

FORFEITURE OF ASSETS IN DRUGS CASES

Now that forfeiture legislation is not going to be attached to the football anti-alcohol measure in this session, there is time to devise more powerful legislation on asset forfeiture. We suggest several important amendments to the Home Secretary's paper of 10 June:

1. While a new offence of acquiring/possessing/using or laundering the proceeds of drug trafficking is needed in view of the agreed estimates that this is an illicit trade of between £500 and £1 billion per year, the punishment proposed is wrong. The Home Office suggest prison and unlimited fines. They do not propose forfeiture of assets. Unlimited fines to a judiciary that have rarely imposed fines of over £0.25 million will be misinterpreted. We need either to presume that the fine will take all the assets of the drug baron or better still to be direct and give the power to forfeit assets, as has already been our declared intention.
2. The Home Office import a complication into the potential new legislation. What is necessary is for the drug baron to have his assets forfeit, unless he can prove that they were gained lawfully. We should not impose a duty on the Crown to consider the complicated matter of an individual's profit and loss until the accused or convicted man puts in the defence that his goods were obtained lawfully.
3. The Home Office shift the burden to the defence in respect of assets obtained or owned by drug

traffickers. There is precedent for this and we should not be shy of this principle. The Home Office make it too complicated and therefore are ~~less~~^{more} open to defeat. A simpler way than the provision proposed by the Home Office is as follows:

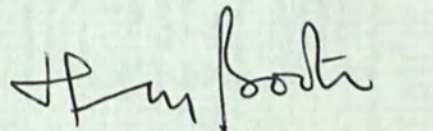
- Stage 1, before arrest on warrant allow full powers to search bank accounts and bankers books (the gap in present law).
- Stage 2, following issue of arrest warrant or at arrest freeze the offender's assets. (Home Office agree part of this).
- Stage 3, when a prima facie case ^{has been established} that these #3. assets are owned by or are the property of the offender, then the burden shifts to the offender to prove that he obtained them lawfully. He can apply then or after conviction to rebut that presumption.
- Stage 4, on conviction the assets are duly forfeited unless the offender can rebut the burden.

The Lord Chancellor has made various helpful suggestions which pose no insuperable problem, providing we use first-class enquiry agents or accountants to 'follow' the assets of drug barons and allow some restricted right of appeal after forfeiture and rights to third parties. We should pursue international efforts to follow money,
✓ including mutual assistance treaties with Switzerland, Belgium and the Caribbean to obtain more banking
✓ information. On warrants, Inland Revenue information should be revealed to prosecution authorities.

The principal purpose of this legislation is to ensure that drug empires do not flourish while their leaders are in prison. The powers suggested enable the courts to seize all the assets they can find, therefore the question of imprisonment for default raised by the HO is totally unnecessary.

I have discussed these matters in detail with the Assistant Deputy Attorney General of the United States, who supervises similar law in the US and who supports our proposals. Their law has proved most successful.

We recommend you indicate that the proposals by the Home Office to fine instead of forfeit drug traffickers' assets do not have sufficient teeth, and that you go for our stronger option.

A handwritten signature in cursive script, appearing to read "Hartley Booth".

HARTLEY BOOTH