



Treaty Series No. 9 (1997)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Co-operative Republic of Guyana

Concerning

Co-operation in the Investigation of Drug Trafficking Offences,
The Forfeiture of Instruments used for or in Connection with
such Offences and the Deprivation of Drug Traffickers of
Financial Benefits from their Criminal Activities

Georgetown, 17 July 1991

[The Agreement entered into force on 24 November 1996]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
January 1997*

**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE CO-OPERATIVE REPUBLIC OF GUYANA
CONCERNING CO-OPERATION IN THE INVESTIGATION OF DRUG
TRAFFICKING OFFENCES, THE FORFEITURE OF INSTRUMENTS USED
FOR OR IN CONNECTION WITH SUCH OFFENCES AND THE
DEPRIVATION OF DRUG TRAFFICKERS OF FINANCIAL BENEFITS FROM
THEIR CRIMINAL ACTIVITIES**

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the United Kingdom) and the Government of the Co-operative Republic of Guyana (hereinafter referred to as Guyana).

Desiring to provide mutual assistance, to the extent possible within the laws in operation in their respective territories, in the investigation of offences relating to drug trafficking, the forfeiture of instruments used for or in connection with such offences and the deprivation of drug traffickers of financial benefits accruing from their criminal activities;

Have agreed as follows:

**PART I
PRELIMINARY**

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "controlled drug" means:
 - (i) in relation to any offence committed in the United Kingdom, any drug specified in Schedule 2 to the Misuse of Drugs Act 1971, as amended from time to time and in operation in the United Kingdom when the offence was committed; and
 - (ii) in relation to any offence committed in Guyana, any substance falling within the definition of "narcotic" in section 2(l)(m) of the Narcotic Drugs and Psychotropic Substances (Control) Act 1988 (No. 2 of 1988) as in operation in Guyana when the offence was committed;
- (b) "drug trafficking" means engaging, or being concerned, in unlawful production supply, possession for supply, transport, storage, import or export of a controlled drug whether in the United Kingdom, Guyana or elsewhere, and in the case of the United Kingdom, the unlawful manufacturing or supplying of a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990;
- (c) "proceeds", in relation to drug trafficking, means any property that is derived or realised, directly or indirectly, by any person by, or as a result of, the commission of drug trafficking, or the value of any such property;
- (d) "property" means all kinds of movable or immovable or tangible or intangible property and includes money and any interest in property.

ARTICLE 2

Scope of Application

(1) A Party to this Agreement shall, in accordance with its provisions, grant to the other Party assistance in investigations and proceedings in respect of offences relating to drug trafficking, including the tracing, and confiscation or forfeiture, of the property of drug traffickers or property relating to drug trafficking, in the territory of the other Party, and restraining dealings in such property pending decision as to the liability of the property for confiscation or forfeiture.

(2) A request made by a Party to this Agreement to the other Party for assistance thereunder shall be complied with by the other Party in accordance with the law in force in the territory of the other Party.

(3) This Agreement shall not derogate from other obligations between the Parties thereto whether pursuant to other treaties or arrangements or otherwise, nor prevent the Parties from providing assistance to each other pursuant to other treaties or arrangements.

PART II

PROVISIONS RELATING TO RESTRAINT, CONFISCATION AND FORFEITURE OF PROPERTY

Assistance from Guyana to the United Kingdom

ARTICLE 3

Restraint of Property Liable to Confiscation

(1) Where any proceedings in the territory of the United Kingdom against any person, in respect of any offence relating to drug trafficking, is likely to result in the making of an order of the nature referred to in paragraph (1) of Article 4, the Government of the United Kingdom may request the restraint in the territory of Guyana of any property of that person for the purpose of ensuring that it is available to satisfy any such order.

(2) A request made under this Article shall be accompanied by:

- (a) a certificate to the effect that proceedings in respect of an offence relating to drug trafficking have been instituted or are about to be instituted against a specified person and that where those proceedings have been instituted, they have not been concluded and the particulars of the offence relating to drug trafficking;
- (b) an authenticated copy of any relevant order made by a court of the United Kingdom; and
- (c) a description of the property in Guyana to be restrained and its connection with the person specified under sub-paragraph (a) and insofar as possible its whereabouts.
- (d) where, pursuant to a request made under paragraph (2) of this Article, the restraint of any property has been ordered, but there is a representation in the territory of Guyana by a person affected by the order, the Government of Guyana shall inform the Government of the United Kingdom as soon as possible of the representation and shall also inform it promptly of the outcome of that representation.

ARTICLE 4

Assistance in Enforcing the Confiscation of Proceeds and Instruments

(1) This Article applies to, and in relation to, an order made by a Court of the United Kingdom as a result of a conviction of any person for an offence relating to drug trafficking, for the purpose of recovering the proceeds instruments of drug trafficking, including a confiscation order made as a result of conviction for any such offence.

(2) The Government of the United Kingdom may request the assistance of the Government of Guyana in enforcing any order to which this Article applies in respect of property in Guyana.

