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MT

Confidential filing

Compensation payable in relation to Falkland Islands.

ARGENTINA

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June 1982

| Referred to | Date | Referred to | Date | Referred to | Date | Referred to | Date |
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| 22.6.82 | | | | | | | |
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PREM 19/659

Argentina



CU

10 DOWNING STREET

From the Private Secretary

30 September, 1982

FALKLAND ISLANDS: COMPENSATION FOR CIVILIAN
LOSSES

The Prime Minister has noted the contents of the minute of 16 September by the Foreign and Commonwealth Secretary.

A. L. COLES

J E Holmes, Esq.,
Foreign and Commonwealth Office

8-11



CONFIDENTIAL

Prime Minister (2)

To note

ms

MUS 16/9

PM/82/78

THE PRIME MINISTER

Falkland Islands: Compensation for Civilian
Losses

1. In my minute on this subject of 27 July, I undertook to report to members of OD(FAF) progress on the compensation scheme for civilian losses in the Falkland Islands.
2. Provisional guidelines for the scheme were established last month and a team of MOD claims assessors, who have taken on the implementation of the scheme in the Falklands, have already made considerable progress in registering claims and in making payments on the less contentious. About £250,000 has already been paid out in the Islands to private individuals. Officials have now completed work on an explanatory leaflet giving details of the guidelines governing the scheme. This is being prepared for distribution in the Islands and here in London. I attach a copy of the text of the leaflet.
3. No significant problems have yet arisen on the functioning of the scheme and it is hoped that the great majority of claims will be settled before the end of the financial year, although some of the larger and more complex (for example, those relating to losses of livestock and of profits) may take more time to complete.
4. I am copying this minute to OD(FAF) colleagues and to Sir Robert Armstrong.

FP

16 September 1982
Foreign and Commonwealth Office

(FRANCIS PYM)

CONFIDENTIAL

[COVER PAGE]

COMPENSATION FOR CIVIL LOSSES IN THE FALKLAND ISLANDS

Explanatory leaflet

This leaflet sets out the basis on which compensation will be paid for civil losses suffered as a direct result of the Argentine invasion and the subsequent armed conflict. It also tries to answer some of the questions that claimants and others interested in the Scheme will want to know. Enquiries should be addressed to:

- a) the Falkland Islands Department, Foreign and Commonwealth Office, King Charles Street, London SW1; or
- b) the Civil Commissioner, Port Stanley, Falkland Islands.

Purpose of Scheme

1. The Scheme will provide ex gratia compensation for all civil persons and bodies who suffered death, personal injury or loss of or damage to their property as a direct result of the Argentine invasion and the subsequent armed conflict.

Who will qualify?

2. Individuals, bodies corporate or any others who suffered as mentioned in the preceding paragraph.

Timescale

3. The Scheme will cover all cases of death, personal injury or loss of, or damage to, property or consequential loss resulting from activities by British or Argentine forces in the period from the Argentine invasion of 2 April 1982 to the surrender of 14 June 1982. The position in respect of cases of death, personal injury or loss of, or damage to, property or consequential loss, arising after 14 June 1982, but also resulting from activities by British or Argentine forces, will be slightly different. Where such cases give rise to a legal liability on the part of the Ministry of Defence, the claims concerned will be met by them under their normal operating procedures. Where no such legal liability exists claims will be dealt with under the present Scheme. In neither case will there be any time

limit on the incidents in respect of which a claim for compensation may be presented.

4. Claims for compensation should be notified to the Civil Commissioner, Port Stanley, on or before 31 January, 1983, or within six months of the incident which gives rise to the claim (whichever is later) even if the precise amount of the claim may by that date not be quantifiable.

Basis for Compensation

5. In the case of loss or damage to property compensation will be assessed as appropriate either at the cost of repair, or at replacement cost at Falkland levels less an allowance in respect of the age and condition of the article at the time of loss/damage. Consequential loss, in particular loss of profits, will be covered for a period not exceeding six months after the time of the incident which gives rise to the claim. In exceptional circumstances and where loss which is clearly a result of the incident arises after this period of six months, special consideration will be given to the claim.

6. In the case of death and personal injury, the common law principles for assessing financial compensation will apply, subject to the condition that the costs of private treatment will be payable only if, in all the circumstances, both the private treatment and the cost of it are reasonable.

7. Compensation may be refused or the amount reduced in any case where the victim by his negligence contributed to the death, personal injury or loss of or damage to property or any other loss which gave rise to the claim, or where the victim did not take reasonable steps to mitigate the loss or damage.

8. Compensation will be in money. The Secretary of State for Foreign and Commonwealth Affairs reserves the right, where he thinks it appropriate, to insist upon restoration, restitution or replacement of any item in respect of which compensation may be paid.

