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PRIVILEGES
AND
IMMUNITIES



Treaty Series No. 22 (1983) ✓

Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and The Commonwealth Foundation

London, 14 February 1983

[The Agreement entered into force on 14 February 1983]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 1983*

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**HEADQUARTERS AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
COMMONWEALTH FOUNDATION**

The Government of the United Kingdom of Great Britain and Northern Ireland and The Commonwealth Foundation;

Having regard to Article 9 of the Memorandum of Understanding⁽¹⁾ on The Commonwealth Foundation;

Desiring to define the status, privileges and immunities of the Foundation and persons connected with it;

Have agreed as follows :

ARTICLE 1

Use of terms

For the purpose of this Agreement:

- (a) "Foundation" means The Commonwealth Foundation;
- (b) "Members" means the Commonwealth Government Members of The Commonwealth Foundation;
- (c) "Government" means the Government of the United Kingdom of Great Britain and Northern Ireland;
- (d) "Chairman" means the Chairman of The Commonwealth Foundation;
- (e) "Board" means the Board of Governors of The Commonwealth Foundation;
- (f) "Governors" means the representatives of Members of the Foundation, and in each case means heads of delegations and alternates;
- (g) "Premises" means the buildings or parts of buildings and the land ancillary thereto used for the official purpose of the Foundation;
- (h) "Official activities" of the Foundation includes its administrative activities and those undertaken by it pursuant to the Memorandum of Understanding;
- (i) "Staff members" means the Director and all persons employed full time by the Foundation and subject to its staff regulations, other than persons recruited locally and assigned to hourly rates of pay.
- (j) "Citizen of the United Kingdom" means a person who is a British citizen, a British Dependent Territories citizen, or a British Overseas citizen.

⁽¹⁾ Not published.

ARTICLE 2

Interpretation

This Agreement shall be interpreted in the light of its primary objective of enabling the Foundation at its Headquarters in the United Kingdom fully and efficiently to discharge its responsibilities and fulfil its purposes and functions.

ARTICLE 3

Legal personality

The Foundation shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property and to be party to legal proceedings.

ARTICLE 4

Inviolability of archives

The archives of the Foundation shall be inviolable wherever located or by whomsoever held. The term "archives" includes all records, correspondence, documents, photographs, films and recordings belonging to or held by the Foundation.

ARTICLE 5

Immunity of property and assets

The Foundation's property and assets wherever situated shall be immune from any form of administrative or provisional judicial constraint, such as requisition, confiscation, expropriation or attachment, except insofar as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to, or operated on behalf of, the Foundation.

ARTICLE 6

Exemption from taxes

(1) Within the scope of its official activities the Foundation and its property and income shall be exempt from income tax, capital gains tax, corporation tax and other direct taxes.

(2) The Foundation shall be accorded a refund of car tax and value added tax paid on the purchase of new motor cars of United Kingdom manufacture, and where it is readily identifiable value added tax paid on the supply of other goods or services necessary for its official activities. In this connection it is envisaged that claims for refunds will be made only in respect of goods or services supplied on a recurring basis or involving

considerable quantities of goods or involving considerable expenditure such as the furnishing of the premises of the Foundation. No refund shall be made in respect of any claim for goods or services where the value of the goods or services does not amount in the aggregate to £300 sterling or more.

ARTICLE 7

Exemption from customs duties

(1) Goods imported or exported by or on behalf of the Foundation and necessary for the exercise of its official activities shall be exempt from all duties (whether of customs or excise) and other such charges (except mere payments for services) and from all prohibitions and restrictions on import or export.

(2) The Foundation shall be accorded a refund of duty (whether of customs or excise) and value added tax paid on the importation of hydrocarbon oils purchased by it and necessary for the exercise of its official activities.

ARTICLE 8

Exemption from taxes and duties

Exemption in respect of taxes or duties under Article 6 or Article 7 of this Agreement shall not be granted in respect of goods or services which may be purchased or imported for the personal benefit of a staff member of the Foundation. However nothing within this Article shall affect the rights of the Director and other staff members provided for in Articles 11 and 12.

