CABINET

COMMONWEALTH IMMIGRANTS

MEMORANDUM BY THE LORD CHANCELLOR

On 8th September, 1958, the Cabinet invited the Home Secretary, in consultation with the Lord Chancellor, to give further consideration to the desirability of taking statutory powers to deport undesirable immigrants from other countries of the Commonwealth (C.C. (58) 69th Conclusions, Minute 3, Conclusion (2)). At the request of the Home Secretary this question has been considered by the Committee on Colonial Immigrants, and on their behalf I now report our conclusions.

The Problem

2. Two main aspects of the problem of coloured immigration give rise to public concern—

(i) The large numbers of immigrants arriving in this country and their concentration in particular areas, with all the attendant social problems; and

(ii) The criminal activities of a comparatively small number of these immigrants.

Numbers Arriving

3. As regards (i), the flow of coloured immigrants to the United Kingdom is much reduced. During the last quarter of 1958 the net total of arrivals (i.e., after making allowance for those leaving the United Kingdom) from the West Indies was 1,373 compared with 7,074 in the same period of 1957 and 3,322 in 1956. Arrivals from India fell to 940 in this period, compared with 1,508 in the same period of 1957. The position regarding Pakistan is most satisfactory—a net decrease of 174 in this period compared with a net increase of 2,243 in the same period in 1957. Overall, the picture of coloured immigration is reasonably satisfactory, the highest figure in recent months being 3,297 for September last compared with 7,751 in September 1957. In December 1958 there was for the first time in recent years a net decrease in coloured immigration.

4. The reduction in the flow of coloured immigration, particularly from the West Indies, must owe much to the efforts made by the overseas Governments to discourage emigrants from setting out, both by administrative controls and by propaganda. In particular, the falling off of West Indian arrivals is probably due, in large measure, to the results of our discussions with Mr. Manley, the Jamaican Chief Minister and Minister of Development. The reduced prospects of finding employment in the United Kingdom have probably also had an effect. Except in the areas where coloured immigrants have congregated, public opinion on the subject of coloured immigration seems to have subsided since the racial disturbances. We have no evidence of any disputes between white and coloured
people resulting from competition for employment, and coloured people are apparently not finding it relatively more difficult than white people to get jobs. There seems no pressing demand for the imposition of controls over the number of immigrants arriving in this country; in any case such controls could be effected only by major legislation, which clearly cannot be contemplated in the present Parliament. We recommend however that the possibility of a comprehensive Immigration Bill dealing with aliens as well as Commonwealth immigrants should be studied, as suggested in paragraphs 8 and 9 (vi) of our earlier report (C. (58) 129).

Powers to Deport Undesirables

5. Although the real problem is in the numbers of colonial immigrants who arrive in this country, public opinion tends to focus attention on the criminal activities of a small minority—in particular on those convicted of living on immoral earnings. Whilst this aspect of the problem is undoubtedly inflated out of all proportion, the Committee feel that the publicity given to these convictions tends to bring the whole coloured community into disrepute. They have therefore studied the desirability of introducing legislation to give powers to the Home Secretary to order undesirable immigrants to be deported.

6. There are three alternative courses open to us—
   (i) To legislate for the deportation of undesirable Commonwealth and Colonial immigrants immediately.
   (ii) To prepare a Bill, but introduce it only if events make it unavoidable.
   (iii) To leave the question to be dealt with in due course as part of comprehensive legislation regarding immigrants generally.

7. The arguments in favour of immediate legislation are as follows—
   (i) It would go some way to meet the widespread public anxiety about the increase in crime.
   (ii) Since feelings against the whole coloured community are exacerbated by the activities of a few, powers to deport the offenders would tend to improve race relationships.
   (iii) Failure of the Government to take action would encourage the formation of extremist groups in the United Kingdom and would discourage Colonial Governments from pursuing policies of restricting emigration to the United Kingdom.
   (iv) The introduction of a Bill has been foreshadowed in Ministerial statements and the public is expecting the Government to take some action. Failure to take action might react unfavourably on the Government's popularity.
   (v) It would be better for the Government to take the initiative and introduce legislation as a result of mature consideration of the problem, rather than to wait until more race riots compelled its hurried introduction, possibly in a more drastic form, to meet an urgent public demand.
   (vi) If legislation were confined to conferring powers to deport on the recommendation of a Court, there would be little likelihood of opposition in Parliament.

8. The arguments against introducing legislation are—
   (i) It would draw a distinction between the British subject from overseas and the British subject domiciled in this country; as such it could be represented as being a major departure from principle.
   (ii) The race riots have died down, at any rate for the present, and there is no great popular demand for legislation to deport a few undesirable immigrants.
   (iii) The measure might be criticised as failing to deal with the real problem—that of limiting the number of immigrants.
   (iv) It might provoke criticism from certain Colonial territories.
   (v) There is need for a comprehensive Immigration Bill, and separate legislation for Colonial immigrants might have the effect of delaying for some years the introduction of such a Bill.

SECRET
9. The suggestion that a Bill should be prepared and held ready for introduction if circumstances made it necessary (paragraph 6 (ii)) meets some of the objections to immediate legislation but does not overcome the difficulty that if the Bill had to be introduced, it would be clear that the Government had been driven to it by force of events instead of acting after mature and careful consideration.

