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ARTICLE

'Penniless Orientals of the Pedlar Type': The Republic of Ireland and Commonwealth Migrant Rights, 1940s–1970s

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Especially as regards Commonwealth restrictions, Ireland's immigration policy has been seen as (surreptitiously) dependent on UK policy. Although the Common Travel Area imposed serious limits, Irish discretion was in fact significant and restrictive. In 1948–9 the United Kingdom secured Ireland's public commitment to extend reciprocal citizenship rights to all the Commonwealth, notwithstanding its secession, but Ireland avoided this vis-à-vis the 'new' Commonwealth and left its aliens exemption law deliberately opaque. Whilst broadly mirroring the UK Commonwealth Immigrants Act 1962, Ireland retained apartheid South Africa as partially privileged and only comprehensively exempted British citizens born within the United Kingdom. From 1973, the United Kingdom largely abandoned any privileged treatment but, in entirely removing this in 1975 and selectively imposing visas from 1976, Ireland went beyond even this. These divergences reflected that, compared to the United Kingdom, it had left an increasingly diverse Commonwealth in 1949 and had a stronger homogenous nationalism.

Introduction

Notwithstanding its legal separation in 1922, pre-Brexit Irish immigration policy has been understood to have been profoundly but also unequally and somewhat surreptitiously shaped by UK immigration policy. Thus, Bernard Ryan explicates how the contours of the British-Irish Common Travel Area as re-established after the Second World War in 1952 was predicated on the United Kingdom and Ireland agreeing to 'follow a similar immigration policy'.[1] Ryan further argues that whereas '[e]xplicit provision for enforcement of Irish policy has been rare in British law', Irish immigration law has 'frequently reflected the influence of British policy'.[2] He also claims that 'perhaps the most notorious example' of the latter was 'the extension of Irish immigration law to citizens of Commonwealth states in 1962'.[3] The strong coordination is said to flow from the importance, not least as a result of the porous Irish-Northern Irish border, of the Common Travel Area, whereas Ireland's imperative to mirror British restrictions is related to size disparities, especially as regards in-migration (which has been significant in the United Kingdom but, by comparison, extremely low in Ireland until the 1990s). Finally, limited transparency as regards these outcomes is traced to a demand by Irish officials for no publicity[4] which, in turn, can be related to their concern to avoid accusations of undue, or even 'neo-colonial', influence.

[1] Bernard Ryan, 'The Common Travel Area between Britain and Ireland', *Modern Law Review* 64, 6 (2001), 858 (quoting Geoffrey de Freitas, Under-Secretary of State for the Home Department, House of Commons *Debates*, 28 July 1950, col 847).
[2] Ibid., 865.
[3] Ibid., 865.
[4] Ibid., 858–9.

The essential contours of this mainstream understanding are not only theoretically plausible but the empirics cited by Ryan (and others[5]) are often convincing. Nevertheless, as will be explored here primarily through a close analysis of Irish, British and Australian archival material, this perspective is far from complete. In particular, it masks the rather concealed but significant agency which Ireland retained even as regards Commonwealth migrant rights, the way it used this to achieve more restrictive and selective outcomes and how pressure to harmonise with British policy sometimes pushed Ireland towards a more liberal result. When Ireland declared itself a republic and left the Commonwealth in 1948–9, it publicly agreed,[6] following British pressure,[7] to offer reciprocal citizenship rights to all Commonwealth countries and to secure such rights within statute. Whilst never elevated to statute and largely symbolic, over the next two years Ireland adopted reciprocal citizenship rights orders applicable to every 'old' Commonwealth country and, more importantly, maintained their exclusion from ordinary aliens control. In contrast, despite India, Ceylon and Pakistan ostensibly signalling interest in reciprocal rights, Ireland avoided making any further rights orders and, most significantly, did not amend its aliens exemption law to clearly cover these states, other new Commonwealth members or indeed individuals connected to UK colonies, as opposed to the United Kingdom itself. Under UK influence, Ireland adopted a revised immigration order alongside the UK Commonwealth Immigrants Act 1962. Paradoxically, this resulted in the republic committing in law to extending, albeit now severely limited, preferential immigration treatment to all Commonwealth nationals for the first time. However, despite it having been pressured to exit the Commonwealth the previous year, it also granted South Africa the same treatment and, most consequentially, only extended comprehensive aliens exemption to Citizens of the United Kingdom and Colonies who were 'born in Great Britain or Northern Ireland'.[8] Following the coming into force of the UK Immigration Act 1971 but similarly going beyond it, in 1975 Ireland enacted a new immigration order[9] which removed all preferential treatment for Commonwealth citizens, and in 1976 began requiring visas even for short-term tourism for citizens of newly independent Commonwealth countries.[10] However, curiously, the 'old' Commonwealth citizenship rights orders were retained (and anachronistically remain in place today). Ireland's long-standing migration ties also prompted Australia to unilaterally establish a youth 'working holiday' scheme for Irish citizens in 1975, which was maintained despite no effective reciprocation until at least the later 1980s.[11]

Ireland's track-record demonstrates that, notwithstanding its ostensibly open pledge in 1948–9, it proved even keener than the United Kingdom to prioritise migration from countries with which it shared strong ethnic and religious ties and, most especially, to inhibit significant permanent migration from the Global South, notwithstanding that this was practically non-existent. The record also highlights specific consideration being given to Irish missionaries. These particularities appear reflective of the greater strength of a religiously, ethnically and even racially homogenous nationalism in Ireland and that, whereas the United Kingdom was the leading founder, and remained a central member, of an increasingly diverse (and divided) Commonwealth, it had formally left this group in 1949.

[5] See, for example, Graham Butler and Gavin Barrett, 'Europe's "Other" Open-Border Zone: The Common Travel Area under the Shadow of Brexit', *Cambridge Yearbook of European Legal Studies* 20 (2018), 258–9.

[6] See John Costello (Taoiseach), *Dáil Debates*, 113, 3, 24 Nov. 1948.

[7] See Meeting, 16 Nov. 1948, TNA CAB 1/46, C P. (48) 272 (Annex B) (noting intervention of the UK Lord Chancellor Viscount Jowitt).

[8] Aliens (Amendment) Order 1962/12, para. 3. This specific restriction is briefly mentioned, but not analysed, at Ryan, 'Common', 865).

[9] Aliens (Amendment) Order 1975/128.

[10] Ryan, 'Common', 866–7.

[11] See 'Review of Working Holiday Maker Arrangements' (June 1985) in NAA A 446 1985/77278. Today, Ireland has broadly reciprocal youth mobility arrangements not only with Australia but also with nine other advanced industrialised economies. See Ireland, Citizens Information, 'Working Holiday Visas for Irish Citizens', n.d., available at https://www.citizensinformation.ie/en/moving_country/moving_abroad/working_abroad/working_holidays_for_irish_citizens.html (last visited March 2025).

The rest of the article is organised into seven further sections. Whilst the focus is principally on developments from 1948, the section immediately following explores the extensive background which preceded this. Section three then analyses the political agreement on citizenship rights which was fashioned during Ireland's Commonwealth exit and how it was applied to the 'old' Commonwealth between 1948 and 1961. The next section looks at the very different approach taken to 'new' Commonwealth members. The fifth section explores the Irish reaction to the UK Commonwealth Immigrants Act 1962, whilst the following section focuses on its response to the UK Immigration Act 1971. The penultimate section provides an overarching analysis of the described outcomes, followed by a brief conclusion.

Background and Transformations, 1917–1948

The first official recognition of the Commonwealth traces to Resolution IX of the Imperial War Conference in 1917, which called for a readjustment of constitutional relations within the British Empire 'based on a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and India as an important portion of the same'.[12] Despite the desire to include India, which was newly represented in the Imperial Conference (and also the League of Nations), this jurisdiction would only attain self-government after the Second World War. For the other conference members, the resolution represented an ongoing attempt to reconcile autonomy with common allegiance to the Crown.[13] Allegiance was understood to entail the common status of British subject, which was encapsulated in a code designed to be largely identical across the United Kingdom and the Dominions.[14] This common code was not immediately displaced by the Statute of Westminster 1931, which recognised the right[15] of the Dominions to full legislative autonomy. Indeed, the Imperial Conference 1930 recorded that, if any changes were desired, 'provision should be made for the maintenance of the common status, and the changes should only be introduced (in accordance with present practice) after consultation and agreement among the several Members of the Commonwealth'.[16] Nevertheless, alongside this common status, it was accepted at least by the 1880s that growing autonomy entailed a right to self-determine 'electoral and immigration laws'[17] and thereby delineate a *de facto* local citizenship. Only the United Kingdom, Newfoundland and Ireland itself declined to thereby impose legal restrictions on Empire-Commonwealth migration,[18] with all the other Dominions as well as certain UK colonies (and protectorates) adopting highly discriminatory legislation which generally prevented significant permanent immigration from Asia.[19]

[12] Imperial War Conference, *Extracts from Minutes of Proceedings and Papers Laid Before the Conference* (London: HMSO, 2017), 5.

[13] An earlier instantiation of this was the agreement in 1907 to style the members of the conference (other than the UK itself) as dominions rather than colonies, a change which created the imperial as opposed to colonial conference.

[14] See British Nationality and Citizenship Act 1914, s. 9, which only exempted the dominions from that part of the act dealing with the naturalisation of aliens.

[15] In the case of Canada, the Irish Free State and South Africa, this autonomy applied immediately, but in other cases it depended on dominion parliament adoption, which did not take place in Australia until 1942 and in New Zealand until 1947. In addition, sections 7 to 9 of the act contained certain constitutional savings in the case of Canada, Australia and New Zealand.

[16] Imperial Conference, *Summary of Proceedings* (London: HMSO, 1930), 22.

[17] Nicholas Mansergh, *The Commonwealth Experience Volume Two, From British to Multiracial Commonwealth* (London: Macmillan, 1982), 136.

[18] Hugh Tinker, *Separate and Unequal: India and the Indians in the British Commonwealth, 1920–1950* (London: Hirst, 1976), 37.