ARTICLE 9

Re-sale

Goods which have been acquired under Article 6 or imported under Article 7 shall not be given away, sold, hired out or otherwise disposed of unless the appropriate authorities have been notified in advance and any necessary duties and taxes paid.

ARTICLE 10

The Chairman and Governors

(1) The Chairman and Governors of the Foundation shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:

- (a) immunity from jurisdiction (even after the termination of their mission) in respect of acts, including words written or spoken, done by

them in the exercise of their functions; this immunity shall not however apply in the case of a motor traffic offence committed by the Chairman or a Governor nor in the case of damage caused by a motor vehicle belonging to or driven by him;

- (b) inviolability for all their official papers and documents;
- (c) exemption for themselves and their spouses from all measures restricting entry, from charges for visas and from registration formalities for the purpose of immigration control;
- (d) unless they are residents of the United Kingdom for the purpose of exchange control, the same exchange control treatment as is accorded to diplomatic agents;
- (e) the same facilities as regards their personal luggage as are accorded to officials of foreign Governments on temporary official missions.

(2) The provisions of the preceding paragraph shall apply without prejudice to any special immunities to which the persons referred to may otherwise be entitled.

(3) The privileges and immunities described in paragraph (1) of this Article shall not be accorded to any representative of the Government or to any person not a citizen of and ordinarily resident in a Commonwealth country other than the United Kingdom, nor to any person who is a citizen of or permanently resident in the United Kingdom.

(4) Privileges and immunities are accorded to representatives in order to ensure complete independence in the exercise of their functions in connection with the Foundation.

(5) In order to assist the Government to implement the provisions of this Article the Foundation shall as far as possible inform the Government of the names of the Chairman and Governors at the time of their appointment in advance of their arrival in the United Kingdom.

(6) In the implementation of this Article the Government shall pay particular regard to the status of the Chairman as the appointee of Commonwealth Heads of Government.

ARTICLE 11

Director

In addition to the privileges and immunities provided for in Article 12, the Director, provided he is a citizen of a Commonwealth country other than the United Kingdom and neither a citizen of nor permanently resident in the United Kingdom, shall enjoy the privileges and immunities to which a diplomatic agent is entitled except that:

- (i) he shall not enjoy immunity from jurisdiction in the case of a motor traffic offence committed by him or in the case of damage caused by a motor vehicle belonging to or driven by him; and
- (ii) his salary and emoluments shall not be exempt from United Kingdom income tax other than under the provisions of Article 12(2).

ARTICLE 12

Staff members

(1) The staff members of the Foundation shall enjoy the following privileges and immunities:

- (a) immunity from jurisdiction, even after they have left the service of the Foundation, in respect of acts done by them in the exercise of their functions, including words written or spoken; this immunity shall however not apply in the case of a motor traffic offence committed by a staff member nor in the case of damage caused by a motor vehicle belonging to or driven by him;
- (b) exemption, together with members of their families forming part of their households, from any obligations in respect of military service, provided that this exemption shall not apply to any person who is a citizen of the United Kingdom;
- (c) inviolability for all their official papers and documents;
- (d) exemption, together with members of their families forming part of their households, from all measures restricting immigration, from charges for visas and from registration formalities for the purpose of immigration control;
- (e) the same treatment in the matter of currency and exchange control as is accorded to a diplomatic agent in the United Kingdom of the State in which they were resident for exchange control purposes when appointed to their posts with the Foundation, unless they are citizens of the United Kingdom or, at the time of first taking up their post in the United Kingdom, are permanently resident in the United Kingdom;
- (f) at the time of first taking up their post in the United Kingdom, exemption from duties (whether of customs or excise) and other such charges (except mere payments for services) in respect of import of their furniture and personal effects (including one motor car each) in their ownership or possession or already ordered by them and intended for their personal use or for their establishment. Such goods shall normally be imported within three months of the first entry of the staff member into the United Kingdom, but in exceptional circumstances an extension of this period may be granted. If staff members on the termination of their functions export goods to which this paragraph applies, they shall be exempt from any duty or other charge which may be imposed by reason of such export

(except mere payment for services). The privileges referred to in this sub-paragraph shall be subject to the conditions governing the disposal of goods imported into the United Kingdom free of duty in accordance with Article 9 and to the general restrictions applied in the United Kingdom to all imports. The exemptions in this sub-paragraph shall only apply to citizens of a Commonwealth country other than the United Kingdom and who are neither citizens of nor permanently resident in the United Kingdom.

