PAY TRANSPARENCY DIRECTIVE
LIFTING THE VEIL

Monica Kurnatowska and Rob Marsh of Baker McKenzie outline employers' obligations under the new Pay Transparency Directive (*2023/970/EU*) and its practical implications for the UK.

The EU's recently adopted Pay Transparency Directive (*2023/970/EU*) (the Directive) is intended to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (*see box "Background to the Directive"*).

For employers in the EU, the measures in the Directive are significant and touch on many aspects of the employment lifecycle. They include pre-employment pay transparency requirements and worker and representative rights to workforce pay information. The most significant and onerous obligation is likely to be the requirement to conduct detailed pay audits in certain circumstances, including an equal value assessment, and to co-operate with worker representatives to address pay gaps.

Significant advance planning will be required to address both the basic compliance steps required by the Directive and to mitigate the substantial risk of equal pay liability arising as a result of the joint pay assessment provisions. The European Commission (the Commission) has made it clear that it expects employers to start preparing before the Directive is transposed. While the Directive does not apply to Great Britain, there may be considerable indirect effect as multinational employers with operations in EU member states grapple with its implications and consider whether to adopt a harmonised approach across their international operations (*see box "Application in Northern Ireland"*).

There remain a number of questions that the drafting of the Directive leaves unanswered, although some of these may be addressed by national implementing legislation. It is clear that the Directive is about more than just transparency: it is likely to lead to a significant increase in worker and representative involvement in addressing pay equity, and potentially onerous requirements for employers to conduct regular equal pay audits, including an assessment of equal value, which is a concept that may be familiar to UK practitioners but less so for many of those in the EU.

This article addresses the key elements of the Directive and considers how it may directly or indirectly affect employers in Great Britain in light of the UK's withdrawal from the EU. It looks at:

- The key concepts underpinning the Directive.
- Pay reporting.

- Pay transparency.
- Pay assessments and equal value.
- Remedies and enforcement.
- The practical implications of the Directive, including for employers in Great Britain.

KEY CONCEPTS

Before grappling with some of the more complex and onerous requirements of the Directive, it is important to understand the core concepts and definitions that underpin it, which are outlined in Articles 2 and 3. Despite being foundational elements of the scope and application of the Directive, these concepts are not always clear. National implementing legislation will hopefully provide greater clarity, although this will bring an inherent risk of divergence between member states.

Workers

Article 2(2) explains that the Directive applies to all workers who have an employment contract or employment relationship as defined by law, collective agreements or practice in force in each member state, taking into account European Court of Justice (ECJ) case law. Article 2(3) confirms that the Directive also applies to job applicants for the purposes of the pre-employment transparency requirements.

This definition of a worker will vary in scope between member states and will be defined by the substance, rather than the description, of the employment relationship. Recital 18 confirms that the Directive should apply to:

- Part-time workers.
- Fixed-term contract workers.
- Those working under a contract of employment, or who are in an employment relationship, with a temporary work agency.
- Workers in management positions.

Recital 18 also explains that, provided they fulfil relevant criteria, the Directive will also apply to atypical workers such as platform workers, domestic staff, intermittent workers (including zero hours workers), trainees and apprentices. The Directive uses the terms "worker", "employment contract" and "employment relationship", which reads as though it is intended to apply only to an employment relationship in the traditional sense; that is, the concept of an "employee" as it is understood in the UK. However, it is possible that member states could interpret it more broadly to include workers (in the UK sense) and partners.

Pay

Under Article 3(1)(a), pay is defined in broad terms as ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, that a worker receives from their employer either directly or indirectly (including complementary or variable components of pay) in respect of their employment. Recital 21 provides further detail, confirming that complementary or variable pay should include, in addition to the ordinary basic or minimum wage or salary, any benefits that the worker receives directly or indirectly, whether in cash or in kind.

This definition echoes the definition found in Article 157 of the Treaty on the Functioning of the European Union (TFEU) but is arguably even broader. This means that the obligations on pay transparency and reporting will apply across the full range of compensation that employees and workers receive from their employers (*see "Pay transparency" below*). Importantly, this will include bonuses and other incentive payments.

The employer

The concept of an employer is one of the most important foundational concepts in the Directive and yet, arguably, the least clear. It is important because, broadly speaking, the obligations in the Directive fall on employers. However, there is no express definition of employer in the Directive and the recitals offer limited clues as to what the scope of the term should include. ECJ case law has typically focused on how the concept of an employee, rather than an employer, should be defined.

