AI IN THE WORKPLACE
SHAPING THE NEXT GENERATION

Furat Ashraf, Olivia Baxendale and Charles Hill of Bird & Bird LLP examine the key legal risks and employment law considerations surrounding the use of AI in the workplace.

AI, which can be simply defined as the use of computer technology to simulate human intelligence and rational decision making, has been a field of study for a number of decades. Similarly, tools and technologies that leverage AI have been commonplace in day-to-day life for a number of years (*www.ibm.com/topics/artificial-intelligence*). Despite this, AI and AI-leveraged tools have particularly dominated global headlines over the last 18 months, largely thanks to the rapid proliferation of generative AI (GenAI) tools, such as OpenAI's Chat GPT, that can generate high-quality text, images and other content based on the data that they were trained on (*https://research.ibm.com/blog/what-is-generative-AI*).

GenAI tools have placed AI in the public consciousness, made AI tools much more widely accessible, and significantly increased the rate of funding and development in the field.

One of the most, if not the most, prominent area that AI has affected is the workplace. Job applicants and employees are using GenAI tools in order to help them to secure work, in the first instance, and then to maximise their productivity and the quality of their output while at work. At the same time, employers are increasingly using AI tools to identify high-quality candidates and improve operational efficiency by cutting costs and applying more objective and data-based decision making to their workforces.

However, this is not without risk. Employee use of GenAI, in particular, raises issues of confidentiality and business protection, while employers' use of automated decision-making applications can give rise to issues of discrimination, bias and a potential breakdown in the mutual duty of trust and confidence between employers and employees (*see box "Generative AI and algorithmic decision-making AI"*). Each of these risks can readily escalate into legal disputes.

This article breaks down the key legal risks and considerations for employers surrounding the use of AI in the workplace, exploring the following key topics:

- The current UK legal framework governing the use of AI in the workplace.

- How employees are using GenAI tools in the performance of their roles, the risks this can expose the employer to, and how employee use of these tools can be regulated by contract.

- How employers are using algorithmic decision-making tools in recruitment and workforce management, and how this may engage UK equality legislation.

- The possible future of regulation of AI in an employment context.

LEGAL FRAMEWORK

When assessing the legal considerations associated with the use of AI in the workplace, it is important to look at the UK's current legal framework that underpins the relationship between employers and employees, as it is this framework that will be engaged when issues and disputes arise.

At the time of writing, there is no AI-specific legislation governing the use of AI in the workplace and therefore the use of AI must be assessed in the context of the existing UK employment and equality legislation, principally the Equality Act 2010 (2010 Act) and the Employment Rights Act 1996 (ERA). There has also been very little employment tribunal litigation to date concerning the use of AI in the workplace that would help to contextualise the regulation of AI tools within this framework.

In terms of fundamental rights and principles that may be engaged by the use of AI in the workplace, the 2010 Act establishes protections for individuals against discrimination in the workplace (*see feature article "Algorithms, apps and AI: the next frontier in discrimination law", www. practicallaw.com/w-013-8054*). It prohibits direct and indirect discrimination, harassment and victimisation on the grounds of any of the following nine protected characteristics:

- Age.

- Disability.

- Gender reassignment.

- Marriage and civil partnership.

- Pregnancy and maternity.

- Race.

- Religion or belief.

- Sex.

- Sexual orientation (*section 4, 2010 Act*).

Generative AI and algorithmic decision-making AI

While there are countless AI tools and applications, the two broad categories that are especially relevant for the purposes of assessing the employment law implications of AI in the workplace are:

- Generative AI (GenAI) tools.

- Algorithmic decision-making tools. These are tools that leverage machine learning to analyse vast quantities of data in order to infer correlations or otherwise derive data that is then used as the basis for automated decisions; that is, decisions which involve no, or very little, human input or oversight (*www.europarl.europa. eu/RegData/etudes/STUD/2019/624261/EPRS_STU(2019)624261_EN.pdf*).

At a very high level, GenAI tools create new content, while algorithmic decision-making AI tools make informed decisions based on data analysis.

These two broad categories currently look set to have the greatest impact from a UK employment law perspective when assessing the introduction of AI into the relationship between employers and employees. Although this article focuses, in particular, on how employees use GenAI tools and how employers use algorithmic decision-making tools, conversely, it is also possible that employers may use GenAI tools when making decisions that affect employees and that employees may use algorithmic decision-making tools in the performance of their jobs.

