

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5183 GIBRALTAR Tuesday 22nd October 2024

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B. 28/24

## BILL

FOR

AN ACT to amend the Proceeds of Crime Act 2015 in order to make provision for unexplained wealth orders and for connected purposes.

ENACTED by the Legislature of Gibraltar.

### Title.

1. This Act may be cited as the Proceeds of Crime (Amendment) Act 2024.

### Commencement.

2. This Act comes into operation on the day appointed by the Minister for justice by notice in the Gazette.

### Amendment of the Proceeds of Crime Act 2015.

3.(1) The Proceeds of Crime Act 2015 is amended in accordance with this section.

(2) In Chapter 2 of Part VI, after section 166 insert-

*“Unexplained wealth orders*

#### **Unexplained wealth orders.**

166A.(1) The Supreme Court may, on an application made by the enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order must-

- (a) specify or describe the property in respect of which the order is sought; and
- (b) specify the person whom the enforcement authority thinks holds the property (“the respondent”) (and the person specified may include a person outside Gibraltar).

- (3) 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 Gibraltar).
- (4) An unexplained wealth order is an order requiring the respondent or any responsible person specified in the order (a “specified responsible officer”) to provide a statement-
  - (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made;
  - (b) explaining how the respondent or any other specified person obtained the property (including, in particular, how any costs incurred in obtaining it were met);
  - (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order; and
  - (d) setting out such other information in connection with the property as may be specified in the order.
- (5) The order must specify-
  - (a) the form and manner in which the statement is to be given, including whether it is to be given in writing or by video recording;
  - (b) the person to whom it is to be given; and
  - (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.
- (6) The order may, in connection with requiring the respondent or any specified responsible officer to provide the statement mentioned in subsection (4), also require them to produce documents of a kind specified or described in the order and in a form and manner specified in the order.
- (7) The respondent or any specified responsible officer must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).
- (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.
- (9) A single unexplained wealth order can be made in respect of more than one item of property.
- (10) In this Chapter, “enforcement authority” means-
- (a) the Royal Gibraltar Police;
  - (b) HM Customs;
  - (c) the Attorney General; or
  - (d) any other person designated by the Minister with responsibility for justice by Order.

**Requirements for making of unexplained wealth order.**

166B.(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

- (2) The Supreme 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 Supreme Court must be satisfied that there are reasonable grounds for suspecting-
- (a) 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; or
  - (b) that the property has been or represents property obtained through unlawful conduct (within the meaning given by section 71).
- (4) The Supreme 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 Gibraltar 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;
  - (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 must be assumed by the court that, irrespective of the nature of his interest, 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-
    - (i) Gibraltar or 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) Section 20A applies for the purposes of determining-
- (a) whether a person has been entrusted with prominent public functions (see the definition of “politically exposed person”);
  - (b) whether a person is a family member (see the definition of “family members”);
  - (c) whether a person is known to be a close associate of another (see the definition of “persons known to be close associates”).
- (9) For the purposes of this section-
- (a) section 166X applies in determining whether a person is involved in serious crime in Gibraltar or elsewhere;
  - (b) paragraph 9 of Schedule 4 to the Income 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.

**Effect of order: cases of non-compliance.**

- 166C.(1) This section applies in a case where the respondent and the specified responsible officer (if any), between them, fail, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.
- (2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part V, unless the contrary is shown.
  - (3) The presumption in subsection (2) applies in relation to property-
    - (a) only so far as relating to the respondent’s interest in the property; and
    - (b) only if the value of that interest is greater than the sum specified in section 166B(2)(b).

- (4) It is for the court hearing the proceedings under Part V in relation to which reliance is placed on the presumption to determine the matters in subsection (3).
- (5) The “response period” is whatever period the court specifies under section 166A(7) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).
- (6) For the purposes of subsection (1)-
  - (a) a respondent or a specified responsible officer who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 166D);
  - (b) where an unexplained wealth order imposes more than one requirement the respondent and the specified responsible officer (if any) are to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.
- (7) Subsections (8) and (9) apply in determining the respondent’s interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order-
  - (a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 166B); or
  - (b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).
- (8) In a case within subsection (7)(a), the respondent’s interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.
- (9) In a case within subsection (7)(b), the respondent’s interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 166B.
- (10) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent’s interest in the property is to the total value of the respondent’s interest in those items.

