

Quarterly Board Briefing

Labour & Employment: UK

Looking to Q3 2024 and Beyond...



Executive Summary

Key






Red – Take Action

Amber – To Be Considered

Green – To Be Aware Of

Hot Topics Radar

This Hot Topics Radar shows how the legal changes and actions to be taken relate to some of the issues which we know to be high on the board's agenda:

-  ESG – Social
-  Diversity, Equity and Inclusion
-  Harassment
-  Whistleblowing & Investigations
-  Workforce Reporting

[In the Spotlight](#) section of this Board Briefing we provide an overview of the Pay Transparency Directive, for those with operations in the EU.



Quarterly Board Briefing | Labour & Employment – UK | Looking Forward to Q3 2024 and Beyond

This briefing aims to provide boards with a guide to key upcoming legal changes and actions to be taken next quarter and includes additional notes for Legal and HR teams in the [Spotlight](#) section at the end. Please note, this document does not cover all legislative changes, just those we view to be of particular relevance to the board.

Topic	Key Date(s)	Overview	Action Required	Risks/Opportunities
Take Action				
The Worker Protection (Amendment of Equality Act 2010) Act 2023	Royal assent – 26 October 2023 The Act will come into force one year after it is passed, so 26 October 2024.	This new legislation amends the Equality Act 2010 and places a new pre-emptive duty on employers to take “reasonable steps” to prevent sexual harassment of employees in the course of their employment. For more information, please see our new guide New Duty to Prevent Sexual Harassment at Work in the UK: Why Doesn't Someone Tell Us What We Need To Do? For more information on this issue from a global perspective, please listen into our recent global webinar “Sexual Harassment in the Workplace – A Global Perspective” .	<ul style="list-style-type: none"> The countdown is now on for employers to review the steps they currently take to prevent sexual harassment in the workplace, and consider whether they might need to do more to satisfy this new mandatory duty. 	<ul style="list-style-type: none"> An employer that breaches this new duty could face proceedings by the Equality and Human Rights Commission, as it will have new powers to enforce stand-alone breaches. If an employee brings a successful complaint of sexual harassment, an employer risks an uplift in compensation of up to 25% if the Tribunal is satisfied that the employer had breached the new duty to take reasonable steps to prevent it. There is no requirement that the employer’s breach should have led to harassment.



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Changes to the Flexible Working Regime	<ul style="list-style-type: none"> In force – 6 April 2024 	<p>The government has made changes to the flexible working regime.</p> <p>The key changes are as follows:</p> <ul style="list-style-type: none"> Employees are entitled to request flexible working from day one of their employment Employees are entitled to apply for flexible working twice in any 12-month period (rather than the current one request) Employers are under an obligation to consult the employee before rejecting a request, and the decision period within which an employer is required to process the request has been reduced from three to two months Employees are no longer required to explain the effects that the changes they are applying for would have on the employer and how they might be dealt with <p>Read our Employment Law Worldview blog for a more in-depth discussion of the changes.</p> <p>Acas has also issued an updated version of the statutory Code of Practice on handling flexible working requests. A failure to comply with the Code does not in itself expose an employer to the risk of a claim, but the Code may be taken into account by a Tribunal in any proceedings.</p> <p>Closely related to changes to the flexible working regime is the new Worker (Predictable Terms and Conditions) Act 2023. Due to come into force from Autumn 2024, this allows workers and employees to request more predictable working patterns and (like the flexible working rules) requires the employer to have a good reason for refusing. The Act is aimed predominantly at “gig” workers and those on zero-hours contracts, but its drafting is sufficiently lax that many ordinary contracts of employment may be caught also. See our Employment Law Worldview blog for more details.</p>	<ul style="list-style-type: none"> Changes to existing policies will be necessary to reflect the new position. Employers should also update managers on the new rights and obligations to maximise compliance with the new provisions. 	<ul style="list-style-type: none"> The board will need to consider its approach to flexible working requests going forward. For more information, please review the Spotlight section at the end of our UK L&E Looking to Q2 2024 and Beyond Board Briefing.

