



# Criminal Finances Bill

## Unexplained Wealth Orders

- Unexplained Wealth Orders (UWO) will mean an individual or company will have to explain the origin of assets that appear to be disproportionate to their known income *and* if they are suspected of involvement in, or association with serious criminality.
- The power can also be applied to foreign politicians or officials, their family members or close associates, as such people can pose a particularly high corruption risk.
- The National Crime Agency, Crown Prosecution Service, Financial Conduct Authority, Serious Fraud Office and HM Revenue and Customs will all be able to apply for a UWO.
- If content with the application, the court would issue a UWO. If the individual or company were not able to provide a response to the UWO it would mean law enforcement agencies could try and recover the property through existing civil recovery powers.
- This power, along with the existing civil recovery powers, will be subject to safeguards, for example, the decision will be made by a High Court judge.

## Background

- Individuals who are involved in grand corruption overseas or in serious crime may seek to launder the proceeds of their crime in the UK.
- Law enforcement agencies often have reasonable grounds to suspect that assets identified during criminal or civil recovery investigations are the proceeds of serious crime.
- However, it is often not possible to take action because law enforcement agencies are unable to get sufficient evidence, particularly if they need evidence from overseas.
- The UWO provisions seek to fill this gap by creating a new investigative power to require people to explain the source of their wealth.
- Applications for UWO may be made to the High Court. Any order made will specify a time period for the subject to respond. Assets can be frozen to prevent the subject from selling or moving the assets during this period.
- A failure to respond will mean that the assets can be made subject to civil recovery action under the Proceeds of Crime Act 2002.
- A person can also be found guilty of an offence if they provide false or misleading information in response to an UWO.
- The measure will be subject to safeguards – the application must be made to a High Court and there will a statutory code of practice.

## Key facts

- The NCA estimates that the amount of money laundered in the UK could be up to £90 billion.
- The European Commission estimates that corruption costs EU member states around €120bn per year.
- £180m+ worth of property in UK has been brought under criminal investigation as the suspected proceeds of corruption since 2004. This is believed to be only the tip of the iceberg of the proceeds of corruption invested in UK property.
- Over 75% of the properties under criminal investigation employ offshore corporate secrecy.

*“Unexplained Wealth Orders would fill a key gap in the UK’s anti-corruption legislation, and make sure that the UK is no longer seen as a safe haven for corrupt wealth ... This is a chance for the UK to step back from complicity in crimes of corruption.”*

**Robert Barrington, Transparency International, October 2016**

*“Everyone accepts that money laundering is a major issue...in the developing world in particular, there is a constant, never ending haemorrhage back into the developed world and our banking system of money that should be going to the poor. Something should be done about it”.*

**Lord Brennan QC, Hansard, 9 Dec 2013**



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## Corruption is not a new issue in the UK. Why are Unexplained Wealth Orders necessary?

- The UK's efforts to assist countries in recovering the proceeds of corruption in recent years have shown that our existing powers are not sufficient.
- Obtaining reliable evidence to prosecute for criminal offences committed overseas requires effective Mutual Legal Assistance. This is often unavailable from countries that have undergone regime change, or where the local law enforcement institutions are themselves subject to corruption.

## Why target foreign officials/politicians?

- Politically exposed persons, by the very nature of their role, have power and access that can be abused for private gain.
- The vast majority of politically exposed persons are not corrupt, but they represent a specific category of persons who have been identified as high risk under UK and international anti-money laundering rules.

## Why aren't we simply criminalising this conduct, rather than adding yet another hurdle into the already lengthy process for obtaining assets under POCA?

- Our aim with this provisions is to ensure that illicitly held property in the UK is recovered.
- The UWO provisions fit into the existing civil recovery scheme under POCA, which means that law enforcement agencies only have to prove, on the balance of probabilities, that the property is derived from unlawful conduct – a lower standard of proof than would be needed for a criminal offence.

## What are the safeguards on the use of these orders?

- An application for a UWO can only be made by certain bodies – the SFO, NCA, CPS, Financial Conduct Authority and HMRC.
- The applicant agency must prove to the High Court that there are reasonable grounds for suspecting that the individual, or persons connected with them, is involved in serious criminality or that they are Politically Exposed Person.
- If an individual provides satisfactory answers to the UWO then the UWO can fall away and no further action may be taken.

## Forcing individuals to reveal the origins of their property is unfair surely? What if this property is perfectly legitimate?

- The purpose of an UWO is to help UK law enforcement agencies to identify property that may have been laundered in or through the UK.
- A law enforcement agency will still need to prove to the High Court that there are reasonable grounds to suspect that the known sources of income are insufficient for the purposes of enabling the person to obtain the property – this is a valuable safeguard to ensure that the power is not used inappropriately.
- It is open to an individual to respond to the UWO and prove the legitimacy of their wealth.

## Why are the existing investigative powers in POCA not enough?

- The existing powers may not have any extra-territorial effect therefore if the owner of the property is overseas they are not sufficient to tackle the particular problem of obtaining evidence against overseas politically exposed persons.
- The UWO will provide a valuable addition to the existing powerful suite of investigation powers in POCA to ensure that the operational agencies can tackle this particular type of criminality.

## How will this work in practice?