**Effect of order: cases of compliance or purported compliance.**

166D.(1) This section applies in a case where, before the end of the response period (as defined by section 166C(5)), the respondent and the specified responsible officer

(if any) between them comply, or purport to comply, with all the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

- (2) If an interim freezing order has effect in relation to the property (see section 166L), the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.
- (3) A determination under subsection (2) must be made within the period of 60 days starting with the day of compliance, or that period as it may be extended by virtue of section 166E or 166F (the “determination period”).
- (4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the enforcement authority must notify the Supreme Court of that fact as soon as reasonably practicable (and in any event before the end of the determination period).
- (5) If there is no interim freezing order in effect in relation to the property, the enforcement authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.
- (6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise and whether or not by the enforcement authority) in relation to the property.
- (7) For the purposes of this section-
  - (a) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days); and
  - (b) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) and (b) references to compliance include purported compliance.

- (8) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under-
  - (a) Part IV (confiscation of the proceeds of criminal conduct);
  - (b) Part V (civil recovery of the proceeds etc. of unlawful conduct); or

- (c) this Chapter.

**Extension of period for making determination where interim freezing order has been made.**

166E.(1) The Supreme 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 166D(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 Supreme 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 166D(7)(a)).

**Extension of period pending determination of proceedings etc.**

166F.(1) Subsection (2) applies where-

- (a) an application is made to the Supreme Court under section 166E 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 166E 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 166E 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.
- (8) The restriction on the overall extension of the determination period mentioned in section 166E(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.

**Offence.**

166G.(1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person-

- (a) makes a statement that the person knows to be false or misleading in a material particular; or
  - (b) recklessly makes a statement that is false or misleading in a material particular.
- (2) A person guilty of an offence under this section is liable-
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both.

**Statements.**

166H. (1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

- (2) Subsection (1) does not apply-
- (a) in the case of proceedings under Part IV;
  - (b) on a prosecution for an offence under section 166G;
  - (c) on a prosecution for an offence for perjury or false statements; or
  - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless-
- (a) evidence relating to it is adduced; or
  - (b) a question relating to it is asked,
- by the person or on the person's behalf in proceedings arising out of the prosecution.

**Disclosure of information, copying of documents, etc.**

166I.(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

- (2) But subsections (1) to (5) of section 165 (rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.
- (3) The enforcement authority may take copies of any documents produced by the respondent or any specified responsible officer in connection with complying with the requirements imposed by an unexplained wealth order.
- (4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 146 in relation to the property in respect of which the unexplained wealth order is made.
- (5) But if the enforcement authority has reasonable grounds to believe that the documents-
  - (a) may need to be produced for the purposes of any legal proceedings; and
  - (b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

**Holding of property: trusts and company arrangements etc.**

166J.(1) This section applies for the purposes of sections 166A and 166B.

- (2) The cases in which a person (P) is to be taken to “hold” property include those where-
  - (a) P has effective control over the property;
  - (b) P is the trustee of a settlement in which the property is comprised;
  - (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.
- (3) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person-
  - (a) exercises;

- (b) is able to exercise; or
  - (c) is entitled to acquire,
- direct or indirect control over the property.
- (4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.
  - (5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of Gibraltar or in a country or territory outside Gibraltar.
  - (6) For further provision about how to construe references to the holding of property, see section 183.

**Supplementary.**

- 166K.(1) An application for an unexplained wealth order may be made without notice.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to unexplained wealth orders.
  - (3) An application to discharge or vary an unexplained wealth order may be made by-
    - (a) the enforcement authority; or
    - (b) the respondent or any specified responsible officer.
  - (4) The court-
    - (a) may discharge the order;
    - (b) may vary the order.
  - (5) An unexplained wealth order may include a requirement that any application to discharge the order must be made by a specified date.

**Application for interim freezing order.**

- 166L.(1) This section applies where the Supreme Court makes an unexplained wealth order in respect of any property.
- (2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery or confiscation order that might subsequently be obtained being frustrated.

