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From: THE PRIVATE SECRETARY



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

25 October 1982

Dear Turk,

SELECT COMMITTEE ON HOME AFFAIRS

As you will know, the Select Committee on Home Affairs is currently inquiring into various aspects of electoral law including the rights of non-British citizens to vote in the United Kingdom.

I enclose a copy of evidence which the Home Secretary proposes to submit to the Select Committee on "The Right to Vote: Nationality Qualifications" and on which he would be grateful for the Prime Minister's and other colleagues' agreement by 28 October. The paper has been discussed and agreed with officials in the FCO., NIO., and Scottish Office.

Copies of this letter go to the Private Secretaries to the Secretaries of State for Foreign and Commonwealth Affairs, Northern Ireland and Scotland and the Private Secretaries to the Lord President and Chief Whip.

Yours sincerely,

Lesley Pallett.

MRS L PALLETT

T. Flesher, Esq.,

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10, DOWNING STREET

Dear Mrs. Lesley Pallett

23 October, 1982

Thank you for your letter of 25 October enclosing the evidence which the Home Secretary proposes to submit to the Select Committee on Home Affairs on nationality qualifications for the rights to vote. The Prime Minister agrees that this may be submitted. I am sending a copy of this to John Holmes (Foreign and Commonwealth Office), John Lyon (Northern Ireland Office), Muir Russell (Scottish Office), David Heyhoe (Lord President's Office) and Murdo Maclean (Chief Whip's Office).

TIMOTHY FLESHER

Mrs. Lesley Pallett,
Home Office

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THE RIGHT TO VOTE : NATIONALITY QUALIFICATIONS

Draft Memorandum

The right to vote is one of a number of civic right and obligations, including membership of the House of Commons, local authorities, the armed forces and the civil service, which are shared by citizens of the United Kingdom and Colonies, citizens of other Commonwealth countries, British subjects under section 2 of the British Nationality Act 1948^o, British subjects without citizenship and citizens of the Republic of Ireland, all of whom may vote in parliamentary and European Parliament elections provided they are of age, satisfy the appropriate residence qualification and do not suffer from any legal incapacity. The right to vote carries with it the obligation of jury service.

2. The fact that the right to vote is extended to both citizens of the United Kingdom and Colonies and to the citizens of many sovereign and independent countries is a product of Britain's imperial past and a reflection of the changing nature of the Commonwealth. Citizens of the United Kingdom and Colonies can vote at elections in a number of other Commonwealth countries, including Australia, New Zealand and (at some elections) Canada and the Republic of Ireland. A full list of the Commonwealth countries in which all British subjects may vote is given at Annex A.

3. Before 1914 the common law status of British subject was enjoyed, broadly speaking, by anyone born within the dominions, ^{of owing} and allegiance to the Crown. A man had to be a British subject to be able to vote; but in practice the determining factor was the need to satisfy one of a number of property and other qualifications. When the last of these property franchises were abolished in 1918, they were replaced with a simple residence or occupation qualification which survives in more or less the same form to the present day. The residence qualification ensures that although

* see paragraph 6 below.

a person cannot vote in a constituency where he has no connections, it is relatively simple for someone who is qualified through nationality to acquire the vote once he is resident in a particular area.

4. In 1914 the British Nationality and Status of Aliens Act gave statutory effect to the common law rule. The Act did not attempt to codify the rights and privileges of British subjects; but it did list the disabilities of aliens, who were barred from public office, from voting at parliamentary and municipal elections and from holding real property in the Colonies. They were subsequently required to register with the police. Aliens were already disqualified from membership of the House of Commons by the Act of Settlement. The 1914 Act was intended to provide the basis for a common nationality status throughout the Empire and the Dominions; and although the Dominions might go on to create their own local citizenships, they were not expected to confer citizenship on anyone who was not already a British subject.

