



BRITISH INDIAN OCEAN TERRITORY

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

**THE COMMUNICATIONS ORDINANCE
2018**

CHAPTER G.10

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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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 laws:

The Communications Ordinance 2018 - Ordinance No.6 of 2018

As amended by:

Ordinance No.5 of 2019

The following revised regulations have been issued in pursuance of this Ordinance:

The Communications (Enforcement Orders)
(Compensation and Penalties) Regulations 2018

RRBIOT, c.G.3.

The Amateur Radio Licence Regulations 2018

RRBIOT, c.G.4.

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

THE COMMUNICATIONS ORDINANCE 2018

CHAPTER G.10

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

THE COMMUNICATIONS ORDINANCE 2018

CHAPTER G.10

An Ordinance to make provision for the licensing of activities related to communication services, the establishment of a regulator responsible for the development, operation and regulation of communication services and to provide for connected matters.

PART 1

PRELIMINARY

Citation.

1. This Ordinance may be cited as the Communications Ordinance 2018, ROBIOT c.G.10.

Deleted on revision.

2. *Deleted on revision.*

Interpretation.

3. In this Ordinance –

Administration of the Territory means the Government of the British Indian Ocean Territory;

apparatus includes any equipment, machinery or device (including, in particular, wire and cable and the casing or coating of wire or cable);

carriage service means a service consisting wholly or partly of transmitting signals by means of a network and the expression –

(a) does not include a content service, and

(b) does include the provision of services ancillary to the conveyance of signals and conditional access or other services to enable customers to access a content service;

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

content service means a service either for the provision of material with a view to its being comprised in signals conveyed by means of a network or that is an audio-visual media service;

electronic communications means the conveyance of signals by the use of electrical, magnetic or electromagnetic energy;

electronic communications data means data relating to electronic communications;

electronic communications equipment means equipment designed or intended to be used in connection with electronic communications;

electronic communications network means a network of electronic communications services;

electronic communications objectives means the objectives set out in section 4;

electronic communications services includes the provision of a carriage service or a content service, including both public and private, mobile and fixed (unless otherwise stated) voice telephony, data and internet services;

exclusive licence has the meaning given by Part 4;

interfere, in relation to a communication, includes fail to deliver, delay delivery, intercept, divert, monitor, and make personal use of the communication;

the licence requirement has the meaning given by section 6(2);

licensee means the holder of a licence issued pursuant to Part 3 or Part 4 of this Ordinance;

message means any communication, whether oral, written, printed or displayed or conveyed by any means;

network means a system used or designed to be used to send signals of any kind, including anything (including data) required to make the system operate;

personal communications device means any portable electronic communications equipment and includes satellite phones, mobile telephone handsets, electronic tablets, laptop computers and pagers;

police officer means a Royal Overseas Police Officer, serving with the British Indian Ocean Territory Police services;

radio means the transmission or reception over any distance without connecting wires of images and other visual matter and of sounds, signs or signals by electrical means;

the Regulator means the Communications Regulator appointed under section 22;

the regulatory principles means the principles specified in section 5;

satellite phone means a mobile telephone which is connected to orbiting satellites instead of terrestrial cell sites;

signal includes –

(a) anything comprising speech, music, sounds, visual images or communications or data of any description, and

(b) signals serving for the communication of anything between persons, between a person and a thing or between things, or for the actuation or control of any apparatus;

the Territory means the British Indian Ocean Territory;

U.S. Authorities includes the United States Department of Defence and the command of the United States Naval Support Facility Diego Garcia;

wireless telegraphy means the emission or receipt of signals over a path of electromagnetic energy of a frequency not exceeding 3000 gigahertz where that path –

(a) serves for the conveyance of messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus, or

(b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of object, and

with lawful authority means in accordance with a provision of this Ordinance or any other enactment, in accordance with a provision of a licence issued under this Ordinance, in connection with or in the course of activities licensed under this Ordinance, in accordance with a notice or requirement issued under this Ordinance, or in accordance with an order of a court.

PART 2

OBJECTIVES AND PRINCIPLES

Electronic communications objectives.

4. The electronic communications objectives for the purposes of this Ordinance are –

- (a) to promote the interests of consumers generally in relation to electronic communications;
- (b) to facilitate effective communication within the Territory and between the people present in the Territory and the rest of the world;
- (c) to ensure effective regulation for the supply and operation of electronic communications services;
- (d) to promote investment and innovation in electronic communications networks and associated infrastructure;
- (e) to support the wider interests and priorities of the Administration of the Territory, the United Kingdom Ministry of Defence and the United States Department of Defence;
- (f) to provide affordable access to all key electronic communications services to those people present in the Territory;
- (g) to maintain public safety and security;
- (h) to contribute to the protection of personal privacy;
- (i) to provide continued growth in international capacity to support increasing demands for data usage levels, so far as economically feasible;
- (j) to improve the regulatory environment that supports the development of electronic communications in the Territory, and
- (k) to promote innovative services to support the needs of the Territory and to take advantage of any changes in technology that enable any of these policy objectives.

