

Confidential Filing

European Commission of Human Rights : Case
brought against U.K. by Mr. J. Dudgeon
(Northern Ireland Homosexual Law)

LEGAL PROCEDURE

83
35
807
☺

MAY 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
29.5.80							
30.7.80							
10.3.81							
10.12.81							
12.12.81							
28.1.82							
23.2.82							
10-3-82							

PREM 19/827

MFJ

~~file~~
legal procedure

10 March 1982

Law on Homosexual Offences in
Northern Ireland

Thank you for your letter of 9 March,
the contents of which the Prime Minister
has noted.

JC

M.W. Hopkins, Esq.,
Northern Ireland Office.

52.

From: THE PRIVATE SECRETARY

A. Kydd

2



NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

Prime Minister
To note.

John Coles Esq
Private Secretary to
the Prime Minister
10 Downing Street
LONDON SW1

9 March 1982 *MR 2/3*

mf

Dear John,

LAW ON HOMOSEXUAL OFFENCES IN NORTHERN IRELAND

I wrote on 22 February to inform you that my Secretary of State proposed by means of an arranged Parliamentary Question to announce his intention of changing the law on homosexual offences in Northern Ireland to bring it into line with that in Great Britain.

In view of the muted reaction in Northern Ireland to the announcement made on 24 February, my Secretary of State is now disposed to proceed immediately with the publication of a Proposal for a draft Order in Council and a six-week consultation period, which is the standard procedure for Northern Ireland legislation. The Proposal will accordingly be published on Thursday, 18 March and the consultation period will expire on Friday, 30 April. Mr Prior will then consider whether the draft Order should be laid before Parliament straightaway.

I am copying this letter to the Private Secretaries to Members of 'H' Committee and the Attorney General, and to David Wright (Cabinet Office).

*Yours sincerely
M W Hopkins*

M W HOPKINS

POSTAL SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

59 MAR 1982



CONFIDENTIAL

R M

Legal Procedure

23 February, 1982

Law on Homosexual Offences in Northern
Ireland

The Prime Minister has noted the contents
of your letter of 22 February.

2 DECEMBER

M Hopkins, Esq
Northern Ireland Office

CONFIDENTIAL

MB



NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

John Coles Esq
Private Secretary to
the Prime Minister
10 Downing Street
LONDON
SW1

Prime Minister

To note.

ms

A.J.C. 22.

22 February 1982

Dear John

LAW ON HOMOSEXUAL OFFENCES IN NORTHERN IRELAND

My Secretary of State wrote to the Prime Minister, the Home Secretary and H Committee colleagues on 7 December seeking their agreement to his proposal to bring the law on homosexual offences in Northern Ireland into line with that in Great Britain in order to comply with the judgement of the European Court of Human Rights which ruled against Her Majesty's Government in the case of Jeffrey Dudgeon, a homosexual living in Northern Ireland. The Secretary of State asked for discretion as to the timing of an announcement of the Government's intentions and any subsequent legislation.

The European Court reserved its judgement on Mr Dudgeon's claim for compensation and gave the European Commission until 27 February to make any submissions concerning the possibility of a friendly settlement between the complainant and HMG. In order to resist any claims for compensation other than substantiated reasonable and necessary costs, it is important that the Government should announce before 27 February its intention to bring the law into line with that in Great Britain. This would enable our representative to argue that the Court's finding of a breach in the European Convention on Human Rights by the United Kingdom, together with the announced intention to change the relevant legislation, afford the applicant just satisfaction. The Government would then argue that it was not prepared to offer payment in respect of damages claimed.

My Secretary of State therefore proposes to announce his intention to change the law by means of an arranged Parliamentary Question on Wednesday, 24 February. But he does not intend to proceed at this stage with the steps necessary to change the law. He prefers to wait for a time when such a change could not be linked in the public's mind with the present Kincorea affair and when it would not run the risk of complicating talks on our proposals for constitutional development. The time for making the relevant change will be kept under review.

/...

CONFIDENTIAL

... Since the announcement itself is likely to be controversial, suitable briefing of your Press Office is being arranged and I attach copies of the Parliamentary Question, the draft answer and the background note.

I am copying this letter to the Private Secretaries to Members of 'H' Committee and the Attorney General, and to David Wright (Cabinet Office).

Yours sincerely

Mike Hopkins

M W HOPKINS

-2-

CONFIDENTIAL

R.

CONFIDENTIAL

DRAFT PQ

To ask the Secretary of State for Northern Ireland, if the Government has yet made a decision on the judgment of the European Court of Human Rights in the case of Jeffrey Dudgeon; and if he will make a statement.

