GIVING NOTICE AND SERVICE

What is the meaning of "giving of notices" for the purposes of the Licensing Act 2003? In other words, when does the law say that a notice has been served, and when do relevant time periods, such as consultation periods, have to be calculated from? It is not as easy as it sounds.

The relevant bits of section 184 LA 2003 state:

" 184 Giving of notices, etc

(1) This section has effect in relation to any document required or authorised by or under this Act to be given to any person ("relevant document").

(2) Where that person is a licensing authority, the relevant document must be given by addressing it to the authority and leaving it at or sending it by post to—

(a) the principal office of the authority, or

(b) any other office of the authority specified by it as one at which it will accept documents of the same description as that document.

(3) In any other case the relevant document may be given to the person in question by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

…….

(5) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person to whom a relevant document is to be given is his last known address [with some exceptions that need not trouble us here, SC]."

The S182 Guidance (October 2012) simply says:

"7.19 The police and EHA have a period of three working days from when they are given the notice to object to it on the basis of any of the four licensing objectives. Where an objection is given, there is provision under section 106 of the 2003 Act for the police or EHA to agree with the premises user to modify the TEN (see paragraph 7.36 below)."

In terms of the giving of the TEN by the applicant to the authorities, Section 100A of the LA 2003 (as amended by PRSR 2011) states:

[100A Standard and late temporary event notices]

[(1) For the purposes of section 100(7)(a), a temporary event notice must be given in accordance with—

(a) subsection (2), in which case the notice is a "standard temporary event notice", or

(b) subsection (3), in which case the notice is a "late temporary event notice".

(2) A temporary event notice is given in accordance with this subsection if, no later than ten working days before the day on which the event period begins,—

(a) it is given to the relevant licensing authority by means of a relevant electronic facility, or

(b) it is given to the relevant licensing authority (otherwise than by means of a relevant electronic facility) and to each relevant person.

(3) A temporary event notice is given in accordance with this subsection if—

(a) it is given to the relevant licensing authority by means of a relevant electronic facility no later than five working days, but no earlier than nine working days, before the day the event period begins, or

(b) both of the following are satisfied—

(i) it is given to the relevant licensing authority (otherwise than by means of a relevant electronic facility) and to each relevant person no later than five working days before the day on which the event period begins;

(ii) it is given to at least one of those persons no earlier than nine working days before the day on which that event period begins.

(4) Where a temporary event notice (the "original notice") is given by the premises user to the relevant licensing authority by means of a relevant electronic facility as referred to in subsection (2)(a) or (3)(a)—

(a) the licensing authority must give a copy of the original notice to each relevant person no later than the end of the first working day after the day on which the original notice was given to the authority, and

(b) for the purposes of this Act, the copy is to be treated as if it were the original notice.

(5) In this section "event period" in relation to a temporary event notice means the event period specified in the notice.]

LA 2003 s104, (as amended by PRSR 2011), states that the Objection by the responsible authorities has to be given in this way:

" **104 Objection to notice by [a relevant person]**

(1) . . .

[(1A) . . .]

(2) Where a relevant person who is given a temporary event notice is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective, the relevant person must give a notice stating the reasons for being so satisfied (an "objection notice")—

(a) to the relevant licensing authority,

(b) to the premises user, and

(c) to every other relevant person.]

(3) The objection notice must be given before the end of the third working day following the day on which the relevant person is given the temporary event notice….."

In practical terms, what does it all mean?

Section 184 clearly governs the "giving" of any notice, and tells us what that means. It states, as we have seen:

"(3) In any other case the relevant document may be given to the person in question by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address."

The first two options seem straight-forward enough (although see below on deemed service for nuances!). They appear to involve the physical delivering/handing over of the document. If you have direct evidence of when a document actually arrived or was handed over, then there may not be an issue.

It is the third option that requires further interpretation.

Section 184 clearly applies section 7 of the Interpretation Act 1978 which states:

"**7** – Where an Act authorises or requires any document to be served by post

(whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, prepaying 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."

Section 7 applies to a statute "unless the contrary intention appears". Under s184, no contrary intention appears; rather the reverse – Section 7 is explicitly envisaged as applying.