Regulatory principles.

5. The regulatory principles for the purposes of this Ordinance are –

(a) that the overarching purpose is to enable the achievement of the electronic communications objectives;

(b) that the primary consideration will be the needs and interests of consumers (individual, business and governmental) of services provided by the licensee, and

(c) that the regulatory regime will be proportionate, transparent, accountable, fair and non-discriminatory.

PART 3

ELECTRONIC COMMUNICATIONS LICENCES

Requirement for licence

Activities requiring licence.

6. (1) The following activities require a licence under this Part –

(a) operating an electronic communications network;

(b) providing electronic communications services;

(c) importing electronic communications apparatus.

(2) In this Ordinance **the licence requirement** means the requirement under subsection (1).

Exemptions

Exclusive licence.

7. The licence requirement does not apply to anything –

(a) done in reliance on and in accordance with an exclusive electronic communications licence granted under Part 4, or

(b) exempted from a requirement for a licence under this Part.

Crown and State.

8. (1) The licence requirement does not apply to anything done by or on behalf of the Administration of the Territory.

(2) The licence requirement does not apply to anything done by or on behalf of –

- (a) Her Majesty's Government;
- (b) Her Majesty's armed forces for operational purposes;
- (c) the U.S. Authorities for operational purposes.

(3) The exemptions provided by subsections (1) and (2)(a) do not apply to the provision of electronic communications services to the public at a time when services of that kind are provided by a licensee.

Foreign transport.

9. (1) Networks and carriage services are exempt from the licence requirement if they are operated on board a foreign vessel or aircraft –

- (a) passing through the territorial waters or skies of the Territory,
or
- (b) berthing or landing in the Territory.

(2) For the purposes of this section **berthing** includes being moored, anchored or tethered.

Emergency services.

10. The licence requirement does not apply to network facilities which are designed and used only for the provision of any of the following services –

- (a) British Indian Ocean Territory Police services;
- (b) REACT or Nuclear Emergency Response Organisation services;
- (c) ambulance services;
- (d) Fire Department services, and
- (e) U.S. Navy Security services.

Maritime and aviation satellite systems.

11. (1) The licence requirement does not apply to anything done in the territorial sea in accordance with the provisions of any international convention or agreement relating to maritime satellite communications.

(2) The licence requirement does not apply to anything done on an aircraft in accordance with an enactment of the State in which it is registered relating to aviation satellite communications.

Personal communications devices.

12. The licence requirement does not apply to the importation into the Territory of a personal communications device if the person importing the device does not intend to sell or otherwise dispose of the device within the Territory for profit or gain.

Scientific monitoring.

13. (1) The licence requirement does not apply to the use of equipment or devices when such use is solely for approved scientific monitoring of –

- (a) the movement, behaviour, health or abundance of any wild life;
- (b) threats to any protected wild life, including fish stocks, or
- (c) the temperature, salinity, sea-level or other quantifiable feature of the waters of the Territory.

(2) For the purposes of this section –

- (a) **approved** means permitted in accordance with the laws of the Territory;
- (b) **wild life** has the meaning assigned to it by the Protection and Preservation of Wild Life Ordinance 1970, and
- (c) **use** includes both **importing** and **operating**, in accordance with section 6(1).

Grant of licences

Power to grant licences.

14. (1) The Commissioner may grant licences permitting persons to –

- (a) operate an electronic communications network;
- (b) provide electronic communications services;
- (c) import electronic communications apparatus.

(2) A licence issued by the Commissioner may –

- (a) apply in relation to all or any specified part of the Territory;
- (b) be exclusive or non-exclusive, and
- (c) be granted on terms and conditions.

(3) The Commissioner may vary the conditions attached to a licence.

(4) In attaching or varying conditions the Commissioner must have regard to the electronic communications objectives and ensure that the licensee is able to recover its reasonable costs of meeting any additional obligations.

(5) A licence may be granted under this section only in so far as it is compatible with an exclusive licence granted under Part 4.

PART 4

EXCLUSIVE ELECTRONIC COMMUNICATIONS LICENCE

Nature of licence

Grant of exclusive licence.

15. (1) The Commissioner may grant an exclusive licence to an electronic communications operator (**the exclusive licensee**) to –

- (a) operate an electronic communications network in the Territory;
- (b) provide electronic communications services in the Territory, and
- (c) do anything else for which a licence is required under section 6(1).

(2) No more than one licence under this section may have effect at any time and a reference in this Part to the exclusive licence is to a licence granted under this section.

(3) Before taking action under this section the Commissioner must have regard to the electronic communications objectives and the regulatory principles.

Terms and conditions.

