What are the key public policy areas where individuals and protected groups are struggling to access their rights?

The Race Equality Action Plan for Scotland 2017–21 (REAP 17–21) outlines key policy priorities that the Scottish Government and other relevant duty bearers have made a commitment to progressing over the cycle of the current parliament. As identified in the REAP 17-21 these are:

Employment, education and lifelong learning, health, housing, poverty, community cohesion and safety, participation and representation, Gypsy/Travellers and general cross cutting themes.¹

Equality and Human Rights law are central to the coherent progression of these policy commitments and aspirations.

However, significant misunderstandings exist at national and local government levels and within other duty bearers as to what race, equality and human rights is and how they strategically implement their policy obligations in compliance with equality and human rights law relevant to the UK and Scotland.

This incoherence pivots upon there being multiple often non-legal compliant understandings of race, equality and human rights in Scotland often differing between departments and agencies.

The inability to distinguish between comprehensive inclusive legal approaches and narrower, louder advocacy interests directly affects the interpretation of international human rights standards influencing the Scottish race equality policy arena. This, in turn, impact not only on the practices and policy developments among stakeholders which, unconsciously, affects and excludes the rights of others.

Despite government commitments in relation to race, equality and human rights being directly linked to the international treaty system² – most notably the ‘International Convention on the Elimination of All Forms of Racial Discrimination’ – there remains a critical void in the coherent implementation of

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the treaties basic functions despite them already being incorporated into UK Human Rights and Equalities law and Scots criminal law.

For the key interest of committee members. Legal definitions and the content of the legislation therein bind ministers and duty bearers to legal obligations in relation to race, equality and human rights.

The legal definitions of race at the international and domestic level are as follows:

- **The International Convention on the Elimination of All Forms of Racial Discrimination**

  *Article 1: In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*

- **Equality Act 2010 c. 15 Part 2 Chapter 1 Section 9**

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

- **Section 96 of the Crime and Disorder Act 1998**

  In this section “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins

- **Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995**

  “Racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

- **Stirring up racial hatred – Public Order Act 1986**

  Meaning of “racial hatred”. In this Part “racial hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Thus, when considering race, equality and human rights in Scotland duty bearers must be cognisant of ‘race, colour, and nationality (including citizenship) ethnic or national origins’. In Scotland race, equality and human rights applies to those covered by this legal definition.
<table>
<thead>
<tr>
<th>Colour</th>
<th>Nationality</th>
<th>Citizenship</th>
<th>Ethnicity</th>
<th>National Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>Polish</td>
<td>Non EU citizens</td>
<td>Roma</td>
<td>Non-EU Citizens</td>
</tr>
<tr>
<td>White</td>
<td>Irish</td>
<td>EEA citizens</td>
<td>Gypsy Traveller</td>
<td>Roma</td>
</tr>
<tr>
<td></td>
<td>Pakistani</td>
<td>Third Country nationals</td>
<td>Irish</td>
<td>Gypsy Traveller</td>
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<tr>
<td></td>
<td>Indian</td>
<td>Depression law restrictions</td>
<td>Jewish</td>
<td></td>
</tr>
<tr>
<td></td>
<td>African (various)</td>
<td></td>
<td>Scottish Gaelic</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Chinese</td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td>English</td>
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</tbody>
</table>

**Which groups of people are most likely to be affected and why?**

Based upon a competent interpretation of the legal definition of race 8.2% (432,616) of Scotland’s population recognised their ethnicity as being independent of the Scottish/Other British characteristics of the 2011 Scottish census. These figures will have increased by today and we will get another snapshot of Scotland’s demographics in the 2021 census.

When legal definitions and standards are not applied and ambiguity persists about what duty bearers understand race, equality and human rights to mean, some communities and individuals are left out of the evidence base and policy response to ongoing race inequalities.

The international treaty definition directly prohibits duty bearers from creating any ‘distinction, exclusion or restriction’ that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing.

