

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

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.