

2019/02/21

OBJECTS AND REASONS

This Bill would amend the *Caribbean Community Act, Cap 15* to give effect to the Protocol on Contingent Rights.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap 15
3. Amendment of Cap. 15

SCHEDULE

PROTOCOL ON CONTINGENT RIGHTS

BARBADOS

A Bill entitled

An Act to amend the *Caribbean Community Act, Cap. 15* to give effect to the Protocol on Contingent Rights.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Caribbean Community (Amendment) Bill, 2019*.

Amendment of section 2 of Cap 15

2. *Section 2 of the Caribbean Community Act, Cap. 15, in this Act referred to as the principal Act, is amended by*

- (a) deleting the definitions of “Protocol to the Treaty” and “Treaty”; and*
- (b) inserting, in the appropriate alphabetical order, the following definitions:*

“Paramaribo Protocol” means the Protocol to the Treaty signed at Paramaribo, Suriname on 17th February, 2005,

- (a) the text of which is set out in the *Second Schedule*; and*
- (b) shall be construed as one with the Treaty;*

“Protocol on Contingent Rights” means the Protocol to the Treaty signed at Montego Bay, Jamaica, 6th July, 2018

- (a) the text of which is in the *Third Schedule*; and*
- (b) shall be construed as one with the Treaty;*

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy

- (a) that was signed in the Bahamas on 5th July, 2001;*
- (b) to which Barbados is a party; and*
- (c) the text of which is set out in the *First Schedule*.”.*

Amendment of Cap. 15

3. *The principal Act is amended by inserting the Schedule contained in the Schedule to this Act as the Third Schedule.*

SCHEDULE

"THIRD SCHEDULE

*(Section 3)***PROTOCOL ON CONTINGENT RIGHTS**

The Parties to the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy ("the Treaty"),

Recalling the undertaking of the Parties set out in Article 239 of the Treaty to elaborate a Protocol relating to *inter alia* rights contingent on establishment, provision of services and movement of capital in the Community;

Recalling also the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Rights of the Child, the United Nations Convention on Migrant Workers, the American Convention on Human Rights, the Charter of Civil Society for the Caribbean Community and the CARICOM Agreement on Social Security;

Recognising that Member States of the Caribbean Community are parties to treaties conferring rights on their nationals;

Acknowledging that the aforementioned rights are additional to the primary rights recognised and accorded to nationals of the Caribbean Community by this Protocol and which relate to the right of establishment, the right to provide services, the right to move capital and the right of recognised skilled nationals to seek employment;

Cognisant of the achievements made by the Member States to improve the standard of living of CARICOM nationals in keeping with the Objectives of the Community as set out in Article 6 of the Treaty;

Convinced that the primary rights accorded by Member States to nationals of the Caribbean Community in respect of the CSME must be supported by other enforceable rights operating to render them exercisable and effective;

Acknowledging also the differential institutional and resource capabilities of Member States of the Caribbean Community in ensuring the enjoyment by their nationals of internationally recognised rights;

Determined to overcome the institutional and resource constraints and to employ their best endeavours in order to reach consensus on the potential rights which are included in the built-in agenda of this Protocol;

Acknowledging further the importance of equality in the grant of Contingent Rights among the Member States;

Committed to conferring contingent rights as set out in this Protocol;

Have agreed as follows:

Article I Use of Terms

In this Protocol,

"built-in agenda" means the potential rights set out in Article III which shall only be recognised and applied as contingent rights at such time and upon such terms and conditions as the Conference may determine pursuant to subparagraph (2)(a) of Article II

"Conference" means the Conference of the Heads of Government of the Caribbean Community;

"Contingent rights" means rights to which a national and his or her spouse and immediate dependants are entitled, contingent on the exercise by the principal beneficiary of the right of establishment, provision of services, movement of capital or free movement of skills;

"dependant" means

- (a) any unmarried child of a principal beneficiary or of his or her spouse:

- i) under the age of 18 years;
 - ii) under the age of 25 years attending school or university full time;
 - iii) over the age of 18 years who, due to disability, is wholly dependent on a principal beneficiary;
- (b) parents of the principal beneficiary wholly dependent on such beneficiary, or
- (c) any other natural person certified as such by order of the Court;

“host country” means the Member State where a grant of primary rights is being exercised;

“national” means a national within the meaning of Article 32(5) of the Treaty;

“primary rights” means rights to which a national of the Caribbean Community is entitled pursuant to the Treaty in relation to the operation of the CSME and described in Articles 32, 34, 36, 40 and 46 of the Treaty;

“principal beneficiary” means a national of a Member State exercising one or more primary rights;

“spouse” means

- (a) a man to whom a woman is legally married; or
- (b) a woman to whom a man is legally married;
- (c) in Member States where and to the extent that common law unions are recognised by law or policy,
 - i) an unmarried man who has cohabited with an unmarried woman as if he were in law her husband for a period of not less than five consecutive years immediately preceding the date of application for the conferral of rights under this Protocol;

- ii) an unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five consecutive years immediately preceding the date of application for the conferral of rights under this Protocol;

“tools of trade” means chattels personal or movable property used in the course of an occupation, trade or vocation;

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (CSME) done at Nassau, The Bahamas, on 5 July 2001.

Article II Contingent Rights

1. Subject to Articles IV, VI and VII Member States undertake to grant the principal beneficiary and his or her spouse and their dependants the following contingent rights:

- (a) the right of a principal beneficiary resident in a host country, his or her spouse or their dependants to transfer capital into and from a host country subject to Article 43 of the Treaty;
- (b) the right of a spouse or dependants of a principal beneficiary resident in a host country to leave and re-enter a host country;
- (c) the right of the spouse of a principal beneficiary resident in a host country to work in a host country without a work permit;
- (d) the right of a principal beneficiary resident in a host country and his or her spouse to access on a non-discriminatory basis lands, buildings and other property for residential or business purposes reasonably connected with the exercise of the rights of the principal beneficiary;

- (e) the right of dependent children of a principal beneficiary resident in a host country to access primary education on a non-discriminatory basis, where and to the extent provided by the Government of the host country;
- (f) the right of a principal beneficiary resident in a host country to import into the host country free of duties within six months of being granted a stay, subject to the principal beneficiary having already satisfied the duty regime in another Member State, tools of trade that are –
 - (i) reasonably connected with the exercise of any of the primary rights of the principal beneficiary;
 - (ii) in the possession of the principal beneficiary in the exercise of any of those primary rights; and
 - (iii) located in a Member State.

2. The Conference shall keep the provisions of this Article under review in order to: –

- (a) extend in a phased approach and upon such terms and conditions as are necessary, as appropriate, potential contingent rights which are included in the built-in agenda of this Protocol; and
- (b) monitor and secure compliance therewith.

Article III Built-in Agenda

The built-in agenda includes the following potential rights which Member States undertake to extend as contingent rights in a phased approach once agreed upon:

- (a) the right of a spouse of a principal beneficiary resident in a host country, to remain in the Member State following termination of a marital relationship subject to the provisions of Article IX;
- (b) the right of dependent children of a principal beneficiary resident in a host country to remain in the Member State on acquiring independent status subject to the provisions of Article IX;
- (c) the right of the dependent children of a principal beneficiary resident in a host country, until they attain the age of majority, to work in the Member State without a work permit;
- (d) the right of dependent children of a principal beneficiary resident in a host country to access on a non-discriminatory basis, where provided by the Government of the host country the following –
 - i) pre-primary education;
 - ii) secondary education; and
 - iii) uniforms, meals, books and transportation;
- (e) the right of a principal beneficiary resident in a host country, his or her spouse or their dependants to access primary health-care on a non-discriminatory basis;
- (f) the right of a principal beneficiary resident in a host country, his or her spouse or their dependants to access national scholarships or bursaries on a non-discriminatory basis, and
- (g) the right of a principal beneficiary resident in a host country to import free of duties, within six months after being granted an indefinite stay, personal effects, a reasonable quantity of household effects commensurate with the size of the household and a motor vehicle, subject to the national regulations of the host country.

