CHAPTER 580

CONSULAR PROTECTION (UNREPRESENTED CITIZENS) ACT

AN ACT to make provision for consular protection to unrepresented citizens.

27th April,2018

ACT XII of 2018.

Short title.

1. The short title of this Act is the Consular Protection (Unrepresented Citizens) Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

"lead State" means one or more Member States represented in a given third country and in charge of coordinating and leading the assistance of unrepresented citizens during crises;

"third country" means a country which is not a Member State of the European Union;

"unrepresented citizen" means a citizen holding the nationality of a Member State who is not represented in a third country through an embassy or a consulate established therein on a permanent basis or, if it has no embassy, consulate or honorary consul there which is effectively in a position to provide consular protection in a given case;

"unrepresented citizen of Malta" means a citizen of Malta who is not represented in a third country through an embassy or a consulate established therein on a permanent basis or, if it has no embassy, consulate or honorary consul of the Government of Malta which is effectively in a position to provide consular protection in a given case.

Consular protection to unrepresented citizens and unrepresented citizens of Malta.

3. (1) Embassies or consulates representing the Government of Malta in a third country shall provide consular protection to an unrepresented citizen as if he was a citizen of Malta.

(2) An unrepresented citizen of Malta is entitled to seek consular protection from the embassy or consulate of any Member State in that third country.

(3) The consular protection referred to in sub-article (1) may, *inter alia*, include assistance in the following situations:

(a) arrest or detention;

(b) being a victim of crime;

(c) a serious accident or serious illness;

(d) death;

(e) relief and repatriation in case of an emergency;

(f) a need for emergency travel documents.

Request for redirection of consular protection.

4. (1) The Government of Malta may, when a Member State informs it that an unrepresented citizen of Malta is seeking or receiving consular protection from its embassy or consulate in a third country, request such Member State to redirect the unrepresented citizen of Malta's application or case to it.

(2) Where the Government of Malta is providing consular protection to an unrepresented citizen it shall inform the Member State of his nationality:

Provided that where the Government of Malta is requested to hand over the application or case of an unrepresented citizen in a third country by the Member State of his nationality, the Government of Malta shall relinquish the case as soon as the requesting Member State confirms that the unrepresented citizen is being provided with consular protection.

(3) Requests for redirection of consular protection shall follow the procedure provided for under article 8.

Consular protection to family members of unrepresented citizens.

5. The Government of Malta shall provide consular protection to family members of unrepresented citizens who, though not being citizens of a Member State, are accompanying unrepresented citizens in a third country. Such protection shall be provided to the same extent and on the same concessions as if the family members were family members of a citizen of Malta.

Representation by Member States.

6. (1) The Government of Malta may represent or be represented by another Member State on a permanent basis.

(2) Embassies or consulates of the Government of Malta may, whenever they deem necessary, conclude practical agreements with other Member States on sharing responsibilities for providing consular protection to unrepresented citizens.

(3) Without prejudice to the provisions of article 3, where an unrepresented citizen seeks consular protection from an embassy or consulate of the Government of Malta which, according to the practical agreement referred to in sub-article (2), is not deemed competent, then the embassy or consulate shall redirect the application to the relevant embassy or consulate:

Provided that the provisions of this sub-article shall not

apply if the urgency of the matter requires immediate action.

Identification of unrepresented citizens.

7. (1) Unrepresented citizens seeking consular protection from the Government of Malta shall establish that they are citizens of the European Union by producing their passport or the identity card:

Provided that if the unrepresented citizen is unable to produce such means of identification, nationality may be proven by any other means, including verification with the diplomatic and consular authorities of the Member State of which the unrepresented citizen claims to be a national.

(2) With regard to family members referred to in article 5, the identity and existence of the family relationship may be proven by any means, including verification by the Government of Malta with the diplomatic consular authorities of the Member State of the citizen as referred to in sub-article (1).

Cooperation between diplomatic and consular authorities.

8. (1) Diplomatic and consular authorities of the Government of Malta shall closely cooperate with the embassies and, or, consulates of other Member States to ensure protection of unrepresented citizens.

(2) When an embassy or consulate of the Government of Malta receives a request for consular protection from a person who claims to be an unrepresented citizen, or is informed of an individual emergency situation of an unrepresented citizen, the Government of Malta shall without delay consult with the Ministry of Foreign Affairs of the Member State of which the person claims to be a national or, where appropriate, the competent embassy or consulate of a Member State and provide it with all the relevant information at its disposal, including but not limited to:

(a) the identity of the person concerned;

(b) the possible cost of consular protection; and

(c) any family members to whom consular protection may also need to be provided:

Provided that, before the provision of any form of consular protection, the unrepresented citizen shall sign a consent form whereby he obliges himself to reimburse the Government of Malta for any reasonable costs incurred in the provision of consular protection unless such costs are excluded under this Act.

(3) The Government of Malta shall also facilitate the exchange of information between the citizen concerned and the authorities of the Member State of the citizen's nationality.

Requests for consular protection by unrepresented citizens of Malta.

9. Where a claim is made by an unrepresented citizen of Malta to an embassy or consulate of a Member State, the Government of Malta shall, if requested by the relevant authorities of such Member State, provide the relevant Ministry of Foreign Affairs or competent embassy or consulate with all the relevant information referred to in article 8(2) and be responsible for any necessary contact with the family members or other relevant persons or authorities.

Local contingency plans in a third country.

10. (1) The Government of Malta shall, without prejudice to any existing local contingency plans, together with other Member States, draw up local contingency plans in third countries in which it is represented in order to ensure that unrepresented citizens are fully assisted in the event of a crisis and, where appropriate, it shall involve the relevant embassy or consulate.

