



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.

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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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*Len Gestrey*

FAULKLANDS - 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