

Organisation of Eastern Caribbean States (Contingent Rights) Act

Introductory note

The Organisation of Eastern Caribbean States (OECS) is an international, inter-governmental organisation dedicated to regional integration in the Eastern Caribbean. The OECS came into being in June 1981 when seven Eastern Caribbean countries, namely Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines, signed the Treaty of Basseterre, thereby agreeing to cooperate and promote unity and solidarity among the Member States. In 2010, the Revised Treaty of Basseterre (RTB) created a single financial and economic space, known as the Eastern Caribbean Economic Union (ECEU), in which goods, people (including service providers), businesses and capital move freely. All Protocol Member States of the OECS, listed above as the signatories of the original Treaty of Basseterre, form part of the ECEU. Associate Members of the OECS, namely the British Virgin Islands, Anguilla, Martinique and Guadeloupe, are not part of the ECEU.

Under Art. 12 of the Protocol of the Eastern Caribbean Economic Union (“the Protocol”), which outlines provisions pertaining to the ECEU, citizens of Protocol Member States of the OECS have the right to freedom of movement across the ECEU. This shall be referred to as the Free Movement of Persons Regime throughout this bill. Citizens also enjoy rights contingent on the right to freedom of movement as agreed by Protocol Member States in accordance with Article 12(3) of the Protocol.

In 2015, the 62nd Ordinary Meeting of the OECS Authority approved the OECS Policy on Rights Contingent on the Right to Free Movement (“contingent rights policy”). The policy further outlines the contingent rights referred to in Art. 12(3) of the Protocol. The general purpose of the contingent rights policy is to guarantee the full exercise and enjoyment of free movement of citizens of Protocol Member States and their family members, who are not themselves citizens of Protocol Member States, by granting them general and social rights. The importance of the policy is particularly evident in the context of natural disasters and extreme weather events, granting citizens of Protocol Member States and their family long-term access to the territory of Protocol Member States as well as the protection of additional general and social rights, including access to education and health care under the same terms and conditions as provided to the citizens of the host Protocol Member States.

While Protocol Member States have already made efforts, to varying degrees, to implement the contingent rights policy, there remain significant gaps in legislative and administrative arrangements to implement the policy at the national level. This has led to citizens of Protocol Member States and their family members facing challenges in relation to accessing the rights granted to them by the contingent rights policy.

In an effort to advance the implementation of the contingent rights policy, the Economic Union Working Group on Movement of People (EUWGMOP) decided at its 24th Meeting in May 2020 that a comprehensive model bill be drafted to provide Protocol Member States with the requisite tools to grant citizens of Protocol Member States and their family members all rights – general and social – including important rights in the areas of immigration, employment, health, education, and social protection. The implementation of the contingent rights policy at national level by way of the bill’s adoption is key to the full realisation of freedom of movement across the ECEU as envisioned by the principal treaty of the RTB and the Protocol.

This model bill has been drafted to assist Protocol Member States in the effective implementation at national level of the contingent rights policy by providing a model bill that may be adopted as domestic legislation. With a view to avoiding a sector-by-sector piecemeal approach, that would require reforming domestic laws in a variety of areas, including immigration, employment, health and education, this proposed model bill serves as a single legislative instrument governing the rights of citizens of Protocol Member States and their family in a Host Protocol Member State. Relying on the doctrine of implied repeal, it is intended that Protocol Member States fully implement the contingent rights policy by adopting the model bill and establishing the necessary administrative arrangements.

While the model bill closely follows the contingent rights policy, it includes more detail than the contingent rights policy and, in limited instances, goes beyond its original scope where this is required to facilitate the seamless movement of people and provide a comprehensive set of rights. Additionally, given that the contingent rights policy was approved just over six years ago, it was decided that the model bill should aim to be as comprehensive as possible to accommodate considerations that have evolved since then, including the importance of taking into account the impact of natural disasters and extreme weather events as well as developments on contingent rights at the level of the Caribbean Community (CARICOM).

How to use the model bill

While recognising that Protocol Member States may require adaptations to accommodate certain national frameworks, the model bill is designed to be as comprehensive as possible, in line with international human rights law, and with the intention of granting citizens of Protocol Member States and their family members the standard of protection envisaged by the principal treaty of the RTB, the Protocol and the contingent rights policy.

The model bill has been informed by research carried out on the implementation of the contingent rights policy in Protocol Member States as well as on comparative freedom of movement frameworks from other regions, including the European Union, the Common Market of the South, the Economic Community of West African States, and the Intergovernmental Authority on Development. Several key considerations derived from the research on comparative frameworks are included as footnotes. These footnotes are primarily intended as a guide to aid policymakers and legislators in Protocol Member States. In addition, they serve as a guide to human rights defenders and civil society actors that work on the protection of the rights of citizens of Protocol Member States and their family.

The footnotes include references both to decision-making processes at the OECS level that underpin the provisions included in this bill as well as standards set at international level, including by instruments that were used in the drafting of the contingent rights bill, namely the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention Relating to the Status of Stateless Persons, the Convention Relating to the Status of Refugees, and the American Convention on Human Rights. In addition, the footnotes refer back to the contingent rights policy to show how this has been interpreted in the model bill.

[INSERT NAME OF STATE]

Organisation of Eastern Caribbean States (Contingent Rights) Act

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[INSERT NAME OF STATE]

Organisation of Eastern Caribbean States (Contingent Rights) Act

An ACT to give effect to the provisions of the Protocol of Eastern Caribbean Economic Union relating to the rights contingent to OECS citizens exercising the right to freedom of movement, and for incidental matters.

[BE IT ENACTED...etc.]

PART I PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Organisation of Eastern Caribbean States (Contingent Rights) Act, 2022.

(2) This Act shall enter into force on a day to be fixed by the Minister by [Order published in the *Gazette*].

2. Interpretation¹

¹ The majority of definitions have been adopted directly from the contingent rights policy. As outlined below, several definitions have been supplemented by adaptations from international treaty standards.

The definition of “child” is adapted from Article 1 of the 1989 Convention on the Rights of the Child.

The definition of “citizen of a Protocol Member State” is in line with the language used in the 1954 Convention Relating to the Status of Stateless Persons. The Handbook on Protection of Stateless Persons developed by the UN Refugee Agency (UNHCR) in 2014 provides guidance on when a person is/is not considered a national under a State’s law and practice.

The definition of “dependent” is adapted from the contingent rights policy as well as case law of the European Court of Justice on the freedom of movement of dependent family members of European Union citizens, specifically *Yunying Jia v Migrationsverket* (Case C-1/05). The definition of “persons with disabilities” is in line with Art. 1 of the 2007 Convention on the Rights of Persons with Disabilities.

The definition of “disaster” is adapted from the terminology used by the United Nations Office for Disaster Risk Reduction as well as the sixteenth session of the Conference of Parties (COP) held in December 2010. Following consultations with experts in human mobility in the context of climate change, the drafters recommend that disasters do not have to be declared as such by a national authority in order to meet the definition set out in this Act.

