



Treaty Series No. 88 (1990)

Treaty

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Australia

concerning the Investigation of Drug Trafficking
and Confiscation of the Proceeds of
Drug Trafficking

Canberra, 3 August 1988

[The Treaty entered into force on 12 September 1990]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
December 1990*

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**TREATY
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF AUSTRALIA CONCERNING THE
INVESTIGATION OF DRUG TRAFFICKING AND
CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia;

Desiring to provide mutual assistance, to the extent possible within their respective laws, in the investigation of drug trafficking and the confiscation of the proceeds of drug trafficking;

Have agreed as follows:

ARTICLE 1

Scope of Application

1. The Parties shall, in accordance with this Treaty, grant to each other assistance in investigations and proceedings in respect of drug trafficking, including the tracing, restraining and confiscation of the proceeds of drug trafficking.
2. This Treaty shall not derogate from other obligations between the Parties whether pursuant to other treaties or arrangements or otherwise, nor prevent the Parties providing assistance to each other pursuant to other treaties or arrangements.

ARTICLE 2

Definitions

For the purposes of this Treaty:

- (a) proceedings are:
 - (i) instituted when an information has been laid before a justice of the peace, when a person is charged with an offence after having been taken into custody without a warrant, or when a bill of indictment is preferred; and
 - (ii) concluded when no further action may be taken to obtain a restraining or confiscation order or to enforce such an order in those proceedings;
- (b) "drug trafficking" means engaging or being concerned in the unlawful production, supply, possession for supply, transport, storage, import or export of a controlled drug or a narcotic substance, whether in the United Kingdom, Australia or elsewhere;
- (c) "controlled drug" means a drug specified in Schedule 2 to the Misuse of Drugs Act 1971 for the United Kingdom or a narcotic substance as defined in the Proceeds of Crime Act 1987 for Australia;
- (d) "drug trafficking offence" means an offence of drug trafficking or conspiring or attempting to commit such an offence or inciting, aiding, abetting, counselling, procuring or being an accessory after the commission of such an offence. An offence of assisting another to retain or to dispose of the proceeds of drug trafficking is also a drug trafficking offence;
- (e) "proceeds" means any property that is derived or realised, directly or indirectly, by any person from drug trafficking, or the value of any such property;
- (f) property includes money and all kinds of moveable or immoveable and tangible or intangible property, and includes any interest in such property.

ARTICLE 3

Central Authorities

1. The Parties shall each appoint a central authority to transmit and receive requests for the purpose of this Treaty. Unless the relevant Party designates another authority, the central authority for Australia shall be the Attorney-General's Department, Canberra and the central authority for the United Kingdom shall be the Home Office, London.
2. The central authority of the Requested Party shall take whatever steps it considers necessary to give effect to requests from the Requesting Party.

ARTICLE 4

Contents of Requests

1. Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relate;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) the need, if any, for confidentiality and the reasons therefore; and
 - (f) any time limit within which compliance with the request is desired.
2. Requests for assistance shall also include:
 - (a) if possible, where the request seeks assistance in relation to an investigation, the quantity of drugs involved in the investigation;
 - (b) the identity, nationality and location of the person or persons who are the subject of the investigation or proceeding;
 - (c) a statement as to what sworn or affirmed evidence or statements are required, if any;
 - (d) a description of any information, statements or evidence sought;
 - (e) a description of any documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated.
3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional information be furnished.

ARTICLE 5

Execution of Requests

1. To the extent permitted by its laws, the Requested Party shall provide assistance in accordance with the requirements specified in the request and shall respond to the request as soon as practicable after it has been received.
2. The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in its territory. The Requested Party shall, upon request, provide certified copies of documents.
3. The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

4. The Requested Party shall promptly inform the Requesting party of a decision of the Requested Party not to comply in whole or in part with a request for assistance and the reason for that decision.

5. The Requesting Party shall promptly inform the Requested Party of any circumstances which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

ARTICLE 6

Refusal of Assistance

1. Assistance shall be refused if the request relates to an offence in respect of which:
 - (a) the person has been finally acquitted or pardoned; or
 - (b) the person has served any sentence imposed and any order made as a result of the conviction has been satisfied.
2. Assistance may be refused if:
 - (a) the Requested Party is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interests; or
 - (b) provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested Party, prejudice the safety of any person or impose an excessive burden on the resources of that Party.
3. Before refusing to grant a request for assistance the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 7

Information and Evidence

1. The Parties may make requests for information and evidence pursuant to this Treaty for the purpose of an investigation or a proceeding.
2. The Requested Party shall as appropriate and insofar as its laws permit:
 - (a) provide information and documents or copies thereof for the purpose of an investigation or a proceeding in the territory of the Requesting Party;
 - (b) take the evidence of witnesses and require witnesses to produce documents, records or other material, for transmission to the Requesting Party;
 - (c) search for and seize and deliver to the Requesting Party any relevant material and provide such information as may be required by the Requesting Party concerning the place of seizure, the circumstances of seizure and the subsequent custody of the material seized prior to delivery.
3. Where required by the Requested Party, the Requesting Party shall return material provided under this Treaty when no longer needed for any investigation or proceeding.

