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**PART 1**

**NOTICES**

A. The following Notices are published by order of the Commissioner:

None.

B. The following Notices are published by order of the Commissioner's Representative:

None.

**PART 2**

**APPOINTMENTS**

A. Appointment of Commissioner:

1. In pursuance of section 4(1) of the British Indian Ocean Territory (Constitution) Order 2004, His Majesty, by instructions given through a Secretary of State, has been pleased to appoint MR NISHI RAJENDRA DHOLAKIA to hold the office of Commissioner for the Territory in place of MR PAUL HENRY CANDLER, with effect from 16 December 2024.

B. The Commissioner has made the following appointments:

1. MICHAEL VIDLER to act in place of ROBERT JOHN FAIRWEATHER as Administrator with effect from 06 January 2025, during any period during which the latter person is himself unable for any reason to discharge the functions vested in him by virtue of that appointment, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004.

2. COMMANDER ANDREW FREDERICK WILLIAMS to be Commissioner's Representative in place of COMMANDER ROGER MALONE with effect 24 January 2025, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004.
3. COMMANDER ANDREW FREDERICK WILLIAMS to be Magistrate in place of COMMANDER ROGER MALONE with effect 24 January 2025, under section 27(1) of the Courts Ordinance 1983.
4. COMMANDER ANDREW FREDERICK WILLIAMS to be a Customs Officer in place of COMMANDER ROGER MALONE with effect 24 January 2025, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 3 of the Imports and Exports Control Ordinance 2009.

C. The Commissioner's Representative has made the following appointments:

None.

### **PART 3**

### **CORRECTIONS**

There are no corrections.

## **PART 4**

### **LEGAL SUPPLEMENT**

- A. The following laws have been enacted:
1. Ordinance No. 1 of 2025: The Immigration (Unlawful Entry) Ordinance 2025
- B. The following Proclamations, Directions, Orders and other statutory instruments have been enacted:
1. Statement on Process – Addendum (6 January 2025)
- C. The following licences have been granted:
1. None.
- D. The following UK laws have been extended to the Territory:
1. None.

## **PART 5**

### **OTHER LEGAL DOCUMENTS**

There are no other legal documents.

## **LEGAL SUPPLEMENT**



THE BRITISH INDIAN OCEAN TERRITORY

**THE IMMIGRATION (UNLAWFUL ENTRY)  
ORDINANCE 2025**

**Ordinance No. 1 of 2025**

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**THE BRITISH INDIAN OCEAN TERRITORY**

**THE IMMIGRATION (UNLAWFUL ENTRY) ORDINANCE 2025**

**Ordinance No.1 of 2025**

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Enacted by the Commissioner for the British Indian Ocean Territory

7 January 2025

[SIGNED ON THE ORIGINAL]

Nishi Dholakia  
Commissioner

# THE BRITISH INDIAN OCEAN TERRITORY

## THE IMMIGRATION (UNLAWFUL ENTRY) ORDINANCE 2025

*An Ordinance to prevent and deter persons from unlawfully entering the Territory by controlling entry; taking biometric and other information; removing such persons either to a safe third country or territory, or to a relevant country; creating offences in relation to these procedures and for connected purposes.*

### PART I

#### PRELIMINARIES

##### Citation and commencement

1. This Ordinance may be cited as the Immigration (Unlawful Entry) Ordinance 2025 and shall come into force forthwith.

##### Definitions

2. (1) In this Ordinance –

“approved medical practitioner” means a person who has been engaged, directly or indirectly by the Armed Forces of the United States, United Kingdom or Administration of the British Indian Ocean Territory to provide services as a doctor, nurse or other health care professional in the Territory;

“Authorised person” means –

- (a) a police officer;
- (b) an immigration officer; or
- (c) a prison officer.

“Biometric information” means a record of a person’s fingerprints and a photograph of that person’s face;

“BIOT” means the Territory;

“family members” means, insofar as the family already existed in the relevant country, the following members of the Unlawful entrant’s family who are present in the Territory –

- (a) the Unlawful entrant’s spouse or unmarried partner in a stable relationship,

(b) the minor and adult children of couples referred to in (a), regardless of whether they were born in or out of wedlock or adopted,

(c) when the Unlawful entrant is a minor and unmarried, the father, mother or another adult responsible for the Unlawful entrant, where the adult is present;

“international protection claim” means an objection to being removed to a relevant country on the basis that it would offend the principle of non-refoulement as a matter of customary international law, in both the narrower refugee law sense and the wider human rights sense, and “claim for international protection” shall be construed accordingly;

“legal practitioner” means a person who has been licensed to practise as a solicitor or barrister in the Territory pursuant to Part IV of the Courts Ordinance 1983;

“master”, in relation to a ship, includes the captain and any person for the time being in command or in charge of the ship;

“minor” means a person below the age of 18 years;

“Order” means the British Indian Ocean Territory (Immigration) Order 2004;

“permission”, save for its use in sections 34 and 43, means permission to enter the Territory in accordance with the Order;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol;

“relative” means the Unlawful entrant’s adult aunt or uncle or grandparent who is present in the Territory, regardless of whether the Unlawful entrant was born in or out of wedlock or adopted;

“relevant country” means a country which is –

(a) the Unlawful entrant’s country of nationality;

(b) if stateless, the Unlawful entrant’s country of former habitual residence, or

(c) the country from which an Unlawful entrant departed before arriving in the Territory.

“removal order” means an order issued under section 12(1) of the Order for the removal of an Unlawful entrant;

“safe third country or territory” means a place –

(a) where an Unlawful entrant’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and

(b) from which an Unlawful entrant will not be sent to another country or territory otherwise than in accordance with the Refugee Convention.

“ship” includes –

(a) every description of vessel (including a hovercraft), and

(b) any other structure (whether with or without means of propulsion) constructed or used to carry persons, goods, plant or machinery by water.

“Territory” means the British Indian Ocean Territory;

“Unlawful entrant” means a person who has entered the Territory without permission after the date on which this Ordinance comes into force.

(2) For the purposes of this Ordinance, a person (“C”) is an “unaccompanied minor” if –

(a) C is a minor, and

(b) at the relevant time no individual (whether or not a parent of C) who was aged 18 or over had care of C.

(3) In subsection (2) “the relevant time” means the time of C’s entry or arrival in the Territory.

## **Introduction**

**3.** (1) The purpose of this Ordinance is to prevent and deter unlawful migration to the Territory by –

(a) requiring the removal from the Territory of persons who enter or arrive in the Territory without permission, and

(b) ensuring that all future claims by such persons for international protection are made outside the Territory.

