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OFFICIAL REPORT

European Committee B

COMBATING TERRORISM

Monday 7 March 2016

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

- | | |
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| † Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con) | † Mullin, Roger (<i>Kirkcaldy and Cowdenbeath</i>) (SNP) |
| † Brokenshire, James (<i>Minister for Immigration</i>) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Brown, Lyn (<i>West Ham</i>) (Lab) | † Streeting, Wes (<i>Ilford North</i>) (Lab) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Umunna, Mr Chuka (<i>Streatham</i>) (Lab) |
| † Hayman, Sue (<i>Workington</i>) (Lab) | † Whittaker, Craig (<i>Calder Valley</i>) (Con) |
| † Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) | Clementine Brown, Daniel Whitford, <i>Committee Clerks</i> |
| † Hopkins, Kelvin (<i>Luton North</i>) (Lab) | |
| † Jayawardena, Mr Ranil (<i>North East Hampshire</i>) (Con) | † attended the Committee |

The following also attended (Standing Order No. 119(6)):

Cash, Sir William (*Stone*) (Con)

European Committee B

Monday 7 March 2016

[MR ADRIAN BAILEY *in the Chair*]

Combating Terrorism

4.30 pm

The Chair: Before we begin, may I take a few moments to outline the procedure? First of all, a member of the European Scrutiny Committee may make a five-minute statement about the decision of that Committee to refer the document for debate: I believe that Kelvin Hopkins will do that. The Minister will then make a statement of no more than 10 minutes, and questions to the Minister will follow. The total time for the statement and questions is up to one hour. Once questions have ended, the Minister will move the motion on the paper and debate will take place on that motion. We must conclude our proceedings by 7 pm.

Does a Member of the European Scrutiny Committee wish to make a brief explanatory statement?

4.31 pm

Kelvin Hopkins (Luton North) (Lab): It is a pleasure to serve with you in the Chair this afternoon, Mr Bailey. The recent terrorist attacks in Paris have increased awareness of the threat presented by foreign terrorist fighters and radicalised individuals who have travelled to conflict zones and returned to the EU to carry out acts of terrorism. Widespread use of the internet and social media have made it easier to disseminate terrorist propaganda, radicalise and recruit new activists, and plan and co-ordinate operations.

The Commission considers that changes are needed to existing EU laws to keep pace with the evolving nature of the terrorist threat. It proposes a new directive that will bring EU rules on terrorism together in one legal text and update them to reflect recent developments in international law. The changes proposed will require member states to make it a criminal offence to travel abroad to receive training, or to organise or facilitate such travel, for terrorism purposes. The proposed rules also enhance the rights of victims of terrorism to receive free assistance and support in their member state of residence.

The proposed directive will apply only to the UK if the Government decide to exercise their right under the EU treaties to opt in. The deadline for that expires on 23 March, but, if the Government wish, they could have a second bite at the cherry and seek to opt in after negotiations have concluded and the directive has been adopted.

The European Scrutiny Committee welcomes the fact that the Government's opt-in decision is to be debated before the UK's opt-in deadline expires. Obvious though that may seem, it has not always been the Government's practice to schedule timely debates. It is none the less disappointing that the Government have not heeded the Committee's clear recommendation for a debate on the Floor of the House to allow the House as a whole to consider and weigh up the factors that resulted in the

Government's decision not to participate in the proposed directive. There can be few more important decisions, given the questions about the security of the EU's external borders and the fact that member states in the Schengen free movement area are taking unilateral action to protect their borders. I look forward to hearing the Minister explain why the Government's opt-in decision does not merit the exposure and scrutiny of a Floor debate.

The Minister's explanatory memorandum on the proposed directive set out a comprehensive list of factors that the Government would weigh in reaching their opt-in decision, which include long-standing concerns about ceding competence to the EU in areas of policy that affect national security as well as the implications of accepting the jurisdiction of the Court of Justice. However, he also acknowledged that the UK's opt-in decision could have both practical and symbolic effects. Might, for example, UK participation in the proposed directive make UK citizens safer or demonstrate that the EU is united in its response to recent terrorist atrocities? I trust that he will explain how the Government have weighed all those factors and concluded that the risks of participation outweigh the benefits.

A debate was recommended to find out whether, despite the Government's decision not to opt in, the Minister considers that the proposed directive will ensure a more coherent and consistent approach to tackling terrorism and foreign terrorist fighters across the EU. What assurances can he give us that there will be no legal or operational gaps in the ability of the UK and other member states to investigate and prosecute terrorist offences, particularly when there is a cross-border dimension? Will he confirm that the Government's decision not to participate in the directive will not impede UK law enforcement authorities in co-operating and exchanging criminal intelligence with their counterparts in other EU member states?

Finally, the European Scrutiny Committee pointed to questions such as: how active a role does the UK intend to play in the negotiations and what are its negotiating objectives? How soon does the Minister expect agreement to be reached within the Council? What is the European Parliament's position, and do the Government intend to review their decision not to opt in once the negotiations have concluded and the final content of the directive is known?

4.35 pm

The Minister for Immigration (James Brokenshire): It is a pleasure to serve under your chairmanship, Mr Bailey.

As the Government's explanatory memorandum of 17 December last year sets out, this is a European Commission proposal for a directive that would replace the 2002 framework decision on combating terrorism. The UK opted out of the 2002 framework decision in December 2014 as part of our block opt-out under protocol 36. We did not opt back in as we did not wish to be bound by EU minimum standards legislation in relation to counter-terrorism. The new directive would be a minimum standards measure intended to strengthen the international response to the threat from terrorism, and in particular would achieve a more comprehensive and consistent approach between EU member states to the criminalisation of foreign fighters and other forms of support to terrorist groups.

The proposed directive builds on existing international agreements in this area, and sets out a broad range of provisions that EU member states would be required to incorporate in their domestic legislation. That includes a requirement that member states are capable of prosecuting various specified terrorist acts, as well as incitement or provocation of those acts and attempts to commit them. Such acts include those that may form part of a terrorist attack or terrorist fighting, such as kidnapping and hostage taking; hijacking; attacks on individuals; releasing harmful substances; and offences relating to explosives and nuclear or chemical weapons. They also include acts preparatory to or in support of terrorism, such as recruitment, travel or training for the purposes of terrorism; dissemination of terrorist propaganda; and provision of material support for terrorist groups, including financial support.

