



**BRITISH INDIAN OCEAN TERRITORY**

# **OFFICIAL GAZETTE**

**VOLUME LV**

**2023**

**ISSUE I**

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**THE BRITISH INDIAN OCEAN TERRITORY**

**OFFICIAL GAZETTE**

**VOL LV: 2023**

**Issue No. I**

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**Published by Authority**

**February 2024**

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**PART 1**

**NOTICES**

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

None.

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

1. Public Notice Number 03-23: Restriction of Movement Order

**PART 2**

**APPOINTMENTS**

A. The Commissioner has made the following appointments:

1. MS KATERINA TSIBOUKLIS to be Principal Legal Adviser with effect from 30 May 2023, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004.
2. MR DAVID EDWARDS to be Principal Legal Adviser, replacing MS KATERINA TSIBOUKLIS, with effect from 23 June 2023, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004.
3. MR NISHI DHOLAKIA to be Deputy Commissioner in place of MS REBECCA MARGARET RICHARDS with effect from 19 October 2023, under section 7 of the British Indian Ocean Territory (Constitution) Order 2004, and in accordance with the Office of Deputy Commissioner Order 2008.
4. MR CHARLES EKINS to be Senior Magistrate with effect from 24 October 2023, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 28(1) of the Courts Ordinance 1983.
5. MR EDWARD BENNETT to be Registrar of the British Indian Ocean Territory Court of Appeal with effect from 11 December 2023, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004.

6. MR CALLUM COWX to be Acting Judge of the British Indian Ocean Territory Supreme Court with effect from 18 December 2023, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 9A(1) of the Courts Ordinance 1983.
7. MS MARGARET OBI to be Acting Judge of the British Indian Ocean Territory Supreme Court with effect from 19 December 2023, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 9A(1) of the Courts Ordinance 1983.
8. MR VINESH MANDALIA to be Senior Magistrate in place of MR CHARLES EKINS with effect from 22 December 2023, under Section 7 of the British Indian Ocean Territory (Constitution) Order 2004 and section 28(1) of the Courts Ordinance 1983.

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

1. MR SEBASTIAN MITCHELL to be Acting Chief of Police in place of MS SHELLEY HYATT with effect from 03 April 2023, under section 28 of the Interpretation and General Provisions Ordinance 1993 and pursuant to section 52(1) of the Courts Ordinance 1983.
2. MR MIKE MWALE to be Chief of Police in place of MR SEBASTIAN MITCHELL with effect from 15 August 2023, under section 28 of the Interpretation and General Provisions Ordinance 1993 and pursuant to section 52(1) of the Courts Ordinance 1983.

### **PART 3**

#### **CORRECTIONS**

There are no corrections.

### **PART 4**

#### **LEGAL SUPPLEMENT**

A. The following laws have been enacted:

1. Ordinance No. 1 of 2023: The Acting Supreme Court Judges (Miscellaneous Provisions) Ordinance 2023

B. The following Proclamations, Directions, Orders and other statutory instruments have been enacted:

1. S.I. No. 1 of 2023: The Supreme Court (Procedure and Practice) Rules 1984 (Amendment) Rules 2023

2. S.I. No. 2 of 2023: The Office of Deputy Commissioner Order 2017 (Revocation) Order 2023

C. The following licences have been granted:

1. None.

D. The following UK laws have been extended to the Territory:

1. S.I. No. 291 of 2023: The Russia (Sanctions) (Overseas Territories) (Amendment) Order 2023

2. S.I. No. 656 of 2023: The Libya (Sanctions) (Overseas Territories) (Amendment) Order 2023

3. S.I. No. 846 of 2023: The Russia (Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2023

4. S.I. No. 1377 of 2023: The Iran (Sanctions) (Overseas Territories) Order 2023

5. S.I. No. 1383 of 2023: The Haiti (Sanctions) (Overseas Territories) (Amendment) Order 2023

## **PART 5**

### **OTHER LEGAL DOCUMENTS**

The following legal documentation is also published in this Issue:

1. Statement on Process (Consolidated and Updated), 10 May 2023

2. Statement on Process (Updated Further to the Settlement Agreement), 25 October 2023

# NOTICES



## **BRITISH INDIAN OCEAN TERRITORY**

### **PUBLIC NOTICE NUMBER 03 - 23**

### **RESTRICTION OF MOVEMENT ORDER**

I, Colvin Osborn, Commissioner's Representative and Principal Immigration Officer make this Restriction of Movement Order (the "Order"), which has been authorised by the (Acting) Commissioner for the British Indian Ocean Territory ("BIOT"), in accordance with section 113 of the Penal Code 1981. It is made to preserve the security of the Facility and to ensure the safety and protection of the persons concerned.

1. This Order shall come into effect forthwith.
2. The attached rules (the "Rules") shall apply to all persons who have arrived in the Territory without permission (the "Relevant Persons").
3. A person who is subject to the Rules disobeys them if, without reasonable excuse, that person –
  - (a) does anything which he or she is prohibited from doing by the Rules, or
  - (b) fails to do anything which he or she is required to do by the Rules.
4. A person who disobeys the Rules may be prosecuted for disobedience of lawful orders, pursuant to section 113 of the Penal Code 1981.
5. This Order shall remain in force until **04 July 2024**, unless otherwise extended, amended, superseded or rescinded.

[SIGNED ON THE ORIGINAL]

04 July 23

Colvin Osborn  
Commissioner's Representative

# RESTRICTION OF MOVEMENT ORDER

## RULES

1. For the purposes of these Rules –

the “Camp” means the area at Thunder Cove which provides tented accommodation for Relevant Persons, and is bordered, either partially or completely, by fencing or dense undergrowth. Where there are gaps in such fencing, the area will be delineated by the shortest distance between those gaps;

“Secondary Accommodation” means any other specific area which has been provided for the accommodation of Relevant Persons;

“specific area” means an area described by the Commissioner’s Representative in writing or by use of a sketch map.