Duplication

9. Compensation will be off-set by the monetary value of any repairs and rehabilitation ^ameasures carried out by Her Majesty's Government (including the British Armed Forces) or by the Falkland Islands Government; and in respect of all instances where satisfaction is otherwise provided, such as under insurance policies or by private charitable or relief funds. No account will, however, be taken of

any payments in respect of death that may be paid under life assurance policies. Claims will not be entertained from insurance companies in respect of any payments they may make to policy-holders in connection with any incident which could give rise to a claim under the Scheme. All claimants will, before payment of compensation is made, have to certify that they have disclosed to the relevant Claims Officers any assistance that they have received in respect of qualifying losses.

Assessment and Settlement of Claims

10. MOD Claims officers in the Falkland Islands will receive, assess and negotiate claims, where appropriate on behalf of the FCO. They will have authority to settle and pay compensation in the great majority of cases without reference to London. Where agreement can be reached with claimants, therefore, it will be possible for compensation to be paid very rapidly.

Disagreed Cases

11. Where agreement between the claimant and the Claims Officers is not possible, it will be open to either party to refer the claim to an arbitrator, to be chosen by the Secretary of State for Foreign and Commonwealth Affairs. The arbitrator's decision will be final.

Argentina

Compensation

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Argentina

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CONFIDENTIAL

FM FCO 291325Z JULY 1982

TO IMMEDIATE CIVIL COMMISSIONER PORT STANLEY
TELEGRAM NUMBER PERSONAL 15 OF 29 JULY.

Read in full.

MS

COMPENSATION FOR CIVIL LOSSES

1. THE PQ REFERRED TO IN MY TELNO 94 HAS NOW BEEN ANSWERED. AT THIS STAGE. THE INFORMATION IN PARAGRAPHS 3 - 9 BELOW IS FOR YOUR OWN INFORMATION: IT MAY CHANGE AS A RESULT OF THE INTER-DEPARTMENTAL DISCUSSIONS STILL IN PROGRESS.
2. THE PURPOSE OF THE SCHEME IS TO PROVIDE BEGIN UNDERLINING EX GRATIA CEASE UNDERLINING COMPENSATION FOR ALL CIVIL PERSONS AND BODIES WHO SUFFERED DEATH, PERSONAL INJURY OR LOSS OF OR DAMAGE TO THEIR PROPERTY AS A DIRECT RESULT OF THE ARGENTINE INVASION AND THE SUBSEQUENT ARMED CONFLICT. THE AIM IS:-
 - (I) IN THE CASE OF PROPERTY, TO RESTORE THE VICTIM TO THE SAME POSITION HE WOULD HAVE BEEN IN HAD THERE BEEN NO LOSS: AND
 - (II) IN THE CASE OF DEATH AND INJURY, TO FOLLOW NORMAL COMMON LAW PRINCIPLES FOR THE ASSESSING OF FINANCIAL COMPENSATION.
3. FOR PROPERTY, REPLACEMENT COSTS AT FALKLANDS LEVELS WILL BE USED, LESS AN ALLOWANCE IN RESPECT OF THE AGE AND CONDITION OF THE ARTICLE AT THE TIME OF THE LOSS/DAMAGE. CONSEQUENTIAL LOSS, SUCH AS LOSS OF PROFITS, WILL BE COVERED.
4. (II) SHOULD ENSURE THAT VICTIMS ARE PLACED IN THE SAME POSITION AS THOSE IN THE UK WHO SUFFER DEATH OR INJURY AS A RESULT OF UNLAWFUL ACTION BY ANOTHER PERSON.
5. COMPENSATION WILL BE IN CASH, NOT IN KIND. IT WILL BE OFFSET BY THE MONETARY VALUE OF ANY REPAIRS AND REHABILITATION MEASURES CARRIED OUT BY THE ARMED FORCES OR BY HMG/FIG, AND IN RESPECT OF ALL INSTANCES WHERE SATISFACTION IS OTHERWISE PROVIDED, SUCH AS UNDER INSURANCE POLICIES OR PRIVATE CHARITABLE OR RELIEF FUNDS. BUT ANY PAYMENTS FOR DEATH UNDER LIFE ASSURANCE POLICIES

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16708 - 1

WILL NOT BE TAKEN INTO ACCOUNT. BODIES CORPORATE, ETC. WILL QUALIFY AS WELL AS INDIVIDUALS.

6. THE SCHEME WILL COVER THE PERIOD FROM 2 APRIL TO 14 JUNE 1982. FOR ADMINISTRATIVE CONVENIENCE, IT WILL COVER ANY DAMAGE AND REQUISITIONS BY BRITISH FORCES DURING THAT PERIOD. LOSSES CAUSED AFTER THE ARGENTINE SURRENDER (OR YET TO OCCUR, EG BY UNEXPLODED MINES) WILL BE DEALT WITH BY THE MOD AS PART OF THEIR NORMAL ARRANGEMENTS. SINCE THE BASIS FOR COMPENSATION WILL BE THE SAME, THERE WILL BE NO PRACTICAL DISTINCTION BETWEEN CASES THAT ARE COVERED BY THE SCHEME AND THOSE THAT ARISE LATER.

7. RATHER THAN DEVISE AN APPEALS SYSTEM TO THE COURTS, WE INTEND TO HAVE AVAILABLE FOR DISAGREED CASES AN ARBITER TO BE APPOINTED BY THE SECRETARY OF STATE. HE WILL BE AVAILABLE TO TRAVEL OUT TO THE ISLANDS AS NECESSARY.

