

CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING

You will recall considering recently the Home Secretary's revised proposals for legislation. You remained, however, unconvinced that the fines route was preferable to forfeiture. You were also concerned that, unless the courts were required to impose a fine which was linked closely to traffickers' illicit gains, the fines would not in practice be confiscatory.

The Home Office response, attached, is a helpful one. It sets out the Home Secretary's thinking more clearly than his earlier letter. It shows that he is quite clear that fines will provide a more flexible and more water-tight arrangement than forfeiture; their key advantage being the scope they offer to impose the proper penalty even where the "laundering" appears faultless.

The Home Secretary, while sticking to his strong preference for fines, has however agreed to meet your concern to ensure that the fines are in practice confiscatory, by requiring the courts to impose a fine of the appropriate order.

I think you will now wish to:

- (i) thank the Home Secretary for his further explanation; ✓
- (ii) welcome his agreement to amend his proposals to ensure the size of the fine is adequate, and ✓
- (iii) indicate you are content with the package as a whole. ✓

You will also wish to welcome his determination to ensure the necessary legislation is introduced next session.

I have checked with Hartley Booth, and he is content with this advice.

Mark Addison

David MB

MARK ADDISON

7 August 1985

VC4ABK



10 DOWNING STREET

From the Private Secretary

8 August 1985

CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING

Thank you for your letter of 5 August.

The Prime Minister was grateful to the Home Secretary for his fuller explanation of the advantages he sees for the fines approach over forfeiture. She welcomes his decision to amend the proposals to require the Courts to impose a fine of the appropriate amount. She is now content with the package as a whole.

The Prime Minister also welcomes the Home Secretary's determination to ensure the necessary legislation is introduced next Session.

I am copying this letter to Joan MacNaughton (Lord President's Office) and Richard Watson (Cabinet Office).

Mark Addison

Hugh Taylor, Esq.,
Home Office.

CST

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

5 August 1985

Dtn Mark

CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING

Thank you for your letter of 26 July.

The Home Secretary was grateful for your further explanation of the reasons why the Prime Minister still feels concern over going down the fines route. He agrees that in certain fairly simple and straightforward cases a forfeiture provision might work quite well. These would be cases where the proceeds of trafficking by the offender are represented by assets which are still in his possession (or have been transferred to third parties for less than full value) and are within reach of our courts. However, there will also be cases in which the defendant can be proved to have received proceeds exceeding the value of the assets derived from that source which are still in his possession; in such a case, in accordance with the principle that the whole of an offender's property can be used to satisfy a fine, any of the assets he has - however "clean" - would be liable to confiscation in pursuance of a confiscatory fine. Again, it is possible that the assets which represent the proceeds of trafficking have been salted away in a country with which we have not been able to conclude a reciprocal agreement. In that event, use of the power to fine means that "clean" assets in this country can be confiscated to secure payment of a fine based on the amount of the proceeds. I hope that these practical examples help to show how important it is to break the link which forfeiture would require between particular assets and the proceeds which the offender has received.

Moreover, in the case where assets have been salted away overseas, it is also important that the courts should have at their disposal the enhanced power to impose imprisonment for culpable default in payment which become available if we go down the fines route. It is for these reasons that the Home Secretary believes that use of the power to fine will be at once more flexible and more effective, and he hopes that in the light of the explanation I have given the Prime Minister may agree.

/You mentioned

Mark Addison, Esq

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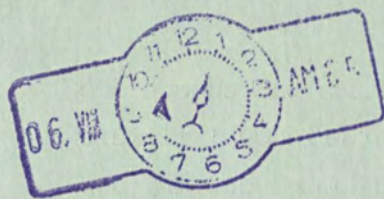
You mentioned that the Prime Minister is concerned that, unless the courts are required to impose a fine which is linked more closely to traffickers' illicit gains, the fines will not in practice be confiscatory. The Home Secretary sees the force of this point, and on reflection he thinks that it would be right to require the Crown Court to make the amount of a confiscatory fine equal to the value of the proved or presumed proceeds of the trafficking. On top of that the Crown Court would have the power to impose an additional fine if it thought it appropriate to do so in any particular case. He will adjust his proposals accordingly.

The Home Secretary entirely accepts the need to ensure that the necessary legislation is introduced next session, and will be pursuing this aspect of the matter separately.

I am sending copies of this letter to Joan MacNaughton and Simon Hickson.

Yours sincerely
H H TAYLOR

H H TAYLOR



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CLH8

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

12 August 1985

Dear Len

NSPm.

CONFISCATION OF THE PROCEEDS OF DRUG TRAFFICKING

Thank you for your letter of 23 July in which you deal with the points raised by our colleagues in the earlier round of correspondence. I see from the comments on your later letter that our colleagues are broadly in agreement with what you now propose, subject to certain detailed points and to the more important questions of resources. I think therefore that the time has arrived where formal policy approval for what you propose may be given, subject to further agreement on detailed issues and on the self-financing character of the scheme. I understand that further discussions on these issues are taking place between your officials and those of the Lord Chancellor, the Attorney General and the Chief Secretary.

As far as the procedure for giving effect to your proposals in next session's legislative programme is concerned, we shall have an opportunity to discuss this at QL Committee on 11 September.

I am sending copies of this letter to the Prime Minister, the members of H and L Committees, the Attorney General, the Lord Advocate, First Parliamentary Counsel and Sir Robert Armstrong.

Yours
L. Brittan

The Rt Hon Leon Brittan QC MP

HOME AFFAIRS : Drug Abuse : Pt 2

10/11/78

