

Restraint orders

What is a restraint order?

A restraint order is an order of the crown court prohibiting any person (individual or company) from dealing with any property held by them. The purpose of a restraint order is to ensure that, if a suspect is successfully prosecuted for a criminal offence, the spoils of their crime are preserved for the court to confiscate.

A restraint order is directed at a person, not at the assets themselves, and it is usually served on third parties such as banks who are known to hold assets on behalf of a suspect. If a person, or a third person with knowledge of the order, deals with the property in breach of the order they will be in contempt of court which means they may face a fine or imprisonment. There is usually an exception to the general prohibition to provide for a modest 'allowance' permitting living expenses.

The court has the power to make any other order that it believes appropriate to ensure that the restraint order is effective. As a result, restraint orders often have additional features such as:

- a requirement that the subject make full disclosure of their assets within a short period of time;
- a requirement that the subject repatriates their assets to the UK.

Could you become the subject of a restraint order?

A judge in a crown court may make a restraint order if an investigator (for example the police or FSA) makes an application under Section 40 of the Proceeds of Crime Act 2002 (POCA) and the judge is persuaded that:

- a criminal investigation has been started in England and Wales with regard to an offence; and
- there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.

A restraint order can be made at the outset of an investigation and will remain in place until a confiscation order is paid or the investigation/proceedings cease (eg acquittal or stay). Applications for restraint orders are most commonly made without notice to the suspect. In practice, restraint orders are often served at the same time that a suspect is arrested in order to effect an interview under caution. However, a restraint order may be made at any time.

If you know there is an investigation against you in respect of an offence for which you have received financial benefit there is a risk that an order will be made at any time. If you are able to make representations in advance of the order being made you may be able to influence its terms (see below), or provide sufficient assurance to the prosecutor in the form of an undertaking to avoid one being made all together.

What can you do if you are a subject of a restraint order?

It is important to get advice from a solicitor as soon as possible when you are served with a restraint order. The immediate effect of a restraint order can be to leave an individual without access to funds that are required to pay bills or keep a business running. As the order is often made without the court hearing from the affected party, it is important that it is carefully reviewed. You may be:

- required to make full disclosure of all your assets within a relatively short space of time. The extent of the disclosure required should be scrutinised to ensure it is necessary within the scope of the act;
- able to argue for an increase in the allowance permitted under the order to meet your usual bills;
- able to challenge the extent of the order. There is no necessity to keep any more in the pot than may be required at the end of any criminal case;
- able to challenge the validity of the order.

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For further information about restraint orders and confiscation proceedings, please contact Corker Binning on 0207 353 6000 or visit www.corkerbinning.com