The ERA confers certain core rights and protections on employees, with some being dependent on the length of the employee's service with their respective employer, including:

- The right to not be unfairly dismissed, including specific protections in redundancy scenarios (*section 94, ERA*).

- Protection from suffering a detriment as a result of making protected disclosures; that is, whistleblower protection (*sections 47B and 103A, ERA*).

The statutory and common law framework, particularly with regard to the protections established by the 2010 Act, is likely to be relevant when assessing employers' use of algorithmic decision-making tools, where such decision making may give rise to issues of discrimination or bias. The contractual relationship between employers and employees will be most relevant in the context of individual employee use of GenAI and how employers seek to regulate this (*see box "The employment relationship"*).

EMPLOYEE USE OF GENAI

In the modern digital workplace, employees are increasingly taking advantage of the capabilities of GenAI tools to augment their roles and enhance their productivity (*see box "Common use cases for generative AI"*). Fundamentally, GenAI tools are designed to process, analyse and generate content. They are trained on vast quantities of data with the purpose of allowing them to identify underlying patterns and subsequently use these patterns to generate new, similar data.

What underpins the wide array of use cases is that, irrespective of the specific use, GenAI is able to significantly improve employee productivity by rapidly increasing the speed with which traditionally lengthy tasks can be performed. It also has the potential to enhance employee performance by not only making employees more efficient but also by providing a tool that augments their creativity and can potentially fill any knowledge gaps that the employee may have.

LEGAL RISKS

The implications of employee use of GenAI tools are manifold and, while there is undoubtedly great potential for GenAI to augment employee performance, there are a number of implications that employers must consider before allowing employees to use these tools.

Misuse

Employers should consider the potential consequences of employees misusing GenAI tools and how these can be mitigated against. As the majority of publicly available GenAI tools have been trained on open source information, which can contain poor quality data, they have the potential to "hallucinate"; that is, to generate false or misleading results. If not interrogated appropriately by the human user, this content may then be shared with customers, which may cause damage to business relationships, the public (causing public relations issues) or other employees (causing employee relations issues).

Beyond inaccurate content, there is also a risk of these tools producing discriminatory or otherwise biased outputs. This may be as a result of misuse by the employee but could also be as a result of the limitations of the tool itself. It is unlikely that an employer will be able to fairly or lawfully hold its employees accountable for any inaccurate, discriminatory or biased outputs that may be generated by a tool that the company has authorised for use. However, the onus to review the outputs can be placed on the employee using the tool in order to ensure a degree of accountability for the work generated and possibly also on senior managers where the use case is particularly high risk.

Business protection

Certain characteristics of GenAI tools are often overlooked, including that, depending on the type of tool and its terms of use, they may store and retain a right to use the data that is inputted into them, and that the training data sets for GenAI tools will most often include material that is subject to copyright.

There is a risk, therefore, that employees input confidential business information into a GenAI tool that leaves this information exposed to, and open for use by, third parties, either unintentionally through the tool's terms of use or inadequate encryption or data storage, or a combination of any or all of these. Deliberate or inadvertent exposure or leaking of a company's sensitive information is likely to breach an employee's express and implied contractual obligations towards their employer, in addition to company policies concerning IT use, giving rise to potential disciplinary action.

Similarly, the infringement of third-party copyright through the generation and use of material that may be subject to existing copyright by virtue of the underlying training data may, in some cases, also constitute a breach of the employee's contractual obligations to their employer and leave an organisation exposed to legal action from the infringed party.

Mitigation strategies

The issues of employee misuse and protection of business interests present challenges for employers, both where employees are permitted to use GenAI tools and misuse occurs inadvertently, and where employees use GenAI tools in breach of any policy concerning the use of third-party data or confidential information. These issues can be mitigated by implementing robust and specific policies and training programmes that outline clear guidelines for the use of GenAI tools in the workplace and provide employers with a clear basis for disciplinary sanctions in the event of misuse.

This will not only involve the preparation of new, specific AI policies that make clear the basis on which the use of GenAI tools is permitted, but also the review and updating of existing policies that may also bear relevance, which may include an organisation's code of conduct, policies on the acceptable use of IT, disciplinary and grievance procedures, and any applicable data protection and privacy policies (*see feature article "AI governance, risk and compliance: shaping an unknown future", www.practicallaw.com/w-040-0428*).

Employers should ensure that all staff are aware of the risks and responsibilities linked to the use of GenAI. This includes:

- Creating safeguards to prevent the input of confidential and sensitive information into AI systems.

