

From: THE PRIVATE SECRETARY

*A. Kydd*

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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  
Mick Hopkins*

M W HOPKINS

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

59 MAR 1982



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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

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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.

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... 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

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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.

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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

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 <sup>in 1980</sup> ~~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 <sup>1981</sup> 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



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... 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.

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22 FEB 1992



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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.

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