(3) A request made under this Article shall be accompanied by:

- (a) an authenticated copy of the order referred to in paragraph (1) of this Article;
- (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 Guyana in relation to which assistance is sought, its connection with the convicted person and insofar as possible its whereabouts; and
- (d) where appropriate, a statement of the amount which it is desired to realise as a result of the assistance.

(4) Property confiscated and realised by the Government of Guyana pursuant to a request under this Article shall be retained by the Government of Guyana, unless otherwise mutually agreed in a particular case.

(5) Where, pursuant to a request made under paragraph (2) of this Article, the confiscation of property has been ordered but there is a representation in the territory of Guyana by a person affected by the order, the Government of Guyana shall inform the Government of the United Kingdom as soon as possible of the representation and shall also inform it promptly of the outcome of that representation.

Assistance from the United Kingdom to Guyana

ARTICLE 5

Assistance in Enforcing Restraint Orders

(1) Where an application has been made in a court in the territory of Guyana for an order prohibiting any person, suspected to have committed an offence relating to drug trafficking, or any other person on his behalf, from disposing of or otherwise dealing with, any property and that property is in the territory of the United Kingdom, or where any such order has been made, the Government of Guyana may request the Government of the United Kingdom to trace that property and to ensure that it is preserved and is not disposed of or otherwise dealt with so long as the aforesaid application is pending or the order is in operation.

(2) A request made under this Article shall be accompanied by:

- (a) a certificate that an application referred to in paragraph (1) of this Article has been made against a specified person or, where an order referred to in that paragraph has been made against him, an authenticated copy of the order, with the particulars of the person and of the offence relating to drug trafficking to which the application or order relates;
- (b) a certificate by the Director of Public Prosecutions that a charge has been laid or is proposed to be laid against a specified person for an offence relating to drug trafficking and where a charge has not been laid, when it is expected to be laid; and
- (c) a description of the property in the United Kingdom to which the order relates, its connection with the person specified under sub-paragraph (a) of this paragraph and insofar as possible its whereabouts.

(3) Where any representation is made by any person in the United Kingdom in respect of any order referred to in paragraph 1 of this Article, insofar as it relates to any property in the United Kingdom, the Government of the United Kingdom shall inform the Government of Guyana as soon as possible of the representation and shall inform it promptly of the outcome of that representation.

ARTICLE 6

Assistance in Enforcing Forfeiture Orders

(1) This Article applies to an order made by a court of Guyana for the forfeiture of the property of any person who has committed an offence relating to drug trafficking.

(2) The Government of Guyana may request the assistance of the Government of the United Kingdom in enforcing any order to which this Article applies insofar as it relates to any property in the United Kingdom.

(3) A request made under this Article shall be accompanied by:

- (a) an authenticated copy of the order referred to in paragraph (1) of this Article;
- (b) an authenticated statement that the order and, where it is based on a conviction, that conviction, is not subject to appeal; and

- (c) a description of the property in the United Kingdom in relation to which assistance is sought, its connection with the person guilty of the offence relating to drug trafficking, and insofar as possible its whereabouts.
- (4) Any property realised by the Government of the United Kingdom pursuant to a request under this Article shall be retained by that Government, unless otherwise mutually agreed in a particular case.
- (5) Where any representation is made in the United Kingdom by any person in respect of any order referred to in paragraph (1) of this Article insofar as it relates to any property in the United Kingdom, the Government of the United Kingdom shall inform the Government of Guyana as soon as possible of the representation and shall inform it promptly of the outcome of that representation.

PART III

ASSISTANCE IN RESPECT OF OTHER MATTERS

ARTICLE 7

Information, Evidence, etc

- (1) Without prejudice to the provision of Part II, a Party to this Agreement may make requests to the other Party for information, evidence and other assistance for the purpose of investigation into any suspected offence relating to drug trafficking or of any proceedings relating to any such offence.
- (2) A request under this Article may relate to:
 - (a) identifying and locating persons;
 - (b) serving documents;
 - (c) examining witnesses;
 - (d) search and seizure;
 - (e) obtaining evidence;
 - (f) facilitating the personal appearance of witnesses; or
 - (g) obtaining production of judicial or official records.

PART IV

PROCEDURE

ARTICLE 8

Central Authorities

The Parties shall each appoint a central authority to transmit and receive requests for the purposes of this Agreement. Unless the relevant Party designates another authority, the central authority for the United Kingdom shall be the Home Office, London, and the central authority for Guyana shall be the Permanent Secretary, Ministry of Home Affairs, Georgetown.

