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CABINET

COMMONWEALTH ORGANISATIONS: IMMUNITIES AND PRIVILEGES

NOTE BY THE SECRETARY OF THE CABINET

At their meeting on 19th December, 1961, the Cabinet asked for further information on points which had arisen in their discussion of immunities and privileges for Commonwealth organisations (C.C. (61) 75th Conclusions, Minute 7). The attached report is submitted in pursuance of this request.

NORMAN BROOK.

*Cabinet Office, S.W. 1,
22nd May, 1962*

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ANNEX

COMMONWEALTH ORGANISATIONS: IMMUNITIES AND PRIVILEGES

REPORT PREPARED IN THE CABINET OFFICE

At their meeting on 19th December, 1961, the Cabinet called for a further report on four points—

- (a) the nature and scope of the legislation required to implement the Commonwealth Secretary's proposal that immunities and privileges should be conferred on Commonwealth organisations and their staffs;
- (b) how far a satisfactory result could be obtained by means not involving legislation—for example, by attaching members of the organisations to the offices of their respective High Commissioners in London;
- (c) what Commonwealth organisations were already in existence or likely to be created for which immunities and privileges would be wanted;
- (d) how far international organisations and their staffs had been permitted to enjoy the full range of immunities provided for by the International Organisations (Immunities and Privileges) Act, 1950.

Nature and Scope of Proposed Legislation

2. The proposal made by the Commonwealth Secretary would involve legislation for the same purpose as, but not necessarily on parallel lines with, the Act of 1950. The legislation would cover organisations—

on which Britain and one or more Commonwealth Governments were represented;

which were jointly financed by the Commonwealth Governments represented in the organisations; and

which had a permanent establishment of servants who were not responsible to any one Commonwealth Government.

The principle underlying the legislation would be that the status, immunities and privileges applicable in respect of Commonwealth organisations should not be less favourable or more favourable than those in respect of other international organisations.

3. The legislation would state the maximum immunities and privileges that could be granted and would provide for Orders in Council to prescribe the immunities and privileges to be accorded to the individual organisations and their staffs within the maxima laid down by the Act. The 1950 Act is framed in that way. As Commonwealth organisations generally have no written or formal constitution, further consideration would have to be given to the questions whether or not a formal agreement should be required by the statute and, if an agreement is required, whether or not provision should be made, as in the Act of 1950, that the immunities and privileges conferred should not be greater than those required by the agreement to be conferred. The Federation of Rhodesia and Nyasaland would rank as a separate Commonwealth Government for the purposes of the proposal, but the Government of the Irish Republic would not.

Solutions not Involving Legislation

4. The problem could not be solved by attaching the staff of Commonwealth organisations to the appropriate High Commissioner in London:

- (i) This would not make the Commonwealth organisations equal in status with other international organisations.
- (ii) The chairman, secretary and other senior staff affected would become identified with a particular Commonwealth country when the aim is that they should be independent "Commonwealth civil servants".
- (iii) Such attachment might be precluded in practice by the strict rules governing the eligibility of persons for addition to the diplomatic list.
- (iv) It would not, without specific legislation, solve the income tax problem.
- (v) It would not of itself entitle the organisations or the attached persons to any immunities or privileges whatever.

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5. No one has been able to think of any other administrative device; and it is clear that no such device would meet the Commonwealth Secretary's main objective of equating the status of Commonwealth organisations with international organisations. If the proposal is to be pursued, therefore, legislation is inescapable.

The Commonwealth Organisations Concerned

6. A number of organisations already in existence fulfil the conditions described in paragraph 2 above and could be affected by the proposed legislation. These organisations are:

- The Commonwealth Education Liaison Unit
- The Commonwealth Economic Committee
- The Commonwealth Agricultural Bureau
- The Commonwealth Telecommunications Board
- The British Commonwealth Scientific Committee and Working Party
- The Commonwealth Shipping Committee
- The Commonwealth Institute

They, the Government representatives, the organisations' officials and staff would be eligible for immunities and privileges in accordance with the legislation. If, however, unlike the Act of 1950, the legislation excluded citizens of the United Kingdom and Colonies and persons already resident here, its provisions conferring immunities and privileges on representatives, officials and staffs would apply in respect of two persons only, that is, one person in the Commonwealth Education Liaison Unit and one person in the Commonwealth Economic Committee. All the senior staff of the other organisations appear to be United Kingdom citizens only or resident in the United Kingdom.

There is a project to establish a Commonwealth English Language Centre. If this is set up in London as at present planned, it would fulfil the conditions and would come within the scope of the proposed legislation.

7. There exist some further Commonwealth organisations which do not as at present organised fulfil the conditions, for example—

- The British Commonwealth Forestry Conference and Standing Committee
- The Committee on Overseas Road Research
- The Commonwealth Air Transport Council
- The Commonwealth Aeronautical Advisory Research Council

Any of these might at some future date (though there are at present no signs of this) reorganise their finance and administration so as to qualify.

Practice under the Act of 1950

8. The immunities and privileges provided for in the Act of 1950 represent a maximum scale which under section 1 (2) of the Act may not be applied to an extent greater than is necessary to give effect to the obligations undertaken by the Government under the agreement whereby a particular organisation is established. The effect of these agreements is summarised in the Annex to the memorandum circulated to the Cabinet by the Lord Chancellor (C. (62) 80).

*Cabinet Office, S.W.1,
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