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Take Action				
Smarter Regulation: Employment Law Reform (including proposal to abolish European Works Councils (EWCs))	<ul style="list-style-type: none"> • Consultation issued – 16 May 2024 • Consultation closes – 11 July 2024 	<p>The government has put forward various proposals as part of its “Smarter Regulation” package, which (it states) seek to reduce burdens on businesses and promote innovation and growth.</p> <p>This consultation seeks views on the following proposals:</p> <ul style="list-style-type: none"> • reaffirming that only employees are protected by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) • removing the complex obligation to split employees’ contracts between multiple employers where a business is transferred to more than one new business • abolishing the legal framework for EWCs 	<ul style="list-style-type: none"> • Review consultation paper (no obligation) and consider whether to respond. 	<ul style="list-style-type: none"> • While the first two proposals may be of limited interest to the board, in that they simply seek to address uncertainties in TUPE transfers created by case law, the abolition of the legal framework for EWCs is likely to be of more interest – at least to some employers. • Following the UK’s departure from the EU, the government legislated to prevent the creation of new EWCs in the UK, but the courts have thus far upheld the position that EWCs that existed prior to EU exit should continue to operate (which can be at a significant cost to the business). • We would be very happy to provide assistance to any impacted organisations in preparing their response to the consultation. Please do get in touch with your usual Squire Patton Boggs contact, or any of the Partners named at the end of this Briefing.



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<p>Economic Crime and Corporate Transparency Act 2023</p> <p>Note – Only applies to large corporates and partnerships.</p> <p>“Large” means organisations meeting two out of three of the following criteria – more than 250 employees, more than £36 million turnover and more than £18 million in total assets.</p>	<ul style="list-style-type: none"> Royal assent – 26 October 2023 Statutory guidance regarding the failure to prevent fraud offence is expected later in 2024. The offence will not come into force until the statutory guidance has been produced. 	<p>The Act creates various new corporate offences, including the offence of failure to take reasonable steps to prevent fraud.</p> <p>The government has produced a factsheet on the offence, which states “under the new offence, an organisation will be liable where a specified fraud offence is committed by an employee or agent, for the organisation’s benefit, and the organisation did not have reasonable fraud prevention procedures in place. It does not need to be demonstrated that company bosses ordered or knew about the fraud.”</p>	<ul style="list-style-type: none"> In-scope organisations should review the factsheet and consider a review of their current fraud prevention procedures, pending further clarity from the government. 	<ul style="list-style-type: none"> Fines for failure to take steps to prevent fraud will be unlimited, and so this needs to be on the board’s agenda.
<p>New Government Guidance on Responsible Use of AI in Recruitment</p>	<ul style="list-style-type: none"> Published – 24 March 2024 	<p>In conjunction with the Ada Lovelace Institute, APSCo UK, Autistica, CIPD and the Recruitment & Employment Confederation, the government has issued new guidance on the responsible use of Artificial Intelligence in recruitment.</p> <p>The government has stated that the aim of the guidance is to identify “potential ethical risks of using AI in recruitment and hiring processes. It further outlines how AI assurance mechanisms can provide organisations with the tools, processes and metrics to evaluate the performance of AI systems, manage risks and ensure compliance with statutory and regulatory requirements.</p> <p>It is intended for organisations seeking to procure and deploy AI systems in their recruitment processes. The guidance is written for a non-technical audience and assumes a minimal understanding of AI and data-driven technologies and is appropriate for organisations with or without a comprehensive AI strategy.”</p>	<ul style="list-style-type: none"> Review the guidance (not compulsory). 	<ul style="list-style-type: none"> Although this guidance focuses on recruitment, the same principles may be extended beyond this to the use of AI in other employment-related decision-making. The board should therefore consider any potential areas of risk (and how these might be mitigated) in terms of any existing or intended use of AI in the recruitment process and throughout all stages of employment (i.e. promotion/dismissals etc), particularly in terms of discrimination. Note: there is no minimum service requirement for a claim of discrimination under the Equality Act 2010, meaning that it is open for job applicants to bring claims if they feel disadvantaged based on any protected characteristic by your AI systems.

