Item 3. A

SECRETARY OF STATE FOR EMPLOYMENT

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NBPM yet

Rt Hon Sir Keith Joseph Bt MP
Secretary of State for
Industry
Department of Industry
Ashdown House
123 Victoria Street
LONDON SW1

c/ M Forsyth ✓

TL 16/12

15 December 1980

Dear Keith

REVIEW OF THE FAIR WAGES RESOLUTION

In earlier correspondence about reviewing the Fair Wages Resolution (FWR) we agreed that officials should examine and report on the issues including timing considerations. The attached report reflects consultations which have taken place between my officials and those of other Departments, and presents conclusions on which they reached general agreement.

The report's main conclusion is that there are only two realistic options:

(i) to repeal the FWR completely after denunciation of ILO Convention 94 (which could not take effect before September 1983);

(ii) to leave the Resolution unchanged.

The arguments for and against each of these courses are set out in the report. The advantage of total repeal is that it would be a straightforward and effective solution, consistent with our general policy and with our repeal of Schedule 11 of the Employment Protection Act 1975. The disadvantages are, first, the three year delay before such a decision could become effective, and secondly the political difficulties which repeal would undoubtedly create. On the first point, we accepted in earlier correspondence that we could not lightly set aside our international obligations and denounce Convention 94 out of time, particularly as the UK appears to have been one of the chief initiators of the Convention. Repeal of the FWR could not therefore take effect before September 1983, although any intention to repeal would need to be announced 12 months or so earlier.

The second consideration is the political difficulties which would inevitably result from a decision to repeal the FWR. A case for repeal can be made, on grounds similar to those on which we repealed

Schedule 11. However, the FWR differs from Schedule 11 in that it relates directly and specifically to Government contracting policy. It reflects a long-standing tradition, dating back to 1891, that the Government has special obligations to ensure that employees of its own contractors are fairly treated, and that the basis of competition for contracts is fair in all respects. Repeal would unquestionably attract strong opposition from the TUC. Departure from an international standard, even in accordance with the rules for denouncing a convention, would not of course escape criticism (this was not a consideration that arose in connection with the repeal of Schedule 11 which had no international implications of this kind.) Unequivocal support for repeal from the CBI is unlikely, and some employer organisations would be very critical as they were over the repeal of Schedule 11.

Officials have considered various options for change short of total abolition, but it seems clear that none would be likely to prove satisfactory. The only real alternative to repeal in 1983 is to leave the Resolution unchanged. This raises the question whether to do so would harm our economic strategy or seriously impede employers in their efforts to restore a sense of reality to pay bargaining. Present evidence suggests that the effect of the FWR is minimal. Only 39 FWR claims were made in 1980 up to the end of October and the numbers are continuing to decline. The Resolution has only been extensively used during periods of rigid pay policy in the 1970s - a point made clear in Appendix 2 of the attached paper.

On present evidence I think the balance of the arguments points to leaving the Resolution unchanged. However, there is no need to come to a final decision now. Because of the international constraints repeal could not be affected before mid-1983, and nothing would be gained by announcing a decision at this stage. I suggest therefore that we look at the matter again in about a year's time, in the light of continued monitoring of the use made of the FWR.

I am copying this letter to other members of E Committee, to Humphrey Atkins, and to Sir Robert Armstrong.

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DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
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Secretary of State for Industry

12 January 1981

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London SW1H 9NA

cc Mr Hodgson
Mr Lankester

Agree Minister

To note that there is disagreement about whether the Fair Wages Resolution should be repealed. An E discussion is called for.

FAIR WAGES RESOLUTION (FWR)

Flag A

1 Thank you for your letter of 15 December about the future of the FWR.

2 The merits of the case lie solely on the side of repeal. As you say compulsory wage fixing, based on the principle of comparability, is contrary to our philosophy that wages should be determined between individual employers and their employees. Any effect of the FWR must tend to increase industry's costs (and since we are concerned with public contractors, hence to increase public expenditure), to distort wage differentials and to reduce employment. It would be totally inconsistent for us to retain the FWR when we have just abolished the exactly similar machinery provided by Schedule 11 of the Employment Protection Act.

3 Nor am I convinced that the benefits of "repealing" the FWR would be as small as your officials' paper suggest. While claims may have been more common during periods of pay policy, the wide range of pay settlements in the current economic circumstances including our restraint of pay in the public sector must surely provide the trade unions with some points to attack in future. In particular they will be on the alert for opportunities of this kind following the TUC's advice in their leaflet "Bargain to Beat the Employment Act" to use the FWR to the utmost as a substitute for Schedule 11. And of course some individual employers, including British Shipbuilders, suffer disproportionately from the existence of the Resolution.

