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Artificial Intelligence (Regulation and Employment Rights) Bill

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[AS INTRODUCED]

A BILL

TO

Regulate the safe, secure, and fair, use of artificial intelligence decision-making by employers in recruitment and the workplace; to make provisions about employment and trade union rights in relation to the use of artificial intelligence technologies by employers; to address risks associated with the value chain in the deployment of artificial intelligence in the field of employment; to enable the development of safe, secure and fair artificial intelligence systems in the employment field; and for connected purposes.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part 1: Preliminary

1. Overview

(1) This Act makes provision for the safe, secure, and fair use of decision-making based on artificial intelligence systems, by employers and prospective employers, in relation to workers, employees and jobseekers, and its provisions are to be construed accordingly.

(2) Part 2 defines the Core Concepts used in this Act.

(3) Part 3 enacts positive duties of transparency, observability and explainability on employers and prospective employers, and persons acting on their behalf.

(4) Part 4 enacts a prohibition on emotion recognition technology which is used to the detriment of workers, employees, and jobseekers.

(5) Part 5 tailors the prohibition in discrimination within the Equality Act

2010 to address the use of artificial intelligence systems by amending the burden of proof and introducing a new defence for employers and their agents, where they have audited the system for discrimination.

(6) Part 6 enacts a right for employees to disconnect.

(7) Part 7 extends the right of employees not to be unfairly dismissed to circumstances when artificial intelligence systems are used and provides protection in relation to the new rights contained in this Act.

(8) Part 8 extends the existing rights and obligations in the Trade Union and Labour Relations (Consolidation) Act 1992 to deployment of artificial intelligence systems and makes further provision for trade unions to secure the fair use of data collected by employers that relates to employees and workers.

(9) Part 9 enacts provisions for the auditing of artificial intelligence systems.

(10) Part 10 enacts enhanced responsibilities for regulators and bodies operating in the employment and artificial intelligence field.

(11) Part 11 enacts provisions to ensure that employers comply with recommendations made by an employment tribunal in proceedings under this Act.

(12) Part 12 enacts provisions to encourage innovation in relation to the use of artificial intelligence systems in the context of employment.

(13) Part 13 contains general and miscellaneous provisions including a power to exempt or modify the obligations within this Act for microbusinesses.

Part 2 – Core Concepts

2. The Core Concepts

(1) The Core Concepts in this Act are those defined in this Part.

(2) Cognate phrases to those defined in this Part are to be construed accordingly.

(3) Regulations made under, and guidance and codes published in accordance with, the powers in this Act are to be construed accordingly.

3. Artificial intelligence system

(1) In this Act an "artificial intelligence system" means a machine-based system that, for explicit or implicit objectives, infers from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different artificial intelligence systems vary in their levels of autonomy and adaptiveness after deployment.

(2) Such systems will have functions that include, but are not limited to -

a. prediction,
b. planning,
c. classification,
d. pattern recognition,
e. organisation,
f. perception,
g. the recognition of speech, sound, or image,
h. the generation of text, sound, or image,
i. language translation,
j. communication,
k. learning,
l. representation, and
m. problem-solving.

(3) A system does not cease to be an artificial intelligence system solely because of human involvement in the system.

4. Artificial intelligence value chain

(1) In this Act, "value chain" means the tools, services, code, components, and processes that are the steps by which an artificial intelligence system accrues utility before the ultimate deployment of an artificial intelligence system in decision-making.

(2) The steps in a value chain include –

a. training data acquisition,
b. creation of training data sets,
c. data collection,
d. data manipulation,
e. data pre-processing,
f. model selection,
g. model training and re-training,
h. model testing, validation, and evaluation,
i. software integration,
j. application configuration, and
k. other similar steps in the development of the system.

5. Decision-making

(1) In this Act "decision-making" means any decision, including profiling, whether to act or not to act, made by an employer or its agent in relation to its employees, workers or jobseekers taken or supported by an artificial intelligence system.

(2) In this Act, "profiling" means decision–making by any form of processing of data by an artificial intelligence system to -

a. evaluate one or more personal aspects relating to a natural person, or
b. analyse, compare, or make predictions.

(3) Profiling for the purposes of this Act includes decisions concerning any one or more of the following aspects of a person -

a. their performance at work or potential performance at work,
b. their suitability for work or employment more generally,

c. their interest in work or employment opportunity,
d. their membership or potential interest in membership of trade union or other collective initiatives,
e. their trade union activities or involvement in other collective initiatives,
f. their state of health,
g. their protected characteristics,
h. their personal preferences,
i. their interests,
j. their reliability,
k. their behaviour,
l. their attitude toward an employment function,
m. their location or movements, or
n. any other similar attribute.

(4) Subsection (1) does not apply to decision-making in relation to the provision of a benefit, facility or service by the employer or agent (A) to employees, workers or jobseekers where A is concerned with the provision (for payment or not) of a benefit, facility or service of the same description to the public.

6. High-risk

(1) In this Act, decision-making is "high-risk" in relation to a worker, employee, or jobseeker, if it has the capacity or potential to produce –

a. legal effects concerning them, or
b. other similarly significant effects.

(2) In this Act "legal effect" is to be construed and applied by reference to the rights and responsibilities of a worker, employee, or jobseeker, arising from or by reason of –
a. the common law,
b. contract law,
c. the law of tort or delict, or
d. any of the statutory provisions set out in Schedule 1.

(3) Unless an employer or their agent can prove otherwise, any decision-making listed in Schedule 2 is high-risk.

(4) The Secretary of State may make regulations to give further guidance as to the factors on which the employer may rely to show that decision making is not high-risk; before making such regulations the Secretary of State shall consult with such organisations of employers and employees as he considers appropriate.

7. Data

In this Act -

(1) "Data" means "personal data", "biometric data" and "synthetic data".

(2) "Personal data" means any information relating to an identifiable living individual.

(3) "Biometric data" means personal data resulting from specific technical processing relating to the physical, physiological, or behavioural characteristics of a natural person, such as facial images or dactyloscopic data, which allow or confirm the unique identification of that natural person, and which is the product of decision-making or is used for decision-making.

(4) "Synthetic data" is data that has been generated using a purpose built mathematical model or algorithm, with the purpose of using it in place of personal data and with the aim of solving one or more of a set of data science tasks.

(5) "Identifiable living individual" means a living individual who can be identified, directly or indirectly, by reference to –

a. an identifier such as a name, an identification number, location data or an online identifier, or
b. one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.

8. Processing

(1) In this Act "processing", in relation to information, means an operation or a set of operations which is performed on information, or on sets of information.

(2) "Processing" includes, but is not limited to, the following operations in respect of information –

a. its collection, recording, organisation, structuring, or storage,
b. its adaption or alteration,
c. its retrieval, consultation, or use,
d. its disclosure by transmission, dissemination
e. its otherwise being made available,
f. its alignment or combination,
g. its restriction, erasure, or destruction, and
h. any other similar operation.

9. Emotion Recognition Technology

In this Act "emotion recognition technology" means an artificial intelligence system used in whole or in part for the purpose of identifying or inferring the attention, emotions, or intentions of natural persons on the basis of their biometric data.

10. Employees, workers, jobseekers, and employers

In this Act -

(1) "Contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(2) "Employee" means an individual who has entered into, or works under (or, where the employment has ceased, worked under), a contract of employment.

(3) "Worker" means an individual who has entered into, or works under (or, where employment has ceased, worked under), —

a. a contract of employment, or
b. any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or personally perform any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

(4) "Jobseeker" means a person who is actively seeking new employment, whether or not that person is already employed.

(5) "Employer" means -

a. in relation to an employee or a worker, the person by whom the employee or worker is (or, where the employment has ceased, was) employed, and
b. in relation to a jobseeker, a person engaging in the process of identifying jobseekers with a view to entering into an employment relationship with one or more of them.

(6) "Employment"—

a. in relation to an employee, means employment under a contract of employment,
b. in relation to a worker, means employment under his contract,
c. in relation to a jobseeker, means employment whether as an employee or as a worker.

11. Trade union

In this Act a "trade union" has the same meaning as section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

12. Amendment of the Core Concepts

(1) The Secretary of State shall keep under review the developments of technologies based on, or associated with, the collection of data relating to employment, for the purpose of deciding whether to amend the Core Concepts.

(2) For this purpose, not less than every two years from the commencement of this Act, the Secretary of State shall consult with appropriate organisations of employers and of employees and workers, in order to keep under review the developments of technologies based on, or associated with, the collection of data relating to employment.

(3) The Secretary of State may by order amend the Core Concepts –

a. In sections 3 to 9 to take account of developments in the capacities of artificial intelligence systems, and
b. In section 6 and Schedule 2 to take account of developments in the assessment of risk in relation to the use and capacities of artificial intelligence systems.

13. Guidance

(1) The Secretary of State shall publish guidance as required by the provisions of this Act by order.

(2) The Secretary of State may by order also publish guidance including technical standards to supplement this Act for the purpose of addressing how the Core Concepts may be assessed, evaluated, and understood.

(3) Guidance, whether published pursuant to subsection (1) or (2), may make different provision for different circumstances.

(4) An employment tribunal or regulator having functions under this Act, shall take into account any relevant guidance published by the Secretary of State, in exercising those functions.

Part 3 – Transparency, observability and explainability

14. Workplace AI Risk Assessments

(1) An employer shall carry out Workplace AI Risk Assessments in accordance with the provisions of this section. In this Act such an assessment is referred to as a "WAIRA".

(2) High-risk decision-making shall not take place unless the employer has carried out an initial WAIRA.

(3) The initial WAIRA shall, unless not reasonably practicable, contain at least –

a. A description of the proposed artificial intelligence system,
b. A description of the relevant value chain,
c. The date from which it is proposed that the system will be used in high-risk decision-making,
d. The categories of high-risk decision which it is proposed the system will take or contribute to,
e. The proposed purpose or aim in using the system,
f. The logic which will underpin the proposed decision-making,
g. The proposed data that will be processed by the system in relation to high-risk decision-making,
h. The way in which the personal data of employees, workers or jobseekers will influence the proposed decisions,
i. A description of how it is proposed to monitor the artificial intelligence system for accuracy, including how that metric will be defined, when high-risk decision-making takes place,
j. A description of how it is proposed to monitor the artificial intelligence system for the risks to the rights of workers, employees or jobseekers contained in the Health and Safety at Work etc. Act 1974, the Human Rights Act 1998, the Equality Act 2010, the Data Protection Act 2018, and the UK General Data Protection Regulation,
k. An assessment of the risks to the rights of workers, employees or

jobseekers contained in the Health and Safety at Work etc Act 1974, the Human Rights Act 1998, the Equality Act 2010, the Data Protection Act 2018, and the UK General Data Protection Regulation, and

l. The measures to be taken with a view to eliminating the risks.

(4) Once high-risk decision-making starts, an employer shall carry out further WAIRAs in accordance with subsection (3) at intervals of not more than 12 months for as long as decision-making continues.

(5) After the initial assessment, subsequent WAIRAs shall also assess -

a. the impact of the high-risk decision-making that has taken place on the protected characteristics set out in sections 4 to 12 of the Equality Act 2010 including the extent to which inaccurate decisions are made by the artificial intelligence system,
b. how often decisions have been modified pursuant to section 18, and
c. the extent to which there have been any incidents in which the high-risk decision-making has caused harm in the workplace.

(6) The Secretary of State shall by order give guidance as to the form that a WAIRA shall take, including as to how it shall address modifications to the functions of an artificial intelligence system, and such guidance may make different provision for different circumstances such as the size of the employer.

(7) Before preparing guidance under subsection 6, the Secretary of State shall consult with such of the following as he considers appropriate—

a. trade associations,
b. trade unions,
c. the Equality and Human Rights Commission,
d. the Information Commissioner's Office, and
e. persons who appear to the Secretary of State to represent the interests of workers.