10. Although the majority of the Committee on Colonial Immigrants is in favour of introducing a Bill in this Parliament, the Committee are not unanimous on the matter, and we submit it to the Cabinet for decision.

11. Before any announcement were made about introducing a Bill it would be necessary to consult other Commonwealth and Colonial Governments (and to forewarn the Government of the Irish Republic) since the legislation would involve departure from our traditional policy under which Commonwealth citizens have the right to remain here indefinitely. The co-operation of Commonwealth Governments would also be necessary in administering the Act. The best course might therefore be to defer coming to a final decision on the matter until the attitude of Commonwealth Governments is known.

The Bill

12. In order to assist our colleagues we have considered what a deportation Bill should contain and have had the attached draft Bill prepared. We have taken into consideration the annexed report by officials which recommends (paragraph 18) that any legislation authorising the deportation of British subjects should contain the following provisions—

(a) Power to the Secretary of State to deport from the United Kingdom any British subject or citizen of the Irish Republic who is recommended for deportation by a Court upon conviction of an offence for which a sentence of imprisonment could be imposed, or of an offence relating to prostitution.

(b) Exemption of any persons coming within the categories set out in paragraph 6 of the report.

(c) Power to the police to arrest and detain any person found in the United Kingdom in contravention of a deportation order.

(d) Penalties for contravention of deportation orders.

Officials feel (paragraph 19) that the balance of advantage lies against the inclusion of the following provisions:

(e) Power to deport persons who are culpably dependent on public funds, other than those recommended on conviction under Section 51 of the National Assistance Act.

(f) Power to deport persons whose deportation appears to the Secretary of State to be necessary for security reasons or otherwise conducive to the public good.

(g) Provision for independent review of cases under (e) or (f).

(h) Amendment of the registration provisions of the British Nationality Act, 1948.

(i) Powers to immigration officers to refuse leave to land to persons against whom deportation orders are in force and for this purpose to examine British subjects entering the country.

13. We agree generally with these recommendations. For the purpose of the Bill "undesirability" is taken to attach only to persons who have been recommended for deportation by a Court on conviction of an offence for which the Court had power to impose a sentence of imprisonment or for certain defined offences relating to prostitution. We have considered whether the Courts should be empowered themselves to order deportation, but we think it preferable that discretion in this matter should rest with the Secretary of State.

14. For presentational reasons we recommend that citizens of the Irish Republic should be liable under the Bill to deportation from the United Kingdom.
in the same circumstances as British subjects, but we recognise that in practice, although they could be deported without difficulty, it would be impossible to prevent their re-entry.

15. As regards exemption we agree with the proposals set out in paragraph 6 of the Officials' Report, subject to the following modifications:

(a) a person whose father was born in the United Kingdom should also be exempt since many persons born abroad of fathers who were born in the United Kingdom have very close connections with this country and would, on return to what they regard as “home,” strongly object to being classed as “deportable”;

(b) the period of residence during which a person would be liable to deportation should be five years instead of seven years since we feel it would be impossible to defend the longer period when aliens can acquire naturalisation after five years' residence;

(c) the model Colonial Ordinance provides (paragraph 6(d) of the Officials' Report) for deportation at the motion of the Executive of a child under 18. It seems better, however, where the initiative comes from a Court, to exempt all persons appearing to be under 17, who might be dealt with by a juvenile court, and this has been achieved by the opening words of Section 1 (3) of the Bill. If a person over that age seems to the Court to merit deportation, he has no strong claim to exemption from deportation merely because one of his parents has, for example, been resident more than five years in the United Kingdom.

16. The retention of a qualifying period of five years for exemption on grounds of residence or domicile will, however, unfortunately perpetuate an anomaly, since under Section 6 (1) of the British Nationality Act a citizen of a Commonwealth country or of the Irish Republic is entitled to be registered as a citizen of the United Kingdom and Colonies after only 12 months' residence here. Immigrants from, for instance, India and Pakistan, can therefore secure themselves immunity from deportation after one year's residence here by claiming registration as citizens of the United Kingdom and Colonies. However, the only way of rectifying this anomaly would be to amend the British Nationality Act, 1948, which would be bound to be controversial and could not in any event be undertaken without full consultation with all the Commonwealth countries. We are satisfied that in these circumstances the anomaly must be allowed to remain.

Conclusion

17. We invite the Cabinet to decide:

(i) Whether, subject to possible reconsideration after the views of Commonwealth Governments have been obtained, early legislation is to be introduced to provide powers to deport undesirable immigrants.

(ii) If not, whether a Bill should nevertheless be prepared but not introduced unless circumstances make it essential.

(iii) If a Bill is to be prepared, whether, subject to its consideration by the Legislation Committee, the attached draft is broadly suitable.

(iv) That the possibility of drawing up a comprehensive Immigration Bill, on the lines indicated in our earlier report (paragraphs 8 and 9(vi) of C. (58) 129), should be studied though not for introduction in the life of the present Parliament.

K.

