

<b>Title:</b> Criminal Finances Act - Unexplained Wealth Orders <b>IA No:</b> HO0282  <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> National Crime Agency	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 20-06-2017			
	<b>Stage:</b> Enactment			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
	<b>Contact for enquiries:</b> public.enquiries@homeoffice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>				
<b>RPC Opinion:</b> Not Applicable				

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£4.7m	£m	£m	Not in scope	Not a regulatory provision

**What is the problem under consideration? Why is government intervention necessary?**  
 Individuals who are involved in grand corruption overseas or in serious crime may seek to launder their proceeds of crime in the UK. Law enforcement agencies may not have sufficient evidence to take action against those assets, particularly if they need evidence from overseas. Government intervention is necessary to create a new form of court order to enable this evidence to be obtained.

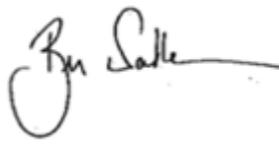
**What are the policy objectives and the intended effects?**  
 The unexplained wealth order (UWO) provisions seek to fill a gap by creating a new investigative power in the Proceeds of Crime Act 2002 (POCA). A new type of civil investigative order has been created, which places the burden of proof on a respondent to explain to the High Court the origin of their assets. The information obtained under an UWO will assist investigative agencies to build evidence for the purposes of bringing a non-conviction based asset recovery case under Part V of POCA.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- No change
- Adapting the existing investigative provisions in POCA.  
Adapting the existing provisions, does not meet the policy objectives and therefore has been discounted prior to any analysis.
- Introduction of unexplained wealth orders.  
The preferred option is the introduction of UWOs which provide a new investigative power and benefits that cannot be met by amending existing provisions or by making no change.

<b>Will the policy be reviewed?</b> It <u>will</u> be reviewed. If applicable, set review date: By 03/2022						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			Micro No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:		Non-traded:	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister  Date: 20-06-17

# Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

## FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

No change from baseline.

### Other key non-monetised costs by 'main affected groups'

No changes from baseline.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

No change from baseline.

### Other key non-monetised benefits by 'main affected groups'

No change from baseline.

Key assumptions/sensitivities/risks (%) N/A	Discount rate	
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## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Introduce Unexplained Wealth Orders

## FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 1.2	High: 8.1	Best Estimate: 4.7

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	1.8
High	Optional	Optional	1.0
Best Estimate			1.4

### Description and scale of key monetised costs by 'main affected groups'

Law enforcement agencies will incur ongoing costs for the application of an UWO, estimated at **£0.3m** present value over ten years. This has been estimated through taking the unit cost of fraud without overheads as a proxy and the number of estimated cases of UWOs. Costs for the High Court will also be incurred for UWO hearings.

### Other key non-monetised costs by 'main affected groups'

Law enforcement agencies will incur minimal one-off costs for adaption to the policy. There will be one off costs for the National Crime Agency (NCA) to update compulsory training materials for financial investigators. There may be a cost on the respondent who will be required to reply to the UWO.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	3.0
High	Optional	Optional	9.1
Best Estimate			6.1

### Description and scale of key monetised benefits by 'main affected groups'

The measure will enable more effective identification and seizure of the proceeds of crime by **law enforcement**. It is estimated that this will result in **£6.1m** forfeited under civil recovery (present value over ten years)

### Other key non-monetised benefits by 'main affected groups'

The measure will be an effective tool to target domestic serious crime and grand corruption overseas, allowing law enforcement agencies to tackle cases that they have not been able to effectively investigate previously.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

It is estimated there will be 20 cases per year that will use UWOs, after an initial year of no cases. This is based on consultation with practitioners, though there is uncertainty with this figure due to the power being new.

Potential costs for the Magistrates court where respondents provide false information and are criminally liable.

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

# Evidence Base (for summary sheets)

## A. Strategic Overview

### A.1 Background

1. Financial profit is the driver for almost all serious and organised crime, and other lower-level acquisitive crime. The UK drugs trade is estimated to generate revenues of nearly £4bn each year and HMRC estimate that over £5bn was lost to attacks against the tax system in 2012/13. Criminals launder their money – moving, using and hiding the proceeds of crime – to fund their lifestyles and to reinvest in their criminal enterprises. The best available estimate<sup>1</sup> of the amounts laundered globally are equivalent to 2.7% of global GDP, or US\$1.6 trillion in 2009, while the NCA assesses that billions of pounds of proceeds of international corruption are laundered into or through the UK. This threatens the integrity and reputation of our financial markets.
2. In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing (NRA), identifying a number of risks and areas where the regimes that combat those threats could be strengthened. The Action Plan for anti-money laundering and counter-terrorist finance, published in April 2016, contained a range of measures to build on the UK's risk-based approach to addressing these areas. The Criminal Finances Act is a core part of our approach to achieving that objective.
3. Law enforcement agencies have identified assets where there are good grounds to suspect that they are the proceeds of corruption, but were unable to freeze or recover them under the provisions in POCA. There were a number of reasons for this. Notably, in order to investigate the origin of funds and protect against potential asset dissipation, law enforcement agencies rely on full cooperation from other jurisdictions to obtain evidence. Often, politically exposed persons (PEPs) still exert significant influence in their host jurisdictions so willingness to provide assistance is not forthcoming. This means it can be very difficult, and sometimes impossible, to obtain enough evidence to undertake civil proceedings or convict an individual of a criminal offence.