The proposed directive broadly requires that member states take extra-territorial jurisdiction in relation to those acts. While its focus is on establishing minimum standards for terrorism-related criminal offences, the proposed directive also includes measures relating to victims of terrorism, and safeguards for fundamental rights and freedoms. In this latter respect, the proposed directive makes it clear that member states should implement and enforce its provisions in a way that is proportionate and compatible with human rights.

The UK is seen internationally as a leader in the field of counter-terrorism and, reflecting this, our domestic legislation is already largely compliant with the measures in the proposed directive. We have a broad, effective and proportionate range of criminal offences, covering all the terrorist acts specified in the proposed directive. We have robust and fair judicial processes, which can prosecute terrorists effectively and which provide strong protections for the rights of individuals. Our terrorism legislation is overseen by an independent reviewer who provides a robust challenge to ensure that it is both proportionate and effective, and we take extra-territorial jurisdiction in relation to a range of offences where we consider it necessary, ensuring that those who engage in terrorist activities overseas are not beyond the reach of the law when they return to this country.

In relation to the UK offences of encouragement of terrorism under section 1 of the Terrorism Act 2006, and of dissemination of terrorist publications under section 2 of that Act, we have identified a need to extend our territorial jurisdiction to comply fully with the proposed directive. The Government rightly take a cautious approach to extending the territorial jurisdiction of our criminal law beyond what is necessary, and we are clear that any further extension should be on the basis of operational need. In this case, we have not identified such an operational need and, accordingly, have no plans to amend our domestic legislation in this way.

The UK supports the aims and measures of the directive and recognises the importance of international collaborative efforts to combat the threat from terrorism and from foreign fighters. The UK has participated fully in negotiations with our international partners on the content of the directive, while in parallel the Government have been considering whether to opt into the directive in accordance with protocol 21 to the treaty on the functioning of the European Union. We have approached this decision with an open mind and have taken it on its own merits.

In reaching our decision, we have taken into account the factors outlined in the explanatory memorandum. The Government have concluded that opting in would not be likely to make UK citizens safer, given that our domestic legislation is already largely compliant with the directive's measures, and we do not consider that there is an operational need for the minor changes that would be required fully to comply. Our legislation is already fully compliant with the existing key international standards in this area: UN Security Council resolution 2178; the Council of Europe's "Additional Protocol to the Convention on the Prevention of Terrorism"; and the 2005 convention itself.

Further, we considered whether we were willing to participate in an exercise of EU competence in relation to counter-terrorism. The UK has previously exercised its opt-out under protocol 36. We concluded that we are not prepared to do so, as we do not wish to be bound by an exercise of EU competence that could limit our future ability to act independently in this area. Following from that, we concluded that it would be unacceptable to grant the European Court of Justice jurisdiction over the matters contained in the proposed directive in relation to the UK.

Set against that, we considered the importance of a strong, collaborative EU-level response to the threat from terrorism, particularly following the recent attacks in Paris. Such a response is vital, and UK police and intelligence agencies have been working closely in support of their European partners following the tragic events in Paris. However, our view is that the UK can play that international role without needing to participate in minimum-standards EU legislation of this kind. Therefore, on balance, the Government decided not to opt into the proposed directive, either now or post-adoption.

The Chair: We now have approximately 52 minutes for questions to the Minister. May I remind Members that questions should be brief and not speeches? There is an opportunity to make speeches in the debate that will follow the question section. It is open to a Member, subject to my discretion, to ask related supplementary questions.

Kelvin Hopkins: An important question that I raised in my introductory remarks is, why did the Government choose once again to refer this matter to Committee, rather than have a debate on the Floor of the House, as requested by the European Scrutiny Committee? This is a matter of great importance and deserves to be discussed in a much more public forum than a Committee.

James Brokenshire: There is always an issue with the scheduling of such debates. As the hon. Gentleman highlighted in his opening comments, the Government recognise the need for these issues to be debated in a timely fashion before the opt-in decision is taken. I hope this debate provides an opportunity for Members to question me and debate this important issue and the EU's relationship with the UK with respect to counter-terrorism matters.

Lyn Brown (West Ham) (Lab): It is weird to come to a debate and not know what the Government are going to say before I sit down. Normally, it is very different.

[Lyn Brown]

May I press the Minister further? Why has it taken the Government so long to make a decision? Despite being involved in the negotiations that led to this directive and despite supporting its aims, they seem to have prevaricated endlessly. We are days away from the deadline on the decision, so I do not agree that this is a timely debate. Given the Government's stance, which we have just discovered, we should have had proper notification and a proper debate.

Were the delay and the opposition, which the Minister just outlined, caused by the Security Minister—I see that he is not in his place—who is opposed to the Home Secretary's and the Government's position on EU co-operation on security policy? What further evidence can the Government provide on the security implications of not opting in? Specifically, have the Office for Security and Counter-Terrorism or the Joint Intelligence Committee been asked to consider this directive? Have they provided any advice? Will the Government publish a summary of the security implications of not opting in? Given that the Government have decided not to opt in, will the Minister agree to refer that decision to the Intelligence and Security Committee? Unlike Select Committees, referrals to that Committee must be made by the Government, not other parliamentary Committees.

The Security Minister's letter of 4 February outlined two changes to domestic legislation that would be required if we were to comply with the directive. First, we would need to amend section 17 of the Terrorism Act 2006 to extend the provision in section 2 to enable the offence of the dissemination of terrorist publications to be prosecuted in the UK, even if the offence is committed outside the UK. Secondly, legal aid would need to be provided to victims of terrorism who make civil claims. What practical issues did the Minister encounter on those fairly simple changes, and is that why the Government are opposed in principle to making the changes? Surely the Government are not opposed to the legislation because we would need to extend legal aid to victims of terrorism. It would be dreadful if that were the case.

James Brokenshire: There are a few questions to respond to. On the hon. Lady's general point about the nature of this debate, may I refer her to the explanatory memorandum, which sets out the various factors for consideration, and to the letter that we sent the European Scrutiny Committee in response to its report, for which we are very grateful. It sets out our logic and thinking on the points that the report made about, for example, extraterritorial jurisdiction and legal aid.