[19] Protests in this regard, principally by India, were repeatedly raised at imperial conferences from 1897 onwards, but this resulted only in essentially symbolic change such as agreement by Australia to substitute an expressly racial immigration policy with a *de facto* discriminatory language test (Duncan Hall, *The British Commonwealth of Nations* (London: Methuen, 1920), 139). India responded by developing a 'retaliatory nationality policy' (Clive Parry, *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland* (London: Stevens, 1957), 85). Finally, by the late 1930s there were widening areas of controversy arising, in particular from a desire by Ceylon and Burma to limit migration from India (Tinker, *Separate*, 174).

Following its separation from the rest of the United Kingdom under the Articles of Association or Treaty of December 1921, the Irish Free State exhibited a distinctive approach which strongly prioritised symbolic independence whilst practically supporting reciprocal free movement and citizenship rights. The latter imperative was reflective of the centrality for Ireland of emigration especially to Great Britain, Australia and Canada, with Great Britain alone accounting for roughly three-quarters of Irish migrant destinations from the 1930s.[20] Uniquely, Ireland and the United Kingdom avoided any immigration control *inter se*. This Common Travel Area required coordination of external immigration control including as regards non-Commonwealth nationals/aliens, and both states adopted new laws for this. In particular, the Irish Aliens Act 1925 'provided that aliens would not require leave to enter if they came from Great Britain or Northern Ireland, save where the British authorities had placed a time limit on their stay which had expired, they had entered Britain illegally, or they had been deported or excluded from Britain'.[21] Through an oath required of members of the Irish Orieachtas (or Parliament), Ireland's 1922 Constitution additionally recognised 'the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations'.[22] It also established local citizenship and required law on its acquisition and termination.[23]

In 1932 the anti-treaty forces of Éamon de Valera and Fianna Fáil came to power and the following year the oath was abolished.[24] In 1934 Ireland sent other Commonwealth members a nationality bill for consultation (but not agreement). The United Kingdom expressed concern (including publicly[25]) that the bill violated the understanding that common Crown allegiance was the basis of common status and that the qualifications for its possession were matters for consultation and agreement.[26] However, the final Nationality and Citizenship Act 1935 declined to acknowledge such a status at all and provided that, in the absence of an international convention and always excepting statutory rights conferred on Irish citizens alone, it was a matter of executive discretion whether to reciprocate rights and privileges accorded Irish citizens in any other country.[27] This Act's counterpart, the Aliens Act 1935, defined all individuals other than Irish citizens as aliens and variously provided or enabled the executive to subject them to far-reaching restrictions including on entry, exit, residence and employment. Nevertheless, both Acts made provision for a lifting of their restrictions by Executive Order and, whilst nothing was forthcoming under the Irish Nationality and Citizenship Act, the Aliens (Exemption) Order 80/1935 relieved 'citizens, subjects or nationals'[28] of *inter alia* the United Kingdom, any of the Dominions and also India[29] from the various restrictions set out in the Aliens Act. The following year, the Executive Authority (External Relations) Act sought to make Ireland's Commonwealth association merely external, a position solidified in a new constitution in 1937 which omitted all explicit reference to the Commonwealth.[30]

[20] Enda Delaney, *Irish Emigration Since 1921* (Dublin: Economic and Social History Society of Ireland, 2002), 7.

[21] Ryan, 'Common', 857.

[22] Constitution of the Irish Free State (Saorstát Eireann) 1922, art. 17.

[23] Ibid., art. 3.

[24] Constitution (Removal of Oath) Act 1933. Sensing further difficulty ahead, the UK Dominions Office was content to treat this as a bilateral issue between the United Kingdom and Ireland. See Deidre McMahon, *Republicans and Imperialists: Anglo-Irish Relations in the 1930s* (New Haven, CT: Yale University Press, 1984), 49.

[25] See House of Commons, *Debates*, 27 Nov. 1934, col. 645.

[26] United Kingdom reply (from Dominions Secretary), 9 July 1934, in NAI, DFA 2/1/56A. Otherwise, Canada declined to reply at all, Australia and New Zealand merely acknowledged receipt and a sympathetic reply from South Africa held that the draft bill wrongly saw 'common status' as an entitlement to 'claim to be a national of any other state of the Commonwealth' rather than a right to 'not be ranked as an alien'. See replies from South Africa (Minister of External Affairs) (13 Mar. 1934), New Zealand (27 Apr. 1934) and Australia (24 Sept. 1934) in NAI, DFA 2/1/56A.

[27] Irish Nationality and Citizenship Act 1935, s 23.

[28] Aliens (Exemption) Order 80/1935, s 3.

[29] Ibid., Sch. 1. The UK Home Office felt that so long as this exemption persisted, the legal changes would not cause practical inconvenience and, without withdrawing its earlier concerns, the United Kingdom took no active steps to further press them (see McMahon, *Republicans*, 142–3).

[30] Consideration of this change amongst the remaining full members of the Commonwealth resulted in a rather cryptic agreement which stated that they were 'prepared to treat the new Constitution as not affecting a fundamental alteration

Ireland uniquely remained neutral in the Second World War, which resulted in its near complete *de facto* suspension from the Commonwealth during hostilities.[31] These developments also prompted a breakdown of the Common Travel Area. In September 1939 the United Kingdom introduced immigration control between Great Britain and the entire island of Ireland[32] and from June 1940 required a permit for travel in either direction.[33] Northern Ireland similarly enacted provisions enabling restrictions on employment (from 1939),[34] requiring possession of a document of identity (from 1940)[35] and mandating permits for long-term residence (from 1942).[36] Meanwhile, in October 1939 Ireland extended the requirement on commercial lodging premises to make police returns on aliens to cover all Commonwealth nationals[37] and from May 1943 required aliens falling outside the 1935 Order to obtain leave for entry even if coming from the United Kingdom.[38]

Turning to the Commonwealth more generally, the war catalysed 'a general breakdown of the "common code"'.[39] In 1946, Canada adopted the Canadian Citizenship Act which inverted the code's general understanding by first defining who were Canadian citizens, only then providing that Canadian citizens were British subjects[40] and finally establishing that those with that status anywhere else in the Commonwealth would likewise be recognised in Canada as a British subject.[41] Subject to later government approval,[42] a experts conference held in February 1947 agreed to universalise this approach through mutual adoption of a 'common clause' under which 'all persons recognised as British subjects in any part of the Commonwealth shall be so recognised throughout the Commonwealth'.[43] It also stressed the importance of safeguarding the 'distinction in treatment between British subjects (or citizens of Commonwealth countries) and aliens' in any 'treaties with foreign countries which include a "most favoured nation" clause'.[44]

Whilst participating in the 1947 conference, Ireland did not accept this clause but secured 'general approval' for an understanding that 'citizens of Eire, though not British subjects, should not have the status of aliens'.[45] This was the first formal recognition of an Irish external or at least *sui generis* association with the wider Commonwealth. Whilst represented at the conference,[46] Burma became independent outside the Commonwealth in January 1948 without agreeing to continue any special citizenship arrangements. Meanwhile, India and Pakistan attained independence within the Commonwealth in August 1947 and Ceylon likewise did so in February 1948. Although kept informed

in the position of the Irish Free Statute, in future to be described under the new Constitution as "Eire" or "Ireland," as a member of the British Commonwealth of Nations' ('British communiqué', *The Times*, 30 Dec. 1937).

[31] See Nicholas Mansergh, 'The Implications of Eire's Relationship with the British Commonwealth of Nations', *International Affairs* 24, 1 (1948), 9.

[32] Passenger Traffic Order 1939/1163.

[33] Passenger Traffic Order 1940/933. As well as ensuring a close surveillance of movements, the permit system was intended to prevent any non-necessary travel and prompted demonstrations by seasonal agricultural workers outside the British permit office in Dublin. Nevertheless, it did not prevent a substantial number of Irish workers of both genders moving to Great Britain, including to work in war-related production. See Jennifer Redmond, 'The Largest Remaining Reserve of Manpower: Historical Myopia, Irish Women Workers and World War Two', *Soathar* 36 (2011), 61.

[34] Control of Employment Act (Northern Ireland) 1939.

[35] The Civil Authorities (Special Powers) (Persons Entering Northern Ireland) Regulations (Northern Ireland) 1940/51.

[36] Residence in Northern Ireland (Restriction) Order 1942/2501.

[37] Aliens Order 1939/291.

[38] Aliens Order 1943/169.

[39] Parry, *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland*, 89.

[40] Canadian Citizenship Act 1946, s 26.

[41] Ibid., s 28.

[42] At least as regards to ensuring the right to preferential treatment and that Commonwealth countries should not be considered foreign between each other, such agreement was minuted at the 1949 Commonwealth Prime Ministers Meeting. See 'Draft Declaration and Interpretative Minutes', 26 Apr. 1949, TNA, FO 468/79.

[43] 'British Commonwealth Conference on Nationality and Citizenship Report', Feb. 1947, TNA, CAB 133/6 B. N. (47) 11, 2.

[44] Ibid., 6.

[45] Ibid., 5.

[46] From the fourth meeting (out of eleven) due to a travel delay. Ibid., 2.

and attending as an observer on its first day, (unpartitioned) India had not been represented at the conference[47] but in April 1948 adopted its conclusions subject to using the term 'Commonwealth citizen' in lieu of 'British subject', which was consulted on with all Commonwealth governments.[48] This changed nomenclature presaged India's shift to a republic and the agreement recorded in the London Declaration of 27 April 1949 that it would nevertheless accept 'The King as symbol of the free association of its independent member nations and as such the Head of the Commonwealth' and thereby a remain a full member.[49]

Finally, turning back to issues related to movement between Ireland and the United Kingdom, in December 1946 Ireland removed all requirements for leave for entry from the United Kingdom, although aliens not covered by the 1935 Order were still required to register with the police within twenty-four hours of arrival.[50] Meanwhile, the UK's requirement for a permit for any travel between Great Britain and the island of Ireland lapsed at the end of 1947 and similar restrictions in Northern Ireland including as regards the need for a document of identity for travel likewise ended in June 1948.[51] However, prompted primarily by an anxiety to 'prevent southern Irish Catholics from entering Northern Ireland',[52] in 1947 Northern Ireland adopted a new Safeguarding of Employment Act which mandated that non-residents of the province obtain a permit if they wished to take up almost any type of employment. A system of immigration checks for travel between Great Britain and the entire island of Ireland also remained in place.

