

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 4 – Enforcement and Scrutiny

Section 26 – Excess of power: preliminary notice

77. **Section 26** sets out the circumstances in which the Scottish Ministers are allowed to act to enforce action after they are satisfied that a local authority has significantly exceeded its power to advance well-being and where they consider that enforcement is justified.
78. In such circumstances, the Scottish Ministers may serve a preliminary written notice on that authority. *Subsection (2)* provides that this notice should inform the authority that in the Scottish Ministers' opinion the circumstances set out in *subsection (1)* have occurred. The Scottish Ministers will require a response, which may be to argue that the case does not meet the criteria, and in this case such a response will need to be justified. Alternatively the response will need to give reasons why, even though the preliminary notice is accurate, the local authority considers further intervention is not appropriate. *Subsection (3)* provides that it is only after considering this response, or after the deadline for offering such a response has expired, that the Scottish Ministers will have the power to issue an enforcement direction as provided in section 27.