



BRITISH INDIAN OCEAN TERRITORY

OFFICIAL GAZETTE

VOLUME LIV

2022

ISSUE II

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THE BRITISH INDIAN OCEAN TERRITORY

OFFICIAL GAZETTE

VOL LIV: 2022

Issue No. II

Published by Authority

January 2024

PART 1

NOTICES

- A. The following Notice is published by order of the Commissioner:
1. Notice of Appointment of Commander Colvin Osborn (Amendments).
- B. The following Notices are published by order of the Commissioner's Representative:
- None.

PART 2

APPOINTMENTS

- A. The Commissioner has made the following appointments:
1. COMMANDER COLVIN OSBORN to be Commissioner's Representative in place of COMMANDER STEVEN DRYSDALE OBE with effect 20 January 2022, under section 7 of the British Indian Ocean (Constitution) Order 2004.
 2. COMMANDER COLVIN OSBORN to be Magistrate in place of COMMANDER STEVEN DRYSDALE OBE with effect 20 January 2022, under section 27(1) of the Courts Ordinance 1983.
 3. COMMANDER COLVIN OSBORN to be a Coroner in place COMMANDER STEVEN DRYSDALE OBE with effect 20 January 2022, under section 3(1) of the Coroners Ordinance 1985.
 4. COMMANDER COLVIN OSBORN to be Postmaster in place of COMMANDER STEVEN DRYSDALE OBE with effect 20 January 2022, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 5 of the Post Office Ordinance 1967.
 5. COMMANDER COLVIN OSBORN to be a Customs Officer in place of COMMANDER STEVEN DRYSDALE OBE with effect 20 January 2022, under

- section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 3 of the Imports and Exports Control Ordinance 2009.
6. MR BALRAJ SINGH DHANDA to be Administrator in place of MR CHRISTOPHER PYMAN with effect from 25 April 2022, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004.
 7. MR BALRAJ SINGH DHANDA to be Director of Fisheries in place of MR CHRISTOPHER PYMAN with effect from 25 April 2022, Section 4(1) of the Fisheries (Conservation and Management) Ordinance 2007.
 8. MS REBECCA MARGARET RICHARDS to be Deputy Commissioner with effect from 21 March 2022, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004, and in accordance with the Office of Deputy Commissioner Order 2008.
 9. MR NADIM BASHIR to be Deputy Coroner with effect from 11 November 2022, under section 3(1) of the Coroners Ordinance 1985.
 10. MS SALLY ROBINSON (JOHNSON) to be Deputy Coroner with effect from 11 November 2022, under section 3(1) of the Coroners Ordinance 1985.

PART 3

CORRECTIONS

The following corrections have been made:

1. The Office of Deputy Commissioner Order 2017 (Revocation) Order 2022 has had the S.I. number inserted after signature;
2. The Removal Order (Process of Determination) Regulations 2022 was incorrectly numbered “S.I. No.7 of 2022”, this has been corrected to read “S.I. No.4 of 2022”;
3. The Road Traffic Ordinance 2022 (Temporary Measures) (Expired Driving Licences) Ordinance 2022 Extension Order 2022 was incorrectly numbered “S.I. No.9 of 2022”, this has been corrected to read “S.I. No.5 of 2022”;
4. The Supreme Court (Location of Sub-Registry) (Amendment) Notice 2022 was incorrectly numbered “S.I. No.10 of 2022”, this has been corrected to read “S.I. No.6 of 2022”; and
5. The Supreme Court (Location of Sub-Registry) (Amendment) (No.2) Notice 2022 was incorrectly numbered “S.I. No.11 of 2022”, this has been corrected to read “S.I. No.7 of 2022”.

PART 4

LEGAL SUPPLEMENT

- A. The following laws have been enacted:
1. Ordinance No. 1 of 2022: The Road Traffic Ordinance 2022
 2. Ordinance No. 2 of 2022: The Road Traffic Ordinance 2022 (Temporary Measures) (Expired Driving Licences) Ordinance 2022
- B. The following Proclamations, Directions, Orders and other statutory instruments have been enacted:
1. S.I. No. 1 of 2022: The Speed of Cycles and Electric Transportation Devices Measuring Devices Approval 2022
 2. S.I. No. 2 of 2022: The Prohibited Imports and Exports Control Order 2022
 3. S.I. No. 3 of 2022: Office of Deputy Commissioner Order 2017 (Revocation) Order 2022
 4. S.I. No. 4 of 2022: The Removal Order (Process Of Determination) Regulations 2022
 5. S.I. No.5 of 2022: The Road Traffic Ordinance 2022 (Temporary Measures) (Expired Driving Licences) Ordinance 2022 Extension Order 2022
 6. S.I. No. 6 of 2022: The Supreme Court (Location of Sub-Registry) (Amendment) Notice 2022
 7. S.I. No. 7 of 2022: The Supreme Court (Location of Sub-Registry) (Amendment) (No.2) Notice 2022
- C. The following licences have been granted:
1. None.
- D. The following UK laws have been extended to the Territory:
1. S.I. No. 453 of 2022: The Russia (Sanctions) (Overseas Territories) (Amendment) Order 2022
 2. S.I. No. 843 of 2022: The Russia (Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2022

3. S.I. No. 1167 of 2022: The Russia (Sanctions) (Overseas Territories) (Amendment) (No. 3) Order 2022
4. S.I. No. 1338 of 2022: The Russia (Sanctions) (Overseas Territories) (Amendment) (No. 4) Order 2022
5. S.I. No. 1339 of 2022: The Republic of Belarus (Sanctions) (Overseas Territories) (Amendment) Order 2022
6. S.I. No. 1347 of 2022: The Haiti (Sanctions) (Overseas Territories) Order 2022

PART 5

OTHER LEGAL DOCUMENTS

The following legal documentation is also published in this Issue:

1. Statement on Process, 21 June 2022
2. Statement on Process, 22 July 2022
3. Statement on Process Addendum, 17 August 2022
4. Statement on Process Second Addendum, 27 October 2022

NOTICES



BRITISH INDIAN OCEAN TERRITORY

NOTICE

APPOINTMENT OF COMMANDER COLVIN OSBORN (AMENDMENTS)

On 15 November 2021, Commander Colvin Osborn, Royal Navy, was appointed to the positions of Commissioner's Representative, Magistrate, Coroner, Postmaster and Customs Officer. Those appointment notices are amended in the following ways:

- a. The spelling of the surname of Commander Colvin Osborn, Royal Navy, is hereby corrected.
- b. Each appointment is hereby amended to specify that they are to be held, at Her Majesty's pleasure, with effect from the 20 January 2022.

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner
British Indian Ocean Territory

Dated: 18th January 2022

LEGAL SUPPLEMENT



BRITISH INDIAN OCEAN TERRITORY

THE ROAD TRAFFIC ORDINANCE 2022

Ordinance No. 1 of 2022

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THE BRITISH INDIAN OCEAN TERRITORY
THE ROAD TRAFFIC ORDINANCE 2022

Ordinance No. 1 of 2022

ARRANGEMENT OF SECTIONS

Section		Page
PART I – GENERAL		
1.	Citation and commencement.	6
2.	Definitions.	6
3.	Motor vehicles – Definitions.	7
PART II – QUALIFICATION TO DRIVE MOTOR VEHICLE		
4.	Driving licence required.	7
5.	Production of driving licence.	9
6.	Disqualification.	9
PART III – COMPULSORY THIRD PARTY INSURANCE		
7.	Users of motor vehicles to be insured against third party risks.	10
8.	Requirements in respect of policies of insurance.	10
9.	Certain conditions in policies to be of no effect.	11
10.	Avoidance of restrictions on scope of policies covering third party risks.	11
11.	Liability of insurers in respect of third party risks.	12
12.	Rights of third parties against insurers.	13
13.	Duty to give necessary information to third parties.	14
14.	Settlement between insurers and insured persons.	15
15.	Bankruptcy, etc., of insured persons not to affect certain claims by third parties.	15
16.	Further rights of third parties against insurers.	15
17.	Duty to surrender certificate on cancellation of policy.	16
18.	Requirements as to production of certificate of insurance.	16
PART IV – CONSTRUCTION AND USE		
19.	Brakes required on motor vehicles and trailers.	16
20.	Motor vehicles and trailers not to be in dangerous condition.	17
21.	Lights and horn required on motor vehicles etc.	17
22.	Offences against sections 19, 20 and 21 and vehicle defect rectification notices.	18
23.	Speed limits and traffic signs.	18
24.	Speed limit – exemptions for certain drivers of specified motor vehicles.	20
25.	Directions given by traffic signs.	21

PART V – RULE OF THE ROAD

26.	General rule.	22
-----	---------------	----

PART VI – OTHER DUTIES AND OFFENCES RELATING PARTICULARLY TO MOTOR VEHICLES

27.	Causing death by reckless driving.	22
28.	Reckless driving.	22
29.	Careless and inconsiderate driving.	22
30.	Driving, or being in charge, when under influence of drink or drugs.	22
31.	Driving with alcohol concentration above prescribed limit.	23
32.	Power to administer preliminary tests.	23
33.	Provision of specimens for analysis.	25
34.	Evidence in proceedings for an offence under section 30 or 31.	26
35.	Interpretation and definitions.	27
36.	Seatbelts.	28
37.	Prohibition of use of mobile telephone or other hand-held device whilst driving.	28
38.	Duty to stop and furnish particulars, in case of accident.	29
39.	Duty, in a case of accident involving injury to another, to produce certificates of insurance.	30
40.	Power of Police officers, etc., to stop vehicle.	30

PART VII – OTHER DUTIES AND OFFENCES RELATING PARTICULARLY TO CYCLES, ELECTRIC TRANSPORTATION DEVICES AND SKATEBOARDS

41.	Restrictions on use of Electric Transportation Devices, skateboards and Electrically Assisted Pedal Cycles.	31
42.	Reckless riding.	31
43.	Careless and inconsiderate riding.	32
44.	Riding when under the influence of drink or drugs.	32
45.	Speed limits and traffic signs – Cycles and Electric Transportation Devices.	32
46.	Restriction on carriage of persons on cycles and Electric Transportation Devices.	33
47.	Prohibition of use of mobile telephone or other hand-held device whilst riding.	33
48.	Prohibition of wearing headphones whilst riding.	33
49.	Cycles and Electric Transportation Devices – Construction and use requirements.	34
50.	Riders of cycles and Electric Transportation Devices to wear personal safety equipment.	34
51.	Duty to stop and furnish particulars, in case of accident – Cycles and Electric Transportation Devices	35
52.	Power of Police Officers, etc., to stop cycles or Electric Transportation Devices.	35

PART VIII – FIXED PENALTIES

53.	Interpretation and definitions.	36
54.	Fixed penalty offences.	36
55.	Fixed penalty notices.	36

56.	Amount of fixed penalty.	37
57.	Notices to be given on the spot.	38
58.	Effect of fixed penalty notice.	38
59.	Payment of penalty.	38
60.	Registration certificates.	38
61.	Registration of sums payable in default.	39
62.	Invalidation of fixed penalty notices or subsequent proceedings.	39
63.	Provisions supplementary to section 62.	40
64.	General restriction on proceedings.	41
65.	Certificates about payment.	41

PART IX – MISCELLANEOUS

66.	Restriction on prosecution for certain offences.	42
67.	Signification of Commissioner’s approval of devices.	42
68.	Application to the Crown.	43

PART X – REPEAL AND RELATED PROVISIONS

69.	Repeal.	43
70.	Transitional provisions.	43
71.	Consequential amendments.	44

SCHEDULE 1 – Places where persons may ride an Electric Transportation Device or skateboard	45
---	----

SCHEDULE 2 – Places where persons may ride an Electrically Assisted Pedal Cycle	45
--	----

SCHEDULE 3 – Fixed Penalty Offences.	46
--------------------------------------	----

SCHEDULE 4 – Form of Fixed Penalty.	47
-------------------------------------	----

SCHEDULE 5 – Form of Vehicle Defect Rectification Notice.	48
--	----

SCHEDULE 6 – Consequential amendments.	49
--	----

Enacted by the Commissioner for the British Indian Ocean Territory

21 January 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner

THE ROAD TRAFFIC ORDINANCE 2022

CHAPTER H.1

An Ordinance to consolidate, with amendments, existing provisions relating to motor vehicles, cycles and other vehicles, to road traffic generally and to activities likely to affect such traffic, to incorporate new provisions relating to Electric Transportation Devices, and to make provision connected therewith or incidental thereto.

PART I

GENERAL

Citation and commencement.

1. This Ordinance may be cited as the Road Traffic Ordinance 2022, which shall come into force on 1 May 2022.

Definitions.

2. (1) In this Ordinance unless the contrary intention appears –

“**the Commanding Officer**” means the United States Navy Officer in command of the facility, and the “**facility**” means the facility described in paragraph (1)(a) of the Exchange of Notes of 25 February 1976 between the Government of the United Kingdom and the Government of the United States of America concerning a United States Navy Support Facility on Diego Garcia;

“**cycle**” means a bicycle, tricycle or Electrically Assisted Pedal Cycle, not being a motor vehicle;

“**to drive**”, in relation to a motor vehicle, means to have control of the steering apparatus of that vehicle and, in relation to a trailer, means to have control of the steering apparatus of the motor vehicle drawing that trailer, and “**driver**” is to be construed accordingly;

“**Electric Transportation Device**” means a two-wheeled electric vehicle with handlebars and includes e-scooters and Segways.

“**Electrically Assisted Pedal Cycle**” means a bicycle fitted with pedals that can be used to drive it forward, helped by an electric motor;

“**Police Officer**” means a police officer appointed as such by or on behalf of the Commissioner pursuant to section 52 of the Courts Ordinance 1983 and includes the Chief of Police appointed pursuant to section 115A of the Police and Criminal Evidence Ordinance 2019;

“**Services policeman**” means a provost officer within the meaning of the Armed Forces Act 2006 or a member of the armed forces of the United States of America who is performing duties similar to those performed by such a provost officer or who is performing the duties of a roadmaster;

“**trailer**” means a vehicle drawn behind a motor vehicle;

“**vehicle**” includes a cycle and an Electric Transportation Device.

(2) If the question arises in any proceedings whether a person was, at any material time, a Services policeman as defined in subsection (1), a certificate signed by the Commissioner's Representative that that person was or was not, at that time, such a provost officer as is there referred to, or a certificate signed by the Commanding Officer that that person was or was not, at that time, a member of the armed forces of the United States of America performing the duties there referred to, shall be conclusive of that matter in those proceedings, and a certificate purporting to be so signed shall be received in evidence as such without proof of signature unless credible evidence to the contrary is adduced.

Motor vehicles – Definitions

3. (1) In this Ordinance unless the contrary appears –

“**motorcycle**” means a motor vehicle which has less than four wheels and the weight of which, when it is unladen, does not exceed 410 kilograms, and

“**motor vehicle**” means, subject to subsection (2), a mechanically propelled vehicle intended or adapted for use on roads, whether or not that is its primary purpose.

(2) For the purposes of this Ordinance –

(a) an Electrically Assisted Pedal Cycle, and

(b) an Electric Transportation Device,

are to be treated as not being motor vehicles.

PART II

QUALIFICATION TO DRIVE MOTOR VEHICLE

Driving licence required.

4. (1) No person may drive a motor vehicle of any class or description at any place in the Territory unless he is the holder of a driving licence, complying with subsection (4), which authorises him to drive a vehicle of that class or description.

(2) No person shall permit or employ any other person to drive a motor vehicle of any class or description at any place in the Territory unless that other person is the holder of a driving licence, complying with subsection (4), which authorises him to drive a vehicle of that class or description.

(3) Any person who contravenes subsection (1) or subsection (2) is guilty of an offence and is liable, on conviction, to a fine of £1,000.

(4) To comply with this subsection, a driving licence must be current and must have been issued

–
(a) by a competent authority in –

(i) the United Kingdom;

(ii) the United States of America;

(iii) any country that is a member of the Commonwealth;

(iv) any country that is a member of the European Union, or the European Economic Area;

(v) Switzerland, or

(vi) any country as is for the time being specified by a notice issued by the Commissioner, which shall be published in the *Gazette*;

(b) in accordance with an international convention to which the United Kingdom or the United States of America is a party; or

(c) in respect only of the driving of vehicles belonging to the Government of the United States of America, by a competent authority of the armed forces of the United States of America in the Territory.

(5) For the purposes of any proceedings for an offence under this section –

(a) a certificate signed by the Commanding Officer that a driving licence had or had not been issued by a competent authority in the United States of America or in accordance with an international convention to which the United States of America was a party or by such a competent authority as is referred to in subsection (4)(c); or

(b) a certificate signed by the Administrator or by the Commissioner's Representative that a driving licence had or had not been issued as otherwise set out in subsection (4),

shall be conclusive of that matter.

(6) Any certificate purporting to be signed as mentioned in subsection (5) shall be received in evidence as such without proof of signature unless credible evidence to the contrary is adduced, and a facsimile or electronic copy of a certificate signed by the Administrator shall be received in evidence as if it were the original certificate.

Production of driving licence.

5. (1) Any person driving a motor vehicle shall, on being requested by a Police Officer to do so, produce his driving licence to that officer there and then for examination:

Provided that it shall be a sufficient compliance with this subsection if the driver of the vehicle, when so requested, undertakes to the officer to produce the licence in person to that officer or to another Police Officer within five days of the request and does so.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Disqualification.

6. (1) In this section “**disqualified**” means disqualified from driving a motor vehicle at any place in the Territory.

(2) A court by which a person is convicted of an offence under section 6(7), 7(2), 23(3), 23(5), 28, 29, 30(2), 31(2), 37(6), 38(4) or 40 may order that person to be disqualified either indefinitely or for such period as the court thinks fit.

(3) A court by which a person is convicted of an offence under section 27, 30(1), 31(1), 32(9) or 33(3) shall order him to be disqualified for such period, not less than 12 months, as it thinks fit, but if it considers that there are special reasons to do so, it may instead order him to be disqualified for a shorter period or not order him to be disqualified.

(4) An order of disqualification made by a court under this section in consequence of a conviction may be in addition to or instead of any other penalty imposed or other order made by the court in consequence of that conviction.

(5) A person who is ordered by a court under this section to be disqualified may appeal against that order in the same manner and subject to the same conditions as apply to an appeal against a sentence imposed on conviction of an offence (and the provisions of the Criminal Procedure Code 2019 relating to appeals against sentence shall have effect accordingly) and, where such an appeal is brought, the court which made the order may, if it thinks fit, suspend its operation pending the hearing and determination of the appeal.

(6) A person who is ordered by a court under this section to be disqualified may, at any time not earlier than six months from the date of the order and from time to time thereafter (but not earlier than three months from the previous application under this subsection) apply to that court to remove the disqualification, and the court shall then, having regard to the character of the applicant, to his conduct subsequent to the order of disqualification, to the nature of the offence by reason of which he was disqualified and to any other circumstances of the case, either order the disqualification to be removed as from such date as that order specifies or refuse the application.

(7) A person who, while disqualified under this section, drives a motor vehicle at any place in the Territory is guilty of an offence and is liable, on conviction, to imprisonment for six months or a fine of £5,000.

PART III

COMPULSORY THIRD PARTY INSURANCE

Users of motor vehicles to be insured against third party risks.

7. (1) Subject to the provisions of this Part, no person may use, or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of that vehicle by that person, or by that other person, as the case may require, a policy of insurance in respect of third party risks which complies with the requirements of this Part.

(2) A person who contravenes this section shall be guilty of an offence and is liable, on conviction, to a fine of £5,000 or to imprisonment for 12 months.

(3) It is a defence (the onus of proof of which lies on the accused person) to a charge under this section that the vehicle did not belong to the accused person and was not in his possession under a contract of hire or of loan, that he was using the vehicle in the course of his employment, and that he neither knew nor had reason to believe that there was not in force in relation to the vehicle a policy of insurance which complies with the requirements of this Part.

(4) This section does not apply to the use, for the purposes of the Government of the United States of America, of a motor vehicle owned by that Government.

Requirements in respect of policies of insurance.

8. (1) To comply with the requirements of this Part, a policy of insurance must be a policy which

–
(a) is issued by an insurer qualified to carry on, and carrying on, the business of motor vehicle third party insurance in, and in accordance with the laws of, any part of the United Kingdom or of the United States of America or of any other country designated by the Commissioner for the purposes of this Part by notice published in the *Gazette*;

(b) insures such person or persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by, or arising out of, the use of the motor vehicle:

Provided that any such policy shall not be required to cover –

(i) any liability in respect of the death of, or bodily injury to, a person in the employment of any person insured by the policy, if the death or bodily injury arises out of and in the course of his employment; or

(ii) any contractual liability.

(2) A person issuing a policy of insurance for the purposes of this Part shall be liable to indemnify the person or persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those persons or those classes of persons.

(3) A policy shall be of no effect for the purposes of this Part unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate (in this Ordinance referred to as a “**certificate of insurance**”) signed by the insurer or his authorised representative.

(4) In this Part the expression “**policy of insurance**” includes a covering note.

Certain conditions in policies to be of no effect.

9. (1) Any condition in a policy issued for the purposes of this Part providing that no liability shall arise under the policy, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy shall be of no effect in connection with such liabilities as are required to be covered by a policy under section 8.

(2) Where a person uses a motor vehicle in circumstances such that under section 7 there is required to be in force in relation to his use of it such a policy of insurance as is mentioned in section 7(1), then, if any other person is carried in or upon the vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held –

(a) to negative or restrict any such liability of the user in respect of persons carried in or upon the vehicle as is required by section 8 to be covered by a policy of insurance; or

(b) to impose any conditions with respect to the enforcement of any such liability of the user,

and the fact that a person so carried has willingly accepted as his, the risk of negligence on the part of the user shall not be treated as negating any such liability of the user.

For the purposes of this subsection references to a person being carried in or upon a vehicle include references to a person entering or getting on to, or alighting from, the vehicle, and the reference to an antecedent agreement is to one made at any time before the liability arose.

(3) Nothing in this section shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

Avoidance of restrictions on scope of policies covering third party risks.

10. Where a certificate of insurance has been delivered under section 8(3) to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters –

- (a) the age or physical or mental condition of persons driving the vehicle;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the time at which or the areas within which the vehicle is used;
- (f) the horse power or cubic capacity or value of the vehicle;
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification,

shall, as respects such liabilities as are required to be covered by a policy under section 8, be of no effect:

Provided that nothing in this section shall require the insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

Liability of insurers in respect of third party risks.

11. (1) If, after a certificate of insurance has been delivered under section 8(3) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 8 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, whether or not the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of the costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1) –

(a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given the insurer had notice of the bringing of the proceedings;

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or

(c) in connection with any liability, if, before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either –

(i) before the happening of that event the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a declaration stating that the certificate had been lost or destroyed;

(ii) after the happening of that event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was issued made a declaration pursuant to subsection (2)(c)(i); or

(iii) either before or after the happening of that event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under subsection (1) if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do, apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the proceedings, specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount which an insurer becomes liable under subsection (1) to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section the expression “**material**” means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression “**liability covered by the terms of the policy**” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or had avoided or cancelled, the policy.

Rights of third parties against insurers.

12. (1) Where, under any policy issued for the purposes of this Part, a person (in this Part called “**the insured**”) is insured against liabilities to third parties which he may incur and any of the following events occurs –

(a) the insured becomes bankrupt or makes a composition or arrangement with his creditors; or

(b) where the insured is a company, a winding-up order is made, or a resolution for a voluntary winding-up is passed with respect to the company, or a receiver or manager of the company's business or undertaking is appointed, or possession is taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge,

then, if, either before or after that event, any such liability as referred to in this subsection is incurred by the insured, his rights against the insurer under the policy in respect of the liability shall be transferred to, and vested in, the third party to whom the liability was so incurred.

(2) Any condition in a policy issued for the purposes of this Part, purporting directly or indirectly to avoid the policy or to alter the rights of the third party thereunder upon the happening to the insured of any of the events specified in subsection (1)(a) or subsection (1)(b) shall be of no effect.

(3) Upon a transfer under subsection (1) the insurer shall, subject to section 14, be under the same liability to the third party as he would have been under to the insured, but –

(a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Ordinance shall affect the rights of the insured against the insurer in respect of the excess; and

(b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Ordinance shall affect the rights of the third party against the insured in respect of the balance.

(4) For the purposes of this section and sections 13 and 14, the expression “**liabilities to third parties**”, in relation to a person insured under any policy of insurance, shall not include any liability of that person in the capacity of insurer under some other policy of insurance.

(5) References in this section and in sections 13 and 14 to a company being wound up do not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Duty to give necessary information to third parties.

13. (1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under section 8 shall on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of this Part, or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under section 8(3).

(2) If any person becomes bankrupt or makes a composition or arrangement with his creditors, or if a winding-up order is made, or a resolution for a voluntary winding-up is passed with respect to any company, or if a receiver or manager of the company's business or undertaking is duly appointed, or if possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to a charge, it is the duty of the bankrupt, debtor or company and, as the case may be, of the trustee, liquidator, receiver or manager or person in possession of the property, to give, at the request of any person claiming that the bankrupt, debtor or company is under a liability to him, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Ordinance and for the purpose of enforcing such rights, if any; and any contract of insurance, in so far as it purports, whether directly or

indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in any of the events described in this subsection, or otherwise to prohibit or prevent the giving thereof in any of those events, shall be of no effect.

(3) If the information given to any person in pursuance of subsection (2) discloses reasonable ground for supposing that there have or may have been transferred to him under this Ordinance rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by that subsection on the persons therein mentioned.

(4) The duty to give information imposed by the section shall include a duty to allow all contracts of insurance, receipts for premiums and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

(5) If, without reasonable excuse, any person fails to comply with the provisions of this section or wilfully makes any false or misleading statement in reply to any demand or request made thereunder, he is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Settlement between insurers and insured persons.

14. Where a person who is insured under a policy issued for the purposes of this Part has become bankrupt, or where, if such an insured person is a company, a winding-up has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the bankruptcy or winding-up, as the case may be, nor any waiver, assignment or other disposition made by, or payment made to, the insured after that commencement shall be effective to defeat or affect the rights transferred to the third party under this Ordinance but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

Bankruptcy, etc., of insured persons not to affect certain claims by third parties.

15. Where a certificate of insurance has been delivered under section 8(3) to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in section 12(1) shall, despite anything in this Ordinance, not affect any liability of that person that is required to be covered by a policy under section 8, but nothing in this section shall affect any rights against the insurer conferred under section 12, 13 or 14 on the person to whom the liability was incurred.

Further rights of third parties against insurers.

16. (1) No settlement by an insurer in respect of any claim which has been or might be made by a third party in respect of any liability that is required to be covered by a policy under section 8 shall be valid unless the third party is a party to that settlement.

(2) Despite the death of any person insured under section 8, a policy issued under this Part shall remain in force and available for third parties as if the insured person were still alive.

Duty to surrender certificate on cancellation of policy.

17. Where a certificate of insurance has been delivered under section 8(3) to the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate was delivered shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, make a declaration to that effect, and, if he fails to do so, he is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Requirements as to production of certificate of insurance.

18. (1) Any person driving a motor vehicle shall, on being so required by a Police Officer, give his name and address and the name and address of the owner of the vehicle and produce his certificate, and if he fails to do so, he is guilty of an offence and is liable, on conviction, to a fine of £1,000:

Provided that it is a sufficient compliance with this subsection if the driver of the vehicle, when so requested, undertakes to the officer to produce the certificate in person to that officer or to another Police Officer within five days of the request and does so.

(2) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by a Police Officer to give for the purpose of determining whether the motor vehicle was or was not being driven in contravention of section 7 on any occasion when the driver was required under this section to produce his certificate, and, if the owner fails to do so, he is guilty of an offence and is liable, on conviction, to a fine of £1,000.

(3) In this section the expression “**produce his certificate**” means produce for examination the relevant certificate of insurance or other evidence that the motor vehicle was not being driven in contravention of section 7.

PART IV

CONSTRUCTION AND USE

Brakes required on motor vehicles and trailers.

19. (1) A motor vehicle when used shall have either an efficient braking system having two means of operation or two efficient braking systems each having a separate means of operation, in either case capable of being operated by the driver of the vehicle.

(2) A trailer with a gross vehicle weight of 751 kilograms or more shall, when used, have an efficient braking system capable of being operated by the driver of the drawing vehicle.

Motor vehicles and trailers not to be in dangerous condition.

20. (1) A motor vehicle or trailer and all the fittings thereof including, but not by way of limitation, any hitch, ball mount, receiver or pin shall, when used, be in such a condition as not to cause or to be likely to cause danger to any person, whether on the motor vehicle or trailer or not.

(2) Without prejudice to the generality of subsection (1) whenever a vehicle or trailer is in an un-roadworthy condition by reason of the condition of its lights, brakes, tyres, steering, indicators, bodywork, exhaust, audible warning device, load, or otherwise it shall be deemed to be in a condition likely to cause danger to any person for the purposes of subsection (1).

(3) For the purposes of subsection (2) a motor vehicle is in an un-roadworthy condition if it would be obvious to a competent and careful driver that it is un-roadworthy.

(4) For the purposes of subsection (2) a tyre on a motor vehicle is in an un-roadworthy condition if it does not meet the required standard.

(5) The required standard referred to in subsection (4) is –

(a) Every tyre fitted to a motor car or trailer not exceeding 3500 kilograms gross vehicle weight, or fitted to a passenger vehicle having up to 8 seats including the driver shall have a minimum of 1.6 mm tread depth in a continuous band throughout the central three-quarters of the tread width throughout the whole circumference of the tyre.

(b) Every tyre fitted to a motor vehicle or trailer with a gross vehicle weight or gross train weight exceeding 3500 kilograms, or fitted to a motorcycle, which expression includes vehicles commonly known as “**Tuk Tuks**”, with an engine capacity exceeding 50cc shall have a minimum of 1 mm tread depth throughout a continuous band measuring at least three-quarters of the breadth of the tread throughout the entire outer circumference of the tyre, or where the grooves of the original tread pattern do not extend beyond three-quarters of the breadth of the tread all grooves of the original tread pattern shall have a minimum of 1mm tread depth throughout the entire outer circumference of the tyre.

Lights and horn required on motor vehicles etc.

21. (1) Every motor vehicle other than those referred to in subsections (2) and (3), when being driven between sunset and sunrise, shall carry, attached to it and kept lit and free of all obstruction, two lamps, each showing to the front a white light visible from a distance of one hundred yards, and two other lamps (“**tail lights**”), each showing to the rear a red light visible from a distance of one hundred yards:

Provided that, in the case of a motor vehicle having a trailer or trailers attached to it, the red tail lights shall be carried and exhibited by the vehicle and every trailer.

(2) Every motorcycle, when being driven between sunset and sunrise, shall carry, attached to it and kept lit and free of all obstruction, one lamp, showing to the front a white light visible from a distance of one hundred yards, and one other lamp, showing to the rear a red light visible from a distance of one hundred yards.

(3) Every Tuk Tuk or similar vehicle having one wheel at the front and not less than two wheels at the rear, when being driven between sunset and sunrise, shall carry, attached to it and kept lit and free of all obstruction, one lamp, showing to the front a white light visible from a distance of one hundred yards, and two other lamps each showing to the rear a red light visible from a distance of one hundred yards.

(4) Every motor vehicle when being used shall be equipped with an audible warning device capable of alerting other road users to its presence on the road.

Offences against sections 19, 20 and 21 and vehicle defect rectification notices.

22. (1) Any person who uses a motor vehicle in contravention of section 19, 20 or 21 is liable, on conviction, to a fine of £1,000.

(2) Whenever a person is using a vehicle in contravention of section 20 a Police Officer may in his discretion issue that person with a vehicle defect rectification notice substantially in the form specified in Schedule 5 requiring that person to remedy the defect and to produce the rectified vehicle to a Police Officer within 7 days from the date of issue of the notice.

(3) If a person issued with a notice under subsection (2) attends the police station in Diego Garcia within the time allowed for the vehicle to be produced, and there satisfies a Police Officer that he is unable for good cause to remedy the defect within the time allowed for the vehicle to be produced, that officer may extend as he sees fit the period within which the rectified vehicle is to be produced.