- (3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 166N).
- (4) An interim freezing order-
  - (a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates;
  - (b) must be made in the same proceedings as those in which the unexplained wealth order is made; and
  - (c) may be combined in one document with the unexplained wealth order.
- (5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

**Variation and discharge of interim freezing order.**

- 166M.(1) The Supreme Court may at any time vary or discharge an interim freezing order.
- (2) The Supreme Court must discharge an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.
  - (3) The first case is where-
    - (a) the applicable 48 hour period has ended; and
    - (b) a relevant application has not been made before the end of that period in relation to the property concerned.
  - (4) The second case is where-
    - (a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned; and
    - (b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.
  - (5) The third case is where the court has received a notification in relation to the property concerned under section 166D(4) (notification from enforcement authority of no further proceedings).
  - (6) The “applicable 48 hour period” is to be read as follows-

- (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the determination period (see section 166D) ends;
  - (b) in any other case, it is the period of 48 hours beginning with the day after the day with which the response period ends.
- (7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of-
- (a) any Saturday or Sunday;
  - (b) Christmas Day;
  - (c) Good Friday; or
  - (d) any day that is a bank holiday under the Banking and Financial Dealings Act.
- (8) Section 166D(7) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.
- (9) Before exercising power under this section to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (10) Subsection (9) does not apply where the court is acting as required by subsection (2).
- (11) In this section-
- “relevant application” means an application for-
- (a) a restraint order under section 59;
  - (b) a property freezing order; or
  - (c) an interim receiving order;
- “response period” has the meaning given by section 166C(5).

**Exclusions.**

166N.(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows-

- (a) power to exclude property from the order; and
  - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may (amongst other things) make provision for the purpose of enabling any person-
- (a) to meet the person's reasonable living expenses; or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Chapter, it must ensure that the exclusion-
- (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs;
  - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and
  - (c) is made subject to the same conditions as would be the required conditions (see section 113) if the order had been made under section 74 (in addition to any conditions under subsection (4)).
- (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Chapter must have regard to the desirability of the person being represented in any proceedings under this Chapter in which the person is a participant.
- (7) If excluded property is not specified in the order it must be described in the order in general terms.

**Restrictions on proceedings and remedies.**

166O.(1) While an interim freezing order has effect-

- (a) the Supreme Court may stay any action, execution or other legal process in respect of the property to which the order applies; and
  - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If a court in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may-
- (a) stay the proceedings; or
  - (b) allow them to continue on any terms it thinks fit.
- (3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable-
- (a) only with the leave of the Supreme Court; and
  - (b) subject to any terms that the court may impose.
- (4) The reference in subsection (3) to a “right of forfeiture” in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.
- (5) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

**Receivers in connection with interim freezing orders.**

166P.(1) This section applies where the Supreme Court makes an interim freezing order on an application by the enforcement authority.

- (2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.
- (3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.



- (4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the enforcement authority to obtain a recovery in respect of any property.
- (5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.
- (6) The person nominated may be a member of staff of the enforcement authority.
- (7) The enforcement authority may apply a sum received by it under section 103(2) in making payment of the remuneration and expenses of a receiver appointed under this section.
- (8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

**Powers of receivers appointed under section 166P.**

166Q.(1) If the Supreme Court appoints a receiver under section 166P on an application by the enforcement authority, the court may act under this section on the application of the enforcement authority.

- (2) The court may by order authorise or require the receiver-
  - (a) to exercise management powers in relation to any property in respect of which the receiver is appointed, including-
    - (i) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
    - (ii) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,
    - (iii) incurring capital expenditure in respect of the property;
  - (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).
- (3) The court may by order require any person in respect of whose property the receiver is appointed-
  - (a) to bring the property to a place in Gibraltar specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);

- (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.
- (4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place in Gibraltar specified by the receiver or to place them in the custody of the receiver.
- (5) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (6) Subsection (7) applies in a case where-
  - (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 166P; but
  - (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of the appointment.
- (7) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (8) But subsection (7) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

**Supervision of section 166P receiver and variations.**

166R.(1) Any of the following persons may at any time apply to the Supreme Court for directions as to the exercise of the functions of a receiver appointed under section 166P-

- (a) the receiver;
  - (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
  - (c) a person affected by an action taken by the receiver;
  - (d) a person who may be affected by an action proposed to be taken by the receiver.
- (2) Before it gives directions under subsection (1) the court must give an opportunity to be heard to-
- (a) the receiver;

- (b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;
  - (c) a person who may be interested in the application under subsection (1).
- (3) The court may at any time vary or discharge-
- (a) the appointment of a receiver under section 166P;
  - (b) an order under section 166Q; or
  - (c) directions under this section.
- (4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to-
- (a) the receiver;
  - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 166Q or (as the case may be) for the directions under this section;
  - (c) the parties to the proceedings for the interim freezing order concerned;
  - (d) any person who may be affected by the court's decision.

### **Registration**

166S. Section 83 (Registration) applies in relation to interim freezing orders as it applies in relation to property freezing orders under section 74.

### **Compensation.**

166T.(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the Supreme Court for the payment of compensation.