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The Employment (Allocation of Tips) Act 2023	<ul style="list-style-type: none"> Royal Assent – 2 May 2023 Will come into force 1 October 2024 	<p>The Employment (Allocation of Tips) Act 2023 will be of limited relevance outside of the hospitality, leisure and service industries, but may have significant impact on existing practices in the distribution of gratuities within those sectors. It applies from 1 October this year and some prior preparation will be necessary. For more information, see our new guide: New Obligations on Employers When Allocating Tips.</p>	<ul style="list-style-type: none"> If your business is within a relevant industry, review existing practices and consider whether changes are required. 	<ul style="list-style-type: none"> While this new law is worthy in its objectives, it is in fact a recipe for dispute and litigation because of the vacuum at its heart, i.e. what amounts to “fairness.” What seems fair to the employer may not to the worker, either in relative or absolute terms. Getting the same distribution as my peers sounds fair but not if I have gone above and beyond to serve my customers and they have not. I may think that I work harder and more effectively than my employer believes, or that my role is more valuable, or that the customer leaving the whopping tip did so wholly or mainly because of me. The legislation urgently needs some objectivity around the question, even if it is just to apply (in effect) the usual test of whether the distribution is “within the range of reasonable responses,” so making it challengeable only if the worker can show that no reasonable employer would have divided up the tips in that way.

Topic	Key Date(s)	Overview	Action Required	Risks/Opportunities
To Be Considered				
Diversity and Inclusion on Company Boards and Executive Committees	<ul style="list-style-type: none"> In-scope companies were required to make these disclosures in their annual reports for financial years starting on or after 1 April 2022. 	<p>The Financial Conduct Authority (FCA) published its policy statement on diversity and inclusion on company boards and executive management in April 2022.</p> <p>In summary, the FCA introduced new listing rules to require issuers to include a statement in their financial report setting out whether they have met specific board diversity targets on a “comply or explain” basis. See our Q2 2023 UK Board Briefing for further details of the requirements.</p> <p>In March 2023, the FCA published Primary Market Bulletin 44, which contains more information about what the FCA expects in the statements and the steps firms should take.</p>	<ul style="list-style-type: none"> If they have not already done so, in-scope companies should review the policy statement, Primary Market Bulletin 44 and the changes to the rules in detail to ensure that they are compliant with the new reporting requirements, including ensuring that there is an adequate strategy in place for data gathering. 	<ul style="list-style-type: none"> Nothing in these changes legitimises positive discrimination to achieve those targets, so care must be taken to maintain the integrity of the recruitment/promotion process.
Consultation – Statutory Code of Practice on Dismissal and Re-engagement	<ul style="list-style-type: none"> Consultation issued – 24 January 2023 Consultation closed – 18 April 2023 Outcome issued – 19 February 2024 Likely to come into force during the Summer of 2024 	<p>The Department for Business, Energy and Industrial Strategy (BEIS) issued a consultation on its new Draft Code of Practice on Dismissal and Re-engagement (Draft Code).</p> <p>Following the consultation period, BEIS has now issued an updated Code.</p> <p>For our detailed analysis, please read our Employment Law Worldview blog.</p>	<ul style="list-style-type: none"> Review updated Code. 	<ul style="list-style-type: none"> Any potential rule changes have yet to be implemented, so there is no risk at this stage, per se. However, the board should carefully consider its approach to any dismissal and reengagement situations in the meantime. The Code will not prevent fire and re-hire practices although imposes significant practical burdens on employers to show them to be a genuine last resort.

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Call for Evidence on Non-financial Reporting Requirements	<ul style="list-style-type: none"> Published – 24 June 2023 Closed – 16 August 2023 First set of responses published – March 2024 	<p>Following on from the publication of its “Smarter Regulation” policy paper (see above), the government also published a call for evidence on non-financial reporting requirements.</p> <p>For more information please refer to our Q3 2023 Board Briefing.</p> <p>The government has now confirmed that as part of the next phase of the review, it intends to make legislative changes designed to directly benefit small and medium-sized companies.</p> <p>The measures will include an approximate 50% uplift to the monetary thresholds that determine a company’s size to take account of inflation and to reduce burdens on smaller businesses. The government believes that uplifting these thresholds will allow around 132,000 companies and LLPs, including 113,000 small companies, to take advantage of simpler, less burdensome reporting regimes, which are more suitable for their size.</p>	<ul style="list-style-type: none"> Review consultation paper (no obligation) and responses but note that the deadline for inputting to the response has passed. 	<ul style="list-style-type: none"> No immediate risk, as there has been no legal change yet.



