



Eleventh Report  
from the  
Foreign Affairs Committee  
**Gibraltar**

Session 2002–2003

Response of the Secretary of State for  
Foreign and Commonwealth Affairs

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs,  
by Command of Her Majesty  
September 2003*

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# **ELEVENTH REPORT FROM THE FOREIGN AFFAIRS COMMITTEE SESSION 2002-2003 GIBRALTAR**

## **RESPONSE OF THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS**

### **Introduction**

1. The Government continues to welcome the interest the Foreign Affairs Committee and its predecessors have taken in Gibraltar.
2. The Government's overall policy towards Gibraltar remains as set out in its response to the Committee's last report:

“The Government's policy ... is based on two fundamental principles. The first is the principle of Gibraltarian consent. The Government has repeatedly made clear that it stands by the 1969 commitment given by the then Labour Government that there will be no change in Gibraltar's sovereignty against the freely and democratically expressed wishes of its people. The second is the principle that a lasting resolution of Gibraltar's problems can only be achieved through dialogue and negotiation with Spain.”

Equally, the Government's objective remains to secure a stable and prosperous future for Gibraltar.

### **Conclusions and recommendations**

3. The Committee's report contains a number of specific recommendations. The Government's response to these is as follows:

**(1) We recommend that the FCO withdraw its unacceptable joint sovereignty proposal, and then get on establishing normal and co-operative relations between Spain and Gibraltar as should be the case between members of the European Union and their dependent territories.**

The Government fully agrees that normal and co-operative relations between Spain and Gibraltar are highly desirable, and will continue to press the Spanish Government to this end. As to joint sovereignty, the Government's position remains as set out in the Foreign Secretary's statement of 12 July 2002.

**(2) We recommend that the Government explain clearly and in full why it offered Gibraltar a voice in meetings under the Brussels Process, but did not renew its previous undertaking not to agree to any new arrangements involving Gibraltar discussed at such meetings without the specific endorsement of the Government of Gibraltar.**

As the Committee notes in its report, in 1997 the Chief Minister was offered an undertaking that the then Foreign Secretary would not agree without his specific endorsement to any new arrangements involving Gibraltar discussed at such meetings. However, as is set out in the Appendix 9 to the Committee's Eleventh Report, Session 2001-2002, the Chief Minister was not satisfied with this assurance, asking that it be

extended to all future talks under the Brussels Process, and considered himself unable to join the negotiations at that time.

The Government believes that the arrangements put in place in 2001 and 2002 met the Chief Minister's legitimate concern to participate in safety and dignity. The Foreign Secretary assured Mr Caruana that he would be consulted throughout the process; be present for all the key meetings; and explained that he shared the Chief Minister's objective to seek agreements which Gibraltar could accept. The Chief Minister could of course have left the talks at any time if the process, or any agreement, were unacceptable to him; and he would also have been free publicly to reject any final package which emerged from the process; moreover, at all times the Government's undertaking to respect the 1969 Constitutional commitment, which the Chief Minister has agreed is absolute, remained in place. As the Government noted in its response to the Committee's previous report:

“... the Chief Minister did not feel that these arrangements satisfied his concerns and he insisted on an explicit veto over every issue discussed at the talks. As the Foreign Secretary said to the Committee on 19 June, it would have been impossible to enter negotiations on that basis.”

- (3) We recommend that the Government invite the Government of Gibraltar to participate in any further talks on the future of Gibraltar, whether or not under the Brussels process, under the formula offered in 1997.**

We note the Committee's view. However, no date has been set for future Brussels process talks, and it would be premature to seek to set the terms now for participation in future meetings, whether under that process or not.

- (4) We conclude that there are positive indications that the British Government is now sticking up for Gibraltar, and is no longer prepared to allow unjustified allegations to go unchallenged. We recommend that the Government adopt this practice as a matter of policy.**

We welcome the Committee's recognition that the Government is committed to defending the interests of Gibraltar. However, we do not agree that the Government has been prepared to allow unjustified allegations to go unchallenged in the past. As was set out in the Government's response to the Committee's Eleventh report of Session 2001-2002 (Command paper 5714) it is this Government's policy to respond appropriately to unfounded allegations. It is however a matter of judgement as to whether, how and when to respond in each case. This will remain our approach.

