



BEMIS SCOTLAND - SMITH COMMISSION – FINAL SUBMISSION – 30/10/14

BEMIS Scotland are the national Ethnic and Cultural Minorities led umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland and the communities that this sector represents.

Our vision is of a Scotland that is equal, inclusive and responsive: A society where:

- people from the diverse communities are valued, treated with dignity and respect,
- have equal citizenship, opportunities and equality of life,
- and who actively participate in civic society.

The Scottish Independence Referendum was a catalyst for a significant increase in participative, democratic citizenship.

Scotland's diverse cultural and ethnic minority communities did not function in isolation of the debate and mirrored the national trend reflected in the 97% electoral registration and 84% electoral turnout.

It is within this context that we welcome the opportunity to engage with the Smith Commission but naturally caution in the face of this democratic evolution inherent in the broader debate that Civic Scotland and most crucially the Scottish electorate do not become isolated from the Smith commission process.

It is our shared responsibility to harness this increase in participative citizenship across systems, areas of governance and dynamics of devolved, reserved and local democracies.

BEMIS Scotland believe that it is ethnic minority communities and citizens in general who must be the key advocates of change and we will continue to work in this spirit within the context of the Smith Commission and in the months and years ahead.

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Ethnic Minority communities and the Referendum

Ethnic Minority communities did not live in isolation of the Independence referendum. Between January – September 2014 BEMIS unilaterally or in partnership with various community stakeholders held 18 individual community led events across Scotland attended by a diverse group of stakeholders.

This broad engagement has not been possible to the same extent within the context of the Smith Commission so far. We would significantly impress the need for the commission, civic Scotland and political parties to engage directly with diverse communities in the weeks and months ahead.

Equal Opportunities Legislation:

Equal Opportunities legislative and policy development is currently reserved to Westminster. While Scotland has the ability to interpret and promote Equal Opportunities we do not have the competency to develop or amend legislation to fit circumstances relevant to Scotland.

The Scottish interpretation of Equal Opportunities is as follows;

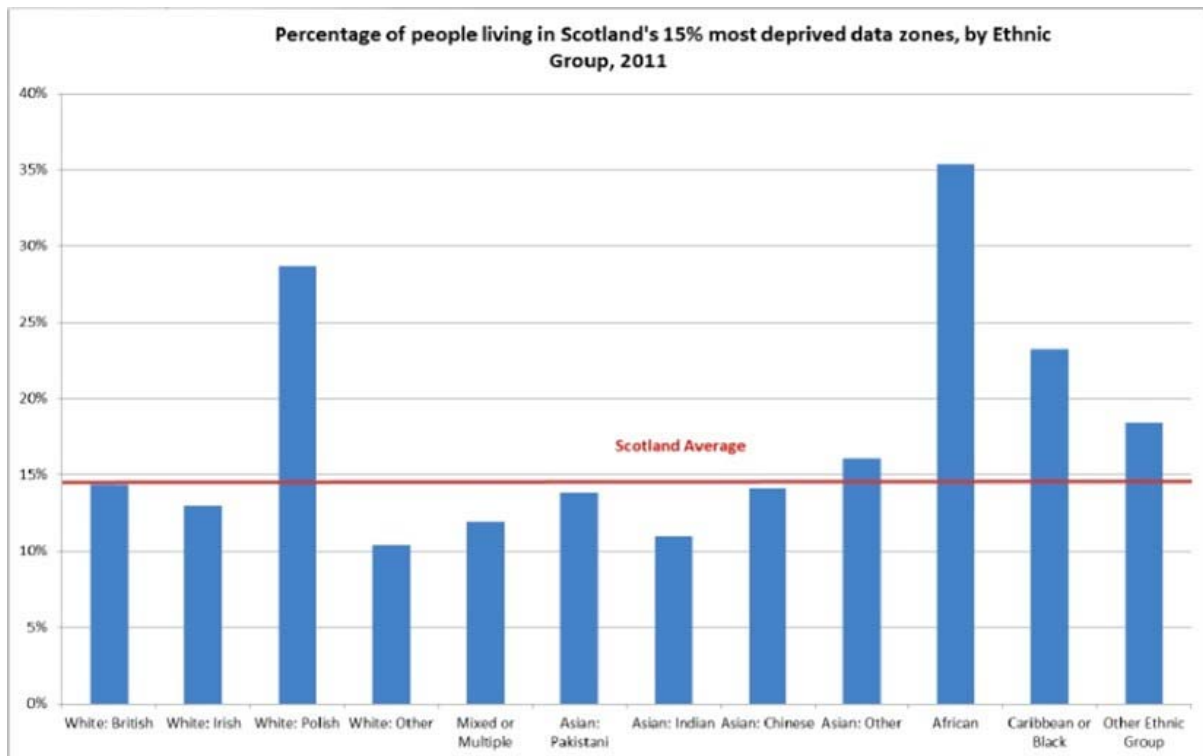
'the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions'.¹

