

Submission to the House of Commons Home Affairs Committee inquiry into the '*equalities agenda of the Government*'.

Equanomics UK: 11<sup>th</sup> March 2011

Introduction

1. This submission from Equanomics UK<sup>1</sup> has been written in partnership with three other leading organisations involved in the promotion of race equality – **the Centre for Local Policy Studies<sup>2</sup>, Race on the Agenda (ROTA)<sup>3</sup> and the Runnymede Trust<sup>4</sup>**. We welcome the fact that Equanomics UK has been invited to give oral evidence to the Home Affairs Committee and its inquiry exploring '*the Government's agenda in relation to equality*'. We hope that this marks the beginning of a dialogue with this Committee, and other Select Committees, that exercise a scrutiny role in relation to equality across government.
2. We have reflected issues raised by the Home Affairs Committee itself, and by the Chair of the EHRC (Trevor Phillips) and the Minister for Equalities (Lynne Featherstone); we have also considered some provisional questions identified by the Committee Secretariat.

Executive summary

3. At the heart of our concerns are questions and issues about: a) the adequacy of current structural arrangements for the promotion of equalities and race equality; b) leadership from Government and its strategy in relation to race equality, particularly concerns about the apparent re-emergence of a one size fits all philosophy and a race neutral or blind approach; c) the future and role of the EHRC; d) failures by Government and public bodies to comply with the existing public sector equality duties including the race equality duty; e) the disproportionate impact of the proposed public sector cuts on voluntary and community organisations especially the Black, Asian and Minority Ethnic (BAME) sector which may undermine the promotion of equality of opportunity; f) how the combined impact of these changes reduces the ability of people from BAME communities to access justice and challenge discrimination; g) the approach of the Home Office and longstanding concerns in relation to criminal justice and policing issues; and h) the adverse impact of aspects of the Localism Bill and the Public Bodies Bill.

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<sup>1</sup> Equanomics-UK addresses race equality in the UK from an economic perspective. It is a broad based coalition of individual activists and voluntary and community based organisations. It seeks to build awareness of the impact of poverty on BAME communities and develop appropriate action.

<sup>2</sup> The Centre for Local Policy Studies, at Edge Hill University, was established in 1993 as a cross-institutional initiative and research centre to develop and carry out research into public policy and local governance.

<sup>3</sup> Race on the Agenda ROTA is a social policy research organisation that focuses on issues impacting on Black, Asian and minority ethnic (BAME) communities. Our policy priorities are health, criminal justice and education. The ROTA-led '*Winning the Race Coalition*' informed the development of the Equality Act 2010.

<sup>4</sup> The Runnymede Trust is the UK's leading independent race equality think tank generating intelligence for a multi-ethnic Britain through research, network building, leading debate, and policy engagement.

## The Government's strategy and structural arrangements for promoting equality and race equality

4. *'The Equality Strategy – Building a fairer Britain'* was published in December 2010; it sets out the Coalition Government's current strategic approach, commitments and structural arrangements in relation to equality. We welcome the Coalition Government's commitment to placing equality at the heart of its work and to ensuring that equality is central to the Government's decision-making processes, actions and priorities as it tackles the unprecedented deficit<sup>5</sup>. However we are concerned about: a) the lack of evidence of these commitments being put into practice in relation to race equality; b) the actions of some government departments and other public bodies<sup>6</sup>; and c) the Government's structural arrangements. We believe that the current structural arrangements are inadequate and that these arrangements should be reviewed alongside the review of the EHRC.
5. Lynne Featherstone MP, the Parliamentary Under Secretary of State responsible for Equalities and Criminal Information gave evidence to the Committee on 25/1/11. We note from her evidence that some aspects of equality, including race, do not fall within her brief. If this Government is committed to a more integrated approach to equalities, we do not understand the rationale for having a Minister for Equalities and a Government Equalities Office (GEO) that do not address the full spectrum of equalities issues. We agree with the Chair of the EHRC that the Coalition Government has missed an important opportunity to improve structural arrangements for equality across government<sup>7</sup>. The Government's Equality Strategy identifies Andrew Stunell MP as the Minister for Race Equality, Department for Communities and Local Government (DCLG). However the DCLG website identifies that race is one of the minister's 4 responsibilities<sup>8</sup> and we understand that the title 'Minister for Race Equality' is not a formal title. We are therefore concerned that the position on race appears to contrast with that in relation to women and disabled people<sup>9</sup>.
6. In October 2010, a coalition of BME organisations produced '*A Position Statement on Race Equality*'. The paper's purpose was to '*inform the Minister's thinking in developing the government's strategy on race equality and to affirm the organisations' collective*

