

file

Legal Proceed^{ns} D.S.

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 Mica

- 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.

8
7
6
5
4
3
2
1
11
12

29 MAY 1960