(2) To advance that purpose, this Ordinance –

(a) places a duty on the Commissioner to make arrangements for the removal of persons who enter or arrive in the Territory without permission as soon as is reasonably practicable after their entry or arrival, subject only to the exceptions specified by or under this Ordinance;

(b) provides that where a person who meets the relevant conditions for removal under this Ordinance has stated that he wishes to make an international protection claim, that person shall be removed to a safe third country or territory for those claims to be processed;

(c) provides that where a person who meets the relevant conditions for removal under this Ordinance has stated that he does not wish to make an international protection claim or has confirmed the withdrawal of such a claim, that person shall be removed to a relevant country.

(d) provides for the detention of persons who are subject to removal under this Ordinance.

(3) Accordingly, and so far as it is possible to do so, provision made by or by virtue of this Ordinance must be read and given effect so as to achieve the purpose mentioned in subsection (1).

(4) “relevant country” has the meaning set out in section 2(1).

## **PART II**

### **PROVISIONS AS TO CONTROL ON ENTRY ETC.**

#### **Examination by an immigration officer and an approved medical practitioner**

**4.** (1) An immigration officer may examine any person whom it appears to an immigration officer may be an Unlawful entrant for the purposes of determining whether that person has permission to enter the Territory and if that person does not have such permission, to determine that person’s identity.

(2) An immigration officer or approved medical practitioner may board any ship for the purpose of exercising his functions under this Ordinance.

(3) An immigration officer, for the purpose of satisfying himself whether there are persons he may wish to examine under subsection (2), may search any ship and anything on board it.

(4) Any such person, if he is seeking to enter the Territory, may be examined also by an approved medical practitioner.

(5) A person, on being examined under this section, may be required to submit to examination, or further examination, by an immigration officer or approved medical practitioner.

#### **Information and documents**

**5.** (1) It shall be the duty of any person examined under section 4 to furnish to the person carrying out the examination all such information in his possession as that person may require for the purpose of that or any other person's functions under that section.

(2) A person on his examination under section 4 by an immigration officer shall, if so required –

(a) produce either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and

(b) declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any relevant description specified by the immigration officer, and produce any documents of that description which he is carrying or conveying.

(3) In subsection 2(b), “relevant description” means any description appearing to the immigration officer to be relevant for the purposes of the examination.

(4) Where under subsection (2)(b) a person has been required to declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any description –

(a) he and any baggage belonging to him or under his control; and

(b) any ship in which he arrived in the Territory,

may be searched with a view to ascertaining whether he is doing or, as the case may be, has done so by an immigration officer or a person acting under the directions of an immigration officer:

(5) Where a passport or other document is produced to or found by an immigration officer in accordance with this section, the immigration officer may examine it and detain it –

(a) for any purpose, until the person to whom the document relates is about to depart or be removed;

(b) after a time described in (a), while the immigration officer thinks that the document may be required in connection with proceedings in respect of an offence.

(6) For the purpose of ascertaining that a passport or other document produced or found in accordance with this section relates to a person examined under section 4, the person carrying out the examination, or any immigration officer may make use of any biometric information obtained pursuant to section 12.

(7) Where a search is carried out in accordance with subsection (4), no woman or girl shall be searched except by a woman.

### **Duties of a master of a ship arriving in the Territory**

6. (1) The master of a ship arriving in the Territory –

(a) shall take such steps as may be necessary to secure that persons on board do not disembark there unless either they have been examined by an immigration officer, or they disembark in accordance with arrangements approved by an immigration officer; and

(b) where the examination of persons on board is to be carried out on the ship, shall take such steps as may be necessary to secure that those to be examined are presented for the purpose in an orderly manner.

(2) If an immigration officer asks the master of a ship arriving in the Territory for passenger information or service information, the master must provide that information to the officer.

(3) In this section –

“Passenger information” means such information relating to the passengers carried by the ship as may be specified by the immigration officer, and

“Service information” means such information relating to the voyage by the ship as may be specified by the immigration officer.

### **Power to require medical examination after entry**

7. (1) This section applies if an immigration officer examining a person under section 4 decides that a medical test or examination, or further medical test or examination, may be required in the interests of public health.

(2) The immigration officer may give the person concerned notice requiring him to submit to such test or examination (if any), as an approved medical practitioner may require.

(3) In reaching a decision under subsection (1), the immigration officer must act on the advice of an approved medical practitioner.

### **Detention of persons liable to examination or removal**

8. (1) A person who may be required to submit to examination under section 4 may be detained under the authority of an immigration officer pending –

(a) his examination, and

(b) a determination being made under section 22.

(2) If there are reasonable grounds for suspecting that a person detained pursuant to subsection (1) is someone in respect of whom directions may be given under section 12 of the Order, that person may be detained under the authority of an immigration officer pending –

(a) a decision whether or not to give such directions;

(b) his removal in pursuance of such directions.

(3) The powers to detain provided by subsections (1) and (2) apply regardless of whether there is anything that for the time being prevents or delays the examination or removal from being carried out, the determination or decision from being made, or the directions from being given.

(4) Without prejudice to the generality of subsections (1) to (3) and (5) to (6) the Commissioner may, by regulations issued under section 45 make special arrangements for the detention of pregnant women and unaccompanied minors.

(5) A person (of any age) detained under this section may be detained in any place that the Commissioner directs.

(6) A person on board a ship may, under the authority of an immigration officer, be removed from the ship for detention under this section; but if an immigration officer so requires the master of a ship shall prevent from disembarking in the Territory any person who has arrived in the Territory in the ship and been refused permission to enter, and the master may for that purpose detain him in custody on board the ship.

(7) A person may only seek to challenge the location or conditions of his detention on the grounds that the location or conditions are causing a serious, rapid and irreversible decline in his health.

### **Power of arrest**

**9.** A person liable to be detained under section 8 may be arrested without warrant by a police officer or by an immigration officer.

### **Detention: further provisions**

**10.** (1) Any person detained under section 8 may be taken in the custody of a police officer, an immigration officer, or any person acting under the authority of an immigration officer –

(a) to and from any place where his attendance is required for the purpose of ascertaining his citizenship or nationality;

(b) to and from any place where his attendance is required for the purpose of making arrangements for his admission to a country or territory other than the Territory;

(c) to, and remain in, a place awaiting his removal from the Territory;

(d) to a place where he is required to be for any other purpose connected with the operation of this Ordinance.

(2) A person shall be deemed to be in legal custody at any time when he is detained under section 8 or is being detained under subsection (1).

(3) A person detained under section 8 or subsection (1) shall not be entitled to bail.

