

EMAIL: Keith Azopardi to Speaker – Sent 26 June 2025 at 7.32pm

Re: Principal Auditor Report 2018/19

Dear Karen

An issue has arisen after today's session in Parliament which I wanted to raise with you as I suspect you may be unaware.

Subsequent to this afternoon's session we have received information that the Principal Auditor delivered a copy of his Report of the Public Accounts 2018/19 to the Chief Minister and separately to the Clerk to Parliament.

I would be grateful if you would make enquiries to confirm whether the latter is so.

Assuming so then we would be concerned that the laying of the report is not delayed and that the answers of the Chief Minister today in answer to Q686/25 (in which no admission was made that he had received a copy) have occurred in the context that the Parliament itself has received the Report for laying before Members. If the information of receipt by the Clerk is confirmed then it can raise issues of the institutional independence of Parliament from the Executive which, as you know, is a matter that we are keen to protect as you will, no doubt, also be.

As you know the Principal Auditor is an officer of the Parliament under s25 of the Constitution. Under s74 of the Constitution it is prescribed that he shall prepare a report into the public accounts of Gibraltar and "shall submit and lay his reports before the Parliament" (s74(2)). Further as s74(3) makes clear the Principal Auditor in the exercise of his functions is not subject to the direction or control of any other person etc. That would include that the laying of his report should not be delayed by Executive control of Parliamentary business given that his function is to audit the Government.

While it is customary for Ministers to lay papers or reports it is clear from Standing Order 12 that a distinction is drawn with the reports of the Principal Auditor (and Ombudsman) that can be presented via the Clerk (SO12(3)) and not a Minister (see the distinction with SO12(1)) which expressly provides an exception in the case of the Principal Auditor Reports from the general principle that these are laid by a Minister.

As I say I would be grateful if you could make enquiries on this matter and the information received.

If it is confirmed that the Parliament is in possession of the Report we would be grateful to receive a copy of the report during next week's Parliament through the Clerk as envisaged by SO12/s74 Constitution.

I would be happy to discuss should you wish to

Rgds

Keith

EMAIL: Keith Azopardi to Speaker of Parliament – sent – 3 July 2025 – 9.29am

URGENT/Principal Auditor Report 2018/19/Representations on the Laying of the Report for Consideration

Dear Karen

Yesterday evening you indicated that you would be writing to me on the subject of my email of a week ago when I sought confirmation as to whether Parliament was in receipt of the latest Principal Auditor's report for 2018/19.

As this has now been confirmed by the Principal Auditor himself things have factually moved on somewhat.

As such and in anticipation of you writing to me as you indicated I thought it would be helpful for me to explain in greater detail why we think that absent a positive immediate step by Government to lay the report today then it should be laid by you as Speaker under Standing Order 12(3) through the Clerk.

Indeed we would argue that this must happen for the reasons that follow and which was adopted by cross-party consensus as the constitutional practice to give vigour to the change brought about by the 2007 Constitution.

These are the points I would ask you to have regard to:

1. As I already indicated in my main speech on Monday and as acknowledged by the then LOTO Joe Bossano in Hansard (26/6/2007) the new Constitution effected a change of practice by which the Principal Auditor sent his reports direct to Parliament rather than to the Governor. This was intended to accelerate the laying of reports. Indeed Joe Bossano made precisely that point on the Budget debate of that year on a report that had been tabled on 31 May 2007 by the Speaker;
2. The present form of Standing Order 12(3) was introduced as an amendment to the 1964 Standing Orders and to give effect to the new Constitution. This is clear from the debate on a Motion brought by the then Chief Minister, Peter Caruana, on 29 March 2007 (Hansard 2007 Consolidated pp7-16).

The extracts and exchanges between Peter Caruana and Joe Bossano at pp9, 13 and 14 are particularly illuminating.

At p9 the CM indicates that SO12(3) was to:

“...recognise the fact that some people whose papers previously had to be laid can now lay it themselves because under the new constitution they have been made officers of this House...they cannot come personally to lay the document but they can lay it through the clerk. In other words rather than the Principal Auditor sending the audited accounts of Gibraltar to the Government so that a Minister tables them, the Principal Auditor can send the reports directly to the Clerk, officer of the House to officer of the House with the request that they be laid on the table....i mean the whole idea of making them officers of this House is that people who serve constitutional functions that are supposed to be independent of the Government in the sense of almost being watchdogs of the Government should not then

have to channel their communications to Parliament through the Government themselves. Both (the Ombudsman)...and the Principal Auditor exist primarily to assist in balancing the power between the State so to speak and the citizen the Government and the citizen and it is therefore appropriate that there should be a direct mechanism for them to lay documents in the House and indeed to be accountable to the House directly..."

At p13 the LOTO (who had indicated support at p12) indicated that he considered that the word "may" in SO12() should be "must" on the basis that "whether we had it in the rule or not it seems to me that there is no choice given that the Constitution requires the Principal Auditor to present the report to the Parliament..."

There followed an exchange as to the word "may" and as to the intention behind it on pp13-14

At p14 the CM postulated whether an amendment should be contemplated to make the word "shall" "...so that it makes clear that what we are purporting to regulate is routeology and not the actual laying..."

