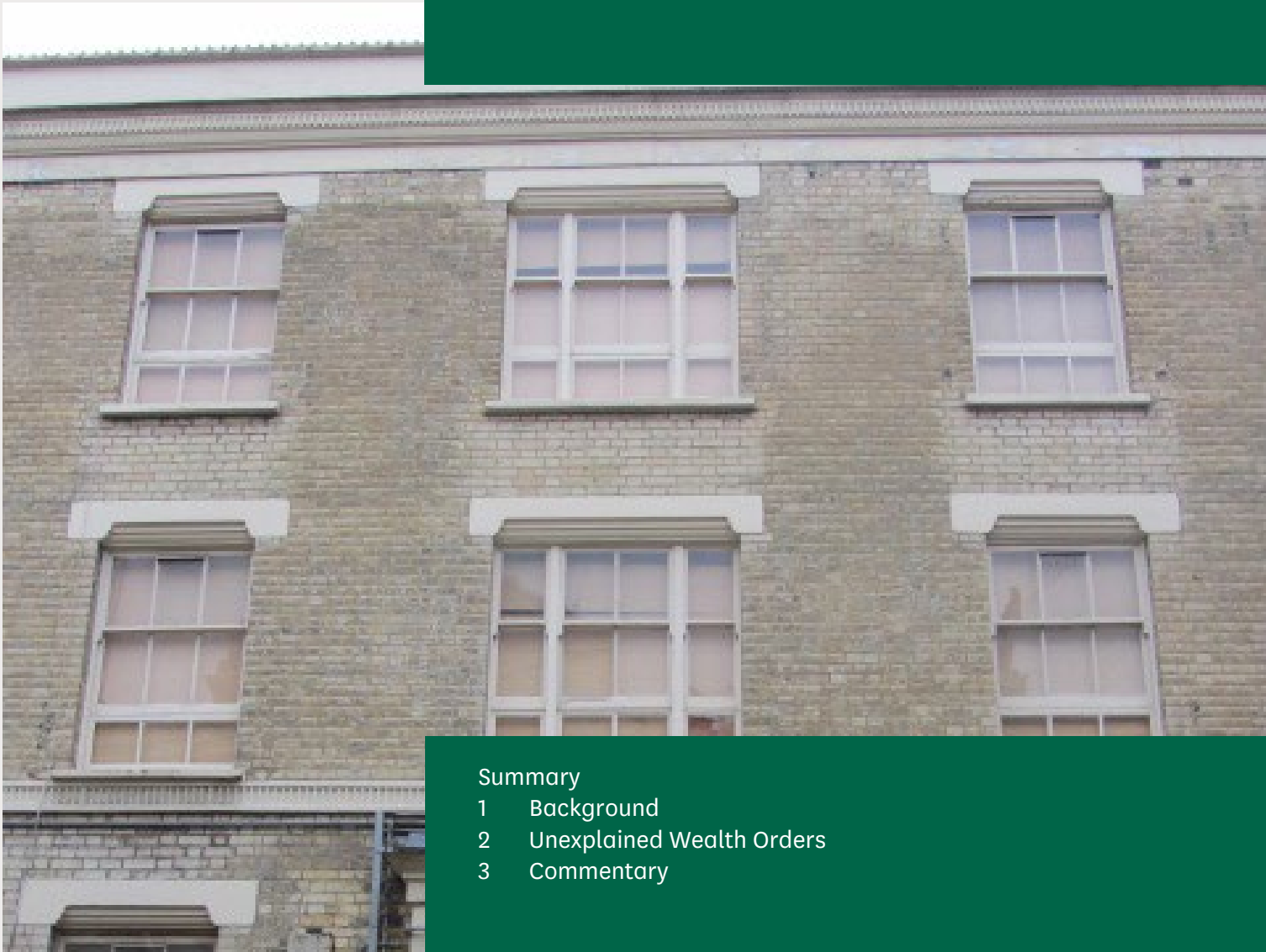


Research Briefing

By Ali Shalchi

14 April 2022

Unexplained Wealth Orders



Summary

- 1 Background
- 2 Unexplained Wealth Orders
- 3 Commentary

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

1	Background	6
1.1	The pre-2002 position	6
1.2	Civil recovery orders	6
1.3	The path to Unexplained Wealth Orders	8
2	Unexplained Wealth Orders	10
2.1	Who can obtain a UWO?	10
2.2	Against whom can a UWO be obtained?	10
2.3	How is a UWO obtained?	11
2.4	What is a UWO?	13
2.5	Interim freezing orders	13
2.6	Failure to comply	13
2.7	Criminal offence: false statements	14
3	Commentary	16
3.1	The first UWO	16
3.2	The first recovery of assets	16
3.3	The first failed application	17
3.4	Number of UWOs used	18
3.5	Criticism	19
3.6	International comparisons	20

Summary

For some time the UK has been accused of being a hub for dirty money – especially London’s prime property market. Unexplained Wealth Orders (UWOs) give law enforcement an opportunity to confiscate criminal assets without ever having to **prove** that the property was obtained from criminal activity.

Origins of UWOs

The [Proceeds of Crime Act 2002](#) introduced Civil Recovery Orders (CROs) to help tackle the problem. CROs permitted the confiscation of criminal property using a lower “civil” standard of proof. Instead of needing to prove a crime was committed, law enforcement bodies only needed to show a court that on the balance of probabilities (or “more likely than not”) unlawful conduct had occurred, and that the property was obtained as a result of that unlawful conduct.

However, use of CROs was limited to exceptional cases where the prospect of criminal prosecution was unavailable or undesirable. It didn’t help in the most difficult cases, such as where concrete evidence was hard to obtain because the alleged launderer was part of, or had the support of, a foreign regime.

The [Criminal Finances Act 2017](#) therefore introduced Unexplained Wealth Orders (UWOs). Nicknamed “McMafia Orders” (after the book and TV series of the same name), these went a step further than CROs. Targeted at people linked with serious crime or who hold public office outside of Europe, they allow law enforcement to apply for a court order requiring someone to explain their interest in property and how they obtained it. If that person fails to comply, law enforcement may then apply to the court for a CRO with the benefit of a presumption that the property should be confiscated.

Use of UWOs

Although they have been available from January 2018, the use of UWOs has been limited. By February 2022 [only nine orders](#) had been issued, relating to four cases. None have been obtained since the end of 2019. There have been high-profile successes and failures.

A similar regime in Australia has also had limited success, whereas that in Ireland is credited with having significantly disrupted economic crime.

A UK Government money laundering risk assessment concluded in December 2020 that [money laundering has probably increased](#) since 2017, suggesting that UWOs are yet to have the desired impact in the UK.

Reform of UWOs

In March 2022 the Government fast-tracked passage of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#) in response to the Russian invasion of Ukraine. The Act introduced significant reforms to the UWO regime, intended to make them easier to obtain, enforce and monitor. Our [briefing on the Act](#) discusses those reforms in more detail.

A Government fact sheet relating to the Act noted that [it was difficult to say whether the Act's reforms would increase the number of UWOs obtained](#), but that “even a single UWO will have a high impact”.

Wider action on money laundering has been set out in the Government's [Economic Crime Plan 2019 to 2022](#), as discussed in our briefing [Economic crime in the UK: a multi-billion pound problem](#).

1 Background

For some time [the UK has been accused of being a hub for dirty money](#) – especially London’s prime property market. New laws have been brought in over time to make tackling economic crime easier for law enforcement bodies.

1.1 The pre-2002 position

Under the [Criminal Justice Act 1988](#), confiscating the proceeds of criminal property – for example, a mansion bought from stolen money – was “conviction-led”. Law enforcement needed to prove that a criminal offence (such as theft) had been committed (to the criminal standard, often summarised as “beyond reasonable doubt”). Once they had proven the offence to this high threshold, they would need to prove, to the civil standard (“on the balance of probabilities”), that the money and property was gained through the unlawful conduct. So as an example, if someone had stolen money and used it to buy a car, to be able to confiscate the car law enforcement would first need to successfully prosecute the thief, and then show that the car was probably bought using that stolen money.

In October 1998 Prime Minister Tony Blair commissioned a report by the Cabinet Office’s Performance and Innovation Unit, that looked at the effectiveness of measures in place to pursue and remove criminal assets.¹ The report, published in June 2000, concluded that the “UK’s confiscation track record is poor. Very little is ordered to be confiscated, even less is collected”.² It recommended that existing powers be widened.

1.2 Civil recovery orders

The [Proceeds of Crime Act 2002](#) (PoCA) then introduced an additional tool: civil recovery orders (CROs). CROs allowed law enforcement to confiscate criminal property without having to prove an underlying criminal offence. Law enforcement only needed to show a court that on the civil standard of proof (the balance of probabilities, or “more likely that not”) “unlawful conduct” has occurred, and that the property was obtained through that unlawful

¹ *Proceeds of Crime Act 2002*, [Explanatory Notes](#), para 7

² Performance and Innovation Unit, [Recovering the Proceeds of Crime](#), June 2000, p29

conduct. If so, the property was “recoverable property” and could be confiscated.

So even if a law enforcement authority failed to prosecute someone for a crime because it was unable to prove that the crime was committed to the high criminal standard needed, it still might be able to recover any property that was the gained from the alleged crime, if it can show that the property **probably** was the proceeds of crime.