Ireland's Exit, Its Citizenship Commitments and New Arrangements with the 'Old' Commonwealth, 1948–1961

On 7 September 1948 the Irish Taoiseach John Costello announced his government's intention to repeal the Executive Authority (External Relations) Act 1936 and fully secede from the Commonwealth. A meeting at Chequers was held between Irish, United Kingdom, Australian and New Zealand delegations on the fringes of the October 1948 Commonwealth Prime Ministers' Meeting (which Ireland was excluded from) and a similarly composed further meeting took place in Paris in November 1948. The United Kingdom – which remained the coordinator of high-level intra-Commonwealth consultation at this time – justified this selection on the grounds of the large Irish diaspora in each country and still ensured that consultation on the proposals took place with all Commonwealth countries. Whilst failing to convince Ireland to reverse its secession plans, the Commonwealth delegations were able to obtain Ireland's assent to ongoing citizenship arrangements based on positive rights secured through primary legislation. Meanwhile, the United Kingdom was similarly successful in obtaining an ostensibly far-reaching Irish pledge that it would offer such reciprocation to all Commonwealth countries.[53] On the basis of this framework, on 24 November 1948 Costello announced the following commitments during the second reading of the Republic of Ireland Bill:

> [W]e propose, as and when the Commonwealth countries grant our citizens recognition and rights, to make Orders provisionally under Section 23 (2) [of the Irish Nationality and Citizenship Act 1935] giving their citizens comparable rights.

[47] Ibid., 2.

[48] Tinker, *Separate*, 374.

[49] The Commonwealth, 'London Declaration' (1949), https://thecommonwealth.org/london-declaration-1949 (last visited March 2025).

[50] Aliens Order 1946, art 5(2). As noted by Ryan, this period was extended to seven days by the Aliens (Amendment) Order SI 112/1962.

[51] Order in Council, dated 28 June 1948, made under Section 9 of the Control of Employment Act (Northern Ireland), 1939 (225/1948).

[52] Jack Crangle, *Migrants, Immigration and Diversity in Twentieth-Century Northern Ireland: British, Irish or 'Other'?* (Cham: Springer, 2023), 48.

[53] See David Erdos, 'Reanalysing Ireland's Exit from the Commonwealth 1948–49: The Brexit Isles' Alter Ego?', *Journal of Imperial and Commonwealth History* 52, 4–5 (2024), 712–13.

> At a later stage – but in the near future, I hope – it is the Government's intention to review our whole nationality law and to bring before the Dáil a comprehensive measure to rectify many of the anomalies that exist under the Act of 1935. In the new Bill provisions will be made to ensure that Commonwealth citizens shall be afforded rights comparable to those afforded our citizens in the Commonwealth of Nations.
>
> There is one thing I should like to make clear to our friends in Britain and the Commonwealth generally. It is that after the passage of this Bill we will continue, provided they so desire, the exchange of citizenship rights and privileges. Ireland does not now, and when the Executive Authority (External Relations) Act of 1936 is repealed, does not intend to regard their citizens as 'foreigners' or their countries as 'foreign' countries.[54]

The Republic of Ireland Act completed its passage in the Oireachtas on 15 December 1948 and was brought into force on 18 April 1949, the anniversary of Ireland's Easter uprising. However, even before this, Ireland was establishing new citizenship arrangements with 'old' Commonwealth countries.

Between 1948 and 1950, all 'old' Commonwealth members adopted new citizenship legislation. Indeed, provisions in line with the February 1947 experts' conference scheme had been adopted in the United Kingdom[55] and New Zealand[56] prior to Ireland's announcement of intended Commonwealth secession in September 1948.[57] New citizenship legislation was also forthcoming in Australia at the end of 1948,[58] South Africa in 1949[59] and Canada in 1950.[60] Finally, as the only continuing UK colony separately represented at the 1947 conference and where it was agreed that separate citizenship would be created, it should be noted that Southern Rhodesia (present day Zimbabwe) similarly adopted such legislation in 1949.[61] These legal provisions variously came into force on 1 January 1949 (United Kingdom and New Zealand), 25 January 1949 (Australia), 2 September 1949 (South Africa), 1 January 1950 (Southern Rhodesia) and 20 July 1950 (Canada). In all cases, they granted Irish citizens non-alien status and, without defining them as such, accorded them the same privileges as British subjects/Commonwealth citizens. Nevertheless, the precise nature of the privileges accorded varied considerably. For example, the United Kingdom and also the New Zealand legislation entitled Irish nationals to full citizenship after just twelve months' residence.[62] At the other pole, in South Africa such citizenship by registration was discretionary, subject to various criteria including as regards language and 'good character' and required residence not only continuously over the previous year but in four out of six years immediately preceding any application.[63] Furthermore, these acts generally failed to set out a comprehensive picture of the real position. For example, although the United Kingdom granted Commonwealth and also Irish citizens free entry into, and full civil rights (including the franchise) within its mainland territory, this was not made clear from the reading of the British Nationality Act 1948 alone. Nevertheless, although no UK politician foresaw that this would be exercised except on a 'limited scale', there was strong cross-party consensus on the 'importance' of continuing 'the right of all British subjects [or Commonwealth citizens] to enter the United Kingdom',[64]

[54] *Dáil Debates*, 113, 3, 24 Nov. 1948.
[55] British Nationality Act 1948, s 3(2), s 6(1) and s 32.
[56] British Nationality and New Zealand Citizenship Act 1948, s 2(1) and s 8.
[57] Later legislation confirmed its continued application to Ireland post-exit. See Ireland Act (UK) 1949 and Republic of Ireland Act (New Zealand) 1950 (both made retrospective back to 18 Apr. 1949).
[58] Nationality and Citizenship Act (Australia) 1948, s 5(1) and s 12.
[59] South African Citizenship Act 1949, s 1(1)(i) and s 8.
[60] Canadian Citizenship (Amendment) Act 1950.
[61] See Southern Rhodesian Citizenship and British Nationality Act 1949, s 2(1) and s 19(1)–(2).
[62] See British Nationality Act 1948, s 6(1) and British Nationality and New Zealand Citizenship Act 1948, s 8.
[63] South African Citizenship Act 1949, s 8.
[64] Randall Hansen, 'The Politics of Citizenship in 1940s Britain: The British Nationality Act', *Twentieth Century British History* 10, 1 (1999), 87.

with both government and opposition spokespersons arguing that this was critical to the nature of the United Kingdom as a 'metropolitan' centre.[65]

Notwithstanding these ambiguities, between 1949 and 1951 the Irish government adopted rights orders under its Nationality and Citizenship Act 1935 applicable to all these states including, as regards the United Kingdom, their colonies (other than Southern Rhodesia).[66] Each order established that the state's citizens 'shall, subject to law, enjoy in Ireland similar rights and privileges to those enjoyed by Irish citizens' by virtue of the specified citizenship legislation in the relevant state.[67] The inclusion of the caveat 'similar' and the qualifier 'subject to law' rendered these orders' legal impact very questionable.[68] However, and most crucially, the 1935 Order (as reconfirmed in the Aliens Order 395/1946) continued in full effect and, aside from the special case of Southern Rhodesia, clearly exempted any 'citizen, subject or national' of the above states from all ordinary aliens' control including as regards entry, exit, residence and employment.

In April 1952 the United Kingdom abolished immigration control on travel to Great Britain from the island of Ireland[69] and formally recognised this as constituting a Common Travel Area the following year.[70] This restoration of full freedom of movement followed an 'informal' Irish-British agreement in February 1952, not made public at Ireland's request, which involved exchanging information on aliens admitted to and leaving each other's jurisdiction, specific notification regarding the landing of anyone on each other's suspects list and agreement not to grant a landing to anyone in transit to the other state where it was clear that they would not be granted landing in the other jurisdiction.[71] However, Northern Ireland continued with its restrictions on non-resident employment set out in its Safeguarding of Employment Act 1947. Whilst sustained politically primarily by a desire to limit Irish Catholic migration, the Act was also central to preventing any 'large-scale Commonwealth settlement' in Northern Ireland and also channelling any such migrants into entrepreneurship activities which lay outside the Act's restrictions.[72] The Act was still in force when the United Kingdom and Ireland joined the European Communities in 1973 and was only revoked after completion of the membership transition period at the end of 1977.[73]

Even vis-à-vis the 'old' Commonwealth, the actions taken by Ireland in the late 1940s and 1950s raised potential issues. Thus, it was unclear whether the rights granted by Ireland were fully 'comparable', especially as regards national voting rights which under the Irish constitution were limited to its own nationals alone.[74] More straightforwardly, no reciprocal citizenship rights were ever included

[65] Hansen, 'The Politics of Citizenship Act', 83 and 87.

[66] See Citizens of United Kingdom and Colonies (Irish Citizenship Rights) Order SI 1/1949, New Zealand Citizens (Irish Citizenship Rights) Order SI 2/1949, Australian Citizens (Irish Citizenship Rights) Order SI 18/1949, South African Citizens (Irish Citizenship Rights) Order SI 198/1950, South Rhodesian Citizens (Irish Citizenship Rights) Order SI 11/1951 and Canadian Citizens (Irish Citizenship Rights) Order SI 89/1951.

[67] In the case of the United Kingdom, New Zealand and Australia, these Orders were made and came into force as soon as the relevant national laws were adopted. In contrast, as regards South Africa, Southern Rhodesia and Canada, there was a delay of between six months and around one year although, in these cases, the Orders were made retrospective back to the earlier date. Thus, the South African Citizens' Rights Order was made and came into force on 28 July 1950, the one for South Rhodesia on 16 Jan. 1951 and the one for Canada on 6 Apr. 1951.

[68] Indeed, although noting that they appeared to 'give satisfaction' to the countries concerned, the Irish government appears to have considered their effect to be one of 'status rather than the substance'. See quotes in 'Memorandum for the Government – Control of Alien Immigration into Ireland', 7 Feb. 1962, NAI, TSCH/3/S1527B.

[69] Aliens (No. 2) Order SI 366/1952.

[70] Aliens Order 1953, SI 1671/1953, para. 3.

