

# Unexplained Wealth Orders and the UK Criminal Finances Act 2017

The Criminal Finances Act 2017 provides new powers to enable law enforcement agencies to identify and recover corrupt and criminal funds from those seeking to hide, use or move them in the UK.

The Act introduced unexplained wealth orders (UWOs), which can be used to compel individuals to explain the sources of their wealth. This is a powerful new weapon for tackling illicit finances and corruption, and the first UWOs have already been issued by the courts.

# 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

# Who can apply for a UWO?

The ability to apply for a UWO is limited to those agencies defined as an “enforcement authority”, namely, in England and Wales;

- the National Crime Agency,
- Her Majesty’s Revenue and Customs,
- the Financial Conduct Authority,
- the Serious Fraud Office, or
- the Crown Prosecution Service)

It is therefore not available to the wider law enforcement and prosecution community, except by referral to an “enforcement authority

UK Law enforcement agencies and prosecution agencies who do not have direct access to the powers can consider referring a suitable case to an enforcement authority.

# Conditions for a UWO

## Serious Crime

- A UWO requires a person who is **reasonably suspected of involvement in, or of being connected to a person involved in, serious crime** to explain the nature and extent of their interest in particular property, and to explain how the property was obtained, where there are reasonable grounds to suspect that the respondent's known lawfully obtained income would be insufficient to allow the respondent to obtain the property.
- The test for involvement with serious crime is by reference to Part 1 of the Serious Crime Act 2007.

# Conditions for a UWO

## Politically Exposed Person

- A UWO can also be applied to politicians or officials from outside the European Economic Area (EEA), or those associated with them i.e. Politically Exposed Persons (PEPs).
- A UWO made in relation to a non-EEA PEP would not require suspicion of serious criminality.

# Key Conditions

- The High Court must be satisfied that:
- They are a PEP (no reasonable grounds for suspicion, they either are or they are not) **or** there are reasonable grounds for suspecting involvement in serious crime
- There is reasonable cause to believe the respondent holds the property;
- There are reasonable grounds for suspecting that the income is insufficient
- The property is of a value of over £50,000

# Interim Freezing Orders

An order which prevents the Respondent or any other person with an interest in the property from in any way dealing with the property.

Test is that High Court considers it 'necessary' to make an order to avoid the risk of any recover order being frustrated.

An application is required from the Law Enforcement Agency and must be made during the same proceedings.

Exclusions for reasonable living costs, legal costs and carrying on trade or occupation.

# 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.



# 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.

# Consent Regime

Under the Proceeds of Crime Act (POCA), individual persons and businesses in the regulated sector are required not only to report (before the event) suspicious transactions or activity that they become aware of, but to desist from completing these transactions until a specific consent is received from the UKFIU/NCA.

This is the 'consent regime' as described in POCA, requiring the submission of a Defence Against Money Laundering Suspicious Activity Report (or DAML SAR).

Under the consent regime, once a DAML SAR has been submitted, there is a **notice period of 7 days** in which consent may or may not be given to the transaction proceeding.

If a refusal is given, then a **31 day** moratorium period commences.

# Moratorium Extension

The new power in the Criminal Finance Act to extend the moratorium period enables extensions of this moratorium period, in situations where the NCA has refused consent for a transaction to proceed.

The initial 31-day moratorium period is sometimes not enough, particularly when the law enforcement agency needs to obtain evidence, or to secure formal letters of request from overseas authorities.

This power allows applicants to seek an extension to the moratorium period for up to an additional 31 days at a time, **up to a maximum of 186 days** to allow investigations to continue, on the proviso that the investigation is being conducted appropriately.

The UKFIU can decide to grant consent at any time following the making of an order extending the moratorium period.

# More Information

<https://www.gov.uk/government/publications/circular-0032018-criminal-finances-act-unexplained-wealth-orders/circular-0032018-unexplained-wealth-orders>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778697/Home\\_Office\\_Circular - Moratorium CW clean FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778697/Home_Office_Circular_-_Moratorium_CW_clean_FINAL.pdf)