

At the Court at Buckingham Palace

THE 10th DAY OF JUNE 2004

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL.

Her Majesty, by virtue and in exercise of all the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation and commencement

1. This Order may be cited as the British Indian Ocean Territory (Immigration) Order 2004 and shall come into force forthwith.

Interpretation

2. – (1) The Interpretation Act 1978^a shall apply, with the necessary modifications, for the purpose of interpreting this Order, and otherwise in relation thereto, as it applies for the purpose of interpreting, and otherwise in relation to, Acts of Parliament.

(2) In this Order, unless the contrary intention appears -

"the Commissioner" means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

"the Commissioner's Representative" means the person for the time being appointed by the Commissioner to act in that capacity in the Territory;

"contravention" in relation to any direction given or requirement imposed under this Order includes a refusal or failure to comply with that direction or requirement;

"endorsement" means an endorsement, made under section 9, on a permit;

"the *Gazette*" means the Official Gazette of the Territory;

"immigration officer" includes the Principal Immigration Officer;

"permit" means a permit issued under this Order;

"prescribed" means prescribed by, or by regulations made under, this Order, or

^a 1978 c.30.

having effect as if so prescribed;

"public officer" means a person holding or acting in an office in the public service of the Crown in a civil capacity in respect of the government of the Territory, and (for the avoidance of doubt) an office may be such an office notwithstanding that the person holding or acting in it is a member of Her Majesty's armed forces;

"the Territory" means the British Indian Ocean Territory specified in the Schedule to the British Indian Ocean Territory (Constitution) Order 2004;

"unlawful entry", "unlawful presence" and related expressions are to be interpreted in accordance with section 11.

Repeal

3. – (1) The Immigration Ordinance 2000 of the Territory (Ordinance No. 4 of 2000), enacted by the Commissioner on 3 November 2000, is repealed.

(2) Without prejudice to the generality of sections 15, 16 and 17 of the Interpretation Act 1978 (as applied by section 2(1) of this Order), the repeal of the Immigration Ordinance 2000 does not affect the continuing validity of any instrument or appointment made, or having effect as if made, or other thing done, or having effect as if done, under that Ordinance and having effect immediately before the commencement of this Order; but any such instrument or appointment made or thing done shall, without prejudice to its revocation or variation by any authority competent in that behalf, continue to have effect thereafter as if made or done under this Order.

Principal Immigration Officer and other immigration officers

4. – (1) The Commissioner's Representative shall be the Principal Immigration Officer for the Territory and shall have the superintendence and control of all immigration officers.

(2) The Commissioner may appoint such other immigration officers as he deems necessary.

(3) The Commissioner may give the Principal Immigration Officer and other immigration officers general or special directions as to the exercise of their functions under this Order or under any other law for the time being in force in the Territory, and any officer to whom such instructions are given shall comply therewith.

Restriction on entering or being present in the Territory

5. – (1) No person shall enter the Territory or be present there unless he is in possession of a permit issued under section 7 or his name is endorsed on a permit under section 9.

(2) This section does not apply to members of Her Majesty's armed forces, or to public officers, or to officers in the public service of the Government of the United Kingdom while on duty, or to such other persons as may be prescribed.

Contractor personnel

6. – (1) All persons whose names are for the time being included in a list which is accepted by the Principal Immigration Officer as a list of persons who are employed or to be employed as contractor personnel shall, unless the Principal Immigration Officer otherwise determines in relation to a particular person whose name is so listed, be deemed to be in possession of a permit issued in accordance with section 7.

(2) A determination by the Principal Immigration Officer under subsection (1) in relation to a particular person shall have effect as if it were the withholding or, as the case may be, the cancellation of any permit deemed in accordance with that subsection to be issued to that person, and the provisions of this Order relating to the issue or cancellation of permits and to matters consequential thereon or incidental thereto shall apply accordingly.

(3) In this section "contractor personnel" has the same meaning as in the Exchange of Notes of 20 December 1966 between the Government of the United Kingdom and the Government of the United States of America concerning the Availability for Defence Purposes of the British Indian Ocean Territory^b.

(4) If, in any proceedings in any court, a question arises as to whether a person's name is included in such a list as is mentioned in subsection (1) or whether the Principal Immigration Officer has made a determination in relation to him under that subsection, a certificate as to that matter signed by the Commissioner's Representative shall be conclusive of that question for all the purposes of those proceedings.

