Reform promises to “repeal” the Equality Act 2010 on Day 1 if elected.

On 17 February 2026, Reform Party MP Suella Braverman announced that her party planned to repeal the Equality Act 2010 on the first day of a Reform government. We analyse the background to this announcement, what Reform has said it intends to do and whether the criticisms made of positive action in particular are valid.

Where has the backlash against equality law come from?

To understand the origins of the Reform Party’s stance, we only have to look across the pond.

Back in January 2025, President Trump signed two executive orders targeting diversity, equity and inclusion (**DEI**) measures (the **Executive Orders**). The first directed federal agencies to dismantle all DEI programs within the Federal Government. The second prohibited private organisations from implementing DEI employment programs for positions funded by federal contracts.

President Trump also instructed the US Attorney General’s office to look into ways that the private sector may be regulated or encouraged *“..to end illegal discrimination and preferences, including DEI”.*

In any event, this strong anti-DEI stance led to an immediate chilling effect within the private sector in the US. Many major organisations pre-emptively dropped their DEI policies following his Presidential win (including the likes of Walmart, Amazon, McDonalds and Meta) with more following suit after the issuance of the Executive Orders (including PepsiCo, Alphabet, Disney, Accenture and Deloitte to name a few).

Did America sneeze and the UK catch a cold?

Within months of President Trump's actions, evidence of a private sector rollback of DEI policies was emerging among some major UK employers. For example:

- British Telecommunications plc removed DEI targets from its annual bonus awards.
- Lloyds Banking Group plc reduced diversity targets affecting its annual bonus awards.
- GSK plc removed diversity targets for leadership roles and suppliers.
- WPP removed all references to diversity, equity and inclusion from its annual report.
- Accenture began a global rollback of DEI including in the UK.

But set against concerns about this apparent ripple effect, it remained the case that UK employers were operating in a different political and legal eco-system to their US counterparts. In July 2024, a Labour Government had been elected on a mandate of strengthening equality law protection. And the UK's advanced equality law framework (set out primarily in the Equality Act 2010 (the **Act**) but supplemented by various corporate governance and reporting rules), restricted the extent to which equality in the workplace could be attacked.

However, since the rollback of DEI in the US, there has been a distinct shift in the discussion of equality law by some UK politicians.

Kemi Badenoch MP, Leader of the Conservative Party, made no bones about her dislike of DEI, having previously referred to workplace DEI training as *"snake oil."* In February 2025, she spoke at the right-wing Alliance for Responsible Citizenship convention and said: *"Whether it's pronouns or DEI or climate activism – these issues aren't about kindness, they're about control."*

In March 2025, the GB News presenter and former Conservative MP and Minister Jacob Rees-Mogg described the Act as a codification of *"woke ideology"* which had created *"…a wasteful and racist DEI industry"*.

On 27 March 2025, Nigel Farage MP, the Leader of the Reform Party, praised President Trump's attack on DEI and said: *"…the lunacies of DEI policy, of employing people on the basis of their colour, or their chosen sexuality…is coming to an end.*

We're seeing the tide turning…and we're moving more towards a system based on meritocracy than based on identity".

What is the Reform Party's latest stance?

Fast forward a year, and the UK's cold appears to be at risk of developing into full-blown flu.

On 17 February 2026, Reform MP Suella Braverman said that Britain was *"being ripped apart"* by DEI policies and she promised that Reform would repeal the Act on Day 1 if Reform wins the next general election. She said: *"…we will repeal the Equality Act, because we are going to work to build a country defined by meritocracy not tokenism, personal responsibility not victimhood, excellence not mediocrity, and unity not division"* and *"scrapping the Equality Act means getting rid of the pernicious, divisive notion of protected characteristics."*

Later interviews given by Reform MPs Zia Yusuf and Robert Jenrick homed in specifically on the positive action provisions in the Act as the key area of concern (these are the provisions which tend to underpin DEI measures). Zia Yusuf MP said: *"The current Equalities Act* (sic) *requires discrimination in the name of 'positive action'. It costs the economy billions of pounds and has become a lawyer's charter to print money. It has destroyed meritocracy, spread division and led to exclusion for some in majority groups."*

Adopting a slightly more moderate tone, Robert Jenrick MP said Reform intended to *"pass on"* important workplace rights to future generations, such as equal pay and disability

discrimination rights. However, he asserted that other aspects of the Act, namely the Public Sector Equality Duty (the **PSED**) and the positive action provisions, were *"harmful"* to government, the economy and society.

It is not entirely clear whether Reform intends to repeal the entirety of the Act or just the positive action and PSED provisions. Clearly, the former is far more radical and would result in an extraordinary degradation of workplace rights in the UK.

Is Reform right about positive action?

Reform says the positive action provisions in the Act require discrimination and are exclusionary, divisive and harmful. So, what exactly are the positive action provisions?

In the main, the Act prohibits various forms of discrimination (i.e. direct and indirect discrimination, harassment, victimisation and discrimination arising from a disability) connected to certain protected characteristics, as opposed to requiring an employer to take active measures to remove disadvantage. However, there are some limited exceptions to this including the duty to make reasonable adjustments for disabled workers and the duty to take reasonable steps to prevent sexual harassment.

Beyond this, the Act permits, but does not require, employers to take "positive action" measures in certain defined circumstances. Two types of positive action are permitted: general positive action under s.158 and positive action in recruitment and promotion under s.159. Although positive

action is voluntary for private sector employers, public sector employers do have a separate duty to consider taking positive action measures as part of the PSED arising under s.149 of the Act.

