



House of Commons
European Scrutiny, Home
Affairs and Justice Committees

The Government's response to the Committees' Reports on the 2014 block opt-out decision

**First Joint Report from the European
Scrutiny, Home Affairs and Justice
Committees of Session 2013–14**

*Forty-second Report from the European Scrutiny
Committee of Session 2013–14*

*Fourteenth Report from the Home Affairs Committee
of Session 2013–14*

*Fourteenth Report from the Justice Committee
of Session 2013–14*

Report, together with an Appendix and formal minutes

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European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine EU documents, report its opinion on their legal and political importance, recommend documents for debate and consider related issues.

Home Affairs Committee

The Home Affairs Committee examines the expenditure, administration and policy of the Home Office and its associated public bodies.

Justice Committee

The Justice Committee examines the expenditure, administration and policy of the Ministry of Justice and its associated public bodies, and the administration and expenditure of the Attorney General's Office, and its associated public bodies.

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Publication

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Joint Report from the European Scrutiny, Home Affairs and Justice Committees

Background

1. Whether EU measures covered by the so-called '2014 block opt-out decision' continue to apply to the United Kingdom and become subject to the jurisdiction of the Court of Justice from 1 December 2014 is a profoundly significant issue. Some—including the European Arrest Warrant—raise questions affecting public safety and security, as well as the protection of individual rights.

2. Following publication of the Government's Responses¹ to the Reports produced by the European Scrutiny, Home Affairs and Justice Committees,² the Chairs of the Committees sent a joint letter to the Home and Justice Secretaries raising two issues of common concern: the role of Parliament in scrutinising the Government's approach to the 2014 block opt-out decision, and the need for an early debate and vote on the measures the Government proposes to rejoin.

3. We publish the letter we sent to the Home and Justice Secretaries alongside this Report. It sought confirmation, in particular, that the Government would make time available for a debate and vote on the floor of the House (on a substantive, amendable Motion) as soon as possible. We requested a response by the end of January.

The response from the Home and Justice Secretaries

4. The Home and Justice Secretaries responded on 31 January. Their joint letter, which is also published with this Report, rejects the call for an early debate, stating:

“We believe that, in order for the [second] vote to be as informed as possible, the correct approach to this process is to hold the second vote once we have reached ‘in principle’ agreement with the EU institutions and the other Member States.”

The Committees' view of the response

5. **We are taking the unusual step of agreeing a Joint Report because we are deeply disappointed by the Government's position. Put simply, the House should have an opportunity to have a debate – and vote – on which measures the UK should seek to rejoin *before* negotiations begin. Presentation of a 'done-deal', once the negotiation process has been completed, is a poor substitute.**

¹ European Scrutiny Committee, [Second Special Report](#), HC 978; Home Affairs Committee, [Fourth Special Report](#), HC 954; Justice Committee, [Third Special Report](#), HC 972

² European Scrutiny Committee, Twenty-first Report, [The UK's block opt-out of pre-Lisbon criminal law and policing measures](#), HC 683; Home Affairs Committee, Ninth Report, [Pre-Lisbon Treaty EU police and criminal justice measures: the UK's opt-in decision](#), HC 615; Justice Committee, Eighth Report, [Ministry of Justice measures in the JHA block opt-out](#), HC 605

6. The Government's intransigence leaves us with no option but to take this matter to the floor of the House through other means. But the fact that there could be multiple motions and amendments means that Backbench Business Committee time could not realistically be used for the debate we seek. We will therefore be seeking a debate on this Joint Report in Backbench Business Committee time, to enable all Members of this House to debate the Government's resistance to full parliamentary involvement in this complex and highly significant decision.

Appendix: relevant correspondence

Letter to the Home Secretary and the Secretary of State for Justice from the Chairs of the three Committees dated 22 January 2014

The Government's Responses to the Reports of the European Scrutiny, Home Affairs and Justice Select Committees on the UK's 2014 block opt-out decision

We write to you and to the Secretary of State for Justice to thank you for responding promptly to the Reports produced by the European Scrutiny, Home Affairs and Justice Select Committees on the Government's 2014 block opt-out decision. It is apparent that none of our Reports, or the Report produced by the EU Committee in the House of Lords, has caused the Government to re-consider its position, as set out in Command Paper 8671, or to offer an early debate and vote to help inform the Government's negotiating position.

Whilst each of our Committees will wish to consider separately how to take forward matters arising from your response, we feel compelled to respond immediately to two issues of common concern: the role of Parliament in scrutinising the Government's approach to the 2014 block opt-out decision, and the need for an early debate and vote on the measures the Government proposes to rejoin.

