

# LOCAL GOVERNMENT IN SCOTLAND ACT 2003

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### Part 4 – Enforcement and Scrutiny

##### *Section 23 – Enforcement: preliminary notice*

68. *Section 23* sets out the circumstances in which the Scottish Ministers are allowed to act to enforce a local authority's obligations under sections 1, 13, 15, and 17 and the preliminary procedure that must be followed.
69. *Subsection (1)* specifies the procedure to be followed after a recommendation has been made to the Scottish Ministers by the Accounts Commission under the powers provided under section 103D of the 1973 Act. In such circumstances, before issuing a preliminary notice, the Scottish Ministers must take the view that that a local authority is failing to comply with its obligations under sections 1, 13, 15, or 17, and that giving the local authority an enforcement direction is justified in such circumstances.
70. *Subsection (2)* specifies the procedure to be followed by the Scottish Ministers in circumstances where no recommendation has been made by the Accounts Commission. In such circumstances, before issuing a preliminary notice, the Scottish Ministers must satisfy themselves that a local authority is failing to comply with its duty under section 1 (best value), and that giving the local authority an enforcement notice is justified to protect the public interest from substantial harm.
71. If the conditions in *subsections (1) and (2)* are met, the Scottish Ministers may serve a preliminary written notice on that authority. *Subsection (3)* provides that this notice should inform the authority that in the Scottish Ministers' opinion the criteria set out above apply and asks for a response. The response may be to argue that the case does not meet the criteria, or that although the preliminary notice is accurate, there are persuasive reasons why further intervention is not appropriate.

##### *Section 24 – Enforcement directions*

72. *Section 24* provides the Scottish Ministers with the power to direct a local authority to take action to ensure that it complies with its obligations under sections 1, 13, 15 and 17. *Subsection (1)* provides that it is only after considering the local authority's response to the preliminary notice, or after the deadline for offering such a response has expired that the Scottish Ministers will have the power to issue an enforcement direction. Such a direction must be subsequent to the preliminary notice described in section 23, but does not have to be made. *Subsection (2)* provides that the Scottish Ministers may specify in the direction the action required of the local authority to remedy or prevent the recurrence of its failure to comply with its obligations. *Subsection (3)* allows the Scottish Ministers to place conditions on the continued exercise of certain of the local authority's functions. The Scottish Ministers may subsequently amend the direction without having to repeat the preliminary notice procedure described in section 23, and may revoke the direction at any time. *Subsection (4)* provides that the direction may include a direction for the local authority to rectify inaccuracies in its financial accounts.

*These notes relate to the Local Government in Scotland Act  
2003 (asp 1) which received Royal Assent on 11 February 2003*

73. *Subsection (8)* places local authorities under a duty to follow any direction made to them by the Scottish Ministers.
74. *Subsection (9)* provides that in addition to or in place of any enforcement direction the Scottish Ministers may make recommendations to any persons they think appropriate. Such recommendations could be made, for example, to the local authority or to any inspection or regulatory body who may have an interest.
75. *Subsection (10)* provides that if the Scottish Ministers use their power to direct (or to vary or revoke an enforcement direction) then they must prepare a report on that use and lay any such report before the Scottish Parliament.

***Section 25 – Scrutiny of local authorities’ police and fire functions***

76. This section provides that inspectors of both constabulary and fire services may inspect police and fire authorities and joint boards respectively for their compliance with the duties set out in sections 1, 13, 15, 16, 17 and 20 (duties under best value, Community Planning and power of well-being). In addition inspectors may report to the Scottish Ministers on any matter arising out of such inspections.

***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.

***Section 27 – Excess of power: enforcement***

79. **Section 25** provides the Scottish Ministers with the power to direct a local authority to take specified action to remedy or prevent the recurrence of its significant excess of the power. Such a direction must be subsequent to the preliminary notice described in section 24, but does not have to be made. *Subsection (2)* provides that the Scottish Ministers may place conditions on the continued exercise of certain of the local authority’s functions. The Scottish Ministers may subsequently amend the direction without having to repeat the preliminary notice procedure described in section 24, and may revoke the direction at any time.
80. *Subsection (7)* placed local authorities under a duty to follow any direction made to them by the Scottish Ministers.
81. *Subsection (8)* provides that if the Scottish Ministers use their power to direct (or to vary or revoke an enforcement direction) then they must prepare a report on that use and lay any such report before the Scottish Parliament.