



Treaty Series No. 34 (2003)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of America
regarding the sharing of Forfeited or Confiscated Assets
or their Equivalent Funds

Washington, 31 March 2003

[The Agreement entered into force on 31 March 2003]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 2003*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA
REGARDING THE SHARING OF FORFEITED
OR CONFISCATED ASSETS OR THEIR EQUIVALENT FUNDS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America (hereinafter referred to as "the Parties"),

CONSIDERING the commitment of the Parties to co-operate on the basis of their Agreement Concerning the Investigation of Drug Trafficking Offences and the Seizure and Forfeiture of Proceeds and Instrumentalities of Drug Trafficking which entered into force on April 11, 1989¹; the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances² which entered into force on February 20, 1990 for the United States and June 28, 1991³ for the United Kingdom of Great Britain and Northern Ireland; and their bilateral Treaty on Mutual Legal Assistance in Criminal Matters, which entered into force on December 2, 1996⁴;

CONSIDERING FURTHER the 2000 United Nations Convention against Transnational Organized Crime, opened for signature at Palermo from December 14, 2000⁵; as well as the relevant Recommendations of the Financial Action Task Force;

DESIRING to improve the effectiveness of law enforcement in both countries in the investigation, prosecution, and suppression of crime and in the tracing, freezing, seizure, and forfeiture or confiscation of assets related to crime; and

DESIRING also to create a framework for sharing the proceeds of the disposition of such assets;

HAVE AGREED as follows:

¹ Treaty Series No. 32 (1989) Cm 755

² Treaty Series No. 26 (1992) Cm 1927

³ In fact, the Convention entered into force for the UK on 26 September 1991.

⁴ Treaty Series No. 14 (1997) Cm 3546

⁵ Miscellaneous No. 14 (2002) Cm 5580

ARTICLE 1

Interpretation

For the purposes of this Agreement:

(a) references to "forfeiture" or "confiscation" shall mean any action under national law resulting in -

i) in the case of the United States of America, a judgment which extinguishes title to assets of any description related to, or proceeding from crime, or a sum which amounts to the value of such assets, and the vesting of such title in the government pursuing the action; and

ii) in the case of the United Kingdom of Great Britain and Northern Ireland, a confiscation order which is made by a court and which is not, or is no longer, capable of being the subject of any form of appeal proceedings;

(b) "co-operation" (other than references in the title of the Judicial Co-operation Unit of the Home Office) shall mean any assistance, including intelligence, operational, legal or judicial assistance, and shall include the enforcement of a forfeiture or confiscation order of the other Party, which has been given by one Party and which has contributed to, or significantly facilitated, forfeiture or confiscation in the territory of the other Party;

(c) references to "assets" shall mean assets which are in the possession of a Party, and which comprise the net proceeds realised as a result of forfeiture or confiscation, after deduction of the costs of realisation;

and the provisions of this Agreement are to be interpreted accordingly.

ARTICLE 2

Circumstances in which assets may be shared

In any case in which a Party is in possession of forfeited or confiscated assets, and it appears to that Party ('the Holding Party') that co-operation has been given by the other Party, the Holding Party may, at its discretion and in accordance with domestic laws, share those assets with that other Party ('the Co-operating Party').

ARTICLE 3

Requests for asset sharing

1. A Co-operating Party may make a request for asset sharing from the Holding Party in accordance with the provisions of this Agreement when its cooperation has led, or is expected to lead, to a confiscation or forfeiture. In any case, a request for asset sharing shall be made within one year from the date of entry of the final order of forfeiture/confiscation, unless otherwise agreed between the Parties in exceptional cases.
2. A request made under paragraph 1 of this Article shall set out the circumstances of the co-operation to which it relates, and shall include sufficient details to enable the Holding Party to identify the case, the assets, and the agency or agencies involved.
3. On receipt of a request for asset sharing made in accordance with the provisions of this Article, the Holding Party shall -
 - (a) consider whether to share assets as set out in Article 2 of this Agreement, and
 - (b) inform the Party making the request of the outcome of that consideration.
4. In appropriate cases where there are identifiable victims, consideration of the rights of victims may take precedence over asset sharing between the Parties.

ARTICLE 4

Sharing of assets

1. Where the Holding Party proposes to share assets with the Co-operating Party, it shall:
 - (a) determine, at its discretion and in accordance with its domestic law, the proportion of the assets to be shared which, in its view, represents the extent of the co-operation afforded by the Co-operating Party; and
 - (b) transfer a sum equivalent to that proportion to the Co-operating Party in accordance with Article 5 of this Agreement.
2. The Parties agree that it may not be appropriate to share where the value of the realised assets or the assistance rendered by the Co-operating Party is de minimis.

ARTICLE 5

Payment of shared assets

1. Unless otherwise mutually agreed, any sum transferred pursuant to Article 4 (1) (b) of this Agreement shall be paid -

- (a) in the currency of the Holding Party, and
- (b) by means of an electronic transfer of funds or cheque.

2. Payment of any such sum shall be made -

(a) in any case in which the United States of America is the Co-operating Party, to the United States of America, and sent to the pertinent office or designated account of the Department of Justice or the Department of Treasury as specified in the request;

(b) in any case in which the United Kingdom of Great Britain and Northern Ireland is the Co-operating Party, to the Home Office Accounting Officer, and sent to the Head of the Confiscation Policy Section, Judicial Co-operation Unit, Home Office;

or to such other recipient or recipients as the Co-operating Party may from time to time specify by notification for the purposes of this Article.

ARTICLE 6

Imposition of conditions

Unless otherwise mutually agreed, where the Holding Party transfers any sum pursuant to Article 4(1)(b) above, it may not impose on the Co-operating Party any conditions as to the use of that sum, and in particular may not require the Co-operating Party to share the sum with any other state, government, organisation, or individual.

ARTICLE 7

Channels of communication

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through the Central Authorities designated pursuant to Article 2 of the Treaty on Mutual Legal Assistance in Criminal Matters and, where appropriate, as specified as follows:

- (a) on the part of the United States of America, the Office of International Affairs, Criminal Division, United States Department of Justice. In

addition, the United Kingdom may transmit requests for asset sharing directly to the pertinent component agency of the United States Department of Justice or the United States Department of the Treasury;

(b) on the part of the United Kingdom of Great Britain and Northern Ireland, the International Policy Team, Judicial Co-operation Unit, Home Office;

or by such other nominees as the Parties may from time to time for their own part specify by notification for the purposes of this Article.

ARTICLE 8

Territorial application

This Agreement shall apply:

(a) in relation to the United Kingdom

(i) to England and Wales, Scotland and Northern Ireland;

(ii) to any territory for the international relations of which the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any modifications agreed between the Parties. Such extension may be terminated by either Party by giving six months written notice to the other through the diplomatic channels; and

(b) in relation to the United States of America, to federal proceedings resulting in a forfeiture order and occurring in any state of the United States of America, the District of Columbia, or any commonwealth, territory or possession of the United States of America.

ARTICLE 9

Entry into force

This Agreement shall enter into force upon signature by both parties. This agreement supersedes the exchange of letters dated January 20, 1992, and May 26, 1992¹, between the Secretary of State for the Home Department the Right Honourable Kenneth Clarke QC MP and the Attorney General of the United States William P. Barr, which are hereby revoked.

1. Not a Treaty

ARTICLE 10

Termination of Agreement

Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective six months after receipt of the notice.

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

Done in duplicate at Washington, this 31st day of March Two Thousand and Three.

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

For the Government of the United
States of America

DAVID BLUNKETT

JOHN ASHCROFT

