



BRITISH INDIAN OCEAN TERRITORY

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

**THE MISUSE OF DRUGS ORDINANCE  
1992**

**CHAPTER C.5**

**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 Misuse of Drugs Ordinance 1992 - Ordinance No.5 of 1992

As amended by:

Ordinance No.3 of 2008

Ordinance No.4 of 2016

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

**THE MISUSE OF DRUGS ORDINANCE 1992**

**CHAPTER C.5**

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

**THE MISUSE OF DRUGS ORDINANCE 1992**

**CHAPTER C.5**

*An Ordinance to make new provision with respect to dangerous or otherwise harmful drugs and related matters, and to provide for purposes connected therewith.*

**Citation.**

1. This Ordinance may be cited as the Misuse of Drugs Ordinance, ROBIOT c.C.5.

**Definitions.**

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

**cannabis** (except in the expression **cannabis resin**) means any plant of the genus *Cannabis* or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely –

- (a) mature stalk of any such plant;
- (b) fibre produced from mature stalk of any such plant; and
- (c) seed of any such plant;

**cannabis resin** means the separated resin, whether crude or purified, obtained from any plant from the genus *Cannabis*;

**controlled drug** has the meaning assigned by section 3;

**corresponding law** has the meaning assigned by section 23;

**prepared opium** means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked;

**prescribed** means prescribed by regulations made by the Commissioner under section 8 or having effect as if so made;

**produce**, where the reference is to producing a controlled drug, means producing it by manufacture, cultivation or any other method;

**supplying** includes distributing.

(2) References in this Ordinance to misusing a drug are references to misusing it by taking it, and this reference to the taking of a drug is a reference to the taking of it by a human being by way of any form of self-administration, whether or not involving assistance by another.

(3) For the purposes of this Ordinance the things which a person has in his possession shall be taken to include any thing subject to his control which is in the custody of another.

(4) References in this Ordinance to the Misuse of Drugs Act 1971, or to particular provisions of that Act, or to regulations made thereunder, are references to that Act, or those provisions, or those regulations as for the time being in force.

### **Controlled drugs and their classification for purposes of this Ordinance.**

3. In this Ordinance –

(a) the expression **controlled drug** means any substance or product for the time being specified in Part I, Part II or Part III of Schedule 2 to the Misuse of Drugs Act 1971; and

(b) the expression **Class A drug**, **Class B drug** and **Class C drug** mean any of the substances and products for the time being specified respectively in Part I, Part II and Part III of that Schedule,

and the provisions of section 37 of that Act and of Part IV of that Schedule shall have effect, for the purposes of this Ordinance, with respect to the meanings of expressions used in that Schedule.

### **Restriction of importation and exportation of controlled drugs.**

4. (1) Subject to subsection (2) –

(a) the importation of a controlled drug; and

(b) the exportation of a controlled drug are hereby prohibited.

(2) Subsection (1) does not apply –

(a) to the importation or exportation of a controlled drug which is for the time being excepted from paragraph (a) or, as the case may be, paragraph (b) of that subsection by regulations made under, or having effect as if made under, section 8; or

(b) to the importation or exportation of a controlled drug under and in accordance with the terms of a licence issued by the

Commissioner and in compliance with any conditions attached thereto.

(3) It is an offence for a person to import or export a controlled drug in contravention of subsection (1).

(4) In this section **import** and **importation** and **export** and **exportation** have the same meanings as in the Imports and Exports Control Ordinance 2009 and, without prejudice to subsection (3) and section 18, controlled drugs which are imported or exported in contravention of subsection (1) shall be deemed to be prohibited imports or prohibited exports for the purposes of that Ordinance.

### **Restriction of production and supply of controlled drugs.**

5. (1) Subject to any regulations made under, or having effect as if made under, section 8 which are for the time being in force, it shall not be lawful for a person –

(a) to produce a controlled drug; or

(b) to supply or offer to supply a controlled drug to another.

