

GUIDANCE NOTE 04/2023 (Rev 01)

PLEASURE YACHTS ENGAGED IN TRADE

To: OWNERS, OPERATORS AND MASTERS OF PLEASURE YACHTS

1. BACKGROUND

- 1.1 The Cayman Islands Shipping Registry recognizes yachts are used in dual modes in that yachts may be used privately and may also engage in trade, which is provisioned within the Merchant Shipping Act (2021 Revision) and Regulations made thereunder.
- 1.2 The Cayman Islands does not operate a Private Yacht Limited Charter Scheme¹ as may be operated under other Registries and all vessels that engage in trade, irrespective of duration, are required to comply with certain mandatory safety requirements.
- 1.3 The purpose of this guidance note is to remind yacht owners, managers and masters of these mandatory requirements and to outline the consequences of non-compliance.

2. KEY DEFINITIONS

- 2.1 The term “*pleasure vessel*” has the meaning assigned under section 2 of the Merchant Shipping Act (2021 Revision). (See Annex 1 for a full definition) and refers to a mode of use (at the time at which is being used) rather than a vessel type.
- 2.2 “*Private use*” is defined in section 2(b) of the Merchant Shipping Act (2021 Revision) (See Annex 1) but essentially means that the vessel is not used for hire or offered to the public for use.
- 2.3 The definition of “*pleasure yacht*” was clarified in the Merchant Shipping (Pleasure Yachts Carrying Passengers) Regulations, 2011. Pleasure Yacht includes a “*pleasure vessel*” and any vessel to which the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 2002, or any amendments thereto or replacements thereof, apply.

¹ A scheme that permits private yachts to charter with reduced safety requirements and crew welfare compared to a commercial yacht, provided that the duration does not exceed a certain number of days per annum.

- 2.4 There is no definition of commercial vessel under the Merchant Shipping Act, but this is taken as its natural meaning and would cover any activity that does not fall within the usage as a pleasure vessel or in private use.
- 2.5 “load line length” means the length of a ship as defined in the International Convention on Load Lines, 1966, as amended;
- 2.6 For vessels of 24m or more in load line length “Code” means “The Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels²” including any amendments thereto, or any other such Code as may be prescribed in substitution therefore. Regulation 4 refers.
- 2.7 For vessels of less than 24m load line length “Code” means “The Safety of Small Commercial Motor Vessels – A Code of Practice” or “The Safety of Small Commercial Sailing vessels - A Code of practice” including any amendments thereto, or any other such Code as may be prescribed in substitution therefore. Regulation 5 refers.

3. VESSEL REGISTRATION TYPES

- 3.1 For yachts, other than passenger yachts, there are only two vessel type designations that may appear on the Certificate of British Registry: “Pleasure Yacht” or “Commercial Vessel”
- 3.2 As described previously, pleasure vessel is a mode of use and not a vessel type.
- 3.3 A Commercial Vessel must also comply with the relevant provisions at all times and will not be considered as a pleasure vessel irrespective of use.

4. VESSELS IN COMMERCIAL USE FOR SPORT OF PLEASURE

- 4.1 Vessels engaged in trade are in Commercial Use for Sport of Pleasure, more commonly referred to as chartering (i.e. vessels chartered to fee paying guests)
- 4.2 Vessels in Commercial use for Sport or pleasure are subject to the Merchant Shipping (Vessels in Commercial use for Sport or Pleasure) Regulations, 2002.
- 4.3 Under Regulation 4(3) yachts of 24m or more in load line length shall comply with the provisions of the Code as defined in 2.6 above.
- 4.4 Under Regulation 5(3) yachts of less than 24m load line length shall comply with the provisions of the Code as defined in 2.7 above.
- 4.5 Accordingly, a vessel must not engage in trade (in commercial use for sport or pleasure) unless it complies with the Relevant Code of practice.
- 4.6 For avoidance of doubt, compliance means that the vessel is surveyed and maintained under the relevant Code of Practice and all mandatory Certificates maintained as valid when the vessel is engaged in trade (i.e., chartering) or is commercially registered (Commercial Vessel)

² This includes the REG YACHT CODE PART A and THE CAYMAN YACHT CODE (CCA)

4.7 Contravention of the above Regulations is an offence by the owner and master of the vessel which shall render both liable on summary conviction to a fine of fifty thousand dollars or on conviction on indictment to imprisonment for two years and a fine of fifty thousand dollars.

5. MARITIME LABOUR CONVENTION, 2006

5.1 Since the entry into force of the Maritime Labour Convention, 2006 all yachts that engage in trade (i.e. charter) or that are commercially registered shall comply the requirements as applicable to the date of construction according to the Regulations giving effect to the Convention.

5.2 A yacht shall not be issued with a Certificate of Compliance to engage in trade unless the relevant provisions of MLC are confirmed, irrespective of size of vessel.

6. MINIMUM SAFE MANNING

6.1 The Merchant Shipping (Certification, Safe Manning, Hours of Rest of Work and Watchkeeping) Regulations (2004 Revision) apply to all yachts other than when they are being used as a *pleasure vessel*³.

6.2 A yacht that is engaged in trade or is commercially registered shall comply with Minimum Safe Manning requirements at all times.

6.3 In addition, every officer holding a Certificate of Competency that is eligible⁴ for an endorsement attesting to its recognition shall be so endorsed at all times that the yacht is engaged in trade, or the yacht is commercially registered.

6.4 Officers holding Certificates that are not eligible for endorsement, eg, Yachtmaster, AEC, MEOL must maintain valid certificates at all times that the yacht is engaged in trade or the yacht is commercially registered.

6.5 Regulation 24(2), *inter alia*, states that the company or operator shall ensure that every seafarer assigned to any of its ships holds an appropriate certificate in respect of any function he or she is to perform in that ship. Certificate in the above includes Certificate of Competency and endorsement where applicable.

6.6 Offences for contravention of 24(2), *inter alia*, include a fine on summary conviction of twenty-five thousand dollars or on indictment, a fine of fifty thousand dollars and an imprisonment for twelve months, (in the case of an individual). In addition, the Merchant Shipping Act provides for an inquiry into the fitness or conduct of an officer which can result in forfeiture of any Certificate.

7. BAREBOAT CHARTERS

7.1 The Cayman Islands requires that all yachts that are offered for charter to fee paying guests, comply with the relevant Code of Practice according to the size of vessel.

³ The Regulations apply only in respect of recognition of alternative certification and the issue of licences.

⁴ Only Officer Certificates issued under the STCW Regulations are eligible for endorsement.

Owners offering their vessels under a bareboat charter agreement in the USA should seek appropriate legal advice to ensure that the charter arrangements fully satisfy the requirements of the Passenger Vessel Safety Act of 1993⁵.

- 7.2 A vessel that is found to be in breach of the bareboat charter requirements is also potentially in breach of Cayman Islands Shipping Law, if deemed to be engaging in trade without meeting the requirements of Section 4, 5 and 6 of this Guidance Note.

8. CONCLUSION

- 8.1 All Cayman Islands yachts that engage in trade (i.e. charter) or are offered for commercial use for sport or pleasure must comply with the relevant Code of Practice, MLC and Minimum Safe Manning requirements and there is no private yacht limited charter scheme operated by the Cayman Islands. This applies to commercially registered vessels irrespective of use.
- 8.2 There are severe penalties for vessels that do not meet the legal requirements for engaging in trade, which can significantly impact operators, owners and masters.
- 8.3 Should you be in doubt whether your vessel meets all requirements for engaging in trade, please contact the Cayman Islands Shipping Registry at technical@cishipping.com.
- 8.4 In addition to its new construction services, the Cayman Islands Shipping Registry can also conduct an assessment of existing vessels and provide recommendations on any modifications to bring the vessel into compliance. Should you wish to explore this option please contact us at technical@cishipping.com.

⁵ The United States Passenger Vessel Safety Act of 1993 (PVSA) (Pub. L. 103-206, title V, Dec. 20, 1993, 107 Stat. 2439)

ANNEX 1

Section 2 Merchant shipping Act (2021 Revision)

“pleasure vessel” means —

(a) a vessel which at the time it is being used is —

(i) (A) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner;

(B) in the case of a vessel owned by a body corporate, one on which the persons on the vessel are employees, officers or shareholders (including beneficial owners of shares) of the body corporate, or their immediate family or friends; or

(C) in the case of a vessel owned by a trust or other ownership arrangement, one on which the persons on the vessel are beneficiaries under the trust or beneficial owners of the ownership arrangement, or their immediate family or friends; and

(ii) in private use; or

(b) a vessel wholly owned by or on behalf of a club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and in this definition -

“immediate family” means, in relation to an individual, the husband or wife of the individual, or a relative of the individual, or of the individual’s husband or wife; “relative” means brother, sister, ancestor or lineal descendant;

“owner” includes charterer; and

“private use” means that the vessel is used on a private voyage or excursion, and during such use is not engaged in trade by transporting merchandise or carrying passengers for reward or remuneration (other than as a contribution to the actual cost of the vessel or its operation for the period of the voyage or excursion), and is not offered to the public for use