Thus, when policy is developed that has the effect of conflating the words race and colour it can have the effect of ‘nullifying or impairing’ the legal rights of those covered by the legal definition of race in legal instruments. This, in turn, is an approach that is incompatible with the ‘Public Sector Equality Duties’, which dictate to duty bearers that in the development and delivery of public services they must;

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
• foster good relations between people who share a protected characteristic and those who do not.

Thus, for those communities and individuals who do not define themselves by utilising colour classifications like black or white their race, equality and human rights outcomes are in danger of being nullified or impaired.

The following table illustrates the confusion that occurs when approaches such as ‘Critical Race Theory’\(^3\) are adopted in Scotland to respond to advocacy interests effecting duty bearer policy implementation and use of legal instruments such as ‘Positive Action’ measures inherent in the Equality Act 2010.

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\(^3\) CRT scholars hold that the laws and policies in the United States are biased against people of colour, and they have focused their scholarship on demonstrating the ways in which the legal institutions support that bias.
<table>
<thead>
<tr>
<th>Year of publication / Title / Author</th>
<th>Policy output example</th>
<th>Concerns</th>
<th>Outcomes</th>
<th>Remedy</th>
</tr>
</thead>
</table>
| December 2017 ADDRESSING RACE INEQUALITY IN SCOTLAND: THE WAY FORWARD Scottish Government Independent Race Equality Advisor – Dr. Kaliani Lyle | “Terminology 1. In this report, I use the term ‘Minority Ethnic’ (ME) to refer to the 8% of the Scottish population whose self-defined ethnicity is not white Scottish/ British. I also use the term ‘Black and Minority Ethnic’ (BME) to refer to people from visible minorities. They represent 4% of Scotland’s population. The word ‘Black’ is a recognition of a political identity. This does not imply that all those who face racial inequalities identify in this way”.

“Action 63: The Scottish Government, working with the Strategic Board for Teacher Education and the GTCS should establish a short term working party on

The terminology definition creates further confusion about what the word race means. The term ‘Minority Ethnic’ is adopted in compatibility with the legal definition of race inherent in equality, human rights and criminal law i.e. colour, nationality, ethnicity, citizenship and national origin.

The subsidiary definition covering BME is used to identify the ‘colour’ dynamic of the legal definition.

Both terms are then utilised interchangeably and it is unclear where one applies to any given policy area.

Action 63: Following on from the lack of clarity in the ‘terminology’ definition the

Individuals, communities and citizens covered by the legal definition of race who face evidenced problems of inequality are not appropriately considered in policy development and implementation.

This directly effects their access to their rights.

- The right to equality is breached.
- The right to equal legal recognition is breached.

The Scottish Government, COSLA, our 32 Local authorities and all of Scotland’s statutory authorities and duty bearers must progress policy and legal obligations that are compatible with the law.

This means utilising the legal definition of race as an obligation.

The ‘Race’ legal definition in relation to ethnic minorities in Scotland is relevant to, by size of community, Polish, Irish, Pakistani, Indian, Chinese, African (various), Arab (Various), Roma, Gypsy Traveller communities and others. |
<table>
<thead>
<tr>
<th>Policy output example</th>
<th>Concerns</th>
<th>Outcomes</th>
<th>Remedy</th>
</tr>
</thead>
<tbody>
<tr>
<td>increasing the number of teachers from under-represented groups at all levels in Scottish schools. This working party should be chaired by an education expert with expertise on race equality issues, and its membership drawn from education experts familiar with race related issues as well as organisations with an interest in promoting greater diversity in the workforce such as the Scottish Association of Minority Ethnic Educators (SAMEE)(^5)</td>
<td>policy proposal at action 63 has been progressed using the more restrictive interpretation of the legal definition.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^5\) Ibid – Pg. 25 Action 63
December 2018
Teaching in a Diverse Scotland: Increasing and Retaining Minority Ethnic Teachers in Scotland’s Schools
Chair: Professor Rowena Arshad OBE

“2.12 Currently, Scotland’s teaching population is not reflective of Scotland’s population. The statistical data illustrates a static position on the number of teachers from minority ethnic backgrounds and has shown very little change in nearly two decades. Scotland’s Census 2011 recorded that the percentage of people in Scotland from minority ethnic groups is 4% and this compares to 1% of the teacher workforce reporting as being from a minority ethnic background in the 2017 Summary Statistics for Schools in Scotland publication. The concentration of black and minority ethnic people in some cities in Scotland means there are higher numbers in certain areas e.g. 12% in Glasgow, 8% in Edinburgh, 8% in Aberdeen, and 6% in Dundee”.