(2) Subject to section 20, it is an offence for a person –

(a) to produce a controlled drug in contravention of subsection (1); or

(b) to be concerned in the production of such a drug, in contravention of that subsection, by another.

(3) Subject to section 20, it is an offence for a person –

(a) to supply or offer to supply a controlled drug to another in contravention of subsection (1);

(b) to be concerned in the supplying of such a drug to another in contravention of that subsection; or

(c) to be concerned in the making to another, in contravention of that subsection, of an offer to supply such a drug.

### **Restriction of possession of controlled drugs.**

6. (1) Subject to any regulations made under, or having effect as if made under, section 8 that are for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 20 and to subsection (4), it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1).

(3) Subject to section 20, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 5(1).

(4) In any proceedings for an offence under subsection (2) in which it is proved that the accused person had a controlled drug in his possession, it shall be a defence for him to prove –

(a) that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with it and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to destroy the drug or to deliver it into the custody of a person lawfully entitled to take custody of it; or

(b) that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to deliver it into the custody of such a person.

(5) Nothing in subsection (4) shall prejudice any defence which it is open to a person charged with an offence under this section to raise apart from that subsection.

### **Restriction of cultivation of cannabis plant.**

7. (1) Subject to any regulations made under, or having effect as if made under, section 8 that are for the time being in force, it shall not be lawful for a person to cultivate any plant of the genus Cannabis.

(2) Subject to section 20, it is an offence to cultivate any such plant in contravention of subsection (1).

### **Regulations.**

8. (1) The Commissioner may, by regulations, make such provision for the purposes of or in relation to this Ordinance, or for the purposes of or in relation to particular provisions of this Ordinance, as the Secretary of State may make by regulations under section 7, section 10 or section 22 of the Misuse of Drugs Act 1971 for the purposes of or in relation to that Act or for the purposes of or in relation to the provisions of that Act corresponding to those particular provisions of this Ordinance.

(2) Regulations made by the Commissioner under this section (**Commissioner's regulations**) may, whether or not they also make such provision as is referred to in subsection (1), make provision (**an excluding or**



**qualifying provision)** whereby the application as part of the law of the Territory of regulations made by the Secretary of State under section 7, section 10 or section 22 of the Misuse of Drugs Act 1971 (**Secretary of State's regulations**) is excluded or is subject to such modifications, adaptations, qualifications and exceptions as the Commissioner's regulations may specify, but subject to any such excluding or qualifying provision and save to the extent that a Secretary of State's regulation is otherwise inconsistent with a Commissioner's regulation, all Secretary of State's regulations shall have effect for the purposes of this Ordinance as if they were Commissioner's regulations:

Provided that –

(a) a Secretary of State's regulation shall have effect only so far as it is applicable to local circumstances and shall be read with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary;

(b) without prejudice to the generality of paragraph (a), a Secretary of State's regulation shall, in its effect, be construed, unless the context otherwise requires, as if –

(i) any references therein to (or its application in relation to) particular provisions of the Misuse of Drugs Act 1971 were references to (or operated as an application in relation to) the provisions of this Ordinance corresponding to those particular provisions of that Act;

(ii) any references therein to the Secretary of State were references to the Commissioner; and

(iii) any references therein to a practitioner were references to a doctor, dentist, veterinary practitioner or veterinary surgeon, duly qualified as such and practising in the Territory; and

(c) any provision of a Secretary of State's regulation relating to record-keeping shall have effect only if and to the extent that a Commissioner's regulation expressly so provides.

**Occupiers, etc., of premises to be punishable for permitting certain activities to take place there.**

9. A person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is to say –

(a) producing or attempting to produce a controlled drug in contravention of section 5(1);

(b) supplying or attempting to supply a controlled drug to another in contravention of section 5(1) or offering to supply a controlled drug to another in contravention of section 5(1);

(c) preparing opium for smoking;

(d) smoking cannabis, cannabis resin or prepared opium.