### **Searching detained persons**

**11.** (1) This section applies if a person is detained under section 8.

(2) An immigration officer may search the detained person if he has reasonable grounds for believing that the detained person may present a danger to himself or others.



(3) An immigration officer may search the detained person for –

(a) anything which he might use to assist his escape from lawful custody; or

(b) any document which might –

(i) establish his identity, nationality or citizenship; or

(ii) indicate the place from which he has travelled to the Territory or to which he is proposing to go.

(4) The power conferred by subsection (3) may be exercised –

(a) only if the officer has reasonable grounds for believing that the detained person may have concealed on him anything of a kind mentioned in that subsection; and

(b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under subsection (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.

(8) An officer searching a person under subsection (3)(b) may seize and retain anything he finds, other than an item that he has reasonable grounds to believe is subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that subsection.

(9) Subsection (10) applies where –

(a) an officer is searching a person under this section, and

(b) any document the officer has reasonable grounds for believing is a document within subsection (3)(b) is stored in any electronic form on a device or medium found on the person.

(10) The officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(11) If a requirement under subsection (10) is not complied with or a document to which that subsection applies cannot be produced in a form of the kind mentioned in that subsection, the officer may seize the device or medium on which it is stored.

(12) Subsections (10) and (11) do not apply to a document which the officer has reasonable grounds for believing is an item subject to legal privilege.

### **PART III**

#### **BIOMETRIC INFORMATION**

##### **Power for an Authorised person to require an individual to provide biometric information**

**12.** (1) An Authorised person may require a person to whom this section applies to provide biometric information.

(2) Biometric information may be taken under this section only during the relevant period.

(3) Biometric information may not be taken under this section from a minor except in the presence of a person of full age who is –

(a) the minor’s parent or guardian; or

(b) a person who for the time being takes responsibility for the minor.

(4) The person mentioned in subsection (3)(b) may not be an Authorised person.

(5) “Authorised person” has the meaning provided in section 2(1).

(6) This section applies to –

(a) an Unlawful entrant (“A”);

(b) any person (“B”) who is a family member of A.

(7) “The relevant period” begins –

(a) for A, when he arrives in the Territory;

(b) for B, at the same time as for A.

(8) “The relevant period” ends on the earliest of the following –

(a) for A his removal from the Territory;

(b) for B, at the same time as for A.

(9) An Authorised person may not take biometric information from a minor unless his decision to take them has been confirmed –

(a) if he is a police officer, by the Chief of Police;

(b) if he is an immigration officer, by the Senior Customs and Immigration Officer;

(c) if he is a prison officer, by a person designated for the purpose by the Superintendent of Prisons.

(10) Neither subsection (3) nor subsection (9) prevents an Authorised person from taking biometric information if he reasonably believes that the person from whom they are to be taken is aged eighteen or over.

(11) “biometric information”, “family member” and “minor” have the meanings provided in section 2(1).

### **Process by which a person’s biometric information may be obtained and recorded**

**13.** (1) An Authorised person may require a person to whom section 12 applies to attend at a specified place for the taking of biometric information.

(2) A police officer or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).

(3) Before a person arrested under subsection (2) is released –

(a) he may be removed to a place where his biometric information may conveniently be taken; and

(b) his biometric information may be taken (whether or not he is so removed).

(4) An Authorised person may require biometric information to be of a particular specification.

(5) Biometric information may, if necessary, be taken from a person to whom subsection (1) applies without that person’s consent.

(6) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 12).

### **Power to use biometric information**

**14.** (1) Where biometric information has been taken from a person to whom section 12 applies, that biometric information and any associated biographic data may be checked against –

(a) other biometric information and personal data to which the person seeking to check has access and which is held by or on behalf of any one or more relevant law-enforcement authorities;

(b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in (a).

(2) In subsection (1) “relevant law-enforcement authority” means –

(a) the police force of the Territory;

(b) a United Kingdom police force;

(c) the United Kingdom National Crime Agency;

(d) the United Kingdom Border Force;

(e) the United States Naval Criminal Investigative Service;

(f) any person with functions in any country or territory outside the Territory which –

(i) correspond to those of a police force; or

(ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;

(g) any person with functions under any international agreement which consist of or include the investigation of conduct which is –

(i) unlawful under the law of one or more places,

(ii) prohibited by such an agreement, or

(iii) contrary to international law,

or the apprehension of persons guilty of such conduct.

(3) The reference to “a United Kingdom police force” shall have the same meaning as in section 63A(1B) of the Police and Criminal Evidence Ordinance 2019.

(4) For the purposes of this section “associated biographic data” means any personal data relating to the Unlawful entrant subject to subsection (1) that has been obtained pursuant to Part II.

## **Destruction of biometric information**

**15.** (1) Biometric information taken from A must be destroyed as soon as reasonably practicable after his removal from the Territory.

(2) Biometric information taken from B must be destroyed when biometric information taken from the person whose family member he is has to be destroyed.

(3) The obligation to destroy biometric information under this section applies also to copies of biometric information held in the Territory.

(4) The Commissioner must take all reasonably practicable steps to secure –

(a) that data which are held in electronic form and which relate to biometric information which has to be destroyed as a result of this section are destroyed or erased; or

(b) that access to such data is blocked.

(5) The person to whom the data relate is entitled, on request, to a certificate issued by the Commissioner to the effect that he has taken the steps required by subsection (4).

(6) A certificate under subsection (5) must be issued within three months of the date of the request for it.

(7) “Biometric information” means biometric information taken under section 12 and references to A and B are to the persons so described in that section.

## **PART IV**

### **REMOVAL FROM THE TERRITORY**

#### **General principles and safeguards**

**16.** (1) The arrangements set out in this Part are included on the basis that –

(a) there is no right of abode within the Territory;

(b) the Territory is unsafe and unsuitable for Unlawful entrants;

(c) claims for international protection may not be made within the Territory.

(2) The Commissioner shall determine whether any Unlawful entrant wishes to make a claim for international protection.

(3) If an Unlawful entrant wishes to make a claim for international protection, that person shall be removed to a safe third country or territory, for that claim to be made and processed.

(4) If an Unlawful entrant does not wish to make a claim for international protection, or has confirmed the withdrawal of such a claim, that person shall be removed to a relevant country.

(5) An Unlawful entrant may, at any time prior to their removal, voluntarily leave the Territory.

(6) Where a removal cannot, for any reason, be made pursuant to subsection (3) or (4) the Commissioner retains the right to remove a person to any safe third country or territory.

(7) “relevant country” has the meaning set out in section 2(1).