8. THE SCHEME WILL BE HANDLED BY EXPERIENCED CLAIMS OFFICERS OF MOD. WHO ARE ALREADY ON STANDBY AND WILL FLY OUT AS SOON AS SUMMONED. WE HOPE THAT THEY WILL BE ABLE TO TAKE OVER THE DOSSIERS THAT YOU AND THE MILITARY HAVE BEEN COMPILING. THEY WILL HAVE AUTHORITY TO NEGOTIATE AND SETTLE AGREED CASES UP TO A CEILING OF POUNDS 100,000 TOTAL FOR ANY ONE PERSON OR INSTITUTION. (ABOVE THAT FIGURE, THEIR RECOMMENDATIONS WILL COME TO THE FCO FOR AUTHORISATION.) THEY WILL ALSO BE ABLE TO MAKE THE PAYMENTS, WHICH WILL ULTIMATELY BE CARRIED ON THE FCO VOTE. THE FIG WILL NOT, THEREFORE, HAVE A FORMAL ROLE IN THE CLAIMS PROCESS. THIS IS DESIRABLE SO THAT YOU AND YOUR STAFF CAN ACT AS A SOURCE OF ADVICE TO THE ISLANDERS. IT WILL, OF COURSE, BE ESSENTIAL FOR A MEMBER OF YOUR STAFF TO ACT AS CONTACT POINT AND LIAISON WITH THE CLAIMS TEAM, TO ADVISE ON LOCAL CONDITIONS, COSTS, ETC.

9. WE SHOULD BE GRATEFUL FOR YOUR VIEWS ON WHETHER WE NEED TO MAKE SPECIAL ARRANGEMENTS FOR ISLANDERS TO HAVE ACCESS TO LEGAL ADVICE. SINCE THERE ARE NO LAWYERS ON THE ISLANDS, IT COULD BE ARGUED THAT THEY WILL BE IN A LESS ADVANTAGEOUS POSITION THAN THEIR UK COUNTERPARTS. OUR PRESENT THINKING IS THAT WE SHOULD SEE HOW THINGS GO FOR A START WITH THE ISLANDERS LOOKING FOR ADVICE TO YOU AND YOUR STAFF TOGETHER WITH THE ELECTED

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CONFIDENTIAL

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16708 - 1

COUNCILLORS. BUT IF, AFTER THE CLAIMS TEAM HAVE BEEN AT WORK FOR A WEEK OR TWO, THERE IS CLEARLY DEMAND FOR ON THE SPOT ACCESS TO A LAWYER, WE COULD CONSIDER ASKING THE FALKLAND ISLANDS OFFICE TO SUGGEST SOMEONE WHO MIGHT BE PREPARED TO FLY OUT AT OUR EXPENSE.

10. WE SHOULD BE GRATEFUL FOR ANY VIEWS OR QUESTIONS YOU MAY HAVE ON THE ABOVE. IN THE MEANTIME THE WAY IS NOW CLEAR FOR YOU TO MAKE AN ANNOUNCEMENT. THIS WOULD SERVE TO INITIATE A SIX MONTH PERIOD DURING WHICH ALL CLAIMS WOULD HAVE TO BE SUBMITTED. IN MAKING YOUR ANNOUNCEMENT, WE SUGGEST THAT YOU STICK TO THE INFORMATION IN THE PO AND PARAGRAPH 2 ABOVE AT THIS STAGE. TOGETHER WITH A REFERENCE TO THE SIX MONTH PERIOD FOR SUBMISSION OF CLAIMS AND THE PRACTICAL ARRANGEMENTS IN CONNECTION WITH THE IMMINENT ARRIVAL OF THE CLAIMS OFFICERS: YOU COULD SAY THAT FULL DETAILS WILL BE AVAILABLE SHORTLY. GRATEFUL FOR THE TEXT OF YOUR ANNOUNCEMENT AND THE DATE WHEN IT IS MADE.

PYM

[COPIES SENT TO NO 10 DOWNING STREET]

FALKLANDS REHABILITATION

LIMITED

S AM D
FALKLANDS REHAB SECT
FINANCE D
APD
ESID
DEFENCE D
ODA
PS

PS/MR ONSLOW
PS/MR RIFKIND
PS/MR MARTEN
PS/PUS
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MR STREETON
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ADDITIONAL DISTRIBUTION

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10 DOWNING STREET

File
cc MOD
HMT
DOT
ATT GEN
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CO

HL

From the Private Secretary

27 July 1982

Compensation for war damage in the Falklands

The Prime Minister has seen the minute of 27 July by the Foreign and Commonwealth Secretary. She agrees to the proposed Question and Answer. Mrs. Thatcher has not been able to consider the details of the possible scheme which were attached to the minute but will hope to study these overnight.

I am copying this letter to the Private Secretaries to the members of OD(FAF) and to David Wright (Cabinet Office)..