15. Direct consultation with employees and workers

(1) High-risk decision-making shall not take place unless, at least one month before the high-risk decision-making takes place, the employer has taken into account the concerns and interests of workers or employees who are or may be affected by it.

(2) In this Act, the concerns and interests of workers and employees, include all legitimate concerns and interests, including –

a. Understanding and minimizing the deployment of detrimental high-risk artificial intelligence systems,
b. The impact or potential impact of artificial intelligence systems upon workers and employees in relation to their well-being, and
c. The potential for any diminution or other adverse effect on the degree of human connection with their employer.

(3) In order to take into account, the concerns and interests of employees or workers pursuant to subsection (1) employers shall –

a. Complete a WAIRA in accordance with section 14,
b. Share that WAIRA with their employees and workers,
c. Listen to the concerns and interests of their employees and workers in relation to the WAIRA, and
d. Discuss how any adverse aspects identified in the WAIRA can be removed or modified.

(4) Once high-risk decision-making starts, the process in subsection (3) must be repeated every 12 months for as long as decision-making continues.

(5) The Secretary of State shall by order provide guidance as to the process identified in subsection (3), and how account is to be given to such guidance.

(6) Such guidance may provide for different ways for employers to proceed for different classes of employment, and for different levels of risk.

(7) Before preparing guidance under subsection (5), the Secretary of State shall consult with such of the following as he considers appropriate—
  a. trade associations,
  b. trade unions, and
  c. persons who appear to the Secretary of State to represent the interests of workers.

16. Register of artificial intelligence systems used for high-risk decision-making

(1) To the extent that it is reasonably practicable to do so, employers shall establish and maintain a register of information about the artificial intelligence systems used in high-risk decision-making, in accordance with the provisions of this section.

(2) The information contained in the register must be available to workers, employees, and jobseekers, in a readily accessible format.

(3) The information in the register must identify, in so far as it contributes to high-risk decision-making -
  a. Each artificial intelligence system in use,
  b. The date that the use commenced and when the use ended,
  c. The categories of high-risk decision-making the system took or contributed to,
  d. The purpose or aim in using the system,
  e. The type or category of data processed by the system, and
  f. The existence and date of any WAIRA.

(4) The information in relation to the use of an artificial intelligence system must be set out in the register within three months of the day on which the system is first used.

(5) The register must be kept up to date as changes to the artificial intelligence system occur, and the date of such changes must be recorded in the register within three months.

(6) The Secretary of State may make regulations by order as to -
  a. what is a readily accessible format,

b. the form which a register must take,
c. the detail of the information to be set out in the register, and
d. what is reasonably practical,

and such regulations may make different provision for different circumstances.

17. Right to personalised explanations for a high-risk decision

(1) On request, made by an employee, worker, or jobseeker (A), in compliance with this section, an employer must provide an explanation of any high-risk decision which is, or might reasonably be expected to be to the detriment of A.

(2) The explanation must -
a. be readily understandable,
b. address how the decision affects the worker, employee, or jobseeker personally,
c. be in writing in a readily accessible format, and
d. be free of charge.

(3) The obligation in subsection (1) arises only if A makes a request to the employer's nominated contact in writing within 3 months of the date on which they become aware that a high-risk decision has been made, or such longer period as is agreed between the parties or is otherwise just and equitable.

(4) The explanation shall be provided within 28 days of a written request from A or such other period as is agreed between the parties or is otherwise just and equitable.

(5) Subsection (1) does not apply, if -
a. It is not reasonably practicable for the employer to provide an explanation,
b. It relates to a decision which has already been personally reconsidered by the employer,
c. It duplicates a request which the employer has already properly personally reconsidered in relation to A within the last 3 months,

or

d. It is vexatious or excessive.

(6) Whether a request is vexatious or excessive shall be determined having regard to the circumstances of the request, including (so far as relevant)—

a. The extent to which the request repeats a previous request of a similar nature, for which the employer has already provided an explanation.
b. How long ago any previous request(s) were made, and
c. Whether the request overlaps with other requests made by the employee or worker to the employer.

(7) In any proceedings where there is an issue as to whether a request is vexatious or excessive, it is for the employer to show that it is.

(8) An employer's nominated contact is such person, as is nominated and competent to provide an explanation for the purposes of this section, or in default of such nomination the most senior person within the employer.

(9) An employer may nominate the contact by any means, provided that the name and address and contact details of that person are readily available to all its employees, workers, or jobseekers.

(10) The Secretary of State may make regulations by order as to -

a. What is reasonably practical,
b. The contents of an explanation, and
c. What is an acceptable accessible format for an explanation.

and such regulations may make different provision for different circumstances.

18. Right to human reconsideration of a high-risk decision

(1) Subject to subsection (2), on request made by an employee, worker, or jobseeker (A), in compliance with this section, an employer shall

undertake a personal reconsideration, by a competent agent, of any high-risk decision which is, or might reasonably be expected to be, to the detriment of A.

(2) The obligation in subsection (1) arises only if A makes a request to the employer's competent agent in writing within 6 months of the date on which they become aware that a high-risk decision has been made, or such longer period as is agreed between the parties or is otherwise just and equitable.

(3) An employer's competent agent is such person, as is competent to act for the purpose of this section in accordance with subsection (5), and who is nominated to act for the purposes of this section, or in default of such person the most senior person within the employer.

(4) An employer may nominate the competent agent by any means, provided that the name and address and contact details of that person are readily available to all its employees, workers, or jobseekers.

(5) A person is competent to act as an agent for the purpose of this section only if they are -
   a. suitably trained,
   b. designated by the employer to conduct such reconsiderations,
   c. able to discuss and clarify the facts, circumstances and reasons that led to or relating to high-risk decision, to which A has been subject,
   d. able to discuss and clarify the facts, circumstances and reasons that led to or relating to high-risk decision, to which A has been subject, and
   e. able to alter that decision.

(6) The reconsideration by a competent agent must take place, and be notified to A in writing, within 28 days or such other reasonable period as is agreed between the parties or is otherwise just and equitable.

(7) The employer may authorise the competent agent to delegate the task of reconsideration, provided that the person to whom the function is delegated also satisfies the requirements in subsection (5).

(8) Subsection (1) does not apply if, either,

a. It is not reasonably practicable for the employer to provide an explanation,
b. It duplicates a request which the employer has already properly personally reconsidered in relation to A within the last 3 months, or
c. It is vexatious or excessive.

(9) Whether a request is vexatious or excessive must be determined having regard to the circumstances of the request, including (so far as relevant)—

a. The extent to which the request repeats a previous request of a similar nature, for which the employer has already provided an explanation,
b. How long ago any previous request was made, and
c. Whether the request overlaps with other requests made by the employee or worker to the employer.

(10) In any proceedings where there is an issue as to whether a request is vexatious or excessive, it is for the employer to show that it is.

(11) The Secretary of State may make regulations by order as to -

a. What is reasonably practicable,
b. The training that is necessary,
c. The nomination of a contact, and
d. The form of the reconsideration,

and such regulations may make different provision for different circumstances.

19. Complaint to an employment tribunal

(1) A worker, employee, or jobseeker, who is personally affected may present a complaint to an employment tribunal that their employer has failed to comply with the rights and obligations set out in sections 14, 15, 16, 17 or 18.

(2) On a complaint under this section, it is for the employer to show that it has complied with its obligation under sections 14, 15, 16, 17 or 18.

(3) An employment tribunal shall not consider a complaint under this section after the end of –
   a. The period of 6 months beginning with the date of the failure to which the complaint relates, or
   b. Such other period as the employment tribunal considers just and equitable.

(4) Section 207B Employment Rights Act 1996 (extension of the time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

(5) For the purposes of subsection (3), a failure shall be taken to have occurred on the day after the last date by which an employer could have complied fully with an obligation in section 14, 15, 16, 17 or 18.

(6) For the purposes of subsection (3), in deciding what is just and equitable, the employment tribunal shall take into account-
   a. Any steps taken by a trade union or an employee, worker or jobseeker, to attempt to persuade an employer to comply with sections 14, 15, 16, 17 or 18 without recourse to litigation, and
   b. the extent to which the employer's failure was observable and transparent.

20. Remedy

(1) Where an employment tribunal finds a complaint under sections 14, 15, 16, 17 or 18 well-founded, the tribunal may –

a. make a declaration to that effect,
b. make an award of compensation to be paid to the worker, employee, or jobseeker, in respect of the act or failure to act to which the complaint relates, and
c. make a recommendation in accordance with Part 11 to the employer as to the steps necessary to remedy the breach of this Act and to ensure that there is no repetition (a breach of which will attract additional compensation).

(2) The award of compensation may include compensation for the injury to the feelings of the worker, employee, or jobseeker.

(3) The amount of compensation pursuant to subsection (1)(b) shall be such as the employment tribunal considers just and equitable in all the circumstances having regard to the infringement to which the complaint relates but shall not exceed a maximum sum of £xx.

(4) An award of compensation pursuant to subsection (1)(b) will not prevent the worker, employee, or jobseeker from seeking a remedy for the infringement of their rights and entitlements under other legislation, but the principle of no double recovery for the same loss shall apply.

(5) An award of compensation pursuant to subsection (1)(c) shall be such as the employment tribunal considers just and equitable in all the circumstances having regard to the infringement to which the complaint relates but shall not exceed a maximum as set out in section 157(5) in the Data Protection Act 2018.

(6) The Secretary of State shall make regulations by order to set the initial maximum compensation and for a mechanism to update the maximum sum in subsection (3) on annual basis after consultation with such employer and employee organisations as he considers appropriate.

Part 4 – Prohibition on detrimental use of emotion recognition technology

21. Prohibition on detrimental treatment due to emotion recognition technology

No high-risk decision-making using emotion recognition technology may be used which is, or might reasonably be expected to be, to the detriment of a worker, employee, or jobseeker.

22. Complaint to an employment tribunal

(1) A worker, employee or jobseeker may present a complaint to an employment tribunal that an employer has acted contrary to section 21 in so far as they are personally affected by the alleged breach.

(2) An employment tribunal may not consider a complaint under this section after the end of —

a. the period of 6 months starting with the date of the act to which the complaint relates, or
b. such period as the employment tribunal thinks just and equitable.

(3) For the purposes of subsection (2)—

a. conduct extending over a period is to be treated as done at the end of the period, and
b. a failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on a failure to do something –

a. when P does an act inconsistent with doing it, or
b. If P does no inconsistent act, on the expiry of the period in which P might reasonably have expected to do it.

(5) Section 207B Employment Rights Act 1996 (extension of the time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

(6) For the purposes of subsection (3), in deciding what other period is just and equitable, the employment tribunal shall take into account-

a. any steps taken by a trade union or an employee, worker, or jobseeker to attempt to persuade an employer to comply with section 21 without recourse to litigation, and
b. the extent to which the use of the high-risk decision-making has been observable and transparent.

23. Remedy

(1) Where an employment tribunal finds a complaint under section 21 well-founded, the tribunal may –

a. make a declaration to that effect,
b. make an award of compensation to be paid to the worker, employee, or jobseeker, in respect of the act or failure to act to which the complaint relates, and
c. make a recommendation in accordance with Part 11 to the employer as to the steps necessary to remedy the breach of this Act and to ensure that there is no repetition (a breach of which will attract additional compensation).

(2) The amount of compensation further to subsections (1)(b) and (c) shall be such as the employment tribunal considers just and equitable in all the circumstances having regard to the infringement to which the complaint relates but shall not exceed a maximum sum of £xx.

(3) An award of compensation pursuant to subsection (1)(b) will not prevent the worker, employee, or jobseeker from seeking a remedy for the infringement of their rights and entitlements under other legislation, but the principle of no double recovery for the same loss shall apply.

(4) The Secretary of State shall make regulations by order to set the initial maximum compensation and for a mechanism to update the maximum sum in subsection (2) on annual basis after consultation with such employer and employee organisations as he considers appropriate.

Part 5 – Prohibition on discrimination

24. Discrimination in relation to high-risk decision-making

(1) The Equality Act 2010 is amended by the insertion after Part 2, Chapter 1 of section 12A as follows –

"CHAPTER 1A
Artificial Intelligence at Work

12A Definitions

(1) In this Act, "Artificial intelligence system" has the same meaning as section 3 in the Artificial Intelligence (Regulations and Employment Rights) Act 2024.

(2) The terms "value chain", "high-risk", "decision-making", "data", "processing", "jobseeker" and "employer" have the same meaning as sections 4 to 10 in the Artificial Intelligence (Regulations and Employment Rights) Act 2024 when used in relation to artificial intelligence systems."

25. Jobseekers

(1) Section 39 of the Equality Act is amended an accordance with subsections (2) and (3).

(2) Substitute "39. Employees and Applicants" with "39. Employees, Applicants and Jobseekers".

(3) After subsection (1)(a), add:

"(aa) in identifying B as a jobseeker;
(ab) advertising to B as a jobseeker"

26. Liability of employers and principals

(1) Section 109 Equality Act 2010 is amended to add after (1) –

"(1A) Any decision-making done by an artificial intelligence system which is deployed by an employer must be treated as done by the employer."

(2) Section 109 Equality Act 2010 is amended to add after (2) –

"(2A) Any decision-making within the meaning of the Artificial Intelligence (Regulations and Employment Rights) Act 2024 deployed by an agent for a principal, with the authority of the principal, shall be treated as also done by the agent and the principal."

27. Liability of employees

Section 110 Equality Act 2010 is amended to add after section 110 (3) –

"(3A) A does not contravene this section if A is an employee and he relied to any extent on decision-making within the meaning of the Artificial Intelligence (Regulations and Employment Rights) Act 2024 which is deployed by an employer."

28. Remedy

Section 124 Equality Act 2010 is amended to add after (3) –

"(3A) Where the contravention relates to the use of discriminatory artificial intelligence systems, in setting out an appropriate recommendation, the tribunal must have regard to Part 9 of the Artificial Intelligence (Regulation and Employment Rights) Act 2024."

29. Burden of proof

(1) Section 136 of the Equality Act 2010 is amended as set out in subsections (2) – (3).

(2) Subsection (2) is amended to include at the start "Subject to subsection (3A),".

(3) After Subsection (3), insert:

"(3A) Where person (A) is alleged to have contravened Part 5 (work), as a result of reliance on an artificial intelligence system within the meaning of the Artificial Intelligence (Regulations and Employment Rights) Act 2024, unless A shows that the provision was not contravened (whether by A or by the artificial intelligence system), the court must hold that the contravention occurred.

(3B) If A cannot discharge the burden of proof set out in subsection 3A, it is nevertheless a defence to a claim under this Act where A is the employer or its agent, and

(a) A did not create or modify the artificial intelligence system,
(b) A audited the artificial intelligence system for discrimination at each stage in the artificial intelligence value chain before using it to make high-risk decisions, as set out in Part 9 of the Artificial Intelligence (Regulation and Employment Rights) Act 2024, and
(c) there were procedural safeguards in place designed to remove the risk of discrimination after the audit was completed which included monitored steps to prevent employees or workers from using the artificial intelligence system in a discriminatory way as set out in Part 9 of the Artificial Intelligence (Regulation and Employment Rights) Act 2024.

(3C) If A successfully relies on the defence in section 3B, this does not preclude other persons in the artificial intelligence value chain from being liable under the Equality Act 2010 beyond Part 5 (work)"

30. Amendment to Schedule 25 of the Equality Act 2010

Schedule 25 to the Equality Act 2010 (Information Society Services) is amended by the deletion of paragraphs 1 and 2.

Part 6 – Health and well being

31. Statutory right to disconnect

The Employment Rights Act 1996 is amended by the insertion after section 63K of a new section as follows:

“PART 6B
STATUTORY RIGHT TO DISCONNECT

63L. Statutory right to disconnect

(1) For the purposes of this Part, “agreed working hours” means the period of time in respect of which an employer has agreed to remunerate his employee, and which is not holiday time or any other form of paid leave.

(2) Unless the employer can prove otherwise, an employee’s “agreed working hours” will be as stated in any statement produced in accordance with sections 1, 2, 4, 7A and 7B Employment Rights Act 1996.

(3) An employer shall not require an employee employed by him to monitor or respond to any work-related communications, or to carry out any work, outside of the employee’s normal working hours unless, and to the extent that a different arrangement has been agreed by way of collective agreement within the meaning of section 178 TULRCA 1992 or by a relevant workforce agreement.

(4) Subsection (3) does not apply where the employer can show that there is a genuine economic or functional emergency threatening the fair running of the employer which justifies work-related communications, or the carrying out of any work, outside of A’s normal working hours.

(5) The employer must send a statement to each employee explaining that

there is a right to disconnect save in an emergency; before sending such a statement the employer should consult with any recognised trade union on the terms of the statement and take into account any relevant guidance from ACAS.

(6) The Secretary of State shall make regulations as to the timing of the first statement in subsection (5).

(7) The statement in subsection (5) above must be re-issued every 12 months.

(8) For the purposes of this section an agreement is a "workforce agreement" if it meets the conditions for a workforce agreement set out in Schedule 1 to the Working Time Regulations 1998.

(9) ACAS must prepare and publish a code of practice for employers, employees and trade unions in relation to this section.

(10) Before preparing a code or amendments under this section, ACAS must consult the Secretary of State and such of the following as ACAS considers appropriate—

a. trade unions,
b. employers' organisations, and
c. persons who appear to ACAS to represent the interests of employees and employers.

63M. Enforcement

(1) An employee may present a complaint to an employment tribunal that there has been a breach of section 63L(3) by his employer.

(2) An employment tribunal shall not consider a complaint under this section unless it is presented:

(a) before the end of the period of 6 months beginning with the date of the act or failure to act to which the complaint relates or, where that

act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 6 months.

(3) For the purposes of subsection (2)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on,

and, in the absence of evidence establishing the contrary, an employer, shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

63N. Remedy

(1) Where an employment tribunal finds a complaint under section 63N well-founded, the tribunal –

(a) Shall make a declaration to that effect, and

(b) May make an award of compensation to be paid to the employee in respect of the act or failure to act to which the complaint relates.

(2) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall order the employer to pay the worker damages in a sum not exceeding an amount equivalent to the worker's pro rata daily wages for each day on which a breach has occurred.

(3) The Secretary of State shall make regulations by order for a

mechanism to update the maximum sum in subsection (2) on annual basis. "

32. Right not to be subject to detriment in relation to the right to disconnect

(1) After section 47G of the Employment Rights Act 1996 insert:

"47H. Right to disconnect

(1) An employee or worker has the right not to be subjected to a detriment by any act, or deliberate failure to act, by the employee's employer done on the ground that the employee failed or refused to monitor or respond to any work-related communications or to carry out any work outside of his normal working hours.

(2) Subsection (1) does not apply if the detriment in question amounts to dismissal within the meaning of Part 10."

(2) Section 48 of the Employment Rights Act 1996 is amended as follows: in subsection (1) for "47F or 47G" substitute "47F, 47G or 47H".

Part 7 – Dismissal

33. Automatic unfair dismissal: Unfair high-risk decision-making

(1) The Employment Rights Act 1996 is amended in accordance with paragraphs (2) to (4).

(2) After section 104G insert –

"104H Unfair high-risk decision-making

(1) An employee who is dismissed is to be regarded as unfairly dismissed if the reason (or if there is more than one reason, the principal reason) for the dismissal is unfair reliance on high-risk decision-making within the meaning of the Artificial Intelligence (Regulation and Employment Rights) Act 2024.

(2) On a complaint that an employer has not complied with subsection (1) it is for the employer to show that the high-risk decision-making is fair.

(3) The tribunal must examine the extent to which the employer has complied with any obligations under sections 14 to 18 and 21 of the Artificial Intelligence (Regulation and Employment Rights) Act 2024."

(3) After section 104(e) insert –
"(f) the rights conferred by ss 14 to 18 and 21 the Artificial Intelligence (Regulation and Employment Rights) Act 2024".

(4) After section 108(3)(gm) insert –
"(gn) section 104H applies".

34. Automatic unfair dismissal: Right to disconnect

(1) The Employment Rights Act 1996 is amended in accordance with paragraphs (2) to (3).

(2) After section 104H insert –

"104I Right to disconnect

(1) An employee who is dismissed is to be regarded as unfairly dismissed if the reason (or if there is more than one reason, the principal reason) for the dismissal relates to the employee's failure

or refusal to monitor or respond to any work-related communications, or to carry out any work, outside of the worker's normal working hours in so far as section 63L applies."

(3) After section 108(3)(gn) insert –
"(go) section 104I applies".

35. Remedy

(1) Section 112 Employment Rights Act 1996 is amended to add after (4) –

"(3A) Where the dismissal is unfair pursuant to section 104H, the tribunal may make a recommendation to the employer to ensure that there is no repetition in accordance with Part 11 of the Artificial Intelligence (Regulation and Employment Rights) Act 2024".

(2) Section 118 Employment Rights Act 1996 is amended to add after (4) –

"(5) Where the tribunal makes an award of compensation because the dismissal is unfair pursuant to section 104H, it will not bar the employee from seeking a remedy for the infringement of their rights and entitlements under other legislation, but the principle of no double recovery for the same loss shall apply."

36. Interim relief pending determination of complaint

Section 128(1)(a)(i) of the Employment Rights Act 1996 is amended by substituting ", 103A or 104H" for "or 103A".

37. Definitions

(1) The Employment Rights Act 1996 is amended in accordance with subsection (2).

(2) After section 134A insert –

"Section 134B

(1) In this Part, "Artificial intelligence system" has the same meaning as section 3 in the Artificial Intelligence (Regulations and Employment Rights) Act 2024.

(2) The terms "artificial intelligence value chain", "high-risk", "decision-making", "data", "processing" have the same meaning as sections 4 to 8 in the Artificial Intelligence (Regulations and Employment Rights) Act 2024 when used in relation to artificial intelligence systems."

Part 8 – Trade unions

38. Fair data use

(1) In accordance with this section, a trade union has the right to be provided with all the data collected by an employer that relates to its members that is used or is proposed to be used by the employer for artificial intelligence decision-making, to the extent that it is reasonably practicable.

(2) Where a trade union makes a request in accordance with this section the employer shall provide the data in an accessible form within 2 months of the date of the request.

(3) Except where the trade union's members expressly agree in writing the data shall be provided in an anonymised form.

(4) The right in subsection (1) shall not apply in respect of any member of the trade union who notifies the employer in writing of their objection to its collection.

(5) The trade union shall notify the employer of the type of data it seeks and

the date range to which the request relates; the range of data shall commence no earlier than 52 weeks prior to the request.

(6) The right conferred by subsection (1) shall be enforceable by complaint to the employment tribunal in accordance with subsections 7 to 10 below.

(7) A complaint brought under subsection (6) shall be commenced within 6 months of the last date by which the employer should have complied with the request.

(8) It shall be for the employer to prove that it was not reasonably practicable to provide any particular data.

(9) If the employment tribunal finds that the complaint is to any extent well founded it shall make a recommendation in accordance with Part 11.

(10) The Secretary of State shall make regulations by order

a. as to the manner in which a request under this section is to be made,
b. the form by which an employee may lodge an objection to data being shared,
c. what is reasonably practical, and
d. the steps to be taken to preserve the anonymity of the data.

