

The Agreement was previously  
published as United States  
No. 2(1988), Cm. 340

UNITED  
STATES



Treaty Series No. 32 (1989)

# Agreement

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the United States of America

concerning the Investigation of Drug Trafficking  
Offences and the Seizure and Forfeiture of Proceeds  
and Instrumentalities of Drug Trafficking

London, 9 February 1988

[The Agreement entered into force on 11 April 1989]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
August 1989*

LONDON  
HER MAJESTY'S STATIONERY OFFICE  
£1.70 net

**AGREEMENT  
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND  
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
CONCERNING THE INVESTIGATION OF  
DRUG TRAFFICKING OFFENCES AND THE SEIZURE AND FORFEITURE  
OF PROCEEDS AND INSTRUMENTALITIES OF DRUG TRAFFICKING**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America,

Desiring to improve the effectiveness of law enforcement in both countries in the investigation, prosecution, and suppression of drug trafficking and in the forfeiture of proceeds and instrumentalities of drug trafficking;

Have agreed as follows:

**ARTICLE 1**

**Scope of Assistance**

- (1) The Parties shall provide mutual assistance, in accordance with the provisions of this Agreement, in investigations, prosecutions, forfeitures and other proceedings connected with drug trafficking. In this Agreement, "drug trafficking" means any drug trafficking activity referred to in Article 36 of the Single Convention on Narcotic Drugs (1961)<sup>1</sup>, as amended by the 1972 Protocol<sup>2</sup>; in the Convention on Psychotropic Substances (1971)<sup>3</sup>; or in any other international agreement or arrangement binding upon both Parties (hereinafter collectively referred to as "the Conventions"), and any activity connected with, arising from, related to or resulting from such trafficking.
- (2) This Agreement shall apply:
  - (a) in relation to the United Kingdom: to England and Wales and, subject to any necessary modifications, by agreement between the Parties embodied in an exchange of Notes through the diplomatic channel, to Scotland and Northern Ireland and to any territories for the international relations of which the United Kingdom is responsible; and
  - (b) to the United States of America.
- (3) For the purpose of paragraph (1), assistance shall include, but not be limited to:
  - (a) taking the testimony or statements of persons;
  - (b) providing documentary information, records, and articles of evidence, including bank, financial, corporate, and business records;
  - (c) executing requests for searches and seizures; and
  - (d) freezing and forfeiting the proceeds and instrumentalities of drug trafficking.
- (4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of the Agreement shall not create any right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

**ARTICLE 2**

**Definitions**

For the purposes of this Agreement:

- (a) "Proceeding" includes any action before:
  - (i) any criminal or civil court;
  - (ii) any grand jury in the United States;
  - (iii) any preliminary inquiry in the United Kingdom;

---

<sup>1</sup> Treaty Series No. 34 (1965), Cmnd. 2631.

<sup>2</sup> Treaty Series No. 23 (1979), Cmnd. 7466.

<sup>3</sup> Miscellaneous No. 24 (1978), Cmnd. 7330.

- (iv) any court or administrative agency performing an adjudicatory or investigative function with respect to the imposition of civil or administrative sanctions or the issuance of an order imposing forfeiture; or
- (v) any similar body acting or taking steps or measures to facilitate forfeiture or the investigation, prosecution, or suppression of drug trafficking;
- (b) "Seizure" means assuming custody or control of evidence, proceedings or instrumentalities of drug trafficking as directed by order of a court or other competent authority;
- (c) "Freezing" means prohibiting the conversion, disposition, movement, or transfer of legal ownership of proceeds or instrumentalities by order of a court or other competent authority;
- (d) "Forfeiture" means the deprivation or transfer of legal ownership or possession of proceeds or instrumentalities of drug trafficking by order of a court or other competent authority;
- (e) "Proceeds" means property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing right or title to or interest in such property derived directly or indirectly from drug trafficking, and substitute assets;
- (f) "Instrumentalities" means any and all property, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing right or title to or interest in such property, used or intended to be used to further drug trafficking in any way;
- (g) "Documentary information" includes, but is not limited to, any document, memorandum, report, record, or data compilation in any form, and any plan, graph, drawing, or photograph, and any disc, tape, or other device for audio reproduction or computer use, and any film, disc, negative, tape or other device for visual image reproduction.

