

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

AMERICA'S CUP AMENDMENT (NO. 2) ACT 2016

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SCHEDULE
Plan of Dockyard

WHEREAS it is expedient to amend the America's Cup Act 2015 and make connected provision;

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, which amends the America's Cup Act 2015 ("the principal Act"), may be cited as the America's Cup Amendment (No. 2) Act 2016.

Amends section 2 and inserts Schedule 3

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

“Dockyard” means the area outlined in red on the plan in Schedule 3;”.

(2) After Schedule 2 of the principal Act, insert the Schedule to this Act as Schedule 3.

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Amends section 6

3 In section 6 of the principal Act, subsection (6) is repealed and the following subsection substituted—

“(6) In relation to goods imported for use in respect of any building materials, furnishings, fixtures and equipment necessary for capital development projects at the Royal Naval Dockyard approved by the Minister, CPC 4210 of the Fifth Schedule to the Customs Tariff Act 1970 (goods for Government capital expenditure schemes) shall apply as follows—

(a) as if for the entry under the heading Duty Rate there were substituted “0%”;

(b) as if for paragraphs 1 and 2 of the End-Use Conditions/Restrictions there were substituted—

“1. Goods must be imported and used only for a capital development scheme at the Royal Naval Dockyard that has been approved by the Minister responsible for the America's Cup.

2. The Minister shall complete a certificate (a “Minister's certificate”) and thereon certify that the importation is for the purposes of such an approved scheme.”; and

(c) as if in paragraphs 3 to 5 of the End-Use Conditions/Restrictions for “Head of Department's certificate” there were substituted “Minister's certificate”.

Amends section 9

4 In section 9 of the principal Act—

(a) after subsection (1) insert—

“(1A) If an America's Cup event licence is granted under section 22B of the Liquor Licence Act 1974 for a Bermuda Event which is to be held in Dockyard, it shall not be unlawful for the holder of the licence to sell intoxicating liquor to the public during and at the Event in accordance with the licence.”

(b) in subsections (2) and (3), after “subsection (1)” insert “or (1A)”.

Inserts section 9A

5 After section 9 of the principal Act, insert—

“Modification of Liquor Licence Act 1974

9A For the purposes of this Act, the Liquor Licence Act 1974 shall be read as if after section 22A (tourism event licence) there were inserted—

“America's Cup event licence

22B (1) In this section—

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- (a) expressions used in this section and in the America's Cup Act 2015 shall have the meanings given in that Act; and
 - (b) "relevant period" means the period beginning on the first day of the America's Cup Challenger Playoffs (26 May 2017) and ending on the last day of the 35th America's Cup Match (on or around 27 June 2017).
- (2) The chairman may, on an application duly made—
- (a) by ACEA; or
 - (b) by a person authorized in writing by ACEA to make such an application,
- grant a licence (an "America's Cup event licence") authorizing that person to sell intoxicating liquor to persons attending an America's Cup Bermuda Event in Dockyard (or such part of Dockyard as may be specified in the licence) during the hours of 10am to 2am on such day or days during the relevant period as may be specified in the licence.
- (3) The fee for an America's Cup event licence shall be \$100 per day to which the licence relates.
- (4) The following provisions shall, with the necessary modifications, apply to an America's Cup event licence as they apply to a tourism event licence—
- (a) section 17A (mandatory licence condition requiring photographic identification of person appearing to be a minor);
 - (b) subsections (3) to (7) of section 22A (licence to specify times and places, application for licence, duty to produce licence etc);
 - (c) Form 16 in the Schedule to the Liquor Licence (Forms) Regulations 1974 (form of a tourism event licence).
- (5) Section 39B (mandatory training for managers, supervisors and persons in charge of bars) shall not apply in respect of persons selling intoxicating liquor in accordance with an America's Cup event licence."

Inserts section 13A

6 After section 13 of the principal Act, insert—

"Visiting vessels - permit tax and charter tax

13A (1) In this section—

"Director" means the Director of the Department of Marine and Ports Services;

"exempted vessel" means—

- (a) a participating vessel, unless it is to be used for chartering and so will require a charter permit; or

(b) a vessel which is registered in Bermuda;

“participating vessel” means a vessel participating either as a competitor or support vessel—

(a) in an event listed in paragraph (b), (c) or (d) of the definition of Bermuda Events; or

(b) in any other sailing event approved by the Minister for the purposes of this section;

“relevant period” means the period beginning on 26 April 2017 and ending on 31 July 2017;

“responsible person” means—

(a) in relation to a qualifying vessel, the agent; or

(b) in relation to any other visiting vessel, the owner, operator or agent;

“qualifying vessel” means a visiting vessel which is—

(a) 12 metres or more in length; and

(b) registered as a commercial yacht in a jurisdiction outside Bermuda, and certified to the satisfaction of the Director as being compliant with applicable requirements for commercial chartering operations in that jurisdiction;

“tariff code” has the meaning assigned in the Customs Tariff Act 1970;

“visiting vessel” means—

(a) an excursion boat or ferry boat of tariff code 8901.100, if it is to be used for chartering;

(b) a sail-training vessel of tariff code 8901.900, if it is to be used for chartering;

(c) a vessel of tariff code 8903.910 (sailboats);

(d) a vessel of tariff code 8903.920 or 8903.999 (motorboats),

which is temporarily imported into Bermuda during the relevant period, whether or not the reason for its visit relates to any of the Bermuda Events, but does not include an exempted vessel;

“vessel” has the meaning assigned in the Revenue Act 1898;

“wreck” has the meaning assigned in the Merchant Shipping Act 2002.