### **Right to information**

**17.** (1) As soon as practicable after an Unlawful entrant has arrived in the Territory, an Authorised person shall inform the Unlawful entrant of the application of this Ordinance, and in particular –

(a) the objectives of this Ordinance and the consequences of –

(i) indicating that they wish to make a claim for international protection, or

(ii) indicating that they do not wish to make a claim for international protection.

(b) the process that will be adopted for determining whether or not they wish to make a claim for international protection.

(c) the fact that the Commissioner can provide the Unlawful entrant’s personal data to –

(i) where section 16(3) or (6) applies, the appropriate authorities of a safe third country or territory, or

(ii) where section 16(4) applies, the appropriate authorities of that person’s relevant country.

(d) the right of access to the data provided under subsection (1)(c) and the right to request that such data be corrected if inaccurate.

(2) The information referred to in subsection (1) shall be provided in a language that the Unlawful entrant understands or is reasonably supposed to understand. Where necessary for the proper understanding of the Unlawful entrant, the information shall also be supplied during the personal interview as referred to in section 18.

(3) “Authorised person” and “relevant country” have the meanings assigned by section 2(1).

## **Personal interview**

**18.** (1) In order to facilitate the process of determining whether an Unlawful entrant wishes, or does not wish, to make a claim for international protection, an immigration officer shall conduct a personal interview with the Unlawful entrant.

(2) The personal interview may be omitted if the Unlawful entrant has voluntarily left the Territory.

(3) The personal interview shall take place before any removal determination is taken.

(4) The personal interview shall be conducted in a language that the Unlawful entrant understands or is reasonably supposed to understand and in which he is able to communicate. Where necessary, the services of an interpreter will be adopted to ensure appropriate communication between the Unlawful entrant and the person conducting the personal interview.

(5) The personal interview shall, in so far as is reasonably practicable, take place in private.

(6) The officer conducting the personal interview shall ensure that the form set out in the Schedule is completed, showing whether the Unlawful entrant wishes, or does not wish, to make a claim for international protection.

(7) The Unlawful entrant and any legal practitioner representing the Unlawful entrant are entitled to access to the completed form on request.

(8) For the purposes of this Part “removal determination” means a determination made by the Commissioner pursuant to section 22.

## **Guarantees for unaccompanied minors**

**19.** (1) The Commissioner shall ensure that a suitable person assists an unaccompanied minor with respect to all procedures provided for in this Part.

(2) The suitable person shall have the qualifications and expertise to ensure that the best interests of the unaccompanied minor are taken into consideration during the procedures carried out under this Part.

## **Provision of relevant information before a removal is carried out – safe third country or territory**

**20.** (1) The Commissioner, when seeking the assistance of a safe third country or territory to receive an Unlawful entrant pursuant to section 16(3) or 16(6) may communicate to the appropriate authorities of that safe third country or territory such personal data concerning the Unlawful entrant to be removed as is necessary for the sole purpose of ensuring that the competent authorities of that safe third country or territory are in a position to determine whether or not to receive that Unlawful entrant.

(2) The personal data communicated under subsection (1) may include any –

(a) information regarding any immediate measures which the safe third country or territory would be required to take in order to ensure that the special needs of the person to be removed are adequately addressed, including any immediate health care that may be required;

(b) personal details of the Unlawful entrant, and, where appropriate, his family members, relatives or any other family relations (including the relevant person or persons' full name and, where appropriate, former name; nicknames or pseudonyms; nationality, present and former; and date and place of birth);

(c) information regarding, or copies of, identity and travel papers (including references, validity, date of issue, issuing authority, and place of issue) relating to the Unlawful entrant;

(d) biometric information which has been obtained from the Unlawful entrant in accordance with this Ordinance;

(e) places of residence and routes travelled by the Unlawful entrant, and

(f) details of any criminal convictions the Unlawful entrant has received.

(3) The Commissioner shall ensure that all personal data that is provided to the appropriate authorities of the safe third country or territory under subsection (1) is accurate and up-to-date. If it transpires that the Commissioner has forwarded information which is inaccurate or which should not have been forwarded, the appropriate authorities of the safe third country or territory shall be informed thereof immediately.

(4) The Unlawful entrant shall have the right to be informed, on request, of any data that is provided concerning him. If the Unlawful entrant finds that the data provided is incomplete or inaccurate, he shall be entitled to have that data corrected or erased.

(5) The Commissioner shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access to or disclosure, alteration or loss of personal data processed.

### **Provision of relevant information before a removal is carried out – relevant country**

**21.** (1) The Commissioner, when seeking to obtain suitable travel documents to enable an Unlawful entrant to travel to a relevant country pursuant to section 16(4) may communicate to the appropriate authorities of that relevant country such personal data concerning the Unlawful entrant to be removed as is necessary for the sole purpose of obtaining the travel documents.

(2) The personal data communicated under subsection (1) may include –

(a) personal details of the Unlawful entrant, and, where appropriate, his family members, relatives or any other family relations (including the relevant person or persons' full name and, where appropriate, former name; nicknames or pseudonyms; nationality, present and former; and date and place of birth), and



(b) information regarding, or copies of, identity and travel papers (including references, validity, date of issue, issuing authority, and place of issue) relating to the Unlawful entrant.

(3) The Commissioner shall ensure that all personal data that is provided to the appropriate authorities of the relevant country under subsection (1) is accurate and up-to-date. If it transpires that the Commissioner has forwarded information which is inaccurate or which should not have been forwarded, the appropriate authorities of the relevant country shall be informed thereof immediately.

(4) The Unlawful entrant shall have the right to be informed, on request, of any data that is provided concerning him or her. If the Unlawful entrant finds that the data provided is incomplete or inaccurate, he shall be entitled to have that data corrected or erased.

(5) The Commissioner shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access to or disclosure, alteration or loss of personal data processed.

### **Issuance of a removal order**

**22.** (1) The Commissioner must issue a removal order, to remove any Unlawful entrant from the Territory in accordance with the principles in section 16.

(2) When determining whether the removal order will be issued in accordance with section 16(3), (4) or (6), the Commissioner shall consider –

(a) the contents of any applicable form completed under section 18(6),

(b) the arrangements that may be in place enabling an Unlawful entrant to be taken to a specific safe third country or territory,

(c) the response from a safe third country or territory that has received personal data under section 20, and

(d) any other relevant factors.

(3) In this Part –

“removal order” means an order made pursuant to section 12(1) of the Order;

“Order” has the meaning provided in section 2(1).

### **Notification of a removal determination**

**23.** (1) Where the Commissioner has made a determination under section 22, the applicable Unlawful entrant shall be notified of that determination and issued with a copy of the removal order.

