



Local Government in Scotland Act 2003

2003 asp 1

PART 4

ENFORCEMENT AND SCRUTINY

23 Enforcement: preliminary notice

- (1) Where, on a recommendation having been made to them under section 103D of the 1973 Act as applied by section 4 above, it appears to the Scottish Ministers—
 - (a) that a local authority is not complying or has not complied with its duties under section 1, 13, 15 or, as the case may be, 17 above; and
 - (b) that an enforcement notice is justified,they may service a preliminary notice on the authority.
- (2) Where, without a recommendation having been so made to them, it appears to Scottish Ministers—
 - (a) that a local authority is not complying or has not complied with section 1; and
 - (b) that giving the local authority an enforcement direction is justified in order to protect the public interest from substantial harm,they may serve a preliminary notice on the authority.
- (3) A preliminary notice is a written notice which—
 - (a) informs the authority of its apparent failure to comply with its duties under sections 1, 13, 15 or, as the case may be, 17 above; and
 - (b) requires the authority to submit to the Scottish Ministers, within such time as is specified in the notice, a written response which—
 - (i) states that it has not failed to comply with its duties under section 1, 13, 15 or, as the case may be, 17 above in the respects described in the notice and justifies the statement; or
 - (ii) states it has so failed but gives reasons why they should not give it an enforcement direction.

24 Enforcement directions

- (1) Where, following the service of a preliminary notice and the expiry of the time specified in it under section 23(3)(b) above, it still appears to the Scottish Ministers that the local authority is not complying with its duties under section 1, 13, 15 or, as the case may be, 17 above and that action by them under this section is justified they may give the authority an enforcement direction.
- (2) An enforcement direction is a direction by the Scottish Ministers requiring the local authority to which it is given to take such action as is specified in the direction being action calculated to remedy or prevent the recurrence of its failure to comply with its duties under section 1, 13, 15 or, as the case may be, 17 above.
- (3) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the carrying out of such functions of the local authority as are so specified.
- (4) The action referred to in subsection (2) above may include rectification of accounts.
- (5) The Scottish Ministers may vary an enforcement direction by giving a further such direction.
- (6) A further such direction need not proceed upon a further preliminary notice under section 23 above.
- (7) An enforcement direction may be revoked by the Scottish Ministers.
- (8) It is the duty of the local authority to which an enforcement direction is given to comply with it.
- (9) The Scottish Ministers may, instead of or as well as giving an enforcement direction, make such recommendations to such persons as they think appropriate.
- (10) If the Scottish Ministers exercise their power to give, vary or revoke an enforcement direction they shall—
 - (a) prepare a report on their exercise of that power; and
 - (b) lay that report before the Scottish Parliament.

25 Scrutiny of local authorities' police and fire functions

- (1) An inspector of constabulary appointed under section 33 of the Police (Scotland) Act 1967 (c. 77) may inquire into and report to the Scottish Ministers on—
 - (a) whether a local authority is carrying out its functions as police authority so as to comply with its duties under section 1, 13, 15, or as the case may be, 17 above; and
 - (b) whether a joint police board is carrying out its functions so as to comply with its duties under section 1, 13, 16 or, as the case may be, 17 above.
- (2) An Inspector (including the Chief or an Assistant Inspector) of Fire Services for Scotland appointed under section 24 of the Fire Services Act 1947 (c. 41) may inquire into and report to the Scottish Ministers on—
 - (a) whether the local authority is carrying out its functions as fire authority so as to comply with its duties under sections 1, 13, 15 or, as the case may be, 17 above; and

- (b) whether a joint fire board is carrying out its functions so as to comply with its duties under section 1, 13, 16 or, as the case may be, 17 above.
- (3) The inspectors mentioned in subsections (1) and (2) above may also inquire and report to the Scottish Ministers on whether—
 - (a) a local authority (in carrying out its functions as police authority or, as the case may be, fire authority); or
 - (b) a joint police board or, as the case may be, a joint fire board, is carrying out its functions in a manner which is within the power conferred on it by section 20 above.

26 Excess of power: preliminary notice

- (1) If it appears to the Scottish Ministers—
 - (a) that a local authority has significantly exceeded its power under section 20 above; and
 - (b) that giving the local authority an enforcement direction is justified, they may serve a preliminary notice on the authority.
- (2) A preliminary notice is a written notice which—
 - (a) informs the authority of the apparent excess of power; and
 - (b) requires the authority to submit to the Scottish Ministers, within such time as is specified in the notice, a written response which—
 - (i) states that it has not significantly exceeded the power in the respects described in the notice and justifies the statement; or
 - (ii) states it has so exceeded the power but gives reasons why they should not give a direction under subsection (3) below.
- (3) Where, following the service of a preliminary notice and the expiry of the time specified in it under subsection (2)(b) above, it still appears to the Scottish Ministers that the local authority is significantly exceeding the power and that action by them under this section is justified, they may give the authority an enforcement direction.

27 Excess of power: enforcement

- (1) An enforcement direction is a direction by the Scottish Ministers requiring the local authority to which it is given to take such action as is specified in the direction being action calculated to remedy or prevent the recurrence of its significant excess of power.
- (2) An enforcement direction may place such conditions as the Scottish Ministers may specify in it upon the carrying out of such functions of the local authority as are so specified.
- (3) The action referred to in subsection (1) above may include rectification of accounts.
- (4) The Scottish Ministers may vary an enforcement direction by giving a further such direction.
- (5) A further such direction need not proceed upon a further preliminary notice under section 26 above.
- (6) An enforcement direction may be revoked by the Scottish Ministers.

Status: This is the original version (as it was originally enacted).

- (7) It is the duty of the local authority to which an enforcement direction is given to comply with it.
- (8) If the Scottish Ministers exercise their power to give, vary or revoke an enforcement direction they shall—
 - (a) prepare a report on their exercise of that power; and
 - (b) lay that report before the Scottish Parliament.