(1) In this Act-

“child” means every individual below the age of eighteen unless, under the law applicable to the child, majority is attained earlier;

“citizen of a Protocol Member State” means a person who is a citizen under the operation of the laws of a Protocol Member State;

“contingent rights” means the rights to which a principal beneficiary and his or her family members departing the principal beneficiary’s home Protocol Member State or a third country for [insert name of State], are entitled to enjoy upon entry into [insert name of State], as set out in Parts III and IV of this Act;

“dependents” means the following persons, provided they are not citizens of a Protocol Member State -

- a) any unmarried child of a principal beneficiary or his or her spouse-
 - i. under the age of 18 years;
 - ii. under the age of 25 years attending school or full-time tertiary institution;
 - iii. over the age of 18 who, due to disability, is wholly dependent on a principal beneficiary or his or her spouse;
- b) a parent of a principal beneficiary or his or her spouse who is wholly dependent on such principal beneficiary or his or her spouse; or
- c) any other natural person certified by order of the court as a dependent of the principal beneficiary or his or her spouse;

“disability” means a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder a person’s full and effective participation in society on an equal basis with others;

“disaster” means an event leading to serious disruption of the functioning of a community or society involving widespread human, material, economic or environmental losses and impacts, the effects of which can be immediate and localised but are often widespread and long-lasting, and includes the following -

- (a) a sudden onset disaster triggered by a hazardous event that emerges quickly or unexpectedly, including but not limited to hurricane, flash flood, wildfire earthquake, volcanic eruption;

(b) a slow onset disaster that emerges gradually over time, including but not limited to sea level rise, increasing temperatures, drought, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification;

“Economic Union” means the Eastern Caribbean Economic Union established by Article 1(1) of the Protocol of the Eastern Caribbean Economic Union comprising the Protocol Member States;

“family member” means, subject to section 15, the spouse or a dependent of a citizen of a Protocol Member State as well as a dependent of the citizen’s spouse, who are not themselves citizens of a Protocol Member State;

“Free Movement of Persons Regime” means the framework under which a principal beneficiary and his or her family members exercise their right to freedom of movement [as provided in Article 12 of the Protocol of Eastern Caribbean Economic Union];

“Minister” means the Minister with responsibility for the OECS Economic Union under the Organisation of Eastern Caribbean States Act Cap. [];

“OECS” means the Organisation of Eastern Caribbean States, an international organisation continued under the Revised Treaty of Basseterre;

“OECS Authority” means the organ of the OECS established under Article 7.1(a) of the Revised Treaty of Basseterre;

“OECS Economic Affairs Council” means the organ of the OECS established under Article 7.1(d) of the Revised Treaty of Basseterre;

“parent” shall be defined according to the [national law] of [insert name of State].

“principal beneficiary” means a citizen of a Protocol Member State exercising, irrespective of age, the right of freedom of movement under the Protocol of Eastern Caribbean Economic Union;

“Protocol of Eastern Caribbean Economic Union” means the Protocol establishing the Economic Union as contained in the Revised Treaty of Basseterre;

“Protocol Member State” means a Member State of the Organisation of Eastern Caribbean States that is party to the Protocol of the Eastern Caribbean Economic Union as listed in Schedule 1;

“Revised Treaty of Basseterre” means the Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union, signed on the 18th day of June, 2010;

“**spouse**” shall be defined according to the [national law] of [insert name of State];

“**third country**” means a country other than a Protocol Member State;

“ **wholly dependent**” as it relates to the relationship between a principal beneficiary and a dependent -

(a) means a relationship of material, financial, physical or [emotional] dependence between a principal beneficiary or spouse and a dependent person, which the dependent person relies upon almost entirely in order to secure his or her essential needs;

(b) is not contingent on the principal beneficiary or his or her spouse and the dependent person living in the same household or the dependent person having lived in a Protocol Member State prior to entering [Protocol Member State];

(2) For the purposes of this Act, a parent-child relationship shall be construed broadly to include both biological and legal relationships and a legal parent-child relationship shall include adopted children, step-children and children under the legal guardianship of the parent.²

(3) The terms “spouse”, “child” “dependent” and “family member” as used in this Act do not apply to a person who would otherwise meet the definition of one of these terms, if that person is a citizen of a Protocol Member State, as citizenship bestows on that person the status of principal beneficiary entitled in his or her own right to contingent rights.

3. **Purpose of the Act**

(1) The purpose of this Act is to provide a comprehensive framework to bring the OECS Policy on Rights Contingent on the Right to Freedom of Movement within the Economic Union into full effect, in law and practice, by granting contingent rights to citizens of Protocol Member States, and by extension to their family members, who are exercising their right to freedom of movement in the Economic Union under the Free Movement of Persons Regime.

(2) With a view to avoiding a sector-by-sector approach to granting the rights contingent on the right of freedom of movement, this Act shall serve as a single comprehensive legislative document governing such rights.

² The reference to a parent-child relationship, whether biological or legal, is in line with case law of the European Court of Justice, specifically *SM v Entry Clearance Officer, UK Visa Section (C-129/18)*. Where the parent-child relationship does not meet the requirement set out in section 4(1), e.g. where a child is informally adopted, it would be for the competent authority in the host Protocol Member State to assess whether the individual concerned meets the category of family members as set out in section 5(3).

(3) Subject to section 11, all provisions in [insert name of State], whether in law or practice, that conflict with the rights set out in this Act shall be either repealed or disapplied.

4. Application of Act

The provisions of this Act shall apply in the interpretation of every law in force in [insert name of State] relating to the same subject-matter.

5. Beneficiaries

(1) This Act applies to all citizens of Protocol Member States, being principal beneficiaries for the purposes of this Act, who enter a Protocol Member State other than that of which they are a citizen.

(2) In order to maintain the unity of the family, unless otherwise specified, the rights accorded to the principal beneficiaries in this Act shall also be granted to their family members and family members shall be recognised as such upon receipt of indefinite stay in accordance with section 15.³

(3) Persons who are not included in the definition of family member under this Act shall be examined by [Protocol Member State] on a case-by-case basis, in order to determine whether the rights accorded by this Act could be granted to such persons, taking into account their relationship with the principal beneficiary or the spouse, including any other circumstances such as financial or physical dependence on the principal beneficiary⁴.

³ Sec. 5(2) reflects the importance of family unity under the Free Movement of Persons Regime. This is in line with international treaty standards on the recognition of the family as the fundamental group unit of society that is entitled to protection and assistance, including: Art. 16(3) of the 1948 Universal Declaration of Human Rights, Art. 23(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR), Art. 10(1) of the 1966 International Covenant on Economic, Social and Cultural Rights, and Art. 17 of the 1969 American Convention on Human Rights. In addition, the importance of the family unit reflects the rights of the child in accordance with Arts. 9 and 10 of the 1990 Convention on the Rights of the Child.

⁴ Sec. 5(3) has been adapted from Art. 3 of Directive 2004/38/EC of the European Parliament and Council from April 2004, which upholds the unity of the family in a broad sense. Its objective is to give Protocol Member States discretion to include persons that do not automatically fall under the definition of family members set out in sec. 4 as beneficiaries of this Act, which would be decided by Immigration Authorities on a case-by-case basis in accordance with their rules and regulations. This approach reflects findings by various human rights organs that there is no *single* model for a family. The Inter-American Court of Human Rights held in *Atala Riffo and daughters v. Chile* that, where individuals who are not a family in a biological or legal sense had created a family unit by developing personal and emotional closeness, sharing their lives and being in frequent contact, this family unit is to be protected under Arts. 11(2) and 17(1) of the 1969 American Convention on Human Rights. Similarly, the Committee on the Rights of the Child, in its General Comment No. 7 Implementing Child Rights in Early Childhood, notes that “family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children” (para 19).

6. Disasters⁵

(1) The provisions laid out in this Act shall be fully applicable to principal beneficiaries and their family members seeking to enter and remain in [insert name of State] in anticipation of, during and following a disaster.

(2) Individuals seeking to enter and remain in [insert name of State] under the Free Movement of Persons Regime in anticipation of, during or following a sudden onset disaster not in possession of documents required for entry by the law of [insert name of State] shall be registered and treated on a *prima facie* basis as beneficiaries of this Act until such time the [Immigration Authority] has determined that they do not meet the category of beneficiaries under section 5.