[71] See Cabinet Minutes Extract, 29 Feb. 1952, and Department of Justice, 'Immigration Control – Proposed Arrangement for Co-operation between the British Home Office and the Department of Justice', 27 Feb. 1952 in NAI TSCH/3/S15273A.

[72] Crangle, *Migrants*, 37.

[73] See 'Safeguarding of Employment (Northern Ireland) Act 1947: Advice to Ministers and Consultations between Officials, 14 Jan. 1977–25 May 1977', TNA, CJ 4/1535.

[74] Local election voting was not constitutionally restricted and, according to Meehan, was extended to all residents in 1973 (with the right to stand following in 1974). Following a constitutional amendment in 1984, the Electoral (Amendment)

within primary statute.[75] However, a February 1961 report by the Australian Charge d'Affaires in Dublin[76] on this subject clearly highlights the lack of any real concern. In sum, although the precise nature of the promises had clearly been forgotten,[77] the official cited the Australian Citizens (Irish Citizenship Rights) Order as well as assurance from the legal adviser of the (Irish) Department of External Affairs (DEA) that 'Australian citizens in the Republic of Ireland enjoy identical rights to those enjoyed by citizens of the United Kingdom' and stated that he was 'unaware of any significant disability suffered by Australians in this country'. Legal limitations on owning property such as ships and aircraft as well as the franchise restriction were confirmed but, somewhat astoundingly, the legal adviser of the DEA was quoted as being 'sure that this has not prevented British citizens from voting on occasion'. Finally, following consultation with the UK and Canadian embassies in Dublin, the Charges d'Affaires recorded that '[t]he Canadian Embassy considers that in certain respects, Canadian citizens received even better treatment that that accorded to Irish citizens in Canada'.[78] As will be seen below, these attitudes and experiences were very different to those which confronted the 'new' Commonwealth over the same period.

Irish Actions and Inactions vis-à-vis the 'New' Commonwealth, 1948–1961

Although some basic factual information was exchanged prior to this time, the question of establishing reciprocal arrangements with 'new' Commonwealth countries was not concretely addressed until the early 1950s when the position as regards the 'old' Commonwealth including the British-Irish Common Travel Area had all been finalised. Prioritisation of these latter arrangements was likely the primary cause of deferment, although it should be noted that there were also delays in India and, to a lesser extent, Pakistan, which did not adopt new citizenship legislation until 1951 and 1955 respectively.[79] Nevertheless, in summer 1952 the DEA made specific contact with India (through their Dublin Embassy) and with Ceylon and Pakistan (through their London High Commissions) with a view to coming to an understanding on preferential migrant arrangements. As documented in a letter to the Department of Justice (DoJ), this consultation was initially premised on a DEA desire to at least ensure maintenance by Ireland of the exemption from ordinary alien controls here. A Ceylonese reply on 27 August 1952 confirmed that 'Irish citizens enjoy in Ceylon the same rights and privileges as those enjoyed by United Kingdom nationals, and are not subject to the restrictions that may be imposed on aliens', adding more specifically that '[b]ona fide tourists of Irish nationality, in common with those of the United Kingdom, India and Pakistan do not require visa for entry into the Ceylon [sic] for periods of residence not exceeding six months'. It nevertheless clarified that '[p]ersons, other than tourists, of Irish, United Kingdom, Indian and Pakistani nationality would require visa for entry into Ceylon, but are not required on entry, to register with the Police authorities'.[80] No immediate

Act 1985 allowed British citizens to vote in general elections but not referendums or presidential elections (Elizabeth Meehan, *Free Movement between Ireland and the UK: From the 'Common Travel Area' to the Common Travel Area* (Dublin: Policy Institute, 2000), 46).

[75] The Irish Nationality and Citizenship Act 1956 did at least make clear that any citizenship rights order must, subject to any conditions seen fit, confer 'similar citizenship rights and privileges to those enjoyed by Irish citizens' (s 26) in the relevant jurisdiction.

[76] This report was consequent to a request from Canberra but, unfortunately, it has not been possible to trace it.

[77] Thus, the report stated that '[t]he reference by Mr. Attlee to an Irish undertaking [included in the original Canberra request which is no longer in the file] *presumably* relates to some statement by Mr. Costello, as Irish Prime Minister at that time, and I am endeavouring to identify it' ('Memorandum 29/61 from Australian Charge d'Affaires in Dublin to Secretary of Department of External Affairs Canberra', 9 Feb. 1961, NAA, A1838).

[78] Ibid.

[79] Ceylon adopted a new Citizenship Act as early as 1948 which, controversially, excluded almost all resident Indian Tamils from this status and concomitant rights. See Parry, *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland*, 704.

[80] 'Reply from High Commissioner for Ceylon to UK Irish Ambassador', 27 Aug. 1952, NAI, DFA/6/351/88. NAI DFA/5/351/88 also contains a letter of 3 Sept. 1952 from the UK Irish Ambassador to the Secretary of the Department of External Affairs, enclosing a note from the Ceylonese High Commissioner of 20 Jan. 1950 which had not been sent

reply was forthcoming from Pakistan but, following a chaser sent in February/March 1953, the following reply was sent on 25 March 1953:

> [T]he Government of Pakistan have decided that, on the basis of reciprocity, a declaration may be made to the effect that citizens of Ireland shall not be treated as foreigners for the purposes of visa requirements and the Registration of Foreigners Rule, 1939. I should be grateful to know, at Your Excellency's convenience, if the Government of Ireland would be disposed to make a similar declaration in respect of the citizens of Pakistan.[81]

Finally, a reply was received from the Indian Embassy on 20 May 1953 which confirmed that 'specific provision has been made in the draft Indian Citizenship Bill to enable the government of India to grant, on a reciprocal basis, citizenship rights and privileges to the citizens of Ireland'.[82]

Following on from the above, intra-governmental discussion between the DEA and the Department of Justice (DoJ) commenced immediately. The focus throughout was on the 1935 Order as opposed to new citizenship rights orders, although a memorandum prepared in November 1954 for DEA's legal adviser did state that 'it is assumed in our correspondence with the Indian Embassy that an Order will be made under Section 23(2) of the Irish Nationality and Citizenship Act, on a reciprocal basis, when the Indian Act has been enacted'.[83] Turning to the 1935 Order, the DEA initially maintained that, despite only referring to 'India', this covered citizens of India, Pakistan and Ceylon and should continue in force without 'formal amendment'. In contrast, the DoJ held that Pakistan and Ceylon were currently excluded, and so the DEA agreed on an interim basis to similarly exclude them from the visa exemption circular.[84] In August 1953, Peter Berry in the DoJ went further and penned a submission to the Secretary of the DoJ which, on reciprocity, religious, economic and frankly racial grounds, raised doubts about the value either of seeking attorney general clarification on the disputed legal point or on promulgating an extended order:

> We have no information as to the 'laws of such countries in relation to (Irish) immigrants'. It is for External Affairs, I suppose, to assess the benefits to the Irish race abroad if we make reciprocal arrangements with the Governments of India, Pakistan, Southern Rhodesia, etc, for the free admission and operation on the labour markets of each others nationals. Our Missionaries would probably constitute the largest class of Irish citizens which would benefit from full exemption from the restrictions on aliens but the Department of Justice have no knowledge of the extent of the benefits or whether they out-weight the disadvantages of having coloured people here of non-Christian religions, who have been accustomed to social and economic standards of a different order.

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before due to an 'oversight'. In response to a request dated 21 Dec. 1949, this stated that Ceylonese immigration law treated Irish citizens as British subjects and exempted them from alien restrictions.

[81] 'Reply from High Commissioner for Pakistan to UK Irish Ambassador', 25 Mar. 1953, NAI, DFA/5/361/88. This complemented an earlier assurance from Mar. 1950 that 'Eire citizens will be treated like Commonwealth citizens and thus absolved from visa and restriction formalities in Pakistan' (quoted in Commins (DEA) to Berry (DoJ), 25 July 1952, NAI, DFA/5/351/88).

[82] Again, this complemented an earlier reply received from India's London High Commissioner in Aug. 1949 which stated that 'the Government of India have already decided on a reciprocal basis that the citizens of the Republic of Ireland may be exempted from the requirement of possessing a visa for entry into India' and that 'instructions have been issued to the authorities in India exempting citizens of the Republic of Ireland from the requirements of the Registration of Foreigners Rules 1939'. Original copies of these replies appear not to have been retained but are quoted in 'Memorandum 351/88 to DEA's Legal Advisor', 4 Samhain [Nov.] 1954, NAI, DFA/5/351/88.

[83] 'Memorandum 351/88 to DEA's Legal Advisor', 4 Samhain [Nov.] 1954, NAI, DFA/5/351/88 (note that a '(?)' has been added in pen next to 'assumed').

[84] Commins insisted that the DoJ had changed their position, whereas Berry's reply of 24 Aug. 1953 vehemently insisted this was not the case. See Commins (DEA) to Berry (DoJ), 30 June 1952, NAI, DFA/5/351/88.