(2) On or before a visiting vessel's arrival in Bermuda, the responsible person shall apply to the Director for one of the following permits—

(a) a transient permit, for a visit not exceeding five days;

- (b) a cruising permit, for a visit exceeding five days; or
- (c) a charter permit, in the case of a qualifying vessel which is intended to be used for commercial activity during the relevant period.

(3) On the arrival of a visiting vessel in Bermuda, the responsible person shall be liable to pay to the Collector of Customs permit tax, calculated by reference to the total length of the vessel, at the following applicable rate—

- (a) \$3 per metre, for a transient permit;
- (b) \$8 per metre, for a cruising permit;
- (c) \$8 per metre, for a charter permit.

(4) If the owner or operator of a visiting vessel granted a transient permit seeks to extend the vessel's visit beyond five days, the responsible person—

- (a) shall apply to the Director for a cruising permit; and
- (b) shall be liable to pay to the Collector of Customs permit tax at the higher rate, credit being given for the permit tax already paid in respect of the transient permit.

(5) The owner or operator of a qualifying vessel granted a charter permit may charter the vessel or ply for hire or reward during the relevant period in accordance with the terms and conditions of the charter permit, and the responsible person shall be liable to pay a charter tax of 5% of gross charter receipts during the relevant period (whether or not the charter relates to any of the Bermuda Events).

(6) The owner or operator of a vessel which would be a qualifying vessel but for the fact that it arrived in Bermuda before the beginning of the relevant period may apply to the Director for a charter permit, and if granted may charter the vessel or ply for hire or reward during the relevant period in accordance with the terms and conditions of the charter permit, and the responsible person shall be liable to pay a charter tax of 5% of gross charter receipts during the relevant period (whether or not the charter relates to any of the Bermuda Events).

(7) Notwithstanding section 7(3) of the Revenue Act 1898, the Collector of Customs or other proper officer (as defined in that Act) may withhold the certificate of clearance under that section if he is not satisfied that permit tax and charter tax have been accurately accounted for and paid in accordance with this section.

(8) Permit tax shall not be payable in respect of the following visiting vessels—

- (a) vessels travelling on behalf of, or at the expense of, the Government of Bermuda or the Government of the United Kingdom or any foreign Government;
- (b) vessels arriving in Bermuda solely by reason of distress or emergency;

(c) wrecks.

(9) Passenger departure tax under Part VB of the Miscellaneous Taxes Act 1976 shall not be charged in respect of visiting vessels.

(10) Sections 32J, 32L and 32N of the Miscellaneous Taxes Act 1976 (liability for payment and penalties for late or non-payment) apply in relation to permit tax and charter tax payable under this section as they apply to passenger departure tax, with the necessary modifications.

(11) The First Schedule to the Taxes Management Act 1976 shall be read as if at the end there were inserted a reference to permit tax and charter tax payable under section 13A of the America's Cup Act 2015; and accordingly that Act shall apply, with the necessary modifications, in relation to permit tax and charter tax payable under this section."