PART II BASIC PRINCIPLES

7. Freedom of movement

Citizenship of a Protocol Member State of the Organisation of Eastern Caribbean States confers on every principal beneficiary and his or her family members the right to freedom of movement under the Free Movement of Persons Regime.⁶

8. Protection of human rights⁷

⁵ Sec. 6 has been adapted from the Protocol on Free Movement of Persons in the Intergovernmental Authority on Development Region, which was approved in February 2020. While the contingent rights policy does not include a specific reference to disasters, the importance of such a reference in light of the region's vulnerability to natural disasters and/or extreme weather events has become apparent since the policy was first adopted in 2015. As an example, citizens of Protocol Member States heavily relied on the Free Movement of Persons Regime during the Atlantic hurricane season in 2017. A specific reference to persons affected by disasters will guarantee that the rights set out in this Act are fully granted in instances of disaster.

Sec. 6(1) is a specific and non-exhaustive application of the general principle of equal treatment among citizens of Protocol Member States and their family members and citizens of [Protocol Member State].

Sec. 6(2) sets out the requirement to register persons affected by disasters as beneficiaries of this Act where they claim to be eligible to enter and remain in the Host Protocol Member State under the Free Movement of Persons Regime but are unable to provide documentation.

⁶ Sec. 7 is based on the Revised Treaty of Basseterre, the Protocol of the Eastern Caribbean Economic Union, and the contingent rights policy.

⁷ Sec. 8 sets a general human rights framework according to which this Act shall be interpreted and applied. Sec. 8(3) is adapted from Art. 29 of the 1969 American Convention on Human Rights. Sec. 8(5) has been adapted from Art. 27 of the 1969 Vienna Convention on the Law of Treaties.

(1) [Insert name of State] acknowledges inviolable and inalienable human rights as being intrinsic to all people and the foundation of society.

(2) The provisions set out in this Act shall be interpreted in accordance with subsection (1).

(3) The provisions set out in this Act shall not be relied upon to restrict the enjoyment or exercise of any right or freedom recognised by virtue of the national laws of [insert name of State] or by virtue of its obligations under international treaties.

(4) [Insert name of State] shall interpret this Act in accordance with its obligations under international human rights treaties.

(5) [Insert name of State] shall not invoke provisions of its national law, including this Act, as justification for its failure to perform an international human rights treaty.

9. Equality and non-discrimination⁸

(1) The rights set out in this Act shall be applied equally to principal beneficiaries from all Protocol Member States and their family members without discrimination, including based on sex, race, place of origin, political opinions, colour, creed, religion or disability.⁹

(2) All principal beneficiaries and their family members in [Insert name of State] shall enjoy the rights set out in this Act on an equal basis with citizens of [Insert name of State].

(3) The rights set out in this Act shall be applied equally to all family members irrespective of their nationality.

⁸ Sec. 9 is adapted from Art. 24 of Directive 2004/38/EC of the European Parliament and Council from April 2004 and Sec. 9 of the Residence Agreement of the Southern Common Market (MERCOSUR). The inclusion of equality and non-discrimination also reflects the provisions set out in the Protocol of the Eastern Caribbean Economic Union, including on education, human and social development. The Inter-American Court of Human Rights held in its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants of 17 September 2003 that the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, as a result of which no legal act that is in conflict with this fundamental principle shall be acceptable. This applies irrespective of the migration status of the person concerned.

⁹ Sec. 9(1) seeks to ensure that there is no discrimination between principal beneficiaries and their family members and nationals of the Host Protocol Member State on the basis of a list of protected grounds. This subsection applies equally to principal beneficiaries from all seven Protocol Member States, e.g. citizens of St. Lucia and St. Kitts and Nevis would receive the same treatment as each other in Antigua and Barbuda. Sec. 9(2) stipulates that the rights set out in this Act apply equally to all principal beneficiaries and their family members. Sec. 9(3) emphasises that the rights set out in this Act apply equally to all family members, who are not citizens of a Protocol Member State, irrespective of their nationality.

(4) The rights set out in this Act shall apply in the public and private sector.¹⁰

(5) Any distinction in treatment between principal beneficiaries and their family members and citizens of [Insert name of State] shall be justified by a legitimate aim and achieved through suitable, necessary and reasonable measures.

10. Rights of the child

(1) In all actions in relating to the application of this Act concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

(2) [Protocol Member State] undertakes to ensure the child is provided such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

(3) [Insert name of State] shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety and health, in the number and suitability of their staff, as well as competent supervision.¹¹

(4) Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her best interests.¹²

¹⁰ Sec. 9(4) provides that the right to equal treatment applies to both the private and public sector. While the contingent rights policy does not specify whether its application is limited to the public sector, it was originally intended that it would be limited to this sector. It was however decided to also include the private sector for consideration by Member States, as this document has been designed to provide a comprehensive set of rights to people exercising their right to free movement, which would be significantly restricted if the provisions set out in this Act were limited to the public sector, particularly in the area of employment. This is further justified by the responsibility of Protocol Member States for the acts and omissions committed by its agents. As such, a Protocol Member State may incur international responsibility when the actions of its agents, including third parties and private citizens, discriminate against persons, e.g. on the basis of their nationality, in the access to health services. This was set out by the Inter-American Commission on Human Rights in its 2015 Report on the Situation of Human Rights in the Dominican Republic. Sec. 9(5) clarifies that any distinction in treatment has to meet the requirements of a proportionality test. As such, Protocol Member States may require that family members follow separate administrative formalities as set out in Sec. 15 or restrict access to employment as outlined under Sec. 17(4).

¹¹ Sec. 10(1)-10(3) are derived from Art. 3 of the 1989 Convention on the Rights of the Child. Sec. 10(4) is adapted from Art. 24 of the Charter of Fundamental Rights of the European Union.

¹² Under Sec. 10(4), the child's right to maintain a personal relationship with both of its parents shall be restricted where this is against its best interests. As set out in Art. 9 of the Convention on the Rights of the Child, such a determination may be necessary where a child is abused or neglected by one or both of the parents.

11. More favourable provisions

Where laws, regulations or administrative practices in [insert name of State] or international treaties to which [Protocol Member State] is party are more favourable than the provisions laid out in this Act, the more favourable measure shall govern the application of the contingent rights of principal beneficiaries and their family members.¹³

PART III GENERAL RIGHTS

12. Right of Entry and Stay

(1) A citizen of a Protocol Member State arriving in [Protocol Member State] from any place outside [insert name of State] is entitled to enter and remain in [insert name of State] indefinitely.

(2) Subject to any court order as part of ongoing legal proceedings, a citizen of a Protocol Member State has the right to leave and re-enter [insert name of State] at any time.

(3) Upon entry to [insert name of State], a citizen of a Protocol Member State shall receive a stamp of indefinite stay.¹⁴

(4) The stamp of indefinite stay may be applied or endorsed on, or attached to a principal beneficiary's disembarkation card or passport, including a third country passport, once such passport is duly issued to the principal beneficiary and is valid at the date of entry.

(5) Subject to section 15, a family member shall have the rights set out in subsections (1) and (2).

13. Proof of identity and nationality for principal beneficiaries¹⁵

¹³ Sec. 11 is adapted from Art. 37 of Directive 2014/54/EU of the European Parliament and the Council from April 2014 on more favourable national provisions.

¹⁴ Sec.12 reflects the general rights provided by the contingent rights policy. A person travelling on a passport will be able to prove their right to indefinite stay, and consequently their status as beneficiary of this Act, by showing the stamp received upon arrival. Provision is made in subsection (4) for a person travelling on another form of identification as their passport will not be stamped. In that case the person's embarkation-disembarkation card or the receipt that is issued on completion of the online check-in process may be stamped. .