16. The Commissioner may grant an exclusive licence on such terms and conditions as the Commissioner deems appropriate.

Imposition of fees.

17. (1) The Commissioner may require the payment of fees in respect of the application for, or the issue, renewal or maintenance of, or otherwise in connection with, an exclusive licence.

(2) When acting in accordance with subsection (1), the Commissioner may specify –

- (a) the date by which payment of such fees must be made;
- (b) the effects of late payment of such fees, and
- (c) the effects of non-payment of such fees.

(3) A fee imposed in accordance with subsection (1) must –

- (a) be collected and administered by the Administration of the Territory, and
- (b) be paid into the Consolidated Fund.

(4) A fee imposed in accordance with subsection (1), which is due and unpaid, together with any interest thereon, are recoverable as a debt due to the Administration of the Territory.

Change of control

Approval for change of control.

18. (1) A change of control of the exclusive licensee may not be implemented without prior written approval of the Commissioner, which will not be unreasonably withheld or delayed.

(2) The Commissioner must be notified in writing before the end of the period of seven working days beginning with –

- (a) the exclusive licensee's entering into an agreement that would result in a change of control, or
- (b) the announcement of a public bid for control of the exclusive licensee.

(3) Any request made by the Commissioner for information about an event likely to result in a change of control must be complied with –

- (a) in the manner specified by the Commissioner, and
- (b) in accordance with any reasonable requirements as to timing specified by the Commissioner and which should not create any undue delay in obtaining written approval.

(4) For the purposes of this section a reference to change in control includes a reference to any person –

- (a) acquiring control over the affairs of the exclusive licensee, or

(b) acquiring control of more than 30% of the voting shares in the exclusive licensee.

Data retention

Interception and data retention capability.

19. (1) The exclusive licensee must maintain capability to retain registered subscriber details and call and data records, including records for –

(a) mobile services and fixed line services in relation to the services provided by the exclusive licensee, and

(b) broadband user authentication records.

(2) The Commissioner shall consult with the exclusive licensee prior to any amendment of subsection (1).

(3) Anything done in reliance on capability maintained in accordance with subsection (1) is done with lawful authority for the purposes of this Ordinance.

(4) A requirement imposed under this Ordinance (by notice, requirement, authorisation or otherwise) to do anything in reliance on the capability mentioned in subsection (1) is subject to agreement between the exclusive licensee and the Commissioner as to –

(a) costs, and

(b) timing.

(5) Any question arising in relation to the effect of subsections (1), (3) or (4) may be referred by the Commissioner or the exclusive licensee to the Senior Magistrate, whose decision shall be final; and the Regulator has no jurisdiction to determine a question to which this subsection applies.

(6) Nothing done under Part 8 may (explicitly or impliedly) require the exclusive licensee to maintain a capability not required by this section.

PART 5

ACQUISITION OF CONTROL BY THE COMMISSIONER

War and emergencies.

20. (1) If the Commissioner considers it necessary in the interests of defence, public safety or public order, the Commissioner may –

(a) take any steps the Commissioner considers appropriate to assume control over any network or services provided under or in accordance with a licence;

(b) issue directions to a licensee for the purposes of steps under subsection (1)(a);

(c) appoint staff to act for the purposes of subsection (1)(a).

(2) The Commissioner may pay compensation in respect of action taken in accordance with subsection (1).

(3) Nothing in subsection (1) shall be construed as derogating from or otherwise prejudicing the provisions of the Emergency Powers (Overseas Territories) Order 2017, or the Emergency Powers Ordinance 1984.

Other public service acquisition of control.

21. (1) This section applies where –

(a) a licence has been revoked and another licence for the same services has not yet been granted;

(b) a licensee ceases to operate or in the opinion of the Commissioner is about to cease to operate, or

(c) for any other reason the Commissioner considers that it is necessary in the public interest to acquire control of the provision of electronic communications services.

(2) The Commissioner may –

(a) take any steps the Commissioner considers appropriate to assume control over any network or services provided under or in accordance with a licence;

(b) by Order provide for specified assets to vest in the Commissioner for the purposes of use in pursuance of subsection (2)(a);

(c) appoint staff to act for the purposes of subsection (2)(a).

PART 6

THE COMMUNICATIONS REGULATOR

Nature and status

Appointment.

22. (1) The Commissioner shall appoint a person as the Communications Regulator (**the Regulator**) to perform functions conferred by this Ordinance and any other enactment.

(2) In the event that –

(a) the office of the Regulator is vacant, or

(b) the Regulator is incapacitated;

the functions of the Regulator under this Ordinance will be performed by the General Counsel or another officer designated by the Commissioner.

Exercise of certain powers and annual report.

23. (1) Except as provided in subsections (2) and (3), the Regulator, in the exercise of the powers conferred on the Regulator under this Ordinance, must not be subject to the direction or control of any person or authority.