DRAFT REPLY (MR PRIOR)

Yes. The Government has noted the decision of the European Court of Human Rights that the law on homosexual offences in Northern Ireland is in breach of Article 8 of the European Convention on Human Rights. Under the Convention, Her Majesty's Government has undertaken to abide by decisions of the Court in cases to which it is a party. The Government will therefore be taking steps to bring the law on homosexual offences in Northern Ireland into line with that of the rest of the United Kingdom.

CONFIDENTIAL

BACKGROUND NOTE

1. The law on homosexual offences in Northern Ireland is still contained in the Offences Against the Person Act 1861, under which buggery is punishable by a maximum sentence of life imprisonment, and the Criminal Law Amendment Act 1885, under which gross indecency is punishable by a maximum of two years' imprisonment. The Sexual Offences Act 1967 provided that in England and Wales homosexual acts in private between consenting males aged 21 or over should cease to be criminal offences. An amendment to the Criminal Justice (Scotland) Bill in 1980 brought the law in Scotland into line with England and Wales.

2. Prior to 1972 the Stormont parliament did not propose any corresponding legislation for Northern Ireland. Under direct rule, however, HMG has been subject to a certain amount of pressure to bring the law in Northern Ireland into line with that in England and Wales. In 1977 the Standing Advisory Commission on Human Rights recommended that this should be done. In 1978 the then Government published a proposal for a draft Homosexual Offences (NI) Order which would have done this. Public response was extreme, both for and against changing the law. Because there was clearly a substantial body of opinion in the Province which was strongly opposed to the proposed change, the present Government decided in July 1979 that it would not be justified in introducing legislation to make the change.

3. In 1976 Mr Jeffrey Dudgeon, a homosexual living in Northern Ireland, complained to the European Commission of Human Rights that the law on homosexual offences in Northern Ireland breached Articles 8 (the right to privacy) and 14 (against discrimination) of the Convention. In 1980 the Commission adopted a report which concluded

CONFIDENTIAL

- 2 -

that this law breached Article 8 but that it was unnecessary to examine the case under Article 14. The case was referred to the European Court which heard it in April last year.

4. The Government prepared the ground for change ^{in 1980} ~~last year~~ when the then Secretary of State said the Government would be "prepared to reconsider the matter [law reform] in the light of future relevant developments, including any resulting from proceedings under the European Convention on Human Rights".

5. On 22 October ¹⁹⁸¹ the European Court ruled against HMG, as expected. The judgement is as follows:

a. that the law in Northern Ireland breaches Article 8 of the Convention on Human Rights (the right to privacy), this by 15 votes to 4;

b. that it is not necessary to examine the case under Article 14 (against discrimination), this by 14 votes to 5;

c. that the question of compensation under Article 50 should be referred back for decision by the Chamber of the Court.

6. The Secretary of State wrote to the Home Secretary, the Prime Minister and 'H' Committee colleagues seeking their agreement to his proposal to bring the law on homosexual offences in Northern

CONFIDENTIAL

....

CONFIDENTIAL

- 3 -

... offences in Northern Ireland is ... Ireland broadly into line with that in Great Britain which he would announce by means of an arranged PQ. He asked his colleagues for discretion in respect of timing to take account of Protestant sensitivities in the aftermath of the Bradford murder. The Home Secretary agreed to the proposal, the Prime Minister noted it and the only colleague to express reservations was the Chief Whip, who has been consulted by the Secretary of State. The Attorney-General wrote pressing for urgent action to prevent Government embarrassment because he was advising the DPP(NI) on a case which would warrant a prosecution for a homosexual offence under the present law in Northern Ireland but which would not constitute criminal behaviour when the law is reformed.

7. The European Court has given the Commission until 27 February to comment on Mr Dudgeon's claim for compensation of £20,000 and to state whether there is a basis for a friendly settlement. If the Government's intention to change the law is announced in time, it is proposed to argue that except for substantiated legal costs Mr Dudgeon is adequately compensated by HMG's commitment to change the law.

CONFIDENTIAL

22 FEB 1982



Prime Minister's legal procedure

To note, pending Mr.

Prior's reply.

A.S.C. 27

CONFIDENTIAL



01-406 7641 Extn 3201

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

28 January 1982

*I assume the
Lord President
is on 'H.
Committee.
MS.*

He is.

A.S.C. 1/2

f.a.

The Rt Hon James Prior MP
Secretary of State for Northern Ireland
Northern Ireland Office
Great George Street
LONDON S W 1

Dear Jim.