(2) In the event of a crisis the Government of Malta shall, where possible, inform other Member States of available evacuation capacities in a timely manner and may also request aid, such as consular experts, from unrepresented Member States.

(3) The Government of Malta shall provide the lead State or other Member States coordinating assistance with all relevant information regarding its unrepresented citizens present in a crisis situation if the Government of Malta, alone or together with other Member States, is coordinating assistance for unrepresented citizens and it may seek, where appropriate, support from European Union instruments.

Payment for consular protection.

11. (1) Unrepresented citizens of Malta shall reimburse the Government of Malta for costs incurred in providing consular protection and on the same conditions as the nationals of the assisting Member State as provided for under Schedule I.

(2) Unrepresented citizens shall directly reimburse their Member State of nationality when directly requested to do so as provided under Schedule I:

Provided that where an unrepresented citizen of Malta fails to reimburse for costs incurred in accordance with Schedule I, the Government of Malta may claim any right of reimbursement which it may hold against that unrepresented citizen of Malta.

Reimbursement of costs from Member States.

12. (1) The Government of Malta shall seek reimbursement for any costs incurred in providing consular protection to unrepresented citizens from the Member State of their nationality as provided for under Schedule II.

(2) Where the costs of consular protection provided for unrepresented citizens consist in unusually high but essential costs such as to travel, accommodation or translation for the diplomatic or

consular authorities in the case of arrest or detention, the Government of Malta may request the reimbursement of such costs from the unrepresented citizen's Member State of nationality:

Provided that where the Government of Malta is requested to pay such costs from a Member State it shall reimburse the requesting Member State within a period of twelve months.

Costs incurred in crisis situations.

13. (1) The Government of Malta shall, where it is seeking reimbursement for any consular protection provided for an unrepresented citizen in crisis situations, submit any requests to the Ministry of Foreign Affairs of the unrepresented citizen's Member State of nationality:

Provided that such right shall subsist notwithstanding that the unrepresented citizen has not signed an undertaking to repay.

(2) The Government of Malta may ask the unrepresented citizen's Member State of nationality to reimburse such costs on a *pro rata* basis, by dividing the full value of the actual costs incurred by the number of citizens assisted.

(3) Where the Government of Malta was financially supported by way of assistance from the European Union civil protection mechanism, any contribution from the unrepresented citizen's Member State of nationality shall be determined after deduction of the European Union's contribution.

Rights of unrepresented citizens of Malta.

14. When unrepresented citizens of Malta are seeking consular protection from an embassy or consulate of a Member State in a third country they shall enjoy the same rights as enjoyed by the nationals of that Member State notwithstanding the fact that such rights may be less than those provided for by an embassy or consulate of the Government of Malta in a third country.

SCHEDULE I

A. Common format for undertaking to repay costs of consular protection in case of financial assistance

UNDERTAKING TO REPAY COSTS
OF CONSULAR PROTECTION

I, (Mr/Ms) (full name in block capitals) .....
.....

holder of passport No. ..... issued at .....

hereby acknowledge receipt from the Embassy/Consulate of

..... at .....

of the sum of .....

as an advance for the purpose of .....
(including any applicable fee)

and/or undertake and promise to repay on demand to the Ministry for Foreign Affairs/Government of [Member State of nationality]

.....

in accordance with the national law of that Member State the equivalent of that sum or the equivalent of all costs as paid on my account or advanced to me, including costs incurred by the member(s) of my family accompanying me, in (currency) .....
.....

at the rate of exchange prevailing on the day on which the advance was made or the costs were paid.

My address (*) (in block capitals) (country) .....

is: .....

DATE ..... SIGNATURE .....

(*) if you have no permanent address, please indicate a contact address.

B. Common format for undertaking to repay costs of consular protection in case of repatriation

UNDERTAKING TO REPAY COSTS
OF CONSULAR PROTECTION

I, (Mr/Ms) (full name in block capitals) .....

born at (town) ..... in (country) .....

on (date) .....

holder of passport No. ..... issued at .....

on ..... and ID No. .....

and Social Security No. and competent authority (if applicable/where relevant) .....

hereby undertake to repay on demand to the Government of

.....

in accordance with the national law of that Member State the equivalent of all costs as paid on my account or advanced to me by the consular officer

of the ..... Government at .....

for the purpose of, or in connection with, the repatriation to .....

of myself and the members of my family accompanying me, and to pay all appropriate consular fees in respect of the repatriation.

These are:

(i)(*) Fares

Subsistence

Miscellaneous costs

LESS the contribution made by me

CONSULAR FEES:

Repatriation fee

Attendance fee

Passport/emergency fees

(..... hours at ..... per hour .....)

(ii)(*) All sums on my account for the purpose of, or in connection with, the repatriation of myself and the members of my family accompanying me which cannot be determined at the time this undertaking to repay is signed by me.

My address (**) (in block capitals) (country) .....

is: .....

.....

DATE ..... SIGNATURE .....

(*) Delete as appropriate: The Consular Officer and the applicant should initial each deletion in the margin.

(**) If you have no permanent address, please indicate a contact address.

SCHEDULE II

Form of the request for reimbursement

1. Requesting Member State's embassy or consulate

2. Competent embassy or consulate or Ministry of Foreign Affairs of assisted citizen's Member State of nationality

3. Identification of the event

   (date, place)

4. Data of assisted citizen(s) (to be attached separately)

Full name	Place and date of birth	Name and number of the travel document	Kind of assistance provided	Costs

5. Total costs

6. Bank account for the reimbursement

7. Attachment: undertaking to repay (if applicable)