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Unexplained Wealth Orders coming into force

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The regime for Unexplained Wealth Orders will come into force on 31 January. This is a novel power in the UK.

Law enforcement agencies such as the National Crime Agency and Serious Fraud Office will be able to apply to Court, without notice to the recipients, for an Order requiring foreign politicians, and their family members and close associates, to identify any interest in an asset worth over £50,000 and explain how it was obtained.

An Order can be made only where the assets appear disproportionate to known legitimate income. An application can also be made for a UWO against individuals or companies suspected of involvement with other forms of serious criminality, again if their assets appear disproportionate.

A failure to respond to a UWO will create a rebuttable presumption that the assets it targets are recoverable as the proceeds of crime in civil recovery proceedings brought by law enforcement under the Proceeds of Crime Act.

Injunctions can be obtained to secure assets pending a satisfactory response to a UWO, and again can be sought without notice to the defendants.

Deliberately providing false or misleading information or documents in response to a UWO will be a criminal offence.

The regime is based on proposals made in a paper published in March 2016 by Transparency International UK entitled ‘Empowering the UK to recover corrupt assets: Unexplained Wealth Orders and other new approaches to illicit enrichment and asset recovery’. Our partner James Maton was one of the external experts that assisted TI to prepare the proposal after an evaluation of the problems faced by the UK authorities in securing and recovering the proceeds of corruption.

The authors concluded that a UWO could be most effective when UK law enforcement have material to suspect that an asset has been corruptly acquired but need more time to collect evidence. That is a common problem, for example, after the filing of a suspicious activity report.

It is a testament to the hard work and quality of research of the TI team that the proposal has been adopted into law. Its true utility can, of course, only be demonstrated by the use of the power by law enforcement, and it is just one tool that can be used to tackle the problem of identifying and recovering the proceeds of corruption (and other serious crimes).

A final Code of Practice outlining the circumstances in which UWOs will be used is awaited. There are various factors that will need to be weighed when considering whether to deploy UWOs, including whether there will be any adverse impact on an ongoing investigation, and we wait to see whether law enforcement will be proactive in using this innovative investigatory tool where meaningful action could not otherwise be taken. The draft Code of Practice is here.

The original TI paper is here.

Contributors

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