LAW ON HOMOSEXUALITY IN NORTHERN IRELAND

You will remember that I wrote to you on 15 December expressing my concern about any prolonged deferment of the announcement of our intention to bring the law of Northern Ireland into line with the law of the rest of the United Kingdom. In that letter I mentioned that the Director of Public Prosecutions for Northern Ireland was about to seek my directions on whether to institute proceedings in a particular case. He has now done so and I have been wrestling with the problem for this past week. It is a case where there would be no offence if the law of Northern Ireland was in the same form as in the rest of the United Kingdom but where I find it very difficult to identify any proper reason not to authorise a prosecution if I have regard only to the law as it now stands. I really cannot defer my decision much longer but, before I take it, I need to know how firm the prospect is of your announcing in the very near future that the legislation which we have in mind will shortly be introduced.

We ought also not to lose sight of the real problem which a further deferment of the announcement will cause us in relation to the Dudgeon case itself. As you will recall, Dudgeon has put in a claim under Article 50 of the Convention to "just satisfaction" for the violation of his rights which

CONFIDENTIAL



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

the Court found us to have committed. He is claiming substantial sums by way of material damages, legal costs and also "moral damages". While we are prepared to pay him a reasonable sum for properly substantial legal costs, we are proposing strenuously to resist his claim for either kind of damages. But our case for resisting the claim to "moral damages" rests almost entirely on our ability to say that the law is going to be changed to give effect to the Court's judgment and that this, coupled with the judgment itself, constitutes all the satisfaction that he is entitled to under this head. We shall very shortly have to indicate to the Commission what our attitude is towards Dudgeon's claim and the Commission then has to report the position to the Court. The present time limit for their doing so is 27 February. This is an extension of the original time limit but, if it looked as though we were engaged in meaningful negotiations, I daresay that the Commission might be prepared to seek, and would get, yet a further extension. But, given our unforthcoming attitude on everything except costs, I see little prospect of that. Accordingly, if we cannot very soon come out into the open with our intention to amend the law, Dudgeon's claim will go to the Court in the near future on the basis of a very unsatisfactory report by the Commission as to our own attitude. This is bound to increase the risk of our being eventually ordered to pay him a substantial sum by way of moral damages, which I am sure would offend our colleagues.

For all these reasons, I must urge you to make a very early announcement of our intention to legislate. But, in any event, I need to know very soon, for the purposes of reaching my own decision on the prosecution which I have referred to above, what our intentions are.

/I am

CONFIDENTIAL



01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

I am copying this letter to the Prime Minister, the other members of 'H' Committee, the Lord Privy Seal, the Lord Advocate and Sir Robert Armstrong.

Yours etc.

Michael

Legal Procedure ②



QUEEN ANNE'S GATE LONDON SW1H 9AT

17 December 1981

Dear Jim

[Handwritten initials]

Prime Minister

14/12

HOMOSEXUALITY IN NORTHERN IRELAND

f.a.

M 21/12

Thank you for your letter of 7 December 1981 about the law on homosexual offences in Northern Ireland. I have also seen the Lord Privy Seal's letter of 10 December, the Prime Minister's Private Secretary's letter of 10 December to your Private Secretary, the Attorney General's letter of 15 December, and the Chief Whip's letter of 16 December.

In the absence of any contrary views from our colleagues, you may take it that you have agreement to proceed on the basis set out in your letter. I confirm for my part that I am content with what you propose. No doubt you will consider whether you can meet the Attorney General's concern about the timing of the Order in Council.

I am sending copies of this letter to the Prime Minister, the other members of H Committee, the Lord Privy Seal, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

[Handwritten signature]

The Rt. Hon. James Prior, MP.

11 8 DEC 1981

11 12 13 14
15 16 17 18
19 20 21 22

PRIVATE AND CONFIDENTIAL

(2)



~~Prime Minister~~

Government Chief Whip

12 Downing Street, London SW1

17/12

Secretary of State for Northern Ireland

ms

21/12

LAW ON HOMOSEXUALITY IN NORTHERN IRELAND

h-a

I am really very concerned indeed about the implications of our proposals in this direction. Whilst I fully understand the merits of the situation, I guess we could have a tremendous row in the House of Commons.

I am copying this letter to all the recipients of yours.

16 December 1981



Prime Minister

M 17/12

15 December, 1981

M

K.A.
M 22/12

Dear Jim.

