



Economic Crime (Transparency and Enforcement) Act 2022

2022 CHAPTER 10

PART 2

UNEXPLAINED WEALTH ORDERS

45 Imposition of unexplained wealth orders on officers etc of property holder: England and Wales and Northern Ireland

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) Section 362A (unexplained wealth orders) is amended in accordance with subsections (3) to (7).
- (3) After subsection (2) insert—

“(2A) In a case where the respondent is not an individual, the application may also specify a person who is a responsible officer of the respondent (and a person specified may include a person outside the United Kingdom).”
- (4) In subsection (3), in the words before paragraph (a), after “the respondent” insert “or any responsible officer specified in the order (a “specified responsible officer”)”.
- (5) In subsection (5)—
 - (a) after “requiring the respondent” insert “or any specified responsible officer”;
 - (b) for “require the respondent” substitute “require them”.
- (6) In subsection (6), after “respondent” insert “or any specified responsible officer”.
- (7) After subsection (7) insert—

“(8) For the purposes of this Chapter, each of the following is a “responsible officer” of the respondent (in a case where the respondent is not an individual)

—

- (a) any director of the respondent, including any person occupying the position of a director, by whatever name called;
 - (b) any member of a body of the respondent equivalent to a board of directors;
 - (c) any other manager, secretary or similar officer of the respondent;
 - (d) where the respondent is a partnership, a partner or a member of the partnership;
 - (e) any person in accordance with whose directions or instructions the board of directors or equivalent body of the respondent are accustomed to act.”
- (8) In section 362C (effect of unexplained wealth order in case of non-compliance)—
- (a) in subsection (1), for “the respondent fails” substitute “the respondent and the specified responsible officer (if any), between them, fail”;
 - (b) in subsection (5)(a), after “a respondent” insert “or a specified responsible officer”;
 - (c) in subsection (5)(b)—
 - (i) omit “on the respondent”;
 - (ii) for “the respondent is” substitute “the respondent and the specified responsible officer (if any) are”.
- (9) In section 362D (effect of unexplained wealth order in case of compliance or purported compliance)—
- (a) in subsection (1), for “the respondent complies, or purports to comply, with the” substitute “the respondent and the specified responsible officer (if any) between them comply, or purport to comply, with all of the”;
 - (b) in subsection (7)—
 - (i) omit paragraph (a);
 - (ii) in the words after paragraph (c), for “(a) to (c)” substitute “(b) and (c)”.
- (10) In section 362G(3) (disclosure of information, copying of documents etc), after “the respondent” insert “or any specified responsible officer”.
- (11) In section 362I(3)(b) (application to vary or discharge unexplained wealth order), after “respondent” insert “or any specified responsible officer”.

46 Imposition of unexplained wealth orders on officers etc of property holder: Scotland

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) Section 396A (unexplained wealth orders) is amended in accordance with subsections (3) to (7).
- (3) After subsection (2) insert—
 - “(2A) In a case where the respondent is not an individual, the application may also specify a person who is a responsible officer of the respondent (and a person specified may include a person outside the United Kingdom).”
- (4) In subsection (3), in the words before paragraph (a), after “the respondent” insert “or any responsible officer specified in the order (a “specified responsible officer”)”.

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- (5) In subsection (5)—
- (a) after “requiring the respondent” insert “or any specified responsible officer”;
 - (b) for “require the respondent” substitute “require them”.
- (6) In subsection (6), after “respondent” insert “or any specified responsible officer”.
- (7) After subsection (6) insert—
- “(7) For the purposes of this Chapter, each of the following is a “responsible officer” of the respondent (in a case where the respondent is not an individual)
-
- (a) any director of the respondent, including any person occupying the position of a director, by whatever name called;
 - (b) any member of a body of the respondent equivalent to a board of directors;
 - (c) any other manager, secretary or similar officer of the respondent;
 - (d) where the respondent is a partnership, a partner or member of the partnership;
 - (e) any person in accordance with whose directions or instructions the board of directors or equivalent body of the respondent are accustomed to act.”
- (8) In section 396C (effect of unexplained wealth order in case of non-compliance)—
- (a) in subsection (1), for “the respondent fails” substitute “the respondent and the specified responsible officer (if any), between them, fail”;
 - (b) in subsection (5)(a), after “a respondent” insert “or a specified responsible officer”;
 - (c) in subsection (5)(b)—
 - (i) omit “on the respondent”;
 - (ii) for “the respondent is” substitute “the respondent and the specified responsible officer (if any) are”.
- (9) In section 396D (effect of unexplained wealth order in case of compliance or purported compliance)—
- (a) in subsection (1), for “the respondent complies, or purports to comply, with the” substitute “the respondent and the specified responsible officer (if any) between them comply, or purport to comply, with all of the”;
 - (b) in subsection (8)—
 - (i) omit paragraph (a);
 - (ii) in the words after paragraph (c), for “(a) to (c)” substitute “(b) and (c)”.
- (10) In section 396G(3) (disclosure of information, copying of documents etc), after “the respondent” insert “or any specified responsible officer”.