Lord Chancellor's Department, S.W. 1,
Deportation of British Subjects from the United Kingdom

On the 8th September, 1958, the Cabinet (C.C. (58) 69th Conclusions, item 3) invited the Home Secretary—

(1) in consultation with other Ministers, to consider an approach to the Federal Government of the West Indies on the control of emigration from the West Indian territories, and

(2) in consultation with the Lord Chancellor, to give further consideration to the desirability of taking statutory powers to deport undesirable immigrants from other countries of the Commonwealth.

2. It is understood that action on (1) has now been taken. The following report deals with the second of these two issues and brings up to date the discussion of the practical questions involved. The questions which would need to be decided before legislation was introduced fall under the following headings:

(1) Arrangements with other Commonwealth (including Colonial) countries.
(2) Application to the Irish Republic.
(3) Registration under the British Nationality Act, 1948.
(4) Classes of persons to be regarded as not liable to deportation.
(5) The grounds on which deportation might be effected.
(6) Appeals against deportation.
(7) Re-entry of deported persons.

(1) Arrangements with other Commonwealth Countries

3. It would be necessary to consult Governments of other Commonwealth countries at an appropriate stage before legislation involving the deportation of British subjects not belonging to the United Kingdom is introduced. This would be desirable for two reasons:

First, an individual cannot be deported from this country unless there is some other country willing to receive him. We must therefore reach a general understanding with the Governments of other Commonwealth countries (and the Colonies) that they would agree to accept people who "belong" to them who may be deported from here. In spite of such general understanding, however, there might be difficulties in practice in deporting from this country citizens of the United Kingdom and Colonies even though they were also citizens of other Commonwealth countries.

Second, it would be prudent to ascertain, before introducing legislation, that there would be no untoward reactions from any Commonwealth Government. In this connection their own power to deport people belonging to this country is relevant. A summary of the powers of other Commonwealth Governments and the Government of the Irish Republic to deport British subjects is contained in Appendix A to this Report. It will be seen that these powers vary considerably from one Commonwealth country to another, ranging from fairly full powers in some Commonwealth countries such as South Africa, Ceylon, Ghana and the
Federation of Malaya to a virtual absence of any powers in New Zealand and complete absence in the Irish Republic. Moreover, in India and Pakistan, though the scope of the powers might look fairly wide on paper, it is understood that the legislation is not applied to persons belonging to the United Kingdom save in exceptional circumstances. It is possible, therefore, that legislation of the kind suggested in this country might encourage some Commonwealth Governments to take a leaf out of our book by either taking more extensive powers to deport United Kingdom citizens or by applying more widely powers they already possess. Moreover, the Government of India, even if it did not apply the existing deportation powers more rigorously against people from this country might retaliate—possibly under the pressure of public opinion by requiring United Kingdom citizens to submit to troublesome immigration controls or to register with the police. The Commonwealth Relations Office do not rate any of these dangers very high, but would like to consult United Kingdom High Commissioners quickly to ascertain whether they share this view.

(2) Application to the Irish Republic

4. An important question which would have to be decided is whether the suggested legislation should apply to citizens of the Irish Republic. While there are weighty practical reasons for excluding citizens of the Irish Republic from any general restriction on immigration, it would be difficult to justify the exemption of such citizens from a liability to deportation which applied to British subjects from Commonwealth countries. It must be recognised that if the Irish were included the result might be that orders would be made against more Irish than all British immigrants put together. There would be special difficulty in preventing the return from Ireland of citizens of the Republic, but in a lesser degree this problem applies to other territories (see paragraph 16 below). The possibility would also have to be faced that deportations from Northern Ireland to the Republic might create bad feeling in the Republic; but there should be sufficient safeguard in the fact that the power of deportation in such cases would be exercisable not by the Government of Northern Ireland but by the Secretary of State.

(3) Registration under the British Nationalities Act, 1948

5. A point of some difficulty is presented by section 6 (1) of the British Nationality Act, which entitles a citizen of any other Commonwealth country or of the Irish Republic to be registered as a citizen of the United Kingdom and Colonies after twelve months' residence here; under the law of most other Commonwealth countries such registration deprives such a person of his other citizenship and this would render him in practice immune from deportation. It would seem anomalous that immigrants from the Colonies should have to live here for seven years (see paragraph 6 below), before they could gain immunity from deportation, whereas immigrants from, for instance, India and Pakistan could secure themselves such practical immunity after only a year; and the anomaly is likely to become greater as more and more colonies achieve independence. On the other hand, it was part of the 1947 citizenship agreement that as much content as possible should be given to the common status of British subject and this country has always recommended to other Commonwealth countries that one way to do this is to make it much easier for citizens of one Commonwealth country to acquire citizenship of another than for aliens to be naturalised. It would be a retrograde step for the United Kingdom to require citizens of other Commonwealth countries to wait seven or even five years before they could acquire citizenship of the United Kingdom and Colonies. (Five years is the qualifying period for aliens.) Moreover many British subjects who are technically citizens of other Commonwealth countries (and particularly of the "old Dominions") but regard themselves as belonging to the United Kingdom would deeply resent the removal of the right to acquire United Kingdom citizenship soon after taking up residence here. The alternative of reserving to the Secretary of State discretion to register suitable immigrants after one year would be objectionable and difficult to administer, as it would put all applicants to the necessity of a police inquiry into their character. It may be thought better to put up with the anomaly than to include in the Bill an amendment of the British Nationality Act which would be bound to be controversial.
Exemptions from Liability to Deportation