We can find further help on the meaning of: "the time at which the letter would be delivered in the ordinary course of post". The Civil Procedure Rules cover deemed service, in the context of documents served in the course of court proceedings. There would be no reason not to apply the same timeframes in the current context:

"Civil Procedure Rules

Deemed Service

6.26

A document, other than a claim form, served within the United Kingdom in accordance with these Rules or any relevant practice direction is deemed to be served on the day shown in the following table –

Method of service	Deemed date of service
1. First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or
	if not, the next business day after that day.
2. Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or
	if not, the next business day after that day.
3. Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30p.m., on that day; or
	in any other case, on the next business day after that day.
4. Fax	If the transmission of the fax is completed on a business day before 4.30p.m., on that day; or

Method of service	Deemed date of service
	in any other case, on the next business day after the day on which it was transmitted.
5. Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or
	in any other case, on the next business day after the day on which it was sent.
6. Personal service	If the document is served personally before 4.30p.m. on a business day, on that day; or
	in any other case, on the next business day after that day.

15. Paragraphs 10.1 to 10.7 of Practice Direction 6A contain examples of how the date of deemed service is calculated.

Practice Direction 6A

Deemed service of a document other than a claim form

10.1

Rule 6.26 contains provisions about deemed service of a document other than a claim form. Examples of how deemed service is calculated are set out below.

10.2

Example 1

Where the document is posted (by first class post) on a Monday (a business day), the day of deemed service is the following Wednesday (a business day).

10.3

Example 2

Where the document is left in a numbered box at the DX on a Friday (a business day), the day of deemed service is the following Monday (a business day).

10.4

Example 3

Where the document is sent by fax on a Saturday and the transmission of that fax is completed by 4.30p.m. on that day, the day of deemed service is the following Monday (a business day).

10.5

Example 4

Where the document is served personally before 4.30p.m. on a Sunday, the day of deemed service is the next day (Monday, a business day).

10.6

Example 5

Where the document is delivered to a permitted address after 4.30p.m. on the Thursday (a business day) before Good Friday, the day of deemed service is the following Tuesday (a business day) as the Monday is a bank holiday.

10.7

Example 6

Where the document is posted (by first class post) on a bank holiday Monday, the day of deemed service is the following Wednesday (a business day)."

This, whilst not that straight-forward in itself, might be assumed to be the end of the matter as far as calculating when a notice has been "given" is concerned. Such an assumption would be wrong. This provision for the giving of notices has given rise to a remarkable amount of caselaw in many contexts, and the debate appears to be ongoing.

We now have, in the discussion above, the meaning of "giving" a notice; when that is deemed to take place in principle, and the time-frames involved. Does this mean that the document actually has to arrive in the hand of the person it is intended for, or is it enough to simply send it in accordance with the above principles to get the job done?

The *locus classicus* is:

R v Appeal Committee of County of London Quarter Sessions, Ex parte Rossi [1956] 1 All ER 670 [Court of Appeal, Denning, Morris and Parker LJJ]

MORRIS LJ:

"There is an obligation to "give" such notice. The purpose of giving notice to a party of the hearing of a case is so that the party may have the opportunity to appear in order to assert or to defend his rights. It seems to me, therefore, that it is of the very essence of such notice that it should be communicated to or should reach the party interested. It is fundamental in our system of administration of justice that a party should have the right and opportunity to be heard or to be represented. This is well recognised.

We were referred to a number of statutory provisions relating to the serving or sending of various kinds of notices in various circumstances and to certain decisions relating to these provisions. Though it was proper and helpful to be referred to such provisions and decisions, the present case must depend on the interpretation of this particular section of this particular Act. The normal and convenient method of giving notice will doubtless be by way of a written or documentary notice: certainty of communication as to date and time and place may best be secured, if the intimation is recorded in a document. The document could be given to the party interested; but a usual and convenient method of transmitting the document is by employing the machinery of the post office. This is recognised and permitted by the legislature for s.3(1) of the Summary Jurisdiction (Appeals) Act, 1933, enacts that:

"A notice required by this sub-section to be given to any person may be sent by post in a registered letter addressed to him at his last or usual place of abode."

Section 26 of the Interpretation Act, 1889, provides as follows:

"Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve', or the expression 'give' or 'send', or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, 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."