The LOTO at p14 then indicates the concern that "may" could be construed as the Principal Auditor having a choice to lay or not which is not what the Constitution intended.

The CM responds that "...it is not a matter of choice, that is clear, so we can only be providing in these rules for the methodology of doing so. The methodology of it should not be up to him, it is up to us to say how this House wants to have papers laid before it by people who are not in it..."

After the Speaker's suggestion at p14 the House received the suggestion from the CM on the current form of SO12(3) to make "...it clear that this is about the route and not about whether he needs to file it in the first place."

The Speaker's interjection also emphasises that the word "may" is not intended to describe an act of the Clerk but of the Principal Auditor. Indeed the Speaker's suggestion makes clear that the "may" is an act of the Principal Auditor as to methodology of laying of the Report that then does not lead to a discretion of the Clerk to do so or not. In effect the Principal Auditor would be saying "I want it laid through you" and it must be so laid. That is how the practice has always been understood as I demonstrate below.

In other words if the Principal Auditor writes to the Speaker through the Clerk he is in effect invoking the requirement under SO12(3) to lay the Report before Parliament immediately under s74 Constitution and without the ability of anyone delaying that moment as that would be a breach of s74(3) of the Constitution.

3. After the amended Standing Orders and the new Constitution it has been the constitutional practice for the Report to be laid before Parliament by the Speaker between the years 2007 and 2014.

I give you the Hansard references for your assistance below under point 4 for the years 2009 to date. The Reports for 2005/06 and 2006/07 were also tabled under the new constitution respectively on 31 May 2007 and 3 April 2008.

The laying of the Report by the Speaker during the years 2007-2014 was always conducted in the same way and with the Speaker saying:

“I have the honour to report that in accordance with Standing Order 12(3), the Report of the Principal Auditor on the Annual Accounts of the Government of Gibraltar has been submitted to Parliament and I now rule that it has been laid on the Table.”

The practice on the presentation of the Principal Auditor’s report after 2014 was changed from that year so that the Reports since then have been tabled by the Chief Minister. While this was not the intention of the constitutional change which was plainly discussed in the 2007 Motion I do not have an issue with the CM laying the Report on the Table as long as it is understood that this must take place on the very next available Parliamentary day after receipt of the Report by the Speaker. That would accord with both the constitution, the intention which was accepted on a cross-party basis in 2007 and generalised practice since then.

4. The Principal Auditor Reports are all available online from the years 2007/08 at <https://gao.gov.gi/reports/government-of-gibraltar/>

From there I have prepared a table of the date of delivery of the report as against the date of tabling in the House.

You will see from this Table that the practice is clear that it was always tabled on the first available Parliamentary day after the Report was delivered to Parliament (except for 2019 which we consider was in breach of practice). The reason for the gap in 2015 to January 2016 was because of the intervening 2015 election that occurred after the Report had been received as there was no parliamentary day available after receipt.

Financial Year of Report	Date Delivered (date of Report)	Date Tabled in Parliament	When tabled	Who laid
2007/08	20 March 2009	2 April 2009	Very Next Parliamentary Day	Speaker
2008/09	18 March 2010	8 April 2010	Very Next Parliamentary Day	Speaker
2009/10	11 March 2011	16 March 2011	Very Next Parliamentary Day	Speaker
2010/11	29 March 2012	17 May 2012	Very Next Parliamentary Day	Speaker
2011/12	5 July 2013	18 July 2013	Very Next Parliamentary Day	Speaker
2012/13	11 July 2014	16 October 2014	Very Next Parliamentary Day	CM
2013/14	26 August 2015	20 January 2015	Very Next Parliamentary Day	CM
2014/15	26 September 2016	20 October 2016	Very Next Parliamentary Day	CM
2015/16	30 January 2019	30 May 2019	4 months later despite meetings in Feb/Mar/Apr 2019	CM
2016/17 & 2017/18	21 December 2023	24 January 2024	Very Next Parliamentary Day	CM

The practice before the new Constitution was that the Principal Auditor's Report was tabled by the Financial Secretary. As can be seen it was then intended that the Auditor should be able to table without having to go through the Government and more recently the CM has laid it.

Our view is that the change of practice in 2014 was not in accordance with the constitutional intention but as I say I would not raise an issue with it (at this stage) as long as the previous generalised practice is followed which is that the Report is laid the very next available Parliamentary day after the receipt of the Report by the Speaker to give effect to the constitution.

5. The next available Parliamentary day following receipt by Parliament of the Principal Auditor's Report for 2018/2019 (which he has confirmed was 13 June 2025) was 23 June 2025. Parliament has sat almost every day since then. We are therefore already not following the generalised practice since the new Constitution and already arguably breaching the constitutional intention.

That is why our strong view is that absent a positive decision of the Government today to lay the Principal Auditor's report immediately (today) then it is our respectful view that you should do so as Speaker as your predecessors have before you in the period 2007-2014

It seems to us that anything else amounts to a breach of the constitution and constitutional and parliamentary practice

I would therefore be grateful if you would take all these points on board in the constructive spirit that they are intended to assist you in coming to a view on a serious issue of accountability and constitutional practice.

As I indicated in my previous email I would be happy to discuss

Rgds

Keith