- (5) We recommend that the Government explain how Spain's apparent opposition to enfranchisement of the Gibraltar electorate in respect of elections to the European Parliament prevented the Government from implementing the judgment of the European Court of Human Rights in the first place; and what it understands to be the grounds on which Spain is now threatening to take action against the enfranchisement process under Article 227.**

The conditions for European Parliament (EP) elections are currently governed by the 1976 EC Act on Direct Elections. Annex II states that that “the United Kingdom will apply the provisions of the Act only in respect of the United Kingdom”. Following the judgment of the European Court of Human Rights in *Matthews v. UK* (1999), which

placed the UK under a legal obligation to enfranchise the Gibraltar electorate for EP elections, we attempted to amend the 1976 EC Act. However, any amendment required agreement by all Member States, and we were unable to secure the necessary unanimity in the Council. The Government therefore decided to proceed with enfranchising the Gibraltar electorate unilaterally. The European Parliament (Representation) Bill was introduced into Parliament on 21 November 2002 and received Royal Assent on 8th May 2003.

The Spanish Government presented a statement to the European Commission on 28 July 2003, setting out an action to be brought against the UK alleging that we have failed to fulfil our obligations under Article 227 of the Treaty establishing the European Community (TEC). Spain objects to the manner in which we have enfranchised the Gibraltar electorate in two respects:

- that the 2003 Act extends the right to vote in European Parliament elections to “persons who are not nationals for the purposes of EC law”. (i.e. Commonwealth citizens resident in Gibraltar). This infringes Articles 17, 19, 189 and 190 TEC which cover, respectively, the concept of EU citizenship and the European Parliament;
- that the creation of a combined electoral region, incorporating Gibraltar, infringes the 1976 EC Act, and undertakings given by the UK in a minutes statement to the Council of Ministers on 18 February 2002.

We reject both of these arguments, and presented our defence to the European Commission earlier this month.

**(6) We recommend that the Government set out in its response to this Report: (a) the implications for Gibraltar of the proposals contained in the draft Constitution published by the Convention; (b) how it intends to represent the interests of Gibraltar at the forthcoming Inter-Governmental Conference; and (c) how it will ensure that the United Kingdom’s freedom to pursue bilateral relations with Gibraltar – and with the overseas territories generally – in its and their best interests is not compromised by decisions taken at the IGC.**

The draft Constitutional Treaty preserves Gibraltar’s current status within the EU, in similar terms to those set out in Article 299(4) of the current Treaty establishing the European Community. We are in consultation with the Government of Gibraltar on the implications for Gibraltar of the draft Constitution and will remain in contact throughout the forthcoming Inter-Governmental Conference. The Convention text envisages that the present Pillars will be merged into one single Treaty structure: this will have certain consequences for Gibraltar as regards Justice & Home Affairs (JHA) measures. Currently, territorial application of EU measures on police and judicial co-operation under Title VI of the Treaty on European Union is decided on a case-by-case basis, with language extending individual instruments to Gibraltar being included after discussion with the Government of Gibraltar and EU partners. Under the new Treaty, all future JHA measures would apply to Gibraltar. The Government is committed to ensuring continuity of Gibraltar’s present EU status in the new Constitutional Treaty. The UK’s freedom to pursue relations with Gibraltar, and with our other overseas territories, will in no way be affected by decisions taken at the IGC.

- (7) We recommend that the British and Gibraltar Governments renew their efforts to find a solution to the pensions issue and that the FCO in its Response to this Report set out in detail how it proposes to resolve this matter.**

We agree that a resolution is needed. As the Government set out in its response to the Committee's previous Report, HMG has made clear to successive Governments in Gibraltar since 1988 that it is their duty to ensure that arrangements are compatible with EC law. We shall continue to work with the Government of Gibraltar on this issue. As the Report notes, the Commission's enquiries into the issues are continuing, as is our co-operation with them. We will continue to keep the Committee informed of any significant developments as these occur.