2. A Relevant Person must not, without reasonable excuse, leave the Camp or Secondary Accommodation.
3. For the purposes of Rule 2, “reasonable excuse” includes, but is not limited to –
  - (a) attending medical appointments under escort,
  - (c) supervised access to the beach located next to the Camp, and
  - (c) departing the Territory, by air or sea, under escort.
4. Where a Relevant Person has, contrary to these Rules, left the Camp or Secondary Accommodation, that Relevant Person must comply with all reasonable requests made to him or her by police officers, immigration officers or members of G4S, or any other person who is requested by those officers to provide assistance.
5. If a Relevant Person is to be accommodated within Secondary Accommodation, the Commissioner’s Representative or a person acting on his behalf will, as soon as reasonably practicable after the Relevant Person’s arrival at that location, show him or her the boundaries of that specific area.

*By Order*  
Commissioner’s Representative  
04 July 23

# **LEGAL SUPPLEMENT**





THE BRITISH INDIAN OCEAN TERRITORY

**THE ACTING SUPREME COURT JUDGES  
(MISCELLANEOUS PROVISIONS)  
ORDINANCE 2023**

**Ordinance No. 1 of 2023**

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**THE BRITISH INDIAN OCEAN TERRITORY**  
**THE ACTING SUPREME COURT JUDGES**  
**(MISCELLANEOUS PROVISIONS)**  
**ORDINANCE 2023**

**Ordinance No. 1 of 2023**

ARRANGEMENT OF SECTIONS

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Enacted by the Commissioner for the British Indian Ocean Territory

7 July 2023

[SIGNED ON THE ORIGINAL]

Becky Richards  
Acting Commissioner

**THE ACTING SUPREME COURT JUDGES  
(MISCELLANEOUS PROVISIONS)  
ORDINANCE 2023**

**Ordinance No. 1 of 2023**

*An Ordinance to amend existing laws of the Territory to enable the appointment of additional judges of the Supreme Court.*

**Citation and commencement.**

1. This Ordinance may be cited as the Acting Supreme Court Judges (Miscellaneous Provisions) Ordinance 2023 and shall come into force on 10 July 2023.

**Definition.**

2. The “Principal Ordinance” means the Courts Ordinance 1983.

**Repeal and replacement of subsection (5) of section 9.**

3. Subsection (5) of the Section 9 of the Principal Ordinance is repealed and replaced with –

“(5) There may also be one or more acting judges of the Supreme Court, appointed in accordance with section 9A.”

**Repeal of subsection (6) of section 9.**

4. Subsection (6) of section 9 of the Principal Ordinance is repealed.

**Addition of new section 9A.**

5. The following section 9A is hereby added to the Principal Ordinance, immediately after section 9 –

**“Acting judges.**

**9A. (1) If –**

(a) the office of Chief Justice is vacant or the person holding that office is for any reason unable to perform the functions of that office, or

(b) it appears to the Commissioner that the state of business in the Supreme Court so requires,

the Commissioner may appoint a person –

(i) to sit as an acting judge of the Supreme Court; and

(ii) to discharge such of the functions of the office of Chief Justice and for such period as may be specified in the instrument of appointment.

(2) A person appointed under subsection (1) must be qualified for appointment as Chief Justice.”

**Addition of new section 9B.**

6. The following section 9B is hereby added to the Principal Ordinance, immediately after section 9A –

**“Oath or affirmation**

**9B.** A person appointed under section 9 or 9A shall, as soon as may be after his appointment, take the oath prescribed in Schedule I hereto.”

**Amendment of Schedule I.**

7. Schedule I of the Principal Ordinance is hereby repealed and replaced with the following –

“SCHEDULE I

JUDICIAL OATH (*or* AFFIRMATION)  
(Sections 9B, 27 and 28)

“I.....do swear (*or* solemnly affirm) that I will well and truly serve His Majesty King Charles III, His Heirs and Successors, in (*or* while performing the functions of) the office of Chief Justice (*or* Acting Judge of the Supreme Court, *or* Senior Magistrate, *or* Magistrate) and I will do right to all manner of people after the laws and usages of The British Indian Ocean Territory, without fear or favour, affection or ill-will. So help me God (*or omit these last four words if affirmation is taken*).”

**Amendment of Schedule II.**

8. Schedule II of the Principal Ordinance is hereby repealed and replaced with the following –

“SCHEDULE II

FORM OF DECLARATION  
(Section 52)

“I .....of.....do solemnly and sincerely declare and affirm that I will well and truly serve the King in the office of Police Officer, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.”

**Amendments to the Criminal Procedure Code 2019.**

9. The Criminal Procedure Code 2019 is amended by –

(a) replacing the wording of sections set out in Column 1 of the Schedule with the corresponding wording set out in Column 2, or

(b) making the amendments described in Column 2 to the items set out in Column 1.