### ARTICLE 3

#### Central Authorities

- (1) A Central Authority shall be established by each Party.
- (2) For the United States of America, the Central Authority shall be the Attorney General or a person designated by him. For the United Kingdom, the Central Authority shall be the Secretary of State for the Home Department or a person or agency designated by him.
- (3) Requests under this Agreement shall be made by the Central Authority of the requesting Party to the Central Authority of the Requested Party.

### ARTICLE 4

#### Form and Content of Requests

- (1) Requests shall be submitted in writing except in urgent cases. In urgent cases, the request may be made orally, but shall be confirmed in writing within ten days thereafter.
- (2) A request made pursuant to this Agreement shall state that it is so made and shall include the following:
  - (a) the name of the authority conducting the investigation, prosecution or proceedings to which the request relates;
  - (b) the purpose of the request;
  - (c) the nature of the investigation, prosecution or proceeding in relation to which the request is made and, where a person or property is suspected of involvement in drug trafficking, the name or description of that person or property, if known;

- (d) where evidence, proceeds or instrumentalities are to be frozen, seized or forfeited, a statement setting forth the basis for believing that the person or property referred to in (c) above is involved in drug trafficking and, where appropriate, the connection between the person referred to in (c) above and the property to which the request relates;
  - (e) a description of the evidence, documentary information or other assistance sought.
- (3) To the extent necessary and possible, a request shall also include:
- (a) the identity and location of any person from whom evidence is sought;
  - (b) a precise description of the place or person to be searched;
  - (c) a precise description of the proceeds or instrumentalities in respect of which freezing, seizure or forfeiture is sought;
  - (d) a description of the manner in which any testimony or statement is requested to be taken and recorded;
  - (e) a list of questions to be asked of a witness;
  - (f) a description of any particular procedure requested to be followed in executing the request; and
  - (g) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.
- (4) The Requested Party may ask the Requesting State to provide any further information which appears to it to be necessary for the purpose of executing the request.
- (5) The Requested Party shall use its best efforts to maintain the confidentiality of a request and its contents where such a requirement forms part of the request. If the request cannot be executed without breaching the required confidentiality, the Central Authority of the Requested Party shall so inform the Central Authority of the Requesting Party, which shall then decide whether the request should nevertheless be executed.

## ARTICLE 5

### Execution of Requests

- (1) Subject to the provisions of its national laws, the Central Authority of the Requested State shall take whatever steps appear to it to be necessary to give effect to requests received from the Requesting Party, including compulsory measures where appropriate.
- (2) When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested Party.
- (3) The method of execution specified in the request shall be followed to the extent that it is compatible with the laws of the Requested Party.
- (4) If the execution of a request would interfere with an ongoing investigation, prosecution or proceeding in the territory of the Requested Party, the Central Authority of that Party may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting Party.
- (5) The Central Authority of the Requested Party may deny assistance if execution of the request would prejudice the security or other essential interests of the Requested Party.
- (6) Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary.
- (7) If the Requesting Party accepts assistance subject to conditions established pursuant to paragraphs (4) and (6) of this Article, it shall comply with those conditions.
- (8) The Requesting Party shall inform the Requested Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request, or which require modification of the action requested.

(9) The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, whether by the Central Authority or by judicial or administrative action, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

#### ARTICLE 6

##### **Costs**

Unless otherwise agreed, the Requested Party shall pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to travel of persons pursuant to Article 9, which fees, allowances, and expenses shall be paid by the Requesting Party.

#### ARTICLE 7

##### **Record of Government Agencies**

(1) The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies in the territory of the Requested Party.

(2) The Requested Party may provide copies of any record or information in the possession of a government department, agency or a law enforcement entity in its territory, but not publicly available, to the same extent and under the same conditions as such records of information would be available to its own law enforcement or judicial authorities. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

(3) Official records produced pursuant to this Article shall be authenticated in accordance with the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done at the Hague on 5 October, 1961<sup>1</sup>.

#### ARTICLE 8

##### **Authentication of Documentary Information other than Official Records**

Except for official records of government agencies, if authentication is desired the Requested Party shall seek to authenticate the documentary information by the attestation of a person competent to do so, in the manner indicated in the appended Form A or such other form as may be agreed.