**Prohibition of certain activities etc., relating to opium.**

**10.** (1) Subject to section 20, it is an offence for a person –

(a) to smoke or otherwise use prepared opium;

(b) to frequent a place used for opium smoking; or

(c) to have in his possession –

(i) any pipes or other utensils made or adapted for use in connection with the smoking of opium, being pipes or utensils which have been used by him or with his knowledge and permission in that connection or which he intends to use or permit others to use in that connection; or

(ii) any utensils which have been used by him or with his knowledge and permission in connection with the preparation of opium for smoking.

**Prohibition of supply, etc., of articles for administering or preparing controlled drugs.**

**11.** (1) A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, is guilty of an offence.

(2) It is not an offence under subsection (1) to supply or offer to supply a hypodermic syringe or any part of one.

(3) A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another, believing that the article is to be used in circumstances where the administration is unlawful, is guilty of an offence.

(4) For the purposes of this section, any administration of a controlled drug is unlawful except –

(a) the administration by any person of a controlled drug to another in circumstances where the administration of the drug is not unlawful under section 5(1); or

(b) the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under section 6(1).

(5) In this section, references to the administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another.

**Power to direct special precautions for safe custody of controlled drugs to be taken at certain premises.**

12. (1) Without prejudice to any requirement imposed by regulations made under, or having effect as if made under, section 8, the Commissioner may by notice in writing, served on the occupier of any premises on which controlled drugs are, or are proposed to be, kept, give directions as to the taking of precautions or further precautions for the safe custody of any controlled drugs of a description in the notice which are kept on those premises.

(2) It is an offence to contravene any directions given under subsection (1).

**Miscellaneous offences.**

13. (1) It is an offence for a person to contravene any regulations made under, or having effect as if made under, this Ordinance.

(2) It is an offence for a person to contravene a condition or other terms of a licence issued under section 4 or of a licence or other authority issued under regulations made under, or having effect as if made under, this Ordinance.

(3) A person commits an offence if, in purported compliance with any obligation to give information to which he is subject under or by virtue of regulations made under, or having effect as if made under, this Ordinance, he gives any information which he knows to be false in a material particular or recklessly gives information which is so false.

(4) A person commits an offence if, for the purpose of obtaining, whether for himself or another, the issue or renewal of a licence or other authority under this Ordinance or under any regulations made under, or having effect as if made under, this Ordinance, he –

(a) makes any statement or gives any information which he knows to be false in a material particular or recklessly gives any information which is so false; or

(b) produces or otherwise makes use of any book, record or other document which to his knowledge contains any statement or information which he knows to be false in a material particular.

**Attempts, etc., to commit offences.**

14. Without prejudice to section 319 of the Penal Code, it is an offence for a person to attempt to commit an offence under any other provision of this Ordinance or to incite or attempt to incite another to commit such an offence.

**Assisting or inducing commission outside the Territory of offence punishable under a corresponding law.**

15. A person commits an offence if, in the Territory, he assists in or induces the commission in any place outside the Territory of an offence punishable under the provisions of a corresponding law in force in that place.

**Offences by corporations.**

16. When any offence under this Ordinance committed by a body corporate or unincorporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or any person purporting to act in any such capacity, he as well as the body shall be guilty of that offence and shall be liable to be proceeded against accordingly.

**Powers to search, obtain evidence and arrest without warrant.**

17. (1) If a Police Officer has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Ordinance or of any regulations made under, or having effect as if made under, this Ordinance, he may –

(a) search that person and detain him for the purpose of searching him;

(b) search any vehicle or vessel or aircraft and for that purpose require the person in control of any vehicle or vessel to stop it;

(c) seize and detain, for the purposes of proceedings under this Ordinance, anything found in the course of the search which appears to him to be evidence of an offence under this Ordinance.