The definition of worker in the Directive points to it being determined by the existence of an employment contract or relationship as defined in each member state. This is an unsatisfactory approach. Given the importance of the definition, it should not be defined at an autonomous national level by implementing legislation. There is a risk that member states will introduce divergent

Background to the Directive

On 4 March 2021, the European Commission (the Commission) adopted a proposal for a Directive aimed at increasing the transparency of pay systems and enhancing the enforcement of the fundamental right to equal pay, which has been enshrined in EU law since 1957. The European Parliament and the Commission had identified a lack of pay transparency as one of the key obstacles to achieving equal pay, alongside inconsistency across the EU in terms of effective implementation and enforcement. The Pay Transparency Directive (*2023/970/EU*) (the Directive) is intended to address that transparency gap and create a minimum standard of equal pay enforcement and regulation across the EU.

After many months of negotiation, the European Parliament and the Council of the EU reached a political agreement on the Directive on 15 December 2022. The Directive was formally adopted by the European Parliament on 30 March 2023 and by the Council of the EU on 24 April 2023. It came into force on 7 June 2023, with a three-year implementation deadline for EU member states. This means that all member states must have implemented the Directive by 7 June 2026.

It remains to be seen how quickly member states will implement the Directive into national law. The recent experience of the Whistleblowing Directive (*2019/1937/EU*) suggests that there are likely to be delays in many member states (*see News brief "Whistleblowing Directive: a new framework of protection", www.practicallaw.com/w-023-7739 and feature article "Whistleblowing and remote working: out of sight not out of mind", www.practicallaw.com/w-029-6537*). The Commission deliberately applied a longer transposition period for the Directive than normal, with the stated aim of ensuring that employers will have put in place non-discriminatory pay structures to ensure that, at the time of transposition, there will be full application of the new rules.

definitions of employer so that different entities within a group of companies could qualify as the employer of the same worker. The definition of worker also does not expressly state that the employment contract or relationship is with the employer, but this must be implicit.

There are various definitions of employer found in different EU directives. For example, the Information and Consultation Directive (*2002/14/EC*) defines an employer as the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice. The Employer Sanctions Directive (*2009/52/EC*) defines an employer as any natural person or any legal entity, including temporary work agencies, for or under the direction and/or supervision of whom the employment is undertaken. The former definition is to be preferred as the latter is broad and non-specific.

It therefore remains to be seen precisely how the concept of an employer will operate in practice. In the vast majority of cases, it will be uncontroversial: workers will be employed under a contract of employment with a legal entity that is established in the same jurisdiction and the employer will be self-evident. In less obvious cases, it is likely to be more complicated; for example, where a worker works for a branch of a legal entity in another jurisdiction, is on an intra-group secondment or is an assigned agency worker. It is also unclear where employers, and their workers, have to be based to trigger the reporting thresholds and whether this is based on the number of workers in a particular jurisdiction or the number of workers in a particular legal entity. The position is also uncertain where there are multiple connected entities in one jurisdiction.

Category of workers

The meaning of a category of workers is relevant as it underpins several requirements of the Directive, including for gender pay gap reporting and, arguably more importantly, the joint pay assessment requirements (*see "Joint pay assessments" below*). Article 3(h) defines a category of workers as workers performing the same work or work of equal value grouped in a non-arbitrary manner based on non-discriminatory and objective gender-neutral criteria referred to in Article 4(4), by the workers' employer and, where applicable, in co-operation with the workers' representatives in accordance with national law or practice. This means that it is inextricably linked with the concept of equal value.

Equal value

The concept of work of equal value will be familiar to most UK practitioners but it is less familiar in some member states, despite being enshrined in Article 157 of the TFEU. Article 4(4), as well as the recitals, in particular recitals 20, 26, 28 and 30, provide some guidance on equal value. Recital 26 provides that, to facilitate the application of the concept of work of equal value, especially for micro enterprises and SMEs, the objective criteria to be used should include skills, effort, responsibility and working conditions; these factors are essential and sufficient for evaluating the tasks performed in an organisation regardless of the economic sector to which the organisation belongs. Article 4(4) adds that these criteria should be applied in an objective, gender-neutral manner, excluding any direct or indirect sex discrimination, and that soft skills should not be undervalued. In addition, member states must make sure that analytical tools or methodologies are made available to employers to support equal value assessments (*Article 4(2)*).

For member states that have already implemented equal value assessment methodologies, such as Spain which has a point factor system, these methodologies will need to be revisited and potentially revised in light of the Directive's requirements. In member states where no such methodology yet exists, member states will need to consider making training available to employers and drafting guidance on how to conduct an equal value assessment and whether to introduce a formal equal value methodology (*Recital 30*).