- Outlining permitted and prohibited use cases.

- Highlighting which tools are considered safe for use.

- Reinforcing data protection protocols and supervisory measures.

- Ensuring that any training provided to their workforce on the use of GenAI tools covers the potential consequences of misuse and how employees can report, identify and mitigate against inaccurate, discriminatory or biased outputs.

Looking externally towards providers of GenAI tools, employers should, among other checks, carry out due diligence on how input data is treated and stored in order to identify where possible sensitive data leaks could occur. The provider's approach to using training data that may be subject to copyright should also be assessed, so that the employer has a clearer picture of its potential liabilities in this area, should copyrighted output be produced and shared unlawfully by employees.

Role changes and redundancy

Employers that permit, or otherwise encourage, the use of GenAI must consider:

- The point at which the augmentation of an employee's role through the use of these applications constitutes a fundamental change to the terms and conditions of their employment so that the employee's consent is required.

- Whether the use of GenAI to support an employee in the performance of their role can eventually constitute lawful grounds for dismissal, should it be used to the extent that the employee's role can be replaced, or is reduced by, GenAI.

Consent. With regards to role changes, employers should generally seek an employee's consent for any changes to their terms and conditions of employment that may be considered more than minor. Failure to do so may cause the employee to resign, with or without notice, and file a claim for constructive unfair dismissal under section 95(1)(c) of the ERA on the grounds that their employer has committed a repudiatory breach of contract by fundamentally changing the nature of their role. Where the use of GenAI has a substantial impact on an employee's day-to-day role, as may be the case in certain functions, it is easy to see how such a breach can be alleged.

If an employee does not expressly resist or expressly provide consent to the use of GenAI, the employer may rely on the employee's implied consent to the change in terms and conditions. However, this creates an element of uncertainty should the employee's role change substantially over time and they claim at a later stage, perhaps in response to performance management or a redundancy situation, that they did not consent.

Discrimination. If the implementation of GenAI results in changes to terms and conditions that disproportionately affect a particular group of employees, such as women, more senior employees or racial minorities, employers may face issues of unlawful indirect discrimination contrary to the 2010 Act.

For example, if the introduction of GenAI has a disproportionate impact on the reduction of roles that are overwhelmingly performed by a certain demographic of a company's

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Common use cases for generative AI

There are currently several common ways in which employees are making use of generative AI (GenAI) applications.

Data analysis. GenAI is being used in the analysis of large volumes of text. By using machine-learning algorithms, GenAI tools can quickly identify trends, patterns or potential issues that may be overlooked in manual analysis. This is of particular relevance to fields such as market research, social media management and customer service.

Text generation. GenAI is being used to generate correspondence and draft documents. It can help to create well-articulated emails, reports and other forms of written communication, thereby saving time and effort for employees. In addition, these tools can also rephrase or refine existing work, enhancing its clarity and quality.

Images and sound. GenAI can generate visual and audio content; for example, to create images, infographics or soundbites for marketing campaigns, presentations or social media posts. Again, this significantly reduces the time required for content creation.

Computer code. Using GenAI to generate computer code can be of huge use in the field of software development where repetitive tasks can be automated, improving both the quality of an employee's output and their overall efficiency.

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workforce, such as older employees performing administrative functions, this may be indirectly discriminatory if the company is not able to objectively justify this action (*see feature article "Managing an ageing workforce: times are changing", www.practicallaw. com/w-032-6400*).

Information and consultation. Of particular relevance to UK organisations with an international presence, the introduction of GenAI for employee use may also trigger information and consultation obligations with employee representative bodies, such as works councils or trade unions. These bodies may be naturally resistant to the introduction of changes that have such a potentially detrimental impact on their membership. Therefore, employers with a multi-jurisdictional presence should carefully plan how they will engage with these bodies far in advance of any proposed implementation of GenAI tools across the business.

Managing risk. To mitigate against the risk of claims arising from unilateral changes to terms and conditions, employees should carefully consider:

- How the implementation of GenAI will affect employees' roles and whether it is likely to go beyond a minor change to

the role and constitute a fundamental change, which would require consent.

- If it constitutes a fundamental change, whether the employer will consult with employees and seek express consent or instead rely on implied consent.

- Whether consent from an employee representative body is required if GenAI tools are being made available across an organisation in multiple jurisdictions.

- How the employer will deal with employees who refuse to consent to the change in terms and conditions, if this is sought.