Being able to confiscate someone’s property without needing to prove a crime was committed is obviously controversial. In an English 2010 case relating to the bribery of public officials in Indonesia, the judge suggested that CROs should normally be used in circumstances where a criminal prosecution, for whatever reason, was unavailable:

[...] Those who commit such serious crimes as corruption of senior foreign government officials must not be viewed or treated in any different way to other criminals. It will therefore rarely be appropriate for criminal conduct by a company to be dealt with by means of a civil recovery order; the criminal courts can take account of cooperation and the provision of evidence against others by reducing the fine otherwise payable. It is of the greatest public interest that the serious criminality of any, including companies, who engage in the corruption of foreign governments, is made patent for all to see by the imposition of criminal and not civil sanctions. It would be inconsistent with basic principles of justice for the criminality of corporations to be glossed over by a civil as opposed to a criminal sanction. There may, of course, be a place for a civil order, for example, as a means of compensation in addition to a fine. [...]³

Guidance from the Attorney General’s office published in 2012 (including background information published in 2009) which applied to England, Wales and Northern Ireland stated that:

The reduction of crime is in general best secured by means of criminal investigations and criminal proceedings. However, the non-conviction based asset recovery powers available under the Act can also make an important contribution to the reduction of crime where (i) it is not feasible to secure a conviction, (ii) a conviction is obtained but a confiscation order is not made, or (iii) a relevant authority is of the view that the public interest will be better served by using those powers rather than by seeking a criminal disposal.

The Guidance explicitly recognises scenarios in which, even though a criminal conviction might be possible or feasible, the public interest may allow civil recovery powers to be used. One of these is where “civil recovery represents a better deployment of resources to target someone with significant property which cannot be explained by legitimate income.”⁴

There was therefore only a limited number of cases in which seeking a CRO was appropriate. On the one hand, in cases where lots of evidence was

³ R v Innospec Limited [2010] 3 WLUK 784 (Crown Ct (Southwark)), para 38

⁴ Guidance, [Asset recovery powers for prosecutors: guidance and background note 2009](#), 29 November 2012

available, a criminal prosecution (and subsequently a confiscation order to seize criminal assets) was normally the preferred course of action. On the other hand, in cases where there was no or little evidence, it would be difficult to satisfy a court to grant a CRO (because a court would still need to be convinced that the property was **probably** obtained through unlawful conduct).

CROs therefore tended to be used in exceptional cases “for example in cases where the criminality took place overseas and cannot be prosecuted in UK courts or where someone has died”. In 2014/15 for example, the Serious Fraud Office, one of the law enforcement authorities entitled to seek CROs, obtained just one CRO in respect of assets worth £520.⁵

1.3 The path to Unexplained Wealth Orders

In 2015, press articles described London as “the global money-laundering centre for the drug trade”⁶ and “the global capital of money laundering”.⁷

In a July 2015 speech in Singapore, Prime Minister David Cameron said:

I’m determined that the UK must not become a safe haven for corrupt money from around the world. We need to stop corrupt officials or organised criminals using anonymous shell companies to invest their ill-gotten gains in London property, without being tracked down.

[...]

There is no place for dirty money in Britain. Indeed, there should be no place for dirty money anywhere. That is my message to foreign fraudsters: London is not a place to stash your dodgy cash.⁸

The Government’s December 2014 Anti-Corruption Plan committed it to completing a National Risk Assessment on Money Laundering and Terrorist Financing and then producing an Anti-Money Laundering Action Plan to address issues highlighted in the Risk Assessment.⁹

The Risk Assessment was published in October 2015. It noted that “money laundering represents a significant threat to the UK’s national security”.¹⁰ The Action Plan was then published in April 2016, containing a list of 19 actions. Action 11 said the Home Office would consider “New powers to impose an

⁵ Home Office and HM Treasury, [UK national risk assessment of money laundering and terrorist financing](#), pp17 and 26

⁶ The Independent, [London is now the global money-laundering centre for the drug trade, says crime expert](#), Friday 25 December 2015

⁷ The Guardian, [Foreign criminals use London housing market to launder billions of pounds](#), 25 July 2015

⁸ Gov.uk, [Tackling corruption: PM speech in Singapore](#), 28 July 2015

⁹ Gov.uk, [UK Anti-Corruption Plan](#), December 2014, p14

¹⁰ Home Office and HM Treasury, [UK national risk assessment of money laundering and terrorist financing](#), p3

obligation on an individual or entity to explain the source of their wealth in support of an investigation”. Specifically, it said:

The experience of UK law enforcement agencies in investigating the proceeds of international corruption suspected to have entered the UK in recent years has demonstrated POCA’s [the Proceeds of Crime Act 2002] limits. In cases in which offences were conducted abroad, UK law enforcement agencies are forced to rely on the cooperation of the country in which the offence took place if they are to conduct a money laundering investigation with a realistic chance of successfully securing a conviction. But in many cases the country in which the offences took place lacks either the will, the capability, or the human rights record that would allow effective cooperation to take place. This can result in assets suspected of being the proceeds of crime overseas remaining in the UK out of the reach of our law enforcement authorities.

