

Joint statement by Foreign Secretary Jack Straw and Chief Minister Peter Caruana

Following successful negotiations commencing in November 2004, between delegations from the UK and Gibraltar, based on the Constitutional Reform proposals approved by the Gibraltar House of Assembly in January 2002 and formally submitted by the Gibraltar Government to HMG in December 2003, the Foreign Secretary, Jack Straw and the Chief Minister of Gibraltar, Peter Caruana are pleased to announce agreement on wide ranging reform and modernisation of the Gibraltar Constitution.

The New Constitution provides for a modern relationship between Gibraltar and the UK. It does not in any way diminish British Sovereignty of and support for Gibraltar and, indeed, the Sovereignty preamble in the 1969 Constitution Order will be replicated in the new Constitution Order. The UK will retain international responsibility for Gibraltar, including its external relations and defence, and as the Member State responsible for Gibraltar in the European Union. Thus the close constitutional links with the UK, and enduring British Sovereignty are, in accordance with the wishes of the people of Gibraltar, enshrined in the new Constitution.

The New Constitution confirms that the people of Gibraltar have the right of self-determination, and that this must be promoted in conformity with the provisions of the Charter of the United Nations and any other applicable international treaties.

The UK will take note, in the Despatch to the constitution, that it supports this right, but holds the view that it is constrained by the Treaty of Utrecht, and therefore that independence would only be an option with Spain's consent. The Despatch will also note that Gibraltar does not share the view that this constraint exists and that Gibraltar's acceptance of this Constitution would be on that basis. However, this is the first time that Gibraltar's right to self-determination, so constrained, is reflected in its Constitution.

The remainder of the new Constitutional text introduces substantial constitutional reform and modernisation. The constitutional reform has been completed in accordance with the principles set out in the 1999 White Paper (Partnership for Progress and Prosperity: Britain and the Overseas Territories) and therefore provides for that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the UK is responsible for Gibraltar's external relations.

The main elements of Constitutional Reform are the following: -

- (1) The Human Rights provisions are fully aligned with the European Convention on Human Rights.
- (2) Whereas under the current Constitution the rights of Gibraltar Ministers are defined and the Governor enjoys the remainder, under this new Constitution

that position is reversed. Accordingly, the powers of the Governor are defined and the elected Gibraltar Government will enjoy the remainder. The Governor's powers are limited to external relations, defence, internal security including certain aspects of policing and certain aspects of public services appointments.

- (3) The Gibraltar House of Assembly is restyled the Gibraltar Parliament and that Parliament may now determine its own size.
- (4) The right of UK Ministers to disallow laws passed by the Gibraltar Legislature is removed from the Constitution.
- (5) The Governor's powers to withhold assent from laws passed by the Gibraltar Legislature are restricted to certain defined circumstances.
- (6) The Governor's special legislative powers which at present extend to all matters, are restricted to only matters which are his responsibility.
- (7) The offices of Deputy Governor and Financial and Development Secretary are abolished as Constitutional Offices. The Financial Secretary and the Attorney General cease to be members of the House of Assembly. Public Finances become, constitutionally, the direct responsibility of a Minister.

The Speaker of the House will be elected and appointed directly by the House.

(8) The Governor's Power to dissolve Parliament and remove the Chief Minister are restricted to reflect grounds more typical of those applicable in the UK.

(9) Whereas currently all executive authority under the Constitution vests in the Governor, under the new Constitution it will vest, as in the UK directly in Her Majesty the Queen, and (except in the areas of the Governor's responsibilities) it will be exercisable on Her behalf by the elected Gibraltar Government.

(10) The Gibraltar Council is formally abolished. Ministers will be appointed and charged with responsibilities by the Governor acting in accordance with the advice of the Chief Minister, thus reflecting the position in the UK.

(11) As in the UK, the Gibraltar Government is defined as Gibraltar Ministers together with Her Majesty, who is represented in Gibraltar by the Governor.

(12) The bulk of responsibilities for policing in Gibraltar are transferred to a statutory Gibraltar Police Authority.

(13) A new Judicial Service Commission is constituted to advise on the appointment and other matters relating to members of the judiciary. Save in very exceptional circumstances the Governor, acting on behalf of Her Majesty, must act in accordance with the advice of this new Commission. This Commission would be chaired by the President of the Court of Appeal, and would also comprise the Chief Justice, the Stipendiary Magistrate and two members appointed by each of the Governor and the Chief Minister.

(14) Crown Lands must be disposed of by the Governor in accordance with the advice of the Chief Minister. Crown Lands in the occupation of the MOD must be disposed of with the consent of the Secretary of State and the Chief Minister.

Whilst there are many other new and changed provisions, the above represent the principal elements of the constitutional reforms reflected in the proposed new Constitution.

Commenting on this agreement the Foreign Secretary Jack Straw said: -

“I warmly welcome the successful conclusion of these constitutional reform negotiations. The new constitution strengthens Gibraltar’s links with the United Kingdom, and thoroughly modernises the relationship between us, which I hope will be as welcome to the people of Gibraltar as it will be in the UK. “

And, Chief Minister, Peter Caruana said: -

“This is a good outcome which maximises our self Government, while preserving our British Sovereignty and Constitutional links with Britain. Everyone in the Gibraltar Delegation regards this as a good constitutional text. It provides for a modern relationship between the UK and Gibraltar. The Government of Gibraltar is delighted with this settlement, and will have no hesitation in recommending it to the people of Gibraltar.”