Passenger Ships and Other Vessels Act 1972		
(1)	Transit permit under section 3A	\$5 per metre
(2)	Cruising permit under section 3B	(a) \$8.50 per metre for superyachts; (b) \$6.50 per metre for pleasure craft
(3)	Charter permit under section 3C	one-off fee of \$8.50 per metre, plus 6% of gross charter fee for each charter”

Amends Miscellaneous Taxes Act 1976

5 (1) Section 32G of the Miscellaneous Taxes Act 1976 (passenger departure tax: pleasure craft) is repealed.

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(2) In consequence, section 9B(2)(a) of the Miscellaneous Taxes (Rates) Act 1980 (rate of passenger departure tax for pleasure craft) is repealed.

Amends Customs Tariff Act 1970

6 (1) The Fifth Schedule to the Customs Tariff Act 1970 (end use relief) is amended as follows.

(2) In CPC 4160 (commercial tour boats)—

(a) in the entry “Qualifying Goods”, delete paragraph 2;

(b) in the entry “End-Use Conditions/Restrictions”, delete paragraph 2.

(3) In CPC 4219 (fuel for commercial tour boats), in the entry “End-Use Conditions/Restrictions”, delete paragraph 2.

(4) Insert the following CPC in numerical order—

“

Description	Articles and parts (commercial tour boats)
CPC	4233
Duty Rate	5%
Eligible Beneficiary	All importers
Qualifying Goods	Equipment, furnishings, fittings, fixtures and parts
End-Use Conditions / Restrictions	Goods must be imported and used only to equip, furnish, refit, repair or maintain vessels licensed under section 4 of the Marine Board (Island Boats) Regulations 1965.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

”.

(5) At the end of the Sixth Schedule to the Customs Tariff Act 1970 (temporary importation relief) insert—

“

Description	Superyachts (articles and parts)
CPC	5034
Duty Rate	0%
Eligible Beneficiary	All importers
Qualifying Goods	1. Superyachts 2. Equipment, furnishings, fittings, fixtures and parts; and ships' stores

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Temporary Importation Conditions / Restrictions	1. Goods listed in paragraph 2 above must be imported and used only to equip, furnish, refit, repair, maintain or provision superyachts. 2. The superyacht must have been outside Bermuda for a continuous period of 3 months within the previous 12 months before importation. 3. In this CPC "superyacht" has the meaning given in section 1 of the Passenger Ships and Other Vessels Act 1972.
Specific Controls / Diversion	
Construction	For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.

Amends Customs Department Act 1952

7 In section 3 of the Customs Department Act 1952 (exemptions from customs supervision fee), before "; or" at the end of subsection (4)(d) insert ", including a superyacht which is chartered in accordance with the Passenger Ships and Other Vessels Act 1972".

Consequential amendments

8 (1) In section 32F of the Miscellaneous Taxes Act 1976 (passenger departure tax: passenger ships), delete "Passenger Ships Act 1972" and substitute "Passenger Ships and Other Vessels Act 1972".

(2) In section 15C(8) of the Bermuda Tourism Authority Act 2013, delete "Passenger Ships Act 1972" and substitute "Passenger Ships and Other Vessels Act 1972".

(3) In section 7(4) of the Revenue Act 1898, delete "or" at the end of paragraph (c) and insert—

"(ca) that all fees for a transit, cruising or charter permit required under the Passenger Ships and Other Vessels Act 1972 have been accurately accounted for and paid; or".

(4) In the Customs Tariff Standing Authorisation (Temporary Importation of Vessels, Aircraft and Transport Containers) Notice 2011, at the end of paragraph 3(1) insert—

"(k) superyachts of CPC 5034 that arrive in Bermuda under their own power (not including equipment, furnishings, fittings, fixtures, parts and ships' stores thereof)."

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Commencement

9 This Act comes into operation on such day as the Minister responsible for transport may appoint by notice in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Marine Board Act 1962 in relation to superyachts; to amend the Passenger Ships Act 1972 to introduce transit and cruising permits for pleasure craft and superyachts, and charter permits for superyachts, with fees prescribed in the Government Fees Regulations 1976; to amend the Miscellaneous Taxes Act 1976 by repealing passenger departure tax for pleasure craft; to amend the Fifth and Sixth Schedules to the Customs Tariff Act 1970; to amend the Customs Department Act 1952; and to make consequential amendments.

Clause 1 is self-explanatory.

Clause 2 amends the Marine Board Act 1962. Section 2 is amended to insert a definition of “superyacht”, and to provide that superyachts are exempt from Part V (sections 77-91, licensing etc) and the Marine Board (Island Boats) Regulations 1965. Section 25(2) (exemption from light tolls) is amended to include superyachts granted a charter permit. Section 48 is amended to exempt superyachts from the requirement to be piloted by a branch pilot if the Minister issues an exemption certificate.

Clause 3 amends the Passenger Ships Act 1972 by amending the title; by adding new definitions in section 1; by modernising section 3 to remove references to appeals to the Governor; by inserting section 3A to provide for a transit permit for pleasure craft and superyachts, section 3B to provide for a cruising permit for pleasure craft and superyachts, section 3C to provide for a charter permit for superyachts, section 3D to provide fee exemptions in specified circumstances, section 3E in relation to revocation of permits, and section 3F to provide a right of appeal on a point of law to the Supreme Court against refusal to grant or revocation of a permit, or imposition of conditions; and by amending section 5 (offences) to include breach of the new permit conditions and increased maximum penalties.

Clause 4 amends the Government Fees Regulations 1976 to insert Head 51A which prescribes the fees for a transit permit, cruising permit and charter permit.

Clause 5 repeals section 32G of the Miscellaneous Taxes Act 1976, which provided for passenger departure tax for persons arriving in Bermuda by pleasure craft, and section 9B(2)(a) of the Miscellaneous Taxes (Rates) Act 1980 which prescribed a rate of \$35 per passenger and crew member.

Clause 6 amends and inserts various CPC codes in the Fifth (end use reliefs) and Sixth (temporary importation reliefs) Schedules to the Customs Tariff Act 1970, to provide certain reliefs for commercial tour boats and superyachts.

Clause 7 amends section 3 of the Customs Department Act 1952 to insert an exemption from the customs supervision fee for superyachts chartered in accordance with the Passenger Ships and Other Vessels Act 1972 (as amended by clause 3).

Clause 8 makes consequential amendments.

Clause 9 provides for commencement.