¹⁵ Sec. 13 goes beyond the contingent rights policy in that it grants the rights set out in this Act to individuals that are unable to prove that they are a citizen of a Protocol Member State upon entry, which might occur, for example, in the aftermath of a disaster but is not limited to such instances. This does not extend the rights outlined in the policy *per se* but stipulates a certain element of flexibility and discretion in their application.

(1) A principal beneficiary shall provide to border officials evidence to establish his or her identity and that he or she is a citizen of a Protocol Member State upon entry to [insert name of State].

(2) A person may establish his or her identity and nationality by presenting a government issued identification document including but not limited to a passport, driver's license, national identification card, voter's registration card, national insurance card or social security card, provided that such document includes a photograph, is duly issued [and valid at the date of entry].

(3) Where such documentary proof as outlined in subsection (2) is unavailable or cannot reasonably be obtained, testimonial explanations and other documents that assist in establishing the person's identity or nationality may be considered.

(4) While any such forms of evidence provided for under subsection (3) are being considered, persons claiming to be beneficiaries under this Act shall receive a period of definite stay [not exceeding 6 months] and shall not be entitled to enjoy contingent rights until such time that [Immigration Authority] has determined that they are beneficiaries of this Act.

(5) [Insert name of State] shall cooperate with other Protocol Member States to assist the beneficiaries of this Act in documenting their identity and nationality.

14. Proof of identity and nationality for family members¹⁶

Explanatory notes:

The burden of proof to make nationality determinations shall be shared between the individual applicant and the competent state determination authority in the Host Protocol Member State, in that both the individual applicant and the state authority must cooperate to obtain evidence and establish the facts. This is adapted from the UNHCR Handbook on Protection of Stateless Persons under the Convention Relating to the Status of Stateless Persons of 1954, which outlines that the individual applicant has a duty to be truthful, provide as full of an account of their situation as possible, and submit all evidence reasonably available. The state authority is required to obtain and present all relevant evidence reasonably available to it, enabling an objective determination of the applicant's status.

The standard of proof required to make nationality determinations is one of "reasonable degree", which, as above, is in line with the UNHCR Handbook on Protection of Stateless Persons as well as the standard of proof required in refugee status determination. Applying this standard of proof, a determination that a person is a citizen of a Protocol Member State, for example, would be warranted where it is established to a "reasonable degree" that the individual applicant is considered as a national by any Protocol Member State under the operations of its law.

¹⁶ Similarly to Sec. 13, Sec. 14 sets out the proof of identity and nationality requirements for family members. The provisions in Sec. 14(2) are more restrictive in relation to alternative forms of identification than in Sec. 13(2). This decision is based on the need to protect individuals that a principal beneficiary accompanying them might falsely claim are family members, e.g. children being moved to another country without their parents' permission or victims of trafficking. In addition, it limits the scope granted to family members in line with requests from immigration officials in Protocol Member.

Sec. 14(2) diverges from this approach, as it stipulates that family members may provide identity documentation within three months of arrival under certain circumstances. Where family members fail to do so without reasonable

(1) A family member shall provide to border officials evidence to establish his or her identity and nationality by presenting a government issued passport, such passport to be duly issued and valid at the date of entry.

(2) Where a family member enters [insert name of State] under the Free Movement of Persons Regime –

(a) in the anticipation of, during or in the aftermath of a disaster or where otherwise justified on a case-by-case basis; and

(b) not in possession of a passport as required under subsection (1),

he or she shall be granted on a *prima facie* basis a fixed period of stay [not exceeding three months] [corresponding to the period allotted to citizens of the family member's third country on arrival in the State] under [Immigration legislation], during which he or she is required to submit his or her documents to [Immigration Authority].

(3) A family member shall only enter [insert name of State] under the Free Movement of Persons Regime if accompanied by the principal beneficiary or where the principal beneficiary has already entered [insert name of State]. Upon receipt of indefinite stay, family members shall be free to leave and re-enter independently of the movements of the principal beneficiary.

15. Administrative formalities for family members¹⁷

(1) A principal beneficiary whose family member seeks to enter and remain in [insert name of State] under the Free Movement of Person Regime shall apply to [Immigration Authority] on behalf of the family member for indefinite stay, in accordance with subsection (2).

(2) An application for indefinite stay –

(a) shall be in the form set out as Form 1 in Schedule 2;

(b) subject to subsection (3), shall be accompanied by the following original or notarized supporting documents –

(i) family member's birth certificate;

justification, their claim under the Free Movement of Persons Regime shall be considered to be fraudulent in accordance with Sec. 28.

¹⁷ As specified throughout this Act, family members are not citizens of Protocol Member States. Sec. 15 outlines the administrative formalities required for family members. Sec. 15 has been adapted from the *Guidelines for the Treatment of Third Country Dependents and/or Spouses of OECS Citizens at Ports of Entry in Protocol Member States*.

- (ii) marriage certificate, if applicable;
- (iii) certificate of adoption or legal guardianship, if applicable in the case of a child;
- (iv) birth certificate of principal beneficiary or spouse, if family member is a parent;
- (v) certified court order declaring an individual as a dependant of principal beneficiary or spouse, if applicable;
- (vi) family member's passport,
- (vii) principal beneficiary's passport or notarized biographic data page of passport with date of issue and expiry date;
- (viii) any other document reasonably required by [Immigration Authority] to establish the family member's relationship to the principal beneficiary.

(c) shall be processed by [Immigration Authority] within ten (10) working days; and

(d) is free of charge.

(3) If a principal beneficiary submits a statutory declaration that a supporting document required under subsection (2) (b) is unavailable or cannot reasonably be obtained, giving details of the circumstances, [Immigration Authority] may accept testimonial explanations and such other forms of evidence as may reasonably establish the relationship between the principal beneficiary and the family member.

(4) Where the principal beneficiary is able to electronically submit the completed application form and all supporting documents required under subsection (2) [at least 5 working days] ahead of the family member's entry into [insert name of State], the family member shall be granted indefinite stay immediately upon arrival in [insert name of State].¹⁸

(5) Where a principal beneficiary enters [insert name of State] –

¹⁸ Sec. 15(4) offers the opportunity to submit all relevant documentation electronically ahead of entering the Host Protocol Member State, which would allow for verification through the relevant immigration authority and subsequent issuing of indefinite stay upon arrival (or electronically prior to arrival). While this is not provided for in the *Guidelines*, it has been included here as a potential approach.

Explanatory Notes: The relationship between a family member and the principal beneficiary may be established through documentary evidence including a record of marriage or civil partnership, joint utility bills, residential mortgage statements, or tenancy agreements, birth certificate, custody agreement, or family residence permit. Where the individual applicant is unable to provide official documentation, as above, the shared burden of proof and standard of proof "reasonable degree" apply.

- (a) ahead of or accompanied by the family member;
- (b) in possession of all required supporting documents establishing the family member's relationship to the principal beneficiary; and
- (c) completes the application form for indefinite stay on behalf of the family member,

the family member may be granted indefinite stay immediately upon arrival in [insert name of State], subject to the [exigencies][capacity] of the [Immigration Authority] on the day of arrival.

(6) Where a family member does not meet the requirements for grant of indefinite stay immediately on arrival under subsections (4) or (5), or is unable to be processed on the day of arrival under subsection (5), the family member shall receive a definite period of stay [not exceeding six months] [corresponding to the period allotted to citizens of the family member's third country on arrival in [insert name of State] under [Immigration legislation].

(7) Within the definite period of stay granted under subsection (6), the principal beneficiary must submit to the [Immigration Authority], on behalf of the family member, the required application and supporting documents establishing the family member's relationship to the principal beneficiary, in order for the family member to obtain indefinite stay in [insert name of State].

(8) Receipt of indefinite stay under this section shall confirm a person's status as a family member.