The fundamental point, which I alluded to in my opening speech, is that this is a minimum standards-type directive. We decided that it is not appropriate to stay within the 2002 framework decision, which this directive replaces, because we already comply with it. We felt that we did not need to adopt it because, again, it was a minimum standards-type requirement. We are fully compliant with the 2002 framework decision. Therefore, in our judgment, this measure does impact on matters of operational requirement. This is something that we have considered very carefully. On the hon. Lady's point about referral to other Committees, this matter has been considered carefully by the European Scrutiny Committee, which published a report to which the Government replied in the form of the Security Minister's letter.

On the timing, the Government are often criticised for setting out up front our view about whether to opt in or out of particular measures. It is argued that that limits scrutiny because we have already set our minds in a particular direction. Therefore, there is normally a period of several weeks to allow the European Scrutiny Committee to assess the evidence and produce a report, which it has done, before the Government make a publicly stated commitment about whether to opt in or out. We are often told that stating our position too far in advance undermines scrutiny, but the hon. Lady said that not doing so causes confusion. It does not; it is about respecting scrutiny and the appropriate process, which the European Scrutiny Committee has gone through.

Roger Mullin (Kirkcaldy and Cowdenbeath) (SNP): It is a pleasure to serve under your chairmanship, Mr Bailey. I have a few remarks that I will make when we get to the debate stage, but in the light of hon. Members' comments—particularly those of the hon. Member for Luton North—I would like to press the Government further on their decision not to refer this matter for a full debate in the House. The Minister said that the Government made a balanced decision. If it was a balanced decision, there must have been counter-arguments, but we have not heard what they are.

The Chair: Order. May I remind you to frame your comments in a question? You will be free to make broader points during the debate.

Roger Mullin: Okay. What counter-arguments were pressed and why were they discounted? Also, the Minister indicated that the UK was a leader in counter-terrorism. If that is the case, why did the Minister indicate in a debate in October that no information was being gathered on matters such as the use of children as suicide bombers?

James Brokenshire: I underline the fact that the UK is a leader in counter-terrorism. We gain various benefits from our relationship with our European partners as well as from our long-established relationship with other international partners. We are able to work together closely to confront the threat from terrorism that we all face. We deal with the overall level of threats and we disrupt various actions. Arrests and prosecutions continue to arise in respect of those intent on doing us harm. I must reassert that.

I refer the hon. Gentleman to the papers before the Committee in respect of the consideration that the Government have given to this particular measure. Indeed, the explanatory memorandum that was issued by my right hon. Friend the Security Minister on 17 December sets out very clearly the issues relating to this matter and the relevant considerations. Ultimately, the Government have determined, as they have with the framework decision, that this is a minimum standards directive, and we are satisfied that there are no operational gaps or issues of concern. We have weighed up the issue of national security, the ultimate member state competency, and that will always be a priority. That was one of the elements emphasised in the papers arising from the renegotiation, and that has been reaffirmed.

The papers before the Committee clearly set out the Government's consideration of the matter. I hope I have clarified the minimum standards, our assessment with

operational partners, and the need to create further requirements. We have considered the issue of extraterritorial jurisdiction, which is one of the key questions, and we remain satisfied that the balance we have struck and the conclusions we have reached are that it is not appropriate to extend sections 1 and 2 of the 2006 Act in an extraterritorial way. We considered that issue in our debates on the Serious Crime Act 2015, which amended the 2006 Act to extend jurisdiction in relation to the offences of preparing for terrorism under section 5, and further extended the scope of jurisdiction in relation to training for terrorism under section 6. This was necessary to ensure UK compliance with UN Security Council resolution 2178. It helpfully filled a gap in our ability to prosecute suspected terrorists, particularly those who travel to Syria or other theatres of jihad.

Following consultation with partners, we did not identify an operational gap in relation to section 1 and 2 offences that would necessitate the taking and extending of extraterritorial jurisdiction for those offences. The section 5 offence of engaging in conduct in preparation of terrorism is broad and effective. In practice, it can generally be used to prosecute foreign terrorist fighters.

Sir William Cash (Stone) (Con): First, may I congratulate the Government, which is unusual in matters of this kind, because it is such good news to hear that they are not opting into these arrangements? As Chairman of the European Scrutiny Committee, I totally endorse the remarks made by the hon. Member for Luton North about this debate needing to take place on the Floor of the House, whether it is an opt-in or opt-out decision.

The Chair: Order. I remind the hon. Gentleman that this is the question session. He can make general points during the debate that follows.

Sir William Cash: I ask the Minister if he will accept my congratulations on this matter and explain to me, as Chairman of that Committee, why he thinks this measure should not be considered on the Floor of the House. Lastly, how definitive is the Government's opt-in decision? Do the Government intend to review their decision once the outcome of the negotiations is known?

James Brokenshire: I welcome my hon. Friend's presence this afternoon. He underlines his own Committee's scrutiny of and focus on these measures, which I appreciate and welcome. Indeed, I have given evidence to his Committee, and it rightly holds Government to account on these matters.

My hon. Friend asked whether we will somehow reopen consideration of this matter post the EU referendum. It is not the Government's intention to do so. As I have indicated, we did not opt back into the 2002 framework decision that this directive will replace. Because this directive is minimum standards-related, and because of the issues I have highlighted—for example, member state competency, national security and the role that the directive might give to the Court of Justice of the European Union—it is our clear view as a Government that we should not opt into this measure, whether that is now or in future, post-adoption. I hope that that clarity is helpful to the Chair of the Select Committee and to other right hon. and hon. Members.

The Government take such scrutiny seriously. Where the European Scrutiny Committee recommends that there should be a debate on a particular paper or dossier, we should do so, but there is always a question of parliamentary time and the nature of debates available to us. Therefore, on the opt-in decision, we felt that we could grant and respond positively to the need for a debate. That debate is in this format rather than on the Floor of the House, but that should not in any way limit our consideration of these serious matters. This is an important measure, and in this Committee we are considering the relevant directive and the Government's decision that we should not opt into the measure. I welcome the scrutiny that this Committee is able to provide.

Kelvin Hopkins: I take with a pinch of salt the Minister's suggestion that time restrictions meant the measure could not be discussed on the Floor of the House. Time and again, business finishes short and we go home early, but that is not my question. My question is this: what conclusions did the Government draw on the implications for the UK of accepting the jurisdiction of the Court of Justice and on the impact of participation in the proposed directive on the UK's ability to act in its own right in negotiations on terrorism-related matters in international organisations such as the UN and the Council of Europe?