JOHN COLES

Francis Richards, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL

BLK



PM/82/64

MS

You may want to look again
at the details of the
compensation arrangements at
Fly A.

PRIME MINISTERA.J.C. $\frac{27}{7}$ Compensation for War Damage in the Falklands

1. We discussed this matter at OD(FAF) on 20 July and agreed the principle of compensating civilians for losses incurred. Although it was not then felt that a further announcement about our decision in principle was necessary, I believe that we have now - not least in the light of television publicity about the Islanders' impatience for compensation - reached the point at which it would be helpful to say a little more. I attach a draft, on which Treasury and MOD are being consulted at official level. Such a Written Answer will also serve the purpose of securing authority for expenditure before a Supplementary Estimate can be taken.
2. The Question must be put down on the afternoon of 27 July. In the absence of any observations I shall arrange for this to be done.
3. Officials have also been considering the details of a possible scheme. I think it right to circulate an outline for the information of my colleagues at this stage. A good deal of work is still required and I shall report further on progress.
4. In operating the Scheme, the proposal is that MOD would act on an agency basis for the FCO. Thus, while expenditure would fall on the FCO Vote, MOD expertise in these matters can be used in advising on the merits of claims submitted. MOD will certify the claims; the FCO will be responsible for authorising payments on the basis of MOD advice.
5. It is possible that we shall be receiving the first claims within a few weeks, as the MOD Claims Officers get to work. I understand that officials see no practical difficulty in ensuring that these are paid rapidly.

CONFIDENTIAL



6. I am copying to OD(FAF) colleagues and to Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'FP', with a horizontal line underneath.

(FRANCIS PYM)

Foreign and Commonwealth Office
27 July, 1982

CONFIDENTIAL

CONFIDENTIAL

Draft 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:

Reference

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

TO:

Your Reference

- Top Secret
- Secret
- Confidential
- Restricted
- Unclassified

Copies to:

PRIVACY MARKING

SUBJECT:

.....In Confidence

PQ

CAVEAT.....

To ask the Secretary of State for Foreign and Commonwealth Affairs whether the Government intend to pay compensation to Falkland Islanders for their losses during the recent Argentine occupation of the Islands.

DRAFT ANSWER

Yes Sir. As the Prime Minister said in reply to my Hon Friend the Member for Tiverton on 15 June, the Government intend to be generous in paying compensation to civilians for loss of life, injury, and damage to property in the Falkland Islands, whether as a result of British or Argentine actions, during the recent conflict. The Civil Commissioner has been collecting damage reports since his return so that we shall be in a position to move quickly. Authority for these payments will be sought from Parliament by means of a

/supplementary

Enclosures—flag(s).....

supplementary estimate. Pending Parliamentary approval,
suitable repayable advances will be made from the
Contingencies Fund.

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+✓

FROM:

Reference

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

TO:

Your Reference

- ~~Top Secret~~
- Secret
- Confidential
- ~~Restricted~~
- ~~Unclassified~~

Copies to:

PRIVACY MARKING

SUBJECT:

.....In Confidence

OUTLINE OF DRAFT COMPENSATION SCHEME FOR CIVIL LOSSES IN THE FALKLANDS

CAVEAT.....

1. Purpose of Scheme. To provide ex gratia compensation for all civil persons and bodies who suffered death, personal injury or loss of or damage to their property as a direct result of the Argentine invasion and the subsequent armed conflict. The aim is:

- (i) In the case of property, to restore the victim to the same position he would have been in had there been no loss:
- (ii) In the case of death and injury, to follow normal common law principles for assessing financial compensation.

2. (i) implies using replacement costs at Falklands levels, less an allowance in respect of the age and condition of the article at the time or loss/damage. To take account of the special circumstances of the Islands (in particular the virtual absence of ^asecond-hand market) this latter provision should be interpreted generously. Consequential loss, such as loss of profits, should be covered.

3. (ii) should ensure that victims were in exactly the same position as those in UK who suffer death or injury as a result of unlawful action by another person.

Enclosures—flag(s).....

4. Those qualifying would be all - individuals, bodies corporate or whatever - who have suffered as at 1. above.

5. Compensation would generally be in cash, not kind. But there would be a danger, perhaps particularly in the case of the Falkland Islands Company, that compensation funds would not be used to replace facilities destroyed or damaged but simply repatriated to UK. (Lord Shackleton's team have already drawn attention informally to this danger.) A possible solution would be to insist on replacement/restitution in the case of property owned by non-resident corporate bodies.

6. Duplication. Compensation would be off-set by the monetary value of any repairs and rehabilitation measures carried out by the services or by HMG/FIG; and in respect of all instances where satisfaction is otherwise provided, such as under insurance policies or private charitable or relief funds. Insurance companies should not be able to claim in respect of any payments they make to policy-holders (most policies will in any ^{event} exclude war damage). But the Falkland Islands Company, for example, should be entitled to claim for compensation for loss of profits through disruption of its shipping services etc, as well as for physical damage to its property.