## SCHEDULE

Section 8

Column 1	Column 2
<p>Section 2</p> <p>“<b>judicial officer</b> includes the Chief Justice, a Magistrate and the Registrar;”</p>	<p>“<b>judicial officer</b> includes the Chief Justice, an acting judge of the Supreme Court, a Magistrate and the Registrar;”</p>
<p>Section 34(4)(b)</p> <p>“(b) where the decision is taken by the Supreme Court, before any of the persons specified in paragraph (a) above or, any person specified by the Chief Justice;”</p>	<p>“(b) where the decision is taken by the Supreme Court, before any of the persons specified in paragraph (a) above, an acting judge of the Supreme Court or, any person specified by the Chief Justice;”</p>
<p>Section 43</p> <p>“Provided that the Chief Justice or Magistrate may, if he thinks fit, order at any stage in the trial of any particular case that the public generally, or any particular person or class of persons, shall not have access to, or be or remain in, the room or building used by the court.”</p>	<p>“Provided that the Chief Justice, an acting judge of the Supreme Court or Magistrate may, if he thinks fit, order at any stage in the trial of any particular case that the public generally, or any particular person or class of persons, shall not have access to, or be or remain in, the room or building used by the court.”</p>
<p>Section 44(3)</p> <p>“(3) The Supreme Court shall consist of the Chief Justice sitting with or without assessors according to its decision under section 45.”</p>	<p>“(3) The Supreme Court shall consist of the Chief Justice, an acting judge of the Supreme Court, sitting with or without assessors according to its decision under section 45.”</p>
<p>Section 58(1)</p> <p>“(1) The Chief Justice or Magistrate trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Commissioner in this behalf shall be entitled to do so without permission. With the like permission, any manager or employee may prosecute for an offence</p>	<p>“(1) The Chief Justice, an acting judge of the Supreme Court, or Magistrate trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Commissioner in this behalf shall be entitled to do so without permission. With the like permission, any manager or employee may prosecute for an</p>

<p>committed to the prejudice of his principal or employer.”</p>	<p>offence committed to the prejudice of his principal or employer.”</p>
<p>Section 129(5)</p> <p>“(5) An application under subsection (4)(b) to the Supreme Court or the Magistrate’s Court may be made before the hearing and on any such application the powers of the court shall be exercisable by the Chief Justice, the Registrar, or, as the case may be, by a Magistrate.”</p>	<p>“(5) An application under subsection (4)(b) to the Supreme Court or the Magistrate’s Court may be made before the hearing and on any such application the powers of the court shall be exercisable by the Chief Justice, an acting judge of the Supreme Court, the Registrar, or, as the case may be, by a Magistrate.”</p>
<p>Section 130(5)</p> <p>“(5) An application under subsection (3) shall, where the hearing at which the report to be used in evidence is to be before the Chief Justice or the Senior Magistrate, be made to the Chief Justice or the Senior Magistrate, as the case may be, and may be made in the United Kingdom or the Territory:</p> <p>Provided that if the application is made in the United Kingdom it shall be made to the Chief Justice whether or not the hearing is to be before him.”</p>	<p>“(5) An application under subsection (3) shall, where the hearing at which the report to be used in evidence is to be before the Chief Justice, an acting judge of the Supreme Court or the Senior Magistrate, be made to the Chief Justice, an acting judge of the Supreme Court or the Senior Magistrate, as the case may be, and may be made in the United Kingdom or the Territory:</p> <p>Provided that if the application is made in the United Kingdom it shall be made to the Chief Justice whether or not the hearing is to be before him.”</p>
<p>Section 162(1)</p> <p>“Provided that the whole judgment shall be read out by the Chief Justice or Magistrate if he is requested so to do either by the prosecution or the defence.”</p>	<p>“Provided that the whole judgment shall be read out by the Chief Justice, an acting judge of the Supreme Court or Magistrate if he is requested so to do either by the prosecution or the defence.”</p>
<p>Section 175</p> <p>“175. If the Chief Justice thinks it is inexpedient to pass sentence immediately he may remand the accused in custody for such period as he thinks fit.”</p>	<p>“175. If the Chief Justice or an acting judge of the Supreme Court thinks it is inexpedient to pass sentence immediately he may remand the accused in custody for such period as he thinks fit.”</p>
<p>Section 176</p> <p>“176. A warrant under the hand of the Chief Justice or Magistrate by whom any person shall be sentenced to imprisonment, ordering</p>	<p>“176. A warrant under the hand of the Chief Justice, an acting judge of the Supreme Court or Magistrate by whom any person shall be sentenced to imprisonment, ordering that the</p>

<p>that the sentence shall be carried out in any prison within the Territory, shall be issued by the Chief Justice or Magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant. Subject to the provisions of section 36 of the Penal Code, every sentence shall be deemed to commence from and to include, the whole of the day of the date on which it was pronounced, except where otherwise provided in this Code.”</p>	<p>sentence shall be carried out in any prison within the Territory, shall be issued by the Chief Justice, an acting judge of the Supreme Court or Magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant. Subject to the provisions of section 36 of the Penal Code, every sentence shall be deemed to commence from and to include, the whole of the day of the date on which it was pronounced, except where otherwise provided in this Code.”</p>
<p>Section 180(1)</p> <p>“(1) If it appears to the Chief Justice or a Magistrate that an offender has been convicted in the Territory of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the Chief Justice or Magistrate may issue a summons requiring the offender to appear at the place and time specified therein, or may, subject to the following provisions of this section, issue a warrant for his arrest.”</p>	<p>“(1) If it appears to the Chief Justice, an acting judge of the Supreme Court or a Magistrate that an offender has been convicted in the Territory of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the Chief Justice, an acting judge of the Supreme Court or Magistrate may issue a summons requiring the offender to appear at the place and time specified therein, or may, subject to the following provisions of this section, issue a warrant for his arrest.”</p>
<p>Section 197(1) and (2)</p> <p>“(1) The Chief Justice or Magistrate may order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as he may think fit in addition to any other penalty imposed:</p> <p>Provided that such costs shall not exceed £1,000 in the case of the Supreme Court and £500 in the case of the Magistrate’s Court.</p> <p>(2) The Chief Justice or Magistrate who acquits or discharges a person accused of an offence may order the prosecutor to pay to the accused such reasonable costs as he may think fit:</p> <p>Provided that such costs shall not exceed £1,000 in the case of the Supreme Court and £500 in the case of the Magistrate’s Court,</p>	<p>“(1) The Chief Justice, an acting judge of the Supreme Court or Magistrate may order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as he may think fit in addition to any other penalty imposed:</p> <p>Provided that such costs shall not exceed £1,000 in the case of the Supreme Court and £500 in the case of the Magistrate’s Court.</p> <p>(2) The Chief Justice, an acting judge of the Supreme Court or Magistrate who acquits or discharges a person accused of an offence may order the prosecutor to pay to the accused such reasonable costs as he may think fit:</p> <p>Provided that such costs shall not exceed £1,000 in the case of the Supreme Court and £500 in the case of the Magistrate’s Court,</p>

<p>Provided further, that no such order shall be made if the Chief Justice or Magistrate considers that the prosecutor had reasonable grounds for making his complaint.”</p>	<p>Provided further, that no such order shall be made if the Chief Justice, an acting judge of the Supreme Court or Magistrate considers that the prosecutor had reasonable grounds for making his complaint.”</p>
<p>Section 259</p> <p>“Provided that, if any such transcript appears to be defective, the Chief Justice or the President of the Court of Appeal may, in his discretion, direct that the record or notes made by the Magistrate or the Chief Justice, as the case may be, shall be treated as the official record for the purposes of any appeal or revision.”</p>	<p>“Provided that, if any such transcript appears to be defective, the Chief Justice or the President of the Court of Appeal may, in his discretion, direct that the record or notes made by the Magistrate, an acting judge of the Supreme Court or the Chief Justice, as the case may be, shall be treated as the official record for the purposes of any appeal or revision.”</p>
<p>Schedule 1</p> <p>Forms IV, V, VII and XIV</p>	<p>The words “Acting judge of the Supreme Court/” are inserted after each reference to the words “Chief Justice”.</p>
<p>Schedule 4</p> <p>“Any interpreter other than a salaried public officer for every attendance before the Court shall be entitled to a fee to be fixed by the Chief Justice or Magistrate according to the duration of the attendance or other circumstances connected with the case.”</p>	<p>“Any interpreter other than a salaried public officer for every attendance before the Court shall be entitled to a fee to be fixed by the Chief Justice, an acting judge of the Supreme Court or Magistrate according to the duration of the attendance or other circumstances connected with the case.”</p>





THE BRITISH INDIAN OCEAN TERRITORY

**THE SUPREME COURT  
(PROCEDURE AND PRACTICE) RULES 1984  
(AMENDMENT) RULES 2023**

**S.I. No. 1 of 2023<sup>1</sup>**

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<sup>1</sup> SI number added after signature

**THE BRITISH INDIAN OCEAN TERRITORY**

**THE SUPREME COURT**  
**(PROCEDURE AND PRACTICE) RULES 1984**  
**(AMENDMENT) RULES 2023**

ARRANGEMENT OF RULES

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[SIGNED ON THE ORIGINAL]

James Lewis KC  
Chief Justice

7<sup>th</sup> July 2023

**THE BRITISH INDIAN OCEAN TERRITORY**

**THE SUPREME COURT  
(PROCEDURE AND PRACTICE) RULES 1984  
(AMENDMENT) RULES 2023**

In exercise of the powers conferred on him by section 14 of the Courts Ordinance 1983 and of all other enabling powers, the Chief Justice has made the following rules of court –

**Citation and commencement.**

1. These rules of court may be cited as the Supreme Court (Procedure and Practice) Rules 1984 (Amendment) Rules 2023 and shall come into force on the same date assigned for the commencement of the Acting Supreme Court Judges (Miscellaneous Provisions) Ordinance 2023.

**Definition.**

2. The “Principal Rules” means the Supreme Court (Procedure and Practice) Rules 1984.

**Replacement of rule 5(2).**

3. Rule 5(2) of the Principal Rules is deleted and replaced with:

“(2) Any question whether any rule, order, direction or practice applies in the Territory or whether or how it should be modified may be determined –

(a) summarily by the Chief Justice, or

(b) in any particular case by an acting judge of the Supreme Court.

(3) Where an acting judge of the Supreme Court makes a determination pursuant to sub-rule (2), the extent and effect of that determination is limited to the proceedings in which it is made.”

**Amendment of rule 6(3).**

4. Rule 6(3) of the Principal Rules is amended to insert the words “or an acting judge of the Supreme Court” after the second reference to “Chief Justice” and before the word “may”.

**Amendment of rule 7.**

5. Rule 7 of the Principal Rules is amended to insert the words “, an acting judge of the Supreme Court” after the first reference to “Chief Justice” and before the words “or the Registrar”.

**Amendment of rule 9.**

6. Rule 9 of the Principal Rules is amended to insert the words “or an acting judge of the Supreme Court” after the reference to “Chief Justice” and before the words “, in any particular case”.



THE BRITISH INDIAN OCEAN TERRITORY

**THE OFFICE OF DEPUTY COMMISSIONER  
ORDER 2017 (REVOCAATION) ORDER 2023**

**S.I. No. 2 of 2023**

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**THE BRITISH INDIAN OCEAN TERRITORY**

**THE OFFICE OF DEPUTY COMMISSIONER ORDER 2017  
(REVOCATION) ORDER 2023**

**S.I. No. 2 of 2023**

In exercise of the powers conferred upon him by section 7 of the British Indian Ocean Territory (Constitution) Order 2004, the Commissioner hereby directs that –

The Office of Deputy Commissioner Order 2017 is hereby revoked.

This Order is to come into effect forthwith.