- (8) We recommend that the Government set out in clear terms in its Response to this Report its policy on using United Kingdom telephone numbers for lines in Gibraltar.**

The Government remains in regular contact with the Government of Gibraltar on the question of the telecommunications problems affecting Gibraltar. Our ultimate objective remains Spanish recognition of Gibraltar's international dialling code +350. Use of the UK dialling code for calls from Spain to Gibraltar could be an interim way forward. We are continuing to look into the practicalities of this option. However, we would need the co-operation of the Spanish authorities to implement it in a way which would be viable for Gibraltar. The Government will continue to investigate this and other options with the authorities in Gibraltar.

- (9) We recommend that the Government urgently complete its review of landing charges at Gibraltar Airport – and announce the results – as soon as may be practicable.**

Landing fees are a matter for the Ministry of Defence, who are responsible for the airfield in Gibraltar and for providing essential support services. Additional commercial services to Gibraltar, expected to start later this year, will attract reduced landing fees for an initial period and will help to reduce the landing fees charged to existing carriers. Overall landing fee revenue will continue to be insufficient to meet the additional costs incurred by the Ministry of Defence in providing these services, so in practice commercial use of the airfield will continue to be subsidised by the UK tax-payer.

- (10) We recommend that in its response to this Report the Government set out what it is doing to persuade the Spanish Government to honour its agreement to restore maritime links between Spain and Gibraltar.**

The Government agrees with the Committee that improved maritime links between Spain and Gibraltar are desirable. We know of no current applications before either the Gibraltar Government or the Spanish authorities to establish regular Gibraltar/Spain services. However, as was made clear in the Government's response to the Committee's 1999 Report, we would support any such responsible initiative: equally, should maritime links with Gibraltar be frustrated in a manner incompatible with EC law, we would explore all available legal avenues for redress.

**(11) We recommend that in its response to this Report the Government set out the latest statistics on delay at the border between Gibraltar and Spain – making clear the basis on which those figures have been compiled – and state how it proposes to ensure that delays at the border between Gibraltar and Spain are no greater than at the land borders between Schengen and non-Schengen EU states.**

The average of all delays recorded daily to date in 2003 has been around 30 minutes for vehicles entering Gibraltar and 20 minutes for those leaving. The outgoing figures reflect a considerable improvement since the second channel into Spain was opened in March 2002.

The statistics are compiled daily by Security and Immigration Limited, the contractor which operates the border controls on behalf of the Government of Gibraltar. Accurate monitoring of delays is easier on the Gibraltar side of the border. Each day is divided into half-hour slots and for each half-hour slot the time taken for a vehicle arriving at the border to pass through is recorded. The average delay is then calculated taking into account only those half-hour periods in which a delay was recorded. The maximum delay during the day is also recorded. The Foreign & Commonwealth Office receives these figures daily. Charts showing the weekly average and also the maximum delays each week in each direction since January 2002 are appended.

As the Committee has acknowledged, although some delays continue, the European Commission investigation into whether the checks at the Spain-Gibraltar border were disproportionate and therefore incompatible with Community law concluded in March 2002 that there was no infringement of Community law. The Government will continue to monitor the situation closely, and would raise any significant deterioration in the figures for border delays with the Spanish Government.

**(12) We conclude that it is unacceptable that prohibitions on direct military movements and military communications between the territories of two NATO allies should continue to exist. We recommend that the British Government seek to bring the full weight of NATO to bear on the Spanish Government to have these prohibitions lifted.**

It remains the Government's objective to lift the reservation on direct military movements between Gibraltar and Spain and to end the ban on direct military communications between NATO forces in Gibraltar and Spain. These are important issues and ones that we shall continue to pursue wherever appropriate.