4 I hope that international considerations are not such as to prevent our taking whatever decision on this essentially domestic matter we believe to be right. Withdrawal from the ILO Convention under the procedure provided by that Convention should not in

/itself ...

itself attract much criticism especially as three other major Western European countries are not parties to it. The UK has denounced other ILO conventions before. We should be able to withstand TUC opposition to the repeal.

5 In my view therefore we should go for repeal. Given the constraints in the ILO Convention I can see the attractions of delaying the announcement of this decision. On the other hand, announcing now, and perhaps approaching Parliament now for authority to repeal the FWR in 1983, might have the advantage of getting any major row over with while the public attitude towards pay moderation is so favourable.

6 An early, firm announcement would also enable us to consult industry on whether or not to introduce in the meantime any of the partial relaxations permitted within the terms of the Treaty and discussed in Appendix 1 to the paper. We should not assume without consultation that none of the proposals are worthwhile; some may be welcome. In addition we should always give industry as much notice as possible of changes affecting them.

7 Because the case for delaying the decision is not clear-cut I suggest that your letter should be the subject of an early collective discussion — perhaps at E.

8 I am sending copies of this letter to the recipients of yours.

Yours ever,

Keith

C

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon James Prior MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
London SW1

28 January 1981

Dear Jim,

REVIEW OF THE FAIR WAGES RESOLUTION

Thank you for sending my predecessor a copy of your letter of 15 December.

I agree with Keith Joseph (his letter of 12 January) that we should have an early discussion of this topic, for the reasons he gives. If we decide that repeal is the right choice, then now may well be the right moment to make the change, even if it cannot take effect before 1983. We might also want to make partial changes in the interim. Delay in my view forecloses the options, and possibly prejudices the outcome.

I am sending copies of this letter to E Committee colleagues, to Humphrey Atkins, and Sir Robert Armstrong.

Yours ever,
Leon

LEON BRITTAN

D

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NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

11 February 1981

The Rt Hon James Prior MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
London
SW1H 9NA

Dear Jim,

FAIR WAGES RESOLUTION (FWR)

Thank you for copying to me your letter of 15 December to Keith Joseph enclosing a report by your officials of a review of the Fair Wages Resolution. I have also seen Keith Joseph's reply of 12 January 1981. I have delayed writing since, as the agenda then stood, I would have been present at the discussion in E Committee.

The Fair Wages Resolution has enabled workers in Northern Ireland successfully to claim terms and conditions of employment corresponding to those enjoyed by their counterparts in Great Britain - at times without regard to the circumstances of their own employers, to the general level of earnings in the Province, or to comparative costs of living.

The fact that employees can resort to the Resolution tends to diminish responsibility in wage bargaining and to undermine the credibility of the negotiating machinery. The Management of both Harland and Wolff and Shorts have complained that the FWR disrupts productivity bargaining and differentials. Both these two companies are of course in public ownership and they are far from profitable.

Repeal of the FWR will not lessen aspirations in the Northern Ireland workforce for parity of pay with workers in Great Britain. It would however leave management free to negotiate within its means, and more able to resist claims it cannot afford to pay.

Given the alternative of no change or repeal, I would support repeal, and an announcement of our intentions at an early date.

I am/....

I am sending copies of this letter to the Prime Minister and to members of E Committee and to Sir Robert Armstrong.

Yours ever

Humphrey

SF

E

cc Mr Ingham
M. Walters

2 MARSHAM STREET
LONDON SW1P 3EB

My ref: H/PSO/19706/80

Your ref:

8 JAN 81

Dear James

REVIEW OF THE FAIR WAGES RESOLUTION

Thank you for sending me a copy of your letter of 15 December to Keith Joseph, enclosing the report by officials reviewing the Fair Wages Resolution.

My Department's experience of the operation of the Resolution, principally in relation to PSA and local government contracts, supports your conclusion that its practical effect is minimal. I agree therefore that there appears to be no pressing need for change and am content with your proposal to leave things as they are and review the position again when appropriate.

Copies of this letter go to the recipients of yours.

yours ever

Michael

MICHAEL HESELTINE

The Rt Hon James Prior MP

CONFIDENTIAL

10 DOWNING STREET

7 November 1980

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State
Department of Industry
Ashdown House
123 Victoria Street
LONDON SW1

Dear Keith,

WAGES COUNCILS: E(EA), MONDAY, 10 NOVEMBER

Jim Prior argues that it would be a mistake to abolish wage councils. We think it is important to distinguish the main political and economic judgments involved.