47 Alternative test to the income requirement: England and Wales and Northern Ireland

In section 362B(3) of the Proceeds of Crime Act 2002 (income requirement for making of unexplained wealth order)—

- (a) after “suspecting” insert “—

- (a)”;
- (b) at the end insert “, or
 - (b) that the property has been obtained through unlawful conduct (within the meaning given by section 242).”

48 Alternative test to the income requirement: Scotland

In section 396B(3) of the Proceeds of Crime Act 2002 (income requirement for making of unexplained wealth order)—

- (a) after “suspecting” insert “—
 - (a)”;
- (b) at the end insert “, or
 - (b) that the property has been obtained through unlawful conduct (within the meaning given by section 242).”

49 Power to extend period for which interim freezing order has effect: England and Wales and Northern Ireland

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In section 362D (effect of order: cases of compliance or purported compliance)—
 - (a) in subsection (3), at the end insert “, or that period as it may be extended by virtue of section 362DA or 362DB (the “determination period”)”;
 - (b) in subsection (4), for “60 day period mentioned in subsection (3)” substitute “determination period”.
- (3) After that section insert—

“362DA Extension of period for making determination where interim freezing order has been made

- (1) The High Court may, on an application made by the enforcement authority, extend the determination period if satisfied that—
 - (a) the enforcement authority is working diligently and expeditiously towards making a determination under section 362D(2),
 - (b) further time is needed for the authority to make that determination, and
 - (c) it is reasonable in all the circumstances for the period to be extended.
- (2) The application must be made before the determination period would otherwise end.
- (3) An extension of the determination period must end no later than the end of the period of 63 days beginning with the day after that on which the period would otherwise end.
- (4) Where the determination period is extended under subsection (1), it may be further extended by the High Court (and subsections (2) and (3) apply in relation to any further extension as they apply in relation to the first one).

- (5) But the determination period as extended must not in total exceed the period of 186 days starting with the day of compliance (within the meaning given by section 362D(7)(b)).

362DB Extension of period pending determination of proceedings etc

- (1) Subsection (2) applies where—
- (a) an application is made to the High Court under section 362DA for the extension (or further extension) of the determination period, and
 - (b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.
- (2) The determination period is extended from the time when it would otherwise end until—
- (a) the Court determines the application or it is otherwise disposed of, or
 - (b) if earlier, the end of the period of 31 days beginning with the day after that on which the period would otherwise have ended.
- (3) Subsection (4) applies where—
- (a) proceedings on an appeal in respect of a decision on an application under section 362DA have been brought, and
 - (b) the determination period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.
- (4) The determination period is extended from the time when it would otherwise end until—
- (a) the proceedings are finally determined or otherwise disposed of, or
 - (b) if earlier, the end of the period mentioned in subsection (2)(b).
- (5) Subsection (6) applies where—
- (a) an application is made to the Court under section 362DA for an extension of the determination period,
 - (b) the Court refuses to grant the application, and
 - (c) the period would (apart from that subsection) end before the end of the 5 day period.
- (6) The determination period is extended from the time when it would otherwise end until—
- (a) the end of the 5 day period, or
 - (b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.
- (7) The “5 day period” is the period of 5 working days beginning with the day on which the Court refuses to grant the application; and for these purposes “working day” means a day other than—
- (a) a Saturday or a Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the application in question under section 362DA is made.