(4) If a person issued with a notice under subsection (2) complies with the requirements of the notice that person shall not be liable to conviction for an offence under section 20 for the use of the vehicle on the occasion when the notice was issued.

(5) If a person issued with a notice under subsection (2) fails to comply with the requirements of the notice, that person shall in addition to being liable to be prosecuted for the offence under section 20, have registered against him in the Magistrate's Court under sections 59 and 60 a certificate stating that the sum of £150 is registerable for enforcement against him as a fine.

Speed limits and traffic signs.

23. (1) Subject to section 24, the maximum speed at which a motor vehicle may lawfully be driven at any place in the Territory is 45 miles per hour or, where a lower maximum speed is specified by an authorised traffic sign, in respect of the road (or the part of a road or the other place) where the vehicle is being driven, that lower speed.

(2) An authorised traffic sign specifying a lower maximum speed than 45 miles per hour (a "**speed traffic sign**") has effect for that purpose in respect of the road (or the part of a road or the other place) on or at or near which it is erected or placed, beginning at the point at which it is so erected or placed and ending (if the case arises) at the point at which there is erected or placed another speed traffic sign, specifying a different maximum speed.

(3) Subject to section 24, any person driving a motor vehicle on a road (or on a part of a road or at another place) at a speed greater than the maximum speed in respect of that road (or that part of a road or that place) is guilty of an offence and is liable, on conviction, to a fine of £2,500:

Provided that it shall be a defence (the onus of proof of which lies on the accused person) to a charge under this subsection that the traffic sign was not in such a position as to give adequate warning of that maximum speed to approaching drivers.

(4) On the prosecution of a person for an offence under subsection (3), evidence of the speed at which he drove may be given in the form of a measurement of that speed by a device designed or adapted for measuring the speed of motor vehicles by radar, but no such evidence is admissible unless the device is of a type approved by the Commissioner.

(5) Where a Police Officer or a Services policeman in uniform is for the time being engaged in the regulation of traffic or where an authorised traffic sign (other than a speed traffic sign) has been erected or placed on or near any road or at or near any other place where motor vehicles are driven, any person who –

(a) neglects or refuses to stop a vehicle (whether a motor vehicle or cycle) or to make it proceed in or keep to a particular line of traffic when directed to do so by that Police Officer or Services policeman in the execution of his duty; or

(b) fails to comply with the direction given by the traffic sign,

is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Provided that –

(i) where a traffic sign and a direction given by a Police Officer or a Services policeman are in conflict, the latter prevails; and

(ii) it shall be a defence (the onus of proof of which lies on the accused person) to a charge under subsection (b) that the traffic sign was not in such a position

as to give adequate warning to approaching drivers to enable them to conform to the direction which it gives.

(6) In this section and in sections 25 and 45, “**authorised traffic sign**” means a traffic sign which –

- (a) was erected or placed with the consent of the Commissioner’s Representative;
- (b) is of a description (in terms of its design, size and colouring and the design, size and colouring of its component features) that has been approved by the Commissioner’s Representative; and
- (c) where appropriate, whose placement in relation to the surface of the ground below it conforms with any specifications in that behalf (in relation to all such signs or to signs of the class to which that sign belongs or to that particular sign) that have been so approved.

(7) In any proceedings for an offence under this Ordinance, it shall be presumed, unless credible evidence to the contrary is adduced and subject to subsection (8), that a traffic sign, whether erected or placed before or after the commencement of this Ordinance, was, at any material time, an authorised traffic sign.

(8) For the purposes of any proceedings for an offence under this Ordinance, a certificate, signed by the Commissioner’s Representative or by a person authorised by him in that behalf, that a traffic sign was or was not, at any material time, an authorised traffic sign shall be conclusive of that fact, and any certificate purporting to be so signed shall be accepted in evidence as such without proof of signature or authorisation unless credible evidence to the contrary is adduced.

Speed limit – exemptions for certain drivers of specified motor vehicles.

24. (1) Despite subsections (1) and (3) of section 23, it shall be lawful for –

- (a) the qualified driver of an emergency vehicle travelling in connection with an emergency,
- (b) a Police Officer driving a police vehicle in the course of his duties,
- (c) a Police Officer driving any motor vehicle in connection with an emergency, and
- (d) any person who complies with each of the conditions set out in subsection (5),

to cause the vehicle which he is driving to travel at a speed in excess of the prevailing speed limit.

(2) For the purposes of subsection (1)(a), the “**qualified driver of an emergency vehicle**” means a trained and appropriately qualified driver of –

- (a) a REACT or Nuclear Emergency Response Organisation vehicle;
- (b) an ambulance;
- (c) a Fire Department Response vehicle; or
- (d) a U.S. Navy Security vehicle,

which is appropriately marked to identify its specified role to other road users and pedestrians, and is equipped with suitable blue or red warning lights and/or audible devices to warn other road users and pedestrians of its approach.

(3) For the purposes of subsection (1)(b), a “**police vehicle**” means a motor vehicle designated for use by the British Indian Ocean Territory Police, which may be marked to identify its specified role to other road users and pedestrians, and is equipped with suitable blue or red warning lights and/or audible devices to warn other road users and pedestrians of its approach.

(4) Where a person drives a motor vehicle in excess of the prevailing speed limit in accordance with subsection (1)(a), (b) or (c), the driver shall, in his discretion, sound any siren or other device available in the vehicle and illuminate any blue or red lights available on the vehicle as a warning to other persons of the approach of that vehicle.

(5) The conditions mentioned in subsection (1)(d) are –

(a) that the driving is restricted to the runway or other part of the airfield in Diego Garcia;

(b) that the Chief of Police permits the person to drive the motor vehicle in excess of the speed limit at the location and time when the driving takes place;

(c) that the person is driving in excess of the speed limit for the purposes of servicing the motor vehicle he is driving or otherwise improving its mechanical performance or efficiency.

(6) Before granting permission pursuant to subsection (5)(b), the Chief of Police shall ensure that the Air Operations Control Supervisor has agreed that the runway or other part of the airfield can safely be used at the relevant time for the purposes set out in subsection (5)(c).

Directions given by traffic signs.

25. (1) The direction given by an authorised traffic sign (other than a speed traffic sign) shall be specified in a notice issued by the Commissioner's Representative at the time when, in accordance with section 23(6)(b), he approves the description to which the sign conforms.

(2) Notices issued by the Commissioner's Representative under this section shall be signed by him or by a person authorised by him in that behalf and a copy of every such notice shall be held in the office of the Commissioner's Representative and shall be made available by him for consultation by any member of the public during normal office hours and, on written request to him, at such other reasonable time as he may appoint.

(3) In any proceedings for an offence under this Ordinance, a copy of a notice issued under this section which is certified by the Commissioner's Representative or by a person authorised by him in that behalf to be a true copy thereof shall be accepted in evidence as sufficient proof of the direction given by any traffic sign to which the notice relates, and any document purporting to be such a certified copy and to be so signed shall be accepted in evidence as such in those proceedings, without proof of signature or authorisation or of its accuracy as a copy, unless credible evidence to the contrary is adduced.

PART V
RULE OF THE ROAD

General rule.

26. The general rule of the road is that vehicles shall keep to the right-hand side.

PART VI

OTHER DUTIES AND OFFENCES RELATING PARTICULARLY TO MOTOR VEHICLES

Causing death by reckless driving.

27. A person who causes the death of another person by driving a motor vehicle recklessly is guilty of an offence and is liable, on conviction, to imprisonment for fourteen years.

Reckless driving.

28. A person who drives a motor vehicle recklessly is guilty of an offence and is liable, on conviction, to imprisonment for two years.

Careless and inconsiderate driving.

29. A person who drives a motor vehicle without due care and attention, or without reasonable consideration for other persons, is guilty of an offence and is liable, on conviction, to imprisonment for three months or to a fine of £2,500.

Driving, or being in charge, when under influence of drink or drugs.

30. (1) A person who, when driving or attempting to drive a motor vehicle, is unfit to drive through drink or drugs is guilty of an offence and is liable, on conviction, to imprisonment for two years or a fine of £10,000.

(2) Without prejudice to subsection (1), a person who, when in charge of a motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence and is liable, on conviction, to imprisonment for one year or a fine of £5,000.

(3) For the purposes of subsection (2), a person shall be deemed not to have been in charge of a motor vehicle if he proves that, at the material time, the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.

(4) For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.

(5) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3) above, disregard any injury to him and any damage to the vehicle.

(6) A Police Officer may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under this section.

(7) For the purpose of arresting a person under the power conferred by subsection (6) above, a Police Officer may enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

Driving with alcohol concentration above prescribed limit.

31. (1) A person who drives or attempts to drive a motor vehicle after consuming so much alcohol that the proportion of it in his breath exceeds the prescribed limit is guilty of an offence and is liable, on conviction, to imprisonment for two years or a fine of £10,000.

(2) Without prejudice to subsection (1), a person who is in charge of a motor vehicle which is on a road or at another public place after consuming so much alcohol that the proportion of it in his breath exceeds the prescribed limit is guilty of an offence and is liable, on conviction, to a fine of £5,000.

(3) For the purpose of subsection (2), a person shall be deemed not to have been in charge of a motor vehicle if he proves that, at the material time, the circumstances were such that there was no likelihood of his driving it so long as the proportion of alcohol in his breath remained likely to exceed the prescribed limit.

(4) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3) above, disregard any injury to him and any damage to the vehicle.

Power to administer preliminary tests.

32. (1) If any of subsections (2) to (5) applies a Police Officer may require a person to co-operate with any one or more preliminary tests administered to the person by that Police Officer or another Police Officer.

(2) This subsection applies if a Police Officer reasonably suspects that the person –

- (a) is driving, is attempting to drive; or
- (b) is in charge of a motor vehicle on a road or other public place, and
- (c) has alcohol or a drug in his body or is under the influence of a drug.

(3) This subsection applies if a Police Officer reasonably suspects that the person while having alcohol or a drug in his body or while unfit to drive because of a drug –

- (a) has been driving, attempting to drive; or
- (b) has been in charge of a motor vehicle on a road or other public place, and
- (c) still has alcohol or a drug in his body or is still under the influence of a drug.

(4) This subsection applies if a Police Officer reasonably suspects that the person –

- (a) is or has been driving, attempting to drive; or
- (b) is or has been in charge of a motor vehicle on a road or other public place, and
- (c) has committed a traffic offence while the vehicle was in motion.

(5) This subsection applies if –

(a) an accident occurs owing to the presence of a motor vehicle,
and

(b) a Police Officer reasonably believes that the person was driving, attempting to drive or was in charge of the vehicle at the time of the accident.

(6) In this section –

(a) a reference to a preliminary test is to either of the tests described in subsections 7 and 8, and

(b) “**traffic offence**” means an offence under a provision of this Ordinance.

(7) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by the Commissioner, an indication whether the proportion of alcohol in the person’s breath or urine is likely to exceed the prescribed limit.

(8) A preliminary impairment test is a procedure whereby the Police Officer administering the test –

(a) observes the person to whom the test is administered in his performance of tasks specified by the Police Officer, and

(b) makes such other observations of the person’s physical state as the Police Officer thinks expedient.

(9) A person who, without reasonable excuse fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section is guilty of an offence and is liable, on conviction, to imprisonment for two years or to a fine of £10,000.

(10) A Police Officer may arrest a person without warrant if –

(a) as a result of a preliminary test, he has reasonable cause to suspect that the proportion of alcohol in that person’s breath exceeds the prescribed limit;

(b) that person has failed to co-operate with a preliminary test in pursuance of a requirement imposed under this section; or

(c) any of subsections (2) to (5) are applicable and the Police Officer has reasonable cause to suspect that the person has alcohol or a drug in his body.

(11) For the purpose of arresting a person under the power conferred by subsection (10) above, a Police Officer may enter (if need be, by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

Provision of specimens for analysis.

33. (1) In the course of an investigation into whether a person has committed an offence under section 30 or 31, a Police Officer may, subject to the following provisions of this section, require him –

(a) to provide two specimens of breath for analysis by means of a device of a type approved by the Commissioner; or

(b) to provide a specimen of urine for a laboratory test.

(2) A Police Officer must, on requiring any person to provide specimens in pursuance of this section, warn him that a failure to provide them may render him liable to prosecution.

(3) A person who, without reasonable excuse, fails or refuses to provide specimens when required to do so in pursuance of this section is guilty of an offence and is liable, on conviction, to imprisonment for two years or to a fine of £10,000.

(4) Of any two specimens of breath provided by any person in pursuance of this section, that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(5) A requirement under this section to provide a specimen of urine can only be made at a police station or at a hospital and can only be made if –

(a) the Police Officer making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required;

(b) at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a) above is not available or it is then for any other reason not practicable to use such a device;

(c) a device of the type mentioned in subsection (1)(a) above has been used but the Police Officer who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned; or

(d) the Police Officer making the requirement has reasonable cause to believe that the person required to provide a specimen of urine has a drug in his body,

but may then be made whether or not the person required to provide the specimen has already provided or been required to provide two specimens of breath.

(6) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.

(7) While a person is at a hospital or medical facility as a patient he shall not be required to provide a specimen of breath or to provide a specimen of urine unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement, and –

(a) if the requirement is then made, it shall be for the provision of the specimen at the hospital or medical facility; but

(b) if the medical practitioner objects on the ground specified in subsection (8) below, the requirement shall not be made.

(8) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or, in the case of a specimen of urine, the warning required under subsection (2) above would be prejudicial to the proper care and treatment of the patient.

Evidence in proceedings for an offence under section 30 or 31.

34. (1) The following provisions apply in respect of proceedings for an offence under section 30 or 31.

(2) Evidence of the proportion of alcohol in a specimen of breath provided by the accused shall in all cases be taken into account and, subject to subsection (3), it shall be assumed that the proportion of alcohol in the accused's breath at the time of the alleged offence was not less than in the specimen.

(3) If the proceedings are for an offence under section 31 or, where the accused is alleged to have been unfit through drink, for an offence under section 30, that assumption shall not be made if the accused proves –

(a) that he consumed alcohol after he had ceased to drive, or to attempt to drive, or to be in charge of a motor vehicle on a road or at another public place, and before he provided the specimen; and

(b) that, had he not done so, the proportion of alcohol in his breath would not have exceeded the prescribed limit and, if the proceedings are for an offence under section 30, would not have been such as to impair his ability to drive properly.

(4) Evidence of the proportion of alcohol or a drug in a specimen of breath or urine may, subject to subsections (5) and (6) below be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say –

(a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a Police Officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; or

(b) a certificate signed by the analyst as to the proportion of alcohol or any drug found in a specimen of urine identified in the certificate.

(5) Subject to subsection (6) below –

(a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in subsections (4) or (5) above is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either has been handed to the accused when the document was produced or has been served on him before the hearing; and

(b) any other document is so admissible only if a copy of it has been served on the accused before the hearing.

(6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused before the hearing has given notice to the prosecutor and the court requiring the attendance at the hearing of the person by whom the document purports to be signed.

Interpretation and definitions.

35. (1) The following provisions apply for the interpretation of sections 31, 32, 33, 34 and 35.

(2) In those sections –

“**drug**” includes any intoxicant other than alcohol;

“**fail**” includes refuse;

“**hospital**” means a place which provides medical or surgical treatment for in-patients or outpatients.

“**the prescribed limit**” means, as the case may require –

(a) 35 micrograms of alcohol in 100 millilitres of breath; or

(b) 107 milligrams of alcohol in 100 millilitres of urine,

or such other proportion as may be prescribed by regulations made by the Commissioner.

(3) A person does not provide a specimen of breath for a breath test or for analysis unless the specimen –

(a) is sufficient to enable the test or the analysis to be carried out; and

(b) is provided in such a way as to enable the objective of the test to be satisfactorily achieved.

Seatbelts.

36. (1) Save as provided by subsection (2), every person who –

(a) is driving a motor vehicle on a road; or

(b) is riding in a motor vehicle on a road in a passenger seat,

shall, if the vehicle is designed to be fitted with a seat belt in respect of the seat in which he is so driving or riding, wear a seat belt of an approved standard which is in good condition.

