Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 8

INVESTIGATIONS

CHAPTER 2

ENGLAND AND WALES AND NORTHERN IRELAND

[F1 Unexplained wealth orders

[F1 362B Requirements for making of unexplained wealth order

(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The High Court must be satisfied that there is reasonable cause to believe that—
- (a) the respondent holds the property, and
- (b) the value of the property is greater than £50,000.

(3) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

(4) The High Court must be satisfied that—
- (a) the respondent is a politically exposed person, or
- (b) there are reasonable grounds for suspecting that—
  - (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
  - (ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of subsection (2)(a)—
- (a) whether or not there are other persons who also hold the property;

Status: *Point in time view as at 31/12/2020. This version of this provision has been superseded.*
Changes to legislation: *Proceeds of Crime Act 2002, Section 362B is up to date with all changes known to be in force on or before 18 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) whether the property was obtained by the respondent before or after the coming into force of this section.

(6) For the purposes of subsection (3)—

(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;

(b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In subsection (4)(a), "politically exposed person" means a person who is—

(a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than **[**[F2]the United Kingdom or another EEA State,**]**

[F2](i) **[** the United Kingdom, or

(ii) an EEA state,**]**

(b) a family member of a person within paragraph (a),

(c) known to be a close associate of a person within that paragraph, or

(d) otherwise connected with a person within that paragraph.

(8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining—

(a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),

(b) whether a person is a family member (see point (10) of that Article), and

(c) whether a person is known to be a close associate of another (see point (11) of that Article).

(9) For the purposes of this section—

(a) a person is involved in serious crime in a part of the United Kingdom or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);

(b) section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies in determining whether a person is connected with another.

(10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.**]**

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Textual Amendments

F1 Ss. 362A-362I and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 for E.W. in so far as not already in force) by Criminal Finances Act 2017 (c. 22), **ss. 1**, 58(1)(6); S.I. 2018/78, **reg. 3(a)**; (as amended (N.I.) on exit day by S.I. 2019/742, regs. 1, **109(2)**)

F2 S. 362B(7)(a)(i)(ii) substituted for words (E.W.) (31.12.2020) by The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742), regs. 1, **107(8)**; 2020 c. 1, Sch. 5 para. 1(1)

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