The Act of 1933 clearly permits or authorises the giving of a notice as to a hearing by sending a document by registered post. But if the primary obligation of giving notice means in this context the giving of some form of notice which reaches the party interested so that he may be present or represented at a hearing, then the permissive user of the post denotes a user so that notice may reach the party interested so that he may be present or represented at the hearing. It was, therefore, entirely proper to send a notice to Mr Rossi by registered post. Applying the provisions of the Interpretation Act, 1889, s 26, since no contrary intention appears from the Act of 1933, the sending of the notice to Mr Rossi was deemed to be effected by properly addressing, prepaying and posting the letter which contained the document. Then by the concluding words of s 26, the sending of the notice was deemed, unless the contrary was proved, to have been effected at the time at which the letter would have been delivered in the ordinary course of post. Here, however, the contrary was proved. It was proved not merely that the letter was not delivered in the ordinary course of post but that the letter was not delivered at all. Service cannot in this case be deemed "to have been effected" at some particular time, ie, in the ordinary course of post: service was proved not to have been effected at all. When considering the giving of a notice of a hearing of an appeal the element of time is clearly of importance: the notice must be given at such time as will enable a party to be present at a hearing. Here it was not.

……. But by the operation of the Interpretation Act, 1889, s 26, on the uncontested facts in this case, it is shown that the procedurally correct permissive method by which it was sought to inform Mr Rossi that the hearing of the appeal would be on 28 September did not achieve its purpose: the attempt to give notice by post failed: it was shown not to have been effected that way. Though a letter was sent it did not arrive. A "notice" was sent, but Mr Rossi was not given notice. The result was that it appeared that notice had not been given to Mr Rossi. ….. As it was and is shown that notice

was not given to Mr Rossi in accordance with s 3(1) of the Summary Jurisdiction (Appeals) Act, 1933, it follows that a requisite imposed by law was not fulfilled and the appeal committee were not entitled to proceed to hear the appeal. It was not a matter for them within their discretion to decide. They could not overlook a failure to satisfy a statutory requirement. I think, therefore, that there should be an order of certiorari."

The immediate predecessor of section 7 was Section 26 of the Interpretation Act, 1889, and the wording is the same.

So – ***Rossi*** appears to confirm that the letter must not only be sent, but it must arrive. There is no particular reason to believe that the law should be different concerning a notice that alerts someone to a court hearing, and a notice that alerts someone that the police have objected to their TEN, and there will, consequently, have to be a hearing. ***Rossi*** would surely apply to both. Therefore a notice can be deemed to have arrived (and thus to have been "given") within the usual postal time periods, unless the contrary is proved. That is the moment at which it is "given" - the moment when service is effected. If it is proved afterwards that it didn't arrive, then it wasn't "given" after all.

In ***Rossi***, the consequence of the failure of the letter to arrive in the post was that the notice of the appeal was not sent, which meant that a key provision of the law was not met, and the appeal hearing could not go ahead. In the context of a Police objection to a TEN, it would mean that the objection was not given in the time provided for within statute, and, surely then, that parties should proceed as if there were no objection. No objection was "given".

It was argued in the 2nd edition (now superseded) of ***Manchester, Poppleston & Allen*** that:

> " 9.5.1 The police must give the objection notice no later than 48 hours [as it then was, SC] after receipt of the copy of the notice…..
>
> S.104(3) [as it then was, SC] provides:
>
> (3) The objection notice must be given no later than 48 hours after the chief officer of the police is given a copy of the temporary event notice under subsection (1)."
>
> The period of 48 hours does not give the police long to decide whether or not to make the objection and speedy contact will need to be made with the premises user if any concerns are to be discussed informally. The objection notice has to be given no later than 48 hours after the police are "given" a copy of the TEN and, as indicated above, this can be done under s184(3) by posting the copy of the TEN to the police. The period of time surely cannot begin to run from when the copy is put in the post. If it does, it is conceivable (and perhaps likely if second class post is used) that the 48 hour period will have elapsed before the police actually receive the copy of the TEN. This can be avoided if "given" (a copy of the TEN) is interpreted in this provision to mean "received".

This discourse is further amplified in a footnote in the textbook:

"This is on the basis that s184 prescribes only the methods of giving notice and not additionally the time from which the notice is considered to have effect."

> As we have seen above, the time frame for when the notice is "given" is calculated by taking into account when the post would have been expected to

be delivered, not when the document was put in the post. But, this not necessarily the same as when it would actually have been received! So this is clearly the correct conclusion in the textbook above, but, with respect, the analysis as to *why* it is so does not seem to accord with the way in which the Statutes, Practice Direction and caselaw are framed. The notice is "given" (as far as the post is concerned) at the point at which it is deemed to have been received by the ordinary operation of the post. It may be something of a fiction: the notice may not actually have been received on that day at all. It may have been received sooner, or it may have been received later, as a matter of fact. It might never have arrived. The timetable for *responding* to the notice, however, will be three days from the day of *deemed* service – unless it is proven that the notice never arrived at all.