- (8) The restriction on the overall extension of the determination period mentioned in section 362DA(5) applies to an extension of the period in accordance with any provision of this section as it applies to an extension under an order of the Court.”
- (4) In section 362K(6)(a) (variation and discharge of interim freezing order), for “60 day period mentioned in section 362D(3)” substitute “determination period (see section 362D(3))”.

50 Power to extend period for which interim freezing order has effect: Scotland

- (1) The Proceeds of Crime Act 2002 is amended as follows.
- (2) In section 396D (effect of order: cases of compliance or purported compliance)—
- (a) in subsection (4), at the end insert “, or that period as it may be extended by virtue of section 396DA or 396DB (the “determination period”)”;
 - (b) in subsection (5), for “60 day period mentioned in subsection (3)” substitute “determination period”.
- (3) After that section insert—

“396DA Extension of period for making determination where interim freezing order has been made

- (1) The Court of Session may, on an application made by the Scottish Ministers or the Lord Advocate, extend the determination period if satisfied that—
- (a) the applicant is working diligently and expeditiously towards making a determination under section 396D(2)(b) or (3) (as the case may be),
 - (b) further time is needed to make that determination, and
 - (c) it is reasonable in all the circumstances for the period to be extended.
- (2) The application must be made before the determination period would otherwise end.
- (3) An extension of the determination period must end no later than the end of the period of 63 days beginning with the day after that on which the period would otherwise end.
- (4) Where the period is extended under subsection (1), it may be further extended by the Court of Session (and subsections (2) and (3) apply in relation to any further extension as they apply in relation to the first one).
- (5) But the determination period as extended must not exceed the period of 186 days starting with the day of compliance (within the meaning given by section 396D(8)(b)).

396DB Extension of period pending determination of proceedings etc

- (1) Subsection (2) applies where—
- (a) an application is made to the Court of Session under section 396DA for the extension (or further extension) of the determination period, and

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- (b) the period would (apart from that subsection) end before the Court determines the application or it is otherwise disposed of.
 - (2) The determination period is extended from the time when it would otherwise end until—
 - (a) the Court determines the application or it is otherwise disposed of, or
 - (b) if earlier, the end of the period of 31 days beginning with the day after that on which the period would otherwise have ended.
 - (3) Subsection (4) applies where—
 - (a) proceedings on an appeal in respect of a decision on an application under section 396DA have been brought, and
 - (b) the determination period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.
 - (4) The determination period is extended from the time when it would otherwise end until—
 - (a) the proceedings are finally determined or otherwise disposed of, or
 - (b) if earlier, the end of the period mentioned in subsection (2)(b).
 - (5) Subsection (6) applies where—
 - (a) an application is made to the Court under section 396DA for an extension of the determination period,
 - (b) the Court refuses to grant the application, and
 - (c) the period would (apart from that subsection) end before the end of the 5 day period.
 - (6) The determination period is extended from the time when it would otherwise end until—
 - (a) the end of the 5 day period, or
 - (b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.
 - (7) The “5 day period” is the period of 5 working days beginning with the day on which the Court refuses to grant the application; and for these purposes “working day” means a day other than—
 - (a) a Saturday or a Sunday, or
 - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.
 - (8) The restriction on the overall extension of the determination period mentioned in section 396DA(5) applies to an extension of the period in accordance with any provision of this section as it applies to an extension under an order of the Court.”
- (4) In section 396K(6)(a) (variation and recall of interim freezing order), for “60 day period mentioned in section 396D(4)” substitute “determination period (see section 396D(4))”.

51 Annual reports on use of unexplained wealth orders: England and Wales

After section 362I of the Proceeds of Crime Act 2002 insert—

“362IA Annual reports

- (1) The Secretary of State must prepare and publish a report in respect of each relevant period setting out—
 - (a) the number of unexplained wealth orders made by the High Court in England and Wales during that period, and
 - (b) the number of applications made to that Court by enforcement authorities for such an order during that period.
- (2) Each of the following is a “relevant period”—
 - (a) the period of 12 months beginning with the day on which section 51 of the Economic Crime (Transparency and Enforcement) Act 2022 comes into force;
 - (b) each subsequent period of 12 months.
- (3) A report under this section must be prepared and published within the period of 4 months beginning with the end of the relevant period to which the report relates.
- (4) The Secretary of State must lay a copy of each report prepared under this section before Parliament.”