(9) Where an application for indefinite stay is not fully processed during the definite period of stay granted to the family member under subsection (5), this period of stay shall be extended free of charge.

(10) Where a principal beneficiary fails to submit the required application and supporting documents for indefinite stay during the family member's definite period of stay, applicable fees under [Immigration legislation] shall apply to extend this period.

(11) A family member shall enjoy the rights set out in this Act while their application for indefinite stay is pending and such rights shall be revoked if the application is unsuccessful only where [Immigration Authority] has determined that the person is not a family member for the purposes of this Act.¹⁹

(12) Where a principal beneficiary's application for grant to a family member of indefinite stay is rejected, the principal beneficiary shall have access to effective judicial remedies to appeal the decision.

(13) Grant of a definite period of stay or indefinite stay under this section is subject, in all circumstances, to the family member meeting all landing requirements upon entry, including visa and any other conditions established for arrival of third country citizens into [Protocol Member State].

¹⁹ Sec. 15(11) stipulates that family members enjoy the rights set out in this Act while applying for indefinite stay . There is currently no system in place by which family members would be able to confirm that the application for indefinite stay made by the principal beneficiary on their behalf is pending, though family members may be able to show a copy of the submitted application or acknowledgment of receipt from Immigration Authorities.

16. Entry outside of an official port of entry²⁰

(1) The provisions of [Immigration legislation] shall apply in any case where a citizen of a Protocol Member State or family member enters [insert name of State] outside of a customs port or customs airport.

(2) A person to whom subsection (1) applies shall only be granted indefinite stay after completing the official process of application for indefinite stay as provided under this Part.

17. Right to work²¹

(1) Without having to obtain a work permit, a citizen of a Protocol Member State and his or her spouse shall be allowed to engage in lawful employment in [insert name of State] in accordance with the provisions in law, regulation or administrative action governing the employment of citizens of [insert name of State].

²⁰ Sec. 16 ensures that Protocol Member States do not discriminate in the application of this Act against principal beneficiaries and their family as a result of irregular entry. This is particularly important in situations of disasters, where individuals may not have the opportunity to enter through an official port of entry, but is not limited to such situations. This goes beyond the scope of the contingent rights policy in the flexibility and discretion given to Protocol Member States in its application.

²¹ Sec. 17 reflects the general rights provided by the contingent rights policy. The policy restricts the right to work to the principal beneficiary and his or her spouse. Sec. 17(2) shall include special recruitment procedures for a principal beneficiary and his or her spouse, advertising of vacancies subject to nationality/citizenship or residence requirements, and registration with employment offices as a pre-condition of employment.

Sec. 17(4) stipulates exceptions to equal treatment in eligibility for employment for citizens of Protocol Member States and their spouses, e.g., where national security considerations are at issue. European Union Member States, for example, may reserve certain public sector positions for their own nationals where such positions involve direct or indirect participation in the exercise of public authority and duties designed to safeguard the general interest of the Member State. This is an exception to the general rule of free movement of workers across the European Union, which is to be interpreted restrictively, cf. case law of the European Court of Justice, including *European Commission v Hungary* (C-392/15) and *Iraklis Haralambidis v Calogero Casilli* (C-270/13).

Sec. 17 applies equally to principal beneficiaries and their spouses. In accordance with Sec. 15, individuals will be recognised as family members upon receipt of indefinite stay, though they already enjoy the rights set out in this Act while applying for indefinite stay.

(2) A principal beneficiary and his or her spouse shall have the right to take up employment in [insert name of State] with the same priority as citizens of [insert name of State].

(3) Provisions laid down by law, regulation or administrative action in [insert name of State] that limit the eligibility of a non-citizen of [insert name of State] for employment in [insert name of State] shall not apply to a principal beneficiary and his or her spouse.

(4) Notwithstanding subsections (2) and (3), access to employment may be reserved for citizens of [insert name of State] where the employment is politically sensitive or concerns matters of national security, which require that the interests of [insert name of States] be safeguarded.

18. Retention of rights by family members

(1) Subject to subsection (3), following the termination of the relationship between a principal beneficiary and spouse, whether by separation, divorce, annulment of marriage, [termination of registered partnership], or the permanent departure or death of the principal beneficiary, the spouse or ex-spouse of a principal beneficiary as the case may be, shall retain the rights accorded in this Act for 12 months following the termination of the relationship, or, on a case-by-case basis, for such further extended period beyond 12 months as may be reasonably necessary for the spouse or ex-spouse to regularize his or her affairs under [Immigration legislation] and any other relevant Act.

(2) Following the termination of the relationship between a principal beneficiary and spouse as contemplated under subsection (1), a dependent of the spouse shall retain the rights accorded in this Act for 12 months following the termination of the relationship, or, on a case-by-case basis, for such further extended period beyond 12 months as may be reasonably necessary for the regularization of the dependent's affairs.

(3) Notwithstanding subsection (1), a spouse or ex-spouse of a principal beneficiary shall retain contingent rights beyond 12 months following termination of the relationship with the principal beneficiary in the following circumstances-

(a) the spouse or ex-spouse retains legal custody of a minor who is principal beneficiary, or of a child of the principal beneficiary, until such minor or child attains the age of 18;

(b) the spouse or ex-spouse retains legal custody of a minor or child under paragraph (a) who has attained the age of 18, but who -

(i) continues to reside principally in [insert name of State];

(ii) is enrolled at an educational establishment for the purpose of studying; and

(iii) continues to need the presence and care of the spouse or ex-spouse in order to be able to pursue and complete his or her studies,

until completion of the studies;

(c) the spouse or ex-spouse has acquired permanent residence or citizenship status in [insert name of State] or in any other Protocol Member State;

(d) on human rights or humanitarian grounds.

(4) Following the permanent departure or death of the principal beneficiary, a dependent of the principal beneficiary residing in [Protocol Member State] under the Free Movement of Persons Regime shall retain the rights accorded in this Act.

(5) For the avoidance of doubt, a child of a principal beneficiary shall retain the rights accorded in this Act upon attaining the age of 18.

(6) This section shall be applied with due regard to the best interest of the child, as set out in section 10.²²

(7) The 12-month period referred to in this section begins on the first day of the month immediately following the month in which the separation, divorce, annulment, [termination of registered partnership], permanent departure or death occurs.

(8) Where a person's entitlement to contingent rights is terminated due to a change in status as contemplated in this section, the State shall employ its best endeavours to mitigate the negative impact on that person arising from such termination and to assist that person in making a smooth transition to the new status.

²² As specified throughout this Act, family members are not citizens of Protocol Member States. Sec. 18 seeks to outline instances in which family members retain the rights set out in this Act following changes in their relationship with the principal beneficiary.

When the OECS Authority adopted the contingent rights policy at its 62nd Meeting in 2015, it noted concerns from Protocol Member States in relation to the right of a spouse, irrespective of nationality, to remain in the Host Protocol Member State following the end of relationship with the principal beneficiary. It was agreed that this should be reviewed. The provisions set out in Sec. 18 have taken as their starting point a legal opinion prepared by the OECS Commission on this question, though the suggested requirements therein under which ex-spouses retain their rights have been amended to accommodate the attachment to the Host Protocol Member States that ex-spouses may develop during a prolonged period of stay. In addition, the legal opinion has been expanded upon to ensure that the provisions are in line with important other considerations, including the best interests of the child. Sec. 18 addresses the retention of rights of family members, beyond the ex-spouse and sets out the circumstances under which the retention of rights would be warranted for family members other than the ex-spouse.

19. Proof of entitlement to contingent rights

A stamp of indefinite stay duly applied or endorsed on or attached to a person's passport or other official document by [Immigration Authority] is conclusive proof of the person's entitlement to contingent rights.