LAW ON HOMOSEXUALITY IN NORTHERN IRELAND

1. Thank you for sending me a copy of your letter of 7 December to the Home Secretary.
2. I have no objection at all to the substance of your proposals. As regards the need to legislate, I agree that the judgment of the Court of Human Rights gives us no option and that you should present your announcement in that light. As regards Mr. Dudgeon's claim for "just satisfaction" under Article 50 of the Convention, I am sure that you are right in proposing that we should indicate a readiness to pay substantial legal costs but should make no offer of any other kind of monetary compensation: the Court may in the end order us to pay some compensation for "moral damages" but, for the reasons which you yourself give, we should resist it as long as possible.
3. What does trouble me considerably, however, is your proposal to defer the announcement of your intention to legislate. I fully understand your reasons for this and I accept that you must be free to choose the best moment in the light of all the political considerations. But I must warn you that any substantial deferment - not merely of the announcement but also of the actual passage of the legislation - will put me, and perhaps the Government as a whole, in an acutely embarrassing position as

/regards



-2-

regards the enforcement of the existing law. In exercising my discretion whether or not to authorise a prosecution in any particular case, I must apply the law as it now stands. I cannot adopt a general policy of not prosecuting that would be tantamount to treating the law as amended or suspended. You will remember the constitutional embarrassment that the Home Secretary of the day found himself in some years ago when, for a short period, he adopted such a policy in relation to the exercise of the Prerogative of Mercy in anticipation of legislation suspending capital punishment for certain offences.

3. Accordingly, until such time as your proposed Order in Council has been approved by Parliament and made and brought into operation, I must continue, in each case that comes before me, to look at it on its intrinsic merits according to the law as it now is. This means that I may have to prosecute. There is already one case - which I am told is probably one where there has been a clear contravention of the existing law but not of the law as it will be when we have amended it to bring it into conformity with the Convention - in which the Director of Public Prosecutions for Northern Ireland is about to seek my directions; and I do not doubt that there will be others if the present situation continues for very long. I would not put it past the Gay Rights movement in Northern Ireland to try to force our hands by deliberately seeking prosecution. If I do decide to prosecute in any particular case, they (and the Human Rights lobby generally) will certainly make the most of the apparent defiance of the European Court's judgment. If I decide not to prosecute, we may be sure that those on the other side will make the most of

/that



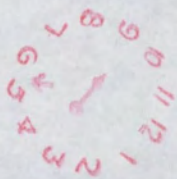
-3-

that. The only way out of this embarrassment is for your Order in Council to be announced, and then approved by Parliament and made, with all possible despatch.

4. I am copying this letter to all the recipients of yours.

*Yours ever,
Michael.*

The Rt Hon James Prior MP
Secretary of State for Northern Ireland
Government Offices
Great George Street
London, SW1



16 DEC 1987

Legal Procedure



Foreign and Commonwealth Office
London SW1A 0AA

10 December 1981

10/12

Dear Jim,

LAW ON HOMOSEXUALITY IN NORTHERN IRELAND

You copied to Peter Carrington your letter of 7 December to Willie Whitelaw. I agree with what you propose.

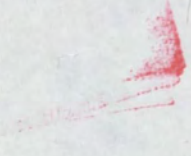
I am copying this letter to the recipients of yours.

Yours ever

Humphrey

The Rt Hon James Prior MP
Secretary of State for Northern Ireland
Northern Ireland Office
Great George Street
London SW1P 3AJ

17 DEC 1991



FILE

Legal Procedure HL



cc: HO DHSS FCO
 LCO CDL LOD
 LPO DES LAD
 EMP CH SEC HMT
 ENV CWO H/C
 SO TRANS
 WO CWO H/L

10 DOWNING STREET

CO
 PMG Arms
 Capt. Gent. at

From the Private Secretary

10 December 1981

Law on Homosexuality in Northern Ireland

The Prime Minister has seen and taken note of Mr. Prior's letter of 7 December to the Home Secretary on this subject.

I am sending copies of this letter to the Private Secretaries to the members of H Committee, Brian Fall (Foreign and Commonwealth Office), Jim Nursaw (Law Officers' Department), Christine Duncan (Lord Advocate's Department) and David Wright (Cabinet Office).

A. J. COLES

Stephen Boys-Smith, Esq.,
Northern Ireland Office.

8K



NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Prime Minister
You will wish to note

The Rt Hon William Whitelaw
CH MC MP
Secretary of State for
the Home Department
Home Office
Queen Anne's Gate
LONDON SW1

AD 8/12

7 December 1981

Whitelaw

[Handwritten mark]

LAW ON HOMOSEXUALITY IN NORTHERN IRELAND

On 22 October the European Court of Human Rights announced its judgment in the case of Jeffrey Dudgeon (a homosexual living in Northern Ireland). The Court ruled that the law on homosexual offences in Northern Ireland (under which homosexual acts are punishable by a maximum sentence of life imprisonment) was in breach of the European Convention on Human Rights. The judgment is binding. I believe that we must introduce a draft Order in Council at an early date bringing the law on homosexual offences in Northern Ireland broadly into line with that in Great Britain.