### A.2 Groups Affected

4. The groups affected by this legislation include:
  - Law enforcement agencies, including the NCA, National Policing, HMRC, the Serious Fraud Office (SFO), and other prosecuting authorities.
  - Regulatory bodies, such as the Financial Conduct Authority (FCA).
  - The Criminal Justice System including the Crown Prosecution Service (CPS); HM Courts and Tribunals Service; and HM Prison Service;
  - Devolved Administrations;
  - Overseas Governments and other international bodies, such as the Financial Action Task Force.
  - The general public, whose safety and security is impacted by the threat of serious and organised criminals.

### A.3 Consultation

#### **Within Government**

5. We consulted with the NCA, police forces, the CPS, HMRC, SFO, FCA, the devolved administrations through the Scottish Office, Northern Ireland Office and Wales Office, and with counter terrorist financing colleagues.

#### **Public Consultation**

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<sup>1</sup> *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*, UNODC 2011

6. The public consultation took place through the Action Plan for anti-money laundering and counter-terrorist finance, which was published on 21 April 2016, with the consultation finishing on 2 June 2016.
7. Following the introduction of the Bill, consultation with the devolved administrations, law enforcement agencies and the regulated sector was maintained to ensure that they could continue to provide their views and shape this measure during the Bill's passage.

## **B. Rationale**

8. Law enforcement agencies often have reasonable grounds to suspect that identified assets of persons who are suspected of involvement in or association with serious criminality are the proceeds of serious crime. However, they were unable to freeze or recover the assets under the provisions in POCA due to an inability to obtain evidence (often due to the inability to rely on full cooperation from other jurisdictions to obtain evidence).
9. UWOs provide an alternative way of obtaining information and allowing for action against those about whose source of wealth little information is available. UWOs enable civil recovery powers to be used to go after assets that clearly are not supported by legitimate income, but where it has proved impossible to trace the source of the wealth (to the current standard required by Part 5 of POCA).
10. A UWO can be served on a wide variety of individuals, including those who hold property in the UK despite it being registered in the name of an overseas company. The definition of those who "hold" property is also wide enough to encompass those circumstances where property is held in trust or in a complex corporate structure agreement.

## **C. Objectives**

11. The primary objective of UWOs is to deprive criminals from benefiting from the proceeds of unlawful activities (corruption in its widest definition) and to do this by forcing the respondent to legitimise the property they hold in the UK. The UWO should establish whether the individual in question has legitimately obtained the asset or not. If an individual does not respond to a UWO, or provides unsatisfactory evidence, then the assets in question can be presumed to be recoverable for the purposes of a civil recovery action under Part 5 of POCA. Pending the response to a UWO, the property can be frozen to prevent the respondent from dealing with or otherwise disposing of their property. If a respondent provides false or misleading information to a UWO, then they can be prosecuted.

## **D. Options**

12. The following options were considered:
  - Option 1 was to make no changes (do nothing). There will be no introduction of UWO. Law enforcement agencies will continue in their use of provisions under POCA. The burden of proof will remain on public prosecution and so will the inability to freeze and/or recover property. Law enforcement agencies will also remain reliant on other jurisdictions to provide evidence in aid of proceedings and convictions.
  - Option 2 was to review and amend the existing investigative powers in POCA. These powers provide a range of powers to law enforcement agencies. Adapting these powers does not meet the policy objective of being able to obtain evidence primarily against overseas individuals. As this option did not meet the policy objective, this option was ruled out and no analysis has been conducted upon it.
  - Option 3 (Preferred) We have introduced UWOs. The applicant for the UWO must be satisfied that the value of the property in question is over £50,000, and that the

respondent is a Politically Exposed Person (outside of the EEA), or that there are reasonable grounds to suspect that the respondent, or a person connected to them is (or has been) involved in serious crime (as defined in the Serious Crime Act 2007). UWOs require an individual to explain the origin of assets that appear to be disproportionate to his or her known income. UWOs reverse the burden of proof and make it easier for law enforcement agencies to recover the proceeds of corruption and other serious crime held in the UK.