(2) The following persons are exempt from the requirement in subsection (1) –

(a) a person driving the vehicle while performing a manoeuvre which involves reversing;

(b) a person driving or riding in a vehicle which is being used by Police Officers in the course of their official duties or for the purposes of a fire-fighting service or for carrying a person in lawful custody (a person being so carried being included in this exemption);

(c) a person holding a valid certificate (the period of its validity being specified in it) signed by a medical practitioner or by or on behalf of the Commissioner’s Representative or by or on behalf of the Commanding Officer to the effect that it is inadvisable on medical grounds for that person to wear a seat belt.

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine of £250.

(4) In any proceedings for an offence under this section, a document purporting to be a certificate signed by or on behalf of the Commissioner’s Representative or the Commanding Officer shall be received in evidence as such without proof of signature unless credible evidence to the contrary is adduced.

Prohibition of use of mobile telephone or other hand-held device whilst driving.

37. (1) No person shall drive a motor vehicle on a road if he is using –

(a) a hand-held mobile telephone; or

(b) a hand-held device of a kind specified in subsection (3).

(2) No person shall cause or permit any other person to drive a motor vehicle on a road while that other person is using –

(a) a hand-held mobile telephone; or

(b) a hand-held device of a kind specified in subsection (3).

(3) A device referred to in subsections (1)(b) and (2)(b) is a device which performs an interactive communication function by transmitting and receiving data.

(4) A person does not contravene a provision of this section if, at the time of the alleged contravention –

(a) he is using the telephone or other device to call the police, fire, ambulance or other emergency service;

(b) he is acting in response to a genuine emergency; and

(c) it is unsafe or impracticable for him to cease driving in order to make the call.

(5) For the purposes of this section and section 47 –

(a) a mobile telephone or other device is to be treated as hand-held if it is, or must be, held at some point during the course of making or receiving a call or performing any other interactive communication function;

(b) “**interactive communication function**” includes the following –

(i) sending or receiving oral or written messages;

(ii) sending or receiving facsimile documents;

(iii) sending or receiving still or moving images; and

(iv) providing access to the internet.

(6) Any person who contravenes subsection (1) or subsection (2) is guilty of an offence and is liable, on conviction, to a fine of £2,000.

Duty to stop and furnish particulars, in case of accident.

38. (1) If in any case, owing to the presence of a motor vehicle, an accident occurs whereby –

(a) personal injury is caused to a person other than the driver of that vehicle,

(b) damage is caused –

(i) to a vehicle other than that vehicle or a trailer drawn thereby,

(ii) to an animal other than an animal in or on that vehicle or a trailer drawn thereby,

(iii) to any other property constructed on, fixed to or growing in or otherwise forming part of the land on which the road or place in or at which the accident occurred is situated, or land adjacent thereto,

the driver of that vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner and the identification marks of the vehicle.

(2) If, in the case of any such accident as described in subsection (1) the driver of the vehicle for any reason does not give his name and address to any such person as required by subsection (1) he shall report the accident to a Police Officer as soon as reasonably practicable, and in any case within twenty-four hours of the occurrence of the accident.

(3) In this section “**animal**” means any horse, cattle, ass, mule, sheep, pig, goat or dog.

(4) A person who fails to comply with this section is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Duty, in a case of accident involving injury to another, to produce certificates of insurance.

39. (1) If, in a case where, owing to the presence of a motor vehicle, an accident occurs involving personal injury to another person, the driver of the vehicle does not at the time produce his certificate to a Police Officer or some person who, having reasonable grounds for so doing, has required its production, the driver shall as soon as possible, and in any case within twenty four hours of the occurrence of the accident, report the accident to a Police Officer and shall thereupon or within five days after the occurrence of the accident produce his certificate.

(2) In this section “**produce his certificate**” has the same meaning as in section 18(3) above.

(3) A person who fails to comply with this section is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Power of Police officers, etc., to stop vehicle.

40. A person driving a motor vehicle on a road shall stop the vehicle on being so required by a Police Officer or Services policeman in uniform, and, if he fails to do so, he is guilty of an offence and is liable, on conviction, to a fine of £1,000.

PART VII

OTHER DUTIES AND OFFENCES RELATING PARTICULARLY TO CYCLES, ELECTRIC TRANSPORTATION DEVICES AND SKATEBOARDS.

Restrictions on use of Electric Transportation Devices, skateboards and Electrically Assisted Pedal Cycles.

41. (1) No person shall ride an Electric Transportation Device or skateboard in any place except where specified in Schedule 1.

(2) No person shall ride an Electrically Assisted Pedal Cycle in any place except where specified in Schedule 2.

(3) Any person who contravenes this section is guilty of an offence and is liable, on conviction, to a fine of £300.

(4) For the purposes of this section, Schedule 1 and Schedule 2 –

“**cycle lane**” means a fully surfaced path or track (not forming part of a road) within the specific area which has been set aside for the passage of cycles or is in general use for such passage and which is indicated as such by one or more signs at a point or points along its length;

“**fully surfaced**” means covered by paving, concrete or asphalt and not consisting only of packed earth, gravel or subgrade material with an unsealed surface.

“**pathway**” means a fully surfaced path or track (not being a road or part of a road) within the specific area which is in general use for the passage of pedestrian traffic;

“**skateboard**” includes roller skates and roller blades;

“**specific area**” means the area for the time being identified as such in accordance with paragraph (1)(a) of the Exchange of Notes of 25 February 1976 between the Government of the United Kingdom and the Government of the United States of America concerning a United States Navy Support Facility on Diego Garcia, British Indian Ocean Territory.

(5) Nothing in this section shall act as to prevent a person from riding an Electric Transportation Device or skateboard across a road, when it is safe to do so, where that road crosses an otherwise continuous pathway or cycle lane, or an approved area.

Reckless riding.

42. A person who rides a cycle or an Electric Transportation Device recklessly is guilty of an offence and is liable, on conviction, to a fine of £1,000 or, in the case of a second or subsequent such conviction, to imprisonment for three months or a fine of £2,000.

Careless and inconsiderate riding.

43. (1) A person who rides a cycle or an Electric Transportation Device without due care and attention or without reasonable consideration for other persons is guilty of an offence and is liable, on conviction, to a fine of £500 or in the case of a second or subsequent such conviction, to a fine of £1,000.

(2) When a person is charged with an offence under section 42 and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under this section, he may be convicted of the latter offence although he was not charged with it.

Riding when under the influence of drink or drugs.

44. (1) A person who, when riding a cycle or an Electric Transportation Device, is unfit to ride through drink or drugs is guilty of an offence and is liable, on conviction, to a fine of £1,000 or, in the case of a second or subsequent such conviction, to imprisonment for three months or a fine of £2,500.

(2) A Police Officer may arrest without warrant any person whom he suspects on reasonable grounds of having committed an offence under this section.

Speed limits and traffic signs – Cycles and Electric Transportation Devices.

45. (1) The maximum speed at which –

(a) a cycle may lawfully be ridden at any place in the Territory is 25 miles per hour,

(b) an Electric Transportation Device may be ridden at any place in the Territory is 12.5 miles per hour,

or, where a lower maximum speed is specified by an authorised traffic sign, in respect of the road (or the part of a road or the other place) where the cycle or Electric Transportation Device is being ridden, that lower speed.

(2) For the purposes of subsection (1), an authorised traffic sign (a “**speed traffic sign**”) has effect for that purpose in respect of the road (or the part of a road or the other place) on or at or near which it is erected or placed, beginning at the point at which it is so erected or placed and ending (if the case arises) at the point at which there is erected or placed another speed traffic sign, specifying a different maximum speed.

(3) Any person riding a cycle or an Electric Transportation Device on a road (or on a part of a road or at another place) at a speed greater than the maximum speed in respect of that road (or that part of a road or that place) is guilty of an offence and is liable, on conviction, to a fine of £1,000:

Provided that it shall be a defence (the onus of proof of which lies on the accused person) to a charge under this subsection that the traffic sign was not in such a position as to give adequate warning of that maximum speed to approaching riders.

(4) On the prosecution of a person for an offence under subsection (3), evidence of the speed at which he rode may be given in the form of a measurement of that speed by a device designed or adapted for measuring the speed of vehicles by radar, but no such evidence is admissible unless the device is of a type approved by the Commissioner.

(5) The provisions contained within section 23(6) apply to this section.

Restriction on carriage of persons on cycles and Electric Transportation Devices.

46. (1) No more than one person may be carried on a cycle or an Electric Transportation Device unless it is constructed or adapted for the carriage of more than one person.

(2) If persons are carried on a cycle or an Electric Transportation Device in contravention of this section, each of the persons so carried is guilty of an offence and is liable, on conviction, to a fine of £250.

Prohibition of use of mobile telephone or other hand-held device whilst riding.

47. (1) No person shall ride a cycle or Electric Transportation Device on a road or other public place if he is using –

(a) a hand-held mobile telephone; or

(b) a hand-held device of a kind specified in subsection (2).

(2) A device referred to in subsection (1)(b) is a device which performs an interactive communication function by transmitting and receiving data.

(3) The provisions contained in section 37(5) apply to this section.

(4) Any person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Prohibition of wearing headphones whilst riding.

48. (1) No person shall ride a cycle or Electric Transportation Device on a road or other public place if he is wearing headphones.

(2) For the purposes of this section –

“**audio transmissions**” means electrical, electronic or radio signals received by, or stored on, either a device which is linked to the headphones, or a component part of the headphones, which are conveyed to an electroacoustic transducer within the headphones to be converted into a corresponding sound;

“**headphones**” means a device with parts which cover, or fit in or on, each ear from which audio transmissions may be heard, and includes earphones, cellular hands-free devices designed to be placed on or in the ear, AirPods and earbuds;

“**wearing**” means placing headphones, or part of them, on, in, over or near to one or both ears, in such a manner as may enable the rider to hear any sounds emitted from those headphones.

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine of £500.

Cycles and Electric Transportation Devices – Construction and use requirements.

49. (1) A cycle and an Electric Transportation Device, when being ridden, shall have –

(a) an efficient braking system,

(b) properly functioning wheels and tyres,

(c) a bell or other instrument in working order attached to it, which is capable of giving audible warning to other persons of the approach of the cycle or the Electric Transportation Device.

(2) Between the hours of sunset and sunrise, every cycle or Electric Transportation Device shall carry, attached to it and kept free of all obstruction, a lamp, showing to the front a clearly visible white light and another lamp showing to the rear a clearly visible red light.

(3) An Electrically Assisted Pedal Cycle and an Electric Transportation Device, when being ridden, shall have no, or limited, wear or damage to the vehicle’s battery and battery housing.

(4) A person who rides a cycle or an Electric Transportation Device, or causes or permits a cycle or an Electric Transportation Device to be ridden, in contravention of any of the provisions of this section is guilty of an offence and is liable, on conviction, to a fine of £500 in the case of a contravention of subsection (1) or (3), or £1,000 in the case of a contravention of subsection (2).

Riders of cycles and Electric Transportation Devices to wear personal safety equipment.

50. (1) Every person who rides a cycle or an Electric Transportation Device shall, when doing so, wear a cycling helmet which is –

(a) in a reasonable condition, and

(b) of an approved design.

(2) The design of a helmet shall be deemed to be approved for the purposes of this section if, and only if, the helmet bears a maker's stamp or mark that the manufacture of the helmet conforms to an internationally approved standard.

(3) Between the hours of sunset and sunrise, the rider of a cycle or Electric Transportation Device shall wear a reflective belt or reflective strip to the upper part of the body, which is clearly visible both from the front and back of the rider.

(4) For the purposes of this section, "**wear**" means fully fastened and secured.

(5) Any person who contravenes this section is guilty of an offence and is liable, on conviction, to a fine of £500.

Duty to stop and furnish particulars, in case of accident – Cycles and Electric Transportation Devices

51. (1) If in any case, owing to the presence of a cycle or Electric Transportation Device, an accident occurs whereby –

(a) personal injury is caused to a person other than the rider of that vehicle,

(b) damage is caused –

(i) to a vehicle other than that vehicle,

(ii) to an animal,

(iii) to any other property constructed on, fixed to or growing in or otherwise forming part of the land on which the road or place in or at which the accident occurred is situated, or land adjacent thereto,

the rider of that vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner and any identification marks of the vehicle.

(2) If, in the case of any such accident as described in subsection (1) the rider of the vehicle for any reason does not give his name and address to any such person as required by subsection (1) he shall report the accident to a Police Officer as soon as reasonably practicable, and in any case within twenty-four hours of the occurrence of the accident.

(3) In this section "**animal**" means any horse, cattle, ass, mule, sheep, pig, goat or dog.

(4) A person who fails to comply with this section is guilty of an offence and is liable, on conviction, to a fine of £1,000.

Power of Police Officers, etc., to stop cycles or Electric Transportation Devices.

52. A person riding a cycle or an Electric Transportation Device shall stop the cycle or Electric Transportation Device on being so required by a Police Officer or Services policeman in uniform, and, if he fails to do so, he is guilty of an offence and is liable, on conviction, to a fine of £1,000.

PART VIII
FIXED PENALTIES

Interpretation and definitions.

53. (1) In this Part –

(a) “**fixed penalty offence**” and “**fixed penalty notice**” have the meanings assigned to those terms by sections 54 and 55(1) respectively; and

(b) “**suspended enforcement period**” has the meaning assigned to that term by section 55(4)(a).

(2) In this Part –

(a) references to a notice requesting a hearing in respect of an offence are references to a notice indicating that the person giving the notice wishes to contest liability for the offence or seeks a determination by a court with respect to the appropriate punishment for the offence; and

(b) references to an offence include an alleged offence.

Fixed penalty offences.

54. (1) Subject to subsection (2), any offence under any provision of this Ordinance specified in column 1 of Schedule 3 (the general nature of that offence being indicated in column 2) is a fixed penalty offence.

(2) An offence under a provision so specified is not a fixed penalty offence if it is committed by causing or permitting a vehicle to be used by another person in contravention of any provision of this Ordinance unless the user is the employer of the person using the vehicle in the course of his employment.

Fixed penalty notices.

55. (1) In this Part “**fixed penalty notice**” means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this Part.

(2) A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence.

(3) Where the offence to which the fixed penalty notice relates is an offence under section 23(3) or section 45 (excessive speed) the notice shall state the speed at which the offender drove so as to commit the offence.

(4) A fixed penalty notice must –

(a) state the period (referred to in this Part as the “**suspended enforcement period**”) within which, by virtue of section 64, proceedings cannot be brought against any person for the offence to which the notice relates, being the period of 21 days following the date of the notice or such longer period (if any) as may be specified in the notice;

- (b) state the amount of the fixed penalty;
- (c) state that the fixed penalty may be paid to the clerk to the Magistrate's Court; and
- (d) specify the manner in which the person to whom the notice is given may request a hearing of the offence to which the notice relates.

(5) A fixed penalty notice should be substantially in the form shown in Schedule 4.

Amount of fixed penalty.

56. (1) Subject to subsections (2), (3) and (4), the fixed penalty for an offence is –

- (a) £200; or
- (b) one-half of the maximum fine to which a person committing the offence would be liable on conviction of that offence by the Magistrate's Court,

whichever is the less.

(2) The fixed penalty for an offence under section 23(3) (excessive speed) is –

- (a) £200; or
- (b) £10 for every mile per hour by which the speed at which the offender drove so as to commit the offence exceeded the maximum speed permitted in the circumstances of the offence,

whichever is the less.

(3) The fixed penalty for an offence under section 45(3) (excessive speed) is –

- (a) £25; or
- (b) £5 for every mile per hour by which the speed at which the offender drove so as to commit the offence exceeded the maximum speed permitted in the circumstances of the offence,

whichever is the less.

(4) The fixed penalty for an offence under section 23(5)(b) (failure to comply with a direction given by a traffic sign) is, where the direction is a prohibition of parking or a restriction on parking, £25.

Notices to be given on the spot.

57. Where, on any occasion, a Police Officer in uniform finds a person who he has reason to believe is committing or has on that occasion committed a fixed penalty offence, he may give that person a fixed penalty notice in respect of that offence.

Effect of fixed penalty notice.

