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FROM: D J WATKINS CC PS/Sir John Wheeler (DFP,B&L) - B
D/Cent Sec PS/Michael Ancram (DENI,B&L) - B
PS/PUS (B&L) - B
DATE: 29 August 1996 PS/Sir David Fell - B
Mr Thomas - B
Mr Bell - B
Mr Gibson, DED
Mr Gowdy, DFP
Mr Leach - B
Mrs Brown - B
Mr Canavan
Mr Hill - B
Mr Maccabe - B
Mr Campbell-Bannerman - B

Mr Smith

Mr Wilson

PS/Secretary of State (B&L) - B

UNION FLAG

1. You sought advice on the exchange between the National Heritage Secretary and the Home Secretary on the flying of the Union flag on Government buildings. The following reflects the views of NIO colleagues, CCRU, DED and DFP.
2. The issue arose from Michael Fabricant's ten minute rule bill (which did not receive Government support). But on the basis that the Union flag could be flown on Government buildings perhaps every day Mrs Bottomley has suggested that, in addition, officials should now look at an alternative scheme to "enable the special days on which a flag is currently flown to be marked as distinctive in some other way".
3. The passions likely to be aroused by this issue, both here and in GB, were made clear by the recent row over the proposed voluntary ID card format.
4. There are two main aspects in Northern Ireland. First, at the request of the IGC Irish and British officials in the Culture and Identity Working Party have been examining issues such as use of flags. In GB the flag is flown on 15 days specified by DNH, and also on St David's Day (Wales), St George's Day

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(England), St Andrew's Day (Scotland) and the days of opening and prorogation of Parliament (London). In Northern Ireland the flag is flown on Government buildings on 15 days specified by DNH; but also 5 further days specified by the Stormont Government in the 1920s and 1930s (New Year's Day, St Patrick's Day, Easter Day, 12 July and Christmas Day). Irish pressure, which Ministers have resisted, is at least to reduce the flying of the Union flag.

5. We have sought various means to meet legitimate nationalist concerns at excessive use of the Union flag, focusing on other regional flags (perhaps alongside the Union flag), or harmonising practice with GB by reducing the 'excess' days, but so far without success. On the excess days, the key judgement is whether nationalists would be sufficiently mollified by this change to justify facing the utterly predictable unionist (and backbench) outrage. (Some would also argue that use of the Union flag on what they would regard as sectarian occasions such as 12 July is in itself an affront.)
6. The second aspect relates to fair employment. While there are no direct references in the 1989 Act to the flying of a Union flag the guidance contained in the Code of Practice is considered very important by the Fair Employment Tribunal. That Code states that an employer should "promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion eg prohibit the display of flags, emblems ... which are likely to give offence or cause apprehension among particular groups of employees".
7. A Government decision to fly the Union flag on major or indeed all Government buildings every day could of course be argued to be purely ceremonial and appropriate for State-owned buildings. But, it could well lead to complaints being made by employees which would be heard by the Fair Employment Tribunal and we could not rule out the possibility of Departments or

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their agencies losing those cases. This would be not only embarrassing for Departments but also damaging to the NICS's hard-won reputation as an impartial and fair employer.

8. In addition, a decision to fly the Union flag more often will place additional pressure on the many private sector employers wrestling with difficult flags and emblems issues. There are encouraging signs that employers increasingly recognise the rightness of pursuing these difficult issues and they will feel let down by any apparent reversal of policy by those who have taken the lead in encouraging it.

9. I judge that Mrs Bottomley's letter, by referring specifically to Northern Ireland, requires a reply. The attached draft seeks to be reasonably firm in pointing out the pitfalls, but is compliant with the idea of a limited examination of options.

[Signed: DJW]

D J WATKINS

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DRAFT REPLY BY THE SECRETARY OF STATE

Rt Hon Virginia Bottomley, MP
Secretary of State for National Heritage
2-4 Cockspur Street
LONDON
SW1Y 5DH

September 1996

FLAGS ON GOVERNMENT BUILDINGS

Thank you for copying to me your letter of 12 August to Michael Howard following your earlier correspondence.

You are entirely right to point out that this subject arouses passions in Northern Ireland. The Union flag is not perceived in Northern Ireland simply as the politically neutral emblem of State. Unionists have adopted the flag effectively as a party emblem. Nationalists see it as symbolic of a nationality which they reject. The flag therefore carries political resonances as in no other part of the UK; and there is no generally acceptable regional flag.

Current arrangements for Northern Ireland specify the flying of the Union flag on Government buildings on 15 days as stipulated by your Department which are common throughout the UK, and also on a further 5 days, by virtue of practice initiated by the Stormont Government in the 1920s and 1930s. The RUC has slightly different arrangements. Nationalists dislike even the current incidence of flag flying and indeed the Irish Government has sought to persuade us to modify the present arrangements, citing its rights under the

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Anglo-Irish Agreement which specifically refers to flags and emblems as a matter for consideration between the two Governments. Our judgement has been that elimination of the flying days specific to Northern Ireland would not sufficiently meet the Nationalist case to justify facing the certain Unionist (and backbench) reaction. But any proposal to increase the flying of the flag would certainly provoke strong Nationalist opposition. If such a proposal were aimed at promoting the Union of the United Kingdom, as Michael Fabricant's original proposal claimed to do, my judgement is that it would generate greater internal divisions in Northern Ireland and as such do nothing to promote the Union [here].

A further point we need to bear in mind are the implications of our strong Fair Employment (NI) Act 1989. Under its Code of Practice, employers are required to promote a good and harmonious working environment, including prohibiting the display of flags and emblems which are likely to give offence or cause apprehension among particular groups of employees. While it could be argued that it is purely for ceremonial purposes that the Union flag might fly outside Government premises in Northern Ireland, we cannot be absolutely certain that a Tribunal would share our view, and it is also likely to raise some tension within the public service in Northern Ireland. Furthermore it would make it much more difficult for private sector employers in Northern Ireland, many of whom have been working carefully to reduce sectarian tension by the removal of such flags and emblems, to continue their work. I would be loath to put at risk the progress that both the private sector and we as direct employers have made in the fair employment field by potentially divisive action on the flying of flags.

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I see attractions in principle in moving to common practice throughout the UK, and am content for my officials to participate in any wider review you put in hand. But against the background I have described, I would be very concerned at any outcome which could have the divisive effects I foresee in Northern Ireland.

I am copying this letter to the Prime Minister and Deputy Prime Minister, to Kenneth Clarke, Malcolm Rifkind, Michael Howard, John Gummer, George Young, Gillian Shephard, Michael Forsyth and William Hague and to Sir Robin Butler.

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