As has happened in the UK, a renewed focus on equal value could have significant consequences as it can lead to a direct comparison between roles that, on the face of it, have material differences and so do not count as "like" work. This can include roles that appear quite different on paper and that have never previously been considered comparable. In many instances, pay will have been set by different decision makers who have applied different criteria, resulting in divergent outcomes, and so sizeable equal pay liabilities can emerge. Employers may face potentially enormous costs, as those that are familiar with the ongoing public sector equal pay litigation in the UK can attest. The claims brought by female employees (including several hundred teaching assistants, cleaners and catering staff) against Birmingham City Council, for example, led to the council's recent announcement that it does not have the funds to settle up to £760 million in compensation and will have to cease providing all but essential statutory services (*www.birmingham.gov.uk/news/article/1381/statement_regarding_section_114_notice*).

GENDER PAY GAPS

Employers whose worker population is over the relevant reporting threshold will be required to report on various aspects of the gender pay gap set out at Article 9(1) (*see box "Gender pay gap reporting"*). This expressly includes complementary or variable elements of pay and also reporting on pay gaps by categories of workers. As with the right to pay information, which is also considered by reference to categories of worker, this means that an employer will need to have assessed upfront which workers are undertaking work of equal value in order

Application in Northern Ireland

Although it is not applicable to Great Britain, there is an argument that the Pay Transparency Directive (*2023/970/EU*) (the Directive) should be implemented in Northern Ireland. This is based on Article 2 of the Northern Ireland Protocol, which requires that Northern Ireland keep pace with developments in certain equalities laws in the EU. This could extend to the Directive given that it is, in principle, an enforcement of the existing Equal Pay Directive (*75/117/EEC*), which is included as one of the relevant Directives at Annex 1 to the Northern Ireland Protocol. There does not appear to be any definitive commitment on this matter, nor any public statements since the Equality Commission for Northern Ireland published a letter on the subject on 30 June 2021 (*www.niassembly.gov.uk/globalassets/committee-blocks/executive-office/2017---2022/redacted-20210630-equality-commission--response---european-commission-proposal-for-a-directive-on-pay-transparancy.pdf*).

to be able to comply with the reporting requirements.

Reporting thresholds

The reporting threshold in the Directive is 100 or more workers. Member states will be able to implement reporting requirements on a phased basis should they wish. Employers with at least 150 workers will have to make their first report in 2027. Employers with at least 250 workers will have to report annually thereafter and employers with between 150 and 249 workers will have to report once every three years. There is scope for member states to delay the first reporting requirements for employers with between 100 and 149 workers to 2031.

Member states can also impose more onerous requirements, including in respect of reporting deadlines and thresholds. Article 9(5) expressly provides that member states may impose lower reporting thresholds if they choose. This is already the case in some member states, for example in Ireland where the Irish gender pay reporting regulations will apply to employers with 50 or more employees from 2025. As with all EU Directives, the Directive imposes a consistent minimum standard but there will be divergence in application across member states (*see box "The UK gender pay gap regime"*).

The reporting thresholds pose the obvious question of where the headcount has to be located to trigger the reporting requirement. The Directive is unhelpfully vague and provides no geographical limitation. Logic suggests that it should be analysed by jurisdiction, but the Directive does not state this and the definition of employer is similarly vague (*see "The employer" above*). In practice, this potentially means that an employer could have one worker in a member state and 249 workers outside of that member state, or even outside of the EU, but still be required to report gender pay gap information in the relevant member state, subject to that worker satisfying the definition of worker as it applies locally.

There is also scope to construe the reporting thresholds narrowly, considering only the number of workers in each legal entity, so that a fragmented entity structure might avoid reporting obligations when looking at each legal entity separately. This contrasts, for example, with the European Works Councils Directive (*2009/38/EC*) where the relevant thresholds for setting up information and consultation frameworks refer to at least 1000 employees within the member states and at least one group undertaking with at least 150 employees in one member state and at least one other group undertaking with at least 150 employees in another member state.

Reporting process

Once the pay report has been prepared, the employer must provide it to:

- The local authority responsible for compiling and publishing pay reporting data.
- Their workers and workers' representatives.
- If requested, to the local labour inspectorate or equality body.

Employers have the option to publish the report on a website or otherwise make it publicly available but this is not mandatory. Given that it will be made public in some form by the local authority in any event, employers may want to publish the report in order to at least have some control over the narrative.

The requirement to report is not the end of the story. The employer's management will also be obliged to confirm the accuracy of the reported information following consultation with workers' representatives, who will need to have access to the methodologies applied. In addition, the employer will have to provide a substantiated response to any requests from workers, their representatives, or the relevant labour inspectorate or equality body, for clarification about the data provided in the report. This will include providing an explanation for any gender pay difference.

Remedying the gap

As a further potential sting in the tail, hidden at the final sentence of Article 9(10), where a difference is not justified by objective and gender-neutral factors, employers are obliged to remedy the situation within a reasonable period of time in close co-operation with the workers' representatives, the labour inspectorate and/or the equality body. In contrast to the joint pay assessