Twitter Thread by Martyn McLaughlin



Martyn McLaughlin
@MartynMcL

Here's a quick thread on the chronology leading up to today's vote in the Scottish Parliament on whether ministers should go to court to investigate the finances of Donald Trump's Scottish resorts via a legal mechanism known as an Unexplained Wealth Order.■

Intrigue surrounding the source of Trump's finances here is by no means new. An editorial in @TheScotsman questioned where the money was coming from back in *2008*. But the UWO issue came to prominence last Feb during exchanges in the Scottish Parliament. https://t.co/wA0GpIXxnI

The issue returned to parliament last November, when First Minister Nicola Sturgeon said any consideration or application for an UWO were "properly matters for the Crown Office, not for the Scottish ministers."

This argument went against the explicit definition of who is able to apply for a UWO, as set out in the Criminal Finances Act 2017 / Proceeds of Crime Act 2002, which states that "the Court of Session may, on an application made by the Scottish ministers, make an UWO"

Unexplained wealth orders: Scotland

Unexplained wealth orders: Scotland

In Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (investigations: Scotland), after section 396 insert—

"Unexplained wealth orders

396A Unexplained wealth orders

(1) The Court of Session may, on an application made by the Scottish Ministers, 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 Scottish Ministers think holds the property ("the respondent") (and the person specified may include a person outside the United Kingdom).

(3) An unexplained wealth order is an order requiring the respondent 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 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 so specified.

(4) The order must specify—

(a) the form and manner in which the statement is to be given,

(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.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.

(6) The respondent 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).

396B 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 Court of Session 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 Court of Session 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.



The leading advocate, Aidan O'Neill QC, has also said Scottish ministers alone are responsible for decisions around UWOs, and that transferring responsibility to the Crown Office or Lord Advocate "does not and can not" change its legal responsibilities. https://t.co/9rlBQ26Ku8

A few days after I wrote this story, Mr O'Neill's advice was put to Ms Sturgeon in parliament. She said she had not read it "in detail" and maintained UWO matters lay with the Lord Advocate.

https://t.co/xvBIEAc0t3

Which led to the story I wrote on Sunday evening, revealing there would be a parliamentary vote on whether ministers should apply for a UWO against Mr Trump, given what @patrickharvie has characterised as "serious and evidenced" concerns over his finances. https://t.co/aPwwsNkt8w

Here's my column in today's @TheScotsman, spelling out some of the many mysteries surrounding the money behind Mr Trump's Scottish entities, which were acquired as part of an uncharacteristic decade-long spending spree. https://t.co/MxcUCWmk5i