(2) The Regulator must have regard to the electronic communication objectives, the regulatory principles and any other relevant and proportionate policy objectives set by the Administration of the Territory.

(3) The Commissioner may give policy directions to the Regulator in the exercise by the Regulator of the functions under section 25(d) to the extent that they are consistent with the electronic communications objectives.

(4) The Regulator must submit an annual written report to the Commissioner about the exercise of the Regulator's functions during each calendar year.

(5) An annual report must be made as soon as reasonably practicable, and in any case not later than three months after the end of the calendar year to which it relates.

Functions

General duties.

24. (1) In carrying out the Regulator's functions the Regulator must –

- (a) aim to pursue the electronic communications objectives;
- (b) have regard to the regulatory principles, and
- (c) have regard to any other principles which appear to the Regulator to represent best practice (having regard to all the circumstances of the Territory).

(2) Where two or more electronic communications objectives or other principles conflict in relation to a matter or class of matters, the Regulator must aim to strike an appropriate balance.

(3) In introducing or developing a regulatory or administrative measure the Regulator must provide to the Commissioner and the relevant licensee a document –

- (a) specifying the electronic communications objectives that are advanced by the measure, and
- (b) demonstrating how the regulatory principles have been complied with.

Specific duties.

25. The Regulator has the following functions –

- (a) to regulate the licensed activities carried out by a licensee;
- (b) to administer the licence fee payable in accordance with section 17;
- (c) to exercise functions conferred on the Regulator by this Ordinance or any other relevant enactment, and
- (d) to undertake other functions connected with electronic communications at the request of the Commissioner.

General powers.

26. (1) In carrying out the specific duties set out in section 25, the Regulator may do anything the Regulator considers necessary or desirable for the purpose of pursuing the electronic communications objectives in accordance with the regulatory principles.

(2) In particular, the Regulator may –

- (a) exercise the powers given to the Regulator under this Ordinance;

- (b) issue or approve codes of practice, directions, decisions, orders, statements, instructions, notifications and technical rules and standards;
- (c) maintain registers or lists;
- (d) institute civil proceedings;
- (e) conduct inquiries, investigations under section 27 and hearings;
- (f) conduct market investigations and reviews;
- (g) require the provision of documents and information, and
- (h) make awards of compensation (in accordance with any relevant law) in respect of loss or damage suffered by consumers, and make provision for the enforcement of awards.

(3) Failure to have regard to or comply with codes of practice, directions, decisions, statements, instructions, notifications and technical rules and standards issued or approved by the Regulator does not of itself give rise to civil or criminal liability, but –

- (a) a court or tribunal (including an arbitral tribunal) may have regard to any of those instruments issued or approved by the Regulator that appears to the court or tribunal to be relevant to a matter before it, and
- (b) licences and other instruments under this Ordinance may require parties to have regard to, or comply with, a specified instrument or class of instrument issued or approved by the Regulator (which may include instruments issued or approved after the grant of the licence).

Enforcement powers

Compliance investigations.

27. (1) The Regulator may investigate an actual, alleged or suspected contravention of the terms of a licence issued under this Ordinance.

(2) For the purposes of an investigation the Regulator may require the provision of information or documents.

(3) The Regulator may, with the approval of the Commissioner, appoint an agent –

- (a) to conduct an investigation, and

(b) to exercise the Regulator's powers under this section in respect of that investigation.

(4) The Commissioner may not approve the appointment of an agent under subsection (3) unless satisfied that –

(a) the agent has appropriate qualifications, experience and competence, and

(b) all necessary safeguards and mechanisms for transparency and accountability are in place.

Enforcement orders, penalties and compensation awards.

28. (1) This section applies where the Regulator considers that a person (whether a licensee or not) has failed to comply with –

(a) the provisions of this Ordinance;

(b) the provisions of a licence or other instrument issued under this Ordinance, or

(c) in the case of a licensee, fails to comply with the terms and conditions of the licence.

(2) The Regulator may by order in writing require the person to –

(a) take action specified in the order, or

(b) refrain from taking any action specified in the order.

(3) The Regulator may by order in writing require the person to pay a penalty, or compensation awarded under the powers in section 26(2)(h).

(4) An order is enforceable as if it were an order of the Supreme Court.

(5) Failure to comply with an order under this section –

(a) is an offence, and

(b) may result in revocation of a licence in accordance with section 35.

(6) A penalty imposed under this section is enforceable as a debt due to the Regulator.

(7) A compensation award imposed under this section is a debt due to the person in whose favour it was made.

(8) A penalty and a compensation award carry interest at such rate as the Commissioner may specify by notice in the *Gazette*.

Determinations of licence and other obligations.

29. (1) The Regulator may make a determination about –

(a) the nature and extent of an obligation imposed on a person by or by virtue of a provision of this Ordinance or of a licence or other instrument under this Ordinance;

(b) the effect of any other provision of or by virtue of this Ordinance or of a licence or other instrument under this Ordinance.