- (2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.
- (3) The court may order compensation to be paid to the applicant only if satisfied that-
  - (a) the applicant has suffered loss as a result of the making of the interim freezing order;
  - (b) there has been a serious default on the part of the enforcement authority that applied for the order; and

- (c) the order would not have been made had the default not occurred.
- (4) Where the court orders the payment of compensation-
- (a) the compensation is payable by the enforcement authority that applied for the order; and
  - (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

**Enforcement abroad: enforcement authority.**

166U(1). This section applies if-

- (a) the Supreme Court makes an unexplained wealth order in respect of any property;
  - (b) it appears to the enforcement authority that the risk mentioned in section 166L(2) applies in relation to the property; and
  - (c) the enforcement authority believes that the property is in a country or territory outside Gibraltar (the receiving country or territory).
- (2) The enforcement authority may send a request for assistance in relation to the property to the Minister with responsibility for justice with a view to it being forwarded under this section.
- (3) The Minister with responsibility for justice may forward the request for assistance to the government of the receiving country or territory.
- (4) A request for assistance under this section is a request to the government of the receiving country or territory-
- (a) to secure that any person is prohibited from dealing with the property;
  - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

**Enforcement abroad: receiver.**

166V.(1) This section applies if-

- (a) an interim freezing order has effect in relation to property; and

- (b) the receiver appointed under section 166P in respect of the property believes that it is in a country or territory outside Gibraltar (the receiving country or territory).
- (2) The receiver may send a request for assistance in relation to the property to the Minister with responsibility for justice with a view to it being forwarded under this section.
- (3) The Minister with responsibility for justice must forward the request for assistance to the government of the receiving country or territory.
- (4) A request for assistance under this section is a request to the government of the receiving country or territory-
  - (a) to secure that any person is prohibited from dealing with the property;
  - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

**Costs orders.**

166W.(1) This section applies in the following cases-

- (a) the enforcement authority has made an application for an unexplained wealth order under section 166A;
- (b) the enforcement authority has made an application for the determination period to be extended under section 166E;
- (c) an application has been made to discharge or vary an unexplained wealth order;
- (d) the enforcement authority has made an application for an interim freezing order under section 166L;
- (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 166O to-
  - (i) stay an action, execution or other legal process,
  - (ii) grant leave to levy distress,
  - (iii) stay proceedings in respect of property or allow them to continue, or
  - (iv) grant leave to exercise a right of forfeiture in relation to a tenancy;

- (g) the enforcement authority has made an application for an order for the appointment of a receiver under section 166P;
  - (h) the enforcement authority has made an application for an order under section 166Q;
  - (i) an application has been made for directions to a receiver under section 166R;
  - (j) an application has been made to discharge or vary-
    - (i) the appointment of a receiver under section 166P,
    - (ii) an order under section 166Q, or
    - (iii) directions under section 166R;
  - (k) an application has been made for compensation under section 166T;
  - (l) the Supreme 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 the 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 enforcement 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 enforcement authority acted dishonestly or improperly in the course of the proceedings.

**Involvement in serious crime.**

166X.(1) For the purposes of section 166B, a person has been involved in serious crime in Gibraltar if he-

- (a) has committed a serious offence in Gibraltar;
- (b) has facilitated the commission by another person of a serious offence in Gibraltar; or

- (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in Gibraltar (whether or not such an offence was committed).
- (2) In subsection (1) “a serious offence in Gibraltar” means an offence under the law of Gibraltar which, at the time when the court is considering the application or matter in question-
- (a) is specified, or falls within a description specified, in Schedule 10; or
  - (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.
- (3) For the purposes of section 166B, involvement in serious crime in Gibraltar is any one or more of the following-
- (a) the commission of a serious offence in Gibraltar;
  - (b) conduct which facilitates the commission by another person of a serious crime in Gibraltar;
  - (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Gibraltar (whether or not such an offence is committed).
- (4) For the purposes of section 166B, a person has been involved in serious crime elsewhere than in Gibraltar if he-
- (a) has committed a serious offence in a country outside Gibraltar;
  - (b) has facilitated the commission by another person of a serious offence in a country outside Gibraltar; or
  - (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside Gibraltar (whether or not such an offence was committed).
- (5) In subsection (4) “a serious offence in a country outside Gibraltar” means an offence under the law of a country outside Gibraltar which, at the time when the court is considering the application or matter in question-
- (a) would be an offence under the law of Gibraltar if committed in or as regards Gibraltar; and
  - (b) either-