The essential economic question is whether fixing wages for nearly 3 million lower paid workers does or does not produce wage levels different from those which would emerge as a result of market forces. If it produces wages which are higher than would otherwise be the case, it must follow that these arrangements cause unemployment. The higher the price of a commodity, the less of it will be bought. This is a fact of life we are continually trying to get across to the public.

Alternatively, it may be the case that wage councils tend to produce wages outcomes that are very similar to those which would obtain if market forces operated. If this is the case, why are the wage councils necessary?

Of course a decision to abolish wage councils will attract political criticism. If wage councils make little impact, it may not be worthwhile making a major change. But to the extent that they do make a difference, we should face up to the fact that we are ourselves permitting continuing higher unemployment in order to avoid short-term political embarrassment.

If - as seems the case - we are unclear on the extent of their impact on wage levels, the sounder course is surely to abolish them. In our view, the considerations introduced by John Biffen's paper E(EA)(80)57 greatly strengthen the case for abolition. As a fallback we could, as he suggests in paragraph 4, simply abolish their statutory wage-fixing and enforcement powers.

I am copying this letter to the Prime Minister, the Chancellor of the Exchequer, members of E(EA), Robin Ibbs and Sir Robert Armstrong.

JOHN HOSKYNS

CONFIDENTIAL

, AC

RESTRICTED

FAIR WAGES RESOLUTION: OPTIONS FOR REFORM

Note by the Department of Employment

1 This note examines the scope for "amending" or "repealing" the Fair Wages Resolution 1946 (FWR). Since the Resolution is not legislation but a declaration of the will of Parliament, neither of these terms is strictly accurate; but it is convenient to refer to possible amendment or repeal in this sense.

2 As a preliminary to examining the options for the Government, the note contains a short description of the FWR (paras 3-6) and how it has been applied (paras 7-16).

The 1946 Resolution

3 The House of Commons first adopted a Fair Wages Resolution as long ago as 1891; the current version dates from 14 October 1946. The intention of the FWR is to ensure that employers engaged on Government contracts should pay rates of wages and observe conditions of employment not less favourable than those established by negotiation or observed in practice by other employers in the industry. The FWR is brought into operation by the inclusion in Government contracts of a standard condition calling upon a contractor to observe its conditions.

4 The FWR has two main legs (which were subsequently reflected in the structure of Schedule 11 to the Employment Protection Act, recently repealed). The first is that contractors are required to observe terms and conditions "established for the trade or industry in the district" by representative joint negotiating machinery or arbitration. Secondly, in the absence of such established terms, contractors must observe terms no less favourable than the "general level ... observed by other employers" whose general circumstances in the trade or industry are similar. The Resolution specifically applies to conditions of work (including hours) as well as to wages.

5 If an issue arises whether or not the FWR is being applied by an individual contractor, the matter is referred to the Secretary of State for Employment. The FWR requires that, if not otherwise disposed of, such questions must be

referred by him to an independent tribunal (in practice the Central Arbitrati Committee) for decision. In considering whether the FWR has been applied, the CAC does not act in a statutory capacity and its decisions are not legally enforceable. Neither is there any provision for appeal, beyond the general jurisdiction exercised by the High Court in relation to the activities of junior tribunals. It is up to the contracting Department concerned to take any action considered necessary to remedy failure to observe the FWR where this is established. Normally however contractors simply comply with the terms of CAC awards.

6 The FWR also contains a number of minor provisions. Clause 4 provides that contractors must recognise the freedom of their work-people to be members of trade unions. Clause 6 requires them to accept responsibility for the observance of the Resolution by their sub-contractors. The full text of the FWR is at Appendix 4.

Northern Ireland

7 In addition to the use of the FWR in contracts between Northern Ireland companies and UK Government departments and nationalised industries, Northern Ireland has in existence a Fair Wages Resolution of the House of Commons of Northern Ireland, dated 1947, which is identical to the 1946 resolution and applies to contracts of Northern Ireland Government departments and local authorities. Any changes in the 1946 resolution would require similar action in respect of the Northern Ireland Resolution.

