

Explanations Necessary

3 Dec 2015

In an attempt to crack down on corruption, the government is seeking to make people prove that their assets have not been gained through illegal activity. This is a major reversal of the normal procedures that are in place in criminal investigations. In the vast majority of criminal cases, the burden of proof is on the accuser. If allegations are made against a person and charges are brought then it is the prosecution's task to prove that the accused is guilty beyond reasonable doubt. This has been a cornerstone of justice for centuries.

Treasure chest
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Now this appears set to be further eroded. The government has proposed what have been termed unexplained wealth orders (UWO's). Such orders will operate with the burden of proof reversed – the subject of such an order will have to justify the source of their wealth and prove it was not obtained through illegal activity. If they cannot prove the source of their wealth is lawful they may well lose it. Such a major measure could well be introduced as soon as next year, if reports are to be believed.

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Necessity

The
government
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Supporters
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orders can, of course, argue that the burden of proof is not really such a contentious issue as the orders are a civil law device rather than a criminal law one. This means that the facts of a crime do not have to be proved “beyond reasonable doubt” as in criminal cases. In civil law, any assertions by the authorities only have to be established on the balance of probabilities.

The civil law has been an increasingly attractive option for the authorities in recent years. It has allowed them to seize assets belonging to those it suspects of being involved in crime without that person ever having been convicted of – or even charged with – an offence that created that wealth. UWO’s appear to be an extension of this use of civil law by the state to punish (or at least empty the pockets) of those it suspects of wrongdoing without having to go to the trouble of proving any illegality.

Defending assets

So what can be done by someone faced with such an order? How should they go about defending their assets?

It has been the case for a number of years, as we indicated above, that suspects in business crime have been losing their assets to the authorities without ever having been proved guilty of anything. UWO’s may lead to an increase in the number of people losing assets with no proof of guilt. But what needs to be remembered is that many people who face such a situation could well retain their assets if they seek the appropriate legal advice.

For years, the authorities have been issuing restraint orders against people who have not been convicted or even charged, simply because they suspect them of criminal activity. Such orders involve the powers that be freezing the personal and business assets of someone suspected of criminal activity. The person is then unable to access their finances, even to run their businesses, cover personal outgoings or pay legal expenses.

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Confidence

This is a problem that could be avoided if a person chooses a solicitor who is an expert in this legal area. Our experience in this field means that we can say with confidence that the right legal approach can ensure people still have access to what is theirs, rather than see it all taken away without a conviction. We have proved this to be the case when we have represented clients facing restraint and confiscation orders. And we firmly believe this will be the case when UWO's are introduced.

It is only human for a person to feel panicked if they learn that they are the subject of an order designed to seize their assets. But it is important to find a solicitor who has expertise in this area. UWO's may be a new concept but they will be used by the same agencies who use current assets-related orders.

Being legally represented by a person who is completely up to speed on such legislation – and experienced when it comes to negotiating with the authorities involved – can make all the difference.

That difference can lead to an order being thrown out or varied massively in a person's favour. In the right legal hands, orders can be challenged, their terms altered hugely to prevent a person suffering hardship and the most favourable possible outcome achieved.

A robust challenge to an order made by an appropriate legal expert as early as possible prevents the subject of it being "steamrollered" into accepting its terms. But in inexperienced or unsuitable hands, the chances of mounting a strong, proactive challenge to any or all aspects of a UWO (or other order) are seriously diminished.

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Opportunity

When UWO's come into effect, their use could well intimidate anyone who becomes the subject of one. Yet one thing we have learned when it comes to restraint orders is that the authorities are often quick to issue them. This can lead to mistakes and errors of judgement by the people issuing them. Such slips leave plenty of opportunity for challenges to the terms and validity of an order. This will also be the case when it comes to UWO's.

Photo of an apartment

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UWO's may well be a new concept. But they are based on the authorities' desire to claim assets from people without the need to prove guilt – and that certainly is not a new concept in UK business crime. Such a concept is one that we have been successfully battling against on behalf of clients for many years.

And it is one that is set to continue with the introduction of the UWO.

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