> I might mention also that we have been under some pressure from External Affairs on behalf of the British Embassy to exempt British Protected Persons – mainly [A]frican students – from our alien restrictions. If an Aliens Exemption Order were to be made now this question would also have to be considered.[85]

Berry drew particular attention to concerns raised in the British press about the 'problems' raised by 'coloured immigration', which he labelled as 'insoluble', and cautioned that 'promulgating a new Order with consequent publicity may draw attention to our open door and may give rise to large-scale emigration of coloured people from Commonwealth countries to this country'.[86]

Throughout 1953 and 1954, the Pakistani authorities engaged in repeated follow-ups with the Irish Embassy in London. The latter likewise communicated with the DEA in Dublin both to obtain a reply for Pakistan and to answer queries as to the visa position of various types of Commonwealth national. Thus, between June and November 1953, the London Embassy sent the DEA three messages on the first issue alone.[87] Finding it unclear 'whether citizens of British colonies are exempt [aliens]', on 9 April 1954 it sent a further message regarding the immigration status of a specific Nigerian barrister who was legally a Citizen of the United Kingdom and Colonies. Quoting from an official Irish memorandum which had stated that Pakistan and Ceylonese were exempt from the need for employment permits, it also queried whether they required visas for ordinary travel.[88] Dublin replied on 10 April 1954 stating that the Nigerian in question would not require a visa or even a passport, although it noted that anyone born outside Lagos was not a British citizen but rather a 'British protected person' and would therefore require a visa.[89] The second issue was left hanging and on 14 April 1954 the embassy sent a more pointed message asking '[d]o Pakistanis require visas? Can you now reply please?'.[90] A few days later, a reply was sent which relayed one understanding (presumably to be taken as overriding in specific cases) that 'Pakistan visitors do not require visas', whilst also stating that the question of whether the 1935 Order applied to Pakistan was 'under discussion'.[91]

From late 1954, an interchange between the DoJ and the DEA was resumed and led by the end of 1955 to both departments adopting a hardline, united front. In sum, following consideration of this with the secretary of the DoJ, on 20 November 1954 Berry wrote to the legal adviser and assistant secretary of the DEA, William Fay, confirming a view that instead of making a new Aliens (Exemption) Order 'there is a lot to be said for leaving things as they are'.[92] He suggested a telephone call, and an inter-departmental conversation took place the following month where it was recorded that the DoJ 'will not approve any new Order until they know exactly what reciprocity is offered' and, furthermore, that 'they are not really perturbed about fears of an "invasion" of undesirables from India, Pakistan etc. but that there are genuine fears of an overflow from Britain which has recently taken in many such persons'.[93]

A draft letter dated November 1955 revealed that the DEA had now come into lockstep with the DoJ. The letter began by rejecting the idea that the 1935 Order's reference to 'India' should lead to it being interpreted as extending to present-day Pakistan, Ceylon or even India itself. It held that

[85] As can be seen, notwithstanding the citizenship rights order which had been made for Southern Rhodesia (see above), Berry unreservedly placed this jurisdiction's nationals within the non-exempt aliens category. Such a restrictive approach may have been related to the formation on 1 Aug. 1953 of the Federation of Rhodesia and Nyasaland which, until its collapse in 1963, brought Southern Rhodesia together with Northern Rhodesia (present day Zambia) and Nyasaland (present day Botswana) into a new political formation.

[86] 'Question of making a new Aliens Exemption Order', Aug. 1953, NAI, DFA/5/351/88.

[87] See teleprinter messages from Irish Embassy in London dated 29 June 1953, 27 Oct. 1953 and 30 Nov. 1953, NAI, DFA/5/351/88.

[88] See teleprint from Irish Embassy in London dated 9 Apr. 1954 in NAI, DFA/5/351/88.

[89] See teleprint to Irish Embassy in London, 10 Apr. 1954, NAI, DFA/5/351/88.

[90] See teleprint from Irish Embassy in London, 14 Apr. 1954, NAI, DFA/5/351/88.

[91] See teleprint to Irish Embassy in London, 17 Apr. 1954, NAI, DFA/5/351/88.

[92] Letter from Berry (Department of Justice) to Fay (DEA), 20 Nov. 1954, NAI, DFA/5/351/88.

[93] File Note, 14 Dec. 1954, NAI, DFA/5/351/88.

inclusion of the former two would also result in Burma's inclusion when it was not even a Commonwealth member. Furthermore, it argued that even India need not be included as it was unwilling to grant 'full freedom of action to our missionaries' and 'is neither geographically nor constitutionally the same as the India of 1935'. Moreover, the letter strongly rejected adopting an amending order:

> If we allow them all in [through a new Order] we lay ourselves open to the danger of an influx of penniless Orientals of the pedlar type without having got in return full freedom of action for our missionaries. If, on the other hand, we shut them out we run the risk of causing these countries to circumscribe even further the freedom of action of our missionaries and we also run the risk of being charged with colour discrimination and thus losing overnight the considerable goodwill we possess in these countries.

Finally, the letter favoured granting 'administratively exempted aliens status to Indians, Pakistanis and Ceylonese unless and until circumstances oblige us to change our attitude' on the basis that this would allow Ireland to 'continue to press these countries for full freedom of action for our missionaries'.[94]

In August 1957 the Irish Embassy in London relayed yet another Pakistani query regarding 'reciprocal citizenship arrangements'.[95] The DEA reply a few days later included 'for your own information' the text of the unsent letter above 'with which Justice agree' but advised that an interim and frankly misleading reply should be sent to the Pakistan High Commission stating that the matter 'is still under consideration'.[96] File notes from 22 January 1962 indicate that this position was still being advanced up until Ireland's response to the UK Commonwealth Immigrants Act 1962. Finally, despite five new countries becoming independent Commonwealth members in the late 1950s and early 1960s,[97] the DEA did not consider making any amendment to the 1935 Order, let alone adopting new citizenship rights orders, to cover these cases.

Ireland and the UK Commonwealth Immigrants Act 1962: A 'Uniformity of Control'?

From the end of the 1950s, the British Conservative Government faced increased pressure to respond to public concern about the extent and nature of immigration from those parts of the world where it was unrestricted, namely, the Commonwealth and Ireland itself.[98] On 1 November 1961, it tabled proposals for (ostensibly temporary) restrictions which, as amended, were enacted as the Commonwealth Immigrants Act on 18 April 1962 and came into force on 1 July 1962. These evolving developments required Ireland not only to consider how to safeguard the rights of its citizens coming to the United Kingdom but also whether, and if so how, its own immigration law needed to respond to the new

[94] In light of what it saw as the uncertain legal position of Irish citizens in the new Federation of Rhodesia and Nyasaland (see note 85), the letter also mooted adopting the same position vis-à-vis that jurisdiction 'pending regularisation of the Legal position'. Letter from DEA to Berry (unsent), Samhain [Nov.] 1955, NAI, DFA/5/351/88. In Sept. 1956, Berry sent DEA's legal advisor correspondence from the Chief Superintendent of Police which highlighted that Irish citizens had been deported on various grounds from Commonwealth countries (namely, Southern Rhodesia as well as Australia and Canada) and recommended that such deportation powers should be available in like situations in Ireland. Interestingly, the Chief Superintendent described the citizenship rights orders as 'very nebulous in their terms' and erroneously suggested that the 1935 Order may have lapsed. Berry stressed that the DoJ did not wish to raise amendment of the 1935 Order but argued that 'the police suggestion may interest External Affairs and may have some value, sometime, in consideration of the problems'. See Letter from Berry (Department of Justice) to Seán Morrissey (DEA), 27 Sept. 1956, NAI, DFA/5/351/88.

[95] Teleprinter from Irish Embassy in London, dated 15 Aug. 1957, NAI, DFA/5/351/88.

[96] Teleprinter to Irish Embassy in London, dated 20 Aug. 1957, NAI, DFA/5/351/88.

[97] These countries were Malaya (1957), Ghana (1957), Nigeria (1960), Sierra Leone (1961) and Tanganyika (1961).

[98] See Denis Dean, 'The Conservative Government and the 1961 Commonwealth Immigration Act: The Inside Story', *Race and Class* 32, 2 (1993).

British restrictions. In late June 1962, Ireland repealed the 1935 Order[99] and adopted a new Aliens (Amendment) Order 112/1962 which came into force on 1 July 1962. Given the ambiguities in the 1935 Order discussed above, this new order rather ironically constituted the first and only time where the republic legally bound itself to grant privileged migration treatment to all Commonwealth citizens.

Given that the Irish economy was still hugely dependent on large-scale migration to the United Kingdom and notwithstanding widespread rhetoric resistant to significant emigration, concerns related to the position of Irish citizens themselves were understandably uppermost in the minds of Irish politicians. Publication of the UK Commonwealth Immigrants Bill prompted a slew of questions in the Dáil on this topic, which led the Minister of External Affairs, Frank Aiken, on 15 November 1961 to state that '[t]he present freedom of movement between the two countries is to their mutual advantage and I hope that the consultation taking place will lead to its being maintained'.[100] In fact, the Irish government had already been reassured by the British Home Office on 19 October 1961 that, with the exception of new powers to deport convicted criminals on recommendation of a court, the United Kingdom 'did not intend to apply the controls to the admission of Irish citizens'.[101] However, announcement of this intended anomalous treatment on 16 November 1961 at Second Reading of the Bill in the House of Commons led to many criticisms, including from the leader of the opposition, Hugh Gaitskell, who stated that 'with the Irish out all pretence has gone. It is a plain anti-Commonwealth Measure in theory and it is a plain anti-colour Measure in practice'.[102] In winding-up, the Minister of Labour, John Hare, stated that 'some method should be found which would not distinguish the citizens of the Republic of Ireland so sharply from the others affected by the Bill'.[103] Nevertheless, a representative of the UK Commonwealth Relations Office immediately reassured the Irish Embassy that 'he didn't think we need to be worried too much' and that 'no decision would be taken in the matter without discussion with us'.[104] Ultimately, no significant change in the distinctive Irish position was made prior to final enactment in April 1962.[105]

The UK government's principal public argument for divergent Irish treatment was that, given 'how very difficult it is to police the Republic-Ulster border', any 'control against the citizens of the Irish Republic' would necessitate 'control within the United Kingdom itself; that is, against Northern Ireland and Belfast'.[106] It therefore linked the free access of Irish citizens, including to the labour market of Great Britain, with the somewhat different imperative, albeit equally essential to the maintenance of the Common Travel Area, of ensuring a free flow of people generally across the Irish-Northern Irish border. Such an elision was similarly evident in Frank Aiken's answer which, as detailed above, focused on freedom of movement in general. These wider imperatives clearly pointed towards a need for ongoing British-Irish coordination regarding the admission of any and all third country nationals. Indeed, on 19 October 1961 the British Home Office informed the Irish government that 'as well as exempting Irish citizens, the British authorities propose[d] to exempt from immigration examination all persons (whether Irish citizens or not) who arrive in Britain from Ireland' but that 'unless we can arrange to check admissions to this country from places abroad (other than Britain), Ireland could be

[99] Aliens (Exemption) Order, 1935 (Revocation) Order 113/1962.

[100] *Dáil Debates*, 15 Nov. 1961, 192, 2 (responding to questions from Joseph Blowick, Liam Cosgrave, Brendan Corish, Patrick Byrne, Noël Browne and John McQuillan).

[101] 'Discussion with Mr Chin-Chen of the British Home Office in the Department of Justice on 19 Oct.', 20 Oct. 1961, NAI, 2005/7/160.