(2) The staff members of the Foundation shall be subject to an income tax imposed by the Foundation for its benefit on salaries and emoluments paid by the Foundation. From the date on which this tax is applied such salaries and emoluments shall be exempt from United Kingdom income tax, but the Government shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

(3) In the event that the Foundation operates a system for the payment of pensions and annuities to its former staff members, the provisions of paragraph (2) of this Article shall not apply to such pensions and annuities.

(4) From the date on which the Foundation establishes its own social security scheme or joins that of another international organisation under conditions laid down in the staff regulations of the Foundation, the staff members of the Foundation, if they are citizens of a Commonwealth country other than the United Kingdom and neither citizens of nor permanently resident in the United Kingdom, shall with respect to services rendered for the Foundation be exempt from the provisions of any social security scheme established by the law of the United Kingdom.

ARTICLE 13

Object of privileges and immunities. Waiver

(1) The privileges and immunities accorded in this Agreement to the staff members of the Foundation are provided solely to ensure, in all circumstances, the unimpeded functioning of the Foundation and the complete independence of the persons to whom they are accorded.

(2) The Director has the right and the duty to waive such immunities (other than his own) when he considers that they are preventing the carrying out of justice and when it is possible to dispense with them without prejudicing the interests of the Foundation. In respect of the Director, the Board may waive his immunities.

ARTICLE 14

Co-operation

The Foundation shall co-operate at all times with the appropriate authorities in order to prevent any abuse of the privileges and immunities

and facilities provided for in this Agreement. The right of the Government to take all precautionary measures in the interests of its security shall not be prejudiced by any provisions in this Agreement.

ARTICLE 15

Notification of appointments. Cards

(1) The Foundation shall notify the Government when a staff member takes up or relinquishes his post. Furthermore, the Foundation shall from time to time send to the Government a list of all its staff members. It shall in each case indicate whether the staff member is a citizen of a Commonwealth country other than the United Kingdom or permanently resident in the United Kingdom.

(2) The Government shall issue to all staff members, on notification of their appointment, a card bearing the photograph of the holder and identifying him as a staff member. This card shall be accepted by the appropriate authorities of the United Kingdom as evidence of identity and appointment. The Foundation shall return the card to the Government when the holder relinquishes his post.

ARTICLE 16

Modification

At the request either of the Government or of the Foundation consultations shall take place respecting the implementation, modification or extension of this Agreement. Any understanding, modification or extension may be given effect by the Exchange of Letters between a representative of the Government and the Director (after approval by the Board).

ARTICLE 17

Disputes

Any dispute between the Government and the Foundation concerning the interpretation or application of this Agreement or any question affecting the relations between the Government and the Foundation which is not settled by negotiation or by some other agreed method shall be referred for final decision to a panel of three arbitrators. One of those arbitrators shall be chosen by Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, one shall be chosen by the Director and the third, who shall be the Chairman of the Tribunal, shall be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within one year of their own appointment, the third arbitrator, at the request of the Government or of the Foundation, shall be chosen by the President of the International Court of Justice.

ARTICLE 18

Entry into force and termination

(1) This Agreement shall enter into force on signature.

(2) This Agreement may be terminated by agreement between the Government and the Foundation. In the event of the headquarters of the Foundation being moved from the territory of the United Kingdom, this Agreement shall, after the period reasonably required for such transfer and the disposal of the property of the Foundation in the United Kingdom, cease to be in force.

In witness whereof the respective representatives have signed this Agreement.

Done in duplicate at London this 14th day of February 1983.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

CRANLEY ONSLOW

For The Commonwealth Foundation :

R. THROSSELL

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