

S10/1

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FROM: MRS L ROGERS
CPL DIVISION
30 DECEMBER 1998

*Mr. Boyd
(Bill has not seen)
4/1*

cc Mr Hill
Mr White
Mr Smith (DHSS NI)
Mr Banim
Mr Coleman o/r

*Bill may wish to
note. Nothing to
be done at this
stage.*

MR LEE

file: '99

*Boyd
5/1*

BRIEFING ON NORTHERN IRELAND LAW ON ABORTION

I have been asked to put together some briefing material to respond to the attached note we have received from our Washington Embassy via the FCO.

2. I attach a first draft and would be grateful for comments as soon as possible please. I will be in touch again about suitable briefing material for the Secretary of State's forthcoming visit but we may, of course, need a response to the submission about the need for a possible review on this subject before that briefing can be completed.

Signed

LINDA ROGERS
CPL
11 MILLBANK
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DU/LR(ABORTION LAW)

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ABORTION LAW IN NORTHERN IRELAND - THE LEGAL AND CONSTITUTIONAL POSITION

The Abortion Act of 1967 which applies throughout Great Britain was never extended to Northern Ireland. This was because at that time Northern Ireland had its own Parliament which had responsibility for both social and criminal law and which chose not to extend the provisions of that Act there. This means that the law on abortion in Northern Ireland is found in the Offences Against the Persons Act 1861, the Criminal Justice Act Northern Ireland 1945 and certain case law. This also means that the law on abortion in Northern Ireland is part of the criminal law.

2. Under the terms of the Belfast Agreement those matters which are the responsibility of the Northern Ireland Civil Service Departments will be devolved to the Assembly. These are what are known in Northern Ireland terms as "transferred" matters. Matters which will not be transferred to the devolved Assembly include those which are designated "excepted" ie those matters which it would not be appropriate to devolve and include defence, the Crown, international relations etc and others designated as "reserved". These are reserved issues which might, in the future, be devolved to a Northern Ireland legislature but for the time being it is thought appropriate that they remain with Westminster. The criminal law is included in the reserved category and therefore the law on abortion, like all other criminal matters, is for the time being reserved to Westminster.

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3. During the passage of the Northern Ireland Bill through its Parliamentary stages there was a good deal of discussion about whether abortion law should be devolved to the Assembly. The Government's position was that only those matters designated as transferred ie the responsibilities of the Northern Ireland Departments were to be matters for the Northern Ireland Assembly. Abortion law, because it was a criminal justice matter, would remain in the reserved category and the responsibility would rest with Westminster. To make an exception by including a reserved matter amongst those to be returned to the responsibility of the Assembly would have been counter to the Agreement and quite inappropriate at that time.

4. The Government did, however, confirm that as and when appropriate, consideration would be given to returning further responsibility to the Assembly. No commitment was given to whether abortion in particular or criminal justice matters as a whole would be so considered in the near future.

5. The situation in Northern Ireland is, in constitutional terms, similar to that in Scotland as far as abortion law is concerned. The Abortion Act of 1967 does extend to Scotland but the law on abortion is not within the ambit of the new Scottish Parliament. Other criminal justice matters have been devolved to the new Scottish Parliament but the Government considered that it would not be appropriate to devolve responsibility to a

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local legislature on a matter of such sensitivity. This means that the law on abortion in the United Kingdom as a whole is, for the time being, controlled at the centre in Westminster.

6. During the course of the Northern Ireland Bill through the Houses of Parliament the Government made firm assurances in debate and in letters to Members of both Houses that there would be no change to the law in Northern Ireland relating to abortion without the consent of all the main constitutional parties there. This reassurance has been repeated in further correspondence with MPs and members of the public and in discussions and media interviews.

7. A recent all-party report on health and sex education issues for young people in the United Kingdom pointed up the difference between abortion law in Northern Ireland and GB suggesting that it was unsatisfactory and unfair. One member of that all-party group (Maria Eagle) has since been allocated a place on the list of members entitled to bring forward a Private Members' Bills. There has been some speculation in the press that she might use this slot to bring forward an amendment to the existing Northern Ireland law on abortion.

8. Government Ministers have already stated that if any Private Members' Bill on abortion law in Northern Ireland did come forward then it would be best if a Northern Ireland Member sponsored it and that it came

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forward with broad cross-community support. If, therefore, Ms Eagle did bring forward a Private Members' Bill it seems unlikely that it would obtain the necessary support from the Government or the Northern Ireland MPs to make any progress past its introduction.

9. The Government has gone to some lengths to make clear (to those concerned) that it has no plans of its own to bring forward any legislation on this issue and that if it was decided legislation should be brought forward it would be expected to come about with the broad consent of a cross-section of the people of Northern Ireland and after detailed consultation with their elected representatives.

[Handwritten signature]

Robert McCartney, Minister

Mr Ferguson, RID

Could you secure X for us, and watch Y?

Thanks

Anthony Gray

Mr Braker, NIA

A. Gray

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PS

cc. Dr. Smyth

Mo Mowlam did not make clear to Chris Smith (at an HMG meeting about HMA also headed) that abortion policy would not be devolved because it would impact health - but that we would like the 1967 Act to be applied without modification. We shall secure a brief from London, and ensure that Mo Mowlam is briefed for her mid-Jan visit.

From: Private Secretary

Date: 23 December 1998

cc: Dr Smyth
Mr Rycroft
Mr Reid

Mr Cary

23/12

NORTHERN IRELAND ABORTION LAW

1. Congressman Smith mentioned abortion law in Northern Ireland during the Ambassador's call this morning. He was concerned that under the Northern Ireland settlement abortion policy would be reserved to the centre, not to the devolved assembly, and that HMG might be planning to introduce the 1967 Abortion Act to Northern Ireland. He understood that a Private Members Bill to this effect was being introduced by Maria Eagle. We should recognise that if this took place it would colour the attitudes of US Republicans to the Northern Irish settlement.

X || 2. The Ambassador would be grateful for the facts on the current situation on abortion in Northern Ireland, and for the details of any Private Members Bill.

Y || 3. We also need to ensure that Mo Mowlam (with whom Smith has apparently raised the issue before) is fully briefed before she meets Congressmen during her visit in January.

Robert Chatterton Dickson

Robert Chatterton Dickson

Mr. Ferguson, RID

Could you secure X for us, and watch Y?

Thanks.

Anthony Cary

cc. Mr. Brooker, N10

Dr. Smyth

Mr. Reid

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