19 October 2023

[SIGNED ON THE ORIGINAL]

Paul Candler  
Commissioner

## UK LAWS EXTENDED TO THE BRITISH INDIAN OCEAN TERRITORY

1. S.I. No. 291 of 2023: [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) Order 2023](#)
2. S.I. No. 656 of 2023: [The Libya \(Sanctions\) \(Overseas Territories\) \(Amendment\) Order 2023](#)
3. S.I. No. 846 of 2023: [The Russia \(Sanctions\) \(Overseas Territories\) \(Amendment\) \(No. 2\) Order 2023](#)
4. S.I. No. 1377 of 2023: [The Iran \(Sanctions\) \(Overseas Territories\) Order 2023](#)
5. S.I. No. 1383 of 2023: [The Haiti \(Sanctions\) \(Overseas Territories\) \(Amendment\) Order 2023](#)



## Statement on Process

### Consolidated and Updated

(10 May 2023)

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 on Process issued on 22 July 2022, the First Addendum issued on 17 August 2022 and the Second Addendum issued on 27 October 2022.

This Statement on Process sets out a consolidated and updated process that is to be adopted in connection with all persons unlawfully present in the Territory who object to being removed to a relevant country and who have identified to the BIOT Administration that they wish to be considered for protection on non-refoulement grounds.

No person has a right of abode in the Territory (section 9(1) of the BIOT (Constitution) Order 2004). As a result, the process set out below has been adopted, with assistance from external counsel, to determine how an applicant’s claim may be treated under BIOT and international law.

The arrangements set out in within this Statement on Process shall be followed forthwith.

10 May 2022

[SIGNED ON THE ORIGINAL]

Paul Candler  
Commissioner  
British Indian Ocean Territory

A. *Definitions*

1. In this Statement on Process, unless the context otherwise requires:

“applicant” means a person or head of a family group who:

- a. is unlawfully present in the Territory;
- b. objects to being removed to a relevant country, and
- c. has identified to the BIOT Administration that he or she wishes to be considered for protection on non-refoulement grounds.

“relevant country” means a country which is:

- a. the applicant’s country of nationality;
- b. if stateless, the applicant’s country of former habitual residence, or
- c. the country from which an applicant departed before arriving in the BIOT.

“unlawfully” means otherwise than in accordance with the provisions set out in the British Indian Ocean Territory (Immigration) Order 2004.

B. *Laws of the Territory*

2. 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)).

3. 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.

4. The process set out below has been devised to enable claims that removal to a relevant country would be in breach of the principle of non-refoulement to be lawfully decided.

C. *Process to be applied*

5. Each applicant will be interviewed to gather evidence concerning their claims.

Interview

6. 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

7. Each interviewer will be experienced in dealing with protection and immigration claims and be appointed as a BIOT immigration officer.
8. Each interviewer will ensure that the interviews are conducted in light of specific information concerning country conditions in the relevant country. The applicants and their legal advisers shall be sent the said specific information concerning country conditions in the relevant country prior to the interview.

#### The interpreters

9. Where an interpreter is required for an interview, the interpreter will be suitably qualified.

#### The interviews

10. 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 applicants will be advised, inter alia, to send any documents or other evidence in support of their claim.
11. The applicants 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 a language that is understood by the applicant and read to that person in that language.
12. The interviews will be held remotely, with the interviewers and interpreters physically present in one or more locations in the UK. Each applicant will have a room allotted to them at a suitable location. These rooms will have an iPad, connected to the internet, to enable the interview to take place via Teams, or similar program. The applicants will be informed that they are not to take documents or mobile telephones into the rooms.
13. A member of staff in Diego Garcia will confirm the identity of the applicant at the start of the interview and then leave the room.
14. The invitation letter will contain more information in relation to how the interview will be conducted and who may be present.
15. 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 BIOT Administration's representatives.

#### Record of interview

16. For technical reasons, it may not always 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.
17. The interviewers may attempt to make an audio-recording of the interview. Where this is done, the applicant and (if applicable) his or her legal representative shall be made aware.
18. 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 applicant and (if applicable) his or her legal representative, unless a particular cause for concern is properly identified.

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

#### Legal representation

20. Arrangements will be made for legal representatives to have at least five working days' notice of any interview scheduled for their clients.

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

22. 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.

23. After completion of the interview the applicant 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 (see Annex 1), within ten working days. This duration of time may, at the request of the applicant, or his or her legal representative, be extended by the BIOT 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

24. Once the interview is completed and the applicant and/or his or her legal representatives have had a reasonable 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, this Statement on Process issued in accordance with the Regulations, the British Indian Ocean Territory (Immigration) Order 2004, the British Indian Ocean Territory (Immigration) (Amendment) Order 2022 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, submissions or related correspondence that have been submitted by the applicant and/or his or her legal representatives;
- e. Specified information concerning the relevant country (see paragraph 8 above).

25. The case file will be forwarded to two or more independent lawyers (the "Reviewers") who have considerable experience in immigration and asylum matters, and knowledge of the relevant standards. On consideration of this evidence, the Reviewers 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;
- b. act in accordance with Annex 1, or

c. if satisfied that the casefile is complete, provide the Commissioner with advice.

26. 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 removal to the relevant country would be in breach of the principle of non-refoulement.

The determination

27. 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 25(c) and 26);
- d. The assurances, if any, provided by the relevant country;
- e. The specified information concerning the relevant country, as identified in paragraph 8 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.

28. The Commissioner will decide whether the issuance of a removal order for removal to the relevant country would be in breach of the principle of non-refoulement. Public law principles will govern the taking of that decision.

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

30. 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.

31. 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.

32. For procedures where additional evidence is submitted by the applicant, or his or her legal representative, after the Commissioner has made a decision pursuant to paragraph 27, see Annex 2.

## ANNEX 1

### Funding for Additional Evidence

1. If, based on submissions made pursuant to paragraph 23 of the Statement on Process (“SoP”) or otherwise, the Reviewers considering the case file in accordance with paragraphs 25 and 26 of the SoP 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.