Issue, renewal and cancellation of permits

7. – An immigration officer, acting in his entire discretion, may issue or renew a permit or may cancel a permit before its expiration, subject to the right of appeal provided by section 10.

Duration of permits

8. – A permit shall, unless cancelled, remain in force for a period of four years from the date of issue or for such shorter period as is stated in it. A permit renewed shall, unless

^b Treaty Series No. 15 (1967): Cmnd.. 3231

cancelled, remain in force for a period of four years from the date on which the renewal takes effect or for such shorter period as is stated in the renewed permit.

Endorsement on permits

9. – An immigration officer may, in his entire discretion but subject to the right of appeal provided by section 10, endorse on a permit

(a) the name of the wife or a dependent child of the holder of the permit, but any such endorsement shall expire

(i) when the wife or child ceases to be a dependant of the holder or, in the case of a male child, when he earlier attains the age of 21 years; or

(ii) when the permit itself expires or is cancelled; or

(b) a condition that the holder of the permit and his wife and child shall reside, or shall not reside, in such part or parts of the Territory as are specified in the condition.

Appeal to the Commissioner

10. – A person aggrieved by any decision of an immigration officer may appeal to the Commissioner, whose decision shall be final and conclusive.

When unlawful for a person to enter or be present in the Territory

11. – It is unlawful for any person to enter or be present in the Territory in contravention of section 5, or after the expiration or cancellation of his permit, or after the expiration of an endorsement on a permit made in respect of him, or in contravention of a condition to which his permit, or the endorsement made in respect of him, is subject, or when an order made under section 12(1) is in force in respect of him.

Power to remove persons unlawfully present in the Territory and to prevent unlawful entry into the Territory

12. – (1) The Commissioner or the Principal Immigration Officer may make an order directing that any person who is unlawfully present in the Territory shall be removed from the Territory and shall remain out of the Territory, either indefinitely or for such period as is specified in the order, or that any person not then present in the Territory shall not enter the Territory and shall remain out of the Territory, either indefinitely or for such period as is specified in the order.

(2) An order made under subsection (1) shall be carried into effect in such manner as the Commissioner or the Principal Immigration Officer may direct.

(3) A person against whom an order under subsection (1) is made directing that he be removed from the Territory may, if the Commissioner or the Principal Immigration Officer so directs, be held in custody, in such manner as may be so directed, until his removal from the Territory is effected.

(4) An order made under subsection (1), or any directions given under subsection (2) or (3), may at any time be revoked or varied by the Commissioner or by the Principal Immigration Officer.

(5) The master of a vessel or the commander of an aircraft due to call at any port or place outside the Territory shall, if so required by an immigration officer, receive on board such vessel or aircraft a person against whom an order has been made under subsection (1) and afford him, on due payment, a passage to or towards his final destination and proper accommodation and maintenance during the passage.

(6) Where an order has been made against a person under subsection (1) directing that he be removed from the Territory and the vessel or aircraft on which he was carried into the Territory (or any other vessel or aircraft owned or operated by the same person as is that vessel or aircraft) is present within the Territory (which term here includes the territorial sea of the Territory), the master of that vessel or the commander of that aircraft (or of that other vessel or aircraft) shall, if so required by an immigration officer, receive that person on board his ship or aircraft and convey him to a place outside the Territory, and in such case no payment such as is referred to in subsection (5) shall be due.

(7) Where, under subsection (5) or (6), the master of a vessel is required to receive a person on board his vessel, he shall, if so required by an immigration officer, take his vessel to any place within the Territory designated by the immigration officer.

(8) Any person who, in contravention of an order made under subsection (1), is found within the Territory, whether or not he has previously been removed from or left the Territory under or in consequence of that order, may be removed or again removed from the Territory without further order; and the provisions of this Order shall apply in such a case as if an order had been made under subsection (1) directing that he be so removed, without prejudice however to any penalty to which he may be liable under this Order or any other law for the time being in force in the Territory.

(9) Where it appears to the Commissioner or the Principal Immigration Officer that a vessel, having on board a person or persons whom the Commissioner or the Principal Immigration Officer has reason to believe to be intending to enter the Territory unlawfully, is approaching or has entered the territorial sea, he may issue a direction to the master of that vessel not to cause or allow his vessel to enter the territorial sea or, as the case may be, to cause it to depart forthwith, or within such time as the direction may

specify, from the territorial sea and not to cause or allow that person or those persons to enter the Territory.