58. (1) Where a fixed penalty notice has been given to a person (in this section referred to as “**the recipient**”) under section 57, no proceedings may be brought against him for the offence to which it

relates unless, before the end of the suspended enforcement period, he has given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of that offence.

(2) Where, by the end of the suspended enforcement period –

(a) the recipient has not given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of the offence to which the fixed penalty notice relates; and

(b) the fixed penalty has not been paid in accordance with this Part,

a sum equal to the fixed penalty plus one-half of the amount of that penalty may be registered under section 61 for enforcement against the recipient as a fine.

Payment of penalty.

59. Payment of a fixed penalty must be made to the clerk to the Magistrate’s Court and may be so made either in person at the office of the clerk during the normal working hours of that office or at such other times as the clerk, by notice exhibited at that office, may appoint for that purpose or in such other manner as the Commissioner's Representative may authorise by notice exhibited at his office.

Registration certificates.

60. (1) This section and section 61 apply where –

(a) by virtue of section 58, a sum determined by reference to the fixed penalty for any offence, or

(b) by virtue of section 22(5), the sum of £150,

may be registered under section 61 for enforcement against any person as a fine.

(2) In this section and in section 61 –

(a) the applicable sum determined by subsection (1)(a) or (b) is referred to as a “**sum payable in default**”; and

(b) the person against whom that sum may be so registered is referred to as the “**defaulter**”.

(3) The Police Officer for the time being in command of the Police Officers of the Territory (in this section referred to as “**the Senior Police Officer**”) may, in respect of any sum payable in default, issue a certificate (in this section and in section 61 referred to as a “**registration certificate**”) stating that the sum is registrable under section 61 for enforcement against the defaulter as a fine.

(4) Where the Senior Police Officer issues a registration certificate under this section, he must cause it to be sent to the clerk of the Magistrate’s Court.

(5) A registration certificate issued under this section in respect of any sum payable in default must –

(a) give particulars of the offence to which the fixed penalty notice, or vehicle defect rectification notice, relates; and

(b) state the name and last known address of the defaulter and the amount of the sum payable in default.

Registration of sums payable in default.

61. (1) Where the clerk to the Magistrate's Court receives a registration certificate issued under section 60 in respect of any sum payable in default, he must register that sum for enforcement as a fine by entering it in the register of the Court.

(2) On registering any sum under this section for enforcement as a fine, the clerk to the Magistrate's Court must give the defaulter a notice of registration –

(a) specifying the amount of that sum; and

(b) giving the information with respect to the offence included in the registration certificate by virtue of section 60(5)(a).

(3) On the registration of any sum in the Magistrate's Court by virtue of this section, any provision of law referring (in whatever terms) to a fine imposed or other sum adjudged to be paid on conviction by that Court shall have effect in the case in question as if the sum so registered were a fine imposed by that Court on the conviction of the defaulter on the date of registration.

Invalidation of fixed penalty notices or subsequent proceedings.

62. (1) This section applies where –

(a) a person who has received notice of the registration of a sum under section 61 for enforcement against him as a fine makes a statutory declaration to the effect mentioned in subsection (2); and

(b) that declaration is, within 21 days of the date on which that person received notice of the registration, served on the clerk to the Magistrate's Court.

(2) The statutory declaration must state –

(a) that the person making it was not the person to whom the fixed penalty notice was given; or

(b) that the person making it was not the person to whom the vehicle defect rectification notice was given; or

(c) that he gave notice requesting a hearing in respect of the alleged offence as permitted by the fixed penalty notice before the end of the suspended enforcement period.

(3) In any case within subsection (2)(a) that fixed penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) In any case within subsection (2)(b) that vehicle defect rectification notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(5) In any case within subsection (2)(c) –

(a) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void; and

(b) the case shall be treated after the declaration is served as if the person making it had given notice requesting a hearing of the alleged offence as stated in the declaration.

Provisions supplementary to section 62.

63. (1) In any case within section 62(2)(c), section 39 of the Criminal Procedure Code 2019 (limitation of time) shall have effect if, for the reference to the time when the matter of the charge or complaint arose, there were substituted a reference to the date of the statutory declaration made for the purposes of section 62(1).

(2) Where, on the application of a person who has received notice of the registration of a sum under section 61 for enforcement against him as a fine, it appears to the Magistrate's Court that it was not reasonable to expect him to serve, within 21 days of the date on which he received the notice, a statutory declaration to the effect mentioned in section 62(2), the Court may accept service of such a declaration by that person after that period has expired.

(3) A statutory declaration accepted under subsection (2) shall be taken to have been served as required by section 62(1).

(4) For the purposes of section 62(1), a statutory declaration shall be taken to be duly served on the clerk to the Magistrate's Court if it is delivered to him in person or is left at his office.

(5) In section 62 and this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.

(6) For the purposes of section 62 and this section, a person shall be taken to receive notice of the registration of a sum under section 61 against him as a fine when he receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.

(7) Nothing in the provisions of section 62 or this section is to be read as prejudicing any rights a person may have, apart from those provisions, by virtue of the invalidity of any action purportedly taken in pursuance of this Part which is in fact not authorised by this Part in the circumstances of the case, and, accordingly, references in those provisions to the registration of any sum or to any other action taken under or by virtue of any provision of this Part are not to be read as implying that the registration or action was validly made or taken in accordance with that provision.

General restriction on proceedings.

64. (1) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates until the end of the suspended enforcement period.

(2) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates if the fixed penalty is paid in accordance with this Part before the end of the suspended enforcement period.

Certificates about payment.

65. In any proceedings a certificate signed by the clerk to the Magistrate's Court that the payment of a fixed penalty was or was not received by a date specified in the certificate shall be conclusive of that matter, and a certificate purporting to be so signed shall be received in evidence as such without proof of signature unless credible evidence to the contrary is adduced.

PART IX

MISCELLANEOUS

Restriction on prosecution for certain offences.

66. (1) Where a person is prosecuted for an offence under any of the provisions to which this subsection applies, then, subject to subsections (2) and (3), he shall not be convicted of that offence if he proves that none of the following conditions has been satisfied –

(a) that he was warned on each occasion on which the offence is alleged to have been committed that the question of prosecuting him for an offence under one or other of those provisions would be considered;

(b) that a summons in respect of the offence was served on him within 14 days of the alleged commission of the offence; or

(c) that a notice of intended prosecution specifying the nature of the offence and the time at which and the place where it is alleged to have been committed was served on him within the said 14 days.

(2) Whether or not the accused person proves that none of the conditions specified in subsection (1) has been satisfied, that subsection does not operate to prevent his being convicted of the offence if the court is satisfied –

(a) that his name and address could not with reasonable diligence have been ascertained in time for a notice to be served on him in accordance with subsection (1)(c); or

(b) that he contributed by his own conduct to the failure to satisfy any of those conditions.

(3) Subsection (1) does not operate to prevent the conviction of a person (but subject to section 58) for an offence under section 23(3) or 23(5) if he was, in accordance with section 57, given a fixed penalty notice (as defined in section 55(1)) in respect of that offence.

(4) The provisions to which subsection (1) applies are sections 23(3), 23(5), 28, 29, 31(1) and 31(2).

Signification of Commissioner's approval of devices.

67. For the purposes of any provision of this Ordinance which refers to a device as being such a device, or a device of such type, as is approved by the Commissioner, the approval of the Commissioner shall be given by notice or other instrument signed by him, which shall be published in the *Gazette*.

Application to the Crown.

68. This Ordinance, except Part III, applies to vehicles and persons in the public service of the Crown.

PART X

REPEAL AND RELATED PROVISIONS

Repeal.

69. (1) The Road Traffic Ordinance 1998 is repealed.

(2) The repeal of the Road Traffic Ordinance 1998 does not affect the continuing operation of

—

(a) the Speed of Motor Vehicles Measuring Devices Approval 2010;

(b) the Alcohol in Breath Measuring Devices Approval 2011, and

(c) the Authorisation of Driving Licences (Philippines) Notice 2015,

which shall have effect as if made under this Ordinance.

Transitional provisions.

70. (1) Despite section 69, any traffic sign which, immediately before [Date] was erected or placed on or near a road or at or near another place where vehicles are driven shall, so long as it remains in place, be treated for all the purposes of this Ordinance as being an authorised traffic sign (as defined in section 23(6)).

(2) Any traffic sign which, in accordance with subsection (1), is treated for the purposes of this Ordinance as being an authorised traffic sign shall be treated for those purposes as giving the direction which a reasonable driver would, in the circumstances of the case, understand to be given by it.

(3) Despite section 69 and without prejudice to section 21(1) of the Interpretation and General Provisions Ordinance 1993 –

(a) proceedings may be instituted after the commencement of this Ordinance for an offence alleged to have been committed before that commencement under any provision repealed by section 69 and any such proceedings shall be dealt with for all purposes as if this Ordinance had not been enacted and the repealed provision had remained in force, and

(b) any proceedings that were instituted before the commencement of this Ordinance by virtue of any provision repealed by section 69 may be continued thereafter and shall likewise be dealt with for all purposes as if this Ordinance had not been enacted and the repealed provision remained in force.

Consequential amendments.

71. The instruments specified in Column A of Schedule 6 are repealed or amended by the directions specified in Column B, in accordance with the Notice issued pursuant to section 1(2).

SCHEDULE 1

(Section 41(1))

Places where persons may ride an Electric Transportation Device or skateboard

A person may ride an Electric Transportation Device or skateboard in the following places –

1. All fully surfaced roads, or part of roads, commencing from the cross-section of Britannia Way and Nimitz Road, within the Downtown Area;
2. All roads and pathways within Seabreeze, Palmsville and Splendidville, and
3. Along the cycle lane on DG 1 and within the Downtown Area, but –
 - (a) not past the airport on the cycle lane, and
 - (b) not on roadways, or parts of roads, on DG 1 and DG2 commencing from the cross-section of Britannia Way and Nimitz Road towards the Airport or beyond that location.

SCHEDULE 2

(Section 41(2))

Places where persons may ride an Electrically Assisted Pedal Cycle

A person may ride an Electrically Assisted Pedal Cycle in the following places –

1. All cycle lanes along DG1 and DG 2 from the Airport to Downtown and within the Downtown area.
2. All roads and pathways within Seabreeze, Palmsville and Splendidville.
3. All fully surfaced roads, or part of roads, within the downtown area and along DG1 and DG2.

SCHEDULE 3

(Section 54)

Fixed Penalty Offences

Provision creating offence (Column 1)	General nature of offence (Column 2)
Section 22	Using vehicle in contravention of section 19, 20 or 21 (brakes, dangerous condition, lights)
Section 23(3)	Speeding
Section 23(5)	Failing to comply with direction
Section 36(3)	Failing to wear seatbelt
Section 37(6)	Using a mobile telephone or other hand-held device whilst driving
Section 38(4)	Failing to stop in case of accident
Section 40	Failing to stop motor vehicle when required by Police Officer
Section 41(4)	Riding an Electric Transportation Device or skateboard otherwise than in a permitted place
Section 45(3)	Speeding – Cycles and Electric Transportation Devices
Section 46(2)	Excessive number of persons on cycle or Electric Transportation Device
Section 47(4)	Use of a mobile telephone or other hand-held device whilst riding.
Section 48(3)	Wearing headphones whilst riding.
Section 49(4)	Cycles and Electric Transportation Devices - Failing to comply with construction and use requirements
Section 50(5)	Failing to wear personal safety equipment
Section 51(4)	Failing to stop cycle or Electric Transportation Device when required by Police Officer

SCHEDULE 4

(Section 55(5))

Form of fixed penalty notices

FIXED PENALTY NOTICE

Part VIII of the Road Traffic Ordinance 2022

- 1. To: (name of recipient)
- 2. Circumstances constituting offence.

It is alleged that you have committed an offence under section (section number) of the Road Traffic Ordinance 2022. The circumstances alleged to constitute that offence are as follows:

(Set out sufficient particulars of the offence alleged, including date and approximate time, to give the recipient reasonable information about what he is alleged to have done)

- 3. Speed at which vehicle was driven.

(To be completed only in cases under section 23(3) or 45(3) of the Road Traffic Ordinance 2022. Insert recorded speed, as shown to recipient of notice)

- 4. Options open to recipient of notice.

(a) You have the opportunity to discharge any liability to be convicted of the above offence if you pay the fixed penalty which is specified in paragraph 5 below. If you wish to do that, you must pay the fixed penalty to the clerk to the Magistrate’s Court within the period indicated in paragraph 6 below (**the suspended enforcement period**).

(b) Alternatively, you may request a hearing by the Court in respect of that offence at which you may contest liability for the offence or seek the Court’s determination as to the appropriate penalty. Such a request must be made, in writing, to the clerk to the Magistrate’s Court and be lodged with the clerk, during normal working hours, within the suspended enforcement period.

NOTE: No proceedings will be brought against you for the above offence during the suspended enforcement period. Nor will such proceedings be brought thereafter if you have, during that period, paid the fixed penalty. But, if by the end of that period you have neither paid the fixed penalty nor requested a hearing by the Court, you will automatically be liable, without further proceedings, to pay a sum of 1½ times the fixed penalty. This sum will be enforceable against you as a fine.

- 5. Fixed penalty. (Enter amount, as determined by section 56)
- 6. Suspended enforcement period.

(This may not be less than 21 days from the date of this Notice)

.....
(Date of issuance of Notice)

.....
(Signature and rank of Police Officer)

SCHEDULE 5

(Section 22(2))

Form of Vehicle Defect Rectification Notice

VEHICLE DEFECT RECTIFICATION NOTICE

Section 22(2) of the Road Traffic Ordinance 2022

1. To: (name and address of user of vehicle)

2. On day the day of 20.. you were using

(insert full details of vehicle being used)

in a dangerous condition contrary to section 20(1) of the Road Traffic Ordinance 2022. The vehicle was in a dangerous condition by reason of it being un-roadworthy because

(insert full details of the defects found)

3. If on or before day the day of 20.. (insert date 7 days from date of use) you produce this notice and the vehicle in a roadworthy condition with these defects rectified to a Police Officer at the Police Station you will not be prosecuted for the alleged offence contrary to section 20(1) of the Road Traffic Ordinance 2022.

4. If you fail to produce the vehicle in a roadworthy condition as required, a fine of £150 will be registered against you in the Magistrate’s Court pursuant to section 22(5), and you may also be prosecuted in the Magistrate’s Court for the alleged offence contrary to section 20(1) which carries a maximum penalty of £1,000.

.....
(Date of issuance of Notice)

.....
(Signature and rank of Police Officer issuing the Notice)

[This part to be completed by the Police Officer to whom the rectified vehicle is produced and the whole notice then to be returned to the user of the vehicle]

On day the day of 20.. the vehicle to which this notice refers was produced to me in a roadworthy condition with the defects referred to in this notice rectified.