Timescale

7. The scheme would cover the period from 2 April 1982 to the point of the Argentine surrender. It would be convenient administratively for it to cover any damage and requisitions by British forces during that period; it would be a practical impossibility in many cases to distinguish between damage caused by British and Argentine shells. We also have to cover losses caused since the Argentine surrender, eg by unexploded mines. There are likely to be such cases for years to come, even if infrequently. MOD are prepared to take these on under their normal arrangements, from the date

of the Argentine surrender.

8. There should be a time limit for submission of claims of six months from the date when the Civil Commissioner invites formal applications. This would be very soon after the arrival of the MOD Claims Officers.

9. Disagreed Cases. Rather than devise an appeal system to the Courts, it would seem more sensible to refer to arbitration all cases where claimants disagree with HMG's assessment and award. The options seem to be some kind of arbitration panel, perhaps with members chosen by both sides; and a single arbiter appointed by the Secretary of State who would travel out from the UK as necessary. Given the nature of Falklands society, the latter would seem best.

10. Authorisation of Payments. There is agreement that this should be by HMG and not by the Falkland Islands Government. The latter should be kept to a role of conciliation and advice to the Claims Officers on local conditions. But their concern for the interests of the Islanders could argue against giving them a decisive role. The payments should be certified by the MOD, whose Claims Officers will be receiving, assessing and negotiating the claims locally. They would do so as agents of the FCO, on whose Vote the expenditure would be carried. FCO and MOD would agree procedures for handling individual cases which would ensure that Accounting Officers' responsibilities were clearly defined.

11. Role of the Falkland Islands Government. One benefit of keeping FIG at arms length would be that there should be no need for a local Ordinance. Another would be that the FIG might be able to fulfill informally the role of adviser and ``solicitor`` for claimants - there are no lawyers. If that were not thought an adequate source of advice for the Islanders, we could perhaps consider making a lawyer available for a period, partly or wholly paid from public funds.

12. Parliamentary Authorisation will be needed for the expenditure occasioned by the scheme. A draft Written Answer, agreed with the Treasury and MOD at official level, is attached. This should be answered before Parliament rises, so that we can act quickly as soon as the first claims are processed.

13. If, as is proposed, the Scheme is to have a limited life, legislation would not seem to be necessary. Payments could rest on the authority of the Annual Appropriation Act.



27 JUL 1992



OD(FAF):HMT
Trade
Def
A.Gen
Home Sec

10 DOWNING STREET

From the Private Secretary

26 July, 1982

FALKLAND ISLANDS: COMPENSATION FOR CIVILIAN LOSSES

The Foreign and Commonwealth Secretary minuted about this matter on 19 July. As you know, it was discussed in OD(FAF) on 20 July. Although the minutes of the meeting do not specifically say so, it was felt during the meeting that there was no need for a further announcement about our decision in principle, the Prime Minister having stated in the House on 15 June that it was our intention to be generous.

I am copying this letter to the Private Secretaries to members of OD(FAF) and David Wright (Cabinet Office).

ALL COPIES

F Richards, Esq
Foreign and Commonwealth Office

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FBO

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Cabinet / Cabinet Committee Document

The following document, which was enclosed on this file, has been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate CAB (CABINET OFFICE) CLASSES.

Reference: OD (FAF) (82) 3rd Meeting, item 2

Date: 21 July 1982

Signed AWayland Date 24 May 2012

PREM Records Team

①

CONFIDENTIAL

Prime Minister

You may like to raise in OD (FAF) on Tuesday. Subject to agreement there you could make an announcement at Question-Time on Thursday.

A.J.C. 19/7



PM/82/60
PRIME MINISTER

Falkland Islands: Compensation for Civilian Losses

1. I have been considering the question of compensating civilians and civil bodies for damage to property and possessions caused by the Argentine invasion and occupation. We now have the first assessment by the Civil Commissioner that damage has been extensive; and that the Islanders will expect full and early compensation to be paid by HMG. I am sure that he is correct on this last point and that public opinion here will take the same view. You will recall that you confirmed in the House on 15 June that "It is our intention to be generous in these matters".
2. Officials of the Departments concerned are already working out the details of a compensation scheme and the results will be reported to OD(FAF). But it will take some time to finalise what will be complex arrangements. I think that we need to announce our decision in principle very shortly. You might like to do this during an exchange at Question Time; if so, officials can provide an agreed text.
3. We should do what we can to avoid creating a new bureaucracy to handle this matter. So far as is possible, I believe we should utilise existing expertise, particularly that which the MOD will have in the Falklands. Officials will be working on details as part of the arrangements at paragraph 2 above.
4. It is impossible to give any realistic estimate of the likely cost at this stage. The Civil Commissioner's best estimate is that private individuals might be in a position to claim at least

/£12m.

CONFIDENTIAL



£12m. Whilst this seems high, we are in no position to question the estimate at this stage. And much will, of course, depend on the exact terms of the scheme. There is no provision for compensation in the programmes under my control and I am unable to identify offsetting savings elsewhere. If, therefore, we agree now that civil compensation is to be paid, it must be clearly understood that I shall have no alternative but to approach the Treasury in due course to seek new money.

