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CABINET
DEFENCE & OVERSEA POLICY COMMITTEE

PAPUA NEW GUINEA, WESTERN SAMOA AND NAURU
(MISCELLANEOUS PROVISIONS) BILL

Memorandum by the Secretary of State for Foreign and Commonwealth Affairs

1. I seek approval out of Committee for the introduction of a Bill containing consequential amendments to United Kingdom legislation as a result of the independence of Papua New Guinea, Western Samoa and Nauru, and their becoming members of the Commonwealth. The proposed contents of the Bill are set out in the attached annex.
2. When a British colony achieves independence and membership of the Commonwealth, the Independence Act includes consequential amendments to or repeals of United Kingdom legislation to place the new State on the same footing as other Commonwealth members. When a colony or trust territory has been under the administration of another member of the Commonwealth and has been brought to independence by that State, separate legislation in the United Kingdom is necessary to achieve the same purpose.
3. Papua New Guinea became independent on 16 September 1975 by the authority of the Australian Parliament, and became a member of the Commonwealth on the same date. It is desirable to amend the relevant United Kingdom legislation as soon as practicable. We should also take the opportunity to regularise the position of Western Samoa which was granted independence by the New Zealand

/Parliament

Parliament in 1962 and achieved full membership of the Commonwealth in August 1970, and of Nauru which was granted independence by the Australian Parliament in 1968 and achieved special membership of the Commonwealth later that year. Because it has not been essential consequential legislation with one minor exception has not so far been introduced for Western Samoa or Nauru.

4. Until Papua New Guinea, Western Samoa and Nauru are designated members of the Commonwealth for purposes of the British Nationality Acts they are foreign countries in that context, and their citizens are aliens in UK law. The national status of a child born there to a father who is a citizen of the UK and Colonies can be affected. This is of particular significance in Papua New Guinea where there is a large British community. Accordingly there will be a clause in the Bill which adds the three countries to the list of Commonwealth countries in the British Nationality Acts. It has not been possible, however, to follow the obvious course of back-dating to the date of Commonwealth membership of each of the three countries. Retrospective provision would cause confusion by altering the status of citizens of the three countries as already applied under existing immigration laws and in other spheres (for example, leave of entry to the UK given under the Aliens Order 1953 would no longer be valid for a person who became retroactively a Commonwealth citizen).

5. All the proposed amendments follow a well-established pattern. The Bill will be short and non-controversial and could be a candidate for the Second Reading Committee procedure. Because the nationality amendment should come into effect as soon as practicable, the Bill should be introduced during the earliest convenient gap in the parliamentary timetable. Interested departments have been consulted.

6. If I do not hear from other members of the Committee by 12 October, I shall assume agreement and shall proceed with arrangements for settling the drafting of the Bill.

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Foreign and Commonwealth Office
3 October 1979

SECRET

PROPOSED CONTENTS OF THE PAPUA NEW GUINEA, WESTERN SAMOA
AND NAURU (MISCELLANEOUS PROVISIONS) BILL

1. The Bill should extend certain enactments, listed below, to include Papua New Guinea, Western Samoa and Nauru amongst the Commonwealth countries with fully responsible status. These enactments will have no effect on the laws of Papua New Guinea, Western Samoa or Nauru.
 - i) Section 1(3) of the British Nationality Act 1948 (BNA) lists Commonwealth countries with separate citizenships to which should be added Papua New Guinea, Western Samoa and Nauru.
 - ii) Provision should be made so that births and deaths occurring in Papua New Guinea at any time even between independence and Royal Assent to the Bill are registered in High Commission registers (Section 29 BNA 1948 as extended by Section 4 BNA 1948).
 - iii) Papua, formerly a colony, should now be excluded from the definition of Australia in Section 32(1) of the BNA. This amendment does not apply to New Guinea, Western Samoa and Nauru which were formerly trust territories and are not mentioned by name in the BNA 1948. The provision in the Bill should reflect the current administrative practice under which Papua has been treated as having been excluded from Section 32(1) as from 16 September 1975.
 - iv) The various visiting forces, service discipline and related Acts are to be amended to make provisions for Forces raised in Papua New Guinea, Western Samoa and Nauru similar to those which apply in relation to Forces raised in other Commonwealth countries.
 - v) The Imperial Institute Act 1925 is to be amended to include Papua New Guinea, Western Samoa and Nauru as countries contributing towards the expenses of the Commonwealth Institute.

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2. Because Papua was a British colony from 1898 until 1905 and thereafter an Australian colony, British merchant shipping legislation applied in Papua New Guinea as a whole until its independence in 1975. For the avoidance of doubt, references to Papua must now be excluded from the interpretation of certain UK shipping legislation which will cease to have effect on the laws of Papua New Guinea; legislation includes the Merchant Shipping Act 1894 (Sections 735 and 736, and Section 427(2)), the Colonial Courts of Admiralty Act 1890 and the Whaling Industry (Regulation) Act 1934. For a similar reason provision for Papua New Guinea only is also required in respect of the Colonial Laws Validity Act 1865.

3. The Bill should contain clauses which indicate the short title of the Act and the date on which its provisions become operative.