(2) A determination may be made –

(a) on an application by a person who appears to the Regulator to have a sufficient interest in the matter to be determined, or

(b) on the Regulator's own motion.

(3) Before making a determination in respect of an obligation imposed on a person, the Regulator must consult that person and any other person who appears to the Regulator to have a legitimate interest.

(4) Before making any other determination the Regulator must consult such persons as appear to the Regulator to have a legitimate interest.

(5) The Regulator must issue a determination in writing giving the Regulator's reasons.

(6) Where the matter is urgent, the Regulator may issue an interim determination on such terms as the Regulator considers appropriate.

(7) A person who considers that the Regulator has not correctly followed the procedures set out within this section, may, within seven working days from the date of the determination, apply to the Senior Magistrate for a ruling, in accordance with subsection (8).

(8) Where an application has been made pursuant to subsection (7), the Senior Magistrate may –

(a) sit in any location;

(b) govern the procedures by which the application is to be determined, and

(c) make any order the Senior Magistrate thinks appropriate, including setting aside the determination made by the Regulator and making ancillary provision as to costs or otherwise.

General procedure

Consultation.

30. (1) Before taking regulatory or administrative action under this Ordinance the Regulator must consult any person directly affected by the action and any other person who appears to the Regulator to have a legitimate interest.

(2) This section is without prejudice to any specific procedures provided by or under a provision of this Ordinance.

(3) This section –

(a) does not apply in relation to determinations under section 29, and

(b) is subject to section 31.

Confidentiality and personal data security.

31. (1) A licensee must not produce any information that contains personal data to the Regulator or to any other person except –

(a) in accordance with this Ordinance;

(b) in accordance with an order of a court, or

(c) with the consent of the person to whom the data relates.

(2) Subject to this section, the Regulator must not publish or disclose information –

(a) held under subsection (1) that identifies or could be used to identify the individual that it is about, or

(b) acquired in the course of the exercise of the Regulator's functions which the Regulator considers to be commercially confidential.

(3) Subsection (2) does not apply to disclosure –

(a) to, or in accordance with an order of, a court, or

(b) where the information is provided to a person or class of persons designated under subsection (4).

(4) The Commissioner, by notice in the *Gazette*, may designate persons or a class of persons whom he or she considers reasonably necessary to receive the information referred to in subsection (3) –

(a) for regulatory or other Government functions in connection with duties under this Ordinance, or

(b) to assist the Regulator or the Commissioner with the discharge of regulatory duties under this Ordinance.

(5) Before the Regulator provides information to a person designated under subsection (4) –

(a) the Regulator must be satisfied that the designated person requires the information for the proper performance of their functions or that they need the information to assist the Regulator in the proper performance of the Regulator's functions under this Ordinance;

(b) the designated person signs a declaration that they will hold the information in accordance with the conditions imposed by the Regulator.

Divulging information and use of information for gain.

32. (1) A person who contravenes section 31 is guilty of an offence and is liable on conviction to a fine not exceeding £2,000.

(2) A person who uses for gain (whether by that person or another) information that is held by the Regulator but that is not available to the public is guilty of an offence and is liable on conviction to one or more of the following penalties –

(a) forfeiture of the amount gained;

(b) a fine not exceeding £10,000;

(c) imprisonment for up to 1 year.

Regulator's requests for information.

33. (1) A licensee must comply with any request of the Regulator for the provision of information or documents reasonably required by the Regulator in connection with the performance of the Regulator's functions, subject to any exemptions or qualifications specified in the licence.

(2) A request under this section must specify –

(a) the information or documents required;

- (b) that the request is made in accordance with this section;
- (c) the purpose for which the information or documents are required;
- (d) the time by which the information or documents are to be provided;
- (e) the consequences of failure to comply with the request.

(3) If a licensee considers that the burden of complying with a request in accordance with this section would be disproportionate to the public benefit of compliance –

- (a) the licensee shall, within 10 working days from the date of receipt of the request, send a notice to the Regulator indicating the licensee’s wish not to comply with the request;
- (b) if the licensee provides the Regulator with an indication in accordance with subsection 3(a), the licensee shall, within 20 working days from the date of receipt of that indication, send to the Regulator a notice explaining the reasons for, and extent of, the licensee’s wish not to comply with the request;
- (c) the Regulator must respond to the notice described in subsection 3(b) within 20 working days from the date of receipt of that notice;
- (d) the request is suspended until the Regulator responds;
- (e) the Regulator must modify the request if and to the extent that the Regulator accepts the licensee’s representations, in which case the Regulator must issue a new request under this section (and subsections (1) and (2) apply).

Failure to provide information.

34. (1) This section applies if a licensee fails without reasonable excuse to comply with a request made by the Regulator in accordance with section 33.