6. It would be necessary to exempt from liability to deportation British subjects and citizens of the Irish Republic who “belong” to the United Kingdom. The Colonial Office has consistently recommended to colonial Governments that persons “belonging” to a territory should not be deported from it, and broadly speaking, if the lead given by the Colonial Office in their Model Colonial Ordinance was followed, a person would not be liable to deportation from the United Kingdom if he or she—

(a) was born in the United Kingdom or was born of parents who at the time of his or her birth were ordinarily resident here; or
(b) had been ordinarily resident or domiciled in the United Kingdom continuously for a period of seven years or more and had not since the end of that period been resident continuously for a period of seven years or more in any other part of the Commonwealth; or
(c) was naturalised in this country; or
(d) was the wife or minor child of a person falling within the foregoing classes.

7. There are factors which might suggest that the period of seven years during which a person would be liable to deportation is too long. In comparison with those other Commonwealth countries which have powers of deportation, the proposal might appear excessive—Australia and Canada, for example, are powerless to deport in many cases after five years—and the question of retaliation must be borne in mind. The United Kingdom is, moreover, a party to the European Convention on Social and Medical Assistance (Cmd. 9180) under which the contracting countries have agreed not to deport each other’s nationals on grounds of destitution after five years’ residence. On the other hand, strong reasons would be needed to justify the United Kingdom in departing from the period which it had recommended to the Colonies; and it is worth bearing in mind that large-scale colonial immigration into the United Kingdom started in 1952, so that many immigrants would be outside the scope of legislation from the outset if the period after which “immunity” from deportation is acquired is to be less than seven years. (There could hardly be a question of legislation having retrospective effect.)

8. We accordingly recommend that the exemptions should be defined as in paragraph 6 above.

Grounds for Deportation

9. The recent Cabinet conclusions referred simply to “undesirable immigrants.” The present Report, like that of 1954, considers “undesirability” under the three heads of person who—

(a) have been convicted of offences,
(b) are considered undesirable by executive decision, or
(c) are living on public funds.

Conviction of Offences

10. The strongest candidates for liability to deportation would undoubtedly be those persons who had been convicted of certain criminal offences. The Working Party does not consider it feasible to draw up a list of those offences, or penalties imposed, which would render a person liable. The most practical course would, it is suggested, be to follow in this respect the Aliens Order and allow the Secretary of State discretion to deport any non-exempted British subject or citizen of the Irish Republic who had been recommended for deportation by a court on conviction for an offence for which the court had power to impose a sentence of imprisonment or for certain defined offences relating to prostitution.

11. It is arguable that the Secretary of State ought not to be circumscribed by the necessity of a court recommendation, but should be free to order the deportation of any person convicted of such an offence as described. No doubt in

* A summary of the categories of person dealt with in the Model Ordinance and of the procedure in deportation from colonial territories is included as Appendix B to this Report.
some cases which would otherwise be thought to merit deportation the court will omit to make a recommendation; but the precedent of the Aliens Order stands, and it would be difficult to defend the wider alternative on the ground that the courts could not be trusted to make recommendations in suitable cases.

(b) Undesirability

12. Under the Aliens Order the Secretary of State has also power to deport any alien whose deportation he deems conducive to the public good. Apart from cases where deportation is used as the ultimate sanction to enforce a decision by the Secretary of State that an alien shall leave the country, deportations under this second heading fall mostly into the categories where the person is—

(1) a security risk, or
(2) a danger to public morals.

In dealing with aliens neither category has been found to be numerous in comparison with the total number of aliens deported: the security cases are rare; and there is often great difficulty in assembling a case against those who are thought to be offending but have escaped conviction. There is no reason to think that the position would be dissimilar if such a wide measure of discretion were to be employed against British subjects. The recommendation of the Working Party is that it is not worth attempting to proceed against those who have not been convicted by a court in the circumstances set out in paragraph 10 and whose deportation has not been recommended by a court.

(c) Dependence on Public Funds

13. Equally we do not recommend that dependence on public funds should be of itself a ground for deportation. The great majority of immigrants have come to the United Kingdom not to subsist upon public funds, but to work and support themselves. It would be difficult to justify deportation of any such person merely because, in effect, he had not found the opportunities he anticipated or had fallen sick and could not work. It is not the practice to deport aliens on the mere ground of dependence on public funds, and it would be indefensible to treat British subjects more severely than aliens. Where there is real culpability the National Assistance Act (Section 51) enables a court to impose a sentence of imprisonment on a person who persistently refuses or neglects to maintain himself or his dependants; such a person would, if recommended by a court, be liable to deportation on grounds of his conviction.