ARTICLE 9

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 identity, nationality and locations of the person or persons who are the subject of the investigation or proceedings;
 - (d) if possible, where the request seeks assistance in relation to an investigation, a statement regarding the quantity of drugs involved in the investigation;
 - (e) the purpose for which the request is made and the nature of the assistance sought; information necessary for the execution of the request, including any information or document required to be provided under any provision of this Agreement;
 - (f) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (g) the need, if any, for confidentiality and the reasons therefore; and
 - (h) at any time limit within which compliance with the request is desired.
- (2) Requests for assistance shall also include in appropriate cases:
- (a) a statement as to what sworn or affirmed evidence or statements are required, if any;
 - (b) a description of any information sought;
 - (c) a description of statements, records or other articles or other forms 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;
 - (d) a statement as to whether the document or article or other evidence sought to be obtained has to be searched for and seized.
- (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 the Requesting Party that additional information be furnished.

ARTICLE 10

Execution of Requests

- (1) To the extent permitted by the law in force in its territory 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. Where the delivery of a document is postponed as aforesaid, the Requested Party shall, upon request, provide a certified copy of the document.
- (3) The Requested Party shall promptly inform the Requesting Party of any circumstance which is 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 11

Nature of Assistance in Certain Cases

- (1) Without prejudice to the provision of Article 10, on the receipt of a request therefore, the Requested Party shall, insofar as its laws permit and if appropriate,—
 - (a) provide information and documents or copies thereof for the purpose of any investigation or proceeding, referred to in paragraph (1) of Article 7, in the territory of the Requesting Party;

- (b) take the evidence of witnesses and require witnesses to produce documents, records and other material, for transmission to the Requesting Party;
 - (c) search for and seize, and deliver to the Requesting Party, any relevant document, records or other 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.
- (2) Where required by the Requested Party, the Requesting Party shall return material provided under this Agreement when no longer needed for any investigation or proceedings referred to in paragraph (1) Article 7.

ARTICLE 12

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 be contrary to its Constitution or would seriously impair its security, international relations or other essential interests; or
 - (b) provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested Party or 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 the conditions, it shall comply with the conditions.

ARTICLE 13

Protecting confidentiality and Restricting Use of Evidence and Information

- (1) The Requested Party shall, to any extent requested, keep confidential any 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 any purpose other than that stated in a request evidence or information obtained as a result of it, without the prior consent of the Requested Party.

ARTICLE 14

Privilege

- (1) No person shall be compelled in response to a request under this Agreement to give any evidence in the territory of the Requested Party which he cannot be compelled to give:—
- (a) in criminal proceedings in that territory; or
 - (b) subject to paragraph (2) below, in criminal proceedings in the territory of the Requesting Party.

(2) Paragraph (1)(b) above shall not apply unless the claim of the person questioned to be exempt from giving evidence is conceded by the Requesting Party.

(3) For the Purpose of this Article, any reference to giving evidence includes reference to answering any question and to producing any document.

ARTICLE 15

Immunity of Persons Appearing

(1) The Requesting Party may, at the request of the Requested Party, grant immunity to a witness appearing in the territory of the Requesting Party in response to a request under Article 7 from prosecution, detention or any other restriction of personal liberty in respect of criminal acts or omissions, or convictions, before the time of his departure from the territory of the Requested Party.

(2) Without prejudice to Article 12, if the Requesting Party refuses to grant such immunity, the Requested Party may refuse to execute the request under Article 7.

(3) The immunity provided in this Article shall cease in the case of a witness appearing in response to a request under Article 7, when the witness, having had, for a period of fifteen consecutive days from the date when he was notified by the central authority of the Requesting Party that his presence was no longer required by the court exercising jurisdiction in the matter to which the request related, an opportunity of leaving the territory of the Requesting Party, has nevertheless remained in that territory or having left that territory has returned to it.

ARTICLE 16

Certification and Authentication

(1) Any document or other material supplied in response to a request for assistance shall, to the extent requested, be authenticated in accordance with paragraph (2) of this Article.

(2) A document is authenticated for the purposes of this Agreement if:

- (a) it purports to be certified by a judge, magistrate or other officer in the State or of the State of Government 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 17

Costs

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

PART V

GENERAL PROVISIONS

ARTICLE 18

Consultation

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

ARTICLE 19

Territorial Applications

This Agreement shall apply:

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

ARTICLE 20

Entry into Force and Termination of Agreement

- (1) Each of the Parties to this Agreement shall notify the other Party in writing through the diplomatic channel that their respective requirements for the entry into force of this Agreement have been completed. The Agreement¹ shall enter into force thirty days after the later of these notifications.
- (2) This Agreement shall apply to a request made pursuant to it whether or not the drug trafficking offence to which the request relates occurred prior to the entering into force of this Agreement.
- (3) Either Party may terminate this Agreement at any time by giving one hundred and eighty days' written notice to the other Party through the diplomatic channel.
- (4) Notwithstanding the termination of this Agreement its provisions shall apply to, and in relation to, any request for assistance made under it before such termination.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement. Done in Duplicate at Georgetown this 17th day of July 1991.

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

For the Government of the Co-operative
Republic of Guyana:

S. J. HISCOCK

K. S. MASSIAH

¹ The Agreement entered into force on 24 November 1996.

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