5. These provisions continued in force until 1948. By then, it had become clear that the 1914 Act no longer provided a satisfactory framework for the development of a Commonwealth citizenship. The British Nationality Act 1948, which was drafted after consultations between the members of the Commonwealth, was intended to replace the common nationality of the 1914 Act with a new system of reciprocal citizenship. It introduced a citizenship of the United Kingdom and Colonies, and the holders of this citizenship and of other citizenships created by the independent countries of the Commonwealth in their own legislation were all to continue to be called "British subject". Each member of the Commonwealth would confer on citizens of the other Commonwealth countries the rights and privileges available to its own citizens. In this way citizens of the United Kingdom and Colonies came to share the right to vote in UK elections and other civic rights with citizens not only of countries like Australia and New Zealand where The Queen is the Head of State but also of other Commonwealth countries such as India and the African republics which acknowledge the Crown only as Head of the Commonwealth.

6. Irish citizens have the right to vote by virtue of the Ireland Act 1949. When the south of Ireland was constituted as a Free State within the Commonwealth in 1922, people from both the north and south of Ireland continued to enjoy the status of British subject. But the policy of external association which the Irish government adopted in 1936 made its precise relationship with the Commonwealth uncertain, and Irish citizens were regarded as British subjects throughout the Commonwealth but not in the south of Ireland itself. The British Nationality Act 1948 resolved this problem by providing that although Irish citizens were no longer to be regarded as British subjects they would for all purposes be treated as such, and section 2 of that Act gave Irish citizens born before 1948 the right to retain British nationality if at any time they gave notice in writing to the Home Secretary claiming to be a British subject on certain grounds. When the former Free State severed its last formal ties with the Crown and declared itself a Republic at Easter 1949, it was decided that this change of status should not affect the Republic's relationship with the Commonwealth or the position of Irish citizens within it, including their privileged status under the British Nationality Act; and Parliament accordingly passed the Ireland Act, which declares that the Republic of Ireland is not a foreign country and that citizens of the Republic are not aliens. Similar provisions were made in other Commonwealth countries (a full list is at Annex B), and the arrangements were reciprocated by the Irish government, which made an Order in 1949 providing that citizens of the United Kingdom and Colonies should enjoy in Ireland similar rights and privileges, subject to law, to those enjoyed by Irish citizens in the United Kingdom (but see paragraph 7 below).

7. The provisions of the Representation of the People Act 1949, which expressly confer the right to vote on both British subjects and citizens of the Republic of Ireland, consolidated the existing provisions of electoral law as applied by the British Nationality Act. The Irish government has power under its Nationality and Citizenship Act 1956 to offer citizens of a country similar citizenship rights in the Republic to those enjoyed by Irish citizens in the country in question, but an

attempt to use this power to give British citizens the vote might be considered unconstitutional and be challenged before the Supreme Court. At their meeting in December 1980, the Taoiseach told the Prime Minister that following examination of the constitutional, legal and other aspects of the matter he was prepared to present proposals to effect an extension of the Irish franchise to permit UK citizens to vote at elections to the Dail. The Irish Minister of Foreign Affairs told the Dail in a written answer on 15 July 1982 that draft legislation was being examined as a matter of urgency, and that the intention was to proceed as quickly as possible. At present citizens of the UK and Colonies resident in the Republic may vote in local and European elections but not elections to the Dail, Presidential elections or referendums to amend the constitution. Those born in the UK are exempt from the requirements of Orders controlling Aliens made under the Irish Aliens Act 1935.

8. During the passage of the Ireland Act the then Prime Minister, Mr Attlee, told the House of Commons that its provisions reflected "our propinquity to Eire, the longstanding relations between our peoples and the practical difficulties that flow from any attempt to treat Eire as altogether a foreign country". During the Second World War many Irish citizens settled in this country and many came across from what is now the Republic of Ireland to volunteer. When conscription was in force those settled here were conscripted; and many Irish, both those settled in the UK and from the Republic, still volunteer to serve in the armed forces. Furthermore, many Irish people, women in particular, came to the United Kingdom to work in the immediate post-war years. The 1951 census recorded that there were some 530,000 people born in what is now the Republic of Ireland resident in Great Britain at that time. The figures have remained fairly constant over the succeeding 30 years, and the 1981 Labour Force Survey estimated that there were then about 576,000 people born in the south of Ireland resident here, including about 450,000 of voting age. Many of them, however, possess citizenship of the United Kingdom and Colonies as well as Irish citizenship, and others will have a right to acquire it