39. Trade union consultation

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with paragraph (2).

(2) After section 198B insert –

"Chapter IIA Artificial Intelligence Systems

198C Duty to consult representatives

(1) Where an employer is proposing to do high-risk decision-making, it shall consult all the persons who are appropriate representatives of any of the employees who may be affected.

(2) The consultation shall begin in good time and in any event at least 1 month before the high-risk decision-making takes place.

(3) Once high-risk decision-making starts, the consultation in subsection (2) must be repeated every 12 months for as long as decision-making continues.

(4) For the purposes of this section the appropriate representatives of any affected employees are –

(a) if the employees are of a description in respect of which an independent trade union is recognized by their employer, representatives of the trade union, or
(b) in any other case, whichever of the following employee representatives the employer chooses –

(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the high-risk decision-making on their behalf;

(ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 198D(1).

(5) The consultation shall include consultation about —

(a) the risks to the rights of employees contained in the Equality Act 2010, the Human Rights Act 1998, Health and Safety at Work etc Act 1974, the Equality Act 2010, the Data Protection Act 2018, and the UK General Data Protection Regulation,

(b) the measures envisaged to address the risks,

(c) In this Act, the concerns and interests of workers and employees, include all legitimate concerns and interests, including –

(i) Understanding and minimizing the deployment of detrimental high-risk artificial intelligence systems,

(ii) The impact or potential impact of artificial intelligence systems upon workers and employees in relation to their well-being, and

(iii) The potential for any diminution or other adverse effect on the degree of human connection with their employer.

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives,

(6) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives—

(a) A description of the proposed artificial intelligence system,
(b) A description of the relevant value chain,
(c) The date from which it is proposed that the system will be used in high-risk decision-making,
(d) The categories of high-risk decision which it is proposed the system will take or contribute to,
(e) The proposed purpose or aim in using the system,
(f) The logic which will underpin the proposed decision-making,

(g) The proposed data that will be processed by the system in relation to high-risk decision-making,
(h) The way in which the personal data of employees, workers or jobseekers will influence the proposed decisions,
(i) A description of how it is proposed to monitor the artificial intelligence system for accuracy, including how that metric will be defined, when high-risk decision-making takes place,
(j) A description of how it is proposed to monitor the artificial intelligence system for the risks to worker, employee or jobseeker rights contained in the Equality Act 2010, Health and Safety at Work etc Act 1974, the Human Rights Act 1998, the Equality Act 2010, the Data Protection Act 2018, and the UK General Data Protection Regulation,
(k) An assessment of the risks to worker, employee or jobseeker rights contained in the Equality Act 2010, Health and Safety at Work etc Act 1974, the Human Rights Act 1998, the Equality Act 2010, the Data Protection Act 2018, and the UK General Data Protection Regulation,
(l) The measures to be taken with a view to eliminating the risks, and
(m) A copy of the register created pursuant to s 16 in this Act.

(7) That information shall be given to each of the appropriate representatives by being delivered to them or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(8) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(9) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection (2), (3), (4) or (5), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

(10) Where—

(a) the employer has invited any of the affected employees to elect employee representatives, and

(b) the invitation was issued long enough before the time when the consultation is required by subsection (2) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

(11) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, he shall give to each affected employee the information set out in subsection (5).

(12) This section does not confer any rights on a trade union, a representative or an employee except as provided by this Act.

198D Election of representatives

(1) The requirements for the election of employee representatives under section 198C(3)(b)(ii) are that–

(a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;

(b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;

(c) the employer shall determine whether the affected employees

should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;

(d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 198C to be completed;

(e) the candidates for election as employee representatives are affected employees on the date of the election;

(f) no affected employee is unreasonably excluded from standing for election;

(g) all affected employees on the date of the election are entitled to vote for employee representatives;

(h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;

(i) the election is conducted so as to secure that –

(i) so far as is reasonably practicable, those voting do so in secret, and

(ii) the votes given at the election are accurately counted.

(2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i).

198D Complaint and compensation

(1) Where an employer has failed to comply with a requirement of section

198A or section 198B, a complaint may be presented to an employment tribunal on that ground–

(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees;

(b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,

(c) in the case of failure relating to representatives of a trade union, by the trade union, and

(d) in any other case, by any of the affected employees.

(2) If on a complaint under subsection (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 198A, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

(3) On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in section 198B have been satisfied.

(4) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make an award of compensation to any affected employee to be paid by the employer.

(5) The amount of compensation under subsection (4) shall be such as the employment tribunal considers just and equitable in all the circumstances having regard to the infringement to which the complaint relates but shall not exceed a maximum sum of £xx.

(7) The Secretary of State shall make regulations by order to set the initial maximum compensation and for a mechanism to update the maximum sum in subsection (5) on annual basis after consultation with such employer and employee organisations as he considers appropriate.

(6) An employment tribunal may not consider a complaint under this section after the end of –

(a) the period of 6 months beginning with the date of the failure to which the complaint relates,
or
(b) such other period as the employment tribunal considers just and equitable.

(7) Where the complaint concerns a failure to comply with a requirement of section 198A or 198B, section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (6)(a).

(8) For the purposes of subsection (6), in deciding what is just and equitable, the employment tribunal shall take into account-

(a) any steps taken by a trade union or an employee to attempt to persuade an employer to comply with sections 198A and 198B without recourse to litigation, and
(b) the extent to which the employer's failure was observable and transparent.

(9) If on a complaint under this section a question arises—
(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 198A, or
(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,
it is for the employer to show that there were and that he did.

198D Definitions

(1) In this Chapter, "Artificial intelligence system" has the same meaning as section 3 in the Artificial Intelligence (Regulations and Employment Rights) Act 2024.

(2) The terms "artificial intelligence value chain", "high-risk", "decision-making", "data" and "processing" have the same meaning as sections 4 to 8 in the Artificial Intelligence (Regulations and Employment Rights) Act 2024 when used in relation to artificial intelligence systems."

Part 9 – Auditing and procedural safeguards

40. Auditing artificial intelligence systems for discrimination

(1) An employer or its agent can rely on the defence under section 136(3B) Equality Act 2010 in a discrimination claim.

(2) The employment tribunal must have regard to the extent to which the following matters apply when determining whether section 136(3B)(b) is satisfied:

a. Compliance with statutory guidance from the Equality and Humans Rights Commission concerning the audit of artificial systems for discrimination before they are used to make high-risk decisions;
b. Compliance with relevant technical standards issued by an approved body; and
c. Certification of the artificial intelligence system by an approved body.

(3) An employer or its agent cannot rely on the defence under section 136(3B)(b) Equality Act 2010 if it deploys artificial intelligence systems for use cases which were not originally envisaged when it acquired the system.

(4) The employment tribunal must have regard to the following matters

when determining whether section 136 (3B)(c) is satisfied:

a. The extent to which there is compliance with any statutory guidance from the Equality and Humans Rights Commission concerning the procedural safeguards required to remove the risk of discrimination after an audit for discrimination has taken place; and
b. Any relevant WAIRA.

(5) The Secretary of State shall make regulations by order as to the identification of relevant-
 a. Statutory guidance from the Equality and Humans Rights Commission,
 b. Technical standards, and
 c. Certification by an approved body.

 and such regulations may make different provision for different circumstances.

Part 10 – Regulators and bodies in the employment field and artificial intelligence

41. Regulatory obligations concerning artificial intelligence

(1) A regulator within Schedule 3 shall apply the principles set out in this section in any context concerning employment and the deployment of artificial intelligence systems.

(2) The principles are that regulation should promote -
 a. safety, security and robustness,
 b. appropriate transparency and explainability,
 c. fairness,
 d. equality, diversity, equality of opportunity, and compliance with the Equality Act 2010,
 e. accountability and governance, and
 f. contestability and redress.

(3) For the purposes of this section a regulator within Schedule 3 may request and see information produced pursuant to sections 14 and 16 in accordance with Schedule 4.

(4) "equality", "diversity" and "equality of opportunity" having the same meaning as in the Equality Act 2006.

42. Statutory guidance on artificial intelligence and the principle of non-discrimination

(1) In accordance with this section, Equality and Humans Rights Commission shall publish guidance for employers (their agents and employees), every two years from commencement of this section.

(2) The guidance shall set out the steps that should be taken to avoid a breach of the principle of non-discrimination in consequence of high-risk decision-making including in relation to the defence under section 136(3B) Equality Act 2010.

(3) Equality and Humans Rights Commission must consult with the regulators and bodies listed in subsection (4) and any other bodies or regulators that he considers to be relevant before publishing the statutory guidance referred to in subsection (1).

(4) The regulators and bodies within the meaning of subsection (3) are:

a. The Advisory Conciliation and Arbitration Service (ACAS),
b. The Information Commissioner's Office,
c. Trade Union Congress,
d. The Department of Science, Innovation and Technology,
e. The Chartered Institute of Personnel and Development,
f. The Confederation of British Industry, and
g. The British Computer Society.

(5) Not less than every two years from the commencement of this Act, the Secretary of State shall consult with appropriate organisations of

employers and of employees and workers in order to assess whether amendment is required to the regulators and bodies listed in subsection (3).

43. Data awareness and education

(1) ACAS must prepare a code of practice for employers, employees, workers and jobseekers which —
  a. explains how artificial intelligence is used within the employment field, and
  b. explains the rights and entitlements contained in this Act and an explanation as to how they can be used to ensure transparency and accountability.

(2) Where a code under this section is in force, ACAS may prepare amendments of the code or a replacement code.

(3) Before preparing a code or amendments under this section, the ACAS must consult the Secretary of State and such of the following as ACAS considers appropriate—
  a. trade associations,
  b. trade unions,
  c. workers,
  d. Equality and Humans Rights Commission, and
  e. persons who appear to ACAS to represent the interests of workers.

Part 11 – Enforcement of recommendations

44. Power to make recommendations

(1) A recommendation to an employer made by an employment tribunal under this Act must specify -
  a. The steps necessary to remedy the breach of this Act in relation to an employee, worker, jobseeker or trade union and ensure that

there is no repetition, and

b. The period or periods of time (not exceeding 52 weeks) within which the steps are to be taken.

(2) Such a recommendation may provide for interim and or final reports on the implementation of the recommendations to be made to the employment tribunal.

(3) Where an employment tribunal has made a recommendation to an employer concerning the right of an employee, worker, jobseeker or trade union under this Act and the terms of the recommendation are not fully complied with and it is satisfied that the non-compliance is culpable, it shall make an award of compensation to be paid by the employer to the employee, worker, jobseeker or trade union concerned.

(4) The award of compensation to an employee or worker under subsection (3) above shall be subject to a maximum of £xx.

(5) The award of compensation to a jobseeker under subsection (3) above shall be a maximum of £xx.

(6) The award of compensation to a Trade Union under subsection (3) shall be a maximum of £xx.

(7) The Secretary of State shall make regulations by order to set the initial maximum compensation and for a mechanism to update the maximum sum in subsections (4) to (6) on annual basis after consultation with such employer and employee organisations as he considers appropriate.

Part 12 – Innovation

45. Use of regulatory sandboxes

(1) In this Part, 'regulatory sandbox' means a concrete and controlled framework set up by an approved body which offers providers or prospective providers of artificial intelligence systems the possibility to

develop, train, validate and test, where appropriate in real world conditions, an innovative AI system, pursuant to a sandbox plan for a limited time under the regulatory supervision by the Information Commissioner's Office.

(2) In this Part, 'a sandbox plan' means a document agreed between the participating provider and the approved body describing the objectives, conditions, timeframes, methodology and requirements for the activities carried out within the sandbox.

(3) The provisions of this Act are suspended to the extent that they are identified within a regulatory sandbox but no further.

(4) The Secretary of State shall make regulations as to the meaning of "an approved body", and for the purposes of putting this Part into effect, and such regulations may make different provision for different circumstances.

