



House of Lords
House of Commons
Joint Committee on
Statutory Instruments

Government Response to the Committee's Nineteenth and Twenty-First Reports of Session 2017–19

**First Special Report of Session
2019–21**

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 73](#), relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

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Committee staff

The current staff of the Committee are Liz Booth (Committee Assistant), Luanne Middleton (Commons Clerk) and Chris Salmon Percival (Lords Clerk). Advisory Counsel: Klara Banaszak, Daniel Greenberg and Vanessa MacNair (Commons); Nicholas Beach, James Cooper, John Crane and Ché Diamond (Lords).

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Special Report

On 20 April and 4 May 2018 the Committee published its Nineteenth and Twenty-First Reports of Session 2017–19 respectively. In these reports the Committee invited the Statutory Instrument Hub of the Government Legal Department to consider the purpose and effect of the reference in section 7 of the Interpretation Act 1978 (service of documents by post) to “properly addressing” a document. The response from the Government was dated and received on 20 December 2019. The response is appended below.

Appendix: Government Response: Letter to Chair of JCSI from the SI Hub

Provisions in Statutory Instruments providing for an Address to be the “Proper Address” for the Purposes of Section 7 of The Interpretation Act 1978

Issue

1. In its Nineteenth and Twenty-First Reports of Session 2017–19, the Joint Committee on Statutory Instruments (“the Committee”) invited the Government Legal Department’s SI Hub, in consultation with Parliamentary Counsel, to consider provisions in S.I. 2018/230 and S.I. 2018/437 which provide for service of documents by post.¹ The provisions specify the “proper address” for such service and also provide expressly that this is the “proper address” for the purposes of section 7 of the Interpretation Act 1978 in its application to those provisions.

2. Section 7 of the Interpretation Act 1978 provides that where an Act or subordinate legislation² “authorises or requires any document to be served by post ... then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

3. The Committee is not convinced that the reference in section 7 to “properly addressing” is a reference to the notion of a “proper address” for service, as in a particular address that is to be selected where there is a choice. The Committee considers that the most likely meaning of the term “properly addressing” in section 7 is as a reference to addressing in a manner that can reasonably be processed by the postal system, and not to a selection of which address to use.

1 See regulation 14 of S.I. 2018/230 and regulation 9 of S.I. 2018/437. See also the Committee’s Thirty-First Report of Session 2017–19 (in relation to S.I. 2018/764) and its Sixty-Fifth Report of Session 2017–19 (in relation to S.I. 2019/980).

2 Section 7 applies to subordinate legislation made on or after 1 January 1979: see section 23 of the Interpretation Act 1978.

4. As regards provisions in subordinate legislation that provide expressly for a particular address to be the “proper address” for the purposes of section 7, the Committee considers that these raise a doubt as to vires in the absence of express vires to limit the effect of primary legislation.

5. The Committee has therefore invited the SI Hub, in consultation with the Office of the Parliamentary Counsel, to consider the relevant provisions of S.I. 2018/230 and S.I. 2018/437 in order to determine—

- a) whether they are required at all in relation to the application of section 7 of the Interpretation Act, and
- b) if they are required, what express vires are required to permit these provisions in each case.

Summary of conclusions

6. Briefly, the SI Hub’s view is as follows—

- a) The concept of “properly addressing” in section 7 of the Interpretation Act 1978 is at least partly concerned with the selection of an appropriate, or “proper”, address.
- b) It is not strictly necessary for legislation to specify a “proper address” expressly for the purposes of section 7. Provisions about service by post provide the context in which section 7 operates, and an address specified for service by post will be the address to be used for the purposes of “properly addressing” under section 7 even if there is no express reference to that section. But a clearer result may be achieved by expressly referring to section 7.
- c) Express vires to modify or restrict the effect of primary legislation are not required for a provision of that kind, because provisions specifying the “proper address” for the purposes of section 7 are doing something that is contemplated by section 7 rather than modifying or limiting the effect of that section.

7. The SI Hub has consulted the Office of the Parliamentary Counsel in preparing this Memorandum, and that Office agrees with the conclusions.

Conclusions in more detail

8. The SI Hub does not agree that the reference to “properly addressing” in section 7 is a reference only to addressing in a manner that can reasonably be processed by the postal system. In our view, authority supports the conclusion that “properly addressing” for the purposes of section 7 at least includes using an appropriate, or “proper”, address.

9. In *White v Weston* [1968] 2 QB 647, the Court of Appeal considered whether a summons sent to a person by post, under a provision of the County Court Rules authorising service by post but to an address with which the person had had no connection for five months, had in fact been served. The Court considered the effect of section 26 of the Interpretation Act 1889 (to which section 7 of the Interpretation Act 1978 is identical in

material respects). In his judgment Russell LJ said that “...a summons addressed to an address with which the defendant has had no connection for five months or more cannot be said to be properly addressed.”

