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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.

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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

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Draft 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:

Reference

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

TO:

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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.

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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^a second-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.

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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