

JUSTICE PRESS RELEASE

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Doubt over UK support for right of access to a lawyer EU directive

Only days after the UK announced that it would opt in to a proposed EU law on the rights of victims of crime to ensure that Britons in another EU country will get a guaranteed level of support, **the Justice Secretary has tabled a motion for debate in Parliament on 7 September on the Government's recommendation not to opt in to a similar measure for people suspected of crime.**

The EU Scrutiny Committee called for a debate in July given concerns raised by Government about implications for UK procedure in the draft law. However, the motion shows that the Government has already decided that it will not opt in to the measure. The law is the third measure proposed by the EU to try and enhance rights for suspects which in the UK are largely taken for granted but vary hugely across the EU. The measure seeks to enhance protections for suspects by ensuring they have access to a lawyer at all stages of the criminal process.

JUSTICE welcomes this law as it recognises that despite EU member states being signed up to the European Convention on Human Rights, there are many countries which still do not afford adequate protection to people suspected of crime.

Jodie Blackstock, JUSTICE's Senior Legal Officer in EU Justice, said:

It is imperative that the UK engages with this measure by opting in and ensuring that the final instrument protects the British public when they travel abroad. The UK has often opted in to proposed law in the EU where there is room for improvement and used our bargaining position to make those changes happen. If we don't opt in, we lose our negotiating power, our vote, and our ability to finally raise standards across the EU. The possible reasons to opt out simply do not stand up to scrutiny.

For further comment contact Jodie Blackstock on 020 77626436 or by email jblackstock@justice.org.uk

Notes for Editors

1. The proposed directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest was presented by the EU Commission in June. It is part of a roadmap of rights for suspects which the UK has so far opted in to. The UK has three months to decide whether to opt in to any measure proposed in the area of freedom, security and justice and must decide by the end of September.

2. The EU Scrutiny Committee considered the proposal in its 36th Report on 6th July 2011. The Report shows that the Government raised concerns with the proposal:

(a) It would require access to a lawyer from the start of questioning and during searches where lawyers are not currently present under UK law. However, the proposal states that it only applies from when a person is considered to be a *suspect*, and under the English Police and Criminal Evidence Act (PACE) Codes of Practice a person suspected of a crime must be cautioned prior to questioning and offered legal advice. Moreover, the proposal states that with respect to searches lawyers should only be present where a person's presence is required or permitted *in accordance with national law* and *unless this would prejudice the acquisition of evidence*. Since lawyers are not required to be present when a person is initially searched in custody, in our view the proposal would not demand a change to UK law.

(b) The proposal demands presence of a lawyer whereas the UK is increasingly resorting to telephone advice in relation to minor offences. However, where any questioning is due to take place, a lawyer must attend in person. Equally a person is unlikely to demand access to a lawyer where they are not going to be questioned by the police. We cannot see how this provision is detrimental to ensuring suspects are properly safeguarded in the UK.

(c) Derogations in the proposal are narrowly drawn and do not allow for current operational reasons to withhold legal communication. The views of the other member states are already clear on this from the Council of Minister's working party on the proposal – none of the member states are happy with the draf. It is highly unlikely that this will remain in its current form.

(d) Statements made prior to status as a suspect or obtained in breach of a right are deemed to be inadmissible by the proposal. In the case of breach this is subject to whether it would prejudice the rights of the defence to include the evidence. England and Wales provides for this by virtue of section 78 of PACE where the fairness to the accused of admitting evidence must be considered. In Scotland, the judge has a common law discretion to exclude evidence.

3. If the UK does not opt in, whilst a representative can still attend the working party, we will not be able to vote on the final instrument and will therefore not have a strong bargaining position with other member states. The UK will also not be bound by any of the provisions in the directive.

4. The proposed directive is available here <http://www.statewatch.org/news/2011/jun/eu-com-access-to-lawyer-com-326-11.pdf> and JUSTICE's response is available here <http://www.justice.org.uk/data/files/resources/290/JUSTICE-briefing-on-the-right-of-access-to-a-lawyer.pdf>