Dismissal. The introduction of GenAI may constitute grounds for dismissal if it diminishes the need of the business for a particular role or roles due to that employee's function becoming fully automated or automated to a degree whereby fewer numbers of staff are required to perform the function. This has already started to occur, for example, in respect of customer service roles where GenAI tools can be far more efficient in handling significant volumes of customer queries and are increasingly able to respond to these queries in an articulate and sophisticated manner, so that a human operator is no longer required.

Pooling and selection. It is undisputed that, from a UK employment law perspective, the introduction of AI can result in a genuine and lawful redundancy situation under section 139 of the ERA. Nonetheless, AI-driven redundancy exercises come with some unique considerations, in particular, around the process for pooling and selection for redundancy.

It will be difficult for employers to conduct selection and pooling exercises where the roles of employees who are potentially at risk of redundancy have been gradually augmented over time through the use of GenAI tools. Not all roles within a team will necessarily have been affected in the same way, as AI will drive efficiencies in some areas and not others. In these situations, it may not be easy to identify with consistency the skills and experience that will be required by the business going forward, even within the same set of roles.

There may be a need to retain some traditional roles while, for other roles, the skills outlined in their original job descriptions may bear little resemblance to the AI-based skills that will be needed in the future. Naturally, employers will want the freedom to pool and select employees based on their ongoing business needs; however, an increasingly mixed picture of skills and experience may lead to challenges as regards the fairness of the pooling and selection process and the consistency of treatment between employees.

Employers should be cautious of adopting selection criteria that may be considered to be indirectly discriminatory. It is easy to see how requirements for AI-based skills may disadvantage older employees who might be less willing or able to embrace new technologies. Employers can expect those employees and others placed at risk of redundancy to challenge the rationale for the redundancy in circumstances where, as above, their roles have changed substantially, without their consent, as a result of the introduction of GenAI tools in the workplace, as compared to the roles for which they were originally hired.

Where the use of AI is systemic across certain businesses or functions, so that entire teams may be at risk of being replaced by AI, employers will need to consider carefully how best to pool and select the employees who will be required in the future. This may involve pooling roles across different functions

and business units where the lines have been blurred as a result of the use of GenAI. Pools may need to become wider if they are required to capture all employees who could potentially be made redundant by GenAI in the organisation and selection may need to focus much more on transferable AI skills rather than role requirements. This, in turn, may lead to more employees challenging the basis for their selection if an employer is unable to sufficiently explain their selection over another employee whose role, while different, could equally be carried out by GenAI.

Employers that operate globally should also consider whether the implementation of GenAI constitutes a lawful basis for redundancy in each jurisdiction in which they operate, should a multi-jurisdictional restructuring be triggered. This may not always be the case and will require specific local law analysis.

EMPLOYER USE OF AI

Employers are using algorithmic decision-making tools to assist in a number of areas of, and at different stages in, the employment relationship.

Recruitment

The recruitment phase of the employment relationship is the area where algorithmic decision-making tools are currently most frequently used by employers. These tools are used for the following purposes, each designed to increase the efficiency of the recruitment process and the likelihood of a successful hire, with varying degrees of sophistication and complexity:

- Evaluating the composition of an organisations' workforce in order to identify more precise demographics for targeted job adverts. This might be in an effort, for example, to increase job applicants from underrepresented demographic groups or to target job adverts at demographics that comprise a significant portion of the company's existing workforce, on the basis that candidates from these demographics are statistically more likely to be successful in that organisation.

- Sifting through candidates' CVs and written applications in order to identify and select candidates for interviews who most align with the criteria of the role and the profile of candidate sought.

- Examining patterns of past successful candidates in order to select those who are more likely to succeed in a role. For example, these tools can assess previous hires' length of service, number of promotions, number of accreditations and other factors in order to determine whether they are a success. This information is then used to create the profile of a successful candidate, which forms the basis for hiring decisions.

Workforce management

AI tools can be applied to make or assist with workforce management decisions across numerous aspects of the employment relationship.

Task allocation. AI tools can analyse employee productivity and workload based on a number of data points such as measurable output (in applicable roles where an employee's workload is quantifiable), keystrokes, and metrics such as the number of documents produced or emails sent, in order to determine whether they have capacity to take on further work. Work can then be automatically allocated, or recommended for allocation, based on this data.

Performance management. Employee performance can be discerned by AI tools through an analysis of data points such as sales metrics and customer or colleague feedback, which is particularly suitable for roles and industries where measurable volume is an indicator of performance. Once an AI tool has analysed employee performance based on these data points, it can then recommend or apply decisions regarding that employee's performance, such as whether they qualify for a pay rise or promotion, or whether they should be placed on a performance improvement plan.

