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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

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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.

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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

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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*

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THE DUDGEON CASE

DRAFT PQ

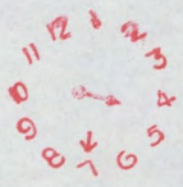
To ask the Secretary of State for Northern Ireland, if the Government has yet made a decision on the recent judgment of the European Court of Human Rights in the case of Jeffrey Dudgeon; and if he will make a statement.

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.

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-7 DEC 1984



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.

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