5. Since payments will not begin in the near future, the question arises whether some relief operation may be needed in the meantime. We have had no request from the Civil Commissioner on this but it is clear from letters from the Islanders to their families here that there is some financial distress. Fortunately, the Falklands Appeal is anxious to operate soon in this area. Their funds stand at only about £50,000 and I believe that we should consider augmenting them by transferring a small part - perhaps £½m - of the generous £5m donation that Jersey has offered to HMG to assist with the costs of recovering and re-establishment of the Islands. The Civil Commissioner is, of course, a Trustee of the Appeal and I have no doubt that any activity in the relief area would be properly managed.

6. I am copying this minute to OD(FAF) colleagues and to Sir Robert Armstrong.

(FRANCIS PYM)

Foreign and Commonwealth Office
19 July 1982



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HM
Argentine
B/C: JV ✓
FILE

10 DOWNING STREET

From the Private Secretary

7 July, 1982

ⓔ

CUNARD

The Prime Minister has seen your Secretary of State's minute of 6 July.

She agrees with him that there is no prospect of intervening to influence Cunard to buy British.

I am sending a copy of this letter to Mike Hopkins (Northern Ireland Office) and John Rhodes (Department of Trade).

M. C. S. 1016

J Spencer, Esq.,
Department of Industry

CONFIDENTIAL



PRIME MINISTER

Top Copy on Nat Ind,
Shipbuilding Policy,
①
Prime Minister
Pt 3

Content that forward
there should be no intervention
in this situation?

Yes
MS

MCS 6/7

I think you should be aware that Cunard are likely to order from the Far East a prestigious third generation container ship which BS have tendered for. This order is Cunard's contribution to the ACL Consortium. The other shareholders are French, Dutch and Swedish.

2 There is likely to be a strong public reaction to this. Cunard have given the impression that the order only arises because of the loss of the Atlantic Conveyor and that the compensation (£9.27m) will go straight to finance a Far Eastern purchase. In fact, before the Falklands crisis Cunard had gone to tender for the order and were contemplating arrangements for the sale of the Atlantic Conveyor. The link between the order and the loss of the Conveyor is not therefore as close as portrayed publicly. However, the loss of a prestige order will also be used as an argument that we should give even more support to the shipbuilding industry. Since coming into Office we have provided nearly £600 million to British Shipbuilders. Even so we have the difficulty that the French and Swedish members of ACL will probably place their orders in their national yards.

3 We cannot see any way in which Cunard can be influenced to "buy British". The price gap between the Japanese and South Korean prices and BSC is of the order of \$30 million though some allowance has to be made for foreign currency risks and inferior



credit abroad which would reduce this gap somewhat. It would have been wrong to attempt to use the compensation paid for the Atlantic Conveyor to influence the Cunard decision. The Government is obliged in law to pay the value of the lost ship, and would be taken to arbitration if we failed to do so in full. We have on occasion authorised BS to use soft credit to win such UK orders but on legal grounds this is challengeable by the Commission and we have restricted its use to where there is no EC competition. In this case there is French and German competition. Moreover, at present the Commission are being rather difficult about our application for the further tranche of Intervention Fund for the shipbuilding industry agreed by Ministers in March. Even if we were to take the risk, it seems doubtful whether BS could accommodate the cost of credit within their loss limit for this year of £10m after Intervention Fund assistance.

4 I have carefully considered whether an intervention by you could secure this order but I see no chance of Lord Matthews moving unless he is promised substantial aid.

5 A copy of this letter goes to Jim Prior and Lord Cockfield.

PJ

PJ

6 July 1982

Department of Industry



Chancellor of the Duchy of Lancaster
and
Paymaster General

Argentina
PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

22 June 1982

Dear John

FALKLANDS: COMPENSATION FOR REQUISITIONED SHIPS

This is simply to confirm that, as I have already told your office by telephone, Mr Parkinson is content with the proposals in your Secretary of State's minute of 18 June to the Prime Minister.

I am sending copies of this letter to the Private Secretaries of recipients of Lord Cockfield's minute.

Yours ever,

KEITH LONG
Private Secretary

J Rhodes Esq
Principal Private Secretary to the
Secretary of State for Trade
Department of Trade
1 Victoria Street
London SW1

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2222 JUN 19 1982



CONFIDENTIAL



FCS/82/91

SECRETARY OF STATE FOR TRADE

Falklands: Compensation for Requisitioned Ships

1. I have seen a copy of your minute of 18 June to the Prime Minister on this subject. I would agree with the course of action which you are proposing.
2. I am copying this minute to colleagues on OD, to the Attorney-General and to Sir Robert Armstrong.

Handwritten initials "FP" and a red circular stamp with illegible text.