20. Right to apply for permanent residence and citizenship²³

The rights granted by this Act shall not preclude the principal beneficiaries and their family members from pursuing or attaining any available residence-based immigration benefits in [insert name of State], including the right to apply for permanent residence and citizenship following a defined period of time, without discrimination of any kind and in line with laws relating to residence and citizenship in [insert name of State].

**PART IV
SOCIAL RIGHTS**

21. Equal treatment in employment

(1) A principal beneficiary and his or her spouse in employment in [insert name of State] shall not be treated differently from citizens of [insert name of State] in respect of any conditions of employment and work, particularly remuneration, dismissal, reinstatement or re-employment.

(2) A principal beneficiary and his or her family members residing in [insert name of State] shall be subject to the same social and tax advantages and obligations as citizens of [insert name of States].

(3) A principal beneficiary and his or her family members residing in [insert name of State] shall have access to the resources allocated through cash advances, labour market schemes, job-seeking allowances and other social safety net mechanisms on the same terms and conditions as citizens of [insert name of State].

(4) A principal beneficiary and his or her family members residing in [insert name of State] shall have access to on-the-job training and retraining centres on the same terms and conditions as citizens of [insert name of States].

²³ Sec. 19 serves to emphasise that residence in a Protocol Member State under the Free Movement of Persons Regime qualifies principal beneficiaries and their family members for permanent residence and citizenship depending on the length of their stay and national immigration rules. This is particularly important for family members, as they are not themselves citizens of a Protocol Member State..

(5) A principal beneficiary and his or her spouse residing in [insert name of State] shall have access to trade unions on the same terms and conditions as citizens of [insert name of State] and enjoy the protections of collective labour rights awarded to citizens of [insert name of State].²⁴

22. Education

(1) A principal beneficiary and a child of a principal beneficiary or of his or her spouse residing in [insert name of State] shall have access to [early childhood], primary, secondary and [post-secondary] education [provided by the Government and Government-assisted schools] in [insert name of State] on the same terms and conditions as citizens of [insert name of State].

(2) A principal beneficiary and the child of a principal beneficiary [or of his or her spouse] residing in [insert name of State] shall be eligible on the same terms and conditions as citizens of [insert name of State] for scholarships, economic costs awards, bursaries and other assistance offered to students [by the Government of [insert name of State]], education providers, [or any other body].

(3) Any provisions, whether in law or practice, in [insert name of State] that discriminate against principal beneficiaries and children of principal beneficiaries or of their spouses residing in [insert name of State] in relation to education shall not apply and [public] education providers in [insert name of State] shall take the required steps to abolish any obstacles for a principal beneficiary and a child of a principal beneficiary or of his and her spouse residing in [insert name of State] to access education, including-

- (a) the alignment of fees payable by principal beneficiaries and children of principal beneficiaries or of their spouses and citizens of [insert name of State] to access [early childhood], primary, secondary and [post-secondary] education;
- (b) the elimination of any citizenship and residence requirements that could prevent principal beneficiaries and children of principal beneficiaries [or of their spouses] from accessing education, scholarships, economic costs awards, bursaries and other assistance for students.²⁵

(4) In this section, “post-secondary education” means education at a community or national college.

²⁴ Sec. 20 has been adapted from Chapter 1 of Regulation No 492/2011 of the European Parliament and the Council on the freedom of movement of workers within the Union from April 2011. Family members have been placed in square brackets; the contingent rights policy includes spouses and dependents in the “access to the resources allocated through cash advances, labour market schemes, and the other social safety net mechanisms to protect the vulnerable members of the principal beneficiary, spouse, and dependents”.

²⁵ The contingent rights policy only provides for access to primary and secondary education. This Act also includes – post secondary education to give Protocol Member States the option to extend the provisions of the policy to post-secondary education. This has been square bracketed, as Protocol Member States might face capacity limitations.

23. Health care

(1) A principal beneficiary and his or her family members residing in [insert name of State] shall have access to health care on the same terms and conditions as citizens of [insert name of State]. This shall extend to all areas of health care, and all [public] providers of health care services.

(2) Any provisions, whether in law or practice, in [insert name of State] that discriminate against principal beneficiaries and their family members residing in [insert name of State] in relation to health care shall not apply and [public] health care providers in [insert name of State] shall take the required steps to abolish any obstacles for those principal beneficiaries and their family members to access health care, which shall entail-

(a) the alignment of fees payable by principal beneficiaries and their family members and citizens of [insert name of State] to access health care;

(b) the elimination of any citizenship and/or residence requirements that could prevent non-citizens of [Protocol Member State] from accessing health care.

24. Social security²⁶

A principal beneficiary and his or her family members shall have access to social security on the same terms and conditions as citizens of [insert name of State].

25. Restrictions on social rights

(1) Subject to this section, if a contingent right conferred under section 22 or section 23 creates serious difficulties that adversely affect [insert name of State]'s ability to deliver services in the education or health care sector as the case may be, [Cabinet] may, by Order published in the *Gazette*, apply such restrictions on the exercise of the contingent right as [Cabinet] considers it appropriate to resolve the difficulties.

(2) Any restrictions applied under subsection (1) shall –

- a) be for a specified period, which shall be set out in the Order;
- b) not discriminate among OECS nationals and family members on the basis of Member State or third country of origin, or on any other basis; and
- c) be confined to what is necessary to resolve the serious difficulties.

²⁶ Protocol Member States are currently in the process of adopting national legislation on social security that has been agreed upon at the regional level. This will facilitate the implementation of Sec. 24.

(3) Before any restrictions are applied under subsection (1), [insert name of State] shall first seek the approval of the OECS Authority under Article 12.5 of the Protocol of Eastern Caribbean Economic Union.

(4) If [insert name of State] is unable to comply with subsection (3), it shall, upon applying the restrictions under subsection (1), immediately notify the OECS Authority.

(5) The communication to the OECS Authority seeking approval under subsection(3) or giving notification under subsection (4) as the case may be, shall include -

(a) the reasons for the which the restrictions are required;

(b) the period for which the restrictions will be applied; and

(c) a plan setting out the steps that [insert name of State] will take to resolve the difficulties.

(6) The OECS Authority, in making its determination –

(a) shall consider –

(i) the appropriateness of the restrictions and, in the case of notification under subsection (4), whether the restrictions should be continued,

(ii) the appropriateness of the period for which the restrictions will apply, and

(iii) the adequacy of the plan.

(b) may impose such conditions as it considers necessary and [insert name of State] shall adhere to such conditions.

(7) If, at any time, [insert name of State] considers that the serious difficulties will likely not be fully resolved by the expiry of the specified period during which the restrictions are to apply, [insert name of State] may seek the approval of the OECS Authority for an extension and the OECS Authority may, if it determines the extension is justified, approve the extension on the same or alternative conditions.

PART V
RESTRICTION OF RIGHTS AND PROCEDURAL SAFEGUARDS

26. Refusal of entry and expulsion

(1) An individual seeking to enter [insert name of State] or in [insert name of State] under the Free Movement of Person Regime may be refused entry to or expelled from [insert name of State] prior to entry or during his or her stay in [insert name of State] only on the ground of being undesirable as an immigrant as provided under [Immigration legislation].

(2) The ground of refusal of entry or expulsion set out in subsection (1) shall not be invoked in relation to an individual to serve economic ends.²⁷

(3) When, pursuant to subsection (1) –

(a) [Immigration Authority] is considering refusing entry to an individual; or

(b) [insert competent authority[ies]] is considering expelling an individual,

the decision shall be taken with due regard to the rights and principles set out in this Act, the interests of family unity, the best interest of the child where applicable, and any need the individual may have for protection on humanitarian grounds.