(2) If a Magistrate is satisfied by information on oath that there is reasonable ground for suspecting –

(a) that any controlled drugs are, in contravention of this Ordinance or of any regulations made under, or having effect as if made under, this Ordinance, in the possession of a person on any premises; or

(b) that a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would if carried out be, an offence under this Ordinance, or, in the case of a transaction or dealing carried out or intended to be carried out in a place outside the Territory, an offence against the provisions of a corresponding law in force in that place, is in the possession of a person on any premises,

he may grant a warrant authorising any Police Officer, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant and to search the premises and any persons found therein and, if there is reasonable ground for suspecting that an offence under this Ordinance has been committed in relation to any controlled drugs found on the premises or in the possession of any such persons, or that a document so found is such a document as is mentioned in paragraph (b), to seize and detain those drugs or that document, as the case may be.

(3) Nothing in subsections (1) and (2) shall prejudice any power of search or any power to seize or detain property which is exercisable apart from those subsections.

(4) A person commits an offence if he intentionally obstructs a Police Officer in the exercise of his powers under this section.

#### **Punishment of offences.**

**18.** (1) Subject to subsection (4), the Schedule to this Ordinance shall have effect, in accordance with subsection (2), with respect to the punishments that may be imposed by the Supreme Court on persons who have been convicted of offences under this Ordinance:

Provided that a person convicted of an offence under section 11 (supply, etc., of articles for administering or preparing controlled drugs) shall be liable to a maximum term of imprisonment of twelve months or a maximum fine of £5,000 or both such imprisonment and such fine.

(2) In relation to an offence under a provision of this Ordinance specified in column 1 of the Schedule (the general nature of the offence being described in column 2) –

(a) columns 3, 4 and 5 show respectively the punishments which may be imposed on a person convicted of the offence according to whether the controlled drug in relation to which the offence was committed was a Class A drug, a Class B drug or a Class C drug; and

(b) column 6 shows the punishment which may be imposed on a person convicted of the offence, whether or not it was committed in relation to a controlled drug and, if it was so committed, irrespective of whether the drug was a Class A drug, a Class B drug or a Class C drug,

and in columns 3, 4, 5 and 6 a reference to a period gives the maximum term of imprisonment and a reference to a sum of money the maximum fine.

(3) Subject to subsection (4), where a person is convicted by the Magistrate's Court of an offence under this Ordinance, the maximum punishment that may be imposed on him by that Court in respect of that offence shall –

(a) if the maximum term of imprisonment specified in the Schedule in relation to that offence on a conviction by the Supreme Court is 5 years or more and if the Magistrate's Court is presided over by the Senior Magistrate, be imprisonment for 3 years or a fine of £10,000 or both such imprisonment and such fine; and

(b) in any other case be imprisonment for twelve months or a fine of £5,000 or both such imprisonment and such fine.

(4) The punishments which may be imposed on a person convicted by a court of an offence under section 14 (attempts, etc.) are the same as those which, under this section, may be imposed on a person convicted by that court of the substantive offence (that is to say, the offence under this Ordinance to which the attempt or, as the case may be, the incitement or attempted incitement mentioned in section 14 was directed.)

(5) The provisions of this section are without prejudice to section 170 of the Criminal Procedure Code 2019 (power of Magistrate to commit offender to Supreme Court for sentence.)

### **Forfeiture.**

**19.** (1) Subject to subsection (2), the court by which a person is convicted of an offence under this Ordinance may order anything shown to the satisfaction of the court to relate to the offence to be forfeited (on such terms, if any, as the court thinks just) and either destroyed or dealt with in such other manner as the court may order.

(2) The court shall not order anything to be forfeited under this section where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

**Proof of lack of knowledge, etc., to be a defence in proceedings for certain offences.**

20. (1) This section applies to offences under any of the following provisions, that is to say, sections 5(2), 5(3), 6(2), 6(3) and 10.

(2) Subject to subsection (3), in any proceedings for an offence to which this section applies it shall be a defence for the accused person to prove that he neither knew of nor suspected nor had reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged.

(3) Where in any proceedings for an offence to which this section applies it is necessary, if the accused person is to be convicted of the offence charged, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance or produce in question was that controlled drug, the accused person –

(a) shall not be acquitted of the offence charged by reason only of proving that he neither knew nor suspected nor had reason to suspect that the substance or product in question was the particular controlled drug alleged; but

(b) shall be acquitted thereof –

(i) if he proves that he neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug; or

(ii) if he proves that he believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.