through registration on the basis of continuous ordinary residence here since 1973, or, in the case of a woman, marriage to a citizen of the United Kingdom and Colonies. Over 150,000 Irish citizens have so far made claims under section 2 of the 1948 Act; and over 15,000 have been registered as citizens of the United Kingdom and Colonies.

9. The number of citizens from other parts of the Commonwealth resident here in 1951 was 375,000. There are now (1981 Labour Force survey) 1,600,000 from Commonwealth countries and Pakistan. While 109,000 of these are from the old Commonwealth, the majority come from the former dependent territories that have achieved independence since 1951. Many of these 1,600,000 may already be citizens of the UK and Colonies; others have the right to become such through marriage or registration. About 334,000 Commonwealth citizens and 112,000 citizens of Pakistan have so far been registered as citizens of the UK and Colonies. Certain Commonwealth countries, notably India, do not recognize dual nationality, and an Indian who has acquired citizenship of the UK and Colonies will have lost his Indian citizenship.

10. A further dimension to the status of Irish citizens resident here, and that of citizens of the United Kingdom and Colonies in the Republic, is added by common membership of the European Community. Membership of the Community provides the basis on which employment and social rights are guaranteed to Community nationals in both the United Kingdom and the Republic, and the Community has succeeded the Commonwealth as the framework for privileged trading arrangements between the two countries. Citizens of the United Kingdom and Colonies can vote with other Community nationals at European Parliament elections in the Republic and with all other residents irrespective of nationality at local elections. In the Community itself,

a working group on special rights is examining the possibility of giving all Community nationals the vote at local elections in their country of residence; and the Council of Ministers is examining proposals for a uniform electoral procedure for European Parliament elections which may involve Member States in greater reciprocity of voting rights. It seems inevitable that the nationality qualifications for elections in the Community will come to be relaxed rather than tightened up.

11. In January 1983, when the British Nationality Act 1981 comes into force, the system inaugurated by the 1948 Act will be replaced by a new one based on a new British citizenship. Under the new Act, the term "British subject" will no longer cover all Commonwealth citizens but will cover only three residual categories.

(including the Irish citizens who claim British subject status under section 2 of the 1948 Act and its 1981 Act equivalent). The Act will not, ~~therefore~~, affect the possession of civic rights and privileges such as the right to vote, and all those Commonwealth citizens who enjoy these rights and privileges by virtue of their present status as British subjects will continue to do so when the Act comes into force. Citizens of the Irish Republic will continue to enjoy these rights by virtue of their status under the Ireland Act. During the passage of the Nationality Act the Government repeatedly gave assurances that although the Act provided a framework through which rights and privileges might be accorded in the future, the Act itself would not be used to effect changes in existing civic rights; and it remains the Government's view that the existence of a separate British citizenship is not in itself sufficient justification for the redefinition of existing civic rights.

Home Office

LONDON SW1

September 1982

The right to vote is given to all British subjects in the following Commonwealth countries:

Antigua and Barbuda

Australia

Barbados

Canada

Dominica

Grenada

Guyana

Jamaica

Mauritius

New Zealand

St Lucia

St Vincent

Sierra Leone

Trinidad and Tobago

The following Commonwealth countries do not treat Irish citizens as aliens for some or all purposes:

Australia
Barbados
Belize
Canada*
Dominica
Gambia
Grenada
Guyana
Jamaica
Malaysia
Malta
New Zealand *
Nigeria
St Lucia
St Vincent
Sierra Leone
Singapore
Solomon Islands
Swaziland
Tanzania
Trinidad and Tobago

* in these countries the relevant legislation includes the right to vote.

(It may also be possible for Irish citizens to vote in some other Commonwealth countries.)