Employee retention. Analysis of employee productivity, activity and engagement can be used to identify employees who are potentially at risk of leaving an organisation. AI tools can be trained to carry out "sentiment analysis" by analysing both text, including the tone and contents of email communications, and biometric information, such as facial expressions, in order to determine an employee's emotions; for example, whether they are acting with anger, sadness or passivity. The results of this sentiment analysis can then be used to inform decisions about whether employee retention measures need to be implemented.

Future restructuring. In a similar manner to employee retention analysis, AI tools can use predictive analytics to identify which roles or skills within an organisation are likely to become redundant. Expanding on this further, an AI tool can be applied to analyse historical workforce data such as hiring patterns and employee turnover rates, current workforce data, employee skill sets based on qualifications and experience, economic trends, workforce demographics including age distribution, job performance metrics such as appraisal ratings, and external employment market data in order to then identify or recommend roles for restructuring or redundancy.

RISKS AND IMPLICATIONS

Clearly, the use of AI tools with algorithmic decision-making capabilities will have a profound impact on how organisations manage their workforce, from making hiring decisions to performance management and restructuring. However, two of the fundamental legal challenges with algorithmic decision making in the workplace are:

- Transparency or "explainability".

- The potential for discrimination.

Transparency

AI models, particularly those that use deep-learning networks and algorithmic decision making, use complex learning and decision-making processes that are not easily interpretable by humans. The decision-making capabilities of these systems are commonly referred to as a black box. Essentially, this means that it can be difficult to explain how an AI model has reached a certain decision. The risks with algorithmic decision-making tools are that:

- The affected employees, who are subject to an automated decision, cannot trust the decision applied to them if they, or the human decision maker do not know how it has been reached.

- If it is not possible to discern how a decision has been reached, it is difficult to identify the presence of bias or discrimination in the decision.

Irrespective of the potential presence of discrimination or bias, the fact of an employer taking a decision produced by an algorithm, which cannot necessarily be fully explained but has a tangible impact on employees, may give rise to questions of whether the employer has breached the implied duty of mutual trust and confidence by undermining the employees' confidence in the organisation to make fair and transparent decisions.

This could, in turn, lead to a breakdown of the working relationship and possible claims of ordinary or constructive unfair dismissal. In addition, employees who suspect that algorithmic decision-making tools used by their employers are resulting in bias or discriminatory decisions may raise these concerns as protected disclosures, giving rise to issues of whistleblower protection under equality legislation.

Discrimination

The risk of discrimination can be illustrated by a simple case study: an algorithm is used to identify candidates for a redundancy exercise and considers, among other factors, the frequency and length of employee absence. However, it may not be capable of differentiating between types of absence or the reasons behind them. As a result, an employee who has been on extended leave due to a serious illness, which is capable of constituting a disability under the 2010 Act, is flagged for redundancy on the basis of the weight attributed by the AI tool to their level of absence in reaching its decision.

This may result in a discriminatory output, as the algorithm's decision-making criteria may be opaque to the individual who is reviewing and applying the decision, so the discriminatory basis of the decision may not be evident and therefore cannot be rectified. This is commonly referred to as discrimination by algorithm. Prospective regulation, both at a UK and EU level, will seek to closely safeguard against this (*see "Future developments" below*).

A practical example of such a risk is demonstrated by the recently settled employment tribunal case of *Manjang v Uber Eats,* in which a delivery driver for Uber Eats sued the company for indirect race discrimination, harassment and victimisation predominantly on the grounds that he continually experienced difficulties with the platform's facial recognition software as a result of his ethnicity. The software, underpinned by AI that trains it to recognise faces contained in images, encountered continued mismatches when identifying the claimant's face, leading eventually to his access to the app being suspended, which is a prerequisite to a driver accessing work and consequently pay.

While the case was settled, it highlights potential battleground areas where automated decisions that are unexplainable to the workforce give rise to potential issues of discrimination (*see Briefing "Facial recognition technology: the risks unfold", www. practicallaw.com/w-033-4793*).

Mitigating steps

Employers can take steps to mitigate against a lack of transparency and the potential for discrimination and bias in decision making by:

- Auditing the quality of the data set that their AI tools are trained on in order to ensure that it is as diverse as possible.