This caveat of '**social origin**' affords us the opportunity to enshrine legal obligations to progress citizens opportunities across societal circumstances. For example –

- The right to a living wage
- The right to safe, clean and affordable housing

¹ The Scotland Act 1998

As evidenced in the following Scottish Government output Ethnic Minority communities do not live in isolation of the broader Scottish populace in relation to the cycle of poverty and associated barriers to personal and communal progress.



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Full devolution of Equal Opportunities Legislation and policy development would afford the Scottish Government and Parliament the opportunity to broaden legislation to include '**social origins**' as a protected characteristic under the terms of the Equality Act 2010.

We believe that this would be in line with the spirit of all political parties' aspiration to progress social justice and enshrine in law legal obligations for local and national government to create this baseline of expectation in our shared objectives of tackling poverty which has a direct impact on other protected characteristics.

² <http://www.scotland.gov.uk/Topics/People/Equality/Equalities/DataGrid/Ethnicity/EthPov>

The current Scottish Government and previous administrations have expressed a commitment to positively progress Equality issues in Scotland. The Parliament has a good track record on Equality issues and while this does not mean to say that we live in a social utopia the commitment of cross party support is largely coherent and should be fully harnessed.

However, it must be acknowledged that under current Equal Opportunities provisions progress could have been made in equalities areas which do not need further devolution; the responsibility of progressing these measure is a shared one between both the Scottish Government, Local authorities and race equality organisations themselves. Measures which should be adopted in any event include;

- Long term strategic use of Positive Action measures to tackle under-representation of ethnic minority communities in public office and positions of authority. This should not be confused with 'affirmative action' which could undermine the objective to make work environments representative. . Positive Action drives the momentum of community engagement via target setting promoting attainable aspirations with substance for individuals and public bodies. Positive Action measures need long term investment and sustained strategic delivery for both ethnic minority communities and those from socio and economic disadvantage.
- Recognition of the self-determining nature of the characteristic of 'race' in the Equality Act moving beyond a hierarchal interpretation of race equality issues predicated by placing communities into silo's based upon specific characteristics.

"Race refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins."³

- Recognition that there is no 'one size fits all' solution to race equality issues. Race Equality is a continually evolving process which must engage positively with progressive changes reflected by public service providers and institutions. By placing communities into silos based upon 'negative experience' or specific characteristics, current or historical exacerbates and repeats past mistakes.
- Leadership from the Scottish Government, The Equality and Human Rights commission and the Scottish Human Rights Commission to fully enact their responsibilities as enforcers of Equality and Human Rights in conjunction with communities and organisations. There continues to be an ambiguity from an Equalities perspective as to the nature of;

³<http://www.equalityhumanrights.com/private-and-public-sector-guidance/guidance-all/protected-characteristics>

(i) Equalities enforcement in relation to real or perceived discriminatory employment practice.

(ii) Recognition of 'race' and associated issues of ethnic and national origin with specific reference to legislative areas which impact on this characteristic – for example – 'The Offensive Behaviour at Football and Threatening Communications Act' and the broader sectarianism agenda which sits separately to the equalities framework yet is related to multiple characteristics including race, ethnicity, national identity, social origin and religion.