Part 13 – General and Miscellaneous provisions

Microbusinesses

46. Power to disapply or modify obligations for microbusinesses

The Secretary of State may by order disapply or modify the obligations in sections 14, 15, 16, 17, 18 and 38 for any employer who employs fewer than 10 employees.

Subordinate legislation

47. Exercise of power

(1) A power to make an order or regulations under this Act is exercisable by a Minister of the Crown on behalf of the Secretary of State.

(2) Orders and regulations, made under this Act must be made by statutory instrument.

(3) Orders or regulations under this Act—

a. may make different provision for different purposes, and

b. may include consequential, incidental, supplementary, transitional, transitory or saving provisions.

(4) Nothing in this Act affects the generality of the power under subsection (3)(a).

48. Ministers of the Crown, etc.

(1) This section applies where the power to make an order or regulations under this Act is exercisable by a Minister of the Crown.

(2) A statutory instrument solely containing an order or regulations that supplements but does not amend this Act is subject to the negative procedure.

(3) A statutory instrument containing (whether alone or with other provision) an order or regulations that amend this Act is subject to the affirmative procedure.

Final provisions

49. Money

There is to be paid out of money provided by Parliament any increase attributable to this Act in the expenses of a Minister of the Crown.

50. Commencement

(1) Subject to subsection (2) this Act will come into force two years after the day on which this Act is passed.

(2) The Secretary of State may by order make regulations bringing different provisions of this Act into force at any time.

51. Extent

This Act forms part of the law of Great Britain [*note it can easily be adapted to extend to Northern Ireland, however there are further and different provisions in Northern Ireland relating to the protection of human rights and prohibition of discrimination*].

52. Short title

This Act may be cited as the Artificial Intelligence (Regulations and Employment Rights) Act 2024.

SCHEDULE 1 – HIGH-RISK DECISION-MAKING STATUTORY RIGHTS

Section 6

Statutory rights

(a) The Employment Rights Act 1996,
(b) the Human Rights Act 1998 which includes Article 8 and the right to privacy,
(c) the Equality Act 2010,
(d) the UK General Data Protection Regulation,
(e) the Data Protection Act 2018,
(f) Trade Union and Labour Relations (Consolidation) Act 1992,
(g) Working Time Regulations 1998,
(h) National Minimum Wage Act 1998,
(i) The Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999, or
(j) Any subordinate legislation made under or by reference to any of those enactments are affected.

SCHEDULE 2 – HIGH-RISK DECISION-MAKING – SPECIFIC ACTIVITIES

Section 6

The specific activities that are presumed to be high-risk unless proved otherwise

(a) The process of recruitment,
(b) Steps taken to enable or deny access to employment,
(c) The setting of wages and other terms and conditions of employment,
(d) Steps taken to enable, determine, quantify or deny access to benefits associated with employment,
(e) Steps taken to determine working hours or times at which work is carried out,
(f) Steps in relation to capability assessments relating to employment,
(g) Steps in relation to disciplinary matters,
(h) Job evaluation in relation to employment or prospective employment,
(i) Steps in relation to the termination of employment,
(j) Steps in relation to assessing a person's performance at work or potential performance at work, suitability for work or employment more generally, interest in work or employment opportunity, membership or potential interest in membership of trade union or other collective initiatives, trade union activities or involvement in other collective initiatives, state of health, protected characteristics, personal preferences, interests, reliability, behaviour, attitude, their location or movements including surveillance,
(k) Steps in relation to the making of references, including references for future employment, credit worthiness and regulatory purposes, and
(l) Steps relating to welfare, pensions, and personal evaluations, and other acts or omissions consequential to employment.

SCHEDULE 3 - REGULATORS

Section 41

Section 41 applies to the regulators identified in Part 1 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (SI 2007 No. 3544) as amended from time to time.

SCHEDULE 4 – REGULATORS' POWERS TO REQUEST AND SEE INFORMATION

Section 41

1. For the purpose of exercising its powers under section 41 a regulator may by notice request and see information produced pursuant to sections 14 and 16.

2. A notice given to a person under paragraph 1 may require him—
(a) to provide information in his possession, or
(b) to produce documents in his possession.

3. A notice under paragraph 1 may not require a person to provide information that he is otherwise prohibited from disclosing by virtue of an enactment.

4. Where a regulator thinks that a person—
(a) has failed without reasonable excuse to comply with a notice under paragraph 1, or
(b) is likely to fail without reasonable excuse to comply with a notice under paragraph 1,
it may apply to the county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring a person to take such steps as may be specified in the order to comply with the notice.

5. A person commits an offence if without reasonable excuse he—
(a) fails to comply with a notice under paragraph 1 or an order under paragraph 4, or
(b) falsifies anything provided or produced in accordance with a notice under paragraph 1 or an order under paragraph 2.

6. A person who is guilty of an offence under paragraph (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

7. Where a person is given a notice under paragraph 1 he shall disregard it, and notify the regulator that he is disregarding it, in so far as he thinks it would

require him—

(a) to disclose sensitive information within the meaning of paragraph 5 of Schedule 1 to the Justice and Security Act 2013 (Intelligence and Security Committee of Parliament),

(b) to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the regulator),

(c) to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,

(d) to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c), or

(e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security.

8. In sub-paragraph (7) "intelligence service" means—

(a)the Security Service,

(b)the Secret Intelligence Service, and

(c)the Government Communications Headquarters.

Artificial Intelligence (Regulation and Employment Rights) Bill

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[AS INTRODUCED]

A BILL

TO

Regulate the safe, secure, and fair, use of artificial intelligence decision-making by employers in recruitment and the workplace; to make provisions about employment and trade union rights in relation to the use of artificial intelligence technologies by employers; to address risks associated with the value chain in the deployment of artificial intelligence in the field of employment; to enable the development of safe, secure and fair artificial intelligence systems in the employment field; and for connected purposes.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Presented by xxx

Ordered, by The House of Commons, to be Printed, xxx 2023.

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PUBLISHED BY THE AUTHORITY OF THE HOUSE OF COMMONS

Bill xx xx/xx

BILL ENDS HERE

EXPLANATORY NOTES

Introduction

These explanatory notes relate to the Artificial Intelligence (Regulations and Employment Rights) Act 2024. [*They have been prepared by Robin Allen KC, Dee Masters, Grace Corby and Jon Cook of Cloisters – This should be amended – in due course - to add the name of the sponsoring department of state*].

Their purpose is to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament. These notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act.

Background

There has been a worldwide debate about the ethical use of artificial intelligence and the appropriate regulatory framework necessary to ensure such use. It has also been recognised that such frameworks would have to be tailored to the particular use cases for artificial intelligence, so as to protect relevant employment and human rights and to prevent discrimination, while also enabling all the potential benefits of this new technology to be available and widely shared.

In March 2021 the Trades Union Congress (TUC) published three reports concerning these issues:

Technology Managing People - The worker experience: a report informed by a TUC survey of workers, trade union reps, BritainThinks polling and a literature review;

Technology Managing People - The legal implications: a report carried out for the TUC by leading employment rights lawyers Robin Allen KC and Dee Masters from the AI Law Consultancy;

Dignity at work and the AI revolution a manifesto: highlighting the values that should be adopted by all to make sure that technology at work is for the benefit of everyone along with proposals for change.

The UK's Centre for Data Ethics and Innovation which has now been integrated into the Department of Science, Innovation and Technology and the Information Commissioner's Office have also both provided general advice on avoiding discrimination and protecting human rights. The Government also published a white paper in "A pro-innovation approach to AI regulation" in March 2023 updated 3 August 2023 which proposed the adoption of a values led approach to the regulation of all use cases.

On the 4 September 2023 the TUC launched a new AI taskforce, calling for "urgent" new legislation to safeguard workers' rights and to ensure AI benefits all. The taskforce brought together leading specialists in law, technology, politics, human resources and the voluntary sector. It was co-chaired by Kate Bell, Assistant General Secretary of the TUC, and Professor Gina Neff, Executive Director of the Minderoo Centre for Technology and Democracy at the University of Cambridge. The taskforce was supported by a special advisory committee that brought together politicians, as well as experts, representative of business, unions, and academics. This committee included members from Tech UK, the Chartered Institute of Personnel and Development (CIPD), the University of Oxford, the British Computer Society, CWU, GMB, USDAW, Community, Prospect, Connected By Data, Responsible AI UK, UKBlackTech, the Institute for the Future of Work, the Ada Lovelace Institute and the Alan Turing Institute.

The TUC taskforce was tasked with overseeing the drafting of a proposal for a Bill to regulate the use of artificial intelligence in the workplace in accordance with the work of the earlier pathfinding work of the TUC and later national and international developments in the approach to such regulation.

The TUC commissioned Robin Allen KC and Dee Masters from the AI Law Consultancy, with assistance from Cloisters barristers' chambers to draft the proposed Bill.

Overall purpose of the Act

Artificial intelligence systems are used increasingly in the workplace and this is quickly evolving. Employees, workers and jobseekers often do not know the reasons for decisions taken or supported by artificial intelligence systems and may

not have the opportunity to ask questions and clarify the circumstances of such decision making with their employer. Moreover, when wrongly used such systems depersonalise work and are not consistent with work as an essentially human relationship. This Act seeks to address these issues.

The Act's purpose is to strengthen the law to support the protection of employee and workers' rights in recruitment and the workplace. It addresses gaps in existing legislation. It sets out safeguards for artificial intelligence used in the workplace and puts in place certain remedies and enforcement measures.

Thus, the Act strengthens the law in a number of areas.

The Act regulates the use of artificial intelligence in the workplace, by setting standards for an employer's use of artificial intelligence systems which take or support decisions which pose a high-risk its employees or workers.

Its aim is to provide for the safe, secure, and fair, use of artificial intelligence decision-making by employers in recruitment and the workplace while at the same time making it possible for employers and employees to enjoy the full benefits of this new technology.

Its approach is therefore not to be overly prescriptive of what technology can be used provided that it does not breach human rights and equality law and does not undermine employment as essentially being a human relationship. It also provides that in defined circumstances regulation may be lifted to enable new ideas to be tried out in a regulatory "sandbox".

It enhances the role of trade unions to act on behalf of employers to ensure that the benefits arising from the collection and aggregation of data relating to employees are shared as between employers and employees.

It seeks to address the risks associated with the value chain in the deployment of artificial intelligence in the field of employment and to provide employers with security from claims which relate to actions upstream in the value chain provided that they have followed appropriate procedures.

The Act also amends existing pieces of legislation to modernise them and make their protections more effective.

It sets out new standards of explainability and transparency for artificial intelligence, including obligations on employers to provide personalised explanations to their employees on high-risk artificial intelligence.

It places a new obligation on the employer to offer a human reconsideration of a high-risk decision derived from artificial intelligence.

It creates a new right for employees to disconnect outside of their normal working hours.

It extends the circumstances in which an employee is protected from unfair dismissal to explicitly include circumstances where the decision is a product of unfair reliance on high-risk artificial intelligence decision making.

It places a legal duty on employers to consult trade unions on the use of “high-risk” and intrusive forms of AI in the workplace;

It amends the Equality Act 2010 to protect against the use of discriminatory algorithms.

It provides for enforcement mechanisms for new obligations, including rights to bring a claims in the employment tribunal.

The structure of the Act

The Act consists of 13 Parts, as follows:

Part 1 Defines the scope of the Act.

Part 2 Defines the Core Concepts used in this Act.

Part 3 Enacts positive duties of transparency, observability and explainability on employers and prospective employers, and persons acting on their behalf.

Part 4 Enacts a prohibition on emotion recognition technology which is used to the detriment of workers, employees and jobseekers.