[102] House of Commons, *Debates*, 16 Nov. 1961, col 799.

[103] Ibid., col 809.

[104] Teleprint from Irish Embassy to DEA (marked 'Urgent'), 18 Nov. 1961, NAI, 2005/7/160.

[105] The means by which the Irish exclusion was secured was nevertheless complex, and such complexity was largely carried over into the United Kingdom's more restrictive Immigration Act 1971. The anomalies this produced were largely masked by the EEC/EU free movement rules and were only addressed post-Brexit. See Bernard Ryan, 'Recognition After All: Irish Citizens in Post-Brexit Immigration Law', *Journal of Immigration, Asylum and Nationality Law* 34, no. 4 (2020), 290–304.

[106] House of Commons, *Debates*, 16 Nov. 1961, col 701 (Mr R. A. Butler, Home Secretary).

used as a "open backdoor" by persons wishing to evade the British restrictions'. They therefore looked for 'an arrangement more or less identical with that at present working so well between the two countries' which was described as 'a uniform system of alien control at the "outer perimeter" of the two islands'.[107] Similarly, Frank Aiken's answer stated that maintenance of freedom of movement 'would, of course, require the introduction of legislation here in order to preserve uniformity of control'.[108]

The clear rationale for clarifying Irish law and the obvious chronological linkage between the UK Act and the Irish Aliens (Amendment) Order has led both politicians and academics to draw a very direct link between these two legal instruments. For example, whilst denying that the UK government had 'requested' the Irish government to take action, the Minister of Justice Charles Haughey stated to the Dáil on 5 July 1962 that 'the necessity to make this Order arose from recent British legislation'.[109] Moreover, Ryan states 'it was the enactment of the Commonwealth Immigrants Act which led the Irish government to exclude Commonwealth citizens from the exemption' from aliens control unless they were 'British nationals'.[110] That the legal changes in the United Kingdom and Ireland were linked is manifest. Nevertheless, even when coupled with a (clearly misleading) insistence that the United Kingdom didn't request any change, this narrative largely obscures the significant discretion which Ireland nevertheless possessed, the way in which it exercised this to adopt a more restrictive and selective approach and finally the serious consideration it gave to adopting an even more divergent stance.

Both the reality of significant ongoing discretion and the desire for a more selective approach is clear from the Irish cabinet's initial discussion on 9 February 1962 which approved in principle a memorandum tabled by Frank Aiken.[111] This memorandum was unequivocal that only those born in Great Britain or Northern Ireland would be fully exempted from ordinary aliens control. This contrasted with the situation proposed[112] (and ultimately adopted[113]) in the United Kingdom, where additionally anyone who held 'a United Kingdom passport and is a citizen of the United Kingdom or colonies' (or was included on the passport of the same) were to be similarly exempted so long as this had been issued in the United Kingdom or Ireland. This wider definition was resisted out of concern that it 'might entitle all persons who are citizens of the United Kingdom and Colonies who are at present in Britain (e.g. the West Indians) to be included in this category by the simple expedient of getting a passport in London'. The memorandum was 'unconcerned' that by this 'expedient' based on birth 'we may be accused of going even further than the British authorities in adopting a policy of racial discrimination'.[114] Turning to the definition and special rights of the wider category of partially privileged nationals, the memorandum stated that '[g]enerally speaking the Minister considers that "special alien treatment" i.e. exemption from police registration and deportation etc. should be accorded to citizens of those countries to which we have traditionally allotted "exempted alien" treatment and which are known clearly to be giving a special position to Irish citizens'. This implied that apartheid South Africa might be included despite it having been pressured to leave the Commonwealth the previous year[115] and that only a selection of Commonwealth states might be similarly privileged. Nevertheless, the memorandum's further analysis highlighted many difficulties surrounding any specific demarcation. Without explicitly addressing the complexities discussed in the

[107] 'Discussion with Mr Chin-Chen', 20 Oct. 1961, NAI, 2005/7/160.
[108] *Dáil Debates*, 15 Nov. 1961, 192, 2.
[109] *Dáil Debates*, 5 July 1962, 196, 10.
[110] Ryan, 'Common', 862.
[111] It was also agreed that further discussions would take place with the British. See Draft of Cabinet Minutes, 9 Feb. 1962, NAI, 2005/7/160.
[112] Commonwealth Immigration Bill, cl. 1(2)(b)–(c).
[113] Commonwealth Immigration Act 1962, s 1(2)(b)–(c).
[114] 'Memorandum for the Government [on] Control of Alien Immigration into Ireland', 7 Feb. 1962, NAI, 2005/7/160.
[115] 'Communique on South Africa' (15 Mar. 1961) in Commonwealth Secretariat, ed., *The Commonwealth at the Summit: Communiqués of Commonwealth Heads of Government Meetings, 1944–1986* (London: Commonwealth Secretariat, 1987), 67.

previous section, it stated that as a result of the 1935 Order 'exempted aliens status has been accorded in practice up to the present to citizens of India, Pakistan and Burma'.[116] Thinking 'particularly of missionaries', it also raised fears that exclusion in these cases could quite possibly result in 'reprisal'. Nevertheless, it underlined that 'it has never been clearly established that we get full reciprocity from certain States' and specifically flagged 'Pakistan, Ceylon and Burma' here. Finally, it argued that '[o]ld Commonwealth' countries should be given priority since 'publicly declared undertakings' including the citizenship rights orders were in place here and that preference in these cases 'could prove useful' to safeguarding the position of Irish citizens in what were principal destinations of Irish emigration aside from the United Kingdom and the United States. South Africa was explicitly treated as an '[o]ld Commonwealth' country here.

Both the nature of the policy constraints and the final outcome became clear when the cabinet returned to this issue on 26 June through consideration of a joint memorandum tabled by Aiken and the Minister of Justice, Charles Haughey. This memorandum focused extensively on demarcating which countries should benefit from partial 'special' alien treatment. Although both accepted the case for some such treatment, Haughey favoured including only Australia, Canada, New Zealand and probably also India and South Africa. However, he indicated a preparedness to drop this approach given Aiken's (revised) position that it was 'politically impossible to adopt this course'. The latter now favoured according special treatment to nationals from all parts of the Commonwealth as well as South Africa, whose inclusion was re-justified on the basis that it was 'desirable for the purpose of safeguarding to the maximum entry and residence of Irish missionaries'. A draft order in these terms was tabled and it was stressed that special treatment should still entail 'control in respect of employment' which, in contrast to the United Kingdom's approach, was not married to any voucher scheme designed to enable ongoing special access to the labour market. Whilst noting that the inclusion of South Africa could lead to criticism,[117] Haughey did not oppose Aiken's suggestions but advocated extending control also to those coming to 'engage in business' and raised again the possibility of making distinctions between Commonwealth countries.[118] The cabinet did not take up the latter suggestion but merely authorised Haughey to make an order along the lines of the tabled draft. Whilst closely following the draft, the final order followed Haughey's proposal to extend (as in the UK Act[119]) control not only to those unable to satisfy an immigration officer that they could support themselves and their dependants otherwise 'than by taking employment' but also otherwise than 'engaging in business'.[120]

Further British and Irish Immigration Reform in the Later 1960s and 1970s

The UK's 1962 Act proved to be far from merely temporary, and from the mid-1960s there was pressure for further limitations which led initially to administrative action and ultimately to two further pieces of restrictive immigration legislation which coincided with the United Kingdom's process of accession to the European Economic Community (EEC). The UK Labour Government's White

[116] The inclusion of Burma here was particularly surprising given both that (as the memorandum acknowledged) it was 'no longer in the Commonwealth' (and in fact had never been an independent member) and that the DEA-DoJ joint approach likewise did not seem to envisage granting its nationals special administrative treatment.

[117] International opposition to South Africa had been growing in intensity, especially since the Sharpeville massacre in 1960 and, not least as Ireland had sponsored initiatives in the United Nations condemning apartheid as early as 1957, it also risked a charge of hypocrisy in adopting a more hospitable attitude to South Africa than the United Kingdom. Nevertheless, as O'Sullivan notes, Irish public opinion was little interested in foreign affairs at the time and '[i]t was left to the British Anti-Apartheid Movement (AAM) to exert pressure on the Irish Government on issues relating to southern Africa' (Kevin O'Sullivan, *Ireland, Africa and the End of Empire: Small State Identity in the Cold War, 1955–75* (Oxford: Oxford University Press, 2012), 76). That was to change over the next decade after the founding of the Irish AAM in 1964 and, most especially, following its high-profile opposition to the South African rugby tour in 1970.

[118] 'Memorandum for the Government [on] Control of Alien Immigration into Ireland', 25 June 1961, NAI, 2005/7/160.

[119] Commonwealth Immigration Act 1962, s 2(3).

[120] Aliens (Amendment) Order 1962, s 4(2).

Paper of August 1965 announced *inter alia* a restriction in both the number and grounds on which employment vouchers would be issued, raised concerns that 'evasion of the existing control was being practised on a considerable scale'[121] and announced enhanced measures to combat such evasion which were widened over time. In late 1967 and early 1968, Kenya adopted Africanisation policies which 'had the immediate effect of depriving non-citizens of the right to jobs which could be held by Kenya citizens, and attacking the free enterprise of non-citizens in business and trade',[122] an approach which was also adopted in Zambia and Uganda the following year.[123] Prompted by the beginnings of large-scale migration to the United Kingdom of East African Asians (many of whom had remained Citizens of the UK and Colonies post-independence), the UK Commonwealth Immigrants Act 1968 'subjected all holders of United Kingdom passports to immigration controls unless they, a parent or a grandparent had been born, adopted or naturalised in the United Kingdom'.[124] The targeting of Asians in Uganda continued to accelerate, culminating in an expulsion in 1972 which, although ostensibly targeted at non-nationals, in practice applied even to Uganda's own citizens.[125] Notwithstanding the by now extensive restrictions permitted in legislation, the UK government agreed to accept responsibility for these individuals. Although around 23,000 moved elsewhere, including a substantial number who decided to go to Canada, just under 29,000 resettled in the United Kingdom.[126] On 1 January 1973 the UK Immigration Act 1971 came into force. This Act in principle subjected Commonwealth citizens to full immigration control whilst exempting so-called 'patrials', namely, those who were born, registered or naturalised in the United Kingdom or who had a parent (or, in the case of Citizens of the UK and Colonies, a grandparent) who had been born in or naturalised in the United Kingdom.[127] Moreover, Commonwealth citizens who had been ordinarily resident in the UK throughout the previous five years were able to register as a Citizen of UK and Colonies,[128] and existing rights in relation to dependants were retained.[129] The Act also did not affect the various special civil rights which continued to be enjoyed by Commonwealth citizens resident in the United Kingdom including, in particular, their right to vote (if of full age and legal capacity) in parliamentary elections.[130] Also on 1 January 1973, the United Kingdom joined the European Economic Community (EEC) and (subject to a transition period which lasted until the end of 1977) was thereby required to ensure freedom of movement, including of workers from all parts of the EEC. According to data set out by Ryan, the United Kingdom continued to grant all Commonwealth country nationals exemption from visa formalities when visiting as short-term tourists until the mid-1980s, when visa requirements were extended to various Commonwealth countries including India, Bangladesh, Sri Lanka and Nigeria.[131]

[121] UK Government, *Immigration from the Commonwealth* (London: HMSO, 1965), 5.