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To Be Aware Of				
Ethnicity Pay Gap Reporting	<p>In 2018, the government launched a consultation on mandatory ethnicity pay reporting.</p> <p>The consultation closed in January 2019.</p> <p>The government issued its response in July 2023.</p>	<p>In its response, the government has now confirmed that it will not be legislating to make ethnicity pay reporting mandatory at this stage.</p> <p>For more detailed analysis of the guidance, please see our blog.</p>	<ul style="list-style-type: none"> • Review guidance. • Consider whether to collect data and make voluntary disclosures. 	<ul style="list-style-type: none"> • No immediate risk, as no legislative changes are proposed. • However, there is a clear benefit in increasing diversity and inclusion. Investors are also increasingly expecting to see this sort of data and so those companies concerned with ESG ratings may wish to make voluntary disclosures. • NOTE: Labour has recently announced proposals to extend the remit of the equal pay legislation to cover ethnicity and disability, should it get into power, so it is worth bearing this in mind.
<p>Joint Discussion Paper – Improving Diversity and Inclusion in Financial Services and Associated Consultations</p> <p>NB: Applies to Financial Services Only</p>	<p>Responses to the joint discussion paper were sought by 30 September 2021.</p> <p>Responses to the consultations were sought by 18 December 2023.</p> <p>Outcomes: awaited.</p>	<p>The FCA, the Prudential Regulation Authority (PRA) and the Bank of England (the Regulators) published a joint discussion paper seeking views on regulatory plans to improve diversity and inclusion in financial services.</p> <p>For more information, please see our Q3 2023 UK Board Briefing.</p> <p>Subsequently, the PRA and FCA each published a consultation paper entitled, respectively, “Diversity and inclusion in PRA-regulated firms” and “Diversity and Inclusion in the financial sector – working together to drive change”.</p>	<ul style="list-style-type: none"> • Review consultations but note that deadline for inputting to the responses has passed. • Firms that are in-scope of the proposals would be well-advised to assume that the proposals will come into force – it is more of a “when” than an “if”. 	<ul style="list-style-type: none"> • No immediate risk, as no legal change yet • In terms of timeline, while there will be a 12-month period between confirmation of the final rules (likely to be at some stage in 2024) and those rules coming into force (likely to be in 2025), we anticipate that firms will not wish to wait until then to start preparing and so this should be on the board’s agenda.

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		<p>The proposals within the papers are largely aligned, but they do diverge in some respects. Their aim is to “drive change” by linking D&I to a firm’s overall strategy, ensuring that strategy is embedded in the firms’ day-to-day operations and culture, requiring firms to gather D&I data to inform improvements; and by developing an understanding of “what good looks like” across the sector.</p> <p>In March 2024, the Treasury Committee released its report into “Sexism in the City”.</p> <p>The report made some specific recommendations to the Regulators, which impact upon the consultations referred to above. Accordingly, earlier this month the FCA and PRA released their response – see here.</p>		

In the Spotlight – the EU Pay Transparency Directive

This quarter, we turn the focus of our Spotlight to the EU Pay Transparency Directive. Although the UK is no longer a member of the European Union (EU) and so will not be required to implement the Directive, it will still be relevant to many of the readers of this briefing, who have operations in continental Europe. Moreover, greater transparency in pay practices and procedures in EU member states is also likely to raise the profile of this issue in the UK, and potentially trigger demands from UK staff for similar information.

What is the EU Pay Transparency Directive?

A lack of pay transparency has been identified as one of the main obstacles to closing the gender pay gap in the EU. This currently stands at around 13%, with significant variations across individual member states. The EU has therefore adopted the Pay Transparency Directive, which obliges member states to introduce legislation that will:

- Require employers to provide job applicants and workers with greater information about starting salaries and pay bands.
- Require large employers to report regularly on their gender pay gap and conduct a joint pay assessment with workers' representatives where the gender pay gap is 5% or more. Note: This joint pay assessment will have to comply with strict and burdensome requirements and must then be made available to workers and their representatives.
- Ensure there are appropriate measures in place to empower individuals to bring claims for equal pay for equal work or work of equal value.

