

An Introduction To The UK's Unexplained Wealth Orders

By **Konstantin Kroll and Matthew Lawson** (March 13, 2018, 3:52 PM EDT)

Law enforcement authorities in the U.K. have obtained a new instrument in their fight against crime.

Starting Jan. 31, 2018, U.K. enforcement authorities can apply for court orders against individuals suspected of being involved in or connected to serious crime or "politically exposed persons" ("PEP") outside the European Economic Area ("EEA"), requiring them to explain the source of their assets. The new orders, known as "unexplained wealth orders" or "UWOs," have a wide geographical scope and may apply to any property, tangible or intangible, with a value greater than 50,000 pounds.

The introduction of UWOs follows similar action implemented in Ireland and Australia. Other foreign jurisdictions are likely to follow suit.

Conditions for the Grant of a UWO

UWOs were introduced in the U.K. by the Criminal Finances Act 2017, which amends the Proceeds of Crime Act 2002. A UWO is a court order requiring an individual (the "respondent") to provide a statement setting out the nature and extent of their interest in the property with respect to which the order is made, as well as explaining how they obtained the property and providing further information about the property, if required under the order.

Importantly, UWO will apply not only to individuals but also to other structures that can hold property, such as trusts.

UWOs are available to Her Majesty's Revenue and Customs, the Financial Conduct Authority, National Crime Agency, the director of the Serious Fraud Office and the director of Public Prosecutions.

The court will only grant a UWO if it is satisfied that:

- there is reasonable cause to believe that the respondent holds the property, and the value of the property is greater than 50,000 pounds;



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- there are reasonable grounds for suspecting that the known source of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property; and
- the respondent is a PEP or there are reasonable grounds for suspecting that the respondent, or a person connected to the respondent, is, or has been, involved in a serious crime (whether in the U.K. or overseas).

"Serious crime" — as explained in the Serious Crime Act 2007 — includes bribery, tax and money laundering offences.

The court's powers to grant a UWO are very broad. First, the rules have wide extraterritorial scope: there is no requirement for the respondent or the relevant property to be situated in the U.K., although it is likely in practice that the court would require some kind of U.K. nexus. Second, the provisions are retrospective and may apply to property obtained before Jan. 31, 2018. Third, the respondent does not need to be the sole owner of the property.

If the court considers it necessary, the UWO may be accompanied by an interim freezing order preventing the respondent from dealing with the property. The courts have the power to impose the UWO as long as there are reasonable grounds for suspecting that the sources of the respondent's lawfully obtained income would have been insufficient for the purposes of obtaining the property in question.

UWO will require respondents to provide a statement setting out the nature and extent of their interest in a property in question, explain how the property was obtained, and clarify how funds were obtained to pay for the property.

What Happens Next?

The grant of a UWO does not, by itself, give the relevant enforcement authority the power to recover assets. However, the enforcement authority will consider what further investigatory or enforcement steps are required, based on the information received in response to the UWO.

It is a criminal offence knowingly or recklessly to provide a materially false or misleading statement in response to a UWO. The maximum sentence upon conviction will be two years' imprisonment.

If the respondent fails, without a reasonable excuse, to comply with the UWO within the period specified in the order, the respondent's interest in the property may be presumed to be recoverable property for the purpose of any civil recovery proceedings under the Proceeds of Crime Act. The respondent will have the burden of proving otherwise.

Who is a "PEP"?

A UWO may be made in respect of a non-EEA PEP without the need to establish that there is a suspicion of serious criminality. For these purposes, a PEP is defined as:

- an individual who is, or has been, entrusted with prominent public functions by an international organization or by a state other than the U.K. or another EEA state; or

- a family member or close associate of, or someone otherwise connected with, such an individual.

In accordance with the EU Fourth Money Laundering Directive and the U.K. Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, individuals entrusted with prominent public functions will include:

- heads of state, heads of government, ministers and deputy or assistant ministers;
- members of parliament or of similar legislative bodies;
- members of the governing bodies of political parties;
- members of supreme courts, of constitutional courts or of other high-level judicial bodies;
- members of courts of auditors or of the boards of central banks;
- ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- members of the administrative, management or supervisory bodies of state-owned enterprises; and
- directors, deputy directors and members of the board or equivalent function of an international organization.

"Family members" will include spouses or individuals considered to be equivalent to spouses, children and their spouses, and parents of PEPs. "Close associates" will include individuals with close business relations with a PEP or who own a legal entity set up for the de facto benefit of a PEP.

What Assets May be Subject to a UWO?

The court may make a UWO with respect to any property. "Property" is defined broadly under the relevant section of the Proceeds of Crime Act to mean all property wherever situated, including money, things in action and other intangible or incorporeal property. Assets, such as securities and money in bank accounts, could therefore be subject to a UWO, although real estate is the most obvious target.

As UWOs have only been recently introduced, it is hard to predict how widely they may be used in practice. However, given a broad scope, they may potentially affect a wide variety of transactions, not just in relation to real estate but also in the corporate context.

The introduction of UWOs puts a new emphasis on the importance of following the best practices in relation to KYC (know your client) and AML (anti-money laundering) procedures.

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