.....
(Signature and details of Police Officer to whom rectified vehicle is produced)

SCHEDULE 6

(Section 71)

Consequential Amendments

Column A	Column B
Police and Criminal Evidence Ordinance 2019, sections 36(6)(d) and 62(11)	“sections 31 and 32 of the Road Traffic Ordinance 1998” is repealed and replaced with “sections 32 and 33 of the Road Traffic Ordinance 2022”
Police and Criminal Evidence Ordinance 2019, section 116(c)	“Road Traffic Ordinance 1998” is repealed and replaced with “Road Traffic Ordinance 2022”
Police and Criminal Evidence Ordinance 2019, section 118(1)	“section 51(1) of the Road Traffic Ordinance 1998” is repealed and replaced with “section 55 of the Road Traffic Ordinance 2022”
Criminal Procedure Code 2019, section 150	“section 26, 27 or 28 of the Road Traffic Ordinance 1998” is repealed and replaced with “section 27, 28 or 29 of the Road Traffic Ordinance 2022”
Criminal Procedure Code 2019, section 151(1)	“section 26 of the Road Traffic Ordinance 1998” is repealed and replaced with “section 27 of the Road Traffic Ordinance 2022”, and “section 27 or 28 of that Ordinance” is repealed and replaced with “section 28 or 29 of that Ordinance”
Criminal Procedure Code 2019, section 151(2)	“section 27 of the Road Traffic Ordinance 1998” is repealed and replaced with “section 28 of the Road Traffic Ordinance 2022”, and “section 28 of that Ordinance” is repealed and replaced with “section 29 of that Ordinance”
Police and Criminal Evidence Ordinance, Code B, Guidance Note 2B	“Road Traffic Ordinance 1998” is repealed and replaced with “Road Traffic Ordinance 2022”, and “section 31(11)” is repealed and replaced with “section 32(11)”
Police and Criminal Evidence Ordinance, Code C, Guidance Note 3D	“Road Traffic Ordinance 1998” is repealed and replaced with “Road Traffic Ordinance 2022”
Police and Criminal Evidence Ordinance, Code C, paragraph 11.1A	“Road Traffic Ordinance 1998, section 32” is repealed and replaced with “Road Traffic Ordinance 2022, section 33”

Police and Criminal Evidence Ordinance, Code D, para 2.17	“Road Traffic Ordinance 1998” is repealed and replaced with “Road Traffic Ordinance 2022”
Police and Criminal Evidence Ordinance, Code G, Guidance Note 1A	“Road Traffic Ordinance 1998, section 31(10)” is repealed and replaced with “Road Traffic Ordinance 2022, section 32(10)”
Speed of Motor Vehicles Measuring Devices Approval 2010	“section 63” is repealed and replaced with “section 67”
Alcohol in Breath Measuring Devices Approval 2011	In both instances, “section 63” is repealed and replaced with “section 67”



THE BRITISH INDIAN OCEAN TERRITORY

**THE ROAD TRAFFIC ORDINANCE 2022
(TEMPORARY MEASURES)
(EXPIRED DRIVING LICENCES)
ORDINANCE 2022**

Ordinance No. 2 of 2022

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THE BRITISH INDIAN OCEAN TERRITORY
THE ROAD TRAFFIC ORDINANCE 2022
(TEMPORARY MEASURES) (EXPIRED DRIVING LICENCES)
ORDINANCE 2022

Ordinance No. 2 of 2022

ARRANGEMENT OF SECTIONS

Section	Page
1. Citation and commencement.	3
2. Definition.	3
3. Authorisation to drive after driving licence has expired.	3
4. Extent of authorisation.	3
5. Effect of authorisation.	4
6. Ordinance to expire unless extended.	4
Schedule	5

Enacted by the Commissioner for the British Indian Ocean Territory

19 April 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner

**THE ROAD TRAFFIC ORDINANCE 2022
(TEMPORARY MEASURES) (EXPIRED DRIVING LICENCES)
ORDINANCE 2022**

Ordinance No. 2 of 2022

An Ordinance to make temporary provisions concerning expired driving licences, where it has not been possible for the licence-holders to renew or otherwise extend those licences.

Citation and commencement.

1. This Ordinance may be cited as the Road Traffic Ordinance 2022 (Temporary Measures) (Expired Driving Licences) Ordinance 2022 and shall come into force on 1 May 2022.

Definition.

2. The “Principal Ordinance” means the Road Traffic Ordinance 2022.

Authorisation to drive after driving licence has expired.

3. (1) Subject to section 4, the Chief of Police may authorise any person who satisfies the expired driving licence criteria to drive a motor vehicle of any class or description in the Territory.

(2) A person satisfies the expired driving licence criteria if –

(a) the person was the holder of a driving licence which complied with section 4(4) of the Principal Ordinance on 30 March 2020;

(b) the driving licence has expired, and

(c) it has not been possible for the person to extend or otherwise renew that driving licence.

Extent of authorisation.

4. An authorisation granted by the Chief of Police pursuant to section 3(1) –

(a) shall be in the form set out in the Schedule;

(b) may only permit the driving of a motor vehicle of the same class or description as was authorised by the expired driving licence;

(c) shall only be of effect whilst this Ordinance is in force, and

(d) may be withdrawn by the Chief of Police at any time and for any reason.

Effect of authorisation.

5. (1) A person driving a motor vehicle in accordance with an authorisation granted pursuant to section 3(1) shall not be required –

(a) to comply with section 4(1) of the Principal Ordinance;

(b) to produce a driving licence if requested by a Police Officer pursuant to section 5(1) of the Principal Ordinance.

(2) Despite section 4(2) of the Principal Ordinance, a person may permit or employ any other person to drive a motor vehicle in accordance with an authorisation granted to that other person pursuant to section 3(1).

Ordinance to expire unless extended.

6. This Ordinance continues in force until 1 August 2022 and then expires unless the Commissioner, by Order which shall be published in the *Gazette*, extends its duration for such further period or periods as the Commissioner may from time to time order.

SCHEDULE

Section 4(a)



BRITISH INDIAN OCEAN TERRITORY

AUTHORISATION TO DRIVE A MOTOR VEHICLE

*Section 3(1) Road Traffic Ordinance 2022
(Temporary Measures) (Driving Licences) Ordinance 2022*

I, [name], Chief of Police, hereby authorise the person named below to drive a motor vehicle, pursuant to section 3(1) of the Road Traffic Ordinance 2022 (Temporary Measures) (Driving Licences) Ordinance 2022 (the “Temporary Ordinance”).

Name of authorised person	
Date of birth	
Expired driving licence number	
Issued by	
Date of expiry	
Time and date of authorisation	

.....
[name]
Chief of Police
British Indian Ocean Territory

[date]

Notes:

1. This authorisation may be withdrawn by the Chief of Police at any time and for any reason.
2. The holder of this authorisation may only drive a motor vehicle of the same class or description as was authorised by the expired driving licence.
3. This authorisation shall only be of effect whilst the Temporary Ordinance is in force.
4. The requirements set out in Part III of the Road Traffic Ordinance 2022 (compulsory insurance) are unaffected by this authorisation.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

This Ordinance further enables the Chief of Police to authorise specific persons to drive motor vehicles in the Territory after their driving licences have expired. These measures were introduced on 14 April 2020, on a temporary basis, in recognition of the difficulties experienced in Diego Garcia as a result of responses to the Covid-19 pandemic.

Due to restrictions on travel and absence of staff at government departments in relevant countries, some persons in the Territory have been unable to extend or otherwise renew their driving licences. This Ordinance continues to address these problems for such time as the issue persists. It does not present an ongoing mechanism for authorisation to be given to drivers whose licences have expired outside these circumstances.



THE BRITISH INDIAN OCEAN TERRITORY

**THE SPEED OF CYCLES AND ELECTRIC
TRANSPORTATION DEVICES MEASURING
DEVICES APPROVAL 2022**

S.I. No. 1 of 2022

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THE BRITISH INDIAN OCEAN TERRITORY

**THE SPEED OF CYCLES AND ELECTRIC TRANSPORTATION
DEVICES MEASURING DEVICES APPROVAL 2022**

S.I. No. 1 of 2022

1. For the purposes of section 45(4) of the Road Traffic Ordinance 2022, the Commissioner, in pursuance of section 67 of the said Ordinance, hereby approves the following devices for measuring the speed of cycles and Electric Transportation Devices –
 - a. The Speedstar SR1 handheld Radar Gun.
 - b. The MPH Industries Z15 handheld speed detection device.
2. This approval shall come into force on 1 May 2022.

21 January 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner



BRITISH INDIAN OCEAN TERRITORY

THE PROHIBITED IMPORTS AND EXPORTS CONTROL ORDER 2022

S.I. No. 2 of 2022

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BRITISH INDIAN OCEAN TERRITORY

**THE PROHIBITED IMPORTS AND EXPORTS CONTROL
ORDER 2022**

S.I. No. 2 of 2022

The Commissioner, in exercise of the powers conferred on him by section 5 of the Imports and Exports Control Ordinance 2009 and all other powers enabling him in that behalf, hereby makes the following Order –

Citation and commencement.

1. This Order may be cited as the Prohibited Imports and Exports Control Order 2022 and shall come into force on 1 May 2022.

Interpretation.

2. (1) In this Order the following words shall have the meanings assigned to them –

“**child**” means a person under the age of 18;

“**drugs**” means “**controlled drugs**”, as defined by section 3 of the Misuse of Drugs Ordinance 1992;

“**Electric Transportation Device**” means a two-wheeled electric vehicle with handlebars and includes e-scooters and Segways;

“**Electrically Assisted Pedal Cycle**” means a bicycle fitted with pedals that can be used to drive it forward, helped by an electric motor;

“**film**” includes any form of video-recording;

“**firearm**” and “**ammunition**” have the meanings as defined in section 2 of the Firearms Ordinance 1970;

“**goods**” includes anything capable of being imported into the Territory;

“**prohibited**” and “**prohibited import**” shall be interpreted in accordance with sections 5 and 7 of the Imports and Exports Control Ordinance 2009;

“**proper officer**” means the Police Officer who is, for the time being, designated as being in charge of record keeping and control of restricted goods;

“**Pseudo-photograph**” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph;

“**restricted goods**” means any goods listed in Column A of Schedule 2;

“**Segway**” means a two-wheeled, one-person, self-balancing electric vehicle with handlebars manufactured by Segway Inc., or having the visual appearance of such a vehicle;

“**Senior Customs and Immigration Officer**” includes any person for the time being lawfully performing the functions of that position;

“**the relevant date**” means the date on which this Order comes into force;

“**Unmanned Aerial Vehicle (UAV)**” means an aircraft or aircraft system that is flown from a remote location without a pilot located in the aircraft itself, and includes a Small Unmanned Aircraft (SUA), a Remotely Piloted System (RPAS), an Unmanned Aircraft System (UAS) and a Drone.

(2) References to a photograph include –

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;

(c) a tracing or other image, whether made by electronic or other means (of whatever nature) –

(i) which is not itself a photograph or pseudo-photograph, but

(ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both), and

(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image within sub-paragraph 2(c),

and sub-paragraph (3) applies in relation to such an image as it applies in relation to a pseudo-photograph.

(3) Where an image shows a person, the image is to be treated as an image of a child if –

(a) the impression conveyed by the image is that the person shown is a child, or

(b) the predominant impression conveyed is that the person shown is a child despite the fact that some of the physical characteristics shown are not those of a child.

(4) Any reference in this Order to a seashell, coral, nest or egg includes a reference to a part thereof.

Prohibited goods – import.

3. (1) All items listed in Schedule 1 are prohibited goods.

(2) Subject to paragraphs 7 and 8, no person may import into the Territory any prohibited goods.

(3) Any item imported into the Territory contrary to sub-paragraph (2) shall be a prohibited import.

Restricted goods – import.

4. (1) All items listed in Column A of Schedule 2 are restricted goods.

(2) No person may import into the Territory any restricted goods unless –

(a) that importation is done in accordance with paragraph 5, or

(b) the Senior Customs and Immigration Officer has permitted that importation in accordance with paragraph 6.

(3) Any item imported into the Territory contrary to sub-paragraph (2) shall be a prohibited import.

Requirements where restricted goods are imported.

5. (1) Where a person wishes (“**the importer**”) wishes to import restricted goods into the Territory, the importer must, when those goods arrive in the Territory, present those goods to the Senior Customs and Immigration Officer for inspection.

(2) If the Senior Customs and Immigration Officer is satisfied that the corresponding conditions set out in Column B of Schedule 2 are fulfilled in connection with the restricted goods listed in Column A of that Schedule, the Senior Customs and Immigration Officer may allow the importer to take possession of those restricted goods.

(3) Where the Senior Customs and Immigration Officer allows an importer to take possession of restricted goods pursuant to sub-paragraph (2), he or she shall provide the proper officer with –

(a) the name, address and occupation of the importer, and

(b) the details of the restricted goods.

(4) The importer must not –

(a) upgrade, modify or alter the specifications of the restricted goods, or cause such an upgrade, modification or alteration to be made,

(c) transfer or otherwise dispose of the restricted goods

without the written permission of the proper officer or the Senior Customs and Immigration Officer.

(5) If the importer fails to comply with any of the applicable conditions in this paragraph, those restricted goods shall be deemed to be a prohibited import.

Further requirements in connection with restricted goods.

6. (1) Where a person (the “**new owner**”) takes possession or ownership of restricted goods, otherwise than by importing those restricted goods pursuant to paragraph 5, that person must, as soon as reasonably practicable and in any event within 48 hours, provide the proper officer with –

(a) his or her name, address and occupation, and

(b) the details of the restricted goods.

(2) The new owner must not –

(a) upgrade, modify or alter the specifications of the restricted goods, or cause such an upgrade, modification or alteration to be made,

(c) transfer or otherwise dispose of the restricted goods

without the written permission of the proper officer or the Senior Customs and Immigration Officer.

(3) If the new owner fails to comply with any of the applicable conditions in this paragraph, those restricted goods shall be deemed to be a prohibited import.

Senior Customs and Immigration Officer may permit import of any restricted or prohibited goods.

7. (1) The Senior Customs and Immigration Officer may expressly permit the import of any goods included in –

(a) Schedule 1, or

(b) Schedule 2 (where the criteria set out in Column B have not been met)

where he or she is satisfied by the person wishing to import the goods that in the particular circumstances its import is reasonable.

(2) Where the importation of goods is permitted in accordance with sub-paragraph (1), the Senior Customs and Immigration Officer may impose conditions on the possession and use of those goods.

(3) The Senior Customs and Immigration Officer may, at any time, amend or vary any conditions imposed pursuant to sub-paragraph (2).

(4) Goods imported into the Territory pursuant to sub-paragraph (1) are not be treated as being prohibited imports unless there is a failure to comply with any conditions imposed pursuant to sub-paragraphs (2) or (3).

Commissioner may permit import of prohibited goods.

8. (1) The Commissioner may permit the import into the Territory of any goods listed in Schedule 1.

(2) The Commissioner may impose conditions on the possession and use of any goods which are imported pursuant to sub-paragraph (1).

(3) The Commissioner may, at any time, amend or vary any conditions imposed pursuant to sub-paragraph (2).

(4) Goods imported into the Territory pursuant to sub-paragraph (1) are not be treated as being prohibited imports unless there is a failure to comply with any conditions imposed pursuant to sub-paragraphs (2) or (3).

Prohibited goods - export.

9. The exportation out of the Territory of any goods listed in Schedule 3 is prohibited, except with the prior written permission of the Commissioner's Representative.

Transitional arrangements – pre-imported restricted goods.

10. (1) This paragraph applies where any person, on the relevant date, is in possession of pre-imported restricted goods.

(2) A person in possession of pre-imported restricted goods must present those goods to the Senior Customs and Immigration Officer within 48 hours from the relevant date, or as soon as reasonably practicable after that time.

(3) When pre-imported restricted goods are provided to the Senior Customs and Immigration Officer in accordance with sub-paragraph (2), paragraph 5 shall apply as if the pre-imported restricted goods had just arrived in the Territory.

(4) If a person in possession of pre-imported restricted goods fails to present them to the Senior Customs and Immigration Officer in accordance with sub-paragraph (2), those pre-imported restricted goods shall be deemed to be a prohibited import.

(5) For the purposes of this paragraph, “**pre-imported restricted goods**” means goods –

(a) which have been imported into the Territory before the relevant date, and

(b) to which paragraph 4 would apply if those goods were to be imported into the Territory on or after the relevant date.

Transitional arrangements – proceedings

11. Despite paragraph 11 and without prejudice to section 21(1) of the Interpretation and General Provisions Ordinance 1993 –

(a) proceedings may be instituted after the relevant date for an offence alleged to have been committed before that date under any provision repealed by paragraph 11 and any such proceedings shall be dealt with for all purposes as if this Order had not been made and the repealed provision had remained in force, and

(b) any proceedings that were instituted before the relevant date by virtue of any provision repealed by paragraph 11 may be continued thereafter and shall likewise be dealt with for all purposes as if this Order had not been made and the repealed provision remained in force.

Repeal.