Section 184 clearly makes reference to Section 7 of the Interpretation Act 1978, and applies it to "giving notice" under the Licensing Act 2003. There appears to be no discernible difference, for the purposes of a TEN objection notice, to the time that it is "given" and the time that it "takes effect". It is the communication of the Police objection that matters, and that is what the notice is for – simply to let the applicant know that the Police object. It has no other "effect". It "comes into effect" when its contents are communicated - ie "given" - to the recipient. We know that this can be a bit of a fiction, but interpreting the word "given" in s 184 as meaning "received" ignores s.7 of the Interpretation Act, and seems to contradict the caselaw. The moment of actual receipt does not matter, unless the party who should have received it wants to prove that it didn't happen, and to claim that they have not been served at all. That they may do, and then all bets are off.

The problem that this textbook discussion was addressing was that the relevant objection notice period for the Police of 48 hours under LA 2003 at the time gave no allowance to those hours being working hours and was an unrealistically short period. [Thus it was not uncommon for TENs to be hand-delivered to police stations on a Friday, with no possibility of it being dealt with appropriately until the Monday, by which time, the objection period was lost; although this is a different point to the one under consideration].

This problem was deliberately addressed by the PRSR 2011, and the notice period for the Police increased from two days to three working days. No additional amplification was given however, and nothing that informs this debate as to when the timetable runs from.

The Explanatory Memorandum to the 2011 PRSR Act does not help. It simply says:

" **Section 117: Temporary event notice: time for objection by police**

344. Section 117 amends section 104(3) of the Licensing Act 2003 to extend the period in which a relevant person can object to a temporary event notice from two to three working days. *Subsection (2)* makes provision for the application of this amendment to temporary event notices given on or after the commencement of this section."

The correct interpretation must be taken from the Interpretation Act, but for such an elderly statute, the debate still rages on remarkably vigorously and recently:

Calladine-Smith v Saveorder Ltd [2011] EWHC 2501 (Ch)

Morgan J:

" 14. It is clear from reading the full judgments of the Court of Appeal in *Rossi* that the purpose of the requirement for giving notice is a fundamental importance as to what should or should not be regarded as constituting notice…

As described in *Rossi*, the position is undoubtedly a slightly curious one. If one splits the section into two parts, one gets rather different messages from the two parts. If the court finds that the letter in question has been put in an envelope, properly addressed,

prepaid and then posted, one deems the letter to have been served. When one comes to consider the date when the letter is served, if that is a relevant question for the particular statute in question, then one can argue and find that the letter was not delivered by the cut-off date either because there is proof it was delivered late or because one finds that there is proof that the letter was not delivered at all. So, although one holds for the first part of section 7 that the letter is deemed served, one is entitled to make a finding of fact on the second part of section 7 that the letter was not served at all. That is really very clear from the way the matter is expressed in *Rossi*. It occurred to me in the course of argument that if there had not been these authorities on section 7 one might have contemplated a different reading of the second part of section 7. One might have contemplated that the only contrary that could be proved would be by reference to a specific date for service later than the deemed date, but one would not be able to contend for a contention that the document had not been served at all. Whether that speculation is worthy or not, I am quite satisfied it is not open to me to develop that further. I am bound by the decision in *Rossi*.

…..

Two questions

25. The first question is whether the word "contrary" refers to the contrary of the allegation that the letter was properly addressed, prepaid and posted, and no other matter, as the defendant contends, or does it refer to the contrary of the deeming provision that the notice in question was delivered in the ordinary course of post, as the claimant contends. In my judgment, it is clear that the claimant is right about the answer to that question. First of all, and pre-eminently, that is what the wording and structure and layout of the section clearly provides. The reference to proving the contrary clearly goes with the second part of section 7 and not with the first part. Indeed, that is how the section has been construed in all of the cases to which my attention has been drawn. Furthermore, it does not make any sense for the wording to go with the first part of section 7. The first part of section 7 imposes the burden of proof on the sender of the letter, not the addressee of the letter. It requires the sender to prove that the sender has properly addressed, prepaid and posted the letter. If the sender cannot do that, the sender cannot rely on section 7. If the sender can do that,

there is no need for there to be a separate inquiry into whether the addressee has proved the contrary because the sender has already proved the essential matter. …