(6) Appeal Machinery

14. If the grounds for deportation were defined as suggested in the previous paragraph, no special appeal machinery would be necessary if the convicted person can appeal to a higher court against a recommendation for deportation just as he can do against sentence. So far as concerns England and Wales we understand that in indictable cases the sentence (against which any person convicted on indictment may appeal to the Court of Criminal Appeal with the leave of that Court) includes any recommendation of the court as to the making of an expulsion order (Criminal Appeal Act, 1907, Sections 3 and 21). So far as aliens are concerned, an appeal is in practice provided in most other cases by Article 20 (3) of the Aliens Order which provides that in any case in which a court has recommended deportation and there is appeal against conviction or sentence, if the higher court certifies that it does not concur in the recommendation for deportation, that recommendation shall have no effect. Since in England and Wales there is always an appeal from any sentence imposed by magistrates' courts, the enactment as regards British subjects of a provision parallel to this provision in the Aliens Order would provide for a judicial review of all recommendations for deportation except in those fairly infrequent cases where—

(a) the court of summary jurisdiction made a recommendation for deportation without imposing any sentence; or

(b) where the defendant did not wish to put his sentence in issue again, but only to appeal against the court of summary jurisdiction's recommendation for deportation.
If it were desired to cover all cases without exception, it would seem necessary to include in the Bill a provision enabling a recommendation for deportation to be appealed against to a higher court, whatever court made the recommendation and whether or not there was an appeal against sentence.

15. We understand the position in Scotland may need special consideration.

(7) Re-entry of Deported Persons

16. Under present arrangements and existing law it would be difficult to prevent a British subject or citizen of the Irish Republic, who had been deported, from re-entering the United Kingdom. The only complete safeguard would be to empower immigration officers at ports to examine all persons entering the country. Even if no attempt were made to control the Irish traffic, such a course would call for an increase in the complement of immigration officers if British travellers were not to be subjected to delays at the ports, and at some ports delays could not be avoided altogether.

17. A lesser safeguard, but one which, in the circumstances, might be thought acceptable, would lie in the following measures:—

(1) The overseas Government concerned would be told of a deportation and invited to take what measures it could to prevent the person's return.

(2) Power could be taken for the police to arrest and detain anyone found in the United Kingdom in contravention of an order. Such a person would be guilty of an offence and on conviction could be recommended again for deportation.

Summary

18. The Working Party accordingly recommends that any legislation authorising the deportation of British subjects should contain the following provisions:—

(1) Power to the Secretary of State to deport from the United Kingdom any British subject or citizen of the Irish Republic who is recommended for deportation by a court upon conviction of an offence for which a sentence of imprisonment could be imposed, or of an offence relating to prostitution.

(2) Exemption of any persons coming within the categories set out in paragraph 6 above.

(3) Power to the police to arrest and detain any person found in the United Kingdom in contravention of a deportation order.

(4) Penalties for contravention of deportation orders.

19. It may be considered that the balance of advantage lies against the inclusion of any of the following additional provisions:—

(a) Power to deport persons who are culpably dependent on public funds, other than those recommended on conviction under section 31 of the National Assistance Act.

(b) Power to deport persons whose deportation appears to the Secretary of State to be necessary for security reasons or otherwise conducive to the public good.

(c) Provision for independent review of cases under (a) or (b).

(d) Amendment of the registration provisions of the British Nationality Act, 1948.

(e) Powers to immigration officers to refuse leave to land to persons against whom deportation orders are in force and for this purpose to examine British subjects entering the country.

15th October, 1958.
APPENDIX A

POWERS OF OTHER COMMONWEALTH GOVERNMENTS AND OF THE GOVERNMENT OF THE IRISH REPUBLIC TO DEPORT BRITISH SUBJECTS

A.—Summary

(a) All Commonwealth Governments have powers to deport British subjects on security grounds.

(b) All except New Zealand and India have powers to deport British subjects convicted of criminal offences, prostitution, &c.

(c) All except Australia, New Zealand and India have powers to deport British subjects who become a charge on public funds.

(d) In the Irish Republic all British subjects are in practice exempted from such powers of deportation as the Government possesses.

B.—Individual Powers

1. Canada

The Canadian Government has power to deport anyone who is not a Canadian citizen and who has been engaged in subversive activities. They also have power to deport anyone who has not a Canadian domicile (which may be acquired after five years residence), who engages in prostitution or who lives on immoral earnings; who has been convicted of an offence under the Criminal Code; who is a public charge, a vagrant, a drug addict or suffers from medical disabilities affecting his ability to earn a living.

2. Australia

The Australian Government has power to deport an immigrant, within five years of his entry into Australia, who is convicted of an offence punishable with imprisonment of more than one year or is convicted of being a prostitute or of living on immoral earnings, or who has become an inmate of a public charitable institution or engages in subversive activities. (N.B. These powers may be affected by a Migration Bill which is now before Parliament.)

3. New Zealand

There are no powers in New Zealand to deport a British subject who has entered New Zealand legally except if he is disaffected, disloyal or likely to be a source of danger to the peace, order and good government of the country and has not been permanently resident in New Zealand for twelve months.

4. South Africa

The Union Government has powers to deport any person (with certain exceptions which include persons born in the Union before 1913 and certain persons born outside the Union of parents domiciled in the Union), who is “deemed on economic grounds or on account of standard of life to be unsuited to the requirements of the Union,” or is likely to become a public charge, or has been convicted of any offence and is deemed to be an undesirable inhabitant or is a prostitute, &c.

5. India

The Government of India has power to deport from India, without giving reasons, any person who is not a citizen of India, United Kingdom, Canada, Australia, New Zealand, Ceylon, Federation of Rhodesia and Nyasaland or the
Republic of Ireland, but even citizens of these countries may be deported if the Government of India is satisfied that it is necessary to do so in the interests of the defence or security of India, of friendly relations with any country outside India, or of the general public of India or any section thereof.