(2) The removal order referred to in subsection (1) shall contain information as to where the Unlawful entrant will be removed.

(3) Where the Unlawful entrant concerned is not assisted or represented by a legal practitioner, that person shall be informed of the main elements of the determination in a language that the person concerned understands or is reasonably supposed to understand.

### **Unlawful entrant – change of intentions**

**24.** (1) This section applies where an Unlawful entrant has –

(a) previously stated that he wishes to make an international protection claim, but no longer wishes to make such a claim, or

(b) previously stated does not wish to make an international protection claim and now does wish to make such a claim.

(2) Where subsection (1) applies the Unlawful entrant must inform an immigration officer prior to the relevant time.

(3) If an Unlawful entrant acts in accordance with subsection (2), the process set out in section 18 will be applied again and the relevant form will be adjusted accordingly.

(4) Where –

(a) subsection (1) applies, and

(b) the Unlawful entrant purports to act in accordance with subsection (2), but

(c) the Unlawful entrant does not inform an immigration officer prior to the relevant time,

the Unlawful entrant will be removed in accordance with the determination made under section 22 as it applied at the time of the purported act.

(5) The “relevant time” for the purposes of this section is a period of 21 days prior to the planned arrival of an aircraft or ship to be used for the purposes of the removal of the Unlawful entrant.

(6) Each Unlawful entrant who has received a notification of a determination under section 23 shall be given notice, as soon as reasonably practicable, as to when the applicable relevant time will commence.

### *Removal process and related matters*

### **Escorts for persons removed from the Territory under directions**

**25.** (1) Directions for, or requiring arrangements to be made for, the removal of a person from the Territory may include or be amended to include provision for the Unlawful entrant who is to be removed to be accompanied by an escort consisting of one or more persons specified in the directions.

(2) The Commissioner may by regulations make further provision supplementing subsection (1).

(3) The regulations may, in particular, include provision –

(a) requiring the person to whom the directions are given to provide for the return of the escort to the Territory, or elsewhere;

(b) requiring him to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;

(c) as to the cases in which the Commissioner is to bear those costs;

(d) prescribing the kinds of expenditure which are to count in calculating the costs incurred in connection with escorts.

(4) In this section “directions” means directions issued under section 12(2) of the Order.

### **Use of force**

**26.** An immigration officer, police officer or removal officer exercising any power conferred on him by or under this Ordinance may, if necessary, use reasonable force.

### **Removal officers**

**27.** (1) The Commissioner may appoint a suitably qualified person as a removal officer.

(2) Removal officers are authorised to perform escort functions.

(3) For the purposes of subsection (1) a person is suitably qualified if he –

(a) is a fit and proper person to perform the functions to be appointed; and

(b) has received training to such standard as the Commissioner considers appropriate for the performance of those functions.

(4) The following persons shall be removal officers –

(a) every person appointed as such by the Commissioner;

(b) every police officer, and

(c) every immigration officer.

(5) In this Part –

“escort functions” means functions under escort arrangements;

“escort arrangements” means arrangements made by the Commissioner under section 28.

## **Arrangements for the provision of escorts and custody**

**28.** (1) The Commissioner may make arrangements for –

(a) the delivery of Unlawful entrants to premises in which they may lawfully be detained;

(b) the delivery of Unlawful entrants from any such premises for the purposes of their removal from the Territory in accordance with a removal order issued in accordance with section 22.

(2) Escort arrangements may provide for functions under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by removal officers.

(3) Escort arrangements may include entering into contracts with other persons for the provision by them of removal officers.

(4) A person responsible for performing a function of a kind mentioned in subsection (1), in accordance with a removal order, complies with the direction if he does all that he reasonably can to secure that the function is performed by a person acting in accordance with escort arrangements.

## **Monitoring of escort arrangements**

**29.** (1) Escort arrangements must include provision for the appointment of a member of the Administration as escort monitor.

(2) The escort monitor must –

(a) keep the escort arrangements under review and report on them to the Commissioner as required in accordance with the arrangements;

(b) from time to time inspect the conditions in which Unlawful entrants are transported or held in accordance with the escort arrangements;

(c) make recommendations to the Commissioner, with a view to improving those conditions, whenever he considers it appropriate to do so.

(3) In this section “Administration” means the Administration of the British Indian Ocean Territory.

## **Powers and duties of removal officers**

**30.** (1) A removal officer acting in accordance with escort arrangements has power –

(a) to search (in accordance with any rules made by the Commissioner) any detained person for whose delivery or custody the officer is responsible in accordance with the arrangements; and

(b) to search any other person who is in, or is seeking to enter, any place where any such detained person is or is to be held, and any article in the possession of such a person.

(2) The power conferred by subsection (1)(b) does not authorise requiring a person to remove any of his clothing other than an outer coat, jacket or glove.

(3) As respects an Unlawful entrant for whose delivery or custody he is responsible in accordance with escort arrangements, it is the duty of a removal officer –

(a) to prevent that person's escape from lawful custody;

(b) to prevent, or detect and report on, the commission or attempted commission by him of other unlawful acts;

(c) to ensure good order and discipline on his part; and

(d) to attend to his wellbeing.

(4) The Commissioner may make rules with respect to the performance by removal officers of their duty under subsection (3)(d).

(5) The powers conferred by subsection (1), and the powers arising by virtue of subsection (3), include power to use reasonable force where necessary.

## **PART V**

### **OFFENCES**

#### **Disembarking from ship or aircraft**

**31.** A person who disembarks in the Territory from a ship or aircraft after being placed on board with a view to his removal from the Territory in accordance with a removal order commits an offence punishable on summary conviction with a fine of not more than £5,000 or with imprisonment for not more than six months, or with both.

#### **Helping asylum-seeker to enter the Territory**

**32.** (1) A person commits an offence if –

(a) he knowingly facilitates the arrival or attempted arrival in, or the entry or attempted entry into, the Territory of an individual, and

(b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.

(2) In this section –

“asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the designated place would be contrary to the designated place’s obligations under –

- (a) the Refugee Convention,
- (b) the Human Rights Convention, or
- (c) any related rule of customary international law;

“designated place” means –

- (a) the Territory, or
- (b) any other place that has agreed to process claims made by asylum-seekers arriving in the Territory.

(3) For the purposes of this section, the following shall be disregarded –

- (a) the extent to which any of the laws set out in subsection (2)(a) to (c) may apply in the Territory;
- (b) that a claim for asylum cannot be made in the Territory, and
- (c) that a claim for international protection may not be made in the Territory.

(4) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which –

- (a) aims to assist asylum-seekers, and
- (b) does not charge for its services.

(5) Subsection (1) applies to things done whether inside or outside the Territory.