Extension of FWR to non-Government contracts

8 The FWR itself is concerned only with Government contracts. The principle of the Resolution has, however, been widely extended so that in practice most nationalised industries and public corporations include some form of fair wages clause in their contracts. In some cases these clauses reproduce the FWR without significant changes; in others there are differences eg no direct reference is made to arbitration. But these modifications have little practical effect; for example where the clause does not specify arbitration the contracting body normally approves use of this mechanism. Some contractors (eg the CEGB) do not consider individual cases but give blanket approval for FWR applications to be sent to the CAC via the Department of Employment.

Current enactments referring to the FWR

9 The principle of the Resolution has also been embodied in a number of Acts which provide assistance to particular industries or public authorities by way of grant, loan or subsidy, guarantee or licence. The Housing Act 1957 (section 92(3)(a)), the Road Traffic Act 1960 (section 152), Films Act 1960 (section 42) and Independent Broadcasting Authority Act 1973 (section 16) are the last remaining. Section 15 of the Civil Aviation Act 1949 which provides for terms and conditions to be determined by reference to those of other similar employees (though not in the words of the FWR) will be repealed under powers in the Civil Aviation Act which has now received Royal Assent.

Use of the FWR

10 The main use of the FWR has been in relation to terms and conditions of employment under clause 1(a) (established terms) and 1(b) (general level). Table I of Appendix 2 shows the annual number of claims made between 1959 and 1979. Table 2 gives a more detailed breakdown of the claims made over the last five years. Table 3 provides a month-by-month breakdown of claims in 1979. Appendix 3 lists the main unions involved.

11 All the tables show a rise in the use of the FWR in periods of incomes policy. Since last year the rate of claims has fallen back substantially nearer to the low levels of the years before 1976. The vast majority of recent years have been under the "general level" provision. Most awards affect small numbers of people (some relate to a single individual). Some industries have been much more seriously affected than others. British Shipbuilders and British Aerospace for example have borne a large proportion of the larger awards in the last few years. There have also been one or two large awards in the private sector eg Boots and USDAW in 1977 affecting some 6,000 employees (though this was a reference brought by the employer himself).

Costs

12 It is very difficult to give an estimate of the cost to industry of FWR awards. A few companies have reported substantial costs, for example British Shipbuilders reported costs of about £21 million arising from FWR awards against their subsidiaries between vesting day (14 June 1977) and 1 January 1979. British Shipbuilders was particularly vulnerable to FWR claims at this time

because it inherited a fragmented wage structure among its subsidiaries and undertook a substantial proportion of its work under Government contract. However since 1979 when a national pay agreement was introduced, the level of claims has been much lower. Another company which has found the cost of FWR awards a significant burden is Alfred Herbert Ltd, who attributed costs of about £2.1 million to the effect of FWR awards in 1977. However Ministers have in general received very few representations from employers about the cost of FWR awards, and the examples given illustrate the minority of cases where, because of the numbers of employees involved, and the number of claims made against a single employer, costs have been substantial. Records of the costs of FWR awards to individual companies are not kept, but even if they were, it would be difficult to distinguish between 'gross' and 'net' costs. For example, it would be hard to quantify to what extent, FWR awards are substituted for 'normal' pay settlements, particularly during periods of periods of pay policy. One indicator that this has happened is the number of claims submitted by employers - these totalled 74 (13% of all claims) in 1978, and further claims were submitted jointly by employers and unions. Similarly it would be difficult to judge to what extent benefits such as improved productivity resulting from the CAC linking awards to changes in working practices or a company's pay structure should be offset against the gross cost of an award. The only general conclusion which is likely to be valid is that successful FWR claims, even in the years when the Resolution was most extensively used, constituted only a tiny fraction of the total wage bill, but that this did not prevent the Resolution being at that time a serious problem for certain particularly vulnerable concerns.

13 It is also hard to judge what effect the FWR may have had on employers not subject to claims. The existence of the FWR may have operated to encourage contractors to observe collective agreements or the "general level" so as to avoid possible claims. This effect can however be exaggerated insofar as most contractors will normally observe minimum conditions laid down in national agreements in any case; and the operation of the labour market will tend to ensure that terms and conditions generally do not fall far below the "general level" in the district.

Clause 4

14 Few cases have been brought under Clause 4 (freedom of work people to be members of a trade union). 8 claims were made to the Industrial Arbitration Board (which preceded the CAC as the body adjudicating FWR claims): none succeeded, even where advertisements specified "non-union operatives". The case of Wiseman & Co and ASSET (1964) established that the clause did not convey a right to recognition for negotiating purposes. The clause must in practice be seen as at most protecting the right of the individual to join a trade union, and to that extent designed to encourage the growth of trade unionism and collective bargaining.