James Brokenshire: As I have indicated, we have considered this matter in the context of the UN Security Council resolution that I mentioned in my opening remarks. Under the previous legislation considered by the House, we decided to give extraterritorial jurisdiction to certain measures in the 2006 Act. This matter was certainly considered carefully at that time. Obviously, this is a new measure, but our judgment remains that there is no need to extend our territorial jurisdiction for the issues outlined.

On the jurisdiction of the Court of Justice, we have obviously considered the measure against the backdrop of national security being a member state competency that we have upheld. Regarding the renegotiation, the legally binding decision supports the UK in reiterating its sovereignty in relation to matters of national security. Our new settlement includes a legal confirmation that the UK's national security is the sole responsibility of the UK Government and helps us to ensure that we can exercise our sovereign responsibility for national security without interference from the EU, while retaining the freedom to collaborate closely with our EU counterparts where it is right to take collective action to tackle the threats we face. The decision makes it clear that EU institutions will fully respect member states' national security responsibilities. The text is a signpost to institutions such as the Court to act in a particular way. As the Court confirmed in the Rottmann case, it is required to take the provisions into account when interpreting the treaties in future, which gives our decision force before the Court.

We have considered the matter carefully. As I indicated in my opening remarks, it was reflected on in terms of whether to opt in or out over and above the points that I have made about the directive being one of minimum standards. That affirms the fact that we can benefit from collaborating and having operational relationships with EU partners. Indeed, I can point to many issues in respect of Europol and other mechanisms that add real

[James Brokenshire]

weight to our ability to protect UK citizens. Nevertheless, the judgment on this measure is that we should not be part of the directive itself, because we gain the operational benefit in any event, without being bound by the directive and all that that might bring in terms of ECJ jurisdiction.

Kelvin Hopkins: Personally, I support the view of the European Scrutiny Committee and support the Government's decision on this matter. I will make a few more comments on that when we come to make a decision. Nevertheless, the are concerns about the rights of victims. Victim Support has made representations to the European Scrutiny Committee; I assume that it has made them to the Government as well. As the Government are minded not to opt into the proposed directive, is the Minister willing to commit to introducing comparable rights for victims of terrorism into UK domestic legislation?

James Brokenshire: We already have in place measures to provide compensation for victims of terrorism. For example, the Criminal Injuries Compensation Act 1995 provides powers for compensation schemes for blameless victims who have sustained criminal injuries, including as a result of terrorism. Victims of violent crime, including terrorism, have been eligible to apply for criminal injuries compensation since the inception of such a scheme for Scotland, England and Wales in 1964. The victims of overseas terrorism compensation scheme came into force in 2012, following the introduction of powers for such a scheme in the Crime and Security Act 2010. Before the establishment of that scheme, there was no compensation scheme for victims of overseas terrorism compensation, aside from an *ex gratia* scheme also introduced in the same year. I underline the support and compensation arrangements that have existed.

On the broader issues relating to victims, the UK previously transposed the EU victims directive into our domestic legislation. Because of that, taken together with other statutory provisions, we are compliant with most of the measures for victims in the proposed directive. However, article 22 of the proposed directive, which provides that all victims of terrorism should receive free legal advice in a broad range of circumstances, might not be fully compatible with the current legal aid scheme in England and Wales because legal aid is means-tested and not always free. Under the Government's proposed residency test, civil legal aid will normally be available only to those currently lawfully resident in the UK who have previously lived in the UK for 12 continuous months. The scope of the legal aid scheme does not generally encompass all civil proceedings—for example, damages claims, which the directive appears to envisage should be included. It is therefore possible that the scope of the existing legal aid scheme would need to be expanded to comply.

Legal aid is obviously paid for by the taxpayer and means-testing is a long-standing feature of the civil legal aid scheme. The Government believe that in principle, for individuals with a strong connection to the UK to benefit from the civil legal aid scheme, that is the appropriate way to structure it. That is why we intend to introduce a residence test for most types of cases funded by civil legal aid, as a fair and appropriate way to demonstrate that connection. We judge that the legal

aid arrangements are fair, just and appropriate and that we have mechanisms rightfully in place to enable victims to seek compensation. Those schemes are available.

We consider the matter carefully through all the debates and in the light of the horrendous circumstances that many hon. Members have had to face up to in the wake of terrorist incidents. Many of us will have met families who have been seriously affected by the loss of loved ones, or people directly affected by lifelong injuries. The Government consider the matter carefully and have arrangements that respect the victims' rights and ensure that compensation can be available.

Several hon. Members *rose*—

The Chair: Keir Starmer first.

Wes Streeting (Ilford North) (Lab): Wes Streeting, but I will take that, Mr Bailey; what a promotion!

The Minister says that, based on his analysis of the operational need, there is no necessity for the UK to opt in. On that basis, will he undertake to publish the analysis and, in particular, the elements of the proposals that go beyond the requirements of international and existing UK law, to satisfy hon. Members, in the absence of a debate on the Floor of the House, that the decision is correct?

James Brokenshire: We are having this debate here this afternoon, and I have already explained our consideration of the matters; and the letter from my right hon. Friend the Security Minister in response to the report of the Committee sets the matter out very carefully. Obviously, we continue to keep the matters under review, and I would point out to the hon. Gentleman the debates on the Serious Crime Act 2015, when issues of extra-territoriality were considered; that was precisely to do with assessments by our operational partners of how value could be added and how there could be a benefit.

There has been a great deal of consideration and the House has reflected closely on issues of extraterritorial jurisdiction. There is an assessment that we make on whether alternative offences are available—particularly the offence of preparing for terrorism, under section 5 of the 2006 Act, which is quite wide-ranging in its scope. Significant numbers of charges and prosecutions have been brought under it, and we judge that it is an appropriate way to see that action is taken against those preparing acts of terrorism, and we work with our operational partners to see that that happens.

Kelvin Hopkins: I have one more question on legal aid. Some of us strongly deprecate the Government's cuts in legal aid, and their impact on many people in different walks of life, with different cases. Is there a possibility—the Minister touched on this—that legal aid might be differentially applied or provided to individuals, depending on where they live in the United Kingdom, such as in Scotland as opposed to England and Wales? The Minister has talked about England and Wales, but not about Scotland or Northern Ireland.

