YOUR ENTITLEMENTS, RESPONSIBILITIES AND OBLIGATIONS WHILE IN DETENTION

1. **Introduction**

As an irregular immigrant to Malta you have certain entitlements, responsibilities and obligations while you are in detention. This booklet explains what your entitlements and responsibilities are and the procedures to be followed.

2. **The Dublin Regulation**

You do not have the right to decide which country will investigate and consider your application for asylum. The European Union Member States, along with Norway and Iceland, are covered by the Dublin Regulation. The Regulation governs which EU country will be responsible for your asylum application. Only one of these countries can examine your application.

3. **Which country will consider your application for asylum?**

Even if you have applied for asylum in Malta and wish to have your application considered here, it is not ascertained that this can be done. Another EU country covered by the Dublin Regulation may be responsible for considering your application. As a result you may have to go to that country.

4. **The following are some circumstances under which another country may consider your application:**

- If you were granted a visa or a residence permit by another country covered by the Dublin Regulation;
- If you had already entered another EU member country prior to your entry into Malta;
- If you have already applied for asylum in another country covered by the Dublin Regulation;
- If members of your family have already received residence permits in another EU Member State.

5. **Fingerprints checked against the database**

If you are 14 or older, we will take your fingerprints. We will then send your fingerprints to be checked against the Eurodac database (that is, an electronic database containing all the fingerprints of irregular immigrants in the EU except Denmark, but including Norway and Iceland). That way we can find out if your fingerprints have been taken by another country linked to Eurodac.

6. **If another country is to consider your application for asylum**

If it turns out that another EU Member State is responsible for considering your application, the Principal Immigration Officer generally makes a decision to send you there. If you do not cooperate
in leaving Malta, the Principal Immigration Officer has the right to take coercive measures.

7. **Appealing against the decision**

   If you do not accept that another country should consider your application for asylum, you are entitled to appeal against the Principal Immigration Officer’s decision. Keep in mind that the country in which your application is to be considered - not your grounds for asylum - will be reviewed during the appeal process. You must leave Malta during the appeal process.

8. **The following countries are covered by the Dublin Regulation**

   The EU Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. A special agreement also extends the Dublin Regulation to Norway and Iceland.

9. **The following countries are linked to Eurodac**

   All the EU Member States, with the exception of Denmark, are linked to the Eurodac electronic database. A special agreement extends Eurodac to Norway and Iceland as well.

10. **Procedure for applying for Refugee Status**

    An irregular immigrant who comes to Malta to seek asylum must – subject to the terms of paragraph 3 – apply to the Commissioner for Refugees to consider his application. He must ask the person in charge of the closed accommodation Centre where he is staying for the necessary Registration Form in the form of the Preliminary Questionnaire. This must be filled in as accurately as possible. Maltese Law lays down that asylum seekers must apply for refugee recognition **within two months of the applicant’s arrival in Malta**. Unless the request for refugee recognition is made within that time, it may NOT be considered valid.

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**YOUR ENTITLEMENT**

11. **Application for Asylum**

    As an irregular immigrant to Malta you are entitled to apply for recognition of refugee status. While your application is being processed you will be placed in detention for a period up to 18 months, this period could be extended if your application has been rejected by a final decision and you deliberately refuse to co-operate with the immigration authorities for your repatriation although this could be less if your case is determined earlier. If your application for asylum has not been decided within that time you will be given access to the labour market after 12 months from the date of your application. You will also have the right to obtain a document from the Refugee Commissioner
certifying that your case is still being examined by the Refugee Commissioner/Refugee Appeals Board. You are entitled to consult the United Nations High Commissioner for Refugees (UNHCR), who has a representative in Malta. You are entitled to legal assistance during all the stages of the application for asylum in Malta. Please note that free legal aid will only be provided at the Appeal Stage (see paragraph 26). You are entitled to remain in Malta until a final decision about your application has been made, unless your application is considered to be manifestly unfounded by the Refugee Commissioner.

12. **Immigration Appeals Board**

Any person detained under the Immigration Act may apply to the Immigration Appeals Board for his release if he feels that his detention is no longer reasonable.

13. **Closed Accommodation**

You are entitled to adequate accommodation and living conditions. Living accommodation will not exceed the laid down occupation level except under exceptional circumstances.

14. **Physical Exercise**

You are entitled to regular physical exercise and open air recreation subject to the exigencies of security.

15. **Admission/Discharge**

You are entitled to a safe and well-managed admission and discharge process at the closed accommodation centre, which will treat you with respect and regard for your immediate well-being and will record essential information about you.

16. **Case Progress**

You are entitled to seek information from the appropriate manager of the closed accommodation centre regarding the outcome of your case, who will refer it to the Refugee Commissioner or Refugee Appeals Board for a reply. Where appropriate, information may also be sought from the Principal Immigration Officer or the Immigration Appeals Board.

17. **Catering**

You are entitled to varied and nutritious food, taking account, in-so-far as local food availability allows, of religious, cultural and medical needs, while also complying with relevant food, health and safety legislation.

18. **Clothing**
You are entitled to retain a sufficient stock of personal clothing and footwear and to wear this providing it is suitable, clean, tidy and does not carry logos or markings which could cause offence to others.

19. **Correspondence and Communications**

You are entitled to maintain reasonable contact, through telephone and/or by written correspondence, with family, friends or others without hindrance, other than that necessary on grounds of security and safety.

