

# Consular Assistance Bill

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[AS INTRODUCED]

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[AS INTRODUCED]

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# B I L L

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Make provision for a right to consular assistance for British citizens abroad in cases where there has been, or where there is a risk of, a breach of human rights, denial of access to legal representation, or torture or other human rights abuses; and for connected purposes.

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## 1 Threshold for consular assistance

- (1) If an official or a Minister of the Crown has reasonable grounds to believe that a British national currently residing or located outside the UK—
- (a) has suffered;
  - (b) is suffering; or 5
  - (c) is at risk of suffering
- a violation of their human rights, the official must, within twenty-four hours of determining that there are such reasonable grounds, inform consular officials in the country in which the British national is currently residing or located.
- (2) Consular officials informed by an official under subsection (1) must, within twenty-four hours of being so informed, make all reasonable endeavours to establish whether the threshold for consular assistance has been met, including by— 10
- (a) contacting the British national; and
  - (b) ascertaining, to the consular official's satisfaction— 15
    - (i) the location of the British national;
    - (ii) the wellbeing of the British national; and
    - (iii) whether any violation of the British national's human rights has occurred or is likely to occur.
- (3) The threshold for consular assistance has been met if— 20
- (a) investigations under subsection (2)—
    - (i) have confirmed that violations of the British national's human rights have occurred, are occurring, or are likely to occur;

- (ii) have not, to the satisfaction of consular officials, confirmed that no violations of their human rights have occurred, are occurring, or are likely to occur; or
      - (iii) have been unnecessarily impeded, or
    - (b) there is any other reasonable basis for concern that violation of the British national's human rights has occurred, is occurring, or is likely to occur. 5
  - (4) Persons for whom the threshold for consular assistance has been met become "protected persons" for the purposes of this Act.
- 2 Duty to inform 10**
- (1) When the threshold for consular assistance has been met –
    - (a) consular officials must inform the relevant Head of Mission and the relevant Minister, and
    - (b) officials or consular officials must inform –
      - (i) the family of the protected person, or 15
      - (ii) an individual designated by the protected person who is not an immediate family member.
  - (2) Officials and consular officials must –
    - (a) take reasonable steps to contact and update the family or designated individual of the protected person within twenty-four hours of –
      - (i) any visit by consular staff to the protected person; 20
      - (ii) disclosure of significant information relating to the protected person; or
      - (iii) identification of a confirmed or potential abuse of human rights,
    - (b) communicate any significant updates or additional information on the status or circumstances of the protected person (except where doing so would prejudice any ongoing investigation); 25
    - (c) respond promptly to any reasonable request for information from the family or designated individual of a protected person.
- 3 Consular assistance for protected persons: further provision 30**
- (1) Protected persons shall receive such consular assistance as the Secretary of State may by regulations prescribe.
  - (2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament. 35
- 4 Consular assistance for protected persons in detention**
- (1) The following duties apply when it is ascertained that a protected person is detained outside the United Kingdom.
  - (2) A Minister of the Crown or senior official from the Foreign, Commonwealth and Development Office must issue a formal complaint or diplomatic 40

communication (or both) to the state in which the protected person is being detained, provided that—

- (a) the Foreign, Commonwealth and Development Office does not have reasonable grounds to believe that such a complaint or communication will worsen the situation of the protected person; and 5
- (b) the Foreign, Commonwealth and Development Office has—
  - (i) obtained the protected person's consent to the complaint or communication; or
  - (ii) obtained the consent of the family or designated individual of the protected person in cases where— 10
    - (A) it is not reasonably practicable to obtain the protected person's consent;
    - (B) the protected person lacks the mental capacity to give consent;
    - (C) there are reasonable grounds to believe that the protected person may be under duress or being coerced. 15
- (3) Officials or consular officials must—
  - (a) visit a detained protected person as soon as is reasonably practicable;
  - (b) take steps to ensure that any consular visits are conducted in a manner which prevents any discussions with the protected person being externally influenced, recorded or overheard; 20
  - (c) take steps to ascertain the health, wellbeing and detention conditions of the protected person on a regular basis;
  - (d) nominate an individual to act as a point of contact for the protected person; 25
  - (e) communicate regularly with the protected person, and respond promptly to any communication or requests for communication from the protected person;
  - (f) provide guidance to the protected person (or their family or designated individual if contact with the protected person is not reasonably practicable) on legal matters and assistance in obtaining legal advice or representation (or both), including by – 30
    - (i) putting the protected person (or their family or designated individual) in contact with independent legal representation; 35
    - (ii) in cases of financial hardship, considering whether it is possible or appropriate to provide legal representation or contribute towards the cost of legal fees at Government expense;
    - (iii) in cases where there are reasonable grounds to believe that the protected person is a victim of arbitrary detention, State hostage-taking, or in which there is a risk that the death penalty could be imposed, or otherwise if it is deemed necessary, attending all pre-trial hearings and trials (unless they are barred from doing so) and maintaining a written record; 40
  - (g) provide basic necessities to any detained protected person, including (but not limited to)— 45
    - (i) food;

- (ii) water;
  - (iii) medicine; and
  - (iv) reading and writing materials
- in cases where it is known that these are not provided by the detaining authorities.

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## 5 Repatriation

- (1) If the Secretary of State has reasonable grounds to believe that—
- (a) a detained protected person has suffered a violation of their human rights; or
  - (b) the detention of the protected person is arbitrary,
- the Secretary of State must make a request for the repatriation of the protected person. 10
- (2) If a request for repatriation is denied, the Secretary of State must have due regard to other mechanisms available in international law to secure the repatriation of the protected person. 15
- (3) Once a protected person is returned to the UK, the Secretary of State must make provision for them to receive—
- (a) a medical examination;
  - (b) access to any necessary physical, mental or emotional therapy or support services required for rehabilitation purposes. 20

## 6 Other duties of the Secretary of State

- (1) The Secretary of State must publish guidance for officials and consular officials detailing—
- (a) what are to be considered ‘reasonable grounds’ for the purposes of section 1(1); 25
  - (b) what are to be considered ‘reasonable endeavours’ for the purposes of section 1(2);
  - (c) the basis on which consular officials can be satisfied that violations of human rights have, or have not, occurred or are, or are not, likely to occur, for the purposes of section 1(3); 30
  - (d) how consular officials are to fulfil their duties to protected persons in detention for the purposes of section 4(3).
- (2) The Secretary of State must lay an annual report before Parliament containing information and statistics on—
- (a) the number of individuals designated as protected persons; 35
  - (b) legal and other action taken;
  - (c) the outcomes of these cases.
- (3) within one year of the passing of this Act, the Secretary of State must lay before Parliament proposals for a process for enforcing access to consular rights. 40

## 7 Expenditure

*There is to be paid out of money provided by Parliament –*

- (a) *any expenditure incurred under or by virtue of this Act by the Secretary of State; and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

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## 8 Interpretation

For the purposes of this Act –

“British national” includes any individual of dual nationality where one of those nationalities is British;

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“consular official” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

“family” with reference to the family of a protected person, means any immediate relative;

“official” means a person who holds an administrative, diplomatic or legislative position, who is an official or agent of the Foreign, Commonwealth and Development Office or another associated body, and who exercises functions of a public nature;

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“violation of human rights” means a violation of the rights contained in Articles 6, 7, 8, 9, 14 and 23 of the International Covenant on Civil and Political Rights (ICCPR).

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## 9 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act may be cited as the Consular Assistance Act 2024.

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*Presented by Christine Jardine*

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Ordered, by The House of Commons, to be  
Printed, 11th December 2023.

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