ARTICLE 8

Restraint of Property Liable to Confiscation

1. Where proceedings in the territory of a Party may result in the making of an order mentioned in paragraph 1 of Article 9, or where such an order has been made, that Party may request the restraint in the territory of the Requested Party of property for the purpose of ensuring that it is available for confiscation.
2. A request made under this Article shall include:
 - (a) a certificate to the effect that proceedings have been instituted on a specified date against a specified person and that those proceedings have not been concluded or that such proceedings are to be instituted within a specified time;

- (b) a description of the property to be restrained and its connection with the person specified under sub-paragraph (a) of this paragraph, and insofar as possible its whereabouts; and
 - (c) details of any relevant order made by a court of the Requesting Party.
3. Where the restraint of property has been ordered pursuant to this Treaty but there is a representation in the territory of the Requested Party by a person affected by the order, that Party shall inform the Requesting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

ARTICLE 9

Assistance in Enforcing the Confiscation of Proceeds

1. This Article applies to an order made by a court of the Requesting Party as a result of a conviction for a drug trafficking offence, for the purpose of the confiscation of the proceeds of drug trafficking, including:
- (a) in relation to the United Kingdom, a confiscation order made as a result of a conviction for a drug trafficking offence;
 - (b) in relation to Australia, any forfeiture order and any pecuniary penalty order made as a result of a conviction for a drug trafficking offence.
2. A Party may request the assistance of the other Party in enforcing an order to which this Article applies.
3. A request made under this Article shall be accompanied by the following documents:
- (a) an authenticated copy of the order;
 - (b) an authenticated statement that neither the order nor any conviction to which it relates is subject to appeal;
 - (c) a description of the property in relation to which assistance is sought and its connection with the convicted person; and
 - (d) where appropriate, a statement of the amount which it is desired to realise as a result of the assistance.
4. Proceeds confiscated pursuant to this Treaty shall be retained by the Requested Party, unless otherwise mutually decided in a particular case.
5. Where the confiscation of proceeds has been ordered pursuant to this Treaty but there is a representation in the territory of the Requested Party by a person affected by the order, that Party shall inform the Requesting Party as soon as possible, and shall also inform it promptly of the outcome of that representation.

ARTICLE 10

Protecting Confidentiality and Restricting Use of Evidence and Information

1. The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting documents, and the fact of granting such assistance. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.
2. The Requesting Party shall, if so requested, keep confidential any evidence and information provided by the Requested Party, except to the extent that its disclosure is necessary for the investigation or proceeding described in the request.
3. The Requesting Party shall not use for purposes other than those stated in a request evidence or information obtained as a result of it, without the prior consent of the Requested Party.

ARTICLE 11

Certification and Authentication

1. Any documents or other material supporting a request for assistance which seeks the exercise of compulsory powers or the restraint or confiscation of property shall, to the extent required by the Requested Party, be authenticated in accordance with paragraph 3.
2. Any documents or other material supplied in response to a request for assistance shall, to the extent requested, be authenticated in accordance with paragraph 3.
3. A document is authenticated for the purposes of this Treaty if:
 - (a) it purports to be signed or certified by a judge, magistrate or other officer in or of the State of the Party sending the document; and
 - (b) it purports to be authenticated by the oath or affirmation of a witness, or to be sealed with an official seal of the Party sending the document or of a minister of state or department or officer of the Government of that Party.

ARTICLE 12

Costs

The Requested Party shall bear any costs arising in its territory in executing a request, unless otherwise mutually decided in a particular case.

ARTICLE 13

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

ARTICLE 14

Application to Scotland

This treaty shall apply in respect of requests from the Government of Australia to Scotland, but for the purposes of Article 2(a) proceedings shall be considered to be instituted in Scotland when a warrant of apprehension to arrest and commit a suspect person has been granted; or when a person has been charged with an offence after having been arrested without a warrant; or when a restraint order has been made under Section 8 of the Criminal Justice (Scotland) Act 1987.

ARTICLE 15

Territorial Application

This Treaty shall apply:

- (a) in respect of requests from the Government of Australia,
 - (i) to England and Wales and Scotland;
 - (ii) upon notification made through the diplomatic channel by the United Kingdom to Australia, to Northern Ireland, and the Channel Islands and the Isle of Man;
 - (iii) to any territory for the international relations of which the United Kingdom is responsible and to which this Treaty shall have been extended by agreement between the Parties; and
- (b) in respect of requests from the United Kingdom, to Australia.

ARTICLE 16

Entry into Force and Termination

1. Each of the Parties shall notify the other in writing through the diplomatic channel that their respective requirements for the entry into force of the Treaty have been completed. The Treaty shall enter into force 30 days after the later of these notifications¹.
2. This Treaty shall apply to a request made pursuant to it whether or not the drug trafficking to which the request relates occurred prior to the Treaty entering into force.
3. Either Party may terminate this Treaty at any time giving 180 days' written notice to the other through the diplomatic channel.

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

Done in duplicate at Canberra on the 3rd day of August 1988.

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

MARGARET THATCHER

For the Government of Australia:

BOB HAWKE

¹The Treaty entered into force on 12 September 1990.

