

EXECUTIVE COUNCIL

PUBLIC

Title: Licence to Exhume Body

Paper Number: 90/18

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Responsible Director: Attorney General

Report Author: Attorney General

Portfolio Holder: MLA Roger Spink

Reason for paper: This paper is submitted to Executive Council:
To meet a statutory requirement

Publication: Yes with redactions as **highlighted**
Not Recommended:
Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance when determining if information should be withheld
The categories which are potentially relevant to this paper are:
Paragraph 3: International Relations and Relations with the UK and other Overseas Territories
Paragraph 12: Information about legal advice

Previous papers: 80/17, 203/16

List of Documents: Annex A – Draft Licence

1. Recommendations

Honourable Members are recommended to

- 1) approve the Grant of a Licence for the exhumation of a body under the Burial Act 1857 in the form set out in Annex A.

- 2) Note that the Licence will be granted to the contractor taking responsibility for the exhumation and transfer of the body.
- 3) Note that the Licence will be granted to permit exhumation at any time in the 12 months from the date on which it is granted.

2. Additional Budgetary Implications

- 2.1 There are no additional budgetary implications arising from this report.

3. Executive Summary

- 3.1 The purpose of this paper is to obtain approval to the grant of a licence for the exhumation of the body of an Argentine soldier buried at the cemetery at Darwin.
- 3.2 Section 25 of the Burial Act 1857 applies in the Falkland Islands pursuant to the Law Revision and Publication Ordinance 2017. This provision was specifically put in place in order to provide a legal power for the Governor in Council to permit exhumation by way of granting a licence.

4. Background

- 4.1 Prior to the exhumation of any human remains, proper lawful authority is required. As a matter of public policy, Honourable Members will wish to satisfy themselves that there are sufficient reasons for ordering an exhumation.
- 4.2 It is suggested that there are good humanitarian grounds on which a licence should be granted in this case.

4.3 REDACTED.

- 4.4 The widow of Flight Lieutenant Luis Dario Jose Castagnari has expressed the intention to re-patriate the remains of her husband to Argentina. The Falkland Islands Government and UK Government have worked together with the family, its representatives and Argentinian authorities in order to facilitate this.
- 4.5 It is important that the task be carried out with due respect, and preliminary arrangements have been made for this purpose.
- 4.6 The body will be exhumed, and placed in a coffin, then transported directly to Mount Pleasant, where it will be placed on a charter plane and flown back to Argentina.
- 4.7 The proposed repatriation of the body engages other statutory functions of the Falkland Islands Government. These have been considered, but are not the subject of this report.

5. Options and Reasons for Recommending Relevant Option

- 5.1 Option 1 is to grant the licence. This is recommended in order to meet the request of the family. There are strong humanitarian grounds to respect the wishes of the family and facilitate their request to repatriate the remains of their son to Argentina.

REDACTED

5.2 Option 2 is to not grant the licence. **REDACTED.**

6. Resource Implications

6.1 Financial Implications: There are no costs associated with the issue of the licence proposed by this report. It has been stated that the Falkland Islands Government will seek to recover any costs incurred in association with the exhumation and transfer of the body for repatriation.

6.2 Human Resource Implications: None

6.3 Other Resource Implications: None

7. Legal Implications

7.1 As noted above, Section 25 of the Burial Act 1857 is applied (with modified effect) to the Falkland Islands by virtue of sections 21 and 22 of, and Part 1 of Schedule 1 to, the Law Revision and Publication Ordinance 2017. This needs to be read by applying the statutory interpretation rules in accordance with the Interpretation and General Clauses Ordinance 1977 (as amended).

7.2 Section 25 (modified in light of the above) should be read to provide as follows:
It shall not be lawful for body or any human remains which have been interred in a place of burial to be removed unless the body or remains is or are removed under a licence from the Governor in Council, and in accordance with any conditions attached to the licence.

7.3 The exhumation of any body or remains should therefore be done under authority of a licence granted by the Governor, with the agreement of the Executive Council.

7.4 The draft licence set out in Annex A is considered to meet the needs of the proposal.

7.5 REDACTED

8. Environmental & Sustainability Implications

8.1 None

9. Significant Risks

9.1 None

10. Consultation

10.1 There has been consultation with HM Coroner, with Members of the Legislative Assembly, with the Public Works Department, with Government House and UK Government representatives in relation to this matter. There has been liaison between staff in the British Embassy in Argentina, and family representatives.

11. Communication

- 11.1 This is a matter which is being progressed on humanitarian grounds to meet the wishes of a family in relation to the body of their son. It is not proposed that proactive communication is appropriate in such circumstances.

Annex A



LICENCE FOR THE REMOVAL OF HUMAN REMAINS

The Governor, in exercise of the power vested in him by section 25 of the Burial Act 1857, applied in modified form to the Falkland Islands pursuant to sections 21 and 22 of, and Part 1 of Schedule 1 to, the Law Revision and Publication Ordinance 2017 and interpreted in accordance with the Interpretation and General Clauses Ordinance 1977, grants a licence for the removal of the remains of Luis Dario Jose Castagnari from or within the place in which they are now interred at Darwin Argentine Military Cemetery.

2. This licence is granted to **[insert name of contractor]** for the exhumation of Luis Dario Jose Castagnari from Darwin Argentine Military Cemetery.

3. It is a condition of this licence that the following precautions should be observed:

(a) Any removal or disturbance of the remains shall be effected with due care and attention to decency;

(b) The ground in which the remains are interred shall be screened from the public gaze while the works are in progress;

(c) The remains shall be exhumed and thereafter are to be transported via Mount Pleasant for transfer to Argentina.

4. This licence exempts the licensee, their employees and agents from the penalties, which would be incurred if removal took place without a licence. It does not in any way alter civil rights.

5. This licence expires on **[insert date 1 year after the date on which the licence is granted]**.

Paragraph 3 must be brought to the attention of every person connected with the removal of the remains. .

the Governor of the Falkland Islands

Reference Number: ExCo xx/xx

Date: