

Unexplained Wealth Orders In the United Kingdom

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Unexplained Wealth Orders History

- Some countries already have something called an Unexplained Wealth Order. But each one is different.
- Some countries have an illicit enrichment offence.
- UK experience was inability to obtain evidence in specific suspicious cases – often relating to MLA or crime bosses.
- Introduced in January 2018 – part of the Criminal Finances Act 2017.

What is an Unexplained Wealth Order?

- A UWO is an investigation tool. Primarily designed to obtain evidence/information on specific property.
- It is **not** a final power of recovery
- It requires the respondent to provide specified information on -
 - their lawful ownership of an identified property, and
 - the means by which it was obtained.
- It is an addition to a number of financial investigation powers already available. Should not be viewed in isolation but another available tool.
- Supporting power to freeze relevant property – Interim Freezing Order



Conditions for a UWO

- Issued by the High Court as a civil investigation order.
- It is available against those connected to
 - serious crime
 - non-EEA PEPs
- In relation to specific identified property worth more than £50,000
- There are reasonable grounds for suspecting that the income of the respondent is insufficient to have obtained the wealth to hold the property.
- Provides a deadline to produce information to explain their legitimate ownership of the identified property.
- Available to limited number of law enforcement agencies – cases can be referred to them.

What next?

- If information is produced in response to a UWO – a decision can be made on further use of that information
 - Criminal investigation and/or court proceedings? (self-incrimination)
 - Civil investigation and/or court proceedings?
 - Further UWO – to trace beneficial ownership.
 - No further action.
- If information is not produced in response to a UWO – the property may be presumed to be liable to recovery under subsequent domestic civil recovery (non-conviction based confiscation) proceedings.

What is civil recovery?

- Civil proceeding in the High Court. Non-conviction based confiscation
- Recovery of the proceeds of crime (directly/indirectly). Focus on property.
- Modelled on normal civil procedures – including -
 - Full court hearing with usual safeguards.
 - Right of interested persons to make representations.
 - Interim freezing orders.
 - Onus on law enforcement agency – to the balance of probabilities.
- £10,000 threshold
- Limited number of law enforcement authorities can take proceedings; cases can be referred.

In relation to UWOs

- The issue can be argued if the respondent intervenes.
- No cases yet reached this stage.

MLA context

- The UWO was designed for a domestic proceeding issue relating to the inability to obtain evidence. No obvious utility in international cooperation.
- But, is available. The UK decides which powers to use in response to a MLA evidence request.
- The consequences of non-compliance do not apply in MLA cases – i.e. the presumption the property is recoverable.
- If a MLA request has been made, it is likely a more focussed investigative tool will be available.
- The UK could apply for a domestic UWO on the basis of information supplied from abroad.

Example and potential

- Zamira Hajiyeva - appeal
- Changed behaviour – examples of engagement with law enforcement
- Clear potential in international corruption cases – re PEPs
- Asset return