(FRANCIS PYM)

Foreign and Commonwealth Office

22 June, 1982

CONFIDENTIAL



22 JUN 1962



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CONFIDENTIAL

1-405 7641 Ext. 3020

Communications on this subject should
be addressed to

LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our Ref: 400/80/145

22 June 1982

J M D Rhodes Esq
Private Secretary to the
Secretary of State for Trade
1 Victoria Street
LONDON S W 1

JF
23/6

W
22/6

Dear R Rhodes

FALKLANDS : COMPENSATION FOR REQUISITIONED SHIPS

We spoke. The Attorney General does not consider that any amendment to your Secretary of State's minute to the Prime Minister is required, but he would like to make explicit one point which already is implicit in that minute, especially when read with his advice annexed to it. The six months cut-off does not, of course, apply at common law, and an aggrieved shipowner could reject an offer of compensation calculated in accordance with common law principles but subject to cut-off and sue instead for his full entitlement at common law. However, he would be unlikely to risk doing so if any extra that he stood to gain were only marginal; and the circumstances in which we would be likely to consider an extension of cut-off would be precisely those in which the extra available at common law was substantial, not merely marginal, and in which a little more must be offered to "buy off" a threat of proceedings.

I understand that the point that we discussed in our second conversation, namely liability to charterers at common law, is at present only theoretical, since no claims have been received from charterers.

I am copying this to the Private Secretaries of the recipients of your Secretary of State's minute.

Yours sincerely
A. M. Susman

A M SUSMAN

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123 JUN 1982





MR RICKETT

10 DOWNING STREET

From the Private Secretary

21 June, 1982

*Can I see these papers
attached* *Wh*
22/6

Falklands: Compensation for Requisitioned Ships

The Prime Minister has seen the minute of 18 June by your Secretary of State. Subject to the views of OD colleagues and the Attorney General, she is content that Lord Cockfield should proceed on the lines he has proposed and that an announcement should be made in a written answer on 23 June.

A. J. COLES

John Rhodes, Esq.,
Department of Trade

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Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

21 June 1982

J D M Rhodes Esq.
Private Secretary to the
Secretary of State for Trade

Dear Sir,

FALKLANDS: COMPENSATION FOR REQUISITIONED SHIPS

The Chancellor of the Exchequer ^{attached} has seen your Secretary of State's minute of 18 June to the Prime Minister, and the draft Parliamentary Question and Answer attached to it.

Your Secretary of State's minute reflects the policy which he had agreed with the Chancellor, and I can confirm that the Chancellor is content with the draft Answer.

I am sending copies of this letter to the Private Secretaries to Members of OD Committee, to the Attorney General's office, and to Sir Robert Armstrong.

Yours ever,

J D Kerr

J D KERR
Principal Private Secretary

22 JUL 1982





FILE SW

bcc: Willie Rickett.

10 DOWNING STREET

From the Private Secretary

21 June, 1982

Falklands: Compensation for Requisitioned Ships

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A. J. COLES

John Rhodes, Esq.,
Department of Trade

Sw.



PRIME MINISTER

FALKLANDS: COMPENSATION FOR REQUISITIONED SHIPS

We have to decide the basis of compensation to shipowners for the use of merchant ships during the Falklands emergency. The Chancellor of the Exchequer has explored this with the Ministers most concerned. We are agreed on the proposals set out in this minute and we commend these to colleagues in OD. It has also been agreed Ministerially by MOD.

Claims for compensation arising from the requisitioning fall to be dealt with under the Compensation (Defence) Act, 1939. The Act provides rather limited specific compensation for the use of the vessel; and envisages that agreements may be made by the Government with shipowners covering other payments. Following the Chancellor's discussions, we are agreed that the specific payments provided for would not give adequate fair compensation in the particular circumstances of the hostilities in the South Atlantic.

For example, the minimum compensation would not cover loss of business suffered after the vessels are returned to the shipowners, but before they can re-establish their markets. We are therefore agreed that we should have a wider basis of compensation.

There is a problem. One shipowner has raised the question whether the 1939 Act, passed as it was for World War II, is still valid in present circumstances. The Attorney General has advised that there is some risk of challenge and that the prospects of successfully resisting this are 50:50. If the Act were held not to be valid, then in default of agreement the Government would be liable to be sued for compensation.

We have considered whether legislation should be introduced to put the validity of the 1939 Act beyond question. We do not find

Prime Minister

Agree that Lord Cockfield should proceed on these lines?

Yes - very good.

ms

A & C. 6/6



this an attractive course. If legislation were introduced there would be pressure in the House to make it set out all possible heads of compensation in specific form and it could be foreseen that such a Bill would run into real difficulties in the House.

The course we prefer in the light of the advice annexed from the Attorney-General is as follows. The Government should adopt a basis of compensation, to be paid within the framework of the 1939 Act, on the lines which we believe would be followed if a court had to decide the matter at common law. We should negotiate with individual shipowners the assessment of their claims on this basis. We should provide for arbitration in the case of disputes.

We think that this would be a fair way of proceeding and that a shipowner would, on this basis, have little incentive to challenge the validity of the 1939 Act. If such a challenge was, however, made and was successful, we think that the Government's position would be defensible and that the courts would be unlikely to award, at most, compensation in a way that significantly differed from the basis we were in any case offering.