Background

The law on homosexual offences in Northern Ireland remains essentially the same as it was in Great Britain before the enactment of the Sexual Offences Act 1967 applying to England and Wales, and the amendment to the Criminal Justice (Scotland) Act 1980 which brought Scotland into line with the rest of Great Britain.

Before direct rule in 1972 the Stormont Parliament did not choose to change the law in this area. Since then, although successive Governments have been subject to a degree of pressure to bring the law into line with England and Wales, they have chosen not to do so because of the existence of a substantial body of opinion in Northern Ireland strongly opposed to a change in the law. The previous administration published a Proposal for a draft Homosexual Offences (NI) Order in 1978; but took it no further. In view of extreme public response to that Proposal (including Ian Paisley's "Save Ulster from Sodomy" campaign which attracted 70,000 signatures) my predecessor decided on coming into office that he would not be justified in proceeding with the proposed Order.

/...

The European Convention on Human Rights Case (Dudgeon)

In 1976 Jeffrey Dudgeon complained to the European Commission of Human Rights that the law on homosexual offences in Northern Ireland breached the Convention. In 1980 the Commission adopted a report which concluded that this law breached Article 8 (the right to privacy). The case was referred to the European Court whose judgment now confirms the Commission's conclusion.

In its judgment the Court gives due weight to HMG's argument that the law in Northern Ireland was justified by the distinctively strong feelings there about the relevance of religious and moral factors to questions of social policy. It also recognises that the Government "acted carefully and in good faith", and "made every effort to arrive at a balanced judgment". Nevertheless, the Court still concludes that the interference with private life entailed by the present law in Northern Ireland is out of proportion to the social need claimed for the law.

Under the European Convention, HMG undertakes to abide by the decision of the Court in any case to which it is a party. In the present case, if we are to remedy the breach of the Convention, we are clearly obliged to amend the law of Northern Ireland. There is no effective recourse to administrative action, while leaving the law unchanged, available to us. Accordingly, our refusal or prolonged failure to amend the law would mean that we should undoubtedly come under intense pressure from the Council of Europe Committee of Ministers (as well as in Parliament and in other domestic and international forums). Although I do not wish to overstate the case, this could lead, eventually, to our being compelled to withdraw from the Council of Europe or being obliged to denounce the Convention.

In view of our international obligations I am firmly of the view that we should bring the law in Northern Ireland into line with that in Great Britain at an early date. I can do this by means of an Order in Council under the Northern Ireland Act 1974, subject to affirmative resolution of both Houses.

Opposition to Legislation

Considerable opposition can be expected in Northern Ireland to any move to bring the law into line with that in Great Britain. Seven of the present eleven Northern Ireland MPs have opposed reform, while none has expressed himself in favour. The Catholic hierarchy, some sections of the Presbyterian Church and other smaller religious groups are opposed. And the Lord Chief Justice and some other prominent judges have declared their opposition. What is more, those who have in the past favoured reform (the SDLP, the Alliance Party, the Church of Ireland and the Methodists) are unlikely to adopt a very high profile in support in the face of vehement opposition. Our difficulties may be compounded because HMG has itself argued in open court at Strasbourg that the existing law is justified; and Paisley, Powell and others will also vent their constitutional opposition to Parliament appearing to be dictated to by European institutions.

A further important factor is the present heightened tension in the Protestant community and the consequent need to avoid giving Ian Paisley's cause a gratuitous boost by allowing him to claim that the Government is once again disregarding the views and interests of the Protestant majority, and is out of touch with the opinions of the people of Northern Ireland generally.

I do not intend to let Paisley's orchestrated opposition deter me from taking action at the appropriate time but it would clearly be unwise to add grist to his mill of dissent just at the present. I shall therefore need to choose my moment carefully. But when the time comes, I shall be able to present the change as an automatic consequence of being a signatory to the European Convention on Human Rights. And I may be able to turn the argument back on Unionists by demonstrating that in changing the law we are bringing Northern Ireland into line with Great Britain - which so many of them claim to favour. Above all, the protest should be relatively short-lived, abating once the legislation is passed and other more important matters present themselves. I do not believe it will become a major issue in my dealings with the local parties.

