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① Mr Bell ✓
② Miss Davis 9/1/8

PS/Secretary of State (L&B)

cc PS/Lord Gowrie (L&B)
PS/PUS
PS/Mr Bell ✓
Mr Marshall ✓
Mr Wyatt
Mr Smartt
Mr Harrington
Mr Blatherwick
Mr Corbett
Mr Shepherd

Mr [unclear]

HOMOSEXUAL LAW IN NORTHERN IRELAND

1. The Secretary of State will wish to know that the question of the reform of the Northern Ireland law on homosexual offences may arise in the very near future as a result of a ruling which we expect from the European Court of Human Rights some time this month.

The present law in Northern Ireland and proposals for reform

2. Homosexual law 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, providing that homosexual acts in private between consenting men aged 21 or over should cease to be criminal offences, extended only to England and Wales. Scotland came into line with England and Wales when a backbench amendment to the Criminal Justice (Scotland) Bill in 1980 was approved.

3. Northern Ireland is therefore the only part of the United Kingdom where homosexual acts between consenting adults in private are a criminal offence. At the time of the 1967 Act, the NI Parliament at Stormont proposed no corresponding legislation. Under direct rule since 1972, however, successive Governments have come under a certain amount of pressure to reform the law. In 1977 the Standing Advisory Commission on Human Rights recommended that Northern Ireland should be brought into line with England and Wales. In 1978 the then Government published a Proposal for a draft

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Homosexual Offences (NI) Order which would have done this. Public response was extreme, both for and against changing the law, but particularly from the DUP which launched an energetic "Save Ulster from Sodomy" campaign. The draft Order in Council was never laid before Parliament. Because there was clearly a substantial body of opinion in the Province which was strongly opposed to the proposed change, the present Government decided on coming to power that it should take no further action in relation to the draft Order but would be prepared to reconsider in the light of any future relevant developments.

The European Convention on Human Rights case (Dudgeon)

4. In 1976 Mr Jeffrey Dudgeon, a homosexual living in Northern Ireland, complained to the European Commission of Human Rights that homosexual law in Northern Ireland breached Articles 8 (the right of privacy) and 14 (against discrimination) of the Convention. In 1980 the Commission adopted a report which concluded that HMG was in breach of 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 this year. We expect their judgment this month.

5. The opinion of the UK delegation after the hearing was that the Court was likely to find against the Government under Article 8 and to require the law to be changed to legalise homosexual acts in private between consenting adults in Northern Ireland. The judgment of the Court is binding on all parties to the Convention.

6. Although no final decisions can be taken until the precise terms of the Court's judgment are known, officials are considering what action the Government might take in the event of a finding that the existing law in Northern Ireland is in breach of the Convention. The Secretary of State is invited to take note of the present position.

D. Chesterton

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7 October 1981

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not take any other action
to Private Office.