- This measure originally proposed a value threshold of £100,000. However, following representation from the devolved administrations and parliamentarians, and consultation with law enforcement agencies, it was reduced to £50,000.

### **Further information on preferred option**

13. A UWO will be made by the High Court, and will require the respondent to explain the origin of the property in question. The property can be frozen, for a strictly time limited period, while the UWO is dealt with. Failure to explain in accordance with the Order can result in the High Court finding that the property is available for recovery under existing civil recovery powers in POCA. If evidence is provided, it can be used by the investigative agency to further develop their case against the individual in a civil recovery investigation. The individual can also be convicted of a criminal offence, if they make false or misleading statements in response to a UWO.
14. UWOs apply to two groups. A UWO requires an entity who is suspected of involvement in or association with serious criminality to explain the origin of assets that appear to be disproportionate to their known income. The power also applies to foreign (non EEA) politicians or officials or those associated to them i.e. Politically Exposed Persons ("PEPs"). A UWO made in relation to an overseas PEP does not require suspicion of serious criminality. This measure reflects the concern about those involved in grand corruption overseas laundering the proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy any evidential standard at the outset of such an investigation given that all relevant information may be outside of the jurisdiction.

15. The following case study illustrates the power being used:

**Hypothetical UWO case study**

The NCA became aware that subject 'X' owned a west London mews house and a prestige Italian sports car, together valued at over £6m. 'X's ownership of this property could not be explained by his known income. There was insufficient evidence for the NCA to pursue prosecution or apply for other investigative orders in order to seek a confiscation or civil recovery outcome. The NCA therefore made a High Court application for a UWO, satisfying s.362B POCA requirements, which included presenting reasonable grounds to suspect that 'X's known sources of legitimate income were insufficient to have obtained the property lawfully. The NCA also satisfied the High Court that 'X' fitted the criteria of being either a non-EEA PEP or a person suspected on reasonable grounds of being involved in serious crime. The UWO was granted and was served on 'X'. To prevent 'X' disposing of the property prior to responding to the UWO, the NCA further applied to the Court for an interim freezing order that was also served upon 'X' and brought to the attention of relevant third parties associated with the property. The NCA also nominated management receivers to preserve the value of the property; these receivers were then formally appointed by the Court to fulfil this role.

If 'X' **does not** comply within the response period, the property will be deemed to be recoverable. The NCA will then decide whether to apply for a property freezing order and pursue further investigation or to lodge a High Court claim to recover the property.

If 'X' **does** comply within the response period the NCA will have the following 30 days to decide whether to initiate enforcement or investigatory proceedings in relation to the property.

## E. Appraisal (Costs and Benefits)

### GENERAL ASSUMPTIONS & DATA

16. Consultation with practitioners has indicated the use of UWOs in 20 cases per year. With the power being new, there is uncertainty regarding the volume. In the first year it is assumed there will not be any cases, as part of the learning curve of their use.

### OPTION 3 – Introduce Unexplained Wealth Orders

#### COSTS

17. Costs are expected to be incurred by the **courts**.
- There are ongoing costs to courts at the initial stage of granting a UWO by request of a law enforcement agency at the High Court.
  - If the application conditions are met then the property is assumed to be “recoverable property” for the purposes of civil recovery under Part 5 of POCA, unless the respondent can provide evidence to the applicant to rebut such assumptions. There will be a time limit to respond to the court. After this period, law enforcement can then make an application, depending on the response, to further investigate or to proceed to full civil recovery proceedings. Any successive civil recovery action against property will take place in the High Court.
18. Following conversations with the NCA, we expect UWOs and the subsequent forfeiture to be comparable to how disclosure orders currently function. It is expected that the first UWOs will require active Counsel participation and will likely be subject to challenge therefore rendering the costs higher than a solitary court hearing. We have taken a high cost estimate as £10,000 and a low cost estimate of £5,000 per case, whether successful or not. This gives a cost of £0.8m in the low cost estimate and £1.5m in the high cost estimate in present value over 10 years. The low cost estimate has been used in the high scenario and high cost in the low scenario to present a greater range. This is not solely court cost but also includes active Counsel participation. However, it excludes internal LEA activity/resource cost.
19. If a respondent, whilst responding to a UWO, makes a statement which they know is false or misleading, or recklessly makes a statement they know is false or misleading in a material way, they can be prosecuted, with a penalty of 2 years or a fine on indictment, or twelve months or a fine for summary conviction. There are not expected to be such cases given the volume of UWOs, and if they do arise, the majority are expected to be heard in the Magistrates court.
20. Within the previous scenarios described, **Law Enforcement Agencies (LEA)** will incur ongoing costs. Estimates are based on “Activity Based Costing” police data using fraud as a proxy activity, without overheads, as the most comparable unit cost available. This gives a unit cost of UWO investigation of £1850.67. For 20 cases a year, this is £37k pa or **£0.3m present value** over ten years. In addition, it is expected there would be minimal one-off costs for acclimatisation for the law enforcement agencies in understanding the new power.
21. There is an unquantified cost on an individual who will be presented with a UWO – but only where they have obtained property legitimately. The nature of a UWO is that it is an investigative order which demands that an individual provides evidence about the source of their property. This may require an amount of unknown costs such as legal fees, monetary and emotional costs of responding. There is also the possibility that an individual is obscuring their income for reputational or other legitimate reasons that could be outed by such an order. We do not consider this likely and believe the likelihood of such a cost happening low.