6 Pakistan

The Government has power to deport, without giving reasons, any person who is not a citizen of Pakistan. However, the Pakistan authorities have explained that it is intended to enforce application of this Act only to citizens of India. The Government may also make an order directing any person who is not a citizen of Pakistan who is likely to act in a way prejudicial to the public safety or the maintenance of public order to remove himself from Pakistan.

7. Ceylon

The Government of Ceylon has power to deport any person who is not a citizen of Ceylon, with certain exceptions (e.g., diplomats, &c.), who is deemed to be incapable of supporting himself and his dependants, is mentally defective or is a prostitute or lives on immoral earnings. There is also power to deport persons convicted of offences for which sentence of imprisonment has been passed and persons who should, in the opinion of the Government of Ceylon, be deported in the public interest.

8. Ghana

The Government of Ghana has power to deport anyone who is not a citizen of Ghana and who is convicted by a court which recommends deportation, or is found by a court to be destitute, mentally defective or is a prostitute or has been declared by the Governor-General to be a person whose presence in Ghana is not conducive to the public good.

9. Federation of Malaya

The Federation Government may deport any person who is not a Federal citizen, a British subject born in or ordinarily resident in Malaya or who has a status of a British subject by virtue of a certificate of naturalisation issued by the High Commissioner or the Governor of the Colony and who is unable to show that he has the means of supporting himself, is suffering from mental disorder or disease, has been convicted of an offence for which a sentence of imprisonment has been passed, is a prostitute or lives on immoral earnings, engages in seditious activities, or, in consequence of information received from any source deemed reliable, is considered to be an undesirable immigrant.

10. Federation of Rhodesia and Nyasaland

The Federal Government has the power to deport any person (including British subjects who have been resident in the Federation for less than seven years), who has been convicted of a serious offence and is deemed to be an undesirable inhabitant of the Federation.

11. Irish Republic

Citizens, subjects and nationals of the United Kingdom, Canada, Australia, New Zealand, South Africa and India are exempted from the application of the Aliens Order, 1946, which controls the entry, supervision and deportation of aliens. In practice, all Commonwealth citizens are exempted from the application of the Order.
APPENDIX B

COLONIAL DEPORTATION LAWS

In 1934 the Secretary of State for the Colonies commended to all colonial territories a model ordinance which was based on the findings of a Departmental Committee set up to report on the conditions which should govern the deportation of British subjects from colonies not possessing responsible government.

2. The general lines of the ordinance have been followed in many colonial territories including Jamaica, Trinidad, British Honduras, the Windward Islands, Singapore, Kenya, Sierra Leone, Cyprus, Mauritius and Nigeria.

Grounds for Deportation

3. In general, a deportation order may be made against a person who:—
   (1) has been convicted by a court of any offence punishable with imprisonment—otherwise than imprisonment imposed for non-payment of a fine—and has been recommended by the court for deportation;
   (2) has been conducting himself so as to be dangerous to peace, good order, good government or public morals;
   (3) is, or is likely to be, a charge on public funds by reason of mental or bodily health or insufficiency of means to support himself and his dependants; or
   (4) has entered the territory contrary to the provisions of an Immigration Ordinance, but has not thereby committed an offence under that Ordinance.

Exemption from Deportation

4. An order may not be made against a British subject who—
   (a) was born in the territory, or of parents who at the time of his birth were ordinarily resident there; or
   (b) has been ordinarily resident in the territory continuously for a period of 7 years or more and has not since the end of that period been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth; or
   (c) was naturalised in the territory; or
   (d) is the wife or minor child of a person falling within the foregoing classes.

Procedure

5. When the Governor-in-Council wishes to make an order, he serves a notice on the person charged, specifying the fact laid against him and the grounds on which it is proposed to proceed, and requiring him to show cause before a Judge why an order should not be made. The Judge hears the case and reports to the Governor, setting out his findings of fact and his conclusions on any question of law involved. If he thinks fit, the Judge may also make a recommendation on the decision to be taken. The final decision rests with the Governor-in-Council; and the judicial process which takes place before the decision is reached is not in any sense an appeal.

6. In those territories which have followed the model ordinance an order may not be made against any but comparatively recent arrivals without the consent of the Secretary of State.
7. In the Leeward Islands the Governor may expel British subjects who have been convicted of sedition or riot, or whose expulsion is in the interests of peace and good order. Orders may not be applied to British subjects domiciled in the territory or who have been resident there for 12 months. There is a right of appeal to the Supreme Court, whose decision is final.

8. In Barbados and British Guiana the Governor may deport an "undesirable" person if it appears to him expedient for the preservation of the peace and good order of the Colony; but this does not apply to a British subject who is domiciled in or who has been ordinarily resident in the territories for two years.

9. In Malta, the only power to deport a British subject lies in the authority of a magistrate who, on application by an Immigration Officer, and on certain conditions, may make an order that a prohibited immigrant be removed from the Island.
ARRANGEMENT OF CLAUSES

Clause
1. Power of court to recommend deportation.
2. Deportation orders.
3. Expenses.
4. Application to Northern Ireland.
5. Short title.