15 Since clause 4 has given trade unions little material assistance in the past, it is unlikely that any strong representations will be advanced for retaining it in its present form. Trade unions in the public sector have sometimes complained that the clause should operate to inhibit the use of contractors employing non-union labour but their complaints have invariably been rejected. Review of the FWR might nevertheless be seized upon by the TUC as an opportunity to urge the reinstatement of some form of statutory negotiation provisions of general application.

Relationship to Schedule 11

16 There is no reason to suppose that repeal of Schedule 11 will greatly affect the extent of recourse to the FWR. Even when Schedule 11 was available there were advantages in claiming under the Resolution. For example under Schedule 11 only a trade union or employers' association could make a claim, while under the FWR a claim could be entered by anyone. Moreover the CAC was restricted by the Deltaflow judgement (1977) in its interpretation of the phrase "general level" under Schedule 11, but has continued to adopt a more liberal approach under the FWR (see para 20 below).

ILO Convention 94

17 The United Kingdom has ratified ILO Convention No 94 (concerning Labour Clause in Public Contracts) the wording of which corresponds very closely to the FWR. The UK Government appears to have been one of the chief initiators of the Convention and this would no doubt give weight to international and domestic cirticism if the Government were now to withdraw its support. UK employer representatives however opposed the adoption of a Convention and would have

preferred ILO guidance to have been confined to a "Recommendation" imposing less stringent obligations, on the grounds that differing industrial relations structures made rigid application of a detailed Convention unrealistic.

18 Complete repeal or radical change of the FWR would require denunciation of the Convention. It would be possible to denounce the Convention; there is a formal procedure for doing so. This can be used however only at 10 year intervals. The next date on which it will be possible to denounce Convention 94 will be 20 September 1982. Denunciation would take effect one year after that. The UK has denounced four Conventions since 1919, most recently in 1971 when the Government wished to charge for PER but had ratified a Convention requiring a free public employment service.

19 Examination of overseas practice suggests that tighter national bargaining arrangements existing in other countries make possible recourse to a separate "general level" of pay and conditions largely irrelevant. In France provision exists for the prefect of the region or department concerned to determine wages for workers on Government contracts by consultation with representative employers and trade union confederations. Usually, however, government contractors are bound by the terms of national agreements extended by an "arete" of the Minister of Labour. Of West European countries, West Germany, Sweden and Switzerland have not ratified Convention 94. Brazil denounced Convention 94 in 1973.

OPTIONS FOR CHANGE

Total repeal

20 If the Convention is denounced, there would be no point in going for a solution less than total repeal. This could be justified on the basis of the Government's general policies in relation to collective bargaining and would be seen as a logical follow up to repeal of Schedule 11. The Government could argue, as it did with Schedule 11, that current circumstances are completely different from those in which the Resolution was passed. The House of Commons

Debates in 1946 show that the FWR was conceived as reinforcing collective bargaining. The Government could argue that the subsequent development of collective bargaining has made the FWR obselete. Competition policy as applied through current monopolies and fair trading legislation, combined with the growth of trade union organisation is adequate to counter possible claims of unfair competition by individual contractors. The Government could quote in support the fact that those industries making most use of the FWR have been amongst the most heavily unionised (even though the FWR does not restrict claims to those made by trade unions). This suggests that the FWR is either an unnecessary adjunct to free collective bargaining or that it is ineffective in the unorganised "sweat shop"; or that both of these conclusions are true.

21 The Government could also point to comments by the Association of County Councils on the Working Paper published last September suggesting that the FWR is irrelevant to modern conditions:

> "It is felt that Local Authorities are sufficiently responsible to ensure that they do not avail themselves of the services of a contractor who clearly is not observing the practices that might be expected of a reasonable employer. It is also felt that nowadays employees are adequately protected not only by the law but by the vigilance of their trade unions against the practices which the FWR, which is over 30 years old, was passed in order to combat."

Comments received from the Society of Chief Personnel Officers in Local Government showed that they also considered the FWR irrelevant to modern conditions.

22 A strong case can therefore be made for total repeal. As para 16 above indicates, however, Convention No 94 cannot be denounced until September 1982. Denunciation before time would be unprecedented. It would be monitored by the ILO and published in its annual reports on infringements. The TUC have already indicated they would make political capital out of this failure to stand by an international agreement; it would give them a further issue on which to criticise the Government.