The Government will explore options for new legal powers. Unexplained Wealth Orders (UWOs) are already used in some countries, such as Ireland and Australia, to tackle this problem. A UWO, when served on the defendant, requires him or her to explain to the court the origin of his or her assets. This can provide critical information on which law enforcement agencies can build their case. The Government will also explore whether a new forfeiture power should be created to enable the forfeiture of any assets for which a satisfactory explanation cannot be given to the court. Some countries have criminalised illicit enrichment, making it a criminal offence to possess assets which cannot be accounted for by way of lawful income. It is a requirement under the UN Convention Against Corruption (UNCAC) for states to consider introducing an illicit enrichment offence and the Government intends to explore whether such an offence will be effective in the UK, and whether it will be compatible with our legal system.⁷⁷

The Risk Assessment noted that in many cases where laundered funds might have been used to buy UK assets, evidence wasn’t available to be able to pursue criminal prosecutions. Because of difficulties in co-operating with foreign countries (for political reasons or otherwise) it was also sometimes difficult to even gather enough evidence to obtain a CRO (which would require convincing a court that the property was more likely that not obtained through unlawful conduct). The Government was therefore considering bringing in Unexplained Wealth Orders (UWOs) which would make it easier for law enforcement authorities to seize criminal assets.

The Criminal Finances Bill was introduced to Parliament on 13 October 2016. It received Royal Assent on 27 April 2017.¹² Sections 1 to 6 introduced Unexplained Wealth Orders (UWOs) by inserting new sections into PoCA, and came into force on 31 January 2018.¹³

¹¹ Gov.uk, [Action Plan for anti-money laundering and counter-terrorist finance](#), April 2016, pp20 and 21

¹² Parliament.uk, [Bill stages – Criminal Finances Act 2017](#)

¹³ Implementation was however delayed in Northern Ireland because of the suspension of the Northern Ireland assembly and it’s unclear when UWOs will come into force there – see [BBC News, Justice ministers targets criminals’ assets](#), 18 June 2020

2 Unexplained Wealth Orders

2.1 Who can obtain a UWO?

The legislation says only an “enforcement authority” can apply for a UWO. This is any of:

- the National Crime Agency;
- Her Majesty’s Revenue and Customs;
- the Financial Conduct Authority;
- the Director of the Serious Fraud Office; or
- the Director of Public Prosecutions.¹⁴

In Scotland it is only “the Scottish Ministers” who can apply. In practice this is likely to mean the Crown Office and Procurator Fiscal Service’s Civil Recovery Unit.¹⁵

Other bodies cannot apply for UWOs – if they wanted a UWO to be pursued they would need to refer the case to one of the above listed enforcement authorities.¹⁶

2.2 Against whom can a UWO be obtained?

Two categories of people can be served with a UWO:

- 1 Politically Exposed Persons (PEPs). These are people with “prominent public functions” such as ministers, MPs and ambassadors, as well as their family members, known close associates and other connections.

The logic is that because of their position, PEPs are higher risk. PEPs are a well-established concept in money laundering law, and the definitions to be used for determining whether someone is a family member or known close associate of a PEP are taken from the Fourth Money

¹⁴ [Proceeds of Crime Act](#), section 362A

¹⁵ Business Insider, [Unexplained Wealth Orders: speak up or pay up?](#) Paul Marshall, Brodies LLP, 4 August 2017

¹⁶ Home Office, [Circular 003/2018: unexplained wealth orders](#), 1 February 2018, para 3

Laundering Directive¹⁷ - see our briefing on the [Politically Exposed Persons Regime](#) for more information.

A UWO can only be obtained against a foreign PEP, who holds their prominent public function outside the UK or European Economic Area (EEA). This remains the law even though the UK has now itself left the EEA, so a UWO can be obtained against a Moldovan PEP, for example, but not a PEP from neighbouring Romania.

- 2 Someone suspected of being involved in serious crime (or who is “connected with” someone so involved). There needs to be “reasonable grounds” for the suspicion.¹⁸

“Involvement in serious crime” takes its meaning from the *Serious Crime Act 2007*. It includes offences relating to drug and people trafficking, terrorism and money laundering¹⁹, as well as other conduct which a court in its opinion considers to be serious enough to be treated as a serious crime.²⁰

Being “connected with” someone involved in serious crime has a complex meaning taken from section 1122 of the *Corporation Tax Act 2010* but includes for example spouses, relatives (including siblings and parents) and partners in a business partnership.²¹

These two limbs are independent from each other. So if someone is a PEP, there’s no need to also show an involvement in serious crime. Likewise, if someone is involved in serious crime, there’s no need to show they are also politically exposed.

UWOs are still a new concept so many of these technical terms and definitions remain untested. The Economic Crime (Transparency and Enforcement) Act 2022 allowed for UWOs to be served on “responsible officers” (such as directors) of an entity that owns property. This is intended to allow law enforcement to get information more easily from officers of legal entities thought to have control over property, even if they do not own it.²²

2.3

How is a UWO obtained?