## APPENDIX ONE – BORDER DELAYS STATISTICS

**Comparison of Border Delays from Gibraltar to Spain, 2002 and 2003 (Friday-Thursday)**

<i>Week Commencing</i>	<i>Average 2002</i>	<i>Maximum 2002</i>	<i>Week Commencing</i>	<i>Average 2003</i>	<i>Maximum 2003</i>
04 January	25	90	03 January	20	60
11	25	60	10	0	15
18	45	120	17	20	60
25	30	105	24	20	30
01 February	35	60	31	0	0
08	50	90	07 February	25	45
15	50	120	14	25	60
22	45	270	21	25	60
01 March	45	90	28	25	60
08	30	60	07 March	25	50
15	30	75	14	25	60
22	25	60	21	15	25
29	20	20	28	15	60
05 April	20	60	04 April	15	30
12	20	45	11	15	30
19	10	60	18	10	30
26	10	45	25	10	45
03 May	20	90	02 May	15	40
10	45	45	09	10	20
17	25	45	16	15	20
24	20	45	23	25	50
31	20	45	30	15	40
07 June	45	45	06 June	20	90
14	30	45	13	15	60
21	30	45	20	15	45
28	30	45	27	20	45
05 July	45	60	04 July	10	30
12	20	30	11	15	30
19	20	60	18	15	45
26	30	90	25	20	60
02 August	20	90	01 August	20	45
09	20	35	09	20	30
16	30	90	15	10	20
23	15	45	22	25	35
30	20	30	29		
06 September	20	60	05 September		
13	30	60	12		
20	20	45	19		
27	35	60	26		
04 October	30	90	03 October		
11	30	60	10		
18	30	60	17		
25	30	75	24		
01 November	25	120	31		
08	25	60	07 November		
15	20	60	14		
22	25	60	21		
29	25	75	28		
06 December	20	60	05 December		
13	20	45	12		
20	15	30	19		
27	15	60	26		

**Comparison of Border Delays from Spain to Gibraltar, 2002 and 2003 (Friday-Thursday)**

<i>Week Commencing</i>	<i>Average 2002</i>	<i>Maximum 2002</i>	<i>Week Commencing</i>	<i>Average 2003</i>	<i>Maximum 2003</i>
04 January	20	50	03 January	10	45
11	20	30	10	20	45
18	5	30	17	10	55
25	5	30	24	15	45
01 February	15	30	31	20	45
08	0	40	07 February	15	60
15	15	30	14	15	75
22	25	75	21	25	60
01 March	30	120	28	25	75
08	20	60	07 March	30	75
15	30	60	14	20	45
22	20	80	21	15	45
29	25	80	28	25	60
05 April	30	75	04 April	30	45
12	30	45	11	35	75
19	20	60	18	40	75
26	10	45	25	25	60
03 May	15	45	02 May	20	60
10	50	90	09	30	60
17	25	60	16	20	30
24	25	45	23	15	20
31	20	45	30	20	45
07 June	45	60	06 June	25	90
14	45	60	13	20	60
21	20	45	20	25	60
28	30	60	27	25	60
05 July	20	30	04 July	30	60
12	45	60	11	30	60
19	20	60	18	30	60
26	45	60	25	35	75
02 August	20	60	01 August	35	75
09	35	80	09	50	120
16	60	120	15	55	120
23	40	60	22	45	90
30	30	60	29		
06 September	25	90	05 September		
13	30	90	12		
20	25	90	19		
27	25	60	26		
04 October	40	90	03 October		
11	30	60	10		
18	20	35	17		
25	20	20	24		
01 November	25	60	31		
08	25	75	07 November		
15	20	45	14		
22	25	25	21		
29	10	25	28		
06 December	25	90	05 December		
13	20	45	12		
20	25	60	19		
27	15	60	26		







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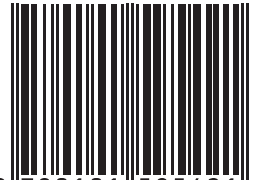
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