2. The Commissioner may, in his complete discretion, on receipt of a recommendation provided by the Reviewers pursuant to paragraph 1:

- 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.

3. If an applicant fails to comply with any reasonable conditions placed on payment in accordance with paragraph 2(b), the Reviewers will be notified that the criteria in paragraph 1(c) has not been met and they will assess the claims made by the applicant in the absence of the additional evidence.

4. Despite the generality of paragraph 2, 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.

5. 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 1(c) has not been met and they will assess the claims made by the applicant in the absence of the additional evidence.

6. Where an applicant does comply with any reasonable conditions placed on payment in accordance with paragraph 2(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.

7. The specified time limit for the purposes of paragraph 6 is five working days, unless it is extended by the BIOT Administration for good cause.

## ANNEX 2

### Submission of Additional Evidence after Decision Made

1. This annex concerns the process to be undertaken when an applicant, or his or her legal representative, submits additional evidence after the Commissioner has made a decision to issue a removal order.

2. For the purposes of this annex, “further evidence” means a report, photograph, recording, or document of any kind:

- a. which is significantly different from the evidence provided to the BIOT Administration by the applicant, or his or her legal representative, prior to the Commissioner making a decision in accordance with paragraph 28 of the SoP (the “decision”), and
- b. which may have a material effect upon the decision that was made.

3. Where an applicant, or his or her legal representative, provides to the BIOT Administration material purporting to be further evidence, that material together with any accompanying representations will be provided to the Reviewers.

4. After receiving the material and any accompanying representations submitted in accordance with paragraph 3, the Reviewers will determine whether it amounts to further evidence. If it is determined by the Reviewers that:

- a. it does not, the Reviewers will provide reasons for that determination to the BIOT Administration, who will inform the applicant and his or her legal representative accordingly.
- b. if it does, the Reviewers will act in accordance with paragraph 5.

5. Where the Reviewers determine that the material and any accompanying representations submitted in accordance with paragraph 3 amounts to further evidence, the Reviewers will:

- a. decide whether the further evidence materially affects the advice that they provided to the Commissioner in accordance with paragraph 25 of the SoP, and

- b. provide the Commissioner with further advice (the “further advice”) as to whether:
  - i. their opinion remains the same;
  - ii. their opinion has been amended, to the effect that a removal order should not be issued;
  - iii. any further actions (the “further actions”), including but not limited to the applicant being further interviewed, should be carried out.

6. Paragraphs 7, 8 and 9 shall only apply where the Reviewers have acted in accordance with paragraph 5(b)(iii).

7. The BIOT Administration will expeditiously make reasonable arrangements for the further actions to be carried out, and make a record (the “record of further actions”) of:

- a. any additional evidence which has been obtained following the further actions being carried out, or
- b. the details as to why no additional evidence could reasonably be obtained following the further actions being carried out or following reasonable attempts to carry out the further actions.

8. The applicant and his or her legal representative shall be provided with the record of further actions and be given five working days in which to provide any further representations. This duration of time may be extended by the BIOT Administration for good cause.

9. Upon receipt of:

- a. the record of further actions, and
- b. any further representations made in accordance with paragraph 7

the Reviewers shall resume acting in accordance with paragraph 4.

10. Paragraphs 11, 12, 13 and 14 shall only apply where the Reviewers have acted in accordance with paragraph 5(b)(i) or (ii).

11. The Commissioner will consider:

- a. the further evidence,
- b. any representations made by the applicant, or his or her legal representative,
- c. any record of further actions, as described in paragraph 7,
- d. any further representations, as described in paragraph 8, and
- e. the further advice.

12. The Commissioner will determine whether the decision:

- a. remains, or
- b. is amended, to the effect that a removal order will not be issued.

13. If the Commissioner determines that the decision will remain, written reasons for this determination will be provided.

14. If the Commissioner decides that the decision will be amended to the effect that a removal order will not be issued, written reasons for this decision may, at the Commissioner's discretion, be provided.

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## Statement on Process

### Updated Further to the Settlement Agreement

(25 October 2023)

I, Nishi Dholakia, Acting 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 Consolidated and Updated Statement on Process issued on 10 May 2023.

This Statement on Process sets out an updated process that is to be adopted in connection with all persons unlawfully present in the Territory who object to being removed to a relevant country and who have identified to the BIOT Administration that they wish to be considered for protection on non-refoulement grounds. It is made further to the settlement agreement reached in the claims BIOT SC No.1 of 2023 and BIOT SC No.2 of 2023 and incorporates the terms of the Consent Order made in connection with those proceedings.

No person has a right of abode in the Territory (section 9(1) of the BIOT (Constitution) Order 2004). As a result, the process set out below has been adopted, with assistance from external counsel, to determine how an applicant’s claim may be treated under BIOT and international law.

The arrangements set out in within this Statement on Process shall be followed forthwith.

25 October 2023

[SIGNED ON THE ORIGINAL]

Nishi Dholakia  
Acting Commissioner  
British Indian Ocean Territory



A. *Definitions*

1. In this Statement on Process, unless the context otherwise requires:

“applicant” means a person or head of a family group who:

- a. is unlawfully present in the Territory;
- b. objects to being removed to a relevant country, and
- c. has identified to the BIOT Administration that he or she wishes to be considered for protection on non-refoulement grounds.

“earlier Statement on Process” means a version of the Statement on Process which was issued prior to 25 October 2023.

“relevant country” means a country which is:

- a. the applicant’s country of nationality;
- b. if stateless, the applicant’s country of former habitual residence, or
- c. the country from which an applicant departed before arriving in the BIOT.

“relevant date” means the date on which the Consent Order was made, in connection with the claims BIOT SC No.1 of 2023 and BIOT SC No.2 of 2023, which is 25 September 2023.