(6) A person guilty of an offence under this section shall be liable –

- (a) on conviction on indictment, to imprisonment for life, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

### **Section 32: application to rescuers**

**33.** (1) A person does not commit an offence under section 32 if the act of facilitation was an act done by or on behalf of, or co-ordinated by –

- (a) the Royal Navy,
- (b) the master of the BIOT Patrol Vessel.

(2) In proceedings for an offence under section 32, it is a defence for the person charged with the offence to show that –

- (a) the assisted individual had been in danger or distress at sea, and
- (b) the act of facilitation was an act of providing assistance to the individual at any time between –
  - (i) the time when the assisted individual was first in danger or distress at sea, and
  - (ii) the time when the assisted individual was delivered to a place of safety on land.

(3) For the purposes of subsection (2), the following are not to be treated as an act of providing assistance –

- (a) the act of delivering the assisted individual to the Territory in circumstances where –
  - (i) the Territory was not the nearest place of safety on land to which the assisted individual could have been delivered, and
  - (ii) the person charged with the offence did not have a good reason for delivering the assisted individual to the Territory instead of to a nearer place of safety on land;
- (b) the act of steering a ship in circumstances where the person charged with the offence was on the same ship as the assisted individual at the time when the individual was first in danger or distress at sea.

(4) A person is taken to have shown a fact mentioned in subsection (2) if –

- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved beyond reasonable doubt.

(5) In this section –

“act of facilitation” means the act of facilitating the arrival (or attempted arrival) in, or entry (or attempted entry) into, the Territory of an individual, as mentioned in section 32(1)(a);

“assisted individual” means the individual whose arrival (or attempted arrival) in, or entry (or attempted entry) into, the Territory is facilitated by the act of facilitation.

## Section 32: defences relating to stowaways

**34.** (1) In proceedings brought against a master of a ship under section 32, it is a defence for the master to show –

(a) that the assisted individual was a stowaway when the act of facilitation took place, and

(b) that the master, or a person acting on the master's behalf, reported the presence of the assisted individual on the ship to the Commissioner's Representative or an immigration officer –

(i) in a case where the ship was scheduled to go to the Territory, as soon as reasonably practicable after the time when the ship's next scheduled port of call became a place in the Territory, or

(ii) in a case where the ship was not scheduled to go to the Territory but the master of the ship decided that the ship needed to go to the Territory (whether for reasons relating to the presence of the assisted individual on board or for other reasons), as soon as reasonably practicable after the master made that decision.

(2) In proceedings for an offence under section 32, it is a defence for the person charged with the offence to show –

(a) that the assisted individual was a stowaway when the act of facilitation took place,

(b) that they were acting to ensure the security, general health, welfare or safety of the assisted individual, and

(c) that they had reported the presence of the assisted individual to the master of the ship as soon as reasonably practicable.

(3) A person is taken to have shown a fact mentioned in subsection (1) or (2) if –

(a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

(4) For the purposes of this section, an individual is a stowaway on a ship if –

(a) they boarded the ship without the knowledge of the master of the ship, and

(b) the master was not aware of their presence on the ship when the ship departed from the port where the individual boarded.

(5) But an individual ceases to be a stowaway if, after the master of the ship has become aware of their presence on the ship, the individual is given permission to leave the ship by the



immigration authorities of a country that the ship arrives at (whether or not they do in fact leave the ship there).

(6) In this section, “act of facilitation” and “assisted individual” have the same meanings as in section 33.

### **Forfeiture of ship**

**35.** (1) This section applies where a person is convicted on information before the Supreme Court of an offence under section 32.

(2) The court may order the forfeiture of a ship used or intended to be used in connection with the offence if the convicted person –

(a) owned the ship at the time the offence was committed,

(b) was at that time a director, secretary or manager of a company which owned the ship,

(c) was at that time in possession of the ship under a hire-purchase agreement,

(d) was at that time a director, secretary or manager of a company which was in possession of the ship under a hire-purchase agreement,

(e) was at that time a charterer of the ship, or

(f) committed the offence while acting as master of the ship.

(3) But in a case to which subsection (2)(a) or (b) does not apply, forfeiture may be ordered only if subsection (4) or (5) applies.

(4) This subsection applies where –

(a) in the course of the commission of the offence, the ship carried more than 20 Unlawful entrants, and

(b) a person who, at the time the offence was committed, owned the ship or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 32.

(5) This subsection applies where a ship’s gross tonnage is less than 500 tons.

(6) Where a person who claims to have an interest in a ship applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship unless the person has been given an opportunity to make representations.

(7) In the case of an offence under section 32, the reference in subsection (4)(a) to an Unlawful entrant shall be taken to include a reference to an asylum-seeker (within the meaning of that section).

## **Detention of ship**

**36.** (1) If a person has been arrested for an offence under section 32, the Senior Customs and Immigration Officer or a police officer may detain a relevant ship –

(a) until a decision is taken as to whether or not to charge the arrested person with that offence; or

(b) if the arrested person has been charged –

(i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or

(ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship.

(2) A ship is a relevant ship, in relation to an arrested person, if it is one which the Senior Customs and Immigration Officer or police officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 35.

(3) A person (other than the arrested person) may apply to the court for the release of a ship on the grounds that –

(a) he owns the ship,

(b) he was, immediately before the detention of the ship, in possession of it under a hire-purchase agreement, or

(c) he is a charterer of the ship.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship on condition that it is made available to the court if –

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 35.

(5) In this section “Court” means –

(a) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, the Magistrate’s Court, and

(b) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

### **Wrongful disclosure of information**

**37.** (1) A person who is or has been employed (whether as a removal officer or otherwise) in accordance with escort arrangements is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Commissioner, any information which he acquired in the course of his employment and which relates to a particular Unlawful entrant.

(2) A person guilty of such an offence is liable to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or to both.

### **General offences in connection with administration of Ordinance**

**38.** A person shall be guilty of an offence punishable on summary conviction with a fine of not more than £5,000 or with imprisonment for not more than six months, or with both, in any of the following cases –

(a) if, without reasonable excuse, he refuses or fails to submit to examination under section 4 of this Ordinance;

(b) if, without reasonable excuse, he refuses or fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is under section 4 or 5 required to furnish or produce;

(c) if on any such examination or otherwise he makes or causes to be made to an immigration officer or other person lawfully acting in the execution of this Ordinance a return, statement or representation which he knows to be false or does not believe to be true;

(d) if, without reasonable excuse, he obstructs an immigration officer or other person lawfully acting in the execution of this Ordinance.