The role of Parliament

As you will be aware, our Committees are of the common view that the Government has not lived up to its professed commitment to engage constructively with Parliament on its approach to the 2014 block opt-out decision. To give you a flavour of our views, the European Scrutiny Committee stated:

"We consider the slow and unpredictable drip-feed of information to Parliament to be inimical to effective scrutiny."¹

The Home Affairs Committee observed:

"To date we have been disappointed with the extent and timeliness of the Government's involvement of Parliament in scrutinising the 2014 opt-out and proposed opt-in. We hope that it will engage more constructively with Parliament for the remainder of this process."²

The Justice Committee noted that:

"repeated attempts by Select Committees to obtain the information necessary for them to undertake effective scrutiny have been stonewalled"

and suggested that Parliament had been treated in a "cavalier fashion".³

We might have had reason to expect that, if all Committees with a direct interest and involvement in scrutinising the Government's 2014 block opt-out decision were of a similar mind, this would be a source of considerable concern for the Government. Yet your response to the Report of the European Scrutiny Committee (reproduced, in part, in your response to the Home Affairs Committee Report) merely refers to "a *perceived* lack of engagement by the Government with Parliament" which you then seek to refute in a detailed (but incomplete and partial) chronology of the ways in which you have engaged with Parliament.

¹ HC (2013–14) [683](#), para 102

² HC (2013–14) [615](#), para 87

³ HC (2013–14) [605](#), para 12

Your “full chronology” excludes any reference to our correspondence with you, dating back to January 2012, which provides the broader context for the concerns we have repeatedly raised about the paucity of information being made available to Parliament. In particular, you ignore our letter of 22 November 2012 which stated in the clearest possible terms that effective Parliamentary scrutiny of the 2014 block opt-out decision could not begin until the Government had produced extensive Explanatory Memoranda on all of the measures subject to the block opt-out. You can have been under no mis-apprehension that the provision of this vital information was considered to be an essential pre-requisite for effective and informed scrutiny by our Committees to take place.

Our letter also made clear that our Committees do not have the resources at the disposal of Government to undertake a detailed assessment of all of the 130-odd measures subject to the block opt-out. Your suggestion that we could have begun our scrutiny of these measures in December 2011 therefore strikes us as disingenuous.

We refute your contention that the vote in the House of Commons on 15 July 2013 demonstrated “Parliament’s support for the Government’s approach *and satisfaction with the information provided*”. As you will recall, the Motion agreed to by the House was amended at our behest because of our dissatisfaction with the Government’s delay in producing the information we had repeatedly requested, and to enable our Committees properly to consider the Explanatory Memoranda belatedly provided in Command Paper 8671.

We do not think it would be productive to prolong our correspondence on this matter, but consider it important to place our views firmly on the record, as you have done in your responses to our Reports. We would add that it is primarily for us, as Chairs of the most affected Parliamentary Committees, to assess whether Government has engaged effectively and pro-actively with Parliament on this matter. Our collective view is that it has not.

The second vote

All of our Reports underlined the need for an early second debate and vote to provide a Parliamentary mandate for negotiations on the measures which the UK should seek to rejoin. The reasons for this were made plain in the Report of the European Scrutiny Committee:

“We think that there is an evident contradiction in the Government’s position on the purpose and timing of the second vote. Under the EU Treaties, the UK has an unconditional right to exercise the block opt-out. The first vote, on 15 July, secured the House’s endorsement of the decision in principle to exercise the block opt-out. The House did not, however, endorse the Government’s proposal to rejoin the 35 measures listed in Command Paper 8671. The purpose of the second vote, therefore, is to enable Parliament, informed by this Report and the Reports of the Home Affairs and Justice Committees, to determine which measures, if any, the Government should seek to rejoin. As the process of rejoining individual measures is conditional on obtaining the agreement of the Commission and Council, we consider that an early debate (before the Government embarks on formal negotiations) would considerably strengthen the Government’s negotiating hand whilst also ensuring full transparency and accountability to Parliament. We can see no reason why the Government, having failed to secure a mandate from the House for the measures it wishes to rejoin in July, should shy away from obtaining one now.”⁴

In your response to the Justice Committee Report, you explain that the number and complexity of the measures covered by the 2014 block opt-out decision meant that reaching a common approach across Government took longer than anticipated. You add:

“Following this, we then have had to agree that approach or vary it with Parliament, before going on to negotiate it with our European partners.”⁵

⁴ HC (2013–14) [683](#), para 568

⁵ Government Response to para 12 of the Justice Committee Report, HC (2013–14) [972](#)

We do not see how this statement is consistent with the approach you appear to advocate of delaying the debate and vote until the negotiation process has been completed. This gives Parliament no opportunity to “agree” or “vary” the list of measures you propose to rejoin *before* the Government embarks on negotiations with the Commission and Council. We have been clear from the outset that our Reports are intended to assist the House in reaching its own view on the measures the UK should seek to rejoin.

