

EQUALITY ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Public Functions

Section 85: Specific duties

288. *Section 85* inserts new *sections 76B* and *76C* into the SDA.
289. New *section 76B* empowers the Secretary of State to impose by order, specific duties on public authorities, other than certain Scottish bodies, to ensure the better performance by them of the general duty in new *section 76A(1)*. This order will be subject to the negative resolution procedure. The Secretary of State is obliged to consult the Commission before making such an order. The provision does not confer rights on individuals to complain about a failure by a public authority to comply with a specific duty.
290. In respect of specific duties being imposed in Wales, new *subsection 76B(3)* confirms that the Secretary of State must (i) consult the National Assembly for Wales before imposing specific duties on any person exercising functions in relation to Wales; and (ii) gain the consent of the National Assembly for Wales before imposing specific duties on a person all of whose functions are public functions in relation to Wales.
291. New *section 76C* includes provisions empowering Scottish Ministers to set specific duties in respect of certain Scottish bodies, to ensure the better performance by them of the general duty. In the case of cross-border public authorities (within the meaning of *section 88(5)* of the Scotland Act 1998), the Secretary of State may impose, by order, duties in respect of the functions which are not Scottish functions (i.e. those which are not devolved), and the Scottish Ministers may impose, by order, duties in respect of their Scottish functions (i.e. those which are devolved). New *section 76C(6)* also requires that, before placing cross-border public authorities under specific duties, the Secretary of State must consult Scottish Ministers. Similarly, new *section 76C(7)* requires that, before placing cross-border public authorities under specific duties, the Scottish Ministers must consult the Secretary of State.
292. New *section 76D* sets out the framework for the enforcement of specific duties imposed by order under *76B(1)* or *76C*. The Commission may serve a compliance notice on a public authority where it is satisfied that the authority is not complying with any specific duty. A compliance notice will require the public authority to (i) comply with the duty and (ii) inform the Commission within 28 days (beginning with the date on which the notice is given), of action it intends to comply with the duty. The notice could also require the public authority to provide the CEHR with information additionally specified in the notice in order to verify that the duty has or is being complied with. This new section also enables the Commission to apply to a county court for an order to require the public authority to comply with the notice, if the Commission thinks that the public authority has not done so.