[122] Daneil Turack, 'Freedom of Movement within the British Commonwealth', *Comparative and International Law Journal of Southern Africa* 1, no. 3 (1968): 481. Restrictions even extended to those willing and eligible to become Kenyan citizens since many who applied 'met obstacles and delays and a large number of applications for citizenship were simply never processed' (Randall Hansen, 'The Kenyan Asians, British Politics, and the Commonwealth Immigrants Act 1968', *The Historical Journal* 42, 3 (1999), 817).

[123] John Miller, *Survey of Commonwealth Affairs: Problems of Expansion and Attrition, 1953–1969* (Oxford: Oxford University Press, 1974), 344.

[124] A very limited voucher scheme was introduced alongside this to allow a small number of East African Asians to migrate. See Ian Spencer, *British Immigration Policy Since 1939: The Making of Multi-Racial Britain* (London: Routledge, 1997), 141.

[125] Justin O'Brien, 'General Amin and the Uganda Asians: Doing the Unthinkable', *The Round Table* 63, 249 (1973), 94.

[126] Spencer, *British*, 141–5.

[127] Immigration Act 1971, s. 2(1). The establishment Commonwealth 'patrial' status benefited a large number of those from the 'old' Commonwealth. Indeed, at the time of enactment it was estimated that around 90 per cent of New Zealanders and 70 per cent of Australians would have such a status and, including Canada, the total number benefiting might be up to twelve million. See Callum Williams, 'Patriality, Work Permits and the European Economic Community: The Introduction of the 1971 Immigration Act', *Contemporary British History* 29, (2015), 526.

[128] Immigration Act 1971, Sch. 1, para. 2.

[129] Ibid., s 1(5).

[130] Representation of the People Act 1948, s 1 (2).

[131] Ryan, 'Common', 866.

Whilst generally responding to UK reforms, the further transformation of Irish law ultimately had the effect of entirely extinguishing the privileged treatment of Commonwealth citizens as such. Turning to consider this, in 1966 the Irish government made a new Order which, notwithstanding the 1962 Order, empowered an immigration officer to refuse leave to land to any alien coming other than from Great Britain or Northern Ireland

> if it appears to the officer that it is the intention of the alien to travel from the State (whether immediately or not) to Great Britain or Northern Ireland and the officer has reason to believe that the alien would be refused admission or leave to land in Great Britain or Northern Ireland if he arrived there from a place other than a place in the State.[132]

This initial change was clearly motivated by a desire to maintain the Common Travel Area in the face of growing concerns about the evasion of UK immigration restrictions. In contrast, Ireland had no need to,[133] and did not, respond to the UK 1968 Act since, as already mentioned, its restriction of full immigration control exemptions to those born in the United Kingdom was already more limiting. On 1 January 1973 Ireland joined the EEC and thus, as with the United Kingdom and subject to the same transitional arrangements, became bound to that association's freedom of movement provisions. Although both countries were rule-takers here, there was some link to UK policy since, from the early 1960s when each began exploring EEC accession, Ireland had taken the position that whilst the national interest 'would in certain circumstances, be served by our joining a grouping of which the United Kingdom was a member, it would not be served by joining the EEC if the United Kingdom remained outside and we had to forgo our preferential advantages in that market'.[134] Finally, and most crucially, on 1 August 1975 Ireland's Aliens (Amendment) Order 1975 came into force. This entirely removed the special alien treatment which the 1962 Order had established for Commonwealth countries, Pakistan (which had left the Commonwealth in 1972 but had remained a listed country) and also South Africa. Alongside many other jurisdictions, nationals of current Commonwealth countries were still exempted from visa or similar formalities when visiting for three months or less otherwise than to engage in employment or establish themselves in business.[135] However, from the following year Ireland imposed visas on all Commonwealth countries becoming independent from 1976 onwards.[136] Albeit with a relatively long time-lag, these changes were clearly prompted by the coming into force of the UK Immigration Act 1971. Indeed, the memorandum presented to Cabinet to justify the proposed order argued that '[c]hanges in British immigration laws in recent years have put "Commonwealth" citizens in a far less privileged position than they have here, with the result that some of them are tempted to come here from Britain when they are required to

[132] Aliens (Amendment) Order, 1966, s 2. The officer was also empowered to refuse landing if not satisfied that that person had a valid passport or other similar documentation. In 1972 Ireland adopted a new consolidating order which repealed its 1966 Order but reestablished its controls under a more restrictive wording. In sum, rather than it needing to appear that an alien was travelling to Great Britain or Northern Ireland and that the immigration officer had 'reason to believe' that they would otherwise be refused admission, the reworded test required the officer to be 'satisfied' both that the alien intended to so travel and that the alien 'would be refused leave to enter Great Britain or Northern Ireland' if they travelled there in another way. See Aliens (Amendment) Order, 1972, s 6.

[133] This was also the understanding of the time as reported in 'No Irish loophole in British immigration control measures', *Irish Independent*, 2 Mar. 1968, 3.

[134] Irish Government, *European Economic Community* (Dublin: Stationary Office, 1961), 7. As with the United Kingdom, this shift towards Europe was seen as 'lessen[ing] the importance Ireland has traditionally attached to relations with the English speaking world', and by 1972 the Australian Ambassador was telling Canberra that 'Irish migration may tend in the future to be to Europe and that Irish migration to Australia might contract as a consequence'. See Australian Ambassador to Secretary of Department of Foreign Affairs, 3 July 1972, NAA, A1838 7931 Part 2.

[135] See Aliens (Amendment) Order, 1975, s 5(e), s 7 (b) and Sch. 6.

[136] As with the United Kingdom, Ireland also imposed visas on other Commonwealth states from the mid-1980s, including India, Bangladesh, Sri Lanka and Nigeria. See Ryan, 'Common', 866–7.

leave Britain'.[137] It is nevertheless significant that the Irish changes were again more far-reaching than those in the United Kingdom by, in this case, entirely removing any pretence of special Commonwealth treatment, continuing to restrict privileges only to those born in the United Kingdom rather than a wider group of UK 'patrials' and, finally, immediately extending visa requirements to newly independent Commonwealth states from 1976. However, in a curious aside, the essentially symbolic citizen rights orders stayed on the statute book where (despite clear anachronism) they remain today. Moreover, although the exemption by Australia (as well as New Zealand) of Irish citizens (but only if of exclusively European ancestry) from standard immigration control ended in the mid-1970s,[138] its long-standing migration ties with Ireland led it to extend a youth mobility or 'working holiday' scheme to this country (irrespective of ancestry) in 1975,[139] which was continued despite not being effectively reciprocated in the case of Ireland until the later 1980s.[140]

Analysis

At least as regards the progressive restrictions placed on Commonwealth citizens, the Republic of Ireland's immigration policy has been understood to have been, albeit rather surreptitiously, dependent on that of the United Kingdom. This concrete policy outcome is said to have resulted from the need for a British-Irish Common Travel Area, the resulting requirement for a coordinated approach to immigration and a power disparity which resulted in Ireland largely being a policy-taker. Meanwhile, the partial concealment of this is related to an Irish desire to assert an autonomy free from undue or 'neo-colonial' influence. Although the imperative to restore and sustain the Common Travel Area undoubtedly imposed serious restraints, a close analysis of Irish, British and Australian archival records has brought to light a more complex picture. In sum, it has highlighted the significant discretion Ireland retained, the way this was often exercised to establish more restrictions and selection (including in favour of apartheid South Africa) and finally how on several occasions pressure to coordinate with the United Kingdom pushed Ireland towards a more liberal as opposed to more restrictive approach.

The record points to multiple rationales for the stance adopted by Ireland. First, the Irish MoJ throughout, and even its DEA after a short interval, adopted a hard-headed approach to the analysis of citizenship rights arrangements. There was a strong scepticism that the 'new' Commonwealth countries would reciprocate the 1935 Order, let alone as augmented by the citizenship rights orders. Given that the replies from Ceylon and even Pakistan indicated little more than an openness to lifting visa and similar formalities for short-term tourist travel, this was most probably justified. Indeed, even before the much more extreme measures adopted in parts of Commonwealth Africa during the late 1960s and 1970s, Toxey has demonstrated that the 'new' Commonwealth countries invariably adopted 'highly restrictive citizenship laws' which were 'designed to prevent large-scale immigration as well'.[141] Second, the socio-economic benefit for Ireland of strong and clear arrangements was severely doubted. In light of the wide socio-economic disparities, Irish officials feared that transparent offering of such rights would lead to damaging in-migration incentives whilst delivering few benefits for Irish citizens other than perhaps some missionaries. In contrast, significant but declining value was placed on

[137] 'Memorandum for the Government [on] Proposed Aliens (Amendment) Order, 1974', 8 Nov. 1974, NAI, 2005/7/160.

[138] See press cuttings ('Britons now need entry permits for NZ' (3 Apr. 1974) and 'Visa needed for all British visitors' (2 Aug. 1974)) in NAI, 2009/85/5.