Compensation

The Court reserved judgment on the question of compensation for Mr Dudgeon pending a report from the Commission on whether there was the basis for a friendly settlement between us and the complainant. Mr Dudgeon is claiming £5,000 for distress, suffering and anxiety resulting from the 1976 police investigation that originally prompted his complaint to the Court; £10,000 for general fear and distress since the age of 17; and £5,000 for legal expenses. To offer compensation (over and above substantiated legal expenses) could cause real difficulties for us in future cases before the European Commission and Court: it would concede that general "moral damages" (as opposed to compensation for established financial loss) were justifiable. It could also lead to other cases being lodged by homosexuals in Northern Ireland claiming comparable compensation. Furthermore, extremely unfavourable comparisons would be made between the compensation offered to Mr Dudgeon and that paid to the victims of terrorism and their relatives in Northern Ireland.

I believe therefore that we should make no offer on compensation (other than to pay substantiated legal costs). We should suggest that Mr Dudgeon is adequately compensated by our commitment to change the law. The final decision of course will rest with the Court.

Conclusion

HMG has been found to be in breach of the European Convention on Human Rights - a judgment which is binding on us. The only means available of complying with our obligations is to amend the law on homosexual offences. We prepared the ground for change last year when we stated that we would be "prepared to reconsider the matter [law reform] in the light of future developments, including any resulting from proceedings under the European Convention on Human Rights". I would therefore present law reform as the only

CONFIDENTIAL

realistic option following the Court's judgment, rather than as a Government initiative to liberalise Northern Ireland's social law. I would have wished to make an immediate announcement of our intentions, particularly in view of the gathering swell of questions I am getting about how I am going to respond to the Court. But in view of Paisley's present efforts to mobilise the majority community against the Government, I feel that I must take special care over timing. I cannot wait too long; but some slight delay may be prudent.

Unless, therefore, you or colleagues to whom I am copying this letter disagree, I intend to announce by way of an arranged PQ that the Government will respond to the judgment of the European Court by introducing a draft Order in Council to bring the law on homosexual offences in Northern Ireland broadly into line with that in Great Britain. I would decide on the precise timing of the announcement in the light of political events in Northern Ireland over the next few weeks. The attached PQ answer indicates the line I would take. On compensation, I intend to offer nothing.

I am copying this letter to the Prime Minister, other members of H Committee, the Foreign and Commonwealth Secretary, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*Yours
James*

CONFIDENTIAL

CONFIDENTIAL

THE DUDGEON CASE

DRAFT PQ

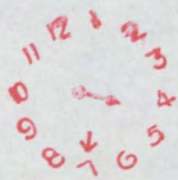
To ask the Secretary of State for Northern Ireland, if the Government has yet made a decision on the recent judgment of the European Court of Human Rights in the case of Jeffrey Dudgeon; and if he will make a statement.

DRAFT REPLY (Mr Prior)

Yes. The Government has noted the ruling of the European Court that the law on homosexual offences in Northern Ireland is in breach of Article 8 of the European Convention on Human Rights. As a party to the European Convention, Her Majesty's Government accepts the judgments of the European Court to be binding and therefore the Government will be taking steps leading to the laying before Parliament of a draft Order in Council which, if approved, would bring the law on homosexual offences in Northern Ireland broadly into line with that in Great Britain.

CONFIDENTIAL

-7 DEC 1984



From: THE PRIVATE SECRETARY

Legal Procedure



NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

Michael Alexander Esq
10 Downing Street
LONDON
SW1

*Ag -
Rund*

(4)

10 March 1981

*Prime Minister
To note.*

mt

Print 15/3

Dear Michael,

EUROPEAN COMMISSION ON HUMAN RIGHTS: THE DUDGEON CASE (NORTHERN IRELAND HOMOSEXUAL LAW)

In my letter of 29 July last I reported that the Commission had referred the Dudgeon case to the European Court on Human Rights. The Commission had found the UK Government to be in breach of Article 8 of the European Convention on Human Rights (relating to the right of individual privacy) because homosexual acts between consenting men remain illegal in Northern Ireland.

My Secretary of State has asked me to let you know that the case is now due to be heard by the Court on 23 April; the Court's judgement is likely to be made public in the early summer. We are considering how the Government should respond in the event of the Court finding against us. (The Court's judgement is binding on member states.)

I am copying this letter to the Private Secretaries of Members of the Cabinet, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

*Yours sincerely
Mike Hopkins*

M W HOPKINS

For the Board of Directors

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535



70 MAR 1987

12 1 2 3 4 5 6 7 8 9

file

Legal Proceeds [Signature]

cc: Cabinet
 to Adv.
 CO

30 July 1980

European Commission of Human Rights: Case
Brought Against HMG By Mr. J. Dudgeon (Northern
Ireland Homosexual Law)

The Prime Minister has seen your letter to me of 29 July on this subject. She agrees with the course of action proposed by Mr. Atkins.