Part 5 Tailors the prohibition in discrimination within the Equality Act 2010 to address the use of artificial intelligence systems by amending the

burden of proof and introducing a new defence for employers and their agents, where they have audited the system for discrimination.

Part 6 Enacts a right for employees to disconnect.

Part 7 Extends the right of employees not to be unfairly dismissed to circumstances when artificial intelligence systems are used and provides protection in relation to the new rights contained in this Act.

Part 8 Extends the existing rights and obligations in the Trade Union and Labour Relations (Consolidation) Act 1992 to deployment of artificial intelligence systems and makes further provision for trade unions to secure the fair use of data collected by employers that relates to employees and workers.

Part 9 Enacts provisions for the auditing of artificial intelligence systems.

Part 10 Enacts enhanced responsibilities for regulators and bodies operating in the employment and artificial intelligence field.

Part 11 Enacts provisions to ensure that employers comply with recommendations made by an employment tribunal in proceedings under this Act.

Part 12 Enacts provisions to encourage innovation in relation to the use of artificial intelligence systems in the context of employment.

Part 13 Contains general and miscellaneous provisions including a power to exempt or modify the obligations within this Act for microbusinesses.

Territorial extent and application

The Act forms part of the law of Great Britain and does not have general extra-territorial effect.

Following the approach taken by the Employment Rights Act 1996 and the Equality Act 2010, the Act leaves it to employment tribunals to determine the extent to which the law applies to acts and omissions that though to some extent occurring outside Great Britain have such a close connection with an employment

relationship in Great Britain have attributes which are within the purview of the Act.

Equal opportunities and discrimination are "transferred matters" under the Northern Ireland Act 1998. As such, with a few exceptions the Act does not form part of the law of Northern Ireland.

Commencement

The Act requires employers and trade unions to make changes to working practices and requires guidance and developments by regulators. Accordingly, an appropriate transitional period is necessary to enable this to happen. For this reason, the Act will come into force fully until two years after Royal Assent.

Commentary on sections

Part 1: Preliminary

Section 1: Overview

Effect

This section defines the scope of the Act identifying that the rights, protections and obligations within it will only have an effect where high-risk decision-making takes place in relation to jobseekers, workers and employees by or on behalf of their employers or potential employers and requires its provisions to be construed accordingly.

Part 2: Core Concepts

Sections 2, 3, 4, 5, 6, 7 and 8: Meaning of high-risk decision-making etc

Effect

Collectively these provisions define the scope of high-risk decision-making which is the primary focus of this Act.

There will be high-risk decision-making where:

- There is an artificial intelligence system as defined in section 3,
- A decision is made by an employer or its agent in relation to the employer's employees, workers or jobseekers which is taken or supported by an artificial intelligence system as set out in section 3, and
- The decision is high-risk in relation to workers, employees or jobseekers in the sense that it has the capacity or the potential to produce legal effects concerning them or other similarly significant effects as set out in section 6.

High-risk decision-making is limited to the employment relationship only.

There will be no high-risk decision-making where a process is simply automated, routine, low impact and nothing more, for example, data is filtered in an excel spreadsheet.

Often the system will be created following a process in which a variety of actors contribute to the only product. The is called the artificial intelligence value chain and is defined in section 4.

Artificial intelligence systems rely on data and this concept is defined in section 7.

The Secretary of State has power to give further guidance on what is high–risk. This guidance might address certain kinds of decisions routinely taken, with significant direct human intervention and control, or following a process agreed by the employer with the trade union recognised by the employer for the relevant employee or worker.

Background

The definition of artificial intelligence is the updated definition recommended by the OECD with effect from 29 November 2023: see here.

It should be noted also that the EU interinstitutional file on the EU Act (Interinstitutional File: 2021/0106(COD)) records agreement between the Council, Parliament and Commission that the OECD's definition should be used: see here. Accordingly in this Act the most up-to-date definition has been adopted.

The definition of profiling is taken from Article 4(4) of the UK GDPR although the word (i) automated has been deleted and (ii) the concept of artificial intelligence has been introduced instead.

The concept of high-risk is similar to part of Article 22 UK GDPR namely "which produces legal effects concerning him or her or similarly significantly affects him or her".

The definition of personal data is taken from s 3(2) Data Protection Act 2018.

The definition of identifiable living person data is taken from s 3(3) Data Protection Act 2018.

The definition of processing is taken from s 3(4) Data Protection Act 2018.

The definition of synthetic data is taken from The Royal Society and the Alan Turing Institute.

The exclusion on decision-making outside of the employment relationship is based on paragraph 19(1) in Schedule 9 to the Equality Act 2010.

Examples

The systems listed here will amount to high-risk decision-making.

An employer buys in an artificial intelligence system from a third party supplier designed to create teams with the right mix of skills and expertise for internal projects.

An employer buys in an artificial intelligence system to make recommendations as to basic pay/bonus for its employees.

An employer instructs an agent to use and uses an artificial intelligence system is find people to employ in nursing roles.

An employer uses an absence-management system which monitors the attendance records of all staff and will automatically trigger progressive stages of its absence management process.

An employer deployed AI powered facial recognition technology which constantly monitors the movement of its employees to ensure that they remain on at their work stations throughout their shifts and do not take excessive comfort breaks.

An employee in a warehouse is given a navigation device and assigned a suitable average time for completing a task. Their data is immediately fed back to the employer's artificial intelligence system, which manages all performance and can issue warnings.

A large law firm's trainee solicitors must pass an artificial intelligence training course in order to qualify. This places the trainee solicitors in scenarios where they

have to handle artificial intelligence generated "clients" with a sufficient level of skill. The system also scores them.

A call centre uses artificial intelligence software (purchased from a third-party company) to match its workers with callers. The software provider states that it analyses previous data from the companies database, including whether or not the workers were successful with callers previously. This is paired with contextual data such as demographic data, previous interactions, and any available internal analytics.

A large supermarket chain deploys an artificial intelligence system which analyses footfall and other external conditions (such as weather) so as to determine shift times and the number of workers required.

A large bank uses an artificial intelligence system to generate employee performance rankings.

An employer operates a digital application ("app") which connects its care workers with end clients who require personal care. The app allocates shifts to its workers using an artificial intelligence system. Using this system, the end client is provided with a generated list of potential care workers, from which they can select which worker they would like.

An employer uses an artificial intelligence system to generate alerts whether workers in a warehouse are acting in an unsafe way and this triggers a review of conduct.

A large employer uses an online tool which allocates tasks to employees, imposes deadlines, tracks when a piece of work has been completed and monitors when people are "available/away/offline" and when they were "last active". The tool is then updated to also log the hours worked by staff, the number of keyboard strikes made in an hour, and social media use. It is used to make decisions about performance and capability.

An employee works for a company which also offers loans to the public. The company uses artificial intelligence to refuse the employee a loan in his capacity as a member of the public. This type of decision-making is outside of the Act as it sits outside the four corners of the employment relationship.

Section 9: Emotion Recognition Technology

Effect

The section defines emotion recognition technology which is then prohibited in certain contexts within sections 21 to 23.

Examples

An employer uses an artificial intelligence tool to assess whether someone is likely to be committing fraud based on their expression and body language. This is emotion recognition technology within the meaning of the Act.

A different employer uses a tool to identify whether employees are paying sufficient attention to an online training sessions. This is emotion recognition technology within the meaning of the Act.

Section 10: Employees, workers jobseekers and employers

Effect

This section lists the types of person which the right and obligations in this Act will protect. It includes those who are employees at common law as well as those who are workers because they are not in business on their own account. It also includes jobseekers being persons who are actively seeking new employment, whether or not already employed.

Background

The definitions of employee and worker mirror those found in s 230 Employment Rights Act 1996 and are intended to be interpreted in the same way. The concept of a "jobseeker" is new. It is broader than the definition of a job applicant under section 39 in the Equality Act 2010 because of the way in which the labour market is changing. Thus, many individuals place and keep themselves in the jobs market online where, whether with or without their direct knowledge, they can interact directly with potential employers or through recruitment agencies. These individuals are covered by the definition of "jobseeker".

Section 11: Trade union

Effect

This section defines the meaning of trade union for the purposes of the new rights and obligations contained in this Act.

Background

The definition of "trade union" is taken from s 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 12: Amendment of the Core Concepts

Effect

This section allows the Secretary of State to update the definition of the Core Concepts so as to react to changes in technology.

Section 13: Guidance

Effect

This section allows the Secretary of State to produce guidance to supplement this Act.

Part 3: Transparency, observability and explainability

Section 14: Workplace AI Risk Assessment

Effect

Many employers already carry out risk assessments for different reasons such as health and safety or equality auditing. This provision extends the scope of such assessments to a new type of assessment abbreviated to "WAIRA".

Thus, high-risk decision-making cannot take place unless the employer has carried out an initial assessment of the risks via a WAIRA which is then repeated every 12 months for as long as the decision-making continues.

The scope of the assessments is defined in the Act. Once high-risk decision-making starts, the assessments must be broadened out to examine matters such as the extent to which inaccurate decisions are made and how often decisions are modified pursuant to section 18.

Background

This provision is partly inspired by Article 15 of the UK GDPR. It builds on proposals for such assessments from various organisations including the Institute for the Future of Work.

Example

An employer decides to implement a new performance management system that is reliant on an artificial intelligence system, which gives its employees marks out of ten. It must be reviewed before implementation and at least annually thereafter.

A large employer uses an online tool which allocates tasks to employees, imposes deadlines, tracks when a piece of work has been completed and monitors when people are "available/away/offline" and when they were "last active". The tool is then updated to also log the hours worked by staff, the number of keyboard strikes made in an hour, and social media use. It must be reviewed before implementation and at least annually thereafter.

An employer uses an artificial intelligence system to generate alerts which analyses data to assess whether workers in a warehouse are acting in an unsafe way. After the system has been used for 12 months, its use is reviewed with a human manager checking 10% of alerts to check whether they were accurate using CCTV. The percentage of false positives (i.e. how often the system as wrong) is recorded within the risk assessment and an assessment is made as to whether particular groups (different racial groups, men/women etc.) are more likely to be subject to false positives. This is consistent with section 14.

Section 15: Direct consultation with employees and workers

Effect

High-risk decision-making will not take place unless the employer has taken into account the concerns and interests of workers or employees who are or may be affected by it. The consultation must take place at least one month before the high-risk decision-making takes place.

Background

The TUC has long proposed that there should be greater consultation with employees about the use of artificial intelligence systems.

Section 16: Register of artificial intelligence systems

Effect

This section requires employers to be transparent about the use of artificial intelligence systems which it undertakes directly or is carried out on its behalf through the creation of registers.

Background

This provision is inspired by the provisions of Article 6 of the EU's Platform Workers Directive which seeks to improve the working conditions in platform work.

Examples

An employer operates a digital application ("app") which connects its care workers with end clients who require personal care. The app allocates shifts to its workers using an artificial intelligence system. Using this system, the end client is provided with a generated list of potential care workers, from which they can select which worker they would like. This falls within this section, and the employer must list it on a register.

A large bank uses an artificial intelligence system to generate employee performance rankings. A human employee (who has the authority to adjust the list

up or down) then considers this list to determine the level of bonus that its staff receive. This falls within this section, and the employer must list it on a register.

A large supermarket chain deploys an artificial intelligence system which analyses footfall and other external conditions (such as weather) so as to determine shift times and the number of workers required. This system, although it does not use any of the employee's own data would still come within this provision.

A bottle factory uses artificial intelligence to determine the number of bottles that it makes each month, to meet supply. This does not impact the shift times of its workers. It does not come within this provision as there is no decision-making at all about workers.

Section 17: Right to personalised explanations for high-risk decisions

Effect

This section requires employers to provide personalised explanations upon request from a worker, employee, or jobseeker in relation to high-risk decision making which causes (or may cause) a detriment to that individual.