27. Procedural safeguards for refusal of entry and expulsion

(1) A decision to refuse entry to an individual seeking to enter [insert name of State] under the Free Movement of Persons Regime shall be made by a senior immigration official and the affected individual shall be notified in writing of the decision.

(2) A notification of refusal of entry under subsection (1) shall be in the form set out as Form 2 in Schedule 2 and shall -

(a) include the ground of refusal of entry under section 26 (1);

²⁷ Sec. 25(2) stipulates that Protocol Member States shall not invoke the grounds to refuse entry to or expel a principal beneficiary or family member to serve economic ends, as the Free Movement of Persons Regime, unlike the free movement of skilled labour under the CARICOM Single Market and Economy, does not give consideration to the available funds of persons exercising their right to freedom of movement.

(b) subject to subsection (6), include the reasons for arriving at the decision under paragraph (a); and

(c) be signed by the senior immigration official.

(3) The senior immigration official shall ensure that the form under subsection (2) is read to the individual and that the individual is aware of his or her rights prior to requiring the individual to affix his or her signature to the form and, in the case that the individual refuses to sign the form, the senior immigration official shall attest to this thereon.

(4) Except as provided in this Part, a decision to expel an individual in [Protocol Member State] under the Free Movement of Persons Regime shall be made in accordance with the procedure for expulsion of persons established under the [Immigration legislation].

(5) Where an individual is refused entry into or is to be expelled from [Protocol Member State] a senior immigration official [Immigration Authority] shall inform the affected individual of the right to –

(a) contact a family member, [consular officer] or attorney-at-law;

(b) make a complaint to the [[national complaints mechanism/ombudsman] under section 34;

(c) seek administrative review under the [Immigration legislation];

(d) seek judicial review.

(e) remain in [Protocol Member State] while pursuing administrative or judicial review subject to such restrictions as required by [insert name of State];

(6) Where refusal of entry or expulsion of an individual involves any issue concerning national security, the [Immigration Authority] shall not be required to provide [detailed] reasons for the conclusion, where such disclosure would be contrary to essential security interests of [Protocol Member State].

(7) Where the individual refused entry or to be expelled applies for an interim order against or administrative or judicial review of the decision taken under section 26, the individual shall retain the rights set out in this Act until such time as the decision on the interim order or the administrative or judicial review application has been taken.

(8) Where an individual is refused entry or expelled, he or she shall have the right to apply to re-enter [Protocol Member State] after twelve (12) months.

28. Reporting of refusal of entry and expulsion

(1) Where a decision has been made to refuse entry to or expel an individual to whom this Act applies, [Immigration Authority] shall as soon as is practicable -

- (a) inform the [national monitoring body] and the Minister in writing of the decision, including the ground and reasons for the decision; and
- (b) in the case of refusal of entry, submit, together with the communication under paragraph (a), a copy of the refusal of entry order signed by the individual refused entry.

(2) The Minister shall, within 3 months of receipt of communication under subsection (1), write to the [OECS Economic Affairs Council] regarding the refusal of entry or expulsion of the individual and the ground and reasons for such refusal of entry or expulsion, except that, where there is any issue concerning national security, the Minister shall not be required to provide [detailed] reasons.

29 Non-refoulement²⁸

(1) [Insert name of State] shall implement the provisions laid out in this Act in accordance with the principle of non-refoulement.

(2) No beneficiary of this Act shall be returned to a country where he or she would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm, including harm related to a disaster.

30. Fraud²⁹

(1) [Insert name of State] reserves the right to refuse, terminate or withdraw any of the rights accorded by this Act in the case of fraud, including marriages of convenience.

²⁸ Sec. 27 is in line with Art. 22(8) of the 1969 American Convention on Human Rights, Art. 13 of the 1987 Inter-American Convention to Prevent and Punish Torture, and Art. 3 of the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Sec. 27 also includes harm related to a disaster, which has been recognised as an important consideration in international law. For example, the Human Rights Committee stated in *Teitiota v New Zealand*, Communication No. 2728/2016: “[W]ithout robust national and international efforts, the effects of climate change in receiving states [of rejected asylum-seekers] may expose individuals to a violation of their rights under articles 6 or 7 of the [International Covenant on Civil and Political Rights], thereby triggering the non-refoulement obligations of sending states” (para 9.11)

²⁹ This section has been adapted from Chapter VII of Directive 2004/38/EC of the European Parliament and Council from April 2004 on abuse of rights (Art. 35). It has been included to address the concerns raised by some member states during consultation, of the possibility of marriages of convenience and other fraudulent practices that might result in persons not otherwise eligible benefiting from the Free Movement of Person Regime.

(2) Where a principal beneficiary or his or her family member is found to have made false representations, submitted false documents, failed to disclose relevant facts or otherwise deceived [Immigration Authority], the principal beneficiary or family member shall be prosecuted for immigration offences in accordance with the [Immigration Legislation].

(3) Any decision taken under subsections (1) and (2) shall be proportionate.

PART VI IMPLEMENTATION AND MONITORING

31. Reciprocity³⁰

(1) The implementation of this Act and the rights provided therein in [insert name of State] shall not be contingent upon the adoption of a similar Act by other Protocol Member States.

(2) A principal beneficiary and his or her family members shall enjoy the full range of rights set out in this Act and this shall not be contingent on the country of origin of the principal beneficiary having adopted through legislative means provisions similar to this Act.

32. Dissemination of information³¹

(1) [National body] is tasked with the dissemination of information in relation to the rights and obligations of principal beneficiaries and their family members in [insert name of State].

(2) [National body] shall engage in awareness raising campaigns through national and local media channels on the rights provided for in this Act using clear, accessible, and up-to-date information that is free of charge.

33. Monitoring

³⁰ While there are no provisions currently in place on the requirement of reciprocity in the implementation of the Free Movement of Persons Regime, the Caribbean Court of Justice (CCJ) recently issued an Advisory Opinion on opt-outs of obligations by Member States as well as the application of the principle of non-reciprocity to the CARICOM Single Market and Economy. The CCJ advised that it is lawful for Member States to request an opt-out of obligations arising from the decision to add more categories of skilled workers eligible for free movement and for the Conference of Heads of Government to grant these opt-outs. The CCJ further advised that the principle of non-reciprocity applies to enlargement decisions so that nationals of the Member States that had opted out continue to be entitled to enjoy the benefits of the enlargement decision.

³¹ Sec. 30 is based on Art. 6 of Directive 2014/54/EU of the European Parliament and the Council from April 2014 and Art. 34 of Directive 2004/38/EC of the European Parliament and Council from April 2004, highlighting the importance of publicity and awareness-raising around the rights accorded by the contingent rights policy.

(1) [National monitoring body] is tasked with monitoring the implementation of the provisions in this Act in line with [insert name of State's] reporting and monitoring obligations under international law.

(2) [National monitoring body] shall comply with such mandatory reporting requirements as may be provided for in an Economic Union monitoring framework to be adopted by the OECS.

(3) Upon request by the OECS Authority, ~~the OECS Commission~~ or the OECS Economic Affairs Council, [insert name of State] shall submit reports on the implementation of the provisions within six months. Such a report shall be requested no more than once per calendar year.

34. Complaints mechanism

(1) The [National complaints mechanism/ombudsman] [established/appointed] under the [insert name of legislation] is tasked with receiving and resolving complaints from principal beneficiaries and their family members, including individuals who have not been recognised as principal beneficiaries or family members by [insert name of State] or who have faced unjustified restrictions and obstacles to the rights provided in this Act.

(2) In carrying out the function with which it is tasked under subsection (1), the [national complaints mechanism/ombudsman] may exercise its full powers under the [insert name of legislation].

(3) An individual who alleges that his or her entitlement to contingent rights has been denied or restricted may make a complaint to the [national complaints mechanism/ombudsman].