“unlawfully” means otherwise than in accordance with the provisions set out in the British Indian Ocean Territory (Immigration) Order 2004.

B. *Laws of the Territory*

2. 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)).

3. 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.

4. The process set out below has been devised to enable claims that removal to a relevant country would be in breach of the principle of non-refoulement to be lawfully decided.

C. *Process to be applied*

5. Each applicant will be interviewed to gather evidence concerning their claims.

Interview

6. 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

7. Each interviewer will be experienced in dealing with protection and immigration claims and be appointed as a BIOT immigration officer.

8. Each interviewer will ensure that the interviews are conducted in light of specific information concerning country conditions in the relevant country. The applicants and their legal advisers shall be sent the said specific information concerning country conditions in the relevant country prior to the interview.

#### The interpreters

9. Where an interpreter is required for an interview, the interpreter will be suitably qualified.

#### The interviews

10. 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 applicants will be advised, inter alia, to send any documents or other evidence in support of their claim.

11. The applicants 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 a language that is understood by the applicant and read to that person in that language.

12. The interviews will be held remotely, with the interviewers and interpreters physically present in one or more locations in the UK. Each applicant will have a room allotted to them at a suitable location. These rooms will have an iPad, connected to the internet, to enable the interview to take place via Teams, or similar program. The applicants will be informed that they are not to take documents or mobile telephones into the rooms.

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

14. The invitation letter will contain more information in relation to how the interview will be conducted and who may be present.

15. 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 BIOT Administration’s representatives.

#### Record of interview

16. For technical reasons, it may not always 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.

17. The interviewers will use all best endeavours to make an audio-recording of the interview. Where this is done, the applicant and (if applicable) his or her legal representative shall be made aware.

18. If it is possible to make an audio-recording of part or all of the interview, a copy of that recording will be made available to the applicant's legal representative on request.

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

#### Legal representation

20. Arrangements will be made for legal representatives to have at least five working days' notice of any interview scheduled for their clients.

21. Those who are unrepresented will be informed that they can have legal representation at any stage and may apply for funding for that representation. Such funding will be determined in accordance with the relevant prevailing laws which are applicable to the Territory.

22. 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.

23. After completion of the interview the applicant 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 (see Annex 1), within ten working days. This duration of time may, at the request of the applicant, or his or her legal representative, be extended by the BIOT 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

24. Once the interview is completed and the applicant and/or his or her legal representatives have had a reasonable 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, subject to paragraph 25, comprise the following:

- a. A copy of the Removal Order (Process of Determination) Regulations 2022, this Statement on Process issued in accordance with the Regulations, the British Indian Ocean Territory (Immigration) Order 2004, the British Indian Ocean Territory (Immigration) (Amendment) Order 2022 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, submissions or related correspondence that have been submitted by the applicant and/or his or her legal representatives;
- e. Specified information concerning the relevant country (see paragraph 8 above).

25. Where the Commissioner made a decision under an earlier Statement on Process and that decision was withdrawn prior to the relevant date, paragraph 24 shall contain an additional sub-paragraph, which reads:

- “f. Any and all evidence and submissions made (insofar as relevant to each individual applicant/claimant) in the claims BIOT SC No.1 of 2023 and BIOT SC No.2 of 2023, (including, for the avoidance of doubt, the submissions as advanced in those claims in relation to the weight that can be placed on Forms 1 and 2) as well as any further evidence and/or submissions filed.”

#### The Reviewers

26. Subject to paragraph 27, the case file will be forwarded to two or more independent lawyers (the “Reviewers”) who have considerable experience in immigration and asylum matters, and knowledge of the relevant standards. On consideration of this evidence, the Reviewers 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;
- b. act in accordance with Annex 1, or
- c. if satisfied that the casefile is complete, proceed in accordance with paragraph 28.

27. Where the Commissioner made a decision under an earlier Statement on Process and that decision was withdrawn prior to the relevant date, all references to “Reviewers” shall be read as referring to “New Reviewers”, who shall be two or more independent lawyers who have:

- a. not had any previous involvement in the claim for protection made by the applicant, and
- b. not given evidence in the claims BIOT SC No.1 of 2023 and BIOT SC No.2 of 2023.

#### Provision of a List

28. Where the Reviewers have reached a provisional view that the applicant is:

- a. entitled to protection on non-refoulement grounds, the Reviewers may proceed to act in accordance with paragraph 33 unless, at any stage before completion of advice under that paragraph, they are of the view that the applicant is not entitled to such protection, in which case they will act in accordance with sub-paragraph b.,
- b. not entitled to protection on non-refoulement grounds, the Reviewers will provide the Commissioner with a list of the points adverse to the applicant (a “List”).

29. Any List provided by the Reviewers pursuant to paragraph 28(b), will be forwarded to the applicant and/or his or her legal representatives who must, within 14 days of receipt of the List, notify whether they:

- a. wish to accept the decision that the applicant is not entitled to protection on non-refoulement grounds, or
- b. do not wish to accept the decision that the applicant is not entitled to protection on non-refoulement grounds.

If neither the applicant nor his or her legal representatives respond within 14 days of receipt of the List, the Commissioner will assume that sub-paragraph a. applies.

30. If the applicant or his or her legal representatives respond pursuant to paragraph 29(b), the applicant or his or her legal representatives shall, within the same 14-day time period, indicate whether they wish to submit on any further submissions and/or evidence (which may include, if so advised, expert evidence).