10. In *Freetown v Assethold Ltd* [2012] EWCA Civ 1657, the Court of Appeal considered the relationship between section 7 of the Interpretation Act 1978 and section 15 of the Party Wall etc Act 1996 which provided for the service of notices by post and specified the addresses to be used for that purpose. In paragraph 41 of his judgment, Rix LJ noted that section 15(1)(c) of the Party Wall etc Act provided for notices to be served by post on a body corporate at the body corporate’s registered or principal office and commented that this provision “...tells us how the letter is to be addressed in order to meet the [condition in section 7 of the Interpretation Act 1978] of “properly addressing” the addressee.”

11. In the light of that, we turn to the Committee’s questions.

Is it necessary for legislation to specify a “proper address” for the purposes of section 7?

12. The SI Hub considers that section 7 is capable of operating where legislation authorises or requires service by post but says nothing about the address or addresses to be used (as in *White v. Weston*, above). The context will be relevant in determining whether a document posted to a particular address is “properly addressed”.

13. Where a provision provides for service by post, it may be considered appropriate for it also to specify the address to be used for such service, as is the case with S.I. 2018/230 and S.I. 2018/437. If the provision were to be silent about its relationship with section 7 of the Interpretation Act 1978 (and assuming the application of that section is not excluded), it would nonetheless provide the particular context in which section 7 applies and determine the address to be used in “properly addressing” for the purposes of that section. The application of section 7 depends expressly on the existence of a statutory provision requiring or authorising service by post and operates in the context of such a provision. What such a provision says about the address to be used for service by post is a key part of that context. Whether a letter is “properly addressed” for the purposes of section 7 must take account of what the particular statutory context says about the address to be used for postal service. Indeed this was, in effect, Rix LJ’s conclusion in *Freetown v Assethold Ltd* (see above).

14. It follows that it is not necessary for legislation authorising service by post to specify a “proper address” expressly for the purposes of section 7. However, a clearer result may be achieved if it does, and that is something for the drafter to consider in the particular context.

What express vires are required to specify a “proper address” for the purposes of section 7?

15. The Committee suggests that the relevant provisions of S.I. 2018/230 and S.I. 2018/437 “impose a limitation on the effect” of section 7 of the Interpretation Act 1978 and, as such, require “express vires” which the Committee were doubtful existed in the two cases in question.

16. However, the SI Hub's view is that the provisions in question do not limit the effect of section 7. Rather, as explained above, they make provision which is contemplated by that section. As such, they do not require the kind of express vires that might be required to modify or restrict the effect of primary legislation.

17. Section 7 applies where a provision authorises or requires service by post. It does not place any limits on what might be contained in such a provision. It operates in the context of such a provision. What such a provision says about the address to be used for service by post is part of that context. Whether a letter is "properly addressed" for the purposes of section 7 must take account of what the particular statutory context says about the address to be used for postal service.

18. S.I. 2018/230 and S.I. 2018/437 provide expressly for particular addresses to be the "proper address" for the purposes of section 7. That is simply a drafting technique to achieve the same result. A provision saying that an address is the "proper address" for the purposes of section 7 does not alter the legal concept of "properly addressing" (in section 7). Such a provision is not doing something different in substance from a provision that relies on the application of section 7 but simply provides a proper address for service without indicating expressly that the effect is that this is also the proper address for the purposes of section 7. Provisions of this kind do not therefore require vires that enable the modification of primary legislation. They require only sufficient vires to enable postal service to be authorised or required.

An alternative argument

19. Even if we are wrong that express vires are not required because provisions about service by post simply provide the context for the application of section 7, there is an alternative argument that no express vires are required for provisions of the kind under discussion. Section 7 allows for legislation to exclude its operation (wholly or in part) by showing contrary intention. No express vires are required for that. Subordinate legislation may make its own provision about the matters provided for by section 7 (so long as there are vires to do so). If legislation provides for service by post and also provides that a particular address is the "proper address" for the purposes of section 7, it may be argued that it is simply acknowledging that section 7 applies generally but providing for a more precise rule about the appropriate address for the purposes of "properly addressing" under that section. It would be possible for the legislation to make its own free-standing rules about service by post, including rules about how and when service is to be taken to be effected, and those rules could duplicate the substance of section 7 with only the addition that a particular address is to be used. As such, it must be the case that legislation can proceed on the basis that section 7 applies but make particular, specific provision about the "proper address" to be used. The difference between provisions drafted in these different ways would be purely a difference of form rather than of substance.