An enforcement authority must apply to the High Court (or the Court of Session in Scotland) for a UWO. The application can be made without notice

¹⁷ [OJL 141/73](#), 5 June 2015

¹⁸ Proceeds of Crime Act, sections 362B and 396B

¹⁹ See [Schedule 1](#) of the Serious Crime Act 2007 for the full list

²⁰ [Serious Crime Act 2007](#), Part 1

²¹ [Corporation Tax Act](#), section 1122 and 1123

²² Sections 45 and 46 of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#)

to the person it is against, but it must set out for the court who it is against and what property it relates to.²³

The court must be satisfied that there are “**reasonable grounds for suspecting**” that the person’s known sources of lawfully obtained income are not sufficient to enable them to obtain the relevant property. In other words, considering what we know about that person’s source of wealth, that there wasn’t a lawful way they could have bought that property. The Economic Crime (Transparency and Enforcement Act) 2022 added an alternative to this: that there are reasonable grounds for suspecting that the property has been obtained through unlawful conduct. This means it is no longer necessary to look at a person’s source of wealth to obtain a UWO (as there is now an alternative test), but the law enforcement agency could still choose that route if it wished.²⁴

1 Assessing lawfully obtained income

If law enforcement decide to pursue the route of assessing the sources of the respondent’s lawfully obtained income, the legislation says that the court should bear the following points in mind:

- whether a mortgage or other type of security might have been available to help the respondent obtain the property;
- the property should be assumed to have been bought at market value;
- income should be considered lawfully obtained if it was obtained lawfully in the country where the income is from;
- the “known” sources of income to be taken into account are those that are “reasonably ascertainable” from available information. This might include for example information available from internet searches and company registry records; and
- (on a more technical note) where the UWO is being issued against a person who owns their interest in property through a trust structure, “obtaining” the property should be interpreted as meaning them obtaining direct ownership in the part of the property represented by their interest.²⁵

In response to concern that the potential costs of obtaining UWOs were deterring enforcement authorities, the Economic Crime (Transparency and Enforcement) Act 2022 provides that a court cannot make an order requiring the enforcement authority to pay costs to the respondent (the other side in the case) unless the authority has acted unreasonably, dishonestly or improperly. This means that a respondent will usually not be able to obtain an order for their legal costs to be paid by the enforcement agency, even if they successfully resist the granting of the UWO.²⁶

²³ *Proceeds of Crime Act*, sections 362A(2) and 369A(2), and 362I and 396I

²⁴ Sections 47 and 48 of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#)

²⁵ Criminal Finances Act 2017, sections 362(B) and 396(B)

²⁶ Sections 52 and 53 of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#)

2.4 What is a UWO?

A UWO is a court order issued against someone, relating to certain property. The order requires them to explain their interest in that property, how they obtained it, and other information relating to that property which is included in the court order.

The respondent to the order has a fixed period of time (as decided by the court granting the order) to respond. Depending on what is requested in the order, the response might require written answers, the production of documents or other evidence.²⁷

The order must relate to property which has a value of at least £50,000.²⁸

2.5 Interim freezing orders

When applying to the court for a UWO, the relevant enforcement authority might also apply at the same time for an interim freezing order. The freezing order would prohibit the person receiving the UWO, and any other person with an interest in that property, from dealing with the property (for example selling it).²⁹

If there was no freezing order, then a person receiving the UWO who knew they wouldn't be able to comply might, for example, sell the property and make off with the money. This would undermine the whole point of the UWO. It therefore seems likely that most applications for a UWO will be accompanied by one for an interim freezing order.

The Economic Crime (Transparency and Enforcement) Act 2022 allowed for courts to grant a further 126 days (in addition to the initial 60-day period) to enforcement authorities to review (and take action on) material provided in response to a UWO, before the interim freezing order expires.³⁰

2.6 Failure to comply

If the recipient responds in a way that attempts to comply with the order's requirements, the enforcement authority may then consider what steps (if any) it wants to take in relation to the property. If there is an interim freezing order in place, any decision to take steps must be made within sixty days of

²⁷ Proceeds of Crime Act, sections 362A and 396A

²⁸ Ibid, sections 362B and 396B

²⁹ Ibid, sections 362J and 396J

³⁰ Sections 49 and 50 of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#)

the date of compliance with the order. 48 hours after the sixty day period ends, the respondent can apply to have the interim freezing order lifted.³¹

If the recipient of a UWO fails to respond without “reasonable excuse”, the property is presumed to be “recoverable property” for the purposes of any [Civil Recovery Order](#) (CRO) sought. This means a claim can be made to the court to confiscate the property on the basis that it constitutes the proceeds of crime. The court will presume that the property is the proceeds of unlawful conduct and therefore make an order that it be confiscated unless the respondent can satisfy the court that on the balance of probabilities (that is, more likely than not) that it is not.³²

Importantly, therefore, a UWO is an **investigative tool**. It is intended to make it easier to obtain a CRO by reversing the burden of proof. It doesn’t in itself grant law enforcement authorities any new powers to confiscate assets.

2.7

Criminal offence: false statements

Generally, the statements made in a response to a UWO cannot be used as evidence in any criminal prosecution.³³ This is likely to be because the respondent to a UWO is effectively being compelled to respond (or face the risk of losing their property) and doesn’t have the right to remain silent which they would have in a criminal prosecution.