[139] See 'Question No 2636 [Australian] House of Representatives – asked upon notice 1 June 1981', included in NAI, 2012/28/5.

[140] See Temporary Entry Branch [Department of Immigration and Ethnic Affairs], 'Review of Working Holiday Maker Arrangements' (June 1985), NAA, A 446 1985/77278. Today, Ireland has ten broadly reciprocal youth working holiday arrangements encompassing not only Australia, Canada and New Zealand but a diverse range of jurisdictions, including Japan and South Korea. Whilst all advanced industrialised economies, this wider mix suggests that current Irish approaches to migration are considerably less ethnically exclusive than they were in the period analysed in this article. See Ireland, Citizens Information, 'Working'.

[141] Walter Toxey, 'Restrictive Citizenship Policies within the Commonwealth', *McGill Law Journal* 13, no. 3 (1967): 502.

maintaining arrangements with those countries beyond the United Kingdom which Irish migrants had traditionally sought out, namely, Australia, Canada, New Zealand and South Africa. Third and most notably, there was a very strong desire to prevent any significant migration by those with a different ethnicity to majority Irish society. Although sometimes considered in terms of religion, this was more consistently conceptualised in straightforwardly racial or colour terms. This rationale was made explicit in much of correspondence which pointed to the 'disadvantages of having coloured people here of non-Christian religions',[142] made disparaging references to 'penniless Orientals of the pedlar type',[143] feared an overflow from the United Kingdom of 'undesirables from India, Pakistan etc',[144] and later sought to foreclose the continued granting of free movement rights to 'West Indians'[145].

These rationales, including a predominant concern to 'check "coloured immigration"',[146] were also a strong influence on British policy-makers and were critical to the significant curtailment of Commonwealth immigration rights in the United Kingdom by 1962[147] and an almost complete erosion of preferential treatment for Commonwealth citizens as such by the mid-1970s. Nevertheless, they played an earlier and stronger role in Irish policymaking and led to an earlier (even if generally veiled) adoption of a more restrictive and more selective approach. This occurred despite the fact that, in contrast to the roughly half a million new Commonwealth migrants who moved to the United Kingdom between 1948 and 1962,[148] Ireland experienced almost no permanent in-migration at all. Moreover, given the 'tendency to explain racism as the product of colonialism',[149] it is also striking that Ireland throughout represented itself as 'the moral pioneer of anti-colonialism, and the friend of emergent small nations'.[150]

This apparently counterintuitive divergence between Ireland and the United Kingdom calls for some explanation. Tentatively, two interconnected factors suggest themselves. First, in contrast to the United Kingdom with its more 'metropolitan'[151] self-understanding (which in turn was linked by politicians across the political spectrum to the best traditions of the Empire as well as that of the emerging Commonwealth), Ireland was engaged in a process of 'nation-building' that was 'characterised by the development of exclusionary conceptions of identity and a sociogenesis of homogeneity linked to nationalism'.[152] This emerged 'through processes of social closure which ideologically and materially displaced minorities from the "nation"'.[153] Although existing scholarship often focuses on 'internal others' especially Protestants, Jews and travellers,[154] it is more pertinent here to note that this paradigm also led (at least until the 1970s) to 'a suspicion of the cosmopolitan and the foreign [that] manifested itself in deep-rooted forms in [domestic] Irish politics and culture'.[155] Since Irish

[142] 'Question of making a new Aliens Exemption Order,' Aug. 1953, NAI, DFA/5/351/88.
[143] Letter from DEA to Berry (unsent), Samhain [Nov.] 1955, NAI, DFA/5/351/88.
[144] File Note, 14 Dec. 1954, NAI, DFA/5/351/88.
[145] 'Memorandum for the Government [on] Control of Alien Immigration into Ireland', 7 Feb, 1962, NAI, 2005/7/160.
[146] Hansen, 'The Politics of Citizenship Act', 68.
[147] Dean, 'The Conservative Government'.
[148] Hansen, 'The Politics of Citizenship Act', 95.
[149] John Brannigan, *Race in Irish Literature and Culture* (Edinburgh: Edinburgh University Press, 2009), 11.
[150] Ibid., 199.
[151] Hansen, 'The Politics of Citizenship Act', 85 and 87.
[152] Brian Fanning, *Racism and Social Change in the Republic of Ireland* (Manchester: Manchester University Press, 2012), 30.
[153] Ibid., 55.
[154] The pejorative phraseology 'penniless Orientals of the pedlar type' can reasonably be seen as drawing not only on racial prejudice but also the exclusion of travellers generally from full membership of the community, which has been understood to be particularly central to ethnic discrimination in Ireland (see Robbie McVeigh, 'The Specificity of Irish Racism', *Race and Class* 33, no. 4 (1992), 40–44). Nevertheless, this official was describing a real phenomenon within the island of Ireland generally. Thus, as Crangle explores in relation to Northern Ireland, '[r]ather than owning shops, early Indian settlers plied their trade door-to-door' and during the mid-1950s 'Indian traders were a common sight across urban and rural areas' (Crangle, *Migrants*, 44). Although the focus on entrepreneurship significantly relates to the effect of Northern Ireland's Safeguarding of Employment Act, the specific resort to peddling was presumably primarily the result of limited capital.
[155] Brannigan, *Race*, 12.

nationalism was 'often seen as movement of liberation from colonialism',[156] it proved entirely possible to marry this dominant exclusionary internal paradigm (which additionally correlated with 'scant interest in foreign affairs'[157] by the domestic public) with a genuine external Irish commitment to anti-colonialism and self-determination. Indeed, as O'Sullivan explores, despite clear evidence of societal discrimination and even 'racially motivated assaults on African students in Ireland' which reached 'crisis point' with the Nigerian media and the Nigerian authorities in 1964, Frank Aitken as Minister of External Affairs (and others in the government) still sought to claim that 'racism did not exist in Irish society, as Ireland was at the forefront of development work in Africa'.[158]

A second and related explanatory factor here is that, also prompted by a strong nationalist orientation and notwithstanding the bold pledges which it made during its secession in 1948–9, Ireland had clearly exited the Commonwealth by the end of the 1940s. This not only made it easier for it to camouflage its use of discretion behind a façade of necessary Irish-British harmonisation but meant it needed to take no direct account of the impact of its policy on the continuation of the Commonwealth itself. In contrast, the United Kingdom was influenced by its position as the chief founder and then a central member of this grouping as it transitioned away from being a bloc or alliance of countries into a much more slender bridge between disparate jurisdictions. Thus, as Hansen explicates, during the early 1950s the primary attachment of United Kingdom politicians to the 'old Commonwealth' led to an outcome where 'new Commonwealth immigrants were accepted, but only in so far as they contributed to a broader structure of subjecthood in which the Dominions' citizens were the key actors'.[159] Later in the decade, and as Dean has explored, concerns about 'dangers to orderly and successful decolonisation', including the emergence of a thriving expanded Commonwealth, further inhibited the introduction of 'restrictive legislation'.[160] In particular, '[t]he concept of a multiracial Commonwealth, however nebulous and ill-defined, was used cease-lessly [sic] to try to bind former British territories together' and '[t]he image, if not the reality, of unrestricted entry to the "mother country" was often seen as the cornerstone of this ideal'.[161]

Conclusions

To date, scholarship has recognised that the Republic of Ireland itself placed increasing limitations on Commonwealth immigration at least from the 1960s onwards but has conceptualised this as being almost entirely dependent on the United Kingdom's increasingly restrictive approach. Furthermore, it has been argued that Ireland deliberately sought to mask such reliance with a view to avoiding charges of improper, or even 'neo-colonial', influence. Through a close analysis of Irish, British and Australian archival material, this article has revealed a much knottier story within which Ireland retained substantial but also rather veiled discretion and used this to engage in earlier, more restrictive and more selective action. This story begins in 1948 when the United Kingdom secured Ireland's public pledge to extending reciprocal citizenship rights to Commonwealth states despite its own impending secession. However, Ireland successfully avoided this as regards the 'new' Commonwealth and left their position within its aliens exemption law deliberately opaque. Although Ireland largely mirrored the limitations set out in the UK's Commonwealth Immigrants Act 1962, its restrictions went further in confining comprehensive aliens exemption to those British citizens who had been born in the United Kingdom and were more selective in retaining apartheid South Africa as a partially privileged country. Through its Immigration Act 1971, which came into force on 1 January 1973, the United Kingdom largely abandoned privileged treatment for Commonwealth citizens as such, although those resident in the United Kingdom retained the franchise and all such citizens continued to benefit

[156] Ibid., 11.
[157] O'Sullivan, *Ireland, Africa*, 75.
[158] Ibid., 189.
[159] Hansen, 'The Politics of Citizenship Act', 93.
[160] Dean, 'The Conservative Government', 60.
[161] Ibid., 59.

from visa-free entry for short-term tourist travel until the mid-1980s. In comparison, Ireland again went further by entirely abolishing all legal privileges in 1975 and imposing visa requirements on newly independent Commonwealth countries from 1976.

The story as presented acknowledges and affirms that Ireland saw its UK immigration links as vital and that this seriously constrained its room for manoeuvre. Indeed, such links are crucial to explaining its pledge in 1948 as well as its need to legislate in both the 1960s and 1970s. Nevertheless, it remains significant that, throughout the period, discretion was retained and also exercised in a restrictive and selective manner. Irish officials are shown to have been motivated not only by a hard-headed and narrow understanding of self-interest but also by a strong desire to inhibit any settlement of those of a different race or religion to majority Irish society. Although the former factor intuitively links to the fact that Ireland had seceded from the Commonwealth in 1949 whereas the United Kingdom remained a leading member of it, the latter appears difficult to square with Ireland's self-presentation as an opponent of 'colonial' discrimination, especially once the almost non-existent nature of in-migration in fact is taken into account. However, this outcome becomes more legible once it is recognised that (as in other countries) nationalism in Ireland was often associated with a strongly homogenising outlook, the exclusionary effect of which was masked by an equation of this with a liberation from colonialism which, in turn, was seen as the sole repository of truly unjust ethnic discrimination. Ultimately, therefore, the story presented here may help build a more accurate and fuller understanding of the complex relationship between nation-building, empire and ethnic particularism.

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