31. Any further submissions and/or evidence, as provided for by paragraph 30 must normally be provided to the BIOT Administration within 21 days. The BIOT Administration will recognise, however, that each case will be dependent on its own circumstances and in some instances a period of time in excess of 21 days may be required. Upon receipt of a suggested reasonable timeframe from the applicant or his or her legal representative, the BIOT Administration will extend the duration of time available, to ensure that a reasonable opportunity to submit further submissions and/or evidence is provided. Any such request must be made before the expiry of the 21 days' time period.

#### Provision of advice

32. Upon completion of the stages described in paragraphs 28 to 31, the Reviewers will be provided with:

- a. the notification, if any, provided by the applicant's legal representative pursuant to paragraph 29;
- b. any further submissions and/or evidence submitted pursuant to paragraph 31.

33. Having considered all submissions and/or evidence provided pursuant to paragraph 32, the Reviewers shall provide advice to the Commissioner. 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 removal to the relevant country would be in breach of the principle of non-refoulement.

#### The determination

34. In making a determination the Commissioner will consider:

- a. The contents of the case file;
- b. All submissions and/or evidence provided in accordance with paragraph 32;
- c. The advice provided to him (see paragraph 33);
- d. The assurances, if any, provided by the relevant country;
- e. The specified information concerning the relevant country, as identified in paragraph 8 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.

35. The Commissioner will decide whether the issuance of a removal order for removal to the relevant country would be in breach of the principle of non-refoulement. Public law principles will govern the taking of that decision.

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

37. 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.

38. 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.

39. For procedures where additional evidence is submitted by the applicant, or his or her legal representative, after the Commissioner has made a decision pursuant to paragraph 27, see Annex 2.

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## ANNEX 1

### Funding for Additional Evidence

1. If, based on submissions made pursuant to paragraph 23 of the Statement on Process ("SoP") or otherwise, the Reviewers considering the case file in accordance with paragraphs 26 and 28 of the SoP 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.

2. The Commissioner may, in his complete discretion, on receipt of a recommendation provided by the Reviewers pursuant to paragraph 1:

- 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.

3. If an applicant fails to comply with any reasonable conditions placed on payment in accordance with paragraph 2(b), the Reviewers will be notified that the criteria in paragraph 1(c) has not been met and they will assess the claims made by the applicant in the absence of the additional evidence.

4. Despite the generality of paragraph 2, 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.

5. 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 1(c) has not been met and they will assess the claims made by the applicant in the absence of the additional evidence.

6. Where an applicant does comply with any reasonable conditions placed on payment in accordance with paragraph 2(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.

7. The specified time limit for the purposes of paragraph 6 is five working days, unless it is extended by the BIOT Administration for good cause.

8. These provisions are supplementary to any funding arrangements described in paragraph 21 of the SoP.

## ANNEX 2

### Submission of Additional Evidence after Decision Made

1. This annex concerns the process to be undertaken when an applicant, or his or her legal representative, submits additional evidence after the Commissioner has made a decision to issue a removal order.

2. For the purposes of this annex, “further evidence” means a report, photograph, recording, or document of any kind:

- a. which is significantly different from the evidence provided to the BIOT Administration by the applicant, or his or her legal representative, prior to the Commissioner making a decision in accordance with paragraph 35 of the SoP (the “decision”), and
  - b. which may have a material effect upon the decision that was made.
3. Where an applicant, or his or her legal representative, provides to the BIOT Administration material purporting to be further evidence, that material together with any accompanying representations will be provided to the Reviewers.
4. After receiving the material and any accompanying representations submitted in accordance with paragraph 3, the Reviewers will determine whether it amounts to further evidence. If it is determined by the Reviewers that:
  - a. it does not, the Reviewers will provide reasons for that determination to the BIOT Administration, who will inform the applicant and his or her legal representative accordingly.
  - b. if it does, the Reviewers will act in accordance with paragraph 5.
5. Where the Reviewers determine that the material and any accompanying representations submitted in accordance with paragraph 3 amounts to further evidence, the Reviewers will:
  - a. decide whether the further evidence materially affects the advice that they provided to the Commissioner in accordance with paragraph 33 of the SoP, and
  - b. provide the Commissioner with further advice (the “further advice”) as to whether:
    - i. their opinion remains the same;
    - ii. their opinion has been amended, to the effect that a removal order should not be issued;
    - iii. any further actions (the “further actions”), including but not limited to the applicant being further interviewed, should be carried out.
6. Paragraphs 7, 8 and 9 shall only apply where the Reviewers have acted in accordance with paragraph 5(b)(iii).
7. The BIOT Administration will expeditiously make reasonable arrangements for the further actions to be carried out, and make a record (the “record of further actions”) of:
  - a. any additional evidence which has been obtained following the further actions being carried out, or
  - b. the details as to why no additional evidence could reasonably be obtained following the further actions being carried out or following reasonable attempts to carry out the further actions.
8. The applicant and his or her legal representative shall be provided with the record of further actions and be given five working days in which to provide any further representations. This duration of time may be extended by the BIOT Administration for good cause.
9. Upon receipt of:



- a. the record of further actions, and
- b. any further representations made in accordance with paragraph 7

the Reviewers shall resume acting in accordance with paragraph 4.

10. Paragraphs 11, 12, 13 and 14 shall only apply where the Reviewers have acted in accordance with paragraph 5(b)(i) or (ii).

11. The Commissioner will consider:

- a. the further evidence,
- b. any representations made by the applicant, or his or her legal representative,
- c. any record of further actions, as described in paragraph 7,
- d. any further representations, as described in paragraph 8, and
- e. the further advice.

12. The Commissioner will determine whether the decision:

- a. remains, or
- b. is amended, to the effect that a removal order will not be issued.

13. If the Commissioner determines that the decision will remain, written reasons for this determination will be provided.

14. If the Commissioner decides that the decision will be amended to the effect that a removal order will not be issued, written reasons for this decision may, at the Commissioner's discretion, be provided.

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