³¹ Criminal Finances Act 2017, sections 362D and 362K, and 396D and 396K

³² Ibid, sections 362C and 396C

³³ Ibid, sections 392F and 396F

There are a small number of exceptions. One is if a person knowingly or recklessly responds to a UWO in a false or misleading way, which is a crime that is punishable by up to two years in prison. Another is that the response to the UWO can be used in evidence if a person is being prosecuted for a separate crime and makes statements inconsistent with what they've said in the UWO. This can only happen if that person brings up the statement themselves by putting forward evidence or asking questions about the statement they made in the UWO response.³⁴

2 A fictional clear-cut case for a UWO

Jon is the son of the authoritarian President of Corruptinia. He has no professional qualifications and doesn't work. Some months ago he moved to London and Land Registry records show he bought a Central London penthouse for £20 million.

Jon's purchase comes to the attention of the National Crime Agency (NCA). The NCA suspects that Jon got the money to buy the penthouse through political corruption, and subsequently laundered that wealth into the UK. But they have no concrete evidence and, unsurprisingly, authorities in Corruptinia are uncooperative.

Without any hard evidence, the NCA would be unlikely to satisfy a court that the house was probably bought using the proceeds of unlawful conduct, so there would be no point applying for a civil recovery order straight away. Any criminal prosecution would clearly not succeed for the same reason.

Instead, the NCA applies to the court for a UWO. The UWO would ask Jon to confirm his interest in the penthouse and explain how he bought it, asking for evidence to substantiate his story. Jon is a PEP and the NCA might be able to satisfy a court that there are reasonable grounds to suspect that Jon's lawfully obtained income wouldn't have been enough to purchase the penthouse. The NCA might also apply for an interim freezing order to ensure Jon doesn't try to sell or pass on the penthouse.

The UWO is granted by the court. Jon receives it and doesn't respond, creating a legal presumption in favour of the NCA that the property is recoverable. The NCA waits for the deadline for the response to the UWO to pass and then applies for a civil recovery order to confiscate the penthouse.

³⁴ Ibid, sections 362E and 396E

3 Commentary

3.1 The first UWO

The very first UWO was issued in England in February 2018, less than a month after UWOs became available.

It concerned a London property which was bought by a company based in the British Virgin Islands. The ultimate owner of the company (and therefore the house) was Jahangir Hajiyeva, a former Chairman of the International Bank of Azerbaijan, which was majority-owned by the Azerbaijani government.

Mr Hajiyeva was arrested and charged in Azerbaijan with various criminal offences relating to his time as Chairman, including fraud and abuse of office. He was convicted and sentenced to 15 years' imprisonment. On 27 February 2018 the court granted an application by the NCA for a UWO against the wife of Mr Hajiyeva, who the NCA believed held the property, together with an interim freezing order. A second UWO was also issued to her in respect of another property.³⁵

Mrs Hajiyeva appealed against the issuance of the UWO on a number of technical grounds, including that the UWO was invalid because her husband wasn't, properly defined, a PEP. The appeals were dismissed by the High Court and the Court of Appeal and in December 2020 the Supreme Court refused to hear the appeal. Mrs Hajiyeva is therefore required to comply with the UWO and provide the information requested within it.

The case is still ongoing but the NCA has described this as a "helpful precedent".³⁶

3.2 The first recovery of assets

On 12 January 2019 UWOs were obtained by the NCA against eight properties owned by Mansoor Mahmood Hussain. Mr Hussain was suspected of being involved in serious crime in connection with the activities of violent gangs in

³⁵ Facts summarised from the judgement in *Zamira Hajiyeva v National Crime Agency* [2020] EWCA Civ 108

³⁶ National Crime Agency, [Supreme court refuses appeal against Unexplained Wealth Order](#), 21 December 2020

the Bradford area, and the NCA argued that he enabled the crime by laundering the proceeds of these criminal activities.³⁷

Mr Hussain submitted 127 lever arch folders of evidence in response to the UWO. The NCA said his response inadvertently gave away clues to allow an even bigger case to be made against him. Mr Hussain subsequently agreed an out-of-court settlement with the NCA on 24 August 2020, in which he handed over 45 properties and other assets with a combined value of almost £10 million.³⁸

3.3 The first failed application

On 22 May 2019 the NCA obtained three UWOs and related interim freezing orders, including against a property on The Bishops Avenue in north London. The NCA argued that the properties were bought using laundered funds originating from Rakhat Aliyev, a Kazakh national who had held several senior political roles in Kazakhstan including as deputy foreign affairs ministers, before falling out with the regime in 2007.³⁹

The respondents to the UWOs applied to have them set aside. The court decided that the NCA's case was flawed and had made unreliable and unjustified assumptions. On the facts of the case, for example, the court said it was wrong to infer that the money to buy the properties must have come from Mr Aliyev. The court also found that, although the properties were held through complex offshore structures, this was not in itself a reason to assume that wrongful motives were involved, as such structures can be used for privacy, security or tax reasons. The NCA were refused permission to appeal the court decision on the basis that the NCA had lost the case on so many points they had no realistic chance of overturning the decision on appeal.⁴⁰