The recommendations of the 2017 report that have informed and led the 2018 report are using the same terminology to mean completely different things. The 2017 report defines minority ethnic as constituting 8% of the national population. The 2018 report defines minority ethnic as constituting 4% of the national population.

Thus, the recommendations of the 2018 report that will be utilised to inform local authority, university and college positive action measures are not compliant with the legal definition of race. The outcome is that some under-represented groups have been ignored. By adopting an interpretation of the legal definition of RACE restricted only to ‘colour’ and not also ‘nationality, citizenship, Under-representation from communities and individuals covered by the legal definition of race is ignored and not part of the policy response. This is legally precarious. The communities whose rights to equality have been derogated include

- Polish
- Gypsy Traveller
- Roma
- others who do not define under the colour dynamic of race

If the full legal definition had been utilised, then the report would have been both legally compatible and significantly richer in its evidence base thus it increases its agency as a catalyst of substantive change for all under represented group.

For example, in Scotland’s largest local authority the under-representation of teachers in March 2019 was as follows: 7

1) There are no teachers of Gypsy Traveller ethnicity employed by Glasgow City Council

2) There are <5 teachers of Polish nationality employed by Glasgow City Council

3) People of Pakistani ethnicity in Glasgow have successfully navigated the academic and employment challenges identified in the report (How &Why?)
<table>
<thead>
<tr>
<th>Year of publication / Title / Author</th>
<th>Policy output example</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ethnicity and national origin' the report derogates the rights of these under-represented group to receive equal application of equalities legislation.</td>
<td></td>
<td>4) People of Irish ethnicity in Glasgow are the most successful minority community in Scotland to have successfully navigated the academic and employment challenges identified in the report. (How &amp; why?)</td>
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<td></td>
<td>5) There is a significant under-representation of Gypsy Traveller, Polish, Indian, Chinese, African, Black and Caribbean teachers in Glasgow.</td>
</tr>
</tbody>
</table>


What type of public sector funding (European, national or local) is provided to your organisation to support vulnerable groups and those with protected characteristics to access public services?

BEMIS receive core funding from the Scottish Governments Equality Unit.

Is the level of public sector funding provided enough to deliver national priorities and better outcomes for people and communities, please provide evidence?

Budget stagnation has and continues to place pressure on organisation running costs that have increased with inflation over the course of the period that budgets have been frozen. Following on significant cuts for the last decade, we can barely manage to sustain the organisation with the present funding allocation amounting to 75-80% of the basic running costs. This is paired with the current stagnation of fund allocation, which has impacted on our abilities to sustain the staff roles and abilities to continue high standard and Scottish wide work delivery where fewer staff are allocated multiple roles with a wide national equality and human rights agenda.

Are there public funding challenges for the third sector; if so, what would be the implications for delivering equalities and human rights outcomes?

The impact of BREXIT on the Scottish economy and subsidiary impacts passed onto communities already in socio-economic disadvantage.

National organisations would struggle to secure funding from local authorities for local delivery of work.

Again, lack of a binding and coherent adherence to the legal bearing and understanding of race (often non-legal compliant understandings of race, equality and human rights) among public bodies and agencies deprive a significant number of diverse groups from benefiting or acquiring equal opportunities for relevant funding to support their respective communities.

What type of administrative systems are in place to monitor the impact on equalities and human rights outcomes from public sector funding to the third sector?

Bi or Annual reports on programmes; Evaluation reports

What changes could be made to improve accountability for national priorities being delivered by the public sector in partnership with the third sector?

Funding agreements and outcomes should be tracked against domestic and international equalities and human rights law obligations.