(2) The Regulator may –

- (a) require the licensee to pay a penalty not exceeding £125,000;
- (b) revoke the licence in accordance with section 35, or
- (c) take action under both subsection (2)(a) and subsection (2)(b).

(3) Before taking action under subsection (2) the Regulator must –

- (a) serve a warning notice on the licensee, and
- (b) give the licensee a reasonable opportunity to make representations.

(4) A penalty under this section may be enforced as a debt due to the Regulator.

(5) The licensee may appeal in writing to the Senior Magistrate against a requirement imposed by the Regulator to pay a penalty under this section.

(6) In hearing an appeal made pursuant to subsection (5), the Senior Magistrate may –

- (a) sit in any location;
- (b) govern the procedures by which the appeal is to be determined, and
- (c) make any order the Senior Magistrate thinks appropriate, including increasing the amount of a penalty and making ancillary provision as to costs or otherwise.

Variation or revocation of licence.

35. (1) This section applies where a licensee fails to comply with the terms and conditions of a licence.

(2) The Regulator may –

- (a) vary the terms or conditions of the licence (which may include adding or removing a term or condition);
- (b) suspend the licence for a specified period, or
- (c) revoke the licence.

(3) Before taking action under this section the Regulator must –

- (a) give the licensee written notice that the Regulator is considering taking action, and
- (b) give the licensee an opportunity to make representations (including a period of at least 28 calendar days for the making of written representations).

(4) Before taking action under this section the Regulator must give the licensee an opportunity to avoid action under this section by remedying the failure to comply with the terms and conditions of the licence (subject to subsection (5)).

(5) The Regulator may take action under this section without complying with subsection (4) if –

(a) the Regulator gave notice to the licensee of intention to take action under this section in respect of one or more previous failures to comply with the terms and conditions of the licence, and

(b) the Regulator is satisfied that the licensee should not be given an opportunity to avoid action under this section, having regard to the previous failure or failures.

(6) Action under this section must –

(a) be taken by giving notice in writing to the licensee (at the address specified in the licence, if any);

(b) specify the failure of compliance in respect of which it is imposed;

(c) specify the date on which the action takes effect (which the Regulator shall set having regard to all the circumstances, including the seriousness and urgency of the results of the failure to comply with the terms and conditions of the licence);

(d) give the Regulator's reasons for imposing the requirement.

(7) A licence issued pursuant to Part 3 or Part 4 may not be revoked unless the Regulator has obtained the leave of the Supreme Court to revoke the licence.

(8) Before applying to the Supreme Court for permission the Regulator must –

(a) obtain the consent of the Commissioner to make the application, and

(b) give at least 6 weeks' notice of the intention to apply for permission.

(9) The decision of the Supreme Court on an application for permission is final.

PART 7

OFFENCES

Specific offences

False statements.

36. (1) A person who makes a statement or provides information or documents to the Regulator or any other public body in pursuance of a provision of this Ordinance commits an offence if the person –

(a) knows that the statement, information or documents are false in a material respect;

(b) is reckless as to whether the statement, information or documents are false in a material respect.

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding £625,000.

Obstructing Regulator.

37. (1) It is an offence for a person to obstruct the Regulator or a person authorised by the Regulator in the exercise of a function under this Ordinance or under a licence issued under this Ordinance;

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding £17,500.

Misleading messages.

38. (1) It is an offence to use electronic communications to send or attempt to send a message which is false or misleading and is likely to threaten the efficiency or safety of any person, vehicle, vessel or aircraft (whether by issuing a false distress call or otherwise).

(2) A person who is guilty of an offence under this section is liable on conviction to a fine not exceeding £125,000.

Improperly obtaining and disclosing information and interfering with communications.

39. (1) It is an offence to –

(a) do anything designed to obtain from the operator of a network information about the content, sender or addressee of an electronic communication, or

(b) disclose that information.

(2) It is an offence for the operator of a network, or a person employed by or otherwise working for the operator of a network, to –

(a) interfere with an electronic communication, or

(b) disclose the existence, nature or content (including sender or addressee) of an electronic communication.

(3) Subsections (1) and (2) do not apply to anything done –

(a) with the consent of the persons sending and receiving the communication, or

(b) with lawful authority.

(4) A person who is guilty of an offence under this section is liable on conviction to –

(a) imprisonment for a term not exceeding 2 years;

(b) a fine not exceeding £625,000, or

(c) both.

Deliberate interference.

40. (1) A person who uses any apparatus for the purpose of interfering with electronic communications commits an offence.

(2) Subsection (1) does not apply to anything done –

(a) with the consent of the persons sending and receiving the communication, or

(b) with lawful authority.

(3) A person who is guilty of an offence under subsection (1) is liable on conviction to –

(a) imprisonment for a term not exceeding 3 months;

(b) a fine not exceeding £1,000, or

(c) both.

Damage to infrastructure.

41. (1) A person who damages any part of the infrastructure of an electronic communications network must report the damage to a police officer as soon as is reasonably practicable.