After losing the case the NCA were hit with a £1.5 million legal bill.⁴¹ This is despite the Government's initial impact assessment estimating legal costs per UWO case to be between five and ten thousand pounds.⁴²

³⁷ Facts summarised from the judgement in *National Crime Agency v Mansoor Mahmood Hussain, Laurel Terrace Limited, Land88 Limited, Jayco88 Limited, Cubic Business Park Limited, 88M Group Limited, 2 Park Square Limited* [2020] EWHC 432 (Admin)

³⁸ NCA, [Businessman with links to serious criminals loses property empire after settling £10m Unexplained Wealth Order case](#), 7 October 2020

³⁹ Facts summarised from the judgement in *National Crime Agency v Baker* [2020] EWHC 822

⁴⁰ See *Criminal Law Review* 2020, 10, 976-982, for useful commentary on the case

⁴¹ The Times, [£1.5m legal bill forces rethink over McMafia wealth orders](#), 13 July 2020

⁴² Criminal Finances Bill, [Impact Assessment](#), 20 June 2017, para 18

3.4 Number of UWOs used

The Impact Assessment for the Criminal Finances Bill (which introduced UWOs) noted that there was uncertainty about how often it would be used, but estimated that there might be none in the first year (as part of the “learning curve”) followed by around 20 UWOs per year.⁴³

When UWOs became available at the end of January 2018, Reuters reported that the Director of the Serious Fraud Office (SFO), one of the enforcement bodies empowered to seek UWOs, was “combing through” existing case work to identify matters where seeking a UWO might be useful.⁴⁴

In April 2018 (about two months after UWOs became available) Donald Toon, Director for Economic Crime at Britain’s National Crime Agency – another enforcement agency empowered to apply for UWOs - said there were about another 100 cases his officers were working on and he expected about five more UWOs to be secured in the next three months.⁴⁵

However, as of February 2022 the NCA had only obtained 9 UWOs⁴⁶ relating to 4 cases since their introduction, with an estimated total value of £143.2m. No other enforcement body (including the SFO) had obtained any UWOs⁴⁷ and no UWOs have been obtained since the end of 2019.

The Economic Crime (Transparency and Enforcement) Act 2022

The [Economic Crime \(Transparency and Enforcement\) Act 2022](#) introduced significant reforms to the UWO regime in response to criticism of the scale of illicit money in the UK (especially UK property), and the small number of UWOs issued to date. Our [briefing on the Act](#) discusses those reforms in more detail.

A Government fact sheet relating to the Act noted that it was difficult to say whether the changes introduced by the Act would increase the number of UWOs obtained, but that “even a single UWO will have a high impact”.⁴⁸

The Act requires the Government to report before Parliament annually on the number of applications made, and UWOs granted, in England and Wales.⁴⁹

⁴³ Ibid, para 22

⁴⁴ Reuters, [UK fraud prosecutor combs through cases for signs of ‘unexplained wealth’](#), 31 January 2018

⁴⁵ Reuters, [British police say: We’re coming after “dirty money”, but it might take time](#), 10 April 2018

⁴⁶ [UIN 111631, tabled on 25 January 2022](#)

⁴⁷ Home Office/Treasury: [National risk assessment of money laundering and terrorist financing](#), December 2020, paras 2.15 and 12.23. See also [Written Question UIN 19705](#), tabled on 21 June 2021

⁴⁸ Treasury, Home Office and Department for BEIS, Policy paper; [Fact sheet: unexplained wealth order reforms](#), 4 March 2022

⁴⁹ See section 51 of that Act

3.5

Criticism

Lack of use

The relatively low number of UWOs issued so far, and their “patchy” success,⁵⁰ has caused concern that the measure is not enough to counter money laundering in the UK. A *Financial Times* article from November 2020 described how the COVID-19 pandemic has assisted money launderers by making performing due diligence more difficult, with transactions often taken place entirely virtually. The article noted that:

While the total number of properties sold in the [London]’s prime central areas in July and August was down by 24 per cent year-on-year, according to research company LonRes, sales of luxury homes priced above £5m increased by 31 per cent.

Despite estate agents being required to file suspicious activity reports (or SARs) to the NCA if they suspect money laundering, the proportion submitted from the property sector remains stubbornly low. In the 2017-18 tax year, estate agents filed 710 SARs, just 0.15 per cent of the total number submitted. That same year, banks filed 371,522. In 2018-19, while most sectors increased their number of suspicious activity reports, the number coming from estate agents dropped to 635.

The article argues that:

the most comprehensive measure for combating money laundering in the UK remains tantalisingly on the horizon. The Registration of Overseas Entities Bill, which would require all overseas companies that currently own UK property to reveal their ultimate beneficial owners, has been in draft stage since mid-2018, but was mentioned in the Queen’s speech — which sets out the government’s agenda — last December.⁵¹

The Government’s December 2020 money laundering risk assessment said:

[...] it is also likely that thousands of properties in London have been bought with illicit funds over the years and that hundreds of millions are laundered through conveyancing across the UK.