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<sup>5</sup> *'Equality is at the heart of this Coalition Government. It is fundamental to building a strong economy and a fairer society; and in these difficult economic times equality is even more important ...it is essential that we make sure that we benefit from the talents of everyone in the UK. As we take difficult decisions necessary to tackle the U.K.'s record deficit we are determined to do so fairly, protecting the most vulnerable and prioritising equal opportunities for all.'* [The Equality Strategy - Foreword by the Minister for Women & Equalities, Theresa May]

<sup>6</sup> See this submission on the EHRC, its future and breaches of the public sector equality duties.

<sup>7</sup> *'I think it is unfortunate that the Coalition Government did not take the opportunity to bring all the equality issues together in one place. At the present time, the mandates are spread out over three Departments with age and disability in DWP, race and faith in Communities and Local Government and the rest at the Home Office.'* [Home Affairs Committee, Q3 oral evidence from Trevor Phillips, Chair EHRC, 25/1/11]

<sup>8</sup> Andrew Stunell OBE MP, Parliamentary Under Secretary of State: The 4 responsibilities – a) Community cohesion (incl. future of Prevent), b) Race equality; c) Building regulations, and d) Big Society, housing and regeneration.

<sup>9</sup> Theresa May is cited by the Home Office as the Home Secretary and Minister for Women and Equality. Maria Miller MP is cited as the Minister for Disabled People by the DWP <http://www.dwp.gov.uk/about-dwp/ministers/>.

*commitment to working alongside government to reduce racial inequality in our society*’. The hope was that the paper would serve as a *‘starting point for ongoing discussions between the Minister, BME VCS organisations, and CLG in its role as a co-ordinator of action to tackle racial inequalities across government.*’ In October 2010, the All Party Parliamentary Group on Race and Community<sup>10</sup> (APPGRC) and the All Party Parliamentary Group on Equalities<sup>11</sup> (APPGE) met with Theresa May MP, Minister for Women and Equalities. The minutes note that no details were *‘given on whether the government plans to do any specific work on race equality.*’ Attendees raised concerns that were not answered by the Minister including: a) the absence of race in the government discourse around equalities and whether this would be addressed; b) changes reducing monitoring in relation to stop and search; and c) mental health and how Black and African Caribbean people are treated compared to others<sup>12</sup>.

7. We welcome the fact that the DCLG plans to respond to *‘A Position Statement on Race Equality*’ and that a meeting on 17<sup>th</sup> March is planned with Andrew Stunell MP, Parliamentary Under Secretary of State. However, we are concerned about the absence of strategic initiatives, work and leadership around race equality across government. We think that the Government needs to be clear what will replace the previous Government’s race strategy – *‘Tackling race inequality: A statement on race*’<sup>13</sup> (January 2010). We believe that there is a need for an integrated equality strategy and implementation plan(s) across government which properly address all of the protected characteristics, including race, and explores intersectionality between the equality strands or protected characteristics<sup>14</sup>.
8. Positive improvements for equality generally and race equality in particular could be achieved by addressing the following questions: a) What are the responsibilities of the Inter-Ministerial Group on Equalities? b) By whom, or by which body or bodies, will the decisions and actions of the Group be monitored? c) Will, and how will, this Inter-Ministerial Group work effectively with the All Party Parliamentary Groups on Race, Equalities and other equality areas? d) The Equality Strategy refers to the EHRC’s Triennial Review but does not address the key priorities on race included in the Review<sup>15</sup>. Will this be rectified in developing an implementation plan for the Equality Strategy? e) What plans are there to promote transparency in relation to the work of the Inter-Ministerial Group? f) Will Andrew Stunell and the DCLG establish proper and regular consultative arrangements with BAME organisations and others interested in the promotion race equality across government<sup>16</sup>?

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<sup>10</sup> The All Party Parliamentary Group on Race and Community (APPGRC) was formally re-established 16th June 2010. The Runnymede Trust took over the secretariat at the start of 2010.

<sup>11</sup> The remit of the All Party Parliamentary Group on Equality (APPGE) is to address discrimination based on all equality grounds and seek to advance equal opportunities for all. It is serviced by the Equality and Diversity Forum.

<sup>12</sup> Minutes of the joint meeting between the APPGR and APPGE held on Tuesday, 19 October 2010.

<sup>13</sup> <http://www.communities.gov.uk/documents/communities/pdf/1432344.pdf>

<sup>14</sup> Intersectionality: How various socially and culturally constructed categories (e.g. gender, race, class, disability & other axes of identity) interact on multiple, often simultaneous levels, contributing to systematic social inequality.

<sup>15</sup> How fair is Britain? The first Triennial Review, EHRC, October 2010.

<sup>16</sup> This needs to address both the work of DCLG and the work of other government departments.

The extent to which the Government's Equality Strategy identifies and addresses key issues facing BAME communities

9. The Equality Strategy states that it sets out the Government's *'new approach to equality'* which *'moves beyond defining people simply because they ticked the box on the form.'* Normally when a significant national strategy is produced, a consultative process and framework for engaging with stakeholders is also identified. The specific race equality duty requires public bodies to identify policies or proposed policies relevant to the race equality duty; we consider the Government's Equality Strategy to be such a relevant policy. Public bodies are required to have arrangements for *'assessing and consulting on the likely impact of'* their *'proposed policies on the promotion of race equality'*<sup>17</sup>. We are unclear how the process for the production of this Equality Strategy has complied with existing obligations under the specific race, or for that matter disability and gender, equality duties.
10. We are concerned about the Equality Strategy's potential impact on the promotion of race equality and we would like to know whether a consultation is planned and when it will take place. If there is a genuine commitment to promoting equality, transparency, engaging with communities and complying with the equality duties, we believe it is essential for the relevant government department(s) to identify proper, effective and meaningful structures and stakeholder engagement processes that include BAME voluntary sector organisations and consider: a) the Equality Strategy; b) any implementation plan and c) key programmes of work.
11. We want to know which government department will be leading the consultative and engagement process, in line with the race equality duty (and other equality duties) on the Equality Strategy. Key questions to be explored include: a) What is the Government's *'new approach to equalities'*? b) How will this new approach impact on BAME communities? c) What does a move beyond *'identity politics'* mean in practice and what are the implications for BAME communities, their needs and funding? d) Will anything replace the strategy and statement *'Tackling Race Inequality'* published by DCLG in January 2010<sup>18</sup>? e) What will replace the funding currently provided by the Tackling Race Inequalities Fund which runs out at the end of March 2011? f) How will the Government's Big Society Strategy effectively involve and include BAME individuals and communities – and what support will be available? g) Given that BAME individuals and communities have been disproportionately excluded from access to banking finance how will the Big Society Bank avoid such pitfalls?

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<sup>17</sup> The Race Relations Act 1976 (Statutory Duties) Order 2001 SI 2001 No. 3458 remains in force until 6<sup>th</sup> April 2011

<sup>18</sup> Tackling Race Inequality – A statement on race, DCLG, January 2010

<http://www.communities.gov.uk/documents/communities/pdf/1432344.pdf>

How well the Home Office takes account of the needs of BAME communities in formulating and implementing policy