### **Arrest without warrant**

**39.** (1) An immigration officer may arrest without warrant a person –

(a) who has committed or attempted to commit, or is committing or attempting to commit, an offence under section 31, 32 or 38(d); or

(b) whom he has reasonable grounds for suspecting has committed or attempted to commit, or is committing or attempting to commit, such an offence.

(2) In relation to the exercise of the powers conferred by subsection (1), it is immaterial that no offence has been committed.

### **Searching arrested persons**

**40.** (1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for –

(a) anything which he might use to assist his escape from lawful custody; or

(b) anything which might be evidence relating to the offence for which he has been arrested.

(4) The power conferred by subsection (3) may be exercised –

(a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and

(b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outercoat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing –

(a) that that person might use it to assist his escape from lawful custody; or

(b) that it is evidence which relates to the offence in question.

(8) Subsection (7)(b) does not apply to an item subject to legal privilege.

### **Searching persons in police custody**

**41.** (1) This section applies if a person –

(a) has been arrested for an offence under this Part; and

(b) is in custody at a police station or in police detention at a place other than a police station.

(2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything –

(a) which he might use to –

- (i) cause physical injury to himself or others;
- (ii) damage property;
- (iii) interfere with evidence; or
- (iv) assist his escape; or

(b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.

(3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).

(4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that –

- (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
- (b) it is evidence relating to the offence in question.

(5) Anything seized under subsection (4)(a) may be retained by the police.

(6) Anything seized under subsection (4)(b) may be retained by an immigration officer.

(7) The person from whom something is seized must be told the reason for the seizure unless he is –

- (a) violent or appears likely to become violent; or
- (b) incapable of understanding what is said to him.

(8) An intimate search may not be conducted under this section.

(9) The person carrying out a search under this section must be of the same sex as the person searched.

(10) In this section –

“Custody officer” has the same meaning as in the Police and Criminal Evidence Ordinance 2019 (the “2019 Ordinance”);

“Intimate search” has the meaning given by section 65 of the 2019 Ordinance, and

“Police detention” has the meaning given by section 118(2) of the 2019 Ordinance.

## **Retention of seized material**

**42.** (1) This section applies to anything seized by an immigration officer under this Part for the purposes of the investigation of an offence or on the basis that it may be evidence relating to an offence.

(2) Anything seized as mentioned in subsection (1) may be retained so long as is necessary in all the circumstances and in particular –

(a) may be retained, except as provided for by subsection (3) –

(i) for use as evidence at a trial for an offence, or

(ii) for forensic examination or for investigation in connection with an offence, and

(b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing may be retained for a purpose mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

## **Seized material: access and copying**

**43.** (1) If a person showing himself to have had custody or control of the material immediately before it was seized, asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

(2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision –

(a) in the case of seized material within subsection (8)(a), of an immigration officer;

(b) in the case of seized material within subsection (8)(b), of a police officer.

(3) An immigration officer may photograph or copy, or have photographed or copied, seized material.

(4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for –

(a) that person to have access to the material for the purpose of photographing or copying it under the supervision –

(i) in the case of seized material within subsection (8)(a), of an immigration officer;

(ii) in the case of seized material within subsection (8)(b), of a police officer; or

(b) the material to be photographed or copied.

(5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.

(6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice –

(a) the exercise of any functions in connection with which the material was seized; or

(b) an investigation which is being conducted under this Ordinance, or any criminal proceedings which may be brought as a result.

(7) “Relevant person” means –

(a) a person who had custody or control of seized material immediately before it was seized, or

(b) someone acting on behalf of such a person.

(8) “Seized material” means anything –

(a) seized and retained by an immigration officer, or

(b) seized by an immigration officer and retained by the police,

under this Part.

### **Access to legal advice**

**44.** (1) An Unlawful entrant shall be entitled, if he so requests, to consult privately with a legal practitioner.

(2) A request under subsection (1) and the time at which it was made shall be recorded in the immigration log.

(3) If a person makes such a request, he must be permitted to consult a legal practitioner as soon as is reasonably practicable except to the extent that delay is permitted by this section.

(4) In any case he must be permitted the opportunity to consult a legal practitioner within 36 hours from the time when a request to consult with a legal practitioner is first made.

(5) Delay in compliance with a request is only permitted if the Senior Customs and Immigration Officer authorises it.

(6) The Senior Customs and Immigration Officer may give an authorisation under subsection (5) orally or in writing.

(7) The Senior Customs and Immigration Officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) at the time when the person desires to exercise it –

(a) will hinder the ability to make suitable enquiries with any relevant law-enforcement authority; or

(b) may lead to the arrival of further Unlawful entrants.

(8) If delay is authorised –

(a) the Unlawful entrant shall be told the reasons for it; and

(b) the reason shall be noted on the immigration log.

(9) The duties imposed by subsection (8) shall be performed as soon as is practicable.

(10) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

(11) For the purposes of this section, the words “to consult” may involve the exchange of words or text, by transmissions of voice or data through a telecommunications system.

(12) Nothing in this section shall require the immigration authorities of the Territory to permit the entry of a legal practitioner into the Territory.

(13) “relevant law-enforcement authority” shall have the same meaning as section 14(2).

## **Regulations**

**45.** (1) The Commissioner may make Regulations for the purpose of carrying into effect the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Commissioner may make regulations to –

(a) provide the mechanism that is to be applied in determining how an Unlawful entrant will be removed from the Territory;

(b) determine the extent to which an Unlawful entrant shall have freedom of movement within Diego Garcia, or any other part or parts of the Territory, and

(c) create offences and provide that contravention of and failure to comply with the regulations made under this section shall be an offence and provide for



penalties for such offences, not exceeding a fine of £5,000 and imprisonment for one year, or both.

### **Declaration as to dis-application of laws of England**

**46.** In accordance with section 4(1) of the Courts Ordinance 1983, it is hereby declared that the following United Kingdom enactments and statutory instruments, as they may affect an Unlawful entrant, do not form part of the law of the Territory –

- (a) The Children Act 1989 and any regulations made thereunder;
- (b) The Data Protection Act 2018, including provisions relating to Subject Access Reports;
- (c) The (UK) GDPR;
- (d) Section 61 and Schedule 10 of the Immigration Act 2016 (Immigration bail) and related provisions;
- (e) The Immigration and Asylum Act 1999 and any regulations made thereunder.

### **Saving for other laws**

**47.** Nothing in this Ordinance shall be construed as in any way derogating from the provisions of the British Indian Ocean Territory (Immigration) Order 2004.