James Brokenshire: To clarify and be absolutely clear, I said the UK. I meant the sense of having a connection to the UK and was explaining why we intend to look at a residence test for most types of cases funded by civil legal aid, in respect of a connection with the UK.

Lyn Brown: I am a bit flabbergasted about this. Can the Minister please explain how what he has set out does not impede EU co-operation? I do not believe that in all the words he has said thus far he has told me whether the Office for Security and Counter-terrorism or the Joint Intelligence Committee were asked to consider the directive, and, if they were, whether they provided advice. Will the Government publish a summary of the security implications of not opting in? I am increasingly getting the feeling that we are not opting into the directives because of the legal aid issue.

The Chair: Order. Could the hon. Lady confine her remarks to questions at this point?

Lyn Brown: I will. Thank you, Mr Bailey. I am sorry.

James Brokenshire: Our consideration of the matter is on the basis of not being subject to a minimum standards directive. The hon. Lady could make the same arguments on the 2002 framework directive, which we decided not to opt into because of the comprehensive range of counter-terrorism powers that we have in place. I reject her characterisation.

The Office for Security and Counter-terrorism is part of the Home Office. We at the Home Office have reflected on the measure as part of the cross-governmental consideration of whether to opt into the matter. We have determined across the Government that opting in is not appropriate because of the counter-terrorism legislation that I have already outlined to the hon. Lady, the potential jurisdiction of the European Court of Justice and the implications of that, and the member state competency over national security, which is a fundamental issue on which the Government will not give way. We have underpinned and underlined that in the renegotiation. That is the consideration we have given. We set out the various issues clearly in the explanatory memorandum and in the response given by the Security Minister to the Committee's report.

The Chair: If no more Members wish to ask questions, we will proceed to debate the motion.

Motion made, and Question proposed,

That the Committee takes note of European Union Document No. 14926/15, a Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA; endorses the Government's decision not to opt in under Protocol 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the EU Treaties; and supports the Government's approach of working with other Member States to support our international partners and strengthen the international response to the threat from terrorism, recognising that national security is a matter for individual nations through their sovereign Parliaments.—(*James Brokenshire.*)

5.11 pm

Lyn Brown: It is an absolute pleasure to serve under your chairmanship, Mr Bailey, and to be here for the debate this afternoon. I thank the European Scrutiny Committee for raising the profile of the issue and for ensuring that we have this debate. I agree that the issue is worthy of consideration on the Floor of the House. I hope that the Government, even at this late stage, and after being pressed in this Committee, will reconsider and it will be possible to have that debate there.

From the outset, I think it is important that we are clear about what we are debating. We are debating whether the UK should opt into an EU directive on combating terrorism that has been proposed by the European Commission. The decision will be taken, as we have heard, by the British Government. Thanks to the European Scrutiny Committee, that decision will be scrutinised, informed and debated by Parliament.

The question that the British Government have to answer is whether it is in the UK's best interests to opt into the collective set of measures to combat terrorism. They will be accountable to Parliament for their decision. What this is not is the European Union foisting regulations on the UK or this Parliament, and those who argue that every EU directive we opt into is an erosion of our sovereignty should remember the process.

Labour supports the directive and believes that the UK should opt in, as that will better ensure that there are no gaps in UK and EU security against terrorism and set a clear benchmark for all members. We recognise the point made in the European Scrutiny Committee's report that there could be a

"risk that differences in the legal framework established at EU level and the UK's domestic law could impede practical cooperation and make it more difficult to prosecute terrorist offences which have a cross-border dimension."

Given the uncertainty of the Government's case and the lack of an impact assessment, we believe that there is a clear national security case for opting in.

I want to comment on several of the specific issues raised by the proposed directive and highlighted by two excellent European Scrutiny Committee reports. Before that, however, I emphasise that the decision needs to be considered in the context of an increasingly international terror threat that requires an international response. We are having a specific debate about whether to opt into the directive in the context of the much wider conversation about whether we are fundamentally safer in the EU or outside of it. No one can be in any doubt that the terror threat we face is severe and evolving. The Commission outlined that in its justification for the directive and that is acknowledged in the European Scrutiny Committee's report. Terror groups such as Daesh are present in multiple states in Europe and the middle east and use their international networks to prepare terror attacks. That can be combated only through collective and consistent action across member states.

My hon. and learned Friend the Member for Holborn and St Pancras (Keir Starmer) would have been here today but he is speaking for the Opposition in a Westminster Hall debate. Before entering the House, he was the Director of Public Prosecutions, acting to ensure convictions against terrorists, and he has explained in detail how the apprehension and prosecution of terror suspects are aided by EU measures: not just the principle of co-operation but specific tools that are used 24/7 by our law enforcement agencies. His intervention followed similar ones from senior police and intelligence figures, including Sir Hugh Orde, the former chair of the Association of Chief Police Officers and former Chief Constable of the Police Service of Northern Ireland. That view is also held by the Government's national security advisers and the Home Secretary.

I am at a loss. British citizens will be safer if we ensure that all EU countries have tough and comprehensive anti-terror measures. Regardless of whether we are in

[Lyn Brown]

the EU or not, we will remain vulnerable to attacks planned and partly orchestrated from abroad. We are safer if all EU countries have effective anti-terror provisions.

Another benefit of the directive is the protections afforded when British citizens are victims of terrorism in the EU. As we saw last year with the terrible attacks in Tunisia and Paris, British citizens are increasingly likely to be victims of terrorist attacks abroad. If an attack takes place in an EU country, articles 22 and 23 offer a basic framework of rights and protections to the victims of terrorism. Surely we should welcome that.

The Opposition believe that the enormous benefits of co-operation on terrorism and security measures mean we should opt into the directive today. I fully accept the argument that UK legislation is already compliant with all of the directive's substantive requirements, but I do not see that as a reason not to put our name to the directive. Instead, we should be pleased that our legislation is being used as a benchmark for other states and aid the process.

The Government's explanatory memorandum makes that argument well. In paragraph 35, it acknowledges that

"The UK actively participated in the negotiation of the final text of the Additional Protocol",

which the directive builds on, and shares

"a keen interest in engaging positively and the importance of sharing best practice".

Engaging and sharing best practice are best served by opting into the directive.