- (i) would be an offence which is specified, or falls within a description specified, in Schedule 10 if committed in or as regards Gibraltar; or
  - (ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in subparagraph (i).
- (6) An act punishable under the law of a country outside Gibraltar constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.
- (7) In considering for the purposes of section 166B, whether a person has committed a serious offence-
  - (a) the court must decide that the person has committed the offence if-
    - (i) he has been convicted of the offence; and
    - (ii) the conviction has not been quashed on appeal nor has the person been pardoned of the offence; but
  - (b) the court must not otherwise decide that the person has committed the offence.
- (8) In deciding for the purposes of section 166B whether a person (the “respondent”) facilitates the commission by another person of a serious offence, the court must ignore-
  - (a) any act that the respondent can show to be reasonable in the circumstances; and
  - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
- (9) In deciding for the purposes of section 166B whether a person (“the respondent”) conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore-
  - (a) any act that the respondent can show to be reasonable in the circumstances; and
  - (b) subject to this, his intentions, or any other aspect of his mental state, at the time.



(10) The Minister with responsibility for justice may by order amend Schedule 10.

(11) In this section-

“act” and “conduct” include omissions and statements; and

“country” includes territory.

### **Code of Practice**

166Y.(1) The Minister with responsibility for justice may issue a code of practice as to the exercise by the enforcement authority of its functions under sections 166A to 166X.

(2) The code must be published and comes into operation on the date of publication.

(3) The enforcement authority must comply with a code of practice which is in operation under this section in the exercise of any function it has under sections 166A to 166X.

(4) If the enforcement authority fails to comply with any provision of such a code of practice he is not by reason only of that failure liable in any criminal or civil proceedings.

(5) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(6) The Minister with responsibility for justice may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.”.

(3) Before section 181 for the heading in italics “*Interpretation*” substitute “*Supplementary and Interpretation*”.

(4) After section 181 insert-

**“Power to vary monetary amounts.**

181A. In order to take account of changes in the value of money, the Minister with responsibility for justice may by regulations substitute another sum for the time being specified in section 166B(2)(b).”.

(5) In section 183-

(a) in subsection (3) before paragraph (a) insert-

- “(za) property is held by a person if he holds an interest in it;”;
- (b) in subsection (6) for the “and” substitute a comma and after “interim receiving order” insert “and “property freezing order””;
- (c) after subsection (7) insert-
  - “(7A) In this Part-
    - “confiscation order” has the same meaning as in Part IV;
    - “interim freezing order” has the meaning given in section 166L(3);
    - “unexplained wealth order” has the meaning given in section 166A(4);
    - “settlement” has the meaning given by paragraph 9(9) of schedule 4 to the Income Tax Act 2010.
  - (7B) In this Part in relation to an interim freezing order or an unexplained wealth order, references to the enforcement authority are to the enforcement authority that is seeking, or (as the case may be) has obtained, the order.”.
- (6) After Schedule 9 insert-

## **“SCHEDULE 10**

Section 166X

### **SERIOUS OFFENCES**

#### *Drug Trafficking*

- 1.(1) An offence under any of the following provisions of the Crimes Act 2011-
  - (a) section 504(2) or (3);
  - (b) section 506(3);
  - (c) section 508;
  - (d) section 512
  - (e) section 515;
  - (f) section 518;
  - (g) section 522.

- (2) An offence under section 15 or 80 of the Imports and Exports Act, 1986;
- (3) An offence under section 104 or 105 of the Imports and Exports Act, 1986 if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 503 of the Crimes Act 2011.

*Slavery*

2. An offence under section 191 or 191A of the Crimes Act 2011.

*People trafficking*

3. An offence under section 63 or 63A of the Immigration, Asylum and Refugee Act.

*Terrorism*

4. An offence for the time being listed in section 109 of the Terrorism Act 2018 (Offences to which Part 9 of the Act applies: terrorism offences).

*Firearms offences*

- 5.(1) An offence under any of the following provisions of the Firearms Act-
  - (a) section 3(1);
  - (b) section 9(1);
  - (c) section 18(2).
- (2) An offence under section 105 of the Imports and Exports Act, 1986 if it is committed in connection with a firearm or ammunition.
- (3) In subparagraph (2) “firearm” and “ammunition” have the same meanings as in section 2 of the Firearms Act.

*Prostitution and child sex*

6. An offence under any of the following provisions of the Crimes Act 2011-
  - (a) section 226;
  - (b) section 263;
  - (c) section 264;
  - (d) section 265;
  - (e) section 267;

- (f) section 268.