23 Even if denunciation was undertaken in 1982 according to the rules, the Government would not of course escape criticism. This would come from both the supporters and opponents of the FWR. The Resolution's supporters would argue that the Government was abandoning an internationally recognised minimum protection. Employers who favoured retention of the "first leg" of Schedule 11

might use a debate on the FWR as an opportunity to revive the issue thus add[redacted] to the Government's embarrassment. At the same time the opponents of the Resolution would no doubt be irritated by the delay in securing its removal.

Ensure precedence of clause 1(a) over 1(b)

24 This option is a less radical alternative that could be put into effect without denouncing the Convention. It is the option favoured by the CBI and EEF. Essentially it would require a drafting amendment which would bring the FWR wording more closely into line with that of Schedule 11. This would make it absolutely clear that paragraph 1(a) referred to minimum terms and conditions agreements, such as the National Engineering Agreement. Where such an agreement existed, employees could not have recourse to the "general level" under clause 1(b). The cases it would not catch would be those based on national agreements. Ford has for example expressed concern that the FWR could be used to import into individual companies concessions made under national agreements eg the 39-hour week.

25 Hitherto, following precedent established by the Industrial Arbitration Board and most clearly enunciated in Crittal-Hope and the Pay Board (1974), the CAC has insisted on applying paragraph 1(a) of the FWR only where terms and conditions are shown to be "established" in the district. This is despite a High Court judgement, in Racal v Pay Board (1974), that minimum rates embodied in national agreements do in fact constitute the standard prescribed by paragraph 1(a). The effect of this interpretation can be seen from the statistics: between 1946 and 1970 not a single FWR claim was made on behalf of manual workers in the engineering industry. The rates/earnings gap and strong trade union organisation were no doubt both factors. In 1979 however 173 out of 240 awards related to the engineering industry, the vast majority of which were based on the general level (though some of these related to non-manual workers).

26 Such an amendment would of course require Parliamentary debate. Trade union opposition might be relatively muted as the change falls short of total repeal and could be defended as an attempt to return to the original intention of the FWR. But this option is open to serious objection. It would leave the FWR in existence, and the CAC with a "rump jurisdiction" which would be restricted in size but could still be damaging. There could be no certainty how an amendment would in practice be applied. This option could not in any case meet problems of the kind anticipated by Ford.

27 Above all, however, it would be extremely difficult to reconcile amendment along these lines with the repeal of Schedule 11. Ministers argued on that occasion that managements and trade unions should be left to negotiate the terms and conditions best suited to their particular circumstances and should not be subject to a statutory mechanism such as the Schedule. The FWR is, of course, not statutory but in other respects resembles the Schedule; indeed, the effect of this amendment would be to bring its operation still closer to that of the Schedule. The only basis on which the FWR might be distinguished is that the Government owes a special obligation to the employees of Government contractors; but this would hardly be found a convincing argument.

Other options

28 Some other suggestions for reform of the FWR, are considered in Appendix 1. None of them, however, nor any combination of them, could be regarded as in themselves constituting worthwhile change in the Resolution whether for the shorter or longer term. Several of them would while achieving little of substance, attract hardly less political controversy than radical reform. They do not go to the heart of the concerns expressed about the FWR.

Conclusions

29 It seems, therefore, that no form of amendment or reform of the FWR short of its total abolition ould be likely to prove satisfactory. The choice appears to be between total abolition of the Resolution or leaving it unchanged. There is no sensible middle course.

30 The advantage of total repeal is that it is a straightforward and effective solution which is consistent with the Government's delcared policy. The disadvantages, apart from the inevitable delay, lie in the political difficulties which repeal would undoubtedly create. TUC opposition to repeal would unquestionably be strong and unequivocal support from the CBI is unlikely to be forthcoming. It is also worth emphasising that the practical gains from repeal of the FWR are not likely to be great. Up to October 31 there had been only 39 FWR claims in 1980 and the numbers are continuing to decline.

31 Recent TUC advice to unions entitled "Bargain to beat the /Employment/ Act" refers to the FWR and suggests that unions should also negotiate "fair wages" clauses with large private employers for inclusion in their commercial contracts. In these circumstances it is a matter for judgement whether the limited economic

benefits to be expected from repeal of the Resolution outweigh the further damage to relations with the trade union movement (and possibly with our partners in the ILO).

32 A decision that Convention No 94 should be denounced could not be implemented before September 1982, ith the FWR being repealed 12 months later, it seems desirable that such a decision should wait until nearer the time, when the balance of argument can be assessed in the light of all the circumstances then obtaining and the experience of claims meanwhile. To issue a further formal document as a basis for consultation with employers and unions would be likely to prove a waste of time since the issue is clearly defined and TUC and CBI opinion is not in doubt. It would also attract further interest in the FWR by both employers and unions, to which the Government would be unable to respond to the satisfaction of either.