That does not mean that I do not agree with the Government and the European Scrutiny Committee that we should generally avoid the introduction of minimum standards in criminal law. Most crimes committed in the UK are the business of the UK Government, so it is for Parliament to decide what conduct should be considered criminal. However, it has long been realised that offences such as drug trafficking, terrorism and human trafficking have an international dimension and therefore they are covered by international law. The directive contains obligations already established by UN Security Council resolution 2178.

This is not the first time that an EU directive has demanded minimum standards on internationally acknowledged criminal action—the EU human trafficking directive makes similar demands because human trafficking is internationally recognised as a crime and it is best tackled through EU co-operation—so I genuinely struggle to understand the Government's position on the directive, given its advantages to the EU's and the UK's security. The Opposition will push the motion to a vote and support a move to opt into the directive. The Government need to rethink their decision.

5.19 pm

Roger Mullin: I would like to take a slightly unusual slant in the debate, if the Minister and others are content with that—or even if they are not. [Laughter.]

I speak today for the third party not as a spokesperson on legal issues, but as one who has had a general interest in the topic ever since the time I thought I was being kidnapped in Yemen. As well as having a personal interest, I should declare that I am chair of the all-party

parliamentary group on explosive weapons. My interest is slightly different from the mere legal interest that many members of this Committee have, so I hope you will indulge me a little, Mr Bailey. I will fairly briefly run through two or three examples of international developments and invite the Minister to respond to persuade me that the Government's approach is the best one.

My natural prejudice is toward encouraging international co-operation at every turn, because of the nature of the threats we face. I notice that, only a few hours ago, Assistant Commissioner Mark Rowley said that Daesh is "trying to build bigger attacks"

globally, including in the UK. Early last October, I had a Westminster Hall debate on the use of children as suicide bombers, during which I pointed out that the information from the United Nations was that there could be up to 1,000 children, in many countries, who are under training as potential suicide bombers. In recent weeks, there have been videos of terrorist groups in the middle east that include children who have been moved from the UK by their parents. In their response to my debate, the Government indicated that they did not compile information on the scale of the threat from that new development in suicide bombing.

Suicide bombing presents a particular form of threat. Suicide bombers are the terrorists' guided weapons. Whereas advanced states such as the UK and the USA use technology to make pinpoint attacks, terrorist groups increasingly use human beings as their guided weapons systems. We will recall what happened in Nigeria last year. Those groups appear in some countries almost to favour the use of young females as guided weapons systems. If that is imported into the western world, as it may well be, that will raise a new type of threat. We could consider those young people trained as suicide bombers to be terrorist threats, but are they not at the same time victims of terrorists? Are we equipped to deal with that growing phenomenon?

The APPG on explosive weapons is conducting an inquiry into the use of improvised explosive devices. Again, we find that there is a lack of consistently held information internationally about the scale of the IED problem, which is spreading throughout the world as terrorists continuously develop their expertise. A week last Friday, I attended a meeting in Geneva hosted by the United Nations Mine Action Service, where I met the director of UNMAS and had an hour's conversation with her. She explained how Daesh has now moved some of its productive capability to Libya, where it is developing large quantities of highly sophisticated IEDs, which will present a continuing threat potentially to Europe and the like. Indeed, the best information we have from the United Nations is that last year 68 countries were victims of activities involving IEDs. This was not just happening in France or Syria or the countries that readily trip off the tongue. The country that had the most deaths and injuries caused by IEDs last year was India, so this is a growing threat in every continent of the world. I would therefore like to know why the UK Government do not believe that stronger international co-operation is the way forward on this matter.

I am sure the Minister will agree that international terrorism is a fast-developing phenomenon. We know that terrorists' technologies are advancing month by month. We know that they are beginning to deploy

human beings in different ways. We know from statements today by our assistant commissioner that they are becoming more ambitious in the scale of their targets. In the circumstances of a growing threat, why on earth do we not act on the basis of our prejudices towards engaging internationally, rather than keep things more closely to our chest?

5.26 pm

Sir William Cash: I want to make one or two comments. I have already congratulated the Government on the line they have taken on this, but I want to draw attention to one or two points. In the first place, it seems to me that the judgment is very much in line with the necessity for us to maintain our own security arrangements within the framework of our domestic law. By opting in, we would clearly be at variance with the position that we would prefer. UK courts would be compelled to interpret UK law in line with European Court of Justice judgments. In other words, by adopting this proposal, we would effectively be bringing ourselves within the framework of the European Court of Justice. As the Minister will know, the European Court might get the matters right, but unfortunately this would also lead to a degree of harmonisation of criminal law across the EU. Frankly, it is far better, in relation to our own legal processes in our domestic jurisdiction, to ensure that this Parliament and our courts set and interpret matters of criminal law. That is the first point I wanted to make.

The second is that we have already legislated, through the Serious Crime Act 2015, to extend territorial jurisdiction over two further offences in the Terrorism Act 2006 to enable the prosecution in the UK of UK-linked individuals who prepare or train for terrorism—that is dealt with in section 5—or who train for terrorism overseas, which is dealt with in section 6. We are therefore already catering for those circumstances. That covers some of the matters raised by the Opposition spokesman. So we are already dealing with these questions under our existing law.

Then there is the vexed question of drawing our jurisdiction into the charter of fundamental rights. This is a subject on which I have had a great deal to say over the last few years and in respect of which the European Scrutiny Committee held a full inquiry. We came to the conclusion that, although the Labour Government and the former Prime Minister, Tony Blair, said just before he left office that we have an opt-out from the charter, that simply is not true. Furthermore, we took evidence from Peter Goldsmith on the matter, and it is clear that the botched attempt by the previous Government to come up with a protocol did not work.

The problem with the charter is that it takes a vast range of matters within the jurisdiction of the European Court of Justice. This particular matter would fall into it. I agree with what the Security Minister said in his explanatory memorandum:

“Security and respect for fundamental rights are consistent and complementary objectives under EU law. Fundamental rights are not absolute”—

he is referring to article 52 of the EU charter—

“and will therefore be balanced against the security objective.”

For all those reasons, it is essential that we maintain our own domestic jurisdiction in matters of security. That, unfortunately, would be transgressed if we opted into this particular directive.