Article IV
Conferment of Greater Rights

Nothing in this Protocol shall preclude a Member State from granting to nationals of other Member States rights more extensive than the contingent rights covered in this Protocol, provided that such grant is in accordance with Articles 7 and 8 of the Treaty.

Article V
Non-applicability of rights

Temporary service providers are not entitled to contingent rights.

Article VI
Safeguard Measures

The safeguard measures mentioned in Article 47 of the Treaty would also apply to this Protocol *mutatis mutandis*.

Article VII
Saving

Nothing in this Protocol shall be construed as precluding or disentitling a principal beneficiary, his/her spouse or dependants from legitimately accessing at their own expense any of the rights covered in this Protocol whether or not provided by the Government of a host country.

Article VIII
Security and General Exceptions

Notwithstanding anything to the contrary in this Protocol, the provisions of Article 225 and Article 226 of the Treaty concerning security and general exceptions respectively, shall apply *mutatis mutandis* in this Protocol.

Article IX
Termination of Rights

Where contingent rights are terminated due to a change in status of a principal beneficiary, his or her spouse or dependants, the host country concerned shall employ its best endeavours to mitigate the negative impact arising from such termination and to effect a smooth transition to the new status.

Article X
Interpretation and Application

This Protocol and any amendments thereto shall be interpreted and applied as one with the Treaty.

Article XI
Entry into force

This Protocol shall be open for signature by the Parties to the Treaty. The Protocol shall be subject to ratification by signatory states in accordance with their respective constitutional procedures. It shall enter into force with the deposit of the instruments of ratification of all the Parties.

Article XII
Amendments

This Protocol may be amended in accordance with the procedure set out in Article 236 of the Treaty.

Article XIII
Accession

After entry into force of this Protocol, any state or territory party to the Treaty or any state or territory which becomes a party to the Treaty may

accede to this Protocol by depositing an Instrument of Accession with the Secretary-General who shall submit a certified copy to each Member State.

**Article XIII
Provisional Application**


Seven or more of the Parties to this Protocol may, upon signature, or at any later date before this Protocol enters into force, declare their intention to apply it provisionally.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

DONE at **MONTEGO BAY, JAMAICA**, this 5th day of July Two Thousand and Eighteen, in a single copy which shall be deposited with the Secretary-General by whom certified copies will be communicated to all the signatories and to the Chairman.

Signed by
for the Government of Antigua and Barbuda on the day of


at

Signed by 
for the Government of Barbados on the 6th day of July, 2018
at Montego Bay, Jamaica.


Signed by
for the Government of Belize on the day of

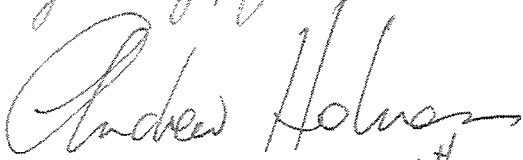
at

Signed by
for the Government of the Commonwealth of Dominica on the day of
at


Signed by 
for the Government of Grenada on the 6th day of July 2018
at Montego Bay - Jamaica


Signed by
for the Government of The Cooperative Republic of Guyana on the day of
at


Signed by 
for the Government of The Republic of Haiti on the 6th day of July, 2018
at Montego Bay, Jamaica

Signed by 
for the Government of Jamaica on the 6th day of July 2018
at Montego Bay, Jamaica.

Signed by
for the Government of the Federation of St. Kitts and Nevis on the day
of
at

Signed by 
for the Government of Saint Lucia on the 6th day of July 2018
at Montego Bay, Jamaica

Signed by 
for the Government of St. Vincent and the Grenadines on the 6th day of July 2018
at Montego Bay, Jamaica

Signed by 
for the Government of The Republic of Suriname on the 6th day of July 2018
at Montego Bay, Jamaica

Signed by
for the Government of The Republic of Trinidad and Tobago on the day of
at

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Read three times and passed the House of Assembly this
day of _____, 2019.

Speaker

Read three times and passed the Senate this _____ day of
, 2019.

President