#### ARTICLE 9

##### **Testimony**

(1) Voluntary testimony provided by a person with respect to matters covered by this Agreement may be taken by affidavit, deposition in the territory of the Requested or Requesting Party, appearance at a proceeding in the territory of the Requested Party, or such other procedure as may be agreed upon among the Parties and the witness. If a deposition is to be taken in the territory of the Requested Party, that Party shall authorise the presence of persons named in the Request and permit such persons to propound questions to the deponent.

(2) Where a deposition is being taken in the territory of the Requested Party, the Central Authorities shall co-ordinate the date and place for the taking of the testimony.

(3) When the appearance of a person who is in the territory of the Requested Party is needed in the Requesting Party, the Central Authority of the Requested Party shall invite the individual to appear in person before the appropriate authority in the territory of the Requesting Party, and shall indicate the extent to which that person's expenses shall be paid. The response of the person shall be communicated promptly to the Requesting Party.

---

<sup>1</sup>Treaty Series No. 32 (1965), Cmnd. 2617.

(4) The execution by compulsory process of a request for testimony shall be subject to the law of the Requested Party. The Requested Party may require that court proceedings shall have been instituted in the territory of the Requesting Party before it applies its own compulsory process. In this paragraph, instituted court proceedings include grand jury investigations.

#### ARTICLE 10

##### **Assistance in Forfeiture Proceedings**

(1) To the extent permitted by their respective laws, the Parties shall assist each other in proceedings involving the freezing, seizure or forfeiture of the proceeds and instrumentalities of drug trafficking and in relation to proceedings involving the imposition of fines.

(2) If the Central Authority of one Party becomes aware that proceeds or instrumentalities are located in the territory of the other Party and may be liable to freezing, seizure or forfeiture under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for a determination whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is aware of the action taken.

(3) A Requested Party in control of forfeited proceeds or instrumentalities shall dispose of them according to its laws. Either Party may transfer forfeited assets, or the proceeds of their sale to the other Party, to the extent permitted by their respective laws, upon such terms as may be agreed.

#### ARTICLE 11

##### **Compatibility with Other Arrangements**

Assistance and procedures set forth in this Agreement shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other international agreements to which each may be a party, or through the provisions of their respective laws. The Parties may also provide assistance pursuant to any arrangement, agreement or practice which may be applicable, including, but not limited to, any informal agreement between the law enforcement agencies of the Parties concerning the exchange of information relating to drug trafficking.

#### ARTICLE 12

##### **Consultation**

The Central Authorities of the Parties shall consult, at mutually agreed times, to enable the most effective use to be made of this Agreement.

#### ARTICLE 13

##### **Negotiation of a Mutual Legal Assistance Treaty**

The Parties agree to enter into negotiations for a Mutual Legal Assistance Treaty concerning criminal matters within nine months after the date on which this Agreement comes into force, with a view to concluding such a Treaty as soon thereafter as their respective constitutional procedures will permit.

#### ARTICLE 14

##### **Entry Into Force**

This Agreement shall enter into force on the date on which the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland exchange diplomatic notes setting forth their intention to be bound by this Agreement<sup>1</sup>.

---

<sup>1</sup> The Agreement entered into force on 11 April 1989.

**ARTICLE 15**

**Termination**

Either Party may terminate this Agreement by means of written notice to the other Party through the diplomatic channel. Such termination shall take effect six months following the date of notification.

**ARTICLE 16**

**Expiration of the Agreement**

This Agreement shall expire upon the entry into force of a Mutual Legal Assistance Treaty to be concluded between the Parties.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 9th day of February 1988.

For the Government of the United  
Kingdom of Great Britain and  
Northern Ireland:

For the Government of the United States  
of America:

**GEOFFREY HOWE  
DOUGLAS HURD**

**CHARLES H. PRICE II**

FORM A

CERTIFICATE OF AUTHENTICITY

I, ..... attest on penalty of criminal punishment for false statement or false attestation that: I am employed by

..... (Name of business from which documents are sought)

and my official title is ..... (Official Title)

each of the records attached hereto is the original or a duplicate of the original records

in the custody of ..... ; and: (Name of business from which documents are sought)

- A) Such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
B) Such records were kept in the course of a regularly conducted business activity;
C) The business activity made such records as a regular practice; and
D) If such record is not the original, such record is a duplicate of the original.

..... (Signature)

..... (Date)

Sworn to before me this

..... day of..... 19.....

..... (Signature)

..... (Title)