*Armed robbery etc.*

7.(1) An offence under section 398(1) of the Crimes Act 2011 where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon.

(2) An offence at common law of an assault with intent to rob where the assault involves a firearm, imitation firearm or an offensive weapon.

(3) In this paragraph-

“firearm” has the meaning given by section 2 of the Firearms Act;

“imitation firearm” has the meaning given in section 24(6)(b) of that Act;

“offensive weapon” has the meaning given in section 2(1) of the Crimes Act 2011.

*Money laundering*

8. An offence under section 2, 3 or 4 of this Act.

*Fraud*

9.(1) An offence under any of the following provisions of the Crimes Act 2011-

(a) section 415;

(b) section 425;

(c) section 419;

(d) section 420;

(e) section 421;

(f) section 422;

(2) An offence at common law of conspiracy to defraud.

*Offences in relation to public revenue*

10.(1) An offence under section 105 of the Imports and Exports Act, 1986 so far as not falling within paragraph 1(3) or 5(2).

(2) An offence under section 67(1) of the Income Tax Act 2010.

- (3) An offence at common law of cheating in relation to public revenue.

*Bribery*

11. An offence under any of the following provisions of the Crimes Act 2011-

- (a) section 566;
- (b) section 567;
- (c) section 571.

*Counterfeiting*

12. An offence under any of the following provisions of the Crimes Act 2011-

- (a) section 442;
- (b) section 443;
- (c) section 444;
- (d) section 445.

*Computer misuse*

13. An offence under any of the following provisions of the Crimes Act 2011-

- (a) section 362;
- (b) section 363;
- (c) section 364;
- (d) section 365;
- (e) section 366A;
- (f) section 366.

*Intellectual property*

- 14.(1) An offence under the following provisions of the Intellectual Property (Copyright and Related Rights) Act 2005-

- (a) section 128(1)(a), (b), (d)(iv) or (e);
- (b) section 231(1)(a), (b), (c)(iii).

- (2) An offence under section 3 of the Merchandise Marks Act.

*Environment*

- 15.(1) An offence under regulation 3(1)(d) of the Marine Protection Regulations 2014.
- (2) An offence under section 192D of the Public Health Act.
- (3) An offence under section 3(1) and section 8 of the Control of Trade in Endangered Species Act 1998.

*Sanctions*

- 16.(1) An offence under section 9 of the Sanctions Act 2019 if it is committed in relation to a financial sanction.
- (2) An offence under paragraph 7 of Schedule 5 to the Terrorism Act 2018.
- (3) An offence under section 25 of the Counter-Terrorism Act 2010 where the offence relates to a requirement of the kind mentioned in section 12 of that Act.
- (4) An offence under section 26 of the Counter-Terrorism Act 2010.
- (5) An offence under regulations made under section 16 of the Sanctions Act 2018.
- (6) In this paragraph-

“financial sanction” means a measure imposing a prohibition or requirement for one of the purposes listed in section 21(1)(a) to (g) of the Sanctions Act 2019.

*Inchoate offences*

- 17.(1) An offence of attempting or conspiring the commission of an offence specified or described in this Schedule.
- (2) An offence under sections 36 to 46 of the Crimes Act 2011 where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence specified or described in this Schedule.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified or described in this Schedule.
- (4) The references in subparagraphs (1) to (3) to offences specified or described in this Schedule do not include the offence at common law of conspiracy to defraud.

*Earlier offences*

- 18.(1) This Schedule (apart from paragraph 17(2)) has effect, in its application to conduct before the passing of this Act, as if the offences specified or described in this Schedule included any corresponding offences under the law in force at the time of the conduct.
- (2) Paragraph 17(2) has effect, in its application to conduct before the passing of this Act, as if the offence specified or described in that provision were an offence of inciting the commission of an offence specified or described in this Schedule.

*Scope of offences*

19. Where this Schedule refers to offences which are offences under the law of Gibraltar and another country, the reference is to be read as limited to the offences so far as they are offences under the law of Gibraltar.”.

**Power to make consequential provision.**

4. The Minister with responsibility for justice may by regulations make provision in consequence of any provision made in this Act.

- (2) Regulations under subsection (1) may-
- (a) include transitional, transitory or saving provisions; and
  - (b) repeal, revoke or otherwise amend any provision in any Act or subsidiary legislation.

**EXPLANATORY MEMORANDUM**

This Bill amends the Proceeds of Crime Act 2015 to make provision for Unexplained Wealth Orders.

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