General positive action

General positive action may only be used where an employer reasonably thinks that persons sharing a protected characteristic suffer a disadvantage, have different needs and/or have disproportionately low participation, when compared to others. Where this is the case, the employer may elect (but is not required) to take action aimed at resolving these issues.

The Act does not prescribe what action is permitted and, in fact, there is no limit on the types of measures that may be taken. Common examples include:

- targeting advertising at specific disadvantaged groups;
- providing opportunities exclusively to the target group to learn more about particular types of work with the employer;
- creation of a work-based support group for members of staff who share a protected characteristic and who may have workplace experiences or needs that are different from other staff; and
- setting aspirational targets for increasing

participation within a particular timescale;

Importantly, identifying the disadvantage, need or underrepresentation and the proposed positive action is not simply the end of the story. The employer is also expected to ensure that the proposed action is a proportionate means of achieving the relevant aim. Proportionality involves a very careful balancing of competing relevant factors. The kinds of questions an employer will need to answer are:

- how serious is the disadvantage, need or under-representation?;
- is the action appropriate to achieve the stated aim?;
- if so, is the proposed action reasonably necessary to achieve the aim, or would it be possible to achieve the aim as effectively by other means less likely to result in less favourable treatment of others?;
- if there is an adverse impact on others, what steps are being taken to mitigate that adverse impact?;
- does the measure rely on objective and transparent criteria?; and
- is there a procedure in place for reviewing the impact of, and need for, the measure? Here, the EHRC Code cautions against taking positive action indefinitely without review since the steps taken may remedy the

situation meaning it is no longer proportionate to continue the action.

What is clear is that an employer must undertake considerable groundwork before rolling out any general positive action measures. It is not something the Act envisages being undertaken lightly or without a compelling rationale.

Positive action in recruitment

Section 159 has the potential for a more dramatic impact in that it allows employers to take positive action at the point of recruitment, i.e. to favour a candidate from a protected group over others. However, it may only do this where it reasonably thinks that persons from the protected group suffer a disadvantage or have disproportionately low participation. Once that disadvantage or underrepresentation has been identified, an employer may then only use s.159 where:

- the candidate A (from the target group) is as qualified as candidate B to be recruited or promoted;
- the employer does not operate a blanket policy of positive action; and
- the action is a proportionate means of achieving the legitimate aim.

The “as qualified as” restriction is a very significant limitation on the scope of the provision. It means that if an employer recruits or promotes someone from a protected group over a *better qualified* candidate they will commit unlawful positive discrimination (rather than lawful positive action).

The result is that positive action in recruitment is used extremely rarely by employers who fear getting it wrong and inviting so-called “reverse discrimination” claims from those in the majority groups. Given that there is no obligation to do it, employers generally do not use s.159 measures. Indeed, until 2019, there were no decided cases in England and Wales at all on the application of s.159 – today, there are only two.

In February 2019, the Liverpool Employment Tribunal handed down its judgment in the case of Furlong v The Chief Constable of Cheshire Police. In that case, the Respondent misapplied s.159 by setting the bar too low when it came to treating candidates as equally qualified. This resulted in discrimination against a white, heterosexual, male applicant who won his case, brought under the very legislation that is now being criticised by Reform. In 2022, In Turner-Robson and others v Chief Constable of Thames Valley Police an Employment Tribunal held that the decision to promote a minority ethnic Police Sergeant into a Detective Inspector role without undertaking any competitive exercise was unlawful race discrimination.

Does the Act require discrimination and is positive action exclusionary, divisive and harmful?

Reform claim that the Act *"requires"* discrimination in the name of positive action is incorrect. Employers are not required to take positive action. And positive action measures in recruitment (the tiebreaker) are used vanishingly rarely. The claim that positive action has *"destroyed meritocracy"* does not withstand scrutiny.

By its very nature, action aimed at improving the position for those belonging to a specific disadvantaged group *will* exclude those outside that group. Yet the logic is that this only rebalances advantage in the workplace and offers opportunities to all to succeed on their own merit. Whether or not this should be regarded as *"divisive"* and *"harmful"* turns on whether you believe this is the right thing to do.

There have been a few examples where poorly judged DEI messaging has led to negative fallout for UK employers (for example, Wickes, Aviva and John Lewis). Placing the spotlight on DEI may provoke a re-evaluation by employers of their approach to ensure that positive action measures are transparent, proportionate and lawful.

Repealing the Equality Act 2010: a licence for positive discrimination?

It is worth remembering, with the exception of disabled individuals and pregnant workers, the Equality Act provides protection from discrimination for everyone symmetrically whether they belong to a historically disadvantaged group or not. White workers, as well as Black and Asian workers, are protected from discrimination because of race. Men as well as women are protected from discrimination because of sex. The philosophical underpinning of the law prohibiting direct

discrimination is that each person deserves to be judged as an individual on the basis of what they contribute, and not on the basis of any prejudice or stereotype related to their protected characteristics. Positive action and the law prohibiting indirect discrimination balances this out with a view that goes beyond the individual to the group and recognises that the playing field is not, or has not always been, level.

The irony of Reform's proposal to repeal the Act is that there would no longer be any legal impediment to employers rolling out "positive discrimination" measures for underrepresented and marginalised groups, the very measures Reform has criticised.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk**) or your usual BDBF contact.**