(4) Nothing in this section shall prejudice any defence which it is open to a person charged with an offence to which this section applies to raise apart from this section.

**Licence and authorities.**

21. A licence or other authority issued by the Commissioner for the purposes of this Ordinance or of regulations made under, or having effect as if made under, this Ordinance may be, to any degree, general or specific, may be issued on such terms and subject to such conditions (including, in the case of a licence, the payment of a prescribed fee) as the Commissioner thinks proper, and may be modified or revoked by him at any time.

## **General provisions as to regulations.**

### **22. Regulations made by the Commissioner under section 8 –**

- (a) may make different provisions in relation to different controlled drugs, different classes of persons, different provisions of this Ordinance or other different cases or circumstances;
- (b) may make the opinion, consent or approval of a prescribed authority or of any person authorised in a prescribed manner material for the purposes of any provision of the regulations; and
- (c) may contain such supplementary, incidental and transitional provisions as appear expedient to the Commissioner.

### **Meaning of “corresponding law” and evidence of certain matters by certificate.**

**23.** (1) In this Ordinance the expression **corresponding law** means a law stated in a certificate purporting to be issued by or on behalf of the Government of a country outside the Territory to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30 March 1961 or a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which Her Majesty’s Government in the United Kingdom and (if that country is not a country for whose external relations the United Kingdom is responsible) the Government of that country are for the time being parties.

(2) A statement in any such certificate as described in subsection (1), to the effect that any facts constitute an offence against the law mentioned in the certificate, shall be evidence of the matters stated.



# **SCHEDULE**

(Section 18)

## **PUNISHMENTS IMPOSABLE BY SUPREME COURT**

Section Creating Offence	General Nature of Offence	PUNISHMENT			
		Class A drug involved	Class B drug involved	Class C drug involved	General
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section 4(3)	Importing or exporting a controlled drug.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 5(2)	Production, or being involved in the production, of a controlled drug.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 5(3)	Supplying or offering to supply a controlled drug or being concerned in the doing of either activity by another.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 6(2)	Having possession of a controlled drug.	7 years or an unlimited fine or both.	5 years or an unlimited fine, or both.	2 years or an unlimited fine, or both.	-
Section 6(3)	Having possession of a controlled drug with intent to supply it to another.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-

		PUNISHMENT			
Section Creating Offence	General Nature of Offence	Class A drug involved	Class B drug involved	Class C drug involved	General
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section 7(2)	Cultivation of cannabis plant.	-	-	-	14 years or an unlimited fine, or both.
Section 9	Being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there.	14 years or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 10	Offences relating to opium.	-	-	-	14 years or an unlimited fine, or both.
Section 12(2)	Contravention of directions relating to safe custody of controlled drugs.	-	-	-	2 years or an unlimited fine, or both.

Section Creating Offence	General Nature of Offence	PUNISHMENT			
		Class A drug involved	Class B drug involved	Class C drug involved	General
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section 13(1)	Contravention of regulations.	-	-	-	2 years or an unlimited fine, or both.
Section 13(2)	Contravention of terms of licence or other authority.	-	-	-	2 years or an unlimited fine, or both.
Section 13(3)	Giving false information in purported compliance with obligation to give information imposed under or by virtue of regulations.	-	-	-	2 years or an unlimited fine, or both.
Section 13(4)	Giving false information, or producing document, etc containing false information, for purposes of obtaining issue or renewal of licence or other authority.	-	-	-	2 years or an unlimited fine, or both.

		PUNISHMENT			
Section Creating Offence	General Nature of Offence	Class A drug involved	Class B drug involved	Class C drug involved	General
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section 15	Assisting in or inducing commission outside Territory of an offence punishable under a corresponding law.	-	-	-	14 years or an unlimited fine, or both.
Section 17(4)	Obstructing exercise of powers of search, etc.	-	-	-	2 years or an unlimited fine, or both.