12. The Prohibited Imports and Exports Order 2009 is hereby repealed.

SCHEDULE 1

PROHIBITED GOODS - IMPORT

1.	Any ballast, rock or other fill material which contains debris, roots, wood, scrap material, refuse, plant or animal material not originating in the Territory.
2.	Any goods or material of any description containing or consisting of any species of living plant, animal or insect not indigenous to the Territory.
3.	Fixed blade knives.
4.	Folding or lock blade knives with blades more than 3 inches long.
5.	Spear-guns.
6.	Catapults.
7.	Firearms or ammunition.
8.	Firecrackers.
9.	Offensive weapons (including, but not limited to, axes, hatchets, cutlasses or clubs).
10.	Drugs (including, but not limited to, Marijuana).
11.	Equipment used for, or to facilitate, weighing, processing, or partaking of drugs.
12.	Clothing which bears any drug emblem.
13.	Things or material, whether written or printed or in the form of pictures, drawings or designs, or in the form of compact discs or any other means of recording, or in the form of any other means of visual or non-visual communication, which advocate or advertise or otherwise promote the use of drugs or which contain, or are contained in, or are accompanied by, such things or material.
14.	Obscene writings, printed matter, drawings, film, photograph or pictures, or any other obscene material or objects.
15.	Any indecent photograph, film or pseudo-photograph or film of a child.
16.	Tobacco in any form save where the import is – (a) of not more than 200 cigarettes or 100 cigarillos or 50 cigars or 250g of tobacco for the personal use of the importer and is contained in the baggage accompanying a person arriving in the Territory; or (b) part of goods consigned to the United States authorities or to a United States contractor for the use of or for sale to members of the United Kingdom Forces, military members of the United States Forces, or to other members of the United States Forces, or to those contractor personnel and their dependents who are not engaged in any business or occupation in the Territory.
17.	Any type of Unmanned Aerial Vehicle (UAV).
18.	Any type of electric vehicle comprised of a board or platform on wheels, without handlebars, for riding on while standing (including, but not limited to, hoverboards, e-unicycles and electric skateboards).

SCHEDULE 2

RESTRICTED GOODS - IMPORT

Column A	Column B
Electrically Assisted Pedal Cycles	<p>The vehicle shall:</p> <ul style="list-style-type: none">(a) be fitted with pedals by means of which it is capable of being propelled; and(b) be fitted with no motor other than an electric motor which—<ul style="list-style-type: none">(i) has a continuous rated output which, when installed in the vehicle with the nominal voltage supplied, does not exceed 0.25 kilowatts, and(ii) cannot propel the vehicle when it is travelling at more than 25 miles per hour.
Electric Transportation Devices	<p>The vehicle shall:</p> <ul style="list-style-type: none">(a) be fitted with a handlebar by which the vehicle may be controlled; and(b) be fitted with no motor other than an electric motor which—<ul style="list-style-type: none">(i) has a continuous rated output which, when installed in the vehicle with the nominal voltage supplied, does not exceed 0.45 kilowatts, and(ii) cannot propel the vehicle when it is travelling at more than 12.5 miles per hour.

SCHEDULE 3

PROHIBITED GOODS - EXPORT

1.	Wild animals, whether alive or dead.
2.	Seashells.
3.	Coral, whether alive or dead.
4.	Wild birds' nests.
5.	Birds' eggs.
6.	Turtles' eggs.
7.	Flora specified under the Wild Life Protection Regulations 2003.

21 January 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner



BRITISH INDIAN OCEAN TERRITORY

**OFFICE OF DEPUTY
COMMISSIONER ORDER 2017 (REVOCATION)
ORDER 2022**

S.I. No. 3 of 2022¹

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¹ SI Number added after signature

BRITISH INDIAN OCEAN TERRITORY

**OFFICE OF DEPUTY COMMISSIONER ORDER 2017 (REVOCATION)
ORDER 2022**

1. In exercise of the powers conferred upon him by section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 25 of the Interpretation and General Provisions Ordinance 1993, the Commissioner hereby revokes the Office of Deputy Commissioner Order 2017 (RRBIOT c.I.11).
2. This Order shall come into effect on 21 March 2022.

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner
British Indian Ocean Territory

18 March 2022



THE BRITISH INDIAN OCEAN TERRITORY

**THE REMOVAL ORDER
(PROCESS OF DETERMINATION)
REGULATIONS 2022**

S.I. No. 4 of 2022²

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² Signed SI incorrectly numbered '7'.

THE BRITISH INDIAN OCEAN TERRITORY

**THE REMOVAL ORDER
(PROCESS OF DETERMINATION)
REGULATIONS 2022**

S.I. No. 4 of 2022³

In exercise of the powers conferred on him by section 15(1) of the British Indian Ocean Territory (Immigration) Order 2004, the Commissioner hereby makes the following regulations:

Citation.

1. These regulations may be cited as the Removal Order (Process of Determination) Regulations 2022 and shall come into force forthwith.

Application of regulations.

2. These regulations apply where the Commissioner is considering whether to make an order under section 12(1) of the British Indian Ocean Territory (Immigration) Order 2004 that a person (“A”) who is unlawfully present in the Territory shall be removed from the Territory and remain out of the Territory (a “removal order”).

Statement on process.

3. (1) Where these regulations apply, the Commissioner may, in his discretion, issue a statement on process.

(2) A statement on process issued pursuant to sub-regulation (1) may relate to a specific individual, or group of individuals, as specified within that document.

Contents of statement on process.

4. A statement on process made in accordance with regulation 3:
- a. shall contain information describing the process that will be adopted before the Commissioner makes a determination on whether to make, or not make, a removal order, and
 - b. may contain such other information as the Commissioner considers useful, or reasonable, in all the circumstances.

Service of statement on process.

5. Where the Commissioner issues a statement on process, it shall be served on A and (if applicable) his or her legal representative, prior to the commencement of the process described within it.

³ Signed SI incorrectly numbered ‘7’.

Statement on process to be followed.

6. (1) The procedures set out in a statement on process shall be followed, as far as reasonably practicable.

(2) Any failure to comply with the procedures set out in a statement of process shall not nullify a subsequent decision of the Commissioner to issue any removal order in connection with A.

21 June 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner



THE BRITISH INDIAN OCEAN TERRITORY

**THE ROAD TRAFFIC ORDINANCE 2022
(TEMPORARY MEASURES) (EXPIRED
DRIVING LICENCES) ORDINANCE 2022
EXTENSION ORDER 2022**

S.I. No. 5 of 2022⁴

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⁴ Signed SI incorrectly numbered '9'.

THE BRITISH INDIAN OCEAN TERRITORY

**THE ROAD TRAFFIC ORDINANCE 2022 (TEMPORARY MEASURES)
(EXPIRED DRIVING LICENCES)
ORDINANCE 2022 EXTENSION ORDER 2022**

S.I. No. 5 of 2022⁵

The Commissioner, acting in accordance with section 6 of the Road Traffic Ordinance 2022 (Temporary Measures) (Expired Driving Licences) Ordinance 2022 (“the Ordinance”), hereby Orders that the Ordinance shall remain in force until 1 December 2022.

19 July 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner

⁵ Signed SI incorrectly numbered ‘9’.



THE BRITISH INDIAN OCEAN TERRITORY

**THE SUPREME COURT
(LOCATION OF SUB-REGISTRY)
(AMENDMENT) NOTICE 2022**

S.I. No. 6 of 2022⁶

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⁶ Signed SI incorrectly numbered '10'.

THE BRITISH INDIAN OCEAN TERRITORY
THE SUPREME COURT
(LOCATION OF SUB-REGISTRY) (AMENDMENT) NOTICE 2022

S.I. No. 6 of 2022⁷

In exercise of the powers conferred by Rule 6(1) of the Supreme Court (Procedure and Practice) Rules 1984 and section 25 of the Interpretation and General Provisions Ordinance 1993, the Commissioner hereby amends the Supreme Court (Location of Sub-Registry) Notice 2015 as follows:

The words “C/o RadcliffesLeBrasseur” are amended to state “Weightmans LLP”.

This amendment shall come into effect forthwith.

15 August 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner

⁷ Signed SI incorrectly numbered ‘10’.



THE BRITISH INDIAN OCEAN TERRITORY

**THE SUPREME COURT
(LOCATION OF SUB-REGISTRY)
(AMENDMENT) (No.2) NOTICE 2022**

S.I. No. 7 of 2022⁸

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⁸ Signed SI incorrectly numbered '11'.

THE BRITISH INDIAN OCEAN TERRITORY

**THE SUPREME COURT
(LOCATION OF SUB-REGISTRY)
(AMENDMENT) (No.2) NOTICE 2022**

S.I. No. 7 of 2022⁹

In exercise of the powers conferred by Rule 6(1) of the Supreme Court (Procedure and Practice) Rules 1984 and section 25 of the Interpretation and General Provisions Ordinance 1993, the Commissioner hereby amends the Supreme Court (Location of Sub-Registry) Notice 2015 as follows:

The words and numbers “85 Fleet Street, London EC4Y 1AE” are amended to read:

“The Hallmark,
105 Fenchurch Street,
London
EC3M 5JG”

This amendment shall come into effect forthwith.

29 December 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner

⁹ Signed SI incorrectly numbered ‘11’.

UK LAWS EXTENDED TO THE BRITISH INDIAN OCEAN TERRITORY

1. S.I. No. 453 of 2022: [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) Order 2022](#)
2. S.I. No. 843 of 2022: [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) \(No. 2\) Order 2022](#)
3. S.I. No. 1167 of 2022: [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) \(No. 3\) Order 2022](#)
4. S.I. No. 1338 of 2022: [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) \(No. 4\) Order 2022](#)
5. S.I. No. 1339 of 2022: [The Republic of Belarus \(Sanctions\) \(Overseas Territories\) \(Amendment\) Order 2022](#)
6. S.I. No. 1347 of 2022: [The Haiti \(Sanctions\) \(Overseas Territories\) Order 2022](#)



Statement on Process

I, Paul Candler, Commissioner of the British Indian Ocean Territory (“BIOT”) hereby issue this statement on process, in accordance with regulation 3 of the Removal Order (Process of Determination) Regulations 2022, to set out the process that is to be adopted in connection with the persons rescued from two vessels in the waters of the Territory (collectively referred to herein as “the migrants”) and who currently remain in Diego Garcia.

A. *Background*

1. The first vessel was rescued on 3 October 2021 and the second vessel was rescued on 10 April 2022. On both occasions, all passengers and crew were taken to Diego Garcia, where they have been provided with temporary shelter, food, healthcare, unlimited access to telephone communications and provisions.

2. Six individuals requested assistance from the British Indian Ocean Territory Administration to facilitate a voluntary return to their home country, Sri Lanka. They arrived back on Colombo on Saturday 28th May 2022. The Administration will assist any remaining members of the group to return home, should that be their voluntarily expressed desire.

3. The migrants are not being detained in Diego Garcia. They are free to leave, if they can make proper arrangements to be collected. In particular, it should be noted that the Administration cannot provide fuel, potable water or food to a collecting vessel. The Administration is also unable to arrange for the repair of either of the vessels from which the migrants were rescued. The Commissioner does not condone and will not be complicit in, any act of people smuggling.

4. A total of 113 migrants remain in Diego Garcia, of whom 111 are believed to be from Sri Lanka and two from India. At present, none of these persons have stated that they wish to return home. Given that they are unable to remain in the Territory, the process set out below has been adopted, with assistance from external counsel, to determine how their claims may be treated under BIOT and international law.

B. *Laws of the Territory*

5. The BIOT’s immigration laws are primarily contained in the British Indian Ocean Territory (Immigration) Order 2004. This provides restrictions on entering or being present in the Territory (section 5) and enables the Commissioner to make an order “directing that any person who is unlawfully present in the Territory shall be removed from the Territory and remain out of the Territory, either indefinitely or for such period as is specified in the order” (section 12(1)).

6. The exercise of these powers by the Commissioner is subject to applicable international law. I have been advised and accept that it is correct to proceed on the basis that neither the ECHR, nor the 1951 Refugee Convention apply in the BIOT. However, the principle of non-refoulement does apply as a matter of customary law, in both the narrower refugee law sense and the wider human rights sense.

7. The process set out below has been devised to enable claims that return to Sri Lanka (or India) would be in breach of the principle of non-refoulement to be lawfully decided.

C. Process to be applied

8. Each individual or head of a family group will be interviewed to gather evidence concerning their claims.

Interview

9. The interview will be conducted in accordance with the Home Office document 'Asylum Interviews', version 8 as suitably modified to suit the circumstances.

The interviewers

10. There will be a total of six interviewers, who are experienced in dealing with immigration claims. They will be appointed as BIOT immigration officers.

11. There will be one immigration adviser, who has greater seniority than the interviewers. This person will be available to assist the interviewers with any queries they may have. This person will ensure that the interviews are conducted in light of specific information concerning country conditions in Sri Lanka (or India). This person will be available to assist the interviewers with any queries regarding this information or any other matter they may have. The applicants and their legal advisers shall be sent the said specific information concerning country conditions in Sri Lanka (or India) prior to the interview.

The interpreters

12. There will be a panel of interpreters, who are suitably qualified and who appear on a list of approved persons to interpret in immigration interviews conducted in the UK.

The interviews

13. Interviews will be arranged and held for all those concerned. These interviews will be held in an expeditious manner. In the letter of invitation the interviewees will be advised, inter alia, to send any documents or other evidence in support of their claim.

14. The interviewees and (where applicable) their legal representatives will be given five working days' notice of the arrangement of their interview. This notice will take the form of an invitation letter, which will be translated into Tamil and read to the person concerned in that language.

15. The interviews will be held remotely, with the interviewers and interpreters physically present in one or more locations in the UK. The interviewees will be in one of five numbered rooms within the chapel, next to where the migrants are based. Each of these rooms will have an iPad, connected to the internet, to enable the interview to take place via Teams, or similar program.

16. A member of staff in Diego Garcia will confirm the identity of the interviewee at the start of the interview and then leave the room.

17. The invitation letter (a template of which is attached) contains more information in relation to how the meeting will be conducted and who may be present.

18. It is expected that each interview will be concluded within a day. If, however, there is a need to clarify a particular point, or correct an omission, a continuation interview will be arranged as soon as

reasonably practicable after the need for a continuation interview is made known to the Administration's representatives.

Record of interview

19. For technical reasons, it may not be possible to make an audio-recording of the interviews. To ensure that a record is kept of what is said during the interviews, the interviewers shall make a contemporaneous note.

20. The interviewers may attempt to make an audio-recording of the interview. Where this is done, the interviewee and (if applicable) his or her legal representative shall be made aware.

21. If it is possible to make an audio-recording of part or all of the interview, it will be used as a back-up and will not be made available to the interviewee and (if applicable) his or her legal representative, unless a particular cause for concern is properly identified.

22. The legal representatives, if any, of the interviewee may not conduct their own audio-recording of those parts of the interview which are not being audio-recorded by the interviewers.

Legal representation

23. Leigh Day solicitors have kindly provided a list of their clients who are in Diego Garcia. Arrangements will be made for them to have at least five working days' notice of any interview scheduled for those persons.

24. Those who are unrepresented will be informed that they can have legal representation at any stage.

25. During interview, the legal representatives will be expected to comply with the "Professional conduct of legal representatives" as set out in page 60 of the Home Office document "Asylum Interviews", version 8.0, as suitably modified to suit the circumstances.

26. After completion of the interview the interviewee and his or her representative will be sent a copy of the contemporaneous note of interview. They will be invited to make any additional comment or submissions or adduce any further evidence at this stage, according to specified time limits.

Initial consideration of the evidence

Case file

27. Once the interview is completed and the applicant and/or his or her representatives have had an opportunity to make any further comments or submissions in light of the contemporaneous note of the interview, all documentation relevant to the application will be compiled into a case file. The case file shall comprise the following:

- (a) A copy of the Removal Order (Process of Determination) Regulations 2022, Statement of Process issued in accordance with the Regulations, the British Indian Ocean Territory (Immigration) Order 2004 and the Courts Ordinance 1983;
- (b) The contents of completed Forms 1 and 2 (if applicable);
- (c) The contemporaneous note of interview(s);
- (d) Any other evidence or materials, including statements, comments, letters or submissions that have been submitted by the applicant and/or his or her representatives;

(e) Specified information concerning Sri Lanka (or India) (see paragraph 10 above).

28. The case file will be forwarded to two independent lawyers who have considerable experience in immigration and asylum matters and knowledge of the relevant standards. On consideration of this evidence, the lawyers will either:

- a. Ask the interviewer to conduct a further interview with the person concerned, to clarify a particular point, or to correct an omission, or
- b. Provide the Commissioner with advice.