12. The Home Office's areas of responsibility inevitably give rise to tensions and potential conflicts with its race equality and race relations obligations. The strapline on the Home Office home page states "The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police"; however there is no mention of equalities even though the Home Office now includes the GEO and the Home Secretary is also the Minister for Women and Equality. To date there is little evidence of any steps to link policies and practices within the traditional Home Office areas to the Government's Equality Strategy and equality legislation for which the GEO, now within the Home Office, is responsible.
13. For all BAME communities, effective, fair, non-racist policies and practices relating to crime, policing, counter-terrorism and immigration are essential for their personal safety and well-being. However this is not many people's experience. Exaggerated anxiety of previous governments as well as the current government regarding numbers of migrants and refugees fuels race hate crime; similarly over-zealous counter-terrorism measures can have a negative impact on police-community relations, creating and maintaining a culture of suspicion targeted at BAME people and people of minority faiths.
14. There is a clear relationship between immigration policies and race relations in the UK – hardline policies stir up racial hatred. It is especially worrying when immigration policies and procedures are themselves exposed as racially discriminatory<sup>19</sup>. When the Race Relations (Amendment) Act 2000 brought all government functions, unless exempted, within the scope of the Race Relations Act 1976 (RRA) there was wide concern that instead of banning discrimination by all government departments, the RRA (section 19D) licenced discrimination in the carrying out of immigration functions, where authorised by a Minister. However, the requirement for the appointment of an independent Race Monitor - to monitor and report on the operation of this exception - was welcomed. The Race Monitor's annual reports<sup>20</sup> identified aspects of immigration control and the processing of asylum applications that appeared to be based on negative stereotypes of particular nationalities. The Equality Act 2010 again permits discrimination in immigration functions (Schedule 3 para 17) but without the requirement for external scrutiny by a Race Monitor.
15. The 1996 Asylum and Immigration Act, section 8, introduced employers' immigration checks, making it a criminal offence to employ a person not entitled to work in the UK. The Home Office acknowledged that this could give rise to race discrimination. The Labour Government strengthened section 8 in 2002 and in the Immigration, Asylum and Nationality Act 2006 introduced a stricter regime from 2009. A number of race discrimination claims

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<sup>19</sup> See for example, *East African Asians v UK*, European Court of Human Rights 1973; CRE Formal Investigation into Home Office immigration procedures, 1985

<sup>20</sup> Reports of the Race Monitor – 2003, 2004, 2005 and 2006

against employers have succeeded. Enforcement by the UK Border Agency has in practice raised different questions in relation to race discrimination; small BAME businesses appear to be disproportionately represented in the lists of employers who have been fined following a raid on their premises, raising concerns about racial profiling where the above exception does not apply.

#### The Equality and Human Rights Commission – key challenges

16. Our central concerns and questions revolve around whether the planned cuts to the EHRC will undermine its ability to be effective and restrict its enforcement role including enforcement of the Public Sector Equality Duty. We are equally concerned about the delay in the formal consultation around the proposals to refocus the role of the EHRC<sup>21</sup>, which may now begin at the end of this month. The Government cut the EHRC budget from £60 million to £53 million in 2010, and it has been suggested that its budget may be reduced to £22.5 million over the course of the Parliament<sup>22</sup>.
17. The minutes of the GEO's Senior Stakeholder Group in November 2010 report that the 'new' EHRC will focus on its regulatory role and that that role will include 4 essential functions: a) monitoring and enforcing equality and anti-discrimination law; b) inquiries and research; c) enforcing EU Directives; d) promotion of good practice and awareness of human rights. A speech by Trevor Phillips, Chair of the EHRC, to Policy Exchange suggests that there may be a rebalancing of responsibilities between the EHRC and government departments<sup>23</sup>. There have been suggestions that some of the EHRC's functions may be handed to government departments, or even the private and voluntary sectors.
18. The proposed consultative process about the 'new' EHRC should: a) have clearly stated underpinning principles; b) be a transparent process; and c) be commenced immediately. It should include the specific plans as to how the EHRC, with a greatly reduced budget, will address all of the protected characteristics, engage better with key stakeholders and address the issue of intersectionality. We would urge the Home Affairs Committee to scrutinise the proposals for the future EHRC before they are implemented.