SCHEDULE:
Supplementary Provisions as to Recommendations and Deportation.
DRAFT OF A BILL

Confer power to deport from the United Kingdom persons from overseas, being Commonwealth citizens or British protected persons, and citizens of the Republic of Ireland, who have been convicted of certain offences and whose deportation has been recommended by the court; and for purposes connected with the matters aforesaid.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) Where a person to whom this section applies is convicted of any offence under—

(a) section forty-four of the Metropolitan Police Act, 1839, section thirty-five of the Town Police Clauses Act, 1847, section seventy-four of the Towns Improvement (Ireland) Act, 1854, or section nine or thirty-two of the Refreshment Houses Act, 1860 (which relate to the keeping of disorderly or unlicensed refreshment houses),

(b) paragraph 11 of section fifty-four of the Metropolitan Police Act, 1839, or paragraph (22) or (23) of section three hundred and eighty-one of the Burgh Police (Scotland) Act, 1892 (which relate to prostitution and soliciting) or the paragraph of section seventy-two of the Towns Improvement (Ireland) Act, 1854 which relates to common prostitutes and night walkers, or
A.D. 1959

(c) provisions of any local Act, byelaw or regulation, being provisions to the like effect as any of the foregoing enactments, or of any offence for which an offender may be sentenced to imprisonment, the court by or before which he is convicted, or any court to which his case is brought by way of appeal against conviction or sentence, may recommend that a deportation order be made in his case:

Provided that where his case is referred for sentence to a court other than the court by which he is convicted, the power to make a recommendation shall be exercisable by the court to which his case is referred and not by the court by which he is convicted.

(2) A recommendation under the foregoing subsection (hereinafter referred to as "a recommendation") shall be treated, for the purposes of the enactments relating to appeals, as an order made on conviction.

(3) This section applies to any person who has attained the age of seventeen, who is a Commonwealth citizen, citizen of the Republic of Ireland or British protected person and in whose case none of the following conditions is fulfilled, that is to say, that—

(a) he was born in the United Kingdom, or is the child of a father born in the United Kingdom or of parents either or both of whom were at the time of his birth ordinarily resident in the United Kingdom; or

(b) over a continuous period of five years he has been ordinarily resident in the United Kingdom and has not since the expiration of that period been ordinarily resident for a continuous period of five years in any one Commonwealth country outside the United Kingdom or in the Republic of Ireland; or

(c) he became a Commonwealth citizen by being naturalised in the United Kingdom; or

(d) in the case of a woman, she is the wife of a Commonwealth citizen, citizen of the Republic of Ireland or British protected person as to whom the condition specified in paragraph (a), (b) or (c) of this subsection is satisfied.

(4) In determining whether this section applies to any person, the country in which he or any other person was born, or ordinarily resident at any time, shall be ascertained by reference to the situation, at the time at which the question of making a recommendation arises, of the place of birth or residence.

(5) In paragraph (b) of subsection (3) of this section "Commonwealth country" means a country which is a member
of the Commonwealth or a colony, and includes any other territory for whose international relations a member of the Commonwealth is responsible; and for the purposes of that paragraph—

(a) any country for the time being mentioned in subsection (3) of section one of the British Nationality Act, 1948, or

(b) any two or more Commonwealth countries, not for the time being mentioned in the said subsection (3), for which one government is constituted,

shall be treated as one country.

(6) References in this section to the United Kingdom shall be deemed to include references to the Channel Islands and the Isle of Man.

(7) If under subsection (3) of this section any question arises as to the age, citizenship or status of a person convicted of such an offence as is mentioned in subsection (1) of this section, or as to the fulfilment in his case of any of the conditions specified in paragraph (a) to (d) of the said subsection (3), it shall rest on him to prove that he is or was not a person to whom this Act applies; and the validity of a recommendation shall not be called in question except on an appeal against the recommendation or the conviction in consequence of which it was made.

2.—(1) Where a recommendation has been made and—

(a) the time for bringing an appeal against the recommendation or the conviction in consequence of which it was made has expired without such an appeal having been brought, or

(b) such an appeal has been brought and finally determined otherwise than by the quashing of the recommendation or conviction, or

(c) the recommendation was made on appeal and no further appeal lies,

the Secretary of State may, if he thinks fit make a deportation order, that is to say an order that the person to whom it relates shall leave the United Kingdom and not return thereto so long as the deportation order is in force.

(2) The Secretary of State may at any time, if he thinks fit, revoke a deportation order.

(3) The provisions of the Schedule to this Act shall have effect as to persons in whose case recommendations or deportation orders have been made.

(4) If a person against whom a deportation order is in force, and who after the coming into force of the order has left the...
A.D. 1959

United Kingdom or has been placed on board a ship or aircraft in pursuance of the provisions of the Schedule to this Act, is found in the United Kingdom he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or imprisonment for a term not exceeding six months.

(5) On a conviction of an offence under the foregoing subsection the deportation order shall cease to have effect, but without prejudice to the power to make a recommendation in respect of that offence.

(6) If any person knowingly harbours any person whom he knows or has reasonable grounds for believing to have committed an offence under subsection (4) of this section, he shall be guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred pounds or imprisonment for a term not exceeding six months.