29. This advice may summarise the issues involved and highlight any particular matter for the Commissioner's attention. It will also contain a reasoned opinion as to whether return to Sri Lanka (or India) would be in breach of the principle of non-refoulement.

The determination

30. In making a determination the Commissioner will consider:

- a. The contemporaneous note of interview;
- b. The contents of completed Forms 1 and 2 (if applicable);
- c. The advice provided to him (see paragraph 21(a));
- d. The assurances, if any, provided by the Government of Sri Lanka (or India);
- e. The specified information concerning Sri Lanka (or India), as identified in paragraph 11 above, and
- f. Any other evidence or materials, including statements, comments, letters or submissions that have been submitted by the applicant and/or his or her representatives.

31. The Commissioner will decide whether the issuance of a removal order for return to Sri Lanka (or India) would be in breach of the principle of non-refoulement. Public law principles will govern the taking of that decision.

32. If the Commissioner determines that a removal order will be issued, written reasons for this decision will be provided.

33. The Commissioner recognises that section 6 of the Courts Ordinance 1983 is expressed in broad terms and would be capable of extending a power of judicial review, that being a power vested in or capable of being exercised by the High Court of Justice in England.

21 June 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner
British Indian Ocean Territory



Statement on Process

(22 July 2022)

I, Paul Candler, Commissioner of the British Indian Ocean Territory (“BIOT”) hereby issue this statement on process, in accordance with regulation 3 of the Removal Order (Process of Determination) Regulations 2022. It replaces the statement of process issued on 21 June 2022 and sets out an updated process that is to be adopted in connection with the persons rescued from three vessels in the waters of the Territory (collectively referred to herein as “the migrants”) and who currently remain in Diego Garcia. The arrangements set out in Part C of this updated statement on process shall be followed forthwith.

A. *Background*

1. The first vessel was rescued on 3 October 2021, the second vessel was rescued on 10 April 2022 and the third vessel was rescued on 21 June 2022. On these three occasions, all passengers and crew were taken to Diego Garcia, where they have been provided with temporary shelter, food, healthcare, access to video and telephone communications with legal representatives and provisions.

2. Six individuals requested assistance from the British Indian Ocean Territory Administration to facilitate a voluntary return to their home country, Sri Lanka. They arrived back on Colombo on Saturday 28th May 2022. The Administration will assist any remaining members of the group to return home, should that be their voluntarily expressed desire.

3. The migrants are not being detained in Diego Garcia. They are free to leave, if they can make proper arrangements to be collected. In particular, it should be noted that the Administration cannot provide fuel, potable water or food to a collecting vessel. The Administration is also unable to arrange for the repair of either of the vessels from which the migrants were rescued. The Commissioner does not condone and will not be complicit in, any act of people smuggling.

4. A total of 173 migrants currently remain in Diego Garcia. Several members of this group have expressed a desire to return home and these requests are being considered. Given that the other members of the group are unable to remain in the Territory, the process set out below has been adopted, with assistance from external counsel, to determine how their claims may be treated under BIOT and international law.

B. *Laws of the Territory*

5. The BIOT’s immigration laws are primarily contained in the British Indian Ocean Territory (Immigration) Order 2004. This provides restrictions on entering or being present in the Territory (section 5) and enables the Commissioner to make an order “directing that any person who is unlawfully present in the Territory shall be removed from the Territory and remain out of the Territory, either indefinitely or for such period as is specified in the order” (section 12(1)).

6. The exercise of these powers by the Commissioner is subject to applicable international law. I have been advised and accept that it is correct to proceed on the basis that neither the ECHR, nor the 1951 Refugee Convention apply in the BIOT. However, the principle of non-refoulement does apply as a matter of customary law, in both the narrower refugee law sense and the wider human rights sense.

7. The process set out below has been devised to enable claims that return to Sri Lanka (or India) would be in breach of the principle of non-refoulement to be lawfully decided.

C. Process to be applied

8. Each individual or head of a family group will be interviewed to gather evidence concerning their claims.

Interview

9. The interview will be conducted in accordance with the Home Office document 'Asylum Interviews', version 8 as suitably modified to suit the circumstances.

The interviewers

10. There will be a total of six interviewers, who are experienced in dealing with immigration claims. They will be appointed as BIOT immigration officers.

11. There will be one immigration adviser, who has greater seniority than the interviewers. This person will be available to assist the interviewers with any queries they may have. This person will ensure that the interviews are conducted in light of specific information concerning country conditions in Sri Lanka (or India). This person will be available to assist the interviewers with any queries regarding this information or any other matter they may have. The applicants and their legal advisers shall be sent the said specific information concerning country conditions in Sri Lanka (or India) prior to the interview.

The interpreters

12. There will be a panel of interpreters, who are suitably qualified.

The interviews

13. Interviews will be arranged and held for all those concerned. These interviews will be held in an expeditious manner. In the letter of invitation the interviewees will be advised, inter alia, to send any documents or other evidence in support of their claim.

14. The interviewees and (where applicable) their legal representatives will be given five working days' notice of the arrangement of their interview, which may be waived by agreement in writing. This notice will take the form of an invitation letter, which will be translated into Tamil and read to the person concerned in that language.

15. The interviews will be held remotely, with the interviewers and interpreters physically present in one or more locations in the UK. The interviewees will be in one of five numbered rooms within the chapel, next to where the migrants are based. Each of these rooms will have an iPad, connected to the internet, to enable the interview to take place via Teams, or similar program. The interviewees will be informed that they are not to take documents or mobile telephones into the rooms.

16. A member of staff in Diego Garcia will confirm the identity of the interviewee at the start of the interview and then leave the room.

17. The invitation letter (a template of which is attached) contains more information in relation to how the meeting will be conducted and who may be present.

18. It is expected that each interview will be concluded within a day. If, however, there is a need to clarify a particular point, or correct an omission, or to continue an interview which had to be stopped due to a connection fault or other issue arising during the course of the interview, a continuation interview will be arranged as soon as reasonably practicable after the need for a continuation interview is made known to the Administration's representatives.

Record of interview

19. For technical reasons, it may not be possible to make an audio-recording of the interviews. To ensure that a record is kept of what is said during the interviews, the interviewers shall make a contemporaneous note.

20. The interviewers may attempt to make an audio-recording of the interview. Where this is done, the interviewee and (if applicable) his or her legal representative shall be made aware.

21. If it is possible to make an audio-recording of part or all of the interview, it will be used as a back-up and will not be made available to the interviewee and (if applicable) his or her legal representative, unless a particular cause for concern is properly identified.

22. The legal representatives, if any, of the interviewee may not conduct their own audio-recording of those parts of the interview which are not being audio-recorded by the interviewers.

Legal representation

23. Leigh Day solicitors have kindly provided a list of their clients who are in Diego Garcia. Arrangements will be made for them to have at least five working days' notice of any interview scheduled for those persons. The same arrangements will be extended to any other firm of solicitors that provide a list of their clients to the Administration before the dates of interviews for their clients have been scheduled.

24. Those who are unrepresented will be informed that they can have legal representation at any stage.

25. During interview, the legal representatives will be expected to comply with the "Professional conduct of legal representatives" as set out in page 60 of the Home Office document "Asylum Interviews", version 8.0, as suitably modified to suit the circumstances.

26. After completion of the interview the interviewee and his or her legal representative will be sent a copy of the contemporaneous note of interview. They will be invited to make any additional comment or submissions or adduce any further evidence at this stage, within ten working days. This duration of time may, at the request of the interviewee, or his or her legal representative, be extended by the Administration for good cause. Any such request must be made before the expiry of the ten working days' time period.

Initial consideration of the evidence

Case file

27. Once the interview is completed and the applicant and/or his or her legal representatives have had an opportunity to make any further comments or submissions in light of the contemporaneous note of the interview, all documentation relevant to the application will be compiled into a case file. The case file shall comprise the following:

- (a) A copy of the Removal Order (Process of Determination) Regulations 2022, Statement of Process issued in accordance with the Regulations, the British Indian Ocean Territory (Immigration) Order 2004 and the Courts Ordinance 1983;
- (b) The contents of completed Forms 1 and 2 (if applicable);
- (c) The contemporaneous note of interview(s);
- (d) Any other evidence or materials, including statements, comments, letters or submissions that have been submitted by the applicant and/or his or her legal representatives;
- (e) Specified information concerning Sri Lanka (or India) (see paragraph 10 above).

28. The case file will be forwarded to two or more independent lawyers who have considerable experience in immigration and asylum matters, and knowledge of the relevant standards. On consideration of this evidence, the lawyers will either:

- a. Ask the interviewer to conduct a further interview with the person concerned, to clarify a particular point, or to correct an omission, or
- b. Provide the Commissioner with advice.

29. This advice may summarise the issues involved and highlight any particular matter for the Commissioner's attention. It will also contain a reasoned opinion as to whether return to Sri Lanka (or India) would be in breach of the principle of non-refoulement.

The determination

30. In making a determination the Commissioner will consider:

- a. The contemporaneous note of interview;
- b. The contents of completed Forms 1 and 2 (if applicable);
- c. The advice provided to him (see paragraph 21(a));
- d. The assurances, if any, provided by the Government of Sri Lanka (or India);
- e. The specified information concerning Sri Lanka (or India), as identified in paragraph 11 above, and
- f. Any other evidence or materials, including statements, comments, letters or submissions that have been submitted by the applicant and/or his or her legal representatives.

31. The Commissioner will decide whether the issuance of a removal order for return to Sri Lanka (or India) would be in breach of the principle of non-refoulement. Public law principles will govern the taking of that decision.

32. If the Commissioner determines that a removal order will be issued, written reasons for this decision will be provided.

33. If the Commissioner determines that a removal order will not be issued, written reasons for this decision may, at the Commissioner's discretion, be provided.

34. The Commissioner recognises that section 6 of the Courts Ordinance 1983 is expressed in broad terms and would be capable of extending a power of judicial review, that being a power vested in or capable of being exercised by the High Court of Justice in England.

22 July 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner
British Indian Ocean Territory



Statement on Process

(22 July 2022)

Addendum

I, Paul Candler, Commissioner of the British Indian Ocean Territory (“BIOT”) hereby issue this Addendum to the Statement on Process issued on 22 July 2022, (the “SoP”), in accordance with regulation 3 of the Removal Order (Process of Determination) Regulations 2022.

1. This Addendum amends paragraph 27, provides further information and explanation in relation to paragraph 29 and corrects an error in paragraph 30 of the SoP.

2. Paragraph 27 of the SoP is hereby amended to read:

27. Once the interview is completed and the applicant and/or his or her legal representatives have had an opportunity to make any further comments or submissions in light of the contemporaneous note of the interview or other matters arising, all documentation relevant to the application will be compiled into a case file. The case file shall comprise the following:

- (a) A copy of the Removal Order (Process of Determination) Regulations 2022, Statement of Process issued in accordance with the Regulations, the British Indian Ocean Territory (Immigration) Order 2004 and the Courts Ordinance 1983;
- (b) The contents of completed Forms 1 and 2 (if applicable);
- (c) The contemporaneous note of interview(s);
- (d) Any other evidence or materials, including statements, comments, letters or submissions that have been submitted by the applicant and/or his or her legal representatives or that have been identified by the lawyers appointed to provide advice to the Commissioner pursuant to paragraph 28(b) as a matter arising that requires additional evidence in order for there to be proper consideration of the migrant’s claims;
- (e) Specified information concerning Sri Lanka (or India) (see paragraph 10 above).

3. If, based on submissions made pursuant to paragraph 26 of the SoP or otherwise, the lawyers considering the case file in accordance with paragraphs 28 and 29 of the SoP (the “Reviewers”) are of the view that:

- a. the relevant claims made by an applicant cannot properly be considered, due to the absence of evidence which could reasonably be obtained, and
- b. the absence of such evidence could materially affect the fairness of their considerations, and
- c. the absence of that evidence is not due to an unreasonable failure by the applicant, or his or her legal representative, to obtain it, and
- d. the provision of funds by the Commissioner would enable that evidence to be obtained within a reasonable amount of time,

the Reviewers may recommend to the Commissioner that funding should be provided for such evidence (the “additional evidence”) to be obtained.

4. The Commissioner may, in his complete discretion, on receipt of a recommendation provided by the Reviewers pursuant to paragraph 3:

- a. allow the expenditure of monies from the Consolidated Fund for payment of the reasonable expenses involved in obtaining the additional evidence,
- b. place any conditions on the payment of those expenses as the Commissioner considers necessary or appropriate.

5. If an applicant fails to comply with any reasonable conditions placed on payment in accordance with paragraph 4.b., the Reviewers will be notified that the criteria in paragraph 3.c. has not been met and they will assess the claims made by the applicant in the absence of the additional evidence.

6. Despite the generality of paragraph 4, if the additional evidence is, or is likely to be, in the form of a report by a medical practitioner, the Commissioner may:

- a. provide the details of up to three suitably qualified medical practitioners to the applicant or his or her legal representatives,
- b. ask the applicant or his or her legal representative to choose which of the medical practitioners the applicant would wish to conduct an assessment and produce that report.

7. If an applicant:

- a. fails to choose between the medical practitioners who have been put forward, or
- b. fails to cooperate fully with a medical practitioner who has been chosen,

the Reviewers will be notified that the criteria in paragraph 3.c. has not been met and they will assess the claims made by the applicant in the absence of the additional evidence.

8. Where an applicant does comply with any reasonable conditions placed on payment in accordance with paragraph 4.b., the additional evidence will be sent to the applicant or his or her legal representatives, who will be afforded sufficient time to make any further comments arising therefrom. This additional evidence, together with any comments arising therefrom received from the applicant or his or her legal representatives within the specified time limit will be included in the case file for further consideration by the Reviewers.

9. The specified time limit for the purposes of paragraph 8 is five working days.
10. Any decision made by the Reviewers in accordance with paragraph 3, to make a recommendation or not, shall be made in their complete discretion and shall not be subject to appeal.
11. In paragraph 30(c) of the SoP, the reference to “paragraph 21(a)” is hereby corrected to state “paragraph 28(b)”.
12. The provisions contained within this Addendum shall be followed forthwith.

17 August 2022

[SIGNED ON THE ORIGINAL]

Paul Candler
Commissioner
British Indian Ocean Territory



Statement on Process

(27 October 2022)

Second Addendum

I, Becky Richards, Acting Commissioner of the British Indian Ocean Territory (“BIOT”) hereby issue this Second Addendum to the Statement on Process issued on 22 July 2022, (the “SoP”), in accordance with regulation 3 of the Removal Order (Process of Determination) Regulations 2022.

This Second Addendum amends the initial paragraph of the SoP, together with Part A (Background).

1. In the initial paragraph, the word “three” is amended to read “five”.

2. Paragraph 1 of the SoP is amended by replacing it with:

“A total of five vessels have been rescued in the waters of the Territory since October 2021, three of which remain in Diego Garcia. Whilst in the Territory, all passengers and crew have been provided with temporary shelter, food, healthcare, access to video and telephone communications with legal representatives and provisions.”

3. Paragraph 2 of the SoP is amended by deleting the first two sentences and replacing them with:

“From May 2022, the British Indian Ocean Territory Administration has facilitated voluntary return flights to Sri Lanka for some of the migrants.”

4. Paragraph 4 of the SoP is amended by replacing it with:

“Given that those migrants who do not voluntarily wish to return home cannot remain in the Territory, the process set out below has been adopted, with assistance from external counsel, to determine how their claims may be treated under BIOT and international law.”

5. For the avoidance of doubt, unless otherwise stated, after the issuance of this Second Addendum, any person who –

- a. arrives in the Territory in a similar way to those who arrived on the five vessels; and
- b. claims that a return to their country of nationality or origin would be in breach of the principle of non-refoulement,

will be subject to the process set out in Part C of the SoP.

6. The provisions set out in this Second Addendum shall be followed forthwith and shall be applicable to persons who arrived on the fourth and fifth vessels as if this Second Addendum had been made on their arrival.

27 October 2022

[SIGNED ON THE ORIGINAL]

Becky Richards
Commissioner (Acting)
British Indian Ocean Territory