This obligation does not arise in various situations including where it would not be reasonably practicable.

Examples

A call centre uses artificial intelligence software (purchased from a third-party company) to match its workers with callers. The software provider states that it analyses previous data from the companies database, including whether or not the workers were successful with callers previously. This is paired with contextual data such as demographic data, previous interactions, and any available internal analytics. An employee believes that she is always allocated difficult clients. Under this section, she has a right to a personalised explanation on how work is allocated to her.

A jobseeker understands that an employer uses artificial intelligence to decide who to show job adverts to when recruiting for certain roles. The jobseekers says that he has never been shown an advert for a nursing role. The artificial intelligence tools analyse the data of over one million users of a particular platform when deciding who will be shown an advert. It is not reasonably practical for the

employer to interrogate the system to understand if the jobseeker was within that one million user pool and if so, why a decision was made to not show him an advert in comparison to the tens of thousands of people who were shown it.

Section 18: Right to personal reconsideration of a high-risk decision

Effect

This section requires employers to provide a means by which employees, workers and jobseekers can seek a reconsideration by a human in relation to high-risk decisions made about them.

Examples

A large law firm's trainee solicitors must pass an artificial intelligence training course in order to qualify. This places the trainee solicitors in scenarios where they have to handle artificial intelligence generated "clients" with a sufficient level of skill. The system scores them. There must be a process for human consideration or review of their results, to comply with the duty to provide human review of high-risk decision making.

An employee in a warehouse is given a navigation device and assigned a suitable average time for completing a task. Their data is immediately fed back to the employer's artificial intelligence system, which manages all performance. If the employer imposes a sanction and there is no method by which the employee can seek reconsideration and explain to a natural person why they were delayed in completing a task, this system will not comply.

A long-standing employee experienced a difficult period in her personal life, making her absent from work for many periods of time for stress-related absences. She had now recovered and was maintaining excellent attendance. Her employer uses an absence-management system which monitors the attendance records of all staff and will automatically trigger progressive stages of its absence management process. Equally, unauthorised absences will trigger performance management processes on the basis that it is considered a disciplinary offence. The employee was placed on a final written warning due to an unavoidable further period of absence, which was adequately explained by a GP's fit note and should have been recorded as an authorised absence. This fit note was not correctly processed by the automated

absence management system. Her employer must provide her with meaningful human reconsideration of this decision she requests it.

Sections 19 to 20: Complaints to an employment tribunal

Effect

These provisions ensure that workers, employees and jobseekers have recourse to the employment tribunal where employers breach sections 14, 15, 16, 17 and 18 of this Act.

They also set out the remedies available to employment tribunals hearing cases under sections 15, 16 and 17 of the Act.

Part 4: Prohibition on detrimental use of emotion recognition technology

Sections 21 to 23: Prohibition on emotion recognition technology

Effect

Emotion recognition technology is used to predict or infer human emotions, for example, if someone is nervous, confident, trustworthy, sad, happy, emotionally engaged with a particular task. This section ensures that employers, or agents working on their behalf, cannot use this type of technology in relation to employees, workers, or jobseekers to their detriment. The right can be enforced in the employment tribunal.

Background

Processing the biometric data of people in order to make judgements about them is highly intrusive. There are also concerns as the accuracy of such technology. It follows that it is prohibited in so far as it is used to make decisions about people to their detriment.

Part 5: Prohibition on discrimination

Sections 24 to 25: Discrimination in relation to high-risk decision making

Effect

This section amends the Equality Act 2010 to ensure that employees, workers, and jobseekers are not subject to discrimination when employers (their agents or employees) make decisions using artificial intelligence systems.

It does not impact on the existing provisions in Part 3 of the Equality Act 2010 which regulates service providers and prohibits discrimination in relation to the provision of service.

Example

A man states on a social media platform that they are looking for new employment in the nursing industry (the jobseeker). A healthcare provider (the employer) asked a recruitment agent to find fifty nurses for a new centre (the agent). The agent used an artificial intelligence tool which would target adverts for those nursing roles to people who were likely to be interested in it. The tool did not show the advert to the man because its algorithm concluded that only women were likely to be interested in a nursing role. The man could bring a claim against the employer or its agent for breach of the Equality Act 2010.

Section 26: Liability of employers and principals

Effect

This section makes it plain that when an artificial intelligence system is used to make a decision, the employer and its agent are liable for that decision where the system is deployed on behalf of the employer.

Example

An employer decides to use an artificial intelligence tool to make decisions about how much to pay its employees. The proposals made by the tool are implemented

by human managers. The employer is liable for any discrimination in relation to pay as a result of a discriminatory proposal (subject to establishing a defence).

Section 27: Liability of employees

Effect

This section prevents employees from being liable for discrimination which is caused to any extent by decision-making within the meaning of the Act. The rationale for this amendment to the EA 2010 is that the employer is best placed to minimise and eliminate the risks of discrimination and the employer has the opportunity to rely on the defence in new section 136 (3B) EA 2010.

Examples

An employer decides to use an artificial intelligence tool to make decisions about how much to pay its employees. The employer provides its employee with access to the system and asks the employee to use the system to set pay. The proposals made by the tool are implemented by the employee. The employer is liable for any discrimination in relation to pay as a result of a discriminatory proposal subject to the defence in section 136 (3A) EA 2010. The employee is not liable.

An employer decides to trial a new artificial intelligence tool to make decisions about which employees to promote. The employer provides its employee with access to the system and asks the employee to use the system to choose who to promote but explains that the system is untested, and it should not be relied on unless the employee is confident in the recommendation himself. The employer is liable for any discrimination in relation to pay as a result of a discriminatory proposal subject to the defence in section 136 (3A) EA 2010. The employee cannot be liable.

Section 28: Remedy

Effect

This section allows the employment tribunal to make recommendations pursuant to Part 9 where discrimination occurs contrary to the Equality Act 2010 in relation to the use of an artificial intelligence system.

Section 29: Burden of proof

Effect

This section means that when an employer or agent is alleged to have contravened the Equality Act 2010 as a result of reliance on an artificial system, they must prove that no discrimination happened whether that be by the system, or any human involved in its operation.

However, if the employer or agent cannot discharge that burden of proof, there is still the possibility of defending the claim where:

(1) They did not create or modify the system (e.g. they purchased it from a third party or used a third party's system),
(2) The employer or agent had audited the system before using it to make high-risk decision-making as per Part 9 of this Act, and
(3) There were procedural safeguards in place designed to remove the risk of discrimination post audit and those safeguards included steps to prevent employees or workers from causing discrimination.

If a person successfully establishes this defence, a discrimination claim against any other person in the artificial intelligence value chain is not precluded.

Background

Organisations will often buy in artificial intelligence tools and have no role in their developments. In the face of a claim, it may not be possible to prove that no discrimination has happened because of the "black box".

The "black box" should not disadvantage claimants who believe that they are the victim of discrimination but are not in a position to really understand how an artificial intelligence system works.

Making the employer or agent prove that no discrimination has happened from the outset is intended to help claimants so that they do not lose discrimination claims simply because a system is opaque and difficult to understand.

However, there also need to be incentives and advantages for employers to supervise and limit inappropriate artificial intelligence systems. Whilst employers

or their agents may not create the discriminatory artificial intelligence system, they should still take steps to remove the risk of discrimination. To incentive good conduct, these provisions also provide employers and agents with a defence where they simply buy in tools which are discriminatory. They can avoid liability where they have audited the tool before use.

Moreover, since employees cannot be personally liable for any discrimination arising from artificial intelligence systems, an employer can only rely on the defence where it has taken procedural steps to prevent employees and workers from using the system in a way which was discriminatory and monitored those steps.

Examples

Person X is a manager and employee of Employer Y. Y has provided an artificial intelligence system that monitors internal communications to look for conduct which is suspicious. The tool highlights a potentially inappropriate conversation to X. The conversation is between two colleagues (one white and one black) but does not seek to attribute blame or say one is more culpable than the other. X simply disciplines the black employee and takes no steps against the white employee without seeking to decide himself what has happened. X says he disciplined the black employee because they had a worse behavioural record, and it was nothing to do with race although this is actually untrue. Whilst the artificial intelligence tool is the backdrop to the discrimination in the sense that it flagged the conversation to X, the decision to unjustifiably discipline the black employee is entirely made by X. However, the black employee does not know this and alleges that the discrimination arose from the artificial intelligence system.

- X can be liable. Section 110 (3A) Equality Act 2010 does not prevent him from being liable because the discriminatory decision was his alone.
- Y is subject to the amended burden of proof provisions in section 136 (3A) because the artificial intelligence is said to be the cause of the discrimination.
- Y can prove that the artificial intelligence system did not create the discrimination. However, it cannot prove that X did not cause the discrimination. This means that its only defence is under section 136 (3B). It successfully relies on this defence because, amongst other matters, it can show that it had put steps in place to prevent employees like X from

making discriminatory systems once potential misconduct was highlight by the artificial intelligence system.

Employer N buys in an artificial intelligence system from a third-party supplier M designed to create teams with the right mix of skills and expertise for internal projects. N audits the system as per Part 9 before using it. The system is then used on an entirely automated basis to create teams (no human review) but there is an annual assessment of the extent to which the system impacts on protected characteristics.

- The defence would be successful when a woman says she is frequently put on inferior projects as a result of her sex, but N cannot explain how or why that is the case.

Employer C buys in an artificial intelligence system to make recommendations as to basic pay/bonus for its employees. C audits the system as per Part 9 before using it. A designated manager D uses the system to set the pay of F (a woman), and this is less than the pay of M (a man). D has sense checked the recommendation before implementing it (and it does not appear to be irrational or unreasonable). He has attended special training on automation bias and understands the risks around artificial intelligence and discrimination. At the same time, C monitors all recommendations made by the system and whilst it cannot precisely explain the basis on which the system recommended that F receive £x and M receive £y, its review of the system does not reveal any pattern in which women are generally paid less than men.

- D would not be liable in his capacity as an employee because of section 110 (3A). C would be able to successfully defence any discrimination under section 136 (3A) Equality Act 2010.

Person A is a manager and an employee of Employer B. A is provided with an artificial intelligence tool to assist him in his decision making for B. A says that the tool is one factor out of five that he took into account when deciding whether to dismiss a junior employee, C. C alleges that the decision to dismiss him was discriminatory (both because of the tool and because of A's decision making).

- A would escape liability under section 110 (3A) because he has relied on the tool when making his decision even if it was only one factor in the discrimination.
- B would be subject to the amended burden of proof in section 136 (3A).
- B cannot show no discrimination in relation to the artificial intelligence system because it is opaque.
- B also cannot show that A did not introduce any discrimination when he relied on the four further factors because B's reasoning is similarly opaque.
- B would not be able to rely on the defence out in section 136 (3B) Equality Act 2010. Whilst he did audit the tool and had in place a system whereby employees had to record clearly why they made decisions and demonstrate they were not tainted by prejudice, there was no process to check that employees provided clear and non-discriminatory explanations.

Section 30: Amendment to Schedule 25 of the Equality Act 2010

Effect

An "information society service provider" which is providing a service to consumers in the United Kingdom may be liable under the Equality Act 2010 even if they are established outside of the United Kingdom.

Background

Paragraphs 1 and 2 in Schedule 25 enshrined the "country of origin rule" which had existed pursuant to the E Commerce Directive.

These old provisions meant that an "information society service provider" established in an EU member state only had to comply with the laws of the state in which it was established even if it was providing services in the UK. There was reciprocal protection for UK established "information society service providers" who provided services in EU memberships.

Post Brexit, the protection for UK established "information society service providers" no longer exists and the Electronic Commerce (E-Commerce Regulations) 2002 have been so amended.

The removal of paragraph 1 from Schedule 25 reflects this change.

The Government has committed to removing the "country of origin" principle from UK legislation so that EU online service providers will be subject to UL laws.

