



BRITISH INDIAN OCEAN TERRITORY

**REVISED ORDINANCES OF THE BRITISH INDIAN
OCEAN TERRITORY**

**THE BRITISH INDIAN OCEAN
TERRITORY WATERS (REGULATION
OF ACTIVITIES) ORDINANCE 1997**

CHAPTER E.5

Revised Edition

Showing the law as at 1 September 2020

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following law:

The British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997
- Ordinance No.3 of 1997

As amended by:

Ordinance No.3 of 2008
Ordinance No.4 of 2016
Ordinance No.1 of 2017
Ordinance No.1 of 2018
Ordinance No.5 of 2019

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CHAPTER E.5

An Ordinance to regulate activities conducted by or from vessels in the waters of the Territory and to provide for matters connected therewith or incidental thereto.

Citation.

1. This Ordinance may be cited as the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997, ROBIOT c.E.5.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires –

authorised officer means the Commissioner's Representative, a Police Officer, a Customs Officer appointed under the Imports and Exports Control Ordinance 2009, a Fisheries Protection Officer within the meaning of the Fisheries (Conservation and Management) Ordinance 2007 or a Visiting Vessels Control Officer appointed under the Visitors and Visiting Vessels Ordinance 2018;

the Commanding Officer means the United States Navy Officer in command of the United States Navy Support Facility on Diego Garcia;

master, in relation to a vessel, includes any person for the time being in charge of the vessel;

regulated activities has the meaning assigned by subsections (2) and (3);

vessel means any seagoing craft;

the waters of the Territory means the internal waters and the territorial sea of the Territory;

without consent means without the consent of the Commissioner or an authorised officer given under section 3 or otherwise than in accordance with any conditions attached to a consent so given.

- (2) In this Ordinance, **regulated activities** means any activities conducted by or from a vessel other than (but subject to subsection (3)) –

(a) activities constituting, or incidental to, the exercise of the right of innocent passage through the territorial sea of the Territory;

(b) fishing, within the meaning of the Fisheries (Conservation and Management) Ordinance 2007, provided that it is conducted in accordance with that Ordinance and the Regulations made thereunder;

(c) mooring, as defined in the Visitors and Visiting Vessels Ordinance 2018, at a place in the outer islands (as so defined), provided that the relevant requirements of that Ordinance are complied with;

(d) activities which are conducted wholly on board the vessel and which (except where reasonably required for the safe navigation of the vessel) do not involve the incursion of any person, or the insertion of any object, or the projection or emission of any electric, acoustic or other impulse or signal, into the waters of the Territory;

(e) swimming or bathing in the waters of the Territory for purely recreational purposes, or the launching from the vessel and the sailing within those waters, for purely recreational purposes, of small ancillary craft, in either case not involving the use of any diving equipment or underwater-swimming equipment;

(f) in the case of a shore-based vessel operating from Diego Garcia, any recreational activities that are for the time being authorised by the Commissioner's Representative or the Commanding Officer; or

(g) in the case of a vessel that is for the time being within the anchorage at Diego Garcia (or at any other place within the waters of Diego Garcia that the Commissioner's Representative has designated as a permitted anchorage) with the authority of the Government of the Territory (including any vessel that is there, with the authority of the Government of the United States of America, in connection with the United States Navy Support Facility on Diego Garcia), such activities as are required for the maintenance of the vessel or for its operation in accordance with such authority.

(3) For the avoidance of doubt and despite anything in subsection (2) (other than paragraph (b) thereof, which excepts activities authorised under the Fisheries (Conservation and Management) Ordinance 2007), **regulated activities** includes any form of exploration or survey of, or research into, any aspect of the waters of the Territory or the seabed or subsoil beneath those waters or the living or non-living resources of those waters or of that seabed or subsoil, whether such exploration or survey or research is conducted for reward or in pursuit of scientific knowledge or for pleasure or for any other purpose whatever.

No regulated activities without consent.

3. (1) No person may conduct any regulated activities in the waters of the Territory without the consent of the Commissioner or of an authorised officer, given in writing under his hand.

(2) The Commissioner or an authorised officer may at any time, by writing under his hand, revoke any consent given under this section.

(3) A consent given by the Commissioner or an authorised officer under this section may have attached to it such conditions as the Commissioner or the authorised officer thinks fit, and the Commissioner or an authorised officer may at any time, by writing under his hand, attach such conditions, or such further conditions, as he thinks fit to a consent already given or may amend as he thinks fit any conditions previously attached to such a consent.

(4) The powers conferred by subsections (2) and (3) may be exercised by the Commissioner or an authorised officer in relation to any consent given under this section or, as the case may be, in relation to any condition attached to such a consent, irrespective of who gave that consent or who attached that condition.

Powers of authorised officers.