### **Repeal of laws**

**48.** (1) The following laws are repealed –

- (a) The Removal Order (Process of Determination) Regulations 2022;
- (b) The Statement on Process, issued on 25 October 2023;
- (c) The Restriction of Movement (Relevant Persons) Order 2024 (as amended).

(2) The repeal of the laws set out in subsection (1) shall not affect the continuing operation of those laws in respect to those persons to whom they were applicable prior to the entry into force of this Ordinance.

(3) Despite subsection (1), the Commissioner may amend the laws set out in that subsection, to the extent that they may affect those persons described in subsection (2).

## SCHEDULE

(Section 18(6))

File number:	
Name of Unlawful entrant and date of birth:	
Name(s) of dependants (if any) and date(s) of birth:	

### STATEMENT OF INTENTION CONCERNING CLAIM FOR INTERNATIONAL PROTECTION

***Important notes to Unlawful entrant:***

1. You are required to state whether you wish, or do not wish, to make a claim for international protection and this form will contain that information.
2. If you wish to make a claim for international protection, you (and any dependants) will be taken to the British overseas territory, Saint Helena, for that claim to be made and processed.
3. If you do not wish to make a claim you (and any dependants) will be taken to a relevant country. That may be your country of nationality, your country of former habitual residence (if you are stateless) or the country from which you departed before arriving in the Territory.
4. Before you make a decision, you are entitled to request independent legal advice. If you have a legal representative, it is respectfully suggested that you speak with that person before completing this form. If you do not have a legal representative, but want to speak with a lawyer, the authorities of the British Indian Ocean Territory will assist you in trying to find one.
5. If you have any doubts or queries in connection with this form, you should inform an immigration officer, who will make a careful note of what is said. You will be provided in due course with further information in response.

I, \_\_\_\_\_ hereby state that –

I **do wish** to make a claim for international protection.

I **do not wish** to make a claim for international protection.

***Tick the relevant box***

I certify that this information has been provided voluntarily by me and that it is true to the best of my knowledge and belief.

Signature:

\_\_\_\_\_

Name of person (*in capitals*): \_\_\_\_\_

Date: \_\_\_\_\_

I, \_\_\_\_\_ have faithfully translated the contents of this

document, including the “Important notes to Unlawful entrant”, from English into a language that the above-named person understands. I have also faithfully translated the response made by the above-named and written it down in English. This has been done to the best of my skill and ability.

Signature:

\_\_\_\_\_

Name of interpreter (*in capitals*): \_\_\_\_\_

Date: \_\_\_\_\_



## Statement on Process

(6 January 2025)

### Addendum

I, Nishi Dholakia, Commissioner of the British Indian Ocean Territory (“BIOT”) hereby issue this Addendum to the Statement on Process issued on 25 October 2023, (the “SoP”), in accordance with regulation 3 of the Removal Order (Process of Determination) Regulations 2022.

This Addendum amends the SoP as follows –

1. In Part C (Process to be applied) –
  - a. the reference in paragraph 39 to “paragraph 27” is amended to read “paragraphs 35 and 36”, and
  - b. a paragraph 40 is added, which reads –

“40. For procedures where additional evidence becomes available after the Commissioner has made a decision pursuant to paragraphs 35 and 37, see Annex 3.”

2. An Annex 3 is added immediately after Annex 2, which reads –

#### “ANNEX 3

##### Submission of Additional Evidence after Decision Made Not to Issue Removal Order

1. This annex concerns the process to be undertaken where additional evidence becomes available to the Commissioner after he has made a decision not to issue a removal order in connection with an applicant (“A”).
2. For the purposes of this annex, “further evidence” means a report, photograph, recording, or document of any kind –
  - a. which is significantly different from the evidence that was provided in A’s case file sent to the Reviewers in accordance with paragraph 26 of the SoP, prior to the Commissioner making a decision in accordance with paragraphs 35 and 37 of the SoP (the “decision”), and

- b. which may have a material effect upon the decision that was made.
3. Where the Commissioner has received material which could amount to further evidence, the Commissioner may provide that material to the Reviewers.
4. After receiving and considering material submitted pursuant to paragraph 3, and any record of further actions provided pursuant to paragraph 7, the Reviewers may –
  - a. determine that the material does not amount to further evidence and provide reasons for that determination to the Commissioner;
  - b. determine that the material does amount to further evidence and notify the BIOT Administration of that determination;
  - c. direct that further actions (the “further actions”) be carried out, including but not limited to the BIOT Administration providing copies of the material to A and his or her legal representatives and –
    - i. requesting representations from them on its potential effect,
    - ii. requesting further evidence from them in connection with it, or
    - iii. arranging for A to be further interviewed.
5. Paragraphs 6 and 7 apply where the Reviewers have acted in accordance with paragraph 4(c).
6. The BIOT Administration will expeditiously make reasonable arrangements for the further actions to be carried out, and make a record (the “record of further actions”) of –
  - a. any additional evidence or representations which have been obtained following the further actions being carried out, or
  - b. the details as to why no additional evidence or representations could reasonably be obtained following the further actions being carried out.
7. Upon completion of the record of further actions the BIOT Administration will provide a copy of it to the Reviewers who shall thereafter resume acting in accordance with paragraph 4.
8. Paragraphs 9 and 10 apply where the Reviewers have acted in accordance with paragraph 4(b).
9. The BIOT Administration will –
  - a. provide A and his or her legal representatives with the further evidence and any record of further actions, and

- b. invite A and his or her legal representatives to provide any representations or additional evidence within ten working days. This duration of time may be extended by the BIOT Administration for good cause.
10. The Reviewers will –
- a. be provided with any representations or evidence provided in accordance with paragraph 9,
  - b. determine whether the further evidence materially affects the advice that they previously provided to the Commissioner in accordance with paragraph 33 of the SoP, and
  - c. proceed to act in accordance with paragraph 11.
11. After making a determination in accordance with paragraph 10(b), the Reviewers will provide the Commissioner with further advice (the “further advice”) as to whether –
- a. their opinion remains the same, or
  - b. their opinion has been amended, to the effect that they have reached a provisional view that the person concerned is not entitled to protection on non-refoulement grounds.
12. Where the Reviewers have acted in accordance with paragraph 11(b) –
- a. A and his or her legal representatives will be informed of the amended opinion,
  - b. the decision will be set aside,
  - c. the Reviewers will act in accordance with paragraph 28(b) of the SoP, and
  - d. the procedures set out in paragraphs 29 to 40 of the SoP, in so far as they are applicable, will be followed.

”

3. The provisions set out in this Addendum will take effect forthwith.

[SIGNED ON THE ORIGINAL]

Nishi Dholakia  
Commissioner  
British Indian Ocean Territory

6 January 2025