I add that the United Kingdom legislation is already compliant with United Nations Security Council resolution 2178, as the Minister has said, and the Council of Europe additional protocol to the convention on the prevention of terrorism. As the explanatory memorandum says, those measures allow the UK to

“disrupt the ability of people to travel abroad to fight, reduce the risks they pose on their return and combat the underlying ideology that feeds, supports and sanctions terrorism.”

For all those reasons, I think the Government have made the right decision.

I would like to take to task the former Home Secretaries—namely, Jack Straw, Charles Clarke and Jacqui Smith—who have weighed in today, making complaints about the position, which I thoroughly endorse, of the Tory mayoral candidate, my hon. Friend the Member for Richmond Park (Zac Goldsmith), on seeking to leave the European Union. They attack him erroneously by saying:

“Electing a Mayor who wants to leave Europe would pose a serious risk to Londoners’ safety and security”.

I simply disagree with that. Ultimately, security has to be a matter for UK domestic jurisdiction.

I wish to complete my remarks by re-congratulating the Minister—somewhat unusually in these matters—on making the right decision not to opt into this directive.

5.32 pm

Wes Streeting: It is a pleasure to serve under your chairmanship, Mr Bailey. This is my first European Committee, and it is a good illustration of how the relationship between this Parliament and the European Union works.

We know that the nature of the threat to this country’s national security has changed extraordinarily during the past century. The threats we face are now no longer simply those of nation states but of terrorists who have no regard for national borders, for democracy or for human rights domestically or internationally. The changing nature of that global threat requires greater global co-operation, in particular with our partners across the European Union.

Here we are, as Members of Parliament, talking about a draft directive that—irrespective of whether the UK chooses to opt in or opt out of it—enables the UK and the Government to say proudly that we have had a role in shaping the standards for tackling terrorism right across the European Union. That has to be in our national interest. It serves to show that in terms of how we exercise our sovereignty to protect our economic, social and national security in this century, if we pool our sovereignty and work together with our partners across the democracies of Europe, we have greater weight and influence to tackle the challenges facing this country and the wider globe.

Here we are, as Members of Parliament, able to directly comment on and feed into the position of our Government, with the Government able to take a flexible approach: they can opt in or opt out of these important directives. There is clearly a difference of opinion between the Government and the Opposition today, but this debate highlights that the UK has all the benefits of being a member of the European Union, with all the flexibilities we have acquired and negotiated over time.

Lyn Brown: One thing I did not bring out in my speech earlier was that, regardless of whether or not we opt into the directive, it will bring significant benefits to British citizens. I do not understand why we think that it is reasonable to receive and not reciprocate. Does the Minister seem like the kind of bloke who does not stand his round at the bar?

Wes Streeting: I am surprised at the Government's response, given the role that they have played in shaping the directive. Indeed, the Security Minister acknowledges in his memorandum that a case can be made for action at EU level to ensure a consistent approach to combating terrorism. The Government have exercised their influence and expertise to ensure that that approach has been adopted by our European partners. As is becoming familiar on a range of issues, but particularly, and alarmingly, national security, I suspect that the politics within the Conservative party and its divisions over Europe are having a far too great a bearing on deliberations right across the House.

That brings me to the substance of my concern. People complain about a lack of influence, or Parliament's lack of involvement in the making of laws and directives that affect our people, our courts and how we go about our business in this country, but every Member of Parliament could have had the opportunity to debate these important measures had the Government accepted the European Scrutiny Committee's recommendation and held a debate on the Floor of the House. I cannot be convinced that we do not have time to discuss something as important as draft measures to combat terrorism. Members of the public would be surprised that we cannot find the time to debate such matters. We find the time to debate all sorts of issues in Parliament, including on the Floor of the House. I have sometimes felt, particularly in recent weeks, that the Chamber has not been as busy or as focused on the big issues as it should be.

It is not because I have anything against the Minister, or just because I love listening to the Security Minister, but I am disappointed and surprised that the latter is not present, because there are several questions that he needs to answer. In his explanatory memorandum, on the one hand he says that opting into the proposed directive might require "significant changes" to UK domestic law, notably in relation to provisions on the liability of legal persons and extraterritorial jurisdiction, but on the other hand he indicates that only "limited changes" to UK primary legislation would be needed. Which is it? Would opting into the directive require substantial changes to legislation? In which case, what are they and what would we be debating? If not, why the contradiction?

I have already asked the Minister to share the outcome of his analysis of the operational need for the elements of the directive that go beyond the requirements of international and UK law. I hope that he will go away and consider publishing that analysis, so that all Members can scrutinise it. He should also comment on the risk that differences between the legal framework established at EU level and the UK's domestic law could impede practical co-operation, as we have set out. It would be deeply unfortunate if a party political headache turns into an obstruction to the UK opting into a directive that could bring practical benefits in tackling international terrorism and the specific threat to the United Kingdom.

The difference of opinion among Committee members underlines the importance of holding such debates on the Floor of the House. Plenty of Members, particularly Government Members, would like us to withdraw from the EU altogether. I do not agree with that position, but I respect it. Whatever difficulties the Conservative party leadership is currently dealing with, they do not warrant us having such an important debate in Committee, rather than on the Floor of the House, where it should take place.

5.39 pm

Sir Oliver Heald (North East Hertfordshire) (Con): We have in this country a good suite of offences and tools for tackling terrorism, as a result of unfortunate experiences over the years—for example, in Northern Ireland—so when the framework directive was being planned in 2002, we were a long way ahead of other countries. At that time, Tony Blair's Government had to decide whether we should join this directive, which, as has been said, is a minimum standards measure. The Labour Government decided not to join, and they had a lot of support from other parties, because at that point we did not want to put an area of criminal law under EU jurisdiction. It is right that the UK does have a special status in the EU, and this is part of it.

I agreed with the hon. Member for West Ham when she mentioned the former DPP, who I worked with when I was Solicitor General and he was superintending the Crown Prosecution Service. There are some good tools that we have opted into—I disagree with my hon. Friend the Member for Stone on this—such as the EU arrest warrant, which is very valuable. However, I think that we are right to continue the policy of the UK Government not to opt into the successor directive, because we still have a special status in the EU and we do not want our criminal law to be under EU jurisdiction. The reason we have such a good suite of offences and tools is that every time we have encountered a problem—for example, when prosecuting an offence, or when we find that we need slightly wider powers—we have changed the law. To be able to do that speedily and to have it under our control is, in my view, very important.