4. (1) For the purpose of enforcing this Ordinance an authorised officer may exercise the following powers with respect to any vessel within the waters of the Territory –

(a) he may stop the vessel;

(b) he may require the master to facilitate the boarding of the vessel by all appropriate means;

(c) he may go on board the vessel and take with him such other persons as he may require to assist him in the exercise of his powers;

(d) he may require the master or any other member of the crew or any passenger to produce, and he may examine and take copies of, any certificate of registry, official logbook, official paper or any other document relating to the vessel or to any member of the crew or to any passenger, or to any activities that may have been conducted by or from the vessel, that is in the possession of the master or such other member of the crew or such passenger;

(e) he may muster the crew of the vessel and all passengers thereon;

(f) he may require the master to appear and give any explanation concerning the vessel or any member of its crew any passenger thereon or any document mentioned in paragraph (d);

(g) he may cause the vessel to be taken to such place in the Territory as he may appoint for the purpose of carrying out any search, examination or enquiry;

(h) if it appears to him that the master or any other person on board the vessel has committed an offence against this Ordinance –

(i) he may seize or take copies of any documents which he believes relevant to the offence;

(ii) he may arrest the suspected offender and shall then, as soon as practicable, bring him before a Magistrate in some convenient place in the Territory, there to be dealt with according to the law; and

(iii) he may, at the same time as he exercises his powers under sub-subsection (ii), seize the vessel, together with all equipment and other goods on board it, and cause it to be taken to some convenient place in the Territory and to be there detained until the conclusion of the proceedings against the suspected offender (or against all suspected offenders who have been brought before a Magistrate in pursuance of sub-subsection (ii)) or, if an order is made under section 5(4), until such time as is specified in that order or, in any case, until such earlier time as a Magistrate may order.

(2) In exercising the powers conferred by subsection (1), an authorised officer and any persons accompanying him under paragraph (c) of that subsection may use such force as is reasonably necessary.

(3) An authorised officer may give to the master of a vessel or to any other member of the crew or to any passenger such directions concerning the navigation, handling or management of the vessel, or of any equipment or other goods on board it, as he considers necessary for the effective discharge of the powers conferred on him by this section.

(4) When a consent given under section 3 in relation to activities to be conducted by or from a particular vessel has been revoked and that vessel is then within the waters of the Territory, an authorised officer may direct the vessel concerned to depart forthwith from those waters.

Offences, penalties and enforcement.

5. (1) The master of any vessel which conducts any regulated activity in the waters of the Territory without consent or from which any such activity is so conducted (and whether or not the activity was conducted with the authority or knowledge of the master) and any person who so conducts such an activity, is guilty of an offence under this Ordinance.

(2) Any person who obstructs an authorised officer in the exercise of his powers under this Ordinance or who, without lawful cause (the onus of proof of which lies on him) refuses or fails to comply with any direction or requirement reasonably given to him by such an officer or to answer any question reasonably put to him by such an officer or who gives an answer to such a question which he knows to be false or misleading in any material particular or who prevents or attempts to prevent another person from complying with such a direction or requirement or from answering such a question is guilty of an offence under this Ordinance.

(3) Any person who commits an offence under this Ordinance is liable, on conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000 (and the Magistrate's Court shall have jurisdiction to impose such a fine despite anything contained in the Criminal Procedure Code 2019).

(4) When any person is convicted of an offence under this Ordinance, the court by which he is convicted may order that any vessel, together with any equipment or other goods on board it (or such of them as the order may specify) that is then being detained under section 4(1)(h)(iii) in connection with the offence shall continue to be detained until any fine that has been imposed under this section has been satisfied or until a court orders it to be earlier released.

(5) Where any fine that has been imposed on any person for an offence under this Ordinance has not been satisfied in full after the expiry of a period of 90 days after it was imposed or such longer period as may be allowed by the court to which an application is made under this subsection, any vessel, equipment or other goods then being detained under subsection (4) shall, on such terms, if any, as the court may think just, be forfeited to the Crown by order of any court upon application made by or with the authority of the Principal Legal Adviser and shall then be disposed of in such a manner as the Commissioner may direct.

(6) The power of a court, under subsection (5), to order the forfeiture of any vessel, equipment or other goods is without prejudice to the power of that or any other court to make, instead or in addition, any other order consequent upon the non-payment of a fine that is authorised by any other law for the time being in force in the Territory.

(7) In any proceedings under this section, a certificate by the Commissioner's Representative that, at any material time, an activity was or was not authorised as mentioned in section 2(2)(f), or that a place within the waters

of Diego Garcia was or was not a permitted anchorage as mentioned in section 2(2)(g), or that a vessel was or was not within the anchorage at Diego Garcia (or at such a place) with such authority as mentioned in section 2(2)(g), shall be conclusive of that fact.

Savings.

6. Nothing in this Ordinance shall be construed as derogating from or as otherwise prejudicing the provisions of the British Indian Ocean Territory (Immigration) Order 2004, the Fisheries (Conservation and Management) Ordinance 2007 or the Visitors and Visiting Vessels Ordinance 2018, and in particular, nothing in this Ordinance shall be construed as authorising any person on board or connected with a vessel (whether or not consent has been given under section 3 in respect of activities to be conducted by or from the vessel) to land in the Territory, or in any other way to enter the Territory, unless he is in possession of a permit, or his name is endorsed on a permit, issued under the British Indian Ocean Territory (Immigration) Order 2004.