(10) The master of a vessel who, having initially complied with a direction given to him under subsection (9) to cause his vessel to depart from the territorial sea, thereafter on the same voyage causes or allows it to re-enter the territorial sea is deemed to have failed to comply with that direction.

(11) Where it appears to the Commissioner or the Principal Immigration Officer that a number of persons have entered the Territory unlawfully, or are seeking to enter the Territory unlawfully, on board one vessel (or on board two or more vessels on the same occasion) and that it is impracticable, for the purposes of their early removal from the Territory under this section or, as the case may be, for the purposes of preventing them, under this section, from entering the Territory, to identify each of those persons individually, he may exercise his powers under this section by reference to them collectively as persons on board that vessel or those vessels.

(12) Any person who contravenes a direction given to him or a requirement imposed on him under any provision of this section commits an offence against that provision.

(13) Without prejudice to the powers conferred by subsection (18), an immigration officer may, in the case of a contravention or suspected contravention of subsection (5), (6), (7) or (9), seize and detain the vessel or aircraft concerned and, in the case of a vessel, cause it, together with all persons and things on board it, to be taken to such place within the Territory as he may direct, and he may then cause the master of the vessel or the commander of the aircraft, together with all persons and things on board the vessel or aircraft, to be further detained, in such manner as the Commissioner's Representative may direct, until the master or the commander has been brought before a court and, subject to any order made by the court, until the contravention has been adjudicated upon.

(14) The master of a vessel or the commander of an aircraft who contravenes subsection (5), (6) or (7) is guilty of an offence and is liable to imprisonment for 3 years or to a fine of £10,000 or to both such imprisonment and such fine; and, when a fine is imposed for that offence, the court may order the vessel or aircraft, and all things on board it, to be detained, in such manner as the Commissioner's Representative may direct, pending the payment in full of the fine and any costs ordered by the court to be paid.

(15) If any fine and costs ordered to be paid in accordance with subsection (14) have not been paid in full (or security therefor given to the satisfaction of the court) within 30 days or such longer period as the court may allow, the court may order the vessel or aircraft, and all things on board it, to be forfeited to the Crown and thereafter to be disposed of as the Commissioner may direct.

(16) The master of a vessel who contravenes subsection (9) is guilty of an offence

and is liable on conviction to imprisonment for 3 years or to a fine of £10,000 or to both such imprisonment and such fine, and, on so convicting him, the court may -

(a) in addition to any other punishment that it may impose, order the vessel, and all things on board it, to be forfeited to the Crown and thereafter disposed of as the Commissioner may direct; or

(b) where it imposes a fine, order that the vessel, and all things on board it, be further detained, in such manner as the Commissioner's Representative may direct, pending payment of the fine and any costs ordered to be paid, and, if the fine and any such costs have not been paid in full (or security given therefor to the satisfaction of the court) within 30 days or such longer period as the court may allow, order the vessel to be forfeited to the Crown and thereafter disposed of as the Commissioner may direct.

(17) A court may not make a forfeiture order under this section except upon application made by or on the authority of the Principal Legal Adviser (that is to say, the person for the time being appointed by the Commissioner to hold, or to act in, the office of Principal Legal Adviser to the Government of the Territory).

(18) Without prejudice to any other proceedings or measures that may be taken, under this Order or otherwise, in respect of a contravention of this Order, an immigration officer may take, or cause to be taken, such measures as are reasonably necessary, including the use of reasonable force, to compel compliance with any direction given or requirement imposed under this section.

(19) Every public officer may give such assistance to any immigration officer as the latter may request in the execution of his powers and duties under this Order and may, in so doing, use reasonable force.

(20) In this section "the territorial sea" means the territorial sea appurtenant to the Territory.

Place of removal

13. – A person who is removed from the Territory under section 12 may be removed to the place whence he came or, with the approval of the Commissioner, to a place in the country to which he belongs or to any place to which he consents to be removed if the Government of that place consents to receive him.