Commencement

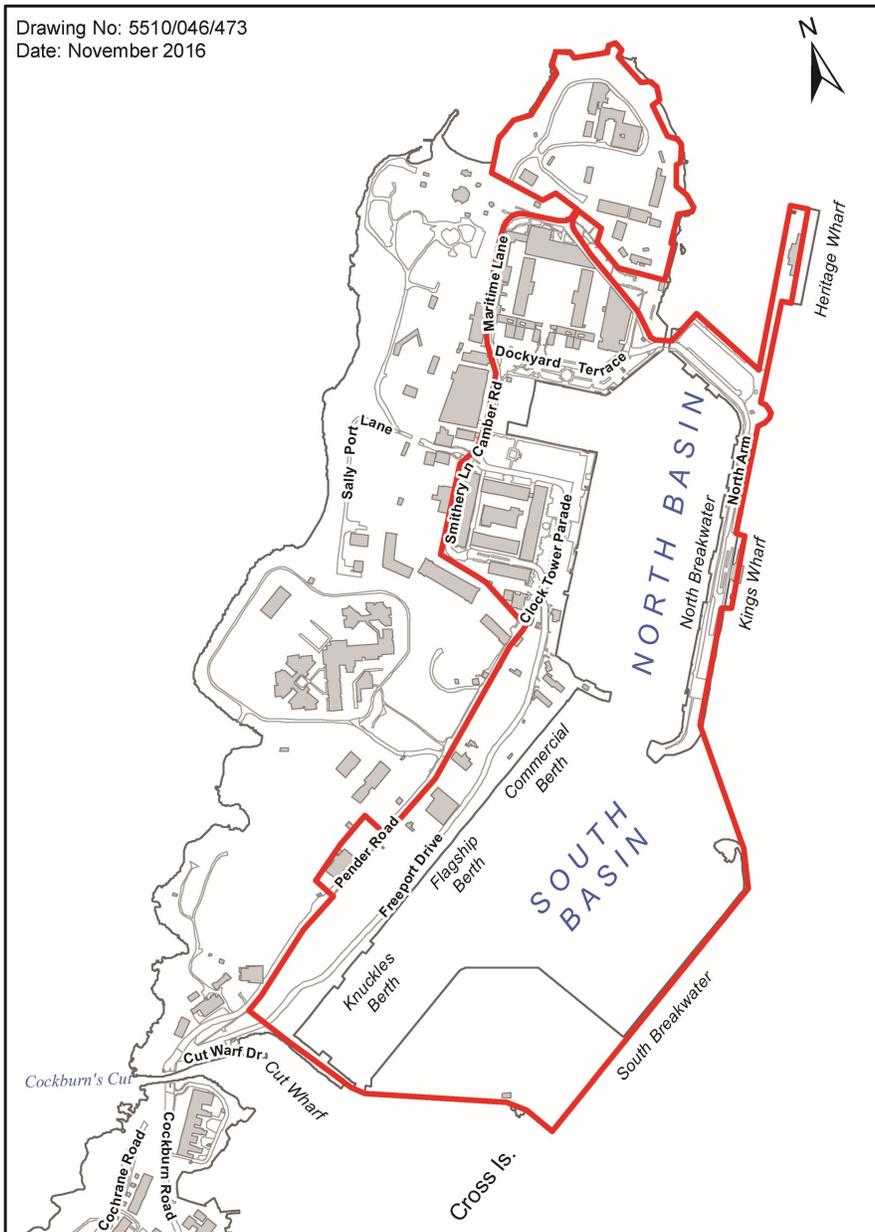
7 (1) Section 3 shall be deemed to have come into operation on 28 February 2015.

(2) The remaining provisions of this Act come into operation on such day as the Minister responsible for the America's Cup may appoint by notice in the Gazette, and different days may be appointed for different provisions.

SCHEDULE

(Section 2)

PLAN OF DOCKYARD



AMERICA'S CUP AMENDMENT (NO. 2) BILL 2016

EXPLANATORY MEMORANDUM

This Bill seeks to make a number of amendments to the America's Cup Act 2015 ("the principal Act").

Clause 1 is self-explanatory.

Clause 2 defines "Dockyard" by reference to the area outlined in red on the plan to be inserted as Schedule 3 to the principal Act. This definition is used in section 9 (as amended) and the new section 9A of the principal Act (liquor licensing).

Clause 3 repeals and replaces section 6(6) of the principal Act to modify CPC 4210 of the Fifth Schedule to the Customs Tariff Act 1970 (goods for Government capital expenditure schemes) in relation to any building materials, furnishings, fixtures and equipment necessary for capital development projects at the Royal Naval Dockyard approved by the Minister. This provision is deemed to have come into operation on the commencement date of the principal Act - see clause 7(1).

Clause 4 amends section 9 of the principal Act by inserting a new subsection (1A) which provides that if an America's Cup event licence is granted under section 22B of the Liquor Licence Act 1974 for a Bermuda Event which is to be held in Dockyard, it shall not be unlawful for the holder of the licence to sell intoxicating liquor to the public during and at the Event in accordance with the licence.

Clause 5 inserts new section 9A into the principal Act which modifies the effect of the Liquor Licence Act 1974 by providing that it shall be read as if section 22B were inserted. Section 22B provides for a new type of licence, an "America's Cup event licence" to be granted to ACEA, or a person authorized in writing by ACEA, to allow sales of intoxicating liquor to persons attending a Bermuda Event in Dockyard for a period during the relevant period between the hours of 10am and 2am daily, at a fee of \$100 per day. Certain provisions of the 1974 Act and Form 16 in the Schedule to the Liquor Licence (Forms) Regulations 1974 which apply to a tourism event licence are modified to apply. Section 39B (compulsory TIPS training) is disappplied.

Clause 6 inserts new section 13A into the principal Act. This section introduces a new permit tax for visiting vessels (as defined) arriving in Bermuda during the relevant period and in respect of which application must be made for either a transient permit (for visits not exceeding five days), a cruising permit (for longer visits) or a charter permit for qualifying vessels (as defined). Vessels with a charter permit will also be subject to a charter tax of 5% of gross charter receipts during the relevant period. Passenger departure tax under Part VB of the Miscellaneous Taxes Act 1976 will not be charged in respect of visiting vessels. Provisions of the Miscellaneous Taxes Act 1976 and the Taxes Management Act 1976 are applied in relation to the administration and collection of permit tax and charter tax.

Clause 7 provides for commencement.