Although further evidence is needed to ascertain geographical conveyancing risks, it is likely that criminals favour locations with high value residential properties such as London or university towns due to high demand and potential investment return opportunities [...]

It also said “it is likely there has been an increase in the amount of money being laundered since 2017”.⁵²

⁵⁰ According to the Financial Times – see [Property offers ready shelter for criminal wealth](#), 5 November 2020

⁵¹ Ibid

⁵² Home Office/Treasury: [National risk assessment of money laundering and terrorist financing](#), December 2020, paras 3.6, 10.2 and 10.3

‘Easy’ use

Another criticism is that the UWOs so far have not sought to tread into the so-called “difficult” cases, where the recipient of the UWO may be on good terms with, or part of, the foreign regime that is the source of their wealth, and so enforcement agencies cannot rely on foreign cooperation.⁵³ That was clearly not the case in the very first UWO, addressed to Mrs Hajiyeva relating to wealth derived from Azerbaijan – in that case, Mr Hajiyeva had already been prosecuted by the Azerbaijani authorities, which made it far easier to show criminality. This is perhaps surprising, given that one of the reasons the Government [wanted](#) to introduce UWOs is to help with cases where evidence is hard to come by because they could not rely on international cooperation.

Wider Government action on tackling money laundering has been set out in the Government’s Economic Crime Plan 2019-2022, which is described in our briefing on [Economic crime in the UK](#).

3.6 International comparisons

Similar regimes to the UK’s UWO exist in both Australia and Ireland. Their success has been mixed. Law firm Bright Line Law wrote in January 2017:

While UWOs have operated for quite some time in Australia, no comprehensive review measuring their effectiveness has taken place. However, the limited evidence available suggests that the effectiveness and use has been mercurial at best. As at December 2016, the UWO regime in Western Australia had seen 28 applications for unexplained wealth declarations since 1 January 2001. 24 of these applications had been successful, three unsuccessful and one pending, noting importantly that between the period of 2004-2008 no unexplained wealth declarations were made – commentator posit this ‘silence’ on extensive public criticism of the UWO regime.

Ireland, however, has had more success:

This picture sits in sharp contrast to the Irish regime with evidence suggesting a 100% success rate in civil based confiscation proceedings. Evidence notes that the total amount of assets forfeited since 2004 totals USD \$15,744,100. Research has further suggested that the Irish regime has had a significant impact on reducing, disrupting and dismantling criminal activities in Ireland, with the two-pronged approach proving a major setback for the Irish criminal fraternity. For completeness, it should be noted that some evidence suggests that in fact criminals have moved their illicit monies to other jurisdiction, such as Holland and Spain, in fear of Irish seizure.⁵⁴

A December 2016 report by the Australian Criminology Research Advisory Council, a statutory research body⁵⁵, noted the success of the Irish regime:

⁵³ See Susan Hawley, [Britain’s first UWO has landed. What comes next?](#) 18 October 2018

⁵⁴ Natasha Reurts, [Unexplained Wealth Laws: The Overseas Experience](#), January 2017, pp 16 and 17

⁵⁵ See [Criminology Research Advisory Council](#)

The introduction of civil-based asset confiscation legislation in the 1990s was a response to a number of high-profile Irish crimes and a significant increase in organised crime. Among other objectives, it sought to address the perception that only lower-level members of criminal syndicates were being prosecuted while the leaders of organised crime escaped prosecution (McKeena & Egan 2009). The Irish police view the implementation of the Irish legislation as a success and it is credited with reducing crime rates by influencing organised criminals to move to other jurisdictions.⁵⁶

A September 2017 report by the Royal United Services Institute (RUSI) suggested four “lessons” for the UK to note when implementing the regime. In summary, these were:

- **Expertise.** Building law enforcement teams with deep knowledge and low staff turnover, as this has contributed to the success of the regime in Ireland;
- **Inter-Agency Cooperation.** Ensuring that the different law enforcement bodies given powers to bring UWOs work together and share information; Australia’s federal model, with “agencies undercutting one another”, is cited as a lesson from which the UK should take note;
- **Resources.** UWOs by their nature will be addressed to wealthy individuals, so law enforcement will need appropriate funding and support. This is particularly the case in the early years when the regime is still “bedding in” and many cases will be appealed, increasing legal costs and risks; and
- **Political Will.** RUSI recommended that the focus on combatting economic crime made clear in the May 2016 Anti-Corruption Summit be sustained.⁵⁷

⁵⁶ Marcus Smith and Russell G Smith, [Exploring the procedural barriers to securing unexplained wealth orders in Australia](#), December 2016, p20

⁵⁷ RUSI, [Unexplained Wealth Orders, Global Lessons for the UK Ahead of Implementation](#), September 2017

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)