Offences and penalties

14. – (1) Any person who -

(a) for the purpose of obtaining for himself or any other person, or of assisting any

other person to obtain, a permit or an endorsement, or with intent to deceive an immigration officer, makes or causes to be made any declaration, return or statement which he knows or has reasonable cause to believe to be false or misleading; or

(b) otherwise than with the authority of the Principal Immigration Officer wilfully alters or defaces or destroys a permit or an endorsement; or

(c) resists, hinders or obstructs an immigration officer or any other officer or person in the lawful execution of his duty, or in the lawful exercise of his powers, under this Order; or

(d) knowingly misleads an immigration officer in relation to any matter material to the performance or exercise by any immigration officer or other officer or person of any duty, function, power or discretion under this Order; or

(e) uses, or without lawful authority has in his possession, any forged or unlawfully altered permit or endorsement; or

(f) knowingly uses, or has in his possession with intent to make use of, any unlawfully issued or otherwise irregular permit or endorsement; or

(g) unlawfully enters or is unlawfully present in the Territory; or

(h) harbours any person whom he knows, or has reasonable cause to believe, to be unlawfully present in the Territory; or

(i) uses any permit issued to, or endorsement made in respect of, another person as if it had been issued to, or made in respect of, himself; or

(j) gives, sells or parts with the possession of any permit in order that, or intending or knowing or having reasonable cause to believe that, it may be used in contravention of paragraph (i); or

(k) having been directed by an order made under section 12 to remain out of the Territory, returns to the Territory in contravention of that order,

is guilty of an offence against this Order.

(2) Any person who commits an offence against this Order for which no other penalty is provided by this Order is liable on conviction to imprisonment for 3 years or to a fine of £3,000 or to both such imprisonment and such fine.

(3) Without prejudice to any of the provisions of section 12, the master of a ship or the commander of an aircraft which carries into the Territory a person in respect of whom he knows there to be in force an order made under section 12 requiring that person

to remain outside the Territory is guilty of an offence and is liable on conviction to imprisonment for 3 years or to a fine of £10,000 or to both such imprisonment and such fine; and the provisions of section 12 relating to contraventions or suspected contraventions of subsections (5), (6) and (7) of that section shall apply also in relation to such an offence or suspected offence.

(4) In any proceedings for an offence under subsection (3) brought against the master of a vessel or the commander of an aircraft which has (or which is owned or operated by the same person as is any other ship or aircraft which has) previously carried the person in question into the Territory, the burden of proof that he did not know that there was in force in respect of that person such an order as is referred to in subsection (3) shall be on the master or commander.

(5) Where in any proceedings for an offence under subsection (1)(g) an immigration officer satisfies the court that he has inspected the records of permits issued under this Order and that they contain no record which shows either that the accused person was, at the relevant time, in possession of a currently valid permit or that there was in force at the relevant time an endorsement on such a permit made in respect of him, it shall then be for the accused person to prove that he was in possession of such a permit at the relevant time or that an endorsement on such a permit made in respect of him was in force at the relevant time.

(6) In any proceedings for an offence under this section a person shall be deemed to know the contents of any declaration, return or statement which he has signed or marked, whether or not he has read it, if he knows the nature of the document.

(7) The penalties authorised by any provision of this Order to be imposed for an offence against this Order may be imposed by the Magistrates' Court notwithstanding section 194(1) of the Criminal Procedure Code 1986 of the Territory.

(8) Notwithstanding section 226(1) of the Criminal Procedure Code 1986 of the Territory, where a person is convicted of an offence against this Order, the court may order him to pay to the Crown such costs and expenses incurred by the Crown in preparation for or otherwise in connection with the proceedings as it thinks proper.

Regulations

15. – (1) The Commissioner may make regulations, which shall be published in the *Gazette*, to carry out the objects and provisions of this Order; and, without prejudice to the generality of the foregoing power, such regulations may

(a) prescribe anything which is required to be or may be prescribed under this Order; and

(b) prescribe the fees to be charged for anything done, or for any permit or

endorsement issued, made or renewed, under this Order or under any such regulations.

(2) Regulations made under subsection (1) may provide that the contravention of any provision thereof or of any direction given or requirement imposed under any such provision shall be an offence against this Order.

A.K. Galloway

EXPLANATORY NOTE

(This note is not part of the Order)

This Order repeals the Immigration Ordinance 2000 of the British Indian Ocean Territory and makes new provision in its place to regulate immigration and residence in the Territory.

NOTE FROM LAW REVISION OFFICER

The following revised rules, notices and proclamations have been issued in pursuance of this Order (or preserved by virtue of section 3 of this Order):

The Immigration (Exemption) Regulations 1971

RRBIOT, c.F.1

The British Indian Ocean Territory (Immigration) Order 2004 Notice of Exemption Order 2017

RRBIOT, c.F.3