Department of Employment
IRD
December 1980

OTHER OPTIONS

End inclusion of FWR in Local Authority and other non-Government contracts

1 The FWR applies only to national Government contracts. Section 735 of the local Government Act 1972 however requires that all contracts made by local authorities must be in accordance with their Standing Orders. Current Model Standing Orders, issued by the Department of the Environment in 1964, include a fair wage clause in terms of the House of Commons FWR. If the FWR was repealed, the Standing Orders for local authorities would have to be amended to bring them into line. In addition the Housing Act 1957 (Section 92(3))a)) requires local authorities to include a clause based on the FWR new housebuilding contracts (see para 3 below). To remove the fair wage clause in Local Authority contracts by itself, however, without repealing the FWR would have little effect at the table below shows. It might also attract political opposition from Labour controlled Authorities.

PERCENTAGE OF CLAIMS FROM CONTRACT SOURCE (ROUNDED FIGURES)

	Local Authorities	Nationalised Industries	Fringe bodies	MOD	Other Government Departments	Total
1977	2	26	-	58	15	101
1978	2	21	2	68	7	100

In 1979 only 6 out of 135 claims stemmed from Local Authority contracts.

2 Claims are in practice based on whatever current contract is most readily accessible. Experience suggests that most firms with a Local Authority contract against whom a claim is brought also posses an MOD or other Government contract. Nationalised industries on the other hand often deal with specialist firms (eg National Coal Board contracts for mining equipment) who would have no Government contract to substitute. But at current rates of claim the effect of removing fair wages clauses from nationalised industry contracts would be marginal.

Repeal of legislation containing references to FWR

3 The following legislation includes provision for the determination of questions about terms and conditions by specific reference to the Fair Wages Resolution:

(i) Housing Act 1957 (section 92(3)(a))

(ii) Films Act 1960 (section 42)

(iii) Road Traffic Act 1960 (section 152)

(iv) Independent Broadcasting Authority Act 1973 (section 16).

Repeal of the FWR would render these provisions ineffective. Their separate repeal is essentially a matter for responsible Departments and would require primary legislation. They have generally been little used (although 32 claims have been made this year under the IBA Act).

Government statement that it will "ignore" FWR

4 Since the FWR is not statute it is probable that the Government could ignore it without legal challenge. It would however presumably need to make a statement in the House to the effect that it regarded the FWR as an anachronism and the administrative procedures for handling claims would cease to operate. The Opposition would no doubt press for a debate on the grounds that the Government were going against the expressed will of the House. The Government would be accused of seeking to act unconstitutionally. The international constraints would not be avoided or diminished. There is therefore nothing to be gained by this course. It would also be left, rather precariously, to the CAC or the High Court to determine whether or not the Resolution was "in force" for the purpose of the provisions referred to in para 3 above.

Amend general level

5 The EEF proposed that a company should only be held to be observing terms and conditions below the "general level" if, taken as a whole, they were found

to be below what all, or nearly all, similar companies were observing in the district. This is presumably designed to distinguish the idea of the "general level" from that of an average. It is however quite uncertain how such an amendment might work in practice. It might do little to reduce the number of claims but their outcome would be rendered more uncertain. The definition of "district" which the CAC is sometimes content to leave blurred would become critical. It would be difficult for the Government, having repealed the "general level" provision of Schedule 11, to seek to amend the concept for FWR purposes.

Exclusions

6 ILO Convention No.94 permits a number of exclusions to be made from its scope. These include:

(a) contracts for small amounts;

(b) non-manual employees in management, technical, professional and scientific grades;

(c) temporary suspension of the provisions' operation in case of national emergency.

Such exclusions could be imported into the FWR without breach of the Convention. They would however be likely to have only limited practical effect. It is inconceivable for example that the Government would be prepared to declare an indefinite suspension of the FWR's application on the grounds that the national welfare was at stake. The TUC would need to be consulted about the cut-off for "small" contracts. Since large contracts would anyway be caught, sub-contractors would not escape on the grounds that their individual contracts fell below the threshold.

7 As with other suggested "intermediate" options, such changes would satisfy neither employers nor unions. If offered as the best the Government could do

pending denunciation of the Convention, they would seem to reflect a determination to strike without the ability to wound. As long-term changes, they lack any reasoned justification.