20. **Complaints**

If you have a complaint to make, you are entitled to have it heard in a timely, thorough and fair manner by the appropriate manager in your closed accommodation centre or by the Commander Detention Service.

21. **Access to Newspapers and Television**

You are entitled to be provided with local newspapers (subject to availability) and access to television.

22. **Female Detainees**

As a female detainee, you are entitled to be provided with a safe and secure environment which meets the needs of women.

23. **Unaccompanied Minors**

As an unaccompanied minor, you are entitled, after all the necessary checks have been carried out to verify your age, to be issued with a Care Order by the relevant authorities and that you are provided with suitable accommodation and placed in the care of a guardian.

24. **Hygiene**

You are entitled to living conditions that are hygienic and are provided with basic toiletry requirements. You are entitled to regular bath or shower facilities.

25. **Health Care**

You are entitled to the same range of medical services as the Maltese citizens receive from the Public Health Service. You are entitled to have access to qualified medical and nursing personnel. You are entitled to expect that matters relating to your health care will be treated in confidence and in a sensitive manner.
26. **Access to Legal Services**

You are entitled to legal representation and also to have access to such representation. You must, however, specify what kind of legal assistance you seek (private or legal aid lawyer or non-governmental organisation lawyer). You cannot ask for one type of legal aid and then seek to alter your request later. Free legal aid will only be provided at the Appeal stage of your application for refugee protection upon request if you decide to appeal against the Refugee Commissioner’s decision. If you first ask for legal aid and then refuse it, explicity or implicitly the final determination of your case will proceed just the same.

27. **Access to Non Governmental Organisations**

You are entitled to meet voluntary, non-governmental organisations working in the field of irregular immigration and to any assistance which they may be able to offer.

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**YOUR RESPONSIBILITIES AND OBLIGATIONS**

28. **Truthful and Complete Information**

You have the obligation to assist the Commissioner for Refugees and the Board of Appeal in making a correct determination of your status by providing truthful and complete information.

29. **Change of Address**

You are responsible for ensuring that the authorities are aware at all times of your address or any change of address once you have moved out of your closed accommodation centre. If you do not send your change of address as required, the determination of status proceedings in your case could cease or proceed without your involvement. You are to ensure that you formally acknowledge any notification of judgement, summons, or other communication.

30. **Presentation of your case**

You are responsible for ensuring you present your case to the Commissioner for Refugees or – should that be the case - the Board of Appeal as fully as possible, and that you support it with available testimonies and/or documents. You are obliged to give adequate and truthful explanations for all the reasons submitted in your application. Refusal on your part, without valid reason, to furnish any information requested by the Commissioner for Refugees or to fully cooperate with the authorities may lead to the suspension, termination or determination of the asylum and appeals procedures regarding your application and, where applicable, to that of any dependent member of your family.
31. **Discipline and Behaviour**

You are obliged at all times to behave in a well-mannered, cooperative, orderly and disciplined manner.

32. **Personal Hygiene, Cleanliness and Care of Closed Accommodation Centre**

You are obliged at all times to have proper regard for personal hygiene in your own interests and that of others. You are to ensure that you keep your accommodation clean and tidy and in a proper condition and to avoid committing any damage to it. You are obliged to contribute your part in the up-keep, tidiness and cleanliness of the closed accommodation centre.

33. **Medical Self-Care**

You are obliged to follow the advice and take any treatment recommended to you by the medical staff who assist you if you are unwell, and to ensure that you do not indulge in any self-harm or do anything that may require unnecessary medical attention.

34. **Security and Safety**

You are obliged to abide by the security arrangements of the closed accommodation centre. You are obliged to ensure that you do not behave in any way which might endanger the health, security or personal safety of others.

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**GENERAL PROCEDURES**

35. **Cash and property**

You will be entitled to retain all your personal property, other than cash, for your own use at the detention centre. Property is recorded on arrival and you will have the opportunity to check those records and to sign them to this effect. The Commander Detention Service will retain items of high value against an official receipt. However, you are advised that if you decide to keep items of high value in your possession you will do so at your own risk. You will not be permitted to retain possession of items which are considered to be a threat to security, or harmful to others, or any items which are prohibited for reasons of safety or security by the appropriate manager of the closed accommodation centre.

36. **Security**

Security at your closed accommodation centre will be maintained by the Detention Service. These
security arrangements will entail no more restriction than is required for your safe custody and of those held in the closed accommodation centre. Measures will be in place to ensure that you and other irregular immigrants are accounted for and properly supervised in a well-ordered community.

37. **Security while Under Escort**

Arrangements for irregular immigrants under escort (e.g. while being escorted to a medical clinic or while in hospital) will be based on the need for your safety and security and may entail hand-cuffing while in transit.

38. **Search Procedures**

Search procedures will take place to detect and deter threats to the security of the closed accommodation centre. All searches will be carried out in as consistent and sensitive a manner as possible, taking into account gender, religious and cultural beliefs, age and other relevant factors. Strip searching will only be conducted by members of the same sex and out of sight of other irregular immigrants. Only female staff will search other females.

39. **Temporary Confinement**

Temporary confinement of violent or undisciplined irregular immigrants in accommodation specifically identified for this purpose may be resorted to by the Commander Detention Service after consultation with the Commander AFM or the Commissioner of Police as to the appropriate place of confinement. This will achieve the correct balance between the requirements to maintain order and discipline, while having due regard to the individual and, in particular the need to prevent self-harm.