## BENEFITS

22. The measure will enable law enforcement to more effectively identify and seize the proceeds of crime. Each successful UWO will deliver at least the £50k minimum threshold in recoverable property, through civil recovery action, the proceeds of which are returned to the consolidated fund and then distributed back to law enforcement agencies through the Asset Recovery Incentivisation Scheme. It is not expected that the costs will exceed the minimum £50k threshold, or indeed the higher average value, meaning that on average each UWO represents positive NPV from a financial benefits perspective. A conservative average of £100k has been taken for the value of each UWO, however it is expected the average value will be higher than this. However, this does not include the wider economic benefits of UWOs through its potential disincentivising effects on criminal activity, as the profits that motivate crime get targeted.
23. Not every UWO will result in further investigation or seizure of the asset. However, it is expected that the average value will be above the conservative £100k value we have used. For this impact assessment, it is assumed in all cases that the value of the asset is exactly £100k, which will underestimate the benefit. In the low case it is assumed that 20% of UWOs will result in forfeiture or further investigation, in the central case, 40%, and in the high case, 60%.

Case	Present Value of Benefit
Low (20%)	£3.0m
Central (40%)	£6.1m
High (60%)	£9.1m

24. The measure will be an effective tool to target domestic serious crime and grand corruption overseas, allowing law enforcement agencies to tackle cases that they have not been able to effectively investigate previously. This will make the UK a hostile place for serious and organised criminals, to benefit of UK business and society, which suffers from the existence of serious crime.

## BUSINESS IMPACT TARGET

25. There are no expected impacts against businesses as this is a measure targeting individuals.

## F. Risks

### OPTION 3 – introduce unexplained wealth orders

26. Following a UWO being granted, if the subject of the order subsequently provides a reasonable explanation for the source of the funds, and applies for the discharge of the order, the investigating agency could be liable for his / her legal costs. This would only occur if the order were found to be applied for inappropriately. While experience from defending restraint orders shows that costs can be substantial, this is unlikely to happen given application to the High Court and use according to the guidance as issued by the Home Office (see next section).
27. There is a risk that the costs may outweigh the benefits if court costs are significant.
28. There is a risk that the number of UWOs is lower or higher than the expected 20 per year

## G. Enforcement

29. The UWO powers are limited to specific law enforcement agencies (those who can use the civil recovery powers in part five of POCA) and are not available to all agencies. Agencies must meet the legal test before applying to the High Court for an order, where the judge will also consider compliance with the legal test to ensure the powers are used appropriately.

30. The use of the powers will be governed by additional guidance issued by the Home Office, through a statutory Code of Practice.
31. The policy will be reviewed after one year, and will also be subject to post legislative scrutiny in the usual way.

## **H. Summary and Recommendations**

32. Option 3 is the preferred option. It provides a new tool to target the proceeds of crime, enabling illicit wealth to be taken from criminals and returned to the legitimate economy. It is likely that the amounts recovered will outweigh the law enforcement and court costs.

## **I. Implementation**

33. The powers will be commenced by order, subject to operational needs and the passage of any necessary secondary legislation/publication of statutory guidance. Where appropriate, this will be on a common commencement date.

## **J. Monitoring and Evaluation**

34. The effectiveness of the new regime would be monitored by the Home Office and the operational agencies who use the powers. The Home Office will review the use of the powers after one year, and through the post legislative scrutiny process.
35. The Home Office will also use the Civil Recovery Practitioners Group (which comprises operational partners) to monitor how the powers are being used and how frequently.

## **K. Feedback**

36. The Home Office will use the Civil Recovery Practitioners Group to encourage feedback on the use of the powers. We will also seek feedback through our existing close liaising with civil society.