Member states are also obliged to put in place effective penalties for employers who break the rules, so unlike the gender pay gap reporting requirements in the UK, these new requirements are likely to have more “teeth”.

Why Is It Important?

The Directive does not fall into the common trap of assuming that a material gender pay gap is evidence of unlawful sex discrimination. It remains possible to justify such a differential at both individual and collective levels, and the Directive does not alter any national laws in that respect. What it does do is force the pay gap to the surface and oblige employers to confront the question of whether it can indeed be justified. We expect a great deal of internal debate in companies and countries new to pay gap reporting, and the revisiting of old practices and assumptions around who gets paid what and why. If we are right on that, then the Directive will have gone a long way towards achieving its aims.

When Will It Come into Force?

Businesses with operation in continental Europe will be required to comply with the Pay Transparency Directive from 7 June 2026, with the new gender pay gap reporting obligations applying from 7 June the following year.

Each EU member state will be required to introduce local legislation to implement the requirements of the Directive. As far as we are aware, no state has yet done so.

Does This Mean We Don't Need To Think About This Yet?

No, we strongly recommend that businesses do not wait for the details of the local legislation to start preparing. The Pay Transparency Directive will impose potentially significant new obligations on affected companies, and it is likely to take months (if not years) for most businesses to implement the changes required.

Global businesses with operations in continental Europe should therefore start planning now for how they will meet these new and potentially onerous obligations. While a number of member states already have some pay transparency rules in place, these are unlikely to be wholly compliant with the Directive and further local changes are expected across the EU.



How We Can Help

We are currently working with a number of international companies to ensure their pay practices and procedures will be compliant with the minimum requirements of the Directive, and any likely changes under local legislation. If you would like to discuss the implications of the Pay Transparency Directive for your business, please speak to your usual contact in the Labour & Employment team.



We also have various other resources available which should assist you with your planning and preparation, as detailed below.

Implementation of the Pay Transparency Directive – Where Are We Currently?

To help employers understand the potential scope of these new obligations, in our latest “snapshot” guide we set out a more detailed overview of the requirements of the Directive and have collaborated with our Global Edge contributors to set out the current state of play in 16 key EU member states, including an indication of the likely scale of change in different jurisdictions.

Please click [here](#) to access the guide.

Global Edge

[Global Edge](#) is an award-winning product that gives instant access to the latest employment law developments in 38 countries plus the EU as a whole, direct to a mobile device or desktop. It is an invaluable tool for in-house counsel and HR professionals in global organisations providing up to date, clear guidance on 30 employment law topics and upcoming legislation. Businesses with operations in continental Europe can keep abreast of developments with the Pay Transparency Directive by using our “At a Glance” charts. If you need more comprehensive information and support, please visit our [Global Edge page](#) or contact us on global.edge@squirepb.com.

Global Board Issues Webinar Series – Money Money Money

There is increasing pressure on companies to be more transparent about how (and how much!) they remunerate their staff, especially as greater pay transparency is seen as a key driver in reducing the gender and ethnicity pay gap.

Join us for our second virtual panel discussion in our 2024 “Global Board Issues” series on 9 July 2024 when our speakers will explore key challenges and opportunities for global companies when it comes to pay equity and transparency, including:

- What do we mean by ‘pay transparency’ and ‘pay equity’?
- Why do these issues matter to the board and its ESG and sustainability strategy?
- The evolving legislative landscape in key jurisdictions around the world – recent/forthcoming changes to be aware of, including how to prepare for the EU Pay Transparency Directive
- Action points – key challenges when seeking to implement greater pay transparency/pay equity and how to address them
- Lessons learned – we share our experiences of advising on pay transparency and global pay equity audits

The main presentation will last 50 minutes, followed by a 10-minute online question and answer session.

This session will be of particular interest to in-house lawyers, C-suite executives, senior HR professionals and risk and compliance professionals.

To register, please click [here](#).

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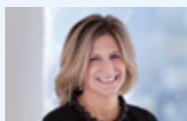
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