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<sup>21</sup> We have concerns about the impact on the EHRC's role in relation to human rights but we note that the EHRC's role in relation to human rights probably falls within the remit of the Joint Committee on Human Rights. The remit of the Joint Committee on Human Rights includes considering *'matters relating to human rights in the United Kingdom.'*

<sup>22</sup> Source: <http://www.scvo.org.uk/policy/equalities-human-rights-news/coalition-government-cuts-ehrc-budget/>

<sup>23</sup> *'What may change is the balance between what we do and what the government does itself. There's no settlement on that issue yet, and it may take some months to get there. But we intend to ensure that the outcome will interfere as little as possible with our core mission in this new world.'* Why Equality and Human Rights Are Essential To Economic Recovery, Chair EHRC 8th February 2011, speech to the Policy Exchange

## Equality legislation and compliance with the public sector equality duties

19. Year on year public sector cuts are planned for the duration of this parliament<sup>24</sup>. For BAME communities and community organisations, if due regard is not given to relevant equality legislation - in particular the race equality duty and the new Public Sector Equality Duty (Equality Act 2010, Section 149) – then we are concerned that: a) fewer and poorer quality services will be provided by the public sector to the BAME communities; b) public bodies will disproportionately cut their funding to BAME community organisations; and c) BAME community organisations will not be able to maintain their support for BAME hard hit communities. We have focused on our concerns about how public bodies are addressing their race equality duties in relation to the cuts because this is so pressing. However we are also concerned about other cases which relate to discriminatory policies and practices.
20. In 2008, the Public Law Project represented applicants whose case, alleging that a council's decision to withdraw funding from a BAME organisation was in breach of its race equality duty, was upheld by Lord Justice Moses<sup>25</sup>. In 2009, a council was judged to have breached its statutory equality duties towards vulnerable individuals when it proposed 80% cuts to local advice agencies<sup>26</sup>. In January 2011, London Councils was held to have breached all three public sector equality duties in making decisions about funding cuts<sup>27</sup>; and in February 2011, the Government was found to have breached all three public sector equality duties in how it decided to cut the Building Schools for the Future Programme<sup>28</sup>.
21. We are concerned that public bodies are failing to comply with the existing race, disability and gender equality duties. We are also concerned about how public bodies will address the new expanded Public Sector Equality Duty. We are concerned about the impact of the cuts on the ability of BAME community organisations and others to challenge potential breaches and seek a resolution, well before the need for expensive legal action. We note that the EHRC is carrying out a formal assessment of compliance by the Treasury with the existing public sector equality duties in decisions contained in the Spending Review. We hope that the Home Affairs Committee will scrutinise the outcome of the EHRC's assessment and look at the wider implications for the public sector and BAME and other communities.

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<sup>24</sup> A recent Guardian blogger estimates that £3bn to £5bn of state funding 'will be sucked out of the sector in the next three years, between a quarter and a third of its income.' <http://www.guardian.co.uk/society/patrick-butler-cuts-blog/2011/mar/07/what-does-a-charity-financial-crisis-look-like>

<sup>25</sup> Kaur and Shah vs Ealing Council [2008] [EWHC 2062] a BAME women's group successfully challenged their funder under the Race Relations Act. In a key judicial review case brought by the Public Law Project about how local authorities should approach the funding of specialist services for BAME groups.

<sup>26</sup> Meany & Ors, R v Harlow District Council [2009] <http://www.bailii.org/ew/cases/EWHC/Admin/2009/559.html>

<sup>27</sup> R (Hajrula & Others) v London Councils. The court case, brought by users of the Roma Support group, challenged London Councils' failures to properly consult, to follow a fair and transparent decision making process, or to comply with its equality duties. Mr Justice Calvert-Smith found that 'the process ....was flawed by reason of the failure to pay due regard to the defendant's public sector equality duties (PSEDs)'.[http://www.pierceglynn.co.uk/news\\_docs/LC\\_JR\\_SuppJudgment&Order.pdf](http://www.pierceglynn.co.uk/news_docs/LC_JR_SuppJudgment&Order.pdf)

<sup>28</sup> Mr. Justice Holman said the Education Secretary, 'unlawfully and without justification', failed to consult with the authorities and unlawfully failed to give due regard to the 'equality impacts of his proposed decision'.

