



BRITISH INDIAN OCEAN TERRITORY

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

**THE COMMUNICATIONS  
(ENFORCEMENT ORDERS)  
(COMPENSATION AND PENALTIES)  
REGULATIONS 2018**

**CHAPTER G.3**

**Revised Edition**

Showing the law as at 1 September 2020

Published by Authority

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

**THE COMMUNICATIONS  
(ENFORCEMENT ORDERS)  
(COMPENSATION AND PENALTIES)  
REGULATIONS 2018**

**CHAPTER G.3**

**Revised Edition**

Showing the law as at 1 September 2020

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:

The Communications (Enforcement Orders) (Compensation and Penalties) Regulations 2018 –  
SI No.6 of 2018

© British Indian Ocean Territory Administration

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying or copying in electronic format) without the written permission of the Commissioner of the British Indian Ocean Territory, or otherwise as permitted under the terms of a licence from the British Indian Ocean Territory Administration.

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

**THE COMMUNICATIONS (ENFORCEMENT ORDERS)  
(COMPENSATION AND PENALTIES) REGULATIONS 2018**

**CHAPTER G.3**

ARRANGEMENT OF REGULATIONS

Regulation		Page
1.	Citation.	4
2.	Application of regulations.	4
3.	Seeking Regulator's orders for remedies by consumer.	4
4.	Initiation of other orders to remedy contraventions or failures.	4
5.	Preliminary enquiry.	5
6.	Regulator's first direction and determination.	5
7.	Notice of intention – initial determination to make an order.	5
8.	Representations to Regulator.	5
9.	Opportunity to rectify contravention.	6
10.	Final determination to make order.	6
11.	Order by the Regulator.	7
12.	Factors when making an order.	7
13.	Special factor in calculating compensation award.	8
14.	Reliance on previous decisions.	8
15.	Transparency.	9

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

**THE COMMUNICATIONS (ENFORCEMENT ORDERS)  
(COMPENSATION AND PENALTIES) REGULATIONS 2018**

**CHAPTER G.3**

**RRBIOT c.G.3**

In exercise of the powers conferred on him by section 53(1) of the Communications Ordinance 2018 (**the Ordinance**) the Commissioner hereby makes the following regulations:

**Citation.**

1. These regulations may be cited as the Communications (Enforcement Orders) (Compensation and Penalties) Regulations 2018, RRBIOT c.G.3.

**Application of regulations.**

2. These regulations apply where the Regulator deals with a matter involving a contravention of the Ordinance or a failure to comply with the conditions of a licence and as a result of which the Regulator has to make an order under the Ordinance.

**Seeking Regulator's orders for remedies by consumer.**

3. (1) A consumer who suffers a loss or damage arising from the services provided by a licensee may lodge a complaint with the Regulator seeking a remedy for an order for compensation for the loss or any other order that the Regulator in his or her discretion considers appropriate in the circumstances.

(2) A consumer may make a complaint to the Regulator against a licensee for the standard of services provided by the licensee and request for the Regulator to make an appropriate order to remedy the situation.

**Initiation of other orders to remedy contraventions or failures.**

4. (1) The Regulator, in his or her own discretion, may conduct an enquiry with a view to assess whether or not there is a contravention of the law or of licence conditions and whether or not an order should be made including an order imposing a penalty.

(2) Subject to these regulations, if, the Regulator in the course of the performance of functions under the Ordinance, the Regulator considers that a contravention or failure has occurred, the Regulator may make an appropriate order.

**Preliminary enquiry.**

5. When seized with a matter in terms of regulation 3 or 4, the Regulator must conduct a preliminary enquiry which involves the assessment of the information which is in the possession of the Regulator in order to establish whether or not reasonable grounds exist upon which an appropriate order may be made under these regulations.

**Regulator's first direction and determination.**

6. After the preliminary enquiry, if the Regulator concludes that there are reasonable grounds for a remedy, the Regulator may –

- (a) direct a complainant to make use of the licensee's own complaint procedure or to use an alternative dispute resolution procedure if one exists;
- (b) request further information from the licensee or other interested person;
- (c) determine whether or not to make an order for a remedy for compensation or a penalty, or
- (d) make an interim order pending a final determination of the matter.

**Notice of intention – initial determination to make an order.**

7. (1) Before the Regulator makes a final order for a compensation award, imposing a penalty or providing any other appropriate remedy, he or she must give notice to a licensee of the intention to make the order.

(2) The notice must specify –

- (a) that the Regulator believes there are sufficient grounds to make an order in terms of the Ordinance;
- (b) the reasons or grounds on which the order may be made;
- (c) the relevant information and facts and circumstances as they are known to the Regulator, or
- (d) that the Regulator may proceed to make the order after the date specified in the notice without further notice.

**Representations to Regulator.**

8. (1) The notice issued under regulation 7 must invite the person or licensee against whom the order is to be made to make representations within a

reasonable period specified in the notice which period must not be less than seven working days.

(2) The expression **working days** within sub-regulation (1) means the days of a week excluding weekends and public holidays.

### **Opportunity to rectify contravention.**

9. (1) The Regulator must consider all the representations that are submitted and if necessary make further enquiries and may engage an expert to assist with a further investigation.

(2) Subject to sub-regulation (3), before making an order, the Regulator must give a licensee or person against whom the order is to be made an opportunity to remedy the contravention or failure giving rise to the order and thus an opportunity to mitigate or avoid the imposition of a compensation award, a penalty or any other order.

(3) The Regulator may impose an order without complying with sub-regulation (2) if –

(a) the Regulator gave notice to the licensee or person against whom the order is to be made, of the intention to make a compensation award, impose a penalty or make any other order in respect of one or more previous contraventions or failures to comply with the terms and conditions of a licence or with the Ordinance;

(b) the Regulator is satisfied that the licensee or person against whom the order is to be made should not be given an opportunity to remedy given previous contraventions or failures, or

(c) the damage or loss suffered by the consumer as a result of the licensee's non-compliance or contravention of the law is such that an award for compensation is the only reasonable remedy.

(4) The Regulator may make an interim order pending a determination to make a final order under regulation 10.

### **Final determination to make order.**

10. (1) Where a person against whom an order is to be made or a licensee made representations under regulation 8 and as a result the Regulator gives the licensee or that person an opportunity to remedy the contravention or failure, the Regulator must consider those representations and the steps taken to remedy the contravention or failure before making a final determination to make an order to award compensation, impose penalties or other appropriate remedy.

(2) Any dispute of fact that arises must be determined by the Regulator on the documents and on a balance of probabilities.

(3) If on a balance of probabilities there is a factual basis for determining that in all circumstances it is in the best interests of the public the Regulator may make an appropriate order in terms of the Ordinance which may be an award for compensation or an imposition of a penalty.

**Order by the Regulator.**

11. (1) Any order by the Regulator must –

- (a) be imposed in writing;
- (b) specify the failure of compliance or contravention in respect of which it is made;
- (c) give the Regulator’s reasons for the order;
- (d) give details of the criteria for the determination of the level of compensation or the penalty;
- (e) specify the date by which the order must be complied with and the rate of interest applicable to the compensation or penalty as may be determined by the Commissioner under section 28(8) of the Ordinance;
- (f) contain details of the appeal processes.

(2) The Regulator may make subsidiary or incidental orders as may be necessary including an order regarding costs related to the issuing of an order.

**Factors when making an order.**

12. (1) The Regulator must have regard to the following when making an order, calculating the compensation award or the penalty –

- (a) the regulatory principles set out in section 5 of the Ordinance;
- (b) the seriousness and duration of the contravention or failure;
- (c) the degree of harm, whether actual or potential, caused by the contravention or failure, including any increased cost incurred by consumers;
- (d) any gain, financial or otherwise made by the licensee as a result of the contravention or failure;
- (e) whether the licensee took all appropriate steps to prevent the contravention or failure;

(f) the extent to which the contravention or failure occurred deliberately or recklessly;

(g) whether timely and effective steps were taken to end the contravention or failure once the licensee became aware of it;

(h) the steps taken for remedying the consequences of the contravention or failure;

(i) whether the licensee has a history of contraventions or failures;

(j) the extent of cooperation by the licensee with the investigation;

(k) any other relevant criteria.

(2) The amount of the penalty imposed on the licensee by the Regulator may not exceed £625,000 or 10% of the licensee's annual turnover, whichever is the lower, and annual turnover is calculated as the licensee's annual turnover –

(a) for the year preceding that in which the penalty is imposed, and

(b) in respect of the licensee's business carried on in reliance on the licence.

(3) The Regulator must have regard to any fair and reasonable contractual restrictions between the consumer and the licensee concerning the limitation of liability.

**Special factor in calculating compensation award.**

**13.** (1) In the case of an order awarding compensation, the consumer must be compensated for actual loss that is meant to return the consumer to a position they were in previously and additionally may include compensation for inconvenience suffered.

(2) Where compensation is awarded for inconvenience suffered, the award must not exceed £500.

**Reliance on previous decisions.**

**14.** When dealing with a matter, the Regulator may have regard to consistency with any relevant previous orders, but only to the extent to which the facts and context of each case are relevant and it would be just to do so.



**Transparency.**

**15.** The Regulator must be guided by the need for transparency in applying these regulations and in its processes particularly in the weighting of the factors for determining the level of the compensation award or penalty.

---

