

ITS 25.9 - Use of external aids to interpret delegated legislation

Use of external aids to interpret delegated legislation (statutory instruments) may be made as the same is made for interpreting the Acts.¹

SYNOPSIS

Explanatory Notes and Memoranda

Role of explanatory notes and memoranda

Official Statements

Explanatory Notes and Memoranda

Statutory instruments are generally accompanied by two types of explanatory documents: explanatory notes and explanatory memoranda.

Explanatory Notes: Each statutory instrument includes an explanatory note that briefly outlines its scope and purpose. These notes are typically concise, attached to the instrument but not legally binding or considered part of it. They often start with a disclaimer, such as, "This note is not part of the [instrument]."

Explanatory Memoranda: For statutory instruments undergoing legislative review, an explanatory memorandum is provided. This document briefly states the instrument's purpose and offers insights into its policy aims and effects. It is intended to be understandable to non-legal audiences and primarily serves the legislative committees and members reviewing the instrument.

Role of explanatory notes and memoranda

¹ Bennion 2020 s 24.24

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Explanatory notes help clarify the context and purpose of provisions.<sup>^2</sup> And, just as explanatory notes to Acts assist in the interpretation of those Acts regardless of ambiguity, explanatory notes to Statutory Instruments may likewise assist in the interpretation of those instruments.<sup>^3</sup>

While there is limited guidance on the role of explanatory memoranda, it is suggested they can be used similarly to explanatory notes.

### Official Statements

In principle, other official information made publicly available can also be used for interpretation. For example, a council tax information letter issued by the Department of the Environment—the department responsible for administering the relevant legislation—may serve as an interpretive aid if released soon after the law’s enactment. <sup>^4</sup>

This is especially relevant for subordinate legislation, which is often drafted by the department itself and issued by the Ministry rather than by Parliament.

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<sup>2</sup> McDonald v Newton [2017] KUSC 52 cited in Bennion 2020 p 779

<sup>3</sup> R (Westminster City Council) v National Asylum Support Service [2002] UKHL 38 Bennion 2020 p 779

<sup>4</sup> Harrow Borough of London v Ayiku [(2012) EWHC 1200 (Admin)] Bennion 2020 p 780