The ability of BAME communities to enjoy full protection of the Equality Act 2010 and to enforce rights against discrimination in all areas covered by the Act

22. Despite years of race equality legislation, BAME individuals and groups continue to experience direct discrimination, indirect discrimination, harassment and victimisation in public and private sector employment, education, housing, services and public functions such as policing, prison discipline and the detention of people with mental health conditions. The Equality Act 2010 gives people a right to seek redress. The hard reality is that to secure legal redress for race discrimination is difficult and may soon become virtually impossible, except for claimants who can meet the costs and take on the financial risks.
23. Discrimination cases are often complex, and without skilled legal advice many people do not realise that they do have a discrimination claim. The Ministry of Justice (MoJ) proposals for reform of legal aid would remove from the scope of legal aid most of the areas in which race discrimination is likely to occur including employment, education, housing, civil claims against the police, debt and welfare benefits. While discrimination will be covered, in most cases a person will have a claim in the substantive area, for example unfair dismissal, school exclusion and wrongful arrest. The prospect of getting legally aided advice is also at further risk since access to legal aid will be only by telephone, with any new case assessed by a non-legally qualified operator. For many ethnic minorities telephone advice is not suitable as communication can be difficult. For migrants there will not only be language and culture issues but also reluctance to discuss sensitive matters with an official they cannot see.
24. The legal aid proposals will also, indirectly, go some way to destroying the infrastructure for the provision of legal aid by drastically reducing the future income of not-for-profit providers such as law centres and community advice agencies to whom vulnerable groups most often turn. Added to this, these bodies now face the further threat of major or total cuts to their funding by local authorities. While, as mentioned above, there have been successful challenges when proposed cuts have not been properly assessed for their equality impact, it is likely that what will have been won is delay, and similar new funding decisions will soon follow with sufficient reference to equality to deflect further challenge.
25. To complete the picture, it is necessary to look at the Department of Business, Innovation and Skills (BIS) proposals for "Resolving Workplace Disputes". As the vast majority of discrimination cases concern employment, these proposals will have a significant impact on people's ability to enforce their equality rights. BIS data show that BAME employees are over-represented among applicants to employment tribunals (ETs) so making access to ETs more difficult will disproportionately disadvantage BAME employees. To require applicants to pay a fee, a deposit or costs will restrict access and further disadvantage people with low incomes among whom BAME people are overly represented. To raise the qualifying period for unfair dismissal to two years will disproportionately disadvantage BAME employees who are less likely than white groups, disabled people or women to have two years' service.

## Criminal justice: Views on criminal justice policy as they relate to BAME communities

26. People from BAME communities remain over-surveilled and under-protected by our criminal justice system – for example CCTV Surveillance of Muslim communities by West Midlands Police or the introduction of Gang ASBOs to tackle youth violence – despite widespread skepticism about their impact from community organisations. The low rates of BAME recruitment and retention in police service, prison service, and at senior levels across CJS continues to be a matter of concern and we are concerned about the future given the planned cuts in staffing projected for police forces across the country.
27. A particular sticking point has been the persistent disproportionality in stop and search figures, which show that Black people are seven times more likely (and Asian people twice as likely) as White people to be stopped and searched<sup>29</sup>. Further to this, people from BAME groups are also more likely than their white counterparts to be arrested, less likely to be cautioned, more likely to be prosecuted, less likely to get bail and more likely to receive longer prison sentences for similar offences<sup>30</sup>. Resettlement interventions for former offenders from BAME groups also currently lead to poorer outcomes<sup>31</sup>. As victims of crime, Black and Mixed groups report lower levels of satisfaction in their treatment by the CJS<sup>32</sup>.
28. These inequalities are incredibly damaging to community relations. If BAME groups believe they are being unfairly and disproportionately targeted, it leads to a lack of trust towards the police. Recent research found that Black people are much less likely than White people to believe that their complaints about the police will be taken seriously, and are more likely to worry about police harassment<sup>33</sup>. Research continues to show that stop and search is a particular concern for BAME communities. For many young Black people, stop and search is their first experience of the police and how they are treated by them.
29. Some have cited the election of police and crime commissioners as a potential way for BAME people to have the views represented more effectively in the criminal justice system. We support the principle of more power being given to people. However, we believe that:  
a) safeguards need to be built in to ensure that ‘community priorities’ are consistent with relevant equality legislation, including the requirements of the public sector equality duty; and  
b) there should be external monitoring.