I am sending copies of this letter to the Private Secretaries to members of Cabinet and of the Lord Advocate, and to David Wright (Cabinet Office).

MOD&A

M. W. Hopkins, Esq.,
Northern Ireland Office.

Mark Carlisle's Office
- 4/8/80
No comment

BK.



NORTHERN IRELAND OFFICE

GREAT GEORGE STREET,

LONDON SW1P 3AJ

Prime Minister.

Michael Alexander Esq
10 Downing Street
London SW1

*I can see that the Scottish
amendment is embarrassing but*

29 July 1980

*suspect that Mr Atkins is right
in wanting to wait for a judgement
from the Court. Agree?*

Revd 25/7

Yes not

Dear Michael

EUROPEAN COMMISSION OF HUMAN RIGHTS: CASE BROUGHT AGAINST HMG BY
MR J DUDGEON (NORTHERN IRELAND HOMOSEXUAL LAW)

You may recall that I wrote to Mike Pattison on 29 May about the report of the European Commission of Human Rights on this case. The report found that the UK was in breach of Article 8 of this European Convention on Human Rights (relating to the rights to individual privacy) because homosexual acts between consenting men remain illegal in Northern Ireland. We have now heard that the Commission have referred the case to the European Court of Human Rights who will in due course, after taking open evidence from both sides, reach a judgement which will be binding on HMG under the European Convention.

We foresaw this reference to the Court last summer when we announced our decision not to proceed with the previous Government's proposed legislation to reform Northern Ireland homosexual law. The view was taken then that in view of the strength of opposition in Northern Ireland to law reform - particularly among Northern Ireland MPs - it was desirable not to initiate legislation but to wait and see whether a binding ruling issued as a result of the Dudgeon case. If so, that would be strong justification for a reform of the law.

My Secretary of State continues to believe that this is the right course. All the arguments that led us to our conclusion last summer apply with equal force now. However, as the Secretary of State for Scotland has pointed out in his letter of 24 July, there has been one development in the last week which, while changing nothing in substance, could lead to some embarrassment. On 22 July, at Report Stage of the Criminal Justice (Scotland) Bill, a backbench amendment was approved bringing the law on homosexuality in Scotland into line with that in England and Wales. This leaves Northern Ireland alone in the United Kingdom where homosexual acts between consenting men remain illegal.

As a result we may expect increased pressure to move immediately to reform the law in Northern Ireland without waiting for a decision from the European Court. Yet the arguments are as they have always been. Public opinion in Northern Ireland cannot be ignored. And the change in the law in Scotland came as a result of the initiative of private members, not the Government: no effort to reform the law in Northern

E.R.

Ireland has come from the backbenches. Mr Atkins therefore does not believe that there is reason to depart from the previously determined policy to await the final outcome of the case under the European Convention before deciding whether to introduce legislation.

I am copying this letter to the Private Secretaries to members of the Cabinet, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely
Mike Hopkins

M W HOPKINS

cc B.igham

RESTRICTED

From: THE PRIVATE SECRETARY

Legal procedure 2



NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

PRIME MINISTER

29 May 1980

For information

M Pattison Esq
10 Downing Street
London SW1

MAJ 29/5

Handwritten notes:
1. MODBA to see
2. re MAJ 2/11

Dear Mike,

EUROPEAN COMMISSION OF HUMAN RIGHTS: CASE BROUGHT AGAINST UK BY MR J DUDGEON (NORTHERN IRELAND HOMOSEXUAL LAW)

My Secretary of State thought that the Prime Minister might wish to have some background information on this case, some reports of which recently appeared in the Guardian as well as the Belfast Newsletter.

Mr Dudgeon, who lives in Northern Ireland, was arrested (though not in the end prosecuted) for homosexual offences. The conduct alleged would not have been a criminal offence if done in England or Wales, because the Sexual Offences Act 1967 made lawful there homosexual acts in private between consenting men aged 21 and above. Mr Dudgeon brought a case against the UK Government before the European Commission on Human Rights claiming that his human rights were being violated because male homosexual acts remain illegal in the Province. We have received a copy of the Report giving the Commission's findings. The Commission has found that the UK was in breach of one article of the European Convention on Human Rights relating to the right to individual privacy. Under the terms of the Convention, the Commission's Report must remain confidential (unless it is referred in due course to the European Court).

Mr Dudgeon has not been given the Commission's Report as such, but was told unofficially by the Commission of its findings, and it is presumably from him that the Press learned what they were. The newspaper reports which have appeared are reasonably accurate and a number of MPs, most of them apparently prompted by branches of the Campaign for Homosexual Equality (CHE), have written to Northern Ireland Office Ministers, asking what the Government proposes to do now.