(7) For the purpose of the trial of a person for any offence under this section the offence shall be deemed to have been committed either at the place at which it actually was committed or at any place at which the offender may be.

(8) A constable may arrest without warrant any person whom he has reasonable grounds to believe to have committed an offence under subsection (4) of this section.

(9) Every document purporting—

(a) to be a deportation order made under this Act by the Secretary of State, and to be signed by him, or

(b) to be any other order, or any authority or direction, made or given under this Act by or on behalf of the Secretary of State, and to be signed by him or by a person acting on his behalf,

shall be received in evidence and shall, until the contrary is proved, be deemed to be an order, direction or authority made or given as aforesaid; and prima facie evidence of any such order, direction or authority may in any legal proceedings be given by the production of a document bearing a certificate purporting to be signed on behalf of the Secretary of State and stating that the document is a true copy.

Expenses.

3. Any expenses of the Secretary of State incurred in pursuance of this Act shall be defrayed out of moneys provided by Parliament.

Application to Northern Ireland.

4.—(1) The following provisions shall have effect for the application of this Act to Northern Ireland.
(2) References to a constable shall be construed as including references to an officer or member of the Royal Ulster Constabulary.

(3) Any reference to an Act, byelaw or regulation shall include a reference to an Act, byelaw or regulation having effect as part of the law of Northern Ireland; and any reference to any enactment so having effect shall include a reference to the corresponding provision of any Act of the Parliament of Northern Ireland repealing that enactment and re-enacting it with or without modifications.

5.—(1) This Act may be cited as the Deportation Act, 1959. Short title.

(2) This Act shall come into operation on the expiration of the period of one month beginning with the date of the passing thereof.
SCHEDULE
SUPPLEMENTARY PROVISIONS AS TO RECOMMENDATIONS AND DEPORTATION

1.—(1) Where a recommendation has been made in respect of a person and has not ceased to have effect, he shall (unless the court, in a case where he is not sentenced to imprisonment, otherwise directs) be detained until the Secretary of State makes a deportation order in his case or directs him to be released.

(2) Where a recommendation has effect as respects any person, but no deportation order has been made in his case, the Secretary of State may by order impose on him restrictions as to residence and requirements as to reporting to the police as respects any time during which he is not being detained; and if he contravenes or fails to comply with the restrictions or requirements he shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months.

(3) Any direction given by the court as respects any person under sub-paragraph (1) of this paragraph shall cease to have effect on his conviction of an offence under the foregoing sub-paragraph.

(4) Any order under sub-paragraph (2) of this paragraph shall cease to have effect if the person to whom it relates is detained, whether under the sentence of a court or otherwise.

(5) Any order under sub-paragraph (2) of this paragraph may be varied or revoked by a subsequent order thereunder.

2.—(1) A person against whom a deportation order is in force may be placed, under the authority of the Secretary of State, on board any ship or aircraft which is about to leave the United Kingdom; and the master of the ship or commander of the aircraft shall, if so required by a person acting under the authority of the Secretary of State, take such steps as may be necessary for preventing the first-mentioned person from landing from the ship or aircraft before it leaves the United Kingdom, and may for that purpose detain him in custody on board the ship or aircraft.

(2) The Secretary of State or any person acting under his authority may give directions to the master of any ship or commander of any aircraft which is about to leave the United Kingdom, requiring him to afford to any person against whom a deportation order is in force, and to his dependants (if any), a passage to any port specified in the directions (being a port at which the ship or aircraft is to call in the course of its voyage) and proper accommodation and maintenance during the passage.

3.—(1) A person against whom a deportation order is in force may be detained, under the authority of the Secretary of State, until he is dealt with under the foregoing paragraph.

(2) A person liable to be detained under this paragraph may be arrested without warrant by a constable.

(3) A person detained under this paragraph shall be detained in such place as may be prescribed by order of the Secretary of State, and shall, while so detained, be deemed to be in legal custody.
4.—(1) Where a person is detained under the foregoing paragraph, any constable or prison officer, or any other person acting under the authority of the Secretary of State, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying the said person.

(2) A person who is so detained may be taken in the custody of a constable to and from any place where his attendance is required for the purpose of ascertaining to what country he is to be deported or of making arrangements for his admission to that country.

5.—(1) The Secretary of State may by order impose on a person against whom a deportation order is in force, but who is not detained under paragraph 3 of this Schedule, restrictions as to residence and requirements as to reporting to the police.

(2) An order under this paragraph may be varied or revoked by a subsequent order, and shall cease to have effect if the person to whom it relates is detained under paragraph 3 of this Schedule.

6. The Secretary of State may, if he thinks fit, apply any money or property belonging to a person against whom a deportation order is in force in payment of the whole or any part of the expenses of or incidental to the voyage from the United Kingdom and the maintenance until departure of the said person and his dependants (if any).
SECRET

Deportation

DRAFT

OF A

BILL

To confer power to deport from the United Kingdom persons from overseas, being Commonwealth citizens or British protected persons, and citizens of the Republic of Ireland, who have been convicted of certain offences and whose deportation has been recommended by the court; and for purposes connected with the matters aforesaid.

X—A (4)

20th January, 1959

24—4