- Regularly reviewing the output of AI tools in order to detect the presence of discrimination or bias on an ongoing basis; these are commonly referred to as bias audits.

- Maintaining a high degree of human oversight so that decisions are not solely automated.

- Working with providers of GenAI tools to better understand the underlying function of the AI tools in order to bridge any gaps in transparency and accountability; for example, by ensuring that any procured GenAI tool appropriately grounds its output wherever possible in verifiable, real-world sources in order to allow the user to more easily verify its accuracy and reduce the scope for hallucinations to go unnoticed.

These mitigating steps are broadly reflected in the government's recent guidance on the use of AI in recruitment (*see below*).

FUTURE DEVELOPMENTS

While the application of AI in the workplace is assessed in the context of existing UK employment and equality law, there are legislative proposals at both a UK and an EU level that, if and when implemented, will provide increased regulation and greater clarity to employers and employees.

UK regulation

The Trades Union Congress (TUC) has launched an AI taskforce and has just published the AI (Employment and Regulation) Bill that is intended to strengthen workers' protections by, among other things, imposing safeguards on automated decision making and amending existing equality legislation to specifically cater for algorithmic discrimination (*www.tuc.org.uk/research-analysis/reports/artificial-intelligence-regulation-and-employment-rights-bill*).

The TUC announces this bill in the hope of a move towards the responsible adoption of AI in the workplace by taking a firmer stance on its regulation. This is manifested in the specific provisions proposed, which include a new statutory union consultation right (before the deployment of high-risk AI decision-making systems in relation to employees), extensions to employee dismissal protections (the right not to be unfairly dismissed by an AI system), and improved employee data access rights (the right to a personalised statement of how AI was used in a high-risk decision about them and the right for unions to receive data on members that is being used in AI decision making).

The bill is indicative of a shift towards a pro-regulation approach to AI in the UK, in the specific context of the workplace and workers' rights. The Labour Party, which is currently in opposition in the UK, is developing its AI strategy. While the full details of its strategy are currently unknown, it will, among other topics, address the impact of AI on the jobs market, which is expected to include specific protections for employees and job applicants in relation to automated decision making in line with the approach being taken by the TUC taskforce.

Although there is a current absence of legislation in the area, government guidance on the responsible use of AI in recruitment sets out recommended AI assurance frameworks that are designed to mitigate the risks of using AI and automated decision making in the context of recruitment processes (*www.gov.uk/government/publications/responsible-ai-in-recruitment-guide/responsible-ai-in-recruitment*). The guidance recommends that employers should, among other actions:

- Carry out impact assessments, such as algorithmic impact assessments, equality impact assessments and data protection impact assessments, to anticipate the likely effects of an AI system.

- Implement an AI governance framework to set out how AI will be implemented in the organisation, including the establishment of a risk management framework.

- Carry out bias audits to determine the presence of bias in the input data and the AI system's output.

- Carry out performance testing to determine the ongoing accuracy of the AI system.

- Train and upskill employees on the use of AI systems.

While the guidance is non-binding, it is indicative of the content of future regulation in this area. Algorithmic decision making is one of the AI use cases most squarely in the sights of EU regulators and is expected to also be reflected in future UK legislation.

EU regulation

The EU's AI Act, characterised by the EU as the first comprehensive legal framework on AI, will seek to impose restrictions and safeguards on high-risk AI systems, while also banning tools that pose an unacceptable risk (*see News brief "International developments in AI governance: same goal, different paths", www.practicallaw.com/w-041-5134*).

In the context of the workplace and the employment relationship, AI systems involved in the recruitment process, such as those used in targeting job adverts or reviewing applications, as well as AI systems used to

make decisions in the employment lifecycle, will be classified as high risk and their use will be subject to extensive obligations.

These obligations will include appropriate risk management systems and obligations for human oversight of these applications. Although the UK is no longer a member of the EU, UK organisations that use AI systems within the EU, or use an AI tool to make decisions about individuals within the EU, will be subject to the obligations under the AI Act. Final adoption of the AI Act is expected in April 2024. Once adopted, it will enter into force 20 days after publication in the Official Journal, following which there are several application dates, with the majority of provisions taking effect 24 months later.

Responsible and fair use of AI
The direction of travel of AI in the workplace is unmistakably towards a future marked by increased regulation and employee protections, as evidenced by the proposed and upcoming legal changes both in the UK and the EU. As these frameworks take shape, both employers and employees must remain vigilant and adaptable to ensure that the benefits of AI are harnessed responsibly and fairly.

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