The Justice Committee Report made a clear recommendation for an early debate in which:

“the Reports of the three Committees and a Government response to them can be considered, and in which the House can express a view on the addition or subtraction of measures from the Government’s list of 35.”⁶

The Home Affairs Committee Report similarly made clear that:

“The House should have an opportunity, at the conclusion of the debate, to come to a decision on every amendment which is selected.”⁷

We therefore reiterate our call for an early debate and vote, in Government time, on a substantive amendable Motion. We can see no legitimate obstacle, domestically or at EU level, to prevent such a course of action, not least because we understand that the Commission has so far been unwilling to embark on negotiations on the 30 non-Schengen measures which the Government wishes to rejoin.

We ask you to confirm that the Government will make time available for a debate and vote as soon as possible. We look forward to hearing from you by the end of January, so that we can consider other options should you decide to reject our request.

Reply from the Home Secretary and the Secretary of State for Justice to the Chairs of the three Committees dated 31 January 2014

The Government's Responses to the Reports of the European Scrutiny, Home Affairs and Justice Select Committees on the UK's 2014 block opt-out decision

Thank you for your letters of 22 January concerning the 2014 decision. We would like to again express our thanks for the reports your Committees produced and for the work they have done on the 2014 decision to date. The Government remains, as it always has, committed to allowing for proper scrutiny of this important matter. We note, and regret, your collective view that Government engagement with Parliament has not been satisfactory.

The Government considered carefully the reports produced by each Committee and provided detailed responses within the usual time frames. They were, and continue to be, helpful in informing our position for the necessary discussions and negotiations with our European partners. This action is consistent with the commitment made in the motion that was debated on 15 July, namely that we would not begin formal negotiations until all relevant Committees had reported on this matter.

The Government will hold a second vote on the final list of measures we will formally apply to rejoin. This commitment was reiterated in our responses to each Committee's report. We believe that, in order for the vote to be as informed as possible, the correct approach to this process is to hold the second vote once we have reached 'in principle' agreement with the EU institutions and the other Member States. We are sure you will understand that at this stage it is not possible to give an indication when this will be as it depends not only on the Government, but also the Commission, Council and individual Member States. However, we will ensure that Parliament is updated on the progress of negotiations as appropriate. As we have set out in our responses

⁶ HC (2013–14) [605](#), para 68

⁷ HC (2013–14) [615](#), para 76

to each of your reports, we will also produce an Impact Assessment on the final list of measures that we will apply to rejoin and will produce this in good time ahead of the vote.

We look forward to engaging further with you on this important matter.

Formal Minutes

Justice Committee

Tuesday 18 March 2014

Members present:

Sir Alan Beith, in the Chair

Steve Brine

Andy McDonald

Nick de Bois

John McDonnell

Draft Report (*The Government's response to the Committees' Reports on the 2014 block opt-out decision*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 6 read and agreed to.

Several Papers were appended to the Report.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.

Ordered, That the provisions of Standing Order No. 137A(2) be applied to the Report.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 26 March at 9.15am.]

Home Affairs Committee

Tuesday 18 March 2014

Members present:

Mr Keith Vaz, in the Chair

Nicola Blackwood
Mr James Clappison
Michael Ellis

Paul Flynn
Dr Julian Huppert
Mr David Winnick

Draft Report (*The Government's response to the Committees' Reports on the 2014 block opt-out decision*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 6 read and agreed to.

Several Papers were appended to the Report.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.

Ordered, That the provisions of Standing Order No. 137A(2) be applied to the Report.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till tomorrow at 3.15pm.]

European Scrutiny Committee

Wednesday 19 March 2014

Members present:

Mr William Cash, in the Chair

Andrew Bingham	Kelvin Hopkins
Mr James Clappison	Chris Kelly
Michael Connarty	Stephen Phillips
Geraint Davies	Jacob Rees-Mogg
Stephen Gilbert	Henry Smith
Chris Heaton-Harris	Mr Michael Thornton

Draft Report (*The Government's response to the Committees' Reports on the 2014 block opt-out decision*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 6 read and agreed to.

Several Papers were appended to the Report.

Resolved, That the Report be the Forty-second Report of the Committee to the House.

Ordered, That the provisions of Standing Order No.137A(2) be applied to the Report.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 26 March at 2.00 pm.]