A draft Parliamentary statement of policy on these lines is annexed. I draw your attention to one point: that there is provision for a cut-off of claims for future loss six months after the date on which a requisitioned vessel is returned to its owner. We think it desirable and defensible to have such a cut-off in order to give a workable limit for claims. Circumstances might be established by a shipowner which might lead us to consider an extension in particular cases, but we would aim to keep such cases to the minimum.

Because of the difficult issues in this matter, it has taken a little time to decide how to proceed and it is now very desirable that my Department, who are acting as agents for the Ministry of Defence in this matter, should get into early discussion with the



shipowners, who are becoming restive at our inability to tell them on what basis we are going to proceed. I should therefore be grateful for your agreement to our proceeding on the lines set out in this minute which I would propose to announce in a Written Answer next Wednesday.

I am copying this minute to colleagues on OD, to the Attorney General and to Sir Robert Armstrong.

Arthur Cockfield

LORD COCKFIELD

Department of Trade

18 June 1982



Question: To ask the Secretary of State for Trade what compensation will be payable to shipowners by the Government in respect of the requisitioning of their ships for use in the South Atlantic.

Answer

Compensation will be payable as provided for under Section 4 of the Compensation (Defence) Act 1939 in respect of

- (1) the loss of use of the vessel during the period of requisition. This will be a bare boat charter rate which will include a profit element for the ship owner;
- (2) expenses in connection with the running of the vessel in cases where it has been agreed that this service will be provided;
- (3) the cost of making good any damage to the vessel;
- (4) in a case of a total loss of the vessel, a sum equal to its value immediately before occurrence of the damage causing its loss;
- (5) expenses reasonably incurred for the purpose of complying with the Requisition Order.

In addition the Government is willing to enter into agreements as envisaged in S 15 of the 1939 Act which will provide for payments to be made in respect of

- (6) any profit which might reasonably have been expected to be earned by the ship during the period of requisition insofar as that profit is not covered by Section 4;



- (7) payments in respect of the period of requisition due to third parties, arising from contractual obligations entered into prior to the requisition, directly connected with the operation of the ship, and not covered by Section 4;
- (8) other expenses reasonably incurred during the period of and attributable to the requisition;
- (9) loss of profit for a period not exceeding six months after the period of requisition being profit which might, but for the requisition, have reasonably been expected to be earned by the ship;
- (10) any other loss suffered by the claimant during a period of not more than six months after the period of requisition if that loss was reasonably foreseeable as a result of the requisition.

The provisions covered in (6)-(10) above are subject to the proviso that no account will be taken of any loss if the claimant has not taken all reasonable steps to avoid or minimise that loss.

The period of six months in (9) and (10) above has been chosen as one in which any loss directly resulting from the requisition could be expected to arise. In exceptional circumstances and where loss which is clearly a result of the requisition arises after this period of six months, the Government will give special consideration to the claim.

My Noble and Learned Friend, the Lord Chancellor, is taking steps to reconstitute the Shipping Claims Tribunal provided for under the 1939 Act which will be asked to determine disputes.



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17 June, 1982

Len Gestrey

FALKLANDS - REQUISITION OF SHIPS - COMPENSATION

The Treasury Solicitor and the Solicitor to the Department of Trade have been to see me and as a result of our conference I can let you have my considered opinion.

As you know there are two uncertainties: whether the 1939 Act applies; and what the measure of compensation is at common law if it does not apply. In the light of the advice that I have previously given I think that there is a real risk that if the terms that we offer are not substantially more generous than those provided by the 1939 Act discontented shipowners will take us to court on their claims. We could of course prevent that by legislating but for a number of reasons that is unattractive. However the risk could be greatly reduced without the need for legislation if we could offer terms which are reasonably generous. Specifically what I have in mind is that if we offer shipowners the choice between on the one hand suing at common law knowing that if they lose they will get no more than the 1939 Act requires and on the other hand settling by agreement on the basis of Option 5 set out in paragraph 31 of the paper covered by Mr. Lovell's minute to you of 11 June (which I consider to correspond to our moral obligations in this case) the strong probability is that commercial prudence will persuade them to accept our terms.

To preserve our position the offer should be expressed in terms which assume that the 1939 Act is applicable to the case but recognise that in these particular circumstances (ie where a burden imposed in the national interest has to be borne by only a small number of shipowners) it is reasonable for more to be offered. Thus the offer should purport to be made under s.15

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of the Act and be expressed as an offer of an amount over and above the statutory entitlement. It should of course be a term of the offer that if it was accepted this would be in full and final settlement of all claims. There would be no objection of course to the offer providing for questions of precise quantum to be referred to the Shipping Claims Tribunal.

In my opinion the cut-off period should be standard (except perhaps that there could be different periods for different classes of vessels e.g. passenger ships and cargo ships) but it could be indicated that in very exceptional cases (such as where a shipowner could show that the requisition had terminated a long-term profitable charter which he could not replace) we might be prepared to offer some flexibility in this respect.

I am sending a copy of this to Arthur Cockfield and also to Sir Douglas Wass, the Treasury Solicitor and the Solicitor to the Department of Trade.

Yours etc.
Michael

Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer
11 Downing Street
London, SW1