26. The second question focuses on the word "proved" in the phrase "the contrary is proved". As I already set out, the question is: is an addressee of the letter required only to show on the balance of probabilities that the letter was not delivered or served or received by him, or does the burden on the addressee go further? Is it a requirement to lead positive evidence as to what happened to the letter? Is there a burden on him to show that the sender of the letter was aware that the letter had not been delivered or served or received? In the absence of authority and basing oneself on the statutory language alone, it seems to me quite clear that the reference to something being proved in this context is a reference to something being proved on the balance of probability. Accordingly, if the addressee of the letter proves on the balance of probability that the letter was not served on him, that matter has been proved and the section should be applied accordingly. Of course it is not enough simply to assert that someone did not receive the letter; the court will consider all the evidence and make its findings by reference to the facts that are established, including issues as to the credibility of witnesses. That is the ordinary way in which a court goes about making findings of fact."

Freetown v Assethold Ltd [2012] EWCA Civ 1657

In this case the, by now, familiar question of whether a notice required under provisions of a statute (this time concerned with real property) becomes effective when posted, or when received, was visited again, in the context of a critical issue as to whether an appeal was in time or not. This is analogous to an assessment as to whether a notice has been served in time or not:

" DISCUSSION

Rix LJ:

[36] In my judgment, the critical question for the interpretation of s 15(1) is, and must be, whether "the contrary intention appears" therein so as to exclude the otherwise statutory and thus mandatory application of s 7 of the Interpretation Act. No other question can have precedence in the working out of the issue as to the

interrelationship of s 15(1) [the section of the property statute in question in this case, requiring the giving of a notice], and s 7. For it is the intention of Parliament that, "unless the contrary intention appears", the concept of service by post is to be dealt with as provided for in s 7. It is as if s 7 (which goes back in its origins to very similar language in s 26 of the Interpretation Act 1889) provides the incorporated meaning of service by post in any statute which authorises or requires any document to be "served by post". Thus the critical question posed is to be resolved by imagining that s 7 is about to be written into the Act and then asking whether s 15 creates, either by its express language or by necessary implication, a situation where s 7 would be incompatible (contradictory or inconsistent).

[37] It may be observed that s 7 is a complex alteration of the common law rule which requires receipt to effect service. Instead, s 7 deems service to be effected at the time the posted document would be received in the ordinary course of the post. That presumption remains rebuttable, but the burden of doing so lies on the addressee. Another condition of the statutory refinement, however, is that the presumption only operates if a letter containing the document to be served has been properly addressed, pre-paid and posted ("by properly addressing, pre-paying and posting a letter containing the document"). The burden of proving that condition lies on the sender. The section seeks to answer various problems that might arise out of the posting of a letter, and to balance the interests of both the server and addressee. The ultimate formula, however, is to maintain that part of the common law rule which requires receipt, but to deem receipt to take place when would the letter be delivered in the ordinary course of post, subject to the right in the addressee to prove otherwise.

…..

[40] As for s 15(1)(b) and the latter part of s 15(1)(c), dealing with sending by post, there is again nothing in the express language which is in any way incompatible with s 7. Of course, once post is in issue, a question may always arise, as it cannot do in the case of personal delivery, as to whether it is the sending or the receiving by post which counts as service. However, even if there could be any doubt on that score against the background of the nature of service in general, or in the context of the rest of s 15(1), s 7 is there to make it completely plain that, whether the expression used is "serve", "give", "send" or any thing else, the concept of receipt remains the dominant concept, albeit there is a deemed receipt subject to proof otherwise….."

Clear? I know. Still, even in 2012, apparently not.

So, how do we apply all of this in the context of TENs notices? Well, given the complexity of the above discourse, we may run screaming for the hills, or wonder how we ever managed to get this far without spontaneously combusting. In a nutshell, it appears that, whether the notice is being served by the Applicant on the Police, or by the Police on the Applicant, if it is going in the post, then it will be "given" when the postman says it will arrive. That is when we start counting the days. If it is early - that's great. If it is later, that might just be too bad. If it never turns up at all, then it wasn't "given" and it is as though it never happened – whatever that consequence might be (depending on who was supposed to be "giving" it.)

It just goes to show that the most innocent and innocuous looking question might turn out to be a serpent in disguise, and it also prompts a new UNBAR rule: if the answer to the question runs to more than fifteen pages then it must not be asked, and we must all pretend not to have heard it, and carry on our lives in blissful ignorance. If anyone wishes to disagree with the above analysis, they may, but only as long as their interpretation exceeds 20 pages.

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