5.41 pm

James Brokenshire: I thank all right hon. and hon. Members who have contributed this afternoon. As we have heard, this comes at a time when the UK faces a serious and continued threat from Islamist extremist violence, which is probably more acute today than it has ever been. Daesh is targeting our way of life, spreading fear and terror, and it wants to exploit the internet, both to radicalise and recruit the vulnerable and to incite and direct extremists to carry out attacks outside Syria and other areas of conflict. Indeed, we face the continuing threat from al-Qaeda and groups linked to it, which seek to challenge and threaten our very way of life.

These are weighty and serious issues, and any Government consider them in that context. Having had the privilege of serving as Security Minister for four years, during which time we saw the growth of this activity, I feel the weight of those responsibilities in my current role on border security and as Immigration Minister, which is why I am disappointed by some of the contributions we have heard this afternoon and by the characterisation of the approach taken by the

Government, who take issues of national security absolutely to heart. That is our first and foremost consideration when making decisions on these and other matters.

I want to be absolutely explicit that nothing in this decision impedes practical co-operation with our European partners. Indeed, when I look at what the Government have done to support Europol and strengthen its capabilities in combating internet radicalisation, and the steps we have taken in opting into the second generation Schengen information system to better share information on suspected terrorists, organised criminals and those subject to European arrest warrants, I see how that absolutely has been in the best interests of the UK. That work will continue, which is why close collaboration and co-operation with our European partners and others will absolutely remain a core part of this Government's activities in seeking to confront and combat those who would seek to harm UK citizens or perpetrate acts of terrorism against them, or indeed any citizens, whether in this county, in Europe or elsewhere around the globe.

There have been some questions about what information can be supplied to this Committee. Let me be clear that we do not comment on operational priorities or the capabilities of our security and intelligence agencies, and for good reason: so that we do not assist those who would seek to conduct acts of terrorism against citizens of this country. Such information, if provided, is likely to be of interest to them, so we provide protection around matters of intelligence. Although various points have been raised about our assessments in relation to these matters, I am afraid that I am not able to go into those operational priorities in Committee. However, I can assure the Committee of the level and extent of analysis that is conducted by our security and intelligence agencies of those who would wish to conduct terrorist acts against UK citizens or against UK interests wherever they may be. I certainly recognise the need to keep those matters under close and careful scrutiny.

I need not remind the Committee of the threat that we and our international partners face from terrorism. We continue to keep our legislation under continuous review to ensure that it is as robust as possible to effectively tackle the threat. We therefore recognise that we have a role to play in sharing our expertise and in supporting our international partners both in the EU and elsewhere. At the operational level, UK law enforcement and intelligence agencies work very closely with international partners to protect the public here and overseas. That includes seeking the support of partners where appropriate in tackling threats to the UK, providing partners with support to tackle threats they face at home and co-operating to tackle threats to the wider international community, such as those posed by Daesh in Syria and Iraq. Day-to-day operational co-operation is vital to modern terrorism investigations and is a routine feature of such investigations, which have an international dimension.

At the structural level, the UK Government and agencies work with international counterparts to build their capacity to tackle terrorism themselves, while promoting the rule of law and respect for human rights. At the level of co-operation through supranational organisations such as the EU or UN, the UK plays a full and active role, and I hope it will continue to do so. We participated fully, along with the other Council of Europe member states, in negotiating the text of the Council of Europe additional protocol to the 2005

convention on the prevention of terrorism, which we exercised our national competence to sign in October 2015. Our legislation is also fully compliant with UN Security Council resolution 2178 on tackling foreign fighters.

I want to highlight why we have determined that this matter should be rejected. Rather than a rejection of the content of the proposed directive or of the principle of international co-operation, at the heart of the Government's decision not to opt in is our fundamental approach to questions of subsidiarity, EU competence and national sovereignty. We do not agree that an EU minimum standards measure of this kind is necessary for sovereign Parliaments, which best understand what is necessary and appropriate in their own national contexts, to be able to protect their citizens.

Furthermore, we have consistently been clear that it would not be in the national interest to do anything that could bind us to an exercise of EU competence on this matter, that could limit our future ability to act independently in this area of national security, or that could grant the Court of Justice of the European Union jurisdiction over the matters contained in the proposed directive in relation to the UK. We judge that these outcomes would be likely to hinder rather than assist our ability to protect the British public.

Given this position, and given that the UK has developed legislation that is specific to the serious threat that we face and that meets or exceeds the proposed directive in almost all respects, we have concluded that it would not be in the national interest to opt into the proposed directive either now or post-adoption.

Sir William Cash: With respect to the difficulty in dealing with terrorists in the context of human rights and the charter of fundamental rights, I am sure that the Minister recognises that there are and have been enormous difficulties in relation to the deportation of terrorists, caused by the fact that the wide range of the charter, for example, can create difficulties in dealing with matters of public security within a domestic framework.

James Brokenshire: My hon. Friend tempts me down a broader path in relation to the European convention on human rights and other related matters. As the Minister most closely involved in the direct negotiations on the treaty that led to the deportation of Abu Qatada, I understand very clearly the international legal aspects, but that is perhaps for another day. I emphasise the consideration that we have given to this directive. In our judgment, opting in does not add to our capabilities and does not in any way impede co-operation with our EU partners. We judge it is in the national interest and in the best interests of protecting the security of our citizens.

Question put,

The Committee divided: Ayes 7, Noes 5.

Division No. 1]

AYES

| | |
|-----------------------|-----------------------|
| Barclay, Stephen | Jayawardena, Mr Ranil |
| Brokenshire, rh James | Smith, Royston |
| Green, Chris | Whittaker, Craig |
| Heald, Sir Oliver | |

NOES

Brown, Lyn
Hayman, Sue
Mullin, Roger

Streeting, Wes
Umunna, Mr Chuka

Question accordingly agreed to.

Resolved,

That the Committee takes note of European Union Document No. 14926/15, a Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA; endorses

the Government's decision not to opt in under Protocol 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the EU Treaties; and supports the Government's approach of working with other Member States to support our international partners and strengthen the international response to the threat from terrorism, recognising that national security is a matter for individual nations through their sovereign Parliaments.—(*James Brokenshire.*)

5.51 pm

Committee rose.