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<sup>29</sup> See [www.stop-watch.org](http://www.stop-watch.org) for the most recent information about developments in stop and search in relation to race equality

<sup>30</sup> Race for Justice report [http://www.rota.org.uk/Downloads/7\\_RFJ%20Report.pdf](http://www.rota.org.uk/Downloads/7_RFJ%20Report.pdf)

<sup>31</sup> See ‘Double Trouble BAME Offenders’ experiences of resettlement’ (2010) [www.clinks.org](http://www.clinks.org)

<sup>32</sup> Witness and Victim Experience Survey (2009) Ministry of Justice

<sup>33</sup> EHRC Triennial Review (2010)

## The Public Bodies Bill and the Localism Bill

30. Both the Public Bodies Bill and the Localism Bill contain clauses that would enable primary legislation to be amended or repealed by subordinate legislation, with or without further Parliamentary scrutiny<sup>34</sup>. We are concerned that these provisions may be applied to undermine the protections and equality rights provided by the Equality Act 2010.
31. Clause 5 of the Localism Bill gives the Secretary of State power by order to “amend, repeal, revoke, or disapply any statutory provision (whenever passed or made)”<sup>35</sup>. In our view, the verbal assurance given in parliament, by Andrew Stunell, MP Minister for Communities and Local Government<sup>36</sup> in relation to the use of the powers and the Equality Act 2010 are problematic; they do not ensure protection of the Act or give it its due weight. Similarly, we do not believe that a non-binding consultation process (made up of consultees chosen by the Secretary of State) and a draft order in parliament would provide sufficient scrutiny of a decision to exempt institutions from the Equality Act 2010.
32. Similarly the provisions in the Public Bodies Bill under clause 3<sup>37</sup> and clause 5<sup>38</sup> give a similar power to alter the constitution and functions of the EHRC, amongst other organisations, which could alter the equality structures of the UK with minimal parliamentary scrutiny. The remaining provisions give the Secretary of State wide ranging power to remove statutory obligations and structures ensuring equality. We welcome the Government announcement, made in the House of Lords on the 28th February 2011<sup>39</sup>, that it will remove Clause 11 and schedule 7 from this Bill<sup>40</sup>.
33. We are concerned that both Bills could significantly undermine how consistently equality is promoted by public bodies. If these provisions are enacted, we would ask the Home Affairs Committee to scrutinise the application of these clauses by the Government in relation to equality provisions, the EHRC and/or other equality structures.

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<sup>34</sup> Such clauses are commonly called Henry VIII clauses - <http://www.parliament.uk/site-information/glossary/henry-viii-clauses/>

<sup>35</sup> Clause 5 (1) could be used where statutory provisions prevent or restrict use of the Localism Bill’s general power. Clause 5 (2) allows the Secretary of State to amend or repeal etc legislation to remove overlaps between the general power and existing powers.

<sup>36</sup> *‘The power for the Secretary of State to remove restrictions involves rigorous procedure, including scrutiny by the House and consultation. It will be for Parliament and not the Secretary of State to decide which procedure—super-affirmative, affirmative or negative—should apply to any order proposed under the power. We certainly do not have anything in mind in the near future that would bring this abruptly into use. I hope he will see that we have no intention of exploiting this—as he might see it—at the drop of a hat.’* Andrew Stunell, MP, Parliamentary Under Secretary for State. Public Bill Committee, Localism Bill, Fifth Session, 1st February 2010, Official Report c210

<sup>37</sup> *‘A Minister may by order modify the constitutional arrangements of a body or office specified in Schedule 3.’* Clause 3(1), Public Bodies Bill (28th October 2010)

<sup>38</sup> *‘A Minister may by order (a) modify the functions of a body, or the holder of an office, specified in Schedule 5, or (b) transfer a function of such a person to an eligible person.’* Public Bodies Bill (28th October 2010).

<sup>39</sup> Lord Taylor of Holbeach CBE, Lord In Waiting, Government Spokesperson for Cabinet Office, and DECC and DWP

<sup>40</sup> Clause 11 and schedule 7 would have allowed abolition of organisations by Ministerial order.