(2) Failure to comply with subsection (1) is an offence.

(3) A person who is guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding £1,000.

Enforcement powers

Power of entry.

42. (1) If a Magistrate is satisfied that there are reasonable grounds to suspect that evidence of the commission of an offence under this Ordinance is to be found on premises, the Magistrate may issue a warrant authorising a person authorised by the Commissioner –

(a) to enter the premises;

(b) to require the provision of a copy of any information or documents stored on the premises (including information stored electronically);

(c) to test equipment;

(d) to remove any article that may be or provide evidence of the commission of the offence.

(2) Subsection (1) applies to a vehicle, vessel or aircraft as it applies to premises.

(3) It is an offence –

(a) to obstruct a person exercising powers under a warrant under this section, or

(b) to fail to provide reasonable assistance on request to a person exercising powers under a warrant under this section.

(4) A person who is guilty of an offence under subsection (3) is liable on conviction to –

(a) imprisonment for a term not exceeding 3 months;

(b) a fine not exceeding £1,000, or

(c) both.

PART 8

DATA

Interpretation

Public interest grounds.

43. For the purposes of this Part the **public interest grounds** are –

- (a) the interests of national security;
- (b) prevention or detection of crime;
- (c) prevention of disorder;
- (d) public safety;
- (e) public health;
- (f) preventing or reducing deaths or injuries as a result of a public emergency;
- (g) any other matter specified for the purposes of this section by the Commissioner by regulations.

Retention and disclosure of data

Retention notices.

44. (1) The Commissioner may by notice (a **retention notice**) require a licensee to retain electronic communications data.

(2) The Commissioner may give a retention notice if satisfied that –

- (a) it is necessary on public interest grounds, and
- (b) it is proportionate to the purpose for which it is required.

(3) A retention notice –

- (a) must specify the classes of data to be retained;
- (b) must specify the period for which data is to be retained;
- (c) may specify the form in which it is to be retained;
- (d) may include other provision as to the retention of the data;

(e) may make provision for data whether or not in existence at the time when the notice is given;

(f) may make provision which applies generally or only for specified purposes;

(g) may make different provision for different purposes.

(4) A retention notice may not require data to be retained for more than 24 months.

(5) A licensee may disclose data retained in accordance with a retention notice only –

(a) in accordance with a provision of this Ordinance, or

(b) in accordance with regulations made pursuant to section 53.

(6) When a licence comes to an end (for whatever reason) –

(a) a retention notice issued to a licensee continues to have effect in accordance with its terms, but

(b) if provision is made for the transfer of data to a new licensee, the Commissioner may vary or revoke the retention notice.

Disclosure requirements.

45. (1) The Commissioner may grant an authorisation allowing a specified person or class of person to require a licensee to disclose electronic communications data.

(2) The Commissioner may require a licensee –

(a) to obtain electronic communications data;

(b) to disclose electronic communications data.

(3) The Commissioner may grant an authorisation under subsection (1) or impose a requirement under subsection (2) only if satisfied that –

(a) it is necessary on public interest grounds, and

(b) it is proportionate to the purpose for which it is required.

(4) A licensee must comply with a requirement imposed under or by virtue of this section.

Interception

Interception authorisation.

46. (1) The Commissioner may authorise a person to take specified steps to –

- (a) intercept an electronic communication or class of communications;
- (b) disclose the intercepted material.

(2) The Commissioner may grant an authorisation under this section only if satisfied that –

- (a) it is necessary on public interest grounds, and
- (b) it is proportionate to the purpose for which it is required.

Encrypted data

Requirement to disclose.

47. (1) This section applies where data is encrypted or protected by a password or other secure means and the data has come into the possession of a police officer –

- (a) in the exercise of a function under this Ordinance, or
- (b) in the exercise of a function under another enactment.

(2) A police officer who believes that a person is likely to possess the key to the encryption (**key to the encryption** includes a password or other access code) may require that person to disclose the key to the British Indian Ocean Territory Police services.

(3) A requirement may be imposed only if the most senior available police officer in the Territory is satisfied that –

- (a) it is necessary on public interest grounds, and
- (b) it is proportionate to the purpose for which it is imposed.

(4) A requirement under this section is enforceable as if it were an order of the Supreme Court.

(5) A requirement under this section may not require the disclosure of a key which is designed to be used, and has been used, only for generating electronic signatures.

(6) A requirement under this section may include a provision prohibiting any person from communicating the fact or nature of the requirement to any other person (except for the purposes of complying with the requirement).

(7) It is an offence for a person to fail without reasonable excuse to comply with a requirement under this section.

(8) A person who is guilty of an offence under this section is liable on conviction to –

(a) imprisonment for a term not exceeding 2 years;

(b) a fine not exceeding £625,000, or

(c) both.

General.