We are taking legal advice on the contents of the Report, and my Secretary of State will then review the possible options open to HMG and make a recommendation to Cabinet colleagues. (In effect the choices fall into two categories: taking steps to amend the

RESTRICTED

RESTRICTED

Northern Ireland law, and letting further stages in the procedures of the Commission run their course.)

Meanwhile enquirers are being told that, under the procedure laid down in the European Convention itself, the Report must remain confidential for the time being at least; that it is under careful study; but that meanwhile the Government's position remains as outlined by the Secretary of State on 2 July 1979 in a Parliamentary Answer (copy attached); i.e. HMG proposes to take no further action for the present in relation to the previous Government's draft Homosexual Offences (NI) Order, but would be prepared to re-consider the matter if there were any developments in the future which were relevant (a concealed reference to the possibility of an adverse finding in the Dudgeon case).

I enclose a note giving further details on the legal background.

A copy of this letter and enclosures goes to Paul Lever (FCO), Bill Beckett (Attorney General's Chambers), and John Chilcot (Home Office).

Yours sincerely
M W Hopkins

M W HOPKINS

RESTRICTED

EUROPEAN COMMISSION OF HUMAN RIGHTS:
CASE OF J DUDGEON V UNITED KINGDOM

The Law in Northern Ireland

1. The present law on homosexual behaviour in Northern Ireland differs from that in England and Wales in that the Sexual Offences Act 1967, which legalised acts in private between consenting men over 21, does not apply to Northern Ireland; there all homosexual acts between men are illegal under the Offences against the Person Act 1861 or the Criminal Law Amendment Act 1885, and some can attract a maximum penalty of life imprisonment.

2. The previous administration published a proposal for a draft Homosexual Offences (NI) Order which would have brought the law in Northern Ireland broadly into line with that in England and Wales. The three-month consultation period which followed produced no clear picture of a majority either for or against changing the law, but it did show that large numbers of people of widely differing religious and political opinion (including all NI MP's) were against the Order. Influenced by this and also by the fact that social law of this kind is traditionally a matter left to the initiative of private members, and might be seen as doubly inappropriate if introduced as a Government measure at a time when Northern Ireland lacks any locally-based legislature, the present Secretary of State decided not to proceed to lay the draft Order before Parliament. But he made it clear, in his answer to a PQ on 2 July 1979, that the door was not closed on the possibility of changing the law; this was said in the knowledge that the European Court would probably find against us in the Dudgeon case.

The Case To Date

3. In 1976 Dudgeon and more than 20 other homosexuals were arrested by the RUC and it was more than a year before the DPP (NI) decided not to bring charges against them under the 1885 Act. Dudgeon lodged a complaint with the European Commission of Human Rights alleging that the UK Government was in breach of two articles of the European Convention on Human Rights: Article 8 which gives the right to respect for one's private life, and Article 14 which forbids discrimination in securing the rights laid down by the Convention. In 1978 the Commission declared both these complaints to be admissible, and in 1979 they held a hearing on the merits of the case, at which HMG was represented by Counsel. It is their report of the conclusions they reached on the basis of this hearing that they have now sent to us.

Next Steps

4. Before the end of July either the Commission or HMG may refer the case to the European Court of Human Rights for a final decision. If it is not so referred, the Committee of Ministers of the Council of Europe (who already have a copy of the Commission's report) will give a final decision. It is considered very probable that whichever of these two bodies makes the decision, it will be held that the law in Northern Ireland breaches Article 8 of the Convention. In either case, the finding will be binding on HMG.

MR NICHOLAS WINTERTON (Macclesfield): To ask the Secretary of State for Northern Ireland, if he proposes to lay before Parliament the draft Homosexual Offences (NI) Order which was published last year as a Proposal.

MR ATKINS

A proposal for a draft Order was published by the previous Government last July at the beginning of a consultation period which lasted three months. Consultation showed that strong views are held in Northern Ireland, both for and against a change in the existing law. Although it is not possible to say with certainty what is the feeling of the majority of people in the province, it is clear that a substantial body of opinion there (embracing a wide range of religious as well as political opinion) is opposed to the proposed change. In considering its own position the Government has taken into account not only the results of the consultation exercise but also the fact that legislation on an issue such as the one dealt with in the draft order has traditionally been a matter for the initiative of a Private Member rather than for Government. At present, therefore, the Government proposes to take no further action in relation to the draft Homosexual Offences Order, but we would be prepared to re-consider the matter if there were any developments in the future which were relevant.

11 12 1
2 3 4
5 6 7 8 9

29 MAY 1960