- Promoting a cultural shift between Public Service Providers and ethnic minority communities. Our communities are citizens, tax payers and participants in civic Scotland and should be engaged as such. Equality issues are for all of Scotland – not only for the people they are 'perceived' to effect. Equally our diverse communities must engage as citizens to effect change, challenge discrimination and engage positively to mould the Scotland we share as a core objective.

Interdependencies across Policy Areas:

Equal Opportunity Policy development and legislative competence is linked across policy areas including Welfare, Housing, Education, Employment, Health, Equalities and Immigration.

The poverty cycle which endures in Scotland and effects our diverse citizenship is a central challenge in our objective to progress the Equalities agenda.

BEMIS advocate for a cross body assessment in relation to these areas of expertise.

However it is correct to say that inability to cater legislation across reserved and devolved matters which are critical to coherently tackling endemic social issues stifles our ability to do so.

Equal Opportunities legislative and policy competence within the responsibility of the Scottish Parliament would enable us to begin to progress this joined up approach across critical policy areas to tackle issues which are key components of working towards a fairer and more just Scotland.

Human Rights

Human Rights obligations are central to the progression and development of creating the type of Scotland we want to live in.

There have been suggestions that the UK Government may seek to remove the UK from existing human rights obligations by repealing the Human Rights Act 1998.⁴

The devolution of Equal Opportunities legislative and Policy development must also take into consideration how best to ensure the continuing operation of human rights protection in Scotland.

Under the devolved constitutional framework the legislative and executive competence of the Scottish Parliament and Government is limited in so far as any act which is incompatible with human rights is unlawful (section 29 of the Scotland Act 1998).

Equal Opportunities legislative enforcement should be balanced against internationally recognised Human Rights treaties. Dilution or removal of Human Rights obligations undermines the development and progression of the Equalities agenda and constitutional provisions should be made to ensure the continuing ability of these aligned agendas to progress.

Recommendations

BEMIS Scotland support the full devolution of Equal Opportunities policy development, legislative competence and enforcement.

The success of these new powers must be aligned to a new strategy within the equalities community and across other policy areas recognising the self-determining nature of the Equality Act and the relationship with policy areas specifically in relation to the alleviation of poverty.

We recommend that;

- Full devolution of Equal Opportunities legislation is utilised to enshrine the Scottish interpretation of 'Equal Opportunities' including 'social origin' as a protected characteristic in our aspiration to tackle poverty.

⁴ <http://www.theguardian.com/law/2013/sep/30/conservatives-scrap-human-rights-act>



- The Equality Act 2010 is adopted as the framework for progressing the equalities agenda including commencing section 1 of the Equality Act 2010 enabling us to tackle socio-economic disadvantage.
- That enforcement of Equalities is transparent and reflects the self-determining nature of the Equality Act. Moving beyond the hierarchical interpretation of issues and responding to diverse needs to which there is no single solution.
- That Scotland's ability to maintain membership of the European Union and Equality and Human Rights obligations is constitutionally enshrined in the event that a future UK Government looks to remove Scotland by default from either.
- That provisions are made for broader civic and public engagement within the timeframe of the Smith Commission to enhance and respect the increase in participative, democratic citizenship evident in the catalyst for the Smith Commission.
- That long term, sustainable Positive Action measure are developed in conjunction with stakeholders to cover underrepresented groups including Ethnic Minorities and those from socio and economic areas of disadvantage.

Conclusion:

Devolution of any power is not an immediate remedy to identified gaps or areas of disadvantage.

BEMIS acknowledge that there are powers at our disposal just now which can be utilised to progress the equalities agenda and would advocate that these progress regardless of the outcomes of the Smith Commission.

However our broader analysis recognises that with the full devolution of Equal Opportunities policy development, legislative competency and enforcement Scotland would be in a good position to evoke and trigger the whole concept of 'social origin' as called for within the Scottish definition of 'Equal Opportunities'.

This context which does not exist at a UK or European level will stimulate and enable an equitable response to the 'social justice' agenda in line with what all political parties have stated as a priority.