(4) A complaint by an individual under subsection (3) (hereafter the "complainant") shall be –

(a) in the form set out as Form 3 in Schedule 2;

(b) signed by the complainant or, in the case of incapacity or inability, by a representative of the complainant; and

(c) submitted to the [national complaints mechanism/ombudsman].

(5) Upon receipt of a complaint [national complaints mechanism/ombudsman] shall –

(a) log the complaint;

(b) issue a prompt written acknowledgement of receipt;

(c) perform a preliminary assessment of the complaint within 14 days of receipt;

(d) request from the complainant any additional information needed for investigation of the complaint;

(6) [National complaints mechanism/ombudsman] shall establish a complaints procedure for its investigation of complaints received under this section which shall include, where its preliminary assessment is that the individual's contingent rights may have been denied or restricted –

- (a) referral of a copy of the complaint to the party against whom the complaint is made and requesting a response;
- (b) engaging the party under paragraph (a) with a view to resolution of the matter;
- (c) communicating to the complainant or representative any actions taken and responses received;
- (d) advising the complainant or representative of the availability of legal redress by way of administrative or judicial review.

(7) Where the [National complaints mechanism/ombudsman] concludes after investigation that a complainant's contingent rights have been denied or restricted –

- (a) [national complaints mechanism/ombudsman] shall inform the party against whom the complaint is made of its conclusion in writing, and advise the party of the necessary corrective actions to be taken;
- (b) the party shall respond in writing within [14 days] of receipt of communication under paragraph (a) –
 - (i) informing the [national complaints mechanism/ombudsman] of the corrective action that has or will be taken; or
 - (ii) disputing the conclusion under paragraph (a), giving reasons.

(8) An investigation of a complainant shall be completed not later than eight weeks after the date of receipt of the complaint, and [national complaints mechanism/ombudsman] shall inform the [national monitoring body] of the outcome of any investigation.

(9) An individual shall have access to the courts to challenge restrictions or the denial of rights under this Act independent of any complaints process available, commenced or completed under this section.

35. Regional oversight

Where [insert name of State] receives recommendations from an Organ of the Organisation of Eastern Caribbean States on the implementation, in law and practice, of this Act in [insert name of State], it shall consider and respond to such recommendations within six months.

PART VII
MISCELLANEOUS

36. Amendment of Schedules

(1) If there is a change in the membership of Protocol Member States of the Organisation of Eastern Caribbean States, the Minister may, by Order, amend Schedule 1 accordingly.

(2) The Minister may, by Order, amend the forms contained in Schedule 2.

Schedule 1

(sec 2)

Protocol Member States of the Organisation of Eastern Caribbean States

Antigua and Barbuda
The Commonwealth of Dominica
Grenada
Montserrat
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and The Grenadines

Schedule 2

(sec 15)

Form 1 - Application for indefinite stay

<p>[INSERT NAME OF STATE]</p> <p>APPLICATION FOR INDEFINITE STAY OF FAMILY MEMBER</p> <p>OECS FREE MOVEMENT OF PERSON REGIME</p>	
<p>SECTION A - APPLICANT INFORMATION</p>	
Full name of applicant (principal beneficiary):	OECS country of citizenship
Address in [insert name of State]	Passport number:
Tel no:	Date of issue:
Email address:	Place of issue:
Date of Birth	Last place of residence
<p>SECTION B - FAMILY MEMBER INFORMATION</p>	
Name of family member	Country of citizenship
Address in [insert name of State]	Passport number:
	Date of issue:
	Place of issue:

Date of birth	Last place of residence
Relationship to applicant	Date of entry into [insert name of State]

SECTION C: CHECKLIST OF ATTACHMENTS

Please tick (as applicable)

- marriage certificate
- family member's birth certificate
- certificate of adoption
- certificate of guardianship
- principal beneficiary's birth certificate
- certified court order
- family member's passport
- applicant's passport/certified passport bio-page
- other _____

Applicant's declaration:

I _____ hereby certify that the information provided by me in this application is true and correct.

Date

Signature of Applicant

For official use
APPLICATION APPROVAL

APPROVED

NOT APPROVED

Please specify reason(s) if not approved:

Name [print]:

Job title/designation:
STAMP]
Date:
Signature:

[IMMIGRATION AUTHORITY

(sec 27)

Form 2 – Refusal of Entry Order

REFUSAL OF ENTRY – FREE MOVEMENT OF PERSONS REGIME (OECS)

TO _____ a citizen of _____

You have appeared this day before the _____ (designation of senior immigration official on duty) at _____ (name of port) and you are hereby refused entry on

the ground of national security public security public health (check box that is applicable)

under section [] of the [Immigration] Act for the following reason(s) –

I hereby order you to be [detained] and [returned] to _____

WARNING:

This Order will be entered into the [Regional Security Register] and the [Regional Free Movement Database]

Please note that:

1. You may consult an attorney-at-law, a consular official of your country or a family member.
2. You have the right to make a complaint to the [national complaints mechanism/ombudsman].
3. You have the right to appeal to the [Chief Immigration Officer][Minister] against this order in accordance with section [] of the [Immigration] Act within _____
4. You have a right to apply to [the High Court] for judicial review of this Order in accordance with section of the [Immigration] Act within _____

Date _____

Signature _____

Designation _____

I acknowledge that I have been advised orally and in writing of the reasons for refusal of entry and I understand that I have the right to;

- (a) contact an attorney-at-law, consular officer or a family member;
- (b) activate the complaints mechanism under sec [] of the Contingent Rights Act;
- (c) appeal the decision to the [Chief Immigration Officer] [Minister];
- (d) remain in [Protocol Member State] while pursuing administrative review subject to such restrictions as required by [Protocol Member State]
- (e) apply to the [High Court] for judicial review of this decision.

SERVICE HEREOF ACKNOWLEDGED BY:

CIRCLE APPROPRIATE RESPONSE AS APPLICABLE

I was / was not provided the facility to contact a family member, an attorney-at-Law and a consular representative and I contacted / did not contact _____ (set out persons contacted, if applicable). I intend / do not intend to appeal the decision to the [Chief Immigration

Officer) [Minister].

Date _____

Name (print) _____

(signature of individual refused entry)

Declaration of the Senior Immigration Officer in the event that the individual refuses to sign the form.

Name Of individual refused entry

_____ at _____ a.m/p.m

(Where applicable)

I, _____ (designation of the Senior Immigration Officer on duty)

at this port (name of port) _____ hereby declare that I have

informed _____ a citizen of _____ of the reasons

for his/her refusal of entry as well as of his/her rights and that the said citizen has refused to affix

his/her signature to this Form.

Date _____

Signature _____

Designation _____

Form 3 – OECS Free Movement of Person Regime Complaints Form

PERSONAL INFORMATION

Surname _____
First Name _____
Nationality _____
Sex _____
Passport Number _____
Address _____
Email address _____
Telephone No. _____

IMMIGRATION ENTRY AND DEPARTURE DETAILS

Point of Entry/Departure _____
Date of Entry/Departure _____
Arrival from/going to _____
Arrived on/Departed on _____

NATURE OF COMPLAINT

1. Please indicate the government department(s)/entity against which you make the complaint:

- Immigration Police Customs Labour Dept
 Health Education Social Security Accreditation body
 Other _____

2. Please indicate what your complaint relates to:

- Refused entry Refused boarding Expulsion Not given equal treatment
 Refused recognition Other _____

3. Please provide details of the complaint:

4. Please indicate your status under the OECS Free Movement of Persons Regime:

- Principal Beneficiary Family Member

If a family member, please indicate your relationship to the principal beneficiary:

Date:

Your signature

OR

Signature of representative of complainant