52 Limits on costs orders in relation to unexplained wealth orders: England and Wales and Northern Ireland

After section 362T of the Proceeds of Crime Act 2002 insert—

*“Unexplained wealth orders: costs of proceedings***362U Costs orders**

- (1) This section applies in the following cases—
 - (a) an enforcement authority has made an application for an unexplained wealth order under section 362A;
 - (b) an enforcement authority has made an application for the determination period to be extended under section 362DA;
 - (c) an application has been made to discharge or vary an unexplained wealth order;
 - (d) an enforcement authority has made an application for an interim freezing order under section 362J;
 - (e) an application has been made to discharge or vary an interim freezing order;
 - (f) an application has been made in the circumstances referred to in section 362M to—
 - (i) stay an action, execution or other legal process,
 - (ii) grant leave to levy distress or use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods),
 - (iii) stay proceedings in respect of property or allow them to continue, or

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- (iv) grant leave to exercise a right of forfeiture in relation to a tenancy;
 - (g) an enforcement authority has made an application for an order for the appointment of a receiver under section 362N;
 - (h) an enforcement authority has made an application for an order under section 362O (powers of receiver);
 - (i) an application has been made for directions to a receiver under section 362P;
 - (j) an application has been made to discharge or vary—
 - (i) the appointment of a receiver under section 362N,
 - (ii) an order under section 362O, or
 - (iii) directions under section 362P;
 - (k) an application has been made for compensation under section 362R;
 - (l) the High Court has of its own motion exercised a power to do anything an application mentioned in paragraphs (a) to (k) may be made for;
 - (m) an application has been made for permission to appeal in relation to anything mentioned in paragraphs (a) to (l).
- (2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by an enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—
- (a) the authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate, or
 - (b) the authority acted dishonestly or improperly in the course of the proceedings.”

53 Limits on expenses orders in relation to unexplained wealth orders: Scotland

After section 396U of the Proceeds of Crime Act 2002 insert—

“Unexplained wealth orders: expenses of proceedings

396V Expenses orders

- (1) This section applies in the following cases—
- (a) the Scottish Ministers have made an application for an unexplained wealth order under section 396A;
 - (b) an application has been made for the determination period to be extended under section 396DA;
 - (c) an application has been made to discharge or vary an unexplained wealth order;
 - (d) the Scottish Ministers have made an application for an interim freezing order under section 396J;
 - (e) an application has been made to vary or recall an interim freezing order;
 - (f) an application has been made in the circumstances referred to in section 396M to—

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- (i) sist an action, execution or other legal process, or
 - (ii) sist proceedings in respect of property or allow them to continue;
 - (g) the Scottish Ministers have made an application under section 396N (arrestment of property affected by interim freezing order);
 - (h) the Scottish Ministers have made an application under section 396O (inhibition of property affected by interim freezing order);
 - (i) the Scottish Ministers have made an application for an order for the appointment of a receiver under section 396P;
 - (j) the Scottish Ministers have made an application for an order under section 396Q (powers of receiver);
 - (k) an application has been made for directions to a receiver under section 396R;
 - (l) an application has been made to vary or recall—
 - (i) the appointment of a receiver under section 396P,
 - (ii) an order under section 396Q or
 - (iii) directions under section 396R;
 - (m) an application has been made for compensation under section 396S;
 - (n) the Court of Session has of its own motion exercised a power to do anything an application mentioned in paragraphs (a) to (m) may be made for;
 - (o) an application has been made for permission to appeal in relation to anything mentioned in paragraphs (a) to (n).
- (2) The court may not make an order that any expenses of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by the Scottish Ministers or the Lord Advocate to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless—
- (a) the Scottish Ministers or the Lord Advocate acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate, or
 - (b) the Scottish Ministers or the Lord Advocate acted dishonestly or improperly in the course of the proceedings.”