The removal of paragraph 2 from Schedule 25 reflects this intention.

Example

A company operates a recruitment website which allows jobseekers to search for and identify job vacancies placed by employers. The employers are charged a fee, and the company prioritises job adverts on the basis of an artificial intelligence tool which predicts which job adverts are most likely to generate applications from certain jobseekers. The website is established in Germany but operates in England advertising roles in the UK to jobseekers in the UK.

The company is an "information society service provider" because it is offering a service online for which it receives remuneration and at the individual request of the jobseeker.

The fact that the recruitment website is established in Germany does not preclude it from being liable in the UK under the EA 2010 in relation to UK jobseekers.

The artificial intelligence tool used by the company results in higher paid vacancies being more likely to be shown to white men. The company could be liable under the EA 2010 in the Employment Tribunal on the basis that it is an agent of an employer who is sued by a black man who is not shown a particular job advert when he used the website.

Part 6: Health and well-being

Sections 31 to 32: A statutory right to disconnect etc

Effect

These sections introduce a new right to disconnection and protection from detrimental treatment for exercising that right. It reflects developments in other countries which have recognised the importance of employees being able to leave work behind at times for purposes of rest, recreation, and personal refreshment.

Background

The text of section 31 is derived from proposed amendments to the Employment Rights Act 1996 by the Autonomy think tank. Similar steps have been taken in other European countries such as the Republic of Ireland.

It also extends the detriment rights in section 47A and following of Employment Rights Act 1996 to cover the right to disconnect.

Example

An employee is given a statement of terms and conditions at the start of their employment which states that their agreed working hours are 9am to 5pm on each week day with a one hour lunch break from 1pm to 2pm. The employee is under no obligation to check their emails after 5pm unless an exemption applies, or they have signed an opt out. If the employee is compelled to do so, in breach of this Act, they will be entitled to compensation if an employment tribunal upholds their claim.

Part 7: Dismissal

Section 33: Automatic unfair dismissal: unfair high-risk decision-making

Effect

Employees will be unfairly dismissed from day one of employment if the reason (or principal reason) for the dismissal is unfair reliance on high-risk decision-making.

In deciding whether there has been unfair reliance, the employment tribunal must examine the extent to which the employer has complied with the rights and obligations under section 14 (Workplace AI Risk Assessments), section 15 (Direct consultation with employees), section 16 (Register), section 17 (Right to personalised explanations for high-risk decision-making), section 18 (Right to

human reconsideration of a high-risk decision) and section 21 (Prohibition on emotion recognition technology).

Further, a dismissal will be unfair under section 104 Employment Rights Act 1996 (Assertion of a statutory right) where the reason or principal reason for dismissal is that the employee has brought proceedings to enforce rights created by this Act or alleged that the employer has infringed those rights namely section 14 (Workplace AI Risk Assessments), section 15 (Direct consultation with employees), section 16 (Register), section 17 (Right to personalised explanations for high-risk decision-making), section 18 (Right to human reconsideration of a high-risk decision) and section 21 (Prohibition on emotion recognition technology).

In addition, in so far as the Employment Rights Act 1996 is amended by this Act, for example, by introducing section 104I, there is a protection against dismissal for enforcing those rights pursuant to section 104 (4)(a) Employment Rights Act 1996.

Background

Prior to the introduction of this Act, employees had a right not to be unfairly dismissed in the Employment Rights Act 1996. In most cases, an employee was only protected only after they had two years' continuous employment. The amendments to the Employment Rights Act 1996 extend those existing rights to provide greater protection where high-risk decision-making takes place.

Example

An employee is dismissed six months into their employment on the grounds of repeated misconduct. The employer decided to dismiss after an artificial intelligence tool had issued three prior warnings for misconduct. The employee had asked for a human to reconsider the three prior warnings, but this had not happened by the time of the dismissal. The employee was clear at the disciplinary hearing which led to their dismissal that they did not accept that there had been misconduct such as to justify the three prior warnings. The dismissal was automatically unfair since there was unfair reliance on high-risk decision-making.

Section 34: Automatic unfair dismissal: Right to disconnect

Effect

Employees will be unfairly dismissed from day one of employment if the reason (or principal reason) for the dismissal relates to the employee's failure or refusal to monitor or respond to any work-related communications or carry out any work outside of the worker's normal working hours.

Example

An employee is dismissed three months into their employment on the grounds that they declined to read emails outside of their normal working hours such that they were protected by section 104I Employment Rights Act 1996 (Right to disconnect). The dismissal was automatically unfair.

Section 35: Remedy

Effect

Where an employee is unfairly dismissed under section 104H Employment Rights Act 1996 i.e. the reason (or principal reason) for the dismissal is unfair reliance on high-risk decision-making, the employment tribunal may make recommendations as per Part 9 of the Act.

Moreover, if the employee receives compensation, this does not prevent them from bringing parallel claims, for example, for breach of the Data Protection Act 2018.

Section 36: Interim relief pending determination of complaint

Effect

Where an employee is unfairly dismissed under section 104H Employment Rights Act 1996 i.e. the reason (or principal reason) for the dismissal is unfair reliance on high-risk decision-making, the employment tribunal may make an order for interim relief under s 128 Employment Rights Act 1996.

Section 37: Definitions

Effect

The Employment Rights Act 1996 is amended to introduce key terms which appear in this Act such as "artificial intelligence system".

Part 8: Trade unions

Section 38: Fair data use

Effect

This section enables trade unions to be provided with all the data collected by an employer in relation to its members.

Background

This is a new provision which was first raised by the TUC in 2021 in seeking to address the developing asymmetry between the power of employers to use data collected in the workplace in relation its employees and the absence of an effective correlative power for employee and worker representatives to use that data.

Section 39: Trade union consultation

Effect

This creates obligations on employers to consult with trade unions where they are proposing to do high-risk decision-making. The consultation must take place at least one month before high-risk decision-making happens. It should be repeated every 12 months for as long as the high-risk decision-making happens.

Background

This section is based on the pre-existing obligation in section 188A of the Trade Union and Labour Relations (Consolidation) Act 1992 for employers to engage in collective consultation where certain types of redundancy exercise are proposed.

Part 9: Auditing

Section 40: Auditing artificial intelligence systems for discrimination

Effect

It is common for organisations such as employers to purchase artificial intelligence systems from third parties. If there is subsequently a discrimination claim and it is not possible to prove that discrimination has not occurred, an employer (their agent or employee) may still successfully defend a claim where section 136 (3B) Equality Act 2010 is satisfied. To satisfy section 136 (3B) there must have been auditing of the artificial intelligence system before the high-risk decision-making takes place. Part 9 provides further detail about that auditing process. In particular, when determining whether auditing complies with Part 9, the employment tribunal must have regard to statutory guidance from the Equality and Human Rights Commission and the extent to which the artificial intelligence system complies with certain technical standards or has been certified.

Several national and international organisations have suggested the tools that could be used for such an audit. The OECD continues to list a variety of tools (see here). It will be for the Equality and Human Rights Commission to provide guidance on the best tools.

Part 10: Regulators and bodies in the employment field and the principle of non-discrimination

Section 41: Regulatory obligations concerning artificial intelligence

Effect

There are numerous regulators who have responsibilities in relation to employment. Some operate vertically in the sense that their responsibilities relate to a particular sector while others operate horizontally in the sense that their responsibilities relate to all employment. The effect of this section is that whether a regulator has horizontal or vertical responsibilities it will have obligations to apply specific principles in relation in carrying out its functions in relation any artificial intelligence system.

Background

These principles were set out in the Government's 2023 White Paper, "A pro-innovation approach to AI regulation" in March 2023 updated 3 August 2023.

Section 42: Statutory guidance on artificial intelligence and the principles of non-discrimination

Effect

Statutory guidance must be produced every two years which explains to employers (and their agents and employees) what steps should be taken to eliminate the risk of discrimination when undertaking high-risk decision-making.

This statutory guidance will also assist employers (their agents and employees) to comply with the auditing defence in section 136 (3B) Equality Act 2010.

The statutory guidance will be produced having consulted with bodies and regulators with technical expertise in the field of artificial intelligence and / or discrimination.

Section 43: Data awareness and education

Effect

The rights and obligations of in this Act will only be effective if employees, workers, and jobseekers understand what artificial intelligence is, how it is used in the employment field and the effect of the rights and obligations in this Act. There is a requirement section 43 to produce a Code which will explain these matters to employees, workers, and jobseekers.

Part 11: Enforcement of recommendations

Section 44: Power to make recommendations

Effect

Throughout this legislation, the employment tribunal is granted a power to make recommendations to an employer in relation to employees and workers where there is a breach of rights and obligations, for example, where an employee is unfairly dismissed under section 104H Employment Rights Act 1996 i.e. the reason (or principal reason) for the dismissal is unfair reliance on high-risk decision-making.

Background

The employment tribunal has had a power to make recommendations historically in relation to certain matters such as where there is found to be discrimination (section 124 (2) (c) Equality Act 2010). This legislation extends the power to make recommendations to the new rights and obligations contained in this Act.

Examples

A tribunal could recommend that the respondent:

(1) Produce a public and readily accessible document which sets out the selection criteria used for transfer or promotion of staff.
(2) Sets up a review panel to address employees' requests for meaningful human review;
(3) Ensures its human review process is more effectively implemented;
(4) Re-trains staff; or
(5) Ceases to use an AI system where the respondent cannot explain the main parameters which the system takes into account.

Part 12: Innovation

Section 45: Use of regulatory sandboxes

Effect

This provision means that innovative forms of artificial intelligence can be developed without risking contravention of this legislation and the remedies that would otherwise apply.

Background

There is widespread recognition of the need to enable these new technologies to develop and that sometimes that will require lightening the regulatory constraints that would otherwise be appropriate. Regulatory sandboxes have been developed in the United Kingdom by the Financial Conduct Authority (see FCA Regulatory Sandbox). This section is based on the text of Article 3 paras 44eb to bg of the European Union AI Act.

Part 13: General and Miscellaneous provisions

Sections 46: Power to disapply and modify obligations for microbusinesses

Effect

This section will allow the Secretary of State to make regulations which will disapply or modify the provisions in this legislation where an employer employs fewer than ten employees. This is to ensure that microbusinesses are not overburdened by the obligations in this legislation.

Sections 47 to 52: Exercise of power etc

Effect

These sections contain basic provisions to ensure that the legislation is enforceable.

It dictates that the rights and obligations in this legislation will not become enforceable for a two year period after it has been passed. This is to ensure that employers and other bodies who are affected by this legislation have time to put systems in place which will ensure compliance.

SCHEDULE 1 - HIGH-RISK DECISION-MAKING – STATUTORY RIGHTS

Effect

The Schedule supplement section 6 which defines "high-risk" decision-making. Specifically, a decision will be "high-risk" where it has the capacity or potential to produce legal effects concerning workers, employees, or jobseekers. Schedule 1 lists the statutory provisions which are to be examined when considering if there is a legal effect.

Example

An employer decides to use an artificial intelligence tool where is the potential for discrimination. The Equality Act 2010 is listed in Schedule 1. It follows that any decisions made in relation to workers, employees or jobseekers using the tool would be high-risk decision-making.

SCHEDULE 2 - HIGH-RISK DECISION-MAKING – SPECIFIC ACTIVITIES

This schedule further supplements section 6 by providing examples of activities that are presumed to be high-risk.

SCHEDULE 3 - REGULATORS

This Schedule identifies the regulators set out in in Part 1 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (SI 2007 No.

3544) as amended from time to time, as being the regulators that are subject to the obligations set out in Part 10.

SCHEDULE 4 – REGULATORS' POWERS TO REQUEST AND SEE INFORMATION

This Schedule identifies the regulators entitlement to request and see information.