

Papers passed to LPA & HSec
offices. MEN 24/7

PRIME MINISTER

CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING

H Committee on Thursday are considering the Report of the Mellor Working Group. You are up to date on the action on drugs the Government has already taken, and the proposals in the pipeline.

There is one particular point however, on forfeiture, which the Working Group has not been considering, but which will come up for discussion at H. Discussion will be based on the Home Secretary's recent minute to the Lord President, setting out his latest proposals, following comments received from you and others on ideas he circulated earlier.

The Home Secretary's letter is at flag A, your reactions to his earlier proposal at flag B. Your main concern then was that the Home Secretary's key suggestion, that legislating for unlimited fines would be better than arranging for straight forfeiture, was unconvincing.

Hartley Booth does not believe the Home Secretary's revised proposals meet the point. He thinks that basing the legislation on fines rather than on forfeiture loses the impact that the latter label has. The Home Secretary's reference to "confiscatory fines" does not have the same effect. More important, Hartley also believes that a policy based on forfeiture would be easier to operate, because it will mean that assets do not have to be individually valued to work out the sentence. Finally, he is concerned that the Home Secretary's proposal that the courts would be required to impose a fine which "has regard to" the illicit gains is not strong enough: he still believes, as I think you will, that the link here must be more tightly drawn.

On the other hand, Hartley accepts that the Home Secretary's revised proposals have gone some significant way towards meeting your concerns. In particular, the presumption that

assets should be assumed to represent the proceeds of trafficking, with the burden of proving otherwise resting with the defendant. Hartley also takes the point that fines may be more flexible in that assets which have been bought with effectively laundered money would be outside the scope of forfeiture legislation but caught by legislation based on fines. (I do not in fact believe this is necessarily so; if the asset has been bought with really clean money, or if the profits from trafficking had simply been spent, I doubt if there is much to choose between either route.)

We must have it.

So far as legislative vehicle is concerned, the Home Secretary's letter is non-committal. The penultimate paragraph carries a worrying suggestion, however, that legislation next session might not prove possible. You are, of course, on the record as saying the proposals will be brought in then.

Content that I should reflect to the Lord President, before H meets on Thursday, that:

- (i) you generally welcome the improvements which the Home Secretary has made to his original proposals; *Yes*
- (ii) you remain, however, unconvinced that the forfeiture route is the wrong one; and *Yes*
- (iii) somehow or other, a way must be found to introduce the legislation next session? *Yes*

Duty Clerk

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pp. MARK ADDISON
23 July 1985