APPENDIX 2

TABLE 1.

Fair Wages Resolution 1946

Claims made in the period 1.1.1959 - 30.12.1979

1959	-	nil	1968	-	nil
1960	-	5	1969	-	4
1961	-	2	1970	-	3
1962	-	1	1971	-	2
1963	-	3	1972	-	7
1964	-	nil	1973	-	30
1965	-	1	1974	-	19
1966	-	1	1975	-	6
1967	-	4	Total		88 - Average 5.18 p.yr.

1976	-	122
1977	-	328
1978	-	570
1979	-	135
Total		1155 - Average 288.75 per year

Claims withdrawn or otherwise settled
without a CAC hearing - 214 (in period 1.1.76 - 30.12.79)

TABLE 2 : CHARACTERISTICS OF FWR AWARDS OVER LAST 5 YEARS

Year	No. of Claims	Total Awards	Result of Award.			Type of Awards		
			Estbld.	Estbld. in part	NA establd.	1(a)	1(b)	Others
1975	6	3	-	-	3	-	3	-
1976	122	14	10	2	2	-	14	-
1977	328	114	91	2	21	3	111	-
1978	570	644 *3	378	62	192	116	516	3 jurisdiction awards 11 withdrawn
1979	135	240 *2	152	19	67	5	233 *1	2 withdrawn

*1 Includes one claim that was established under 1(a) also re-consolidated time rates (79/232)

*2 Including two claims withdrawn at or after a hearing.

*3 Includes 3 jurisdiction awards and nine claims withdrawn after a hearing.

APPENDIX 2

TABLE 3 : FWR CLAIMS FEB. - DEC. 1979 *

	Feb	March	Apl	May	June	Jul	Aug	Sept	Oct	Nov	Dec	TOTAL
No. of claims reported	32	24	15	4	10	6	5	3	4*1	1	2	106
Of which No. by employer	2	1	3	-	-	-	-	-	-	-	-	7
Settled or withdrawn	16	5	13	14	7	14	5	9	3	7	17	124

TABLE 4 : FWR AWARDS FEB - DEC 1979 *

	Feb	March	Apl	May	June	Jul	Aug	Sept	Oct	Nov	Dec	Total for 11 Months
No. of awards recd. by DE	58	21	34	27	20	15	39	16	14	4	11	259
Claims establd.	46	12	17	21	10	12	28	11	4	1	2	164
Establd in part	3	4	1	2	3	-	4	3	1	-	1	22
Not estbld	9	5	17	4	6	3	7	2	9	3	7	72
1a	1	-	-	1	2	-	-	-	-	-	1	5
1b*	57	21	34	27	18	15	39	16	14	4	8	253

* 1 1 resurrected case

Detailed records of cases were started only in February, 1979. There were, however 29 claims reported in January 1979 which makes the total number of claims for the year 135 (see Table 2).

APPENDIX 3

MAIN UNIONS INVOLVED : FWR AWARDS 1979

AUEW (E)	53
AUEW (TASS)	50
APEX	36
EMA	27
ASTMS	26
TGWU	21
EETPU	19
ASBSBSW	13

173 out of 240 awards made in 1979 related to the engineering industry. These included 29 concerned with the ship repairing industry, 3 of which were composite awards covering 41 individual references from DE.

THE FAIR WAGES RESOLUTION 1946

1 (a) The contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out by machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry.

(b) In the absence of any rates of wages, hours or conditions of labour so established the contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the contractor is engaged are similar.

2 The contractor shall in respect of all persons employed by him (whether in execution of the contract or otherwise) in every factory, workshop or place occupied or used by him for the execution of the contract comply with the general conditions required by this Resolution. Before a contractor is placed upon a Department's list of firms to be invited to tender, the Department shall obtain from him an assurance that to the best of his knowledge and belief he has complied with the general conditions required by this Resolution for at least the previous three months.

3 In event of any question arising as to whether the requirements of this Resolution are being observed, the question shall, if not otherwise disposed of, be referred by the Secretary of State for Employment to an independent Tribunal for decision.

4 The contractor shall recognise the freedom of his work people to be members of Trade Unions.

5 The contractor shall at all times during the continuance of a contract display, for the information of his work people, in every factory, workshop or place occupied or used by him for the execution of the contract a copy of this Resolution.

6 The contractor shall be responsible for the observance of this Resolution by sub-contractors employed in the execution of the contract, and shall if required notify the Department of the names and addresses of all such sub-contractors.