48. (1) Nothing in this Part, or done under this Part, requires a licensee or any other person to do anything that is not practicable for the licensee or other person, having regard to all the circumstances.

(2) Where a person has received a retention notice pursuant to section 44, a requirement pursuant to section 45, or a specified steps authorisation pursuant to section 46 and is of the opinion that the notice, requirement or authorisation requires the person to do something that is not practicable –

(a) the person may refer the question to the Senior Magistrate;

(b) the decision of the Senior Magistrate shall be final to determine the question, and

(c) the Senior Magistrate may make any ancillary order the Senior Magistrate thinks fit (including modifying or imposing a condition to or limitation on the notice, requirement or authorisation).

(3) In the case of a notice, requirement or authorisation served on the person by the Commissioner –

(a) the person may not refer the question to the Senior Magistrate without giving the Commissioner such notice as is reasonably practicable, and

(b) the notice, requirement or authorisation has no effect until the question has been determined by (or withdrawn from) the Senior Magistrate (and then has effect subject to the determination).

(4) Nothing in this Ordinance prohibits the doing of anything in accordance with lawful authority.

(5) Where a notice, requirement or authorisation under this Part is served on a person –

(a) a person may comply with the notice, requirement or authorisation wholly or partly by arranging for another person to take the required action, and

(b) the person may disclose the notice, requirement or authorisation for that purpose.

PART 9

AMATEUR RADIO LICENCES

Power to grant amateur radio licences.

49. (1) The Commissioner's Representative, after consultation with the U.S. Authorities, may grant a licence (an **amateur radio licence**) permitting a suitably qualified person to install or use radio transmitting and receiving apparatus for wireless telegraphy –

(a) for the purpose of self-training in radio communications, and

(b) as a leisure activity,

but not for commercial purposes of any kind.

(2) An amateur radio licence issued by the Commissioner's Representative may include such terms and conditions as the Commissioner's Representative deems appropriate.

Variation or revocation of amateur radio licence.

50. The Commissioner's Representative may –

(a) vary the terms or conditions of the amateur radio licence (which may include adding or removing a term or condition);

(b) suspend the amateur radio licence for a specified period, or

(c) revoke the amateur radio licence.

PART 10

RADIO SPECTRUM AND NUMBERING MANAGEMENT

Management of the radio spectrum.

51. (1) Ownership of the radio spectrum is held by the Administration of the Territory.

(2) The U.S. Authorities –

(a) have general responsibility for the management of the radio spectrum in the Territory, and

(b) are responsible for allocation of frequencies in the radio spectrum in the Territory.

Management of the numbering system.

52. (1) Ownership of the +246 country code is held by the Administration of the Territory.

(2) Management and allocation of the numbering system for fixed and mobile telephones within the Territory shall be the responsibility of the exclusive licensee, subject to any direction, or instruction given by the Regulator, pursuant to section 25 of this Ordinance.

(3) In managing and allocating the numbering system, the exclusive licensee shall –

(a) comply with any relevant international standards, and

(b) adopt an efficient use of numbering.

PART 11

SUPPLEMENTAL

Regulations.

53. (1) The Commissioner may make such regulations as the Commissioner considers necessary for the purposes of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made by the Commissioner may provide for or determine –

- (a) anything which is to be, or which may be, prescribed under this Ordinance;
- (b) any forms to be used for the purposes of this Ordinance;
- (c) the procedures to be adopted –
 - (i) in applying for licences;
 - (ii) in granting licences;
 - (iii) in granting authorisations under Part 8;
- (d) the procedures to be adopted by the Regulator in carrying out its functions under this Ordinance, or in accordance with a licence issued under this Ordinance;
- (e) the conditions subject to which licences are to be, or may be, granted;
- (f) the fees to be charged for licences and the method of computing such fees.

(3) Regulations made under this section may provide that the contravention of any provision thereof shall constitute an offence, and may prescribe, as the penalty for any such offence, a fine not exceeding £625,000.

Offences and penalties.

54. (1) Without prejudice to section 319 of the Penal Code, any person who attempts to commit an offence under this Ordinance or under any regulations made under section 53 commits an offence under this subsection and is liable, on conviction, to the same fine as if he had committed the attempted offence.

(2) Despite any provision of law limiting the time within which proceedings may be commenced, proceedings for an offence under this Ordinance or under any regulations made under section 53 may be commenced at any time after the commission of that offence.

(3) On convicting any person of an offence under this Ordinance or under any regulations made under section 53, the Magistrate's Court may –

- (a) Despite section 169(1) of the Criminal Procedure Code 2019, impose on the convicted person any fine to which that person is liable under this Ordinance or under those regulations for that offence, and
- (b) Despite section 197(1) of the Criminal Procedure Code 2019, order the convicted person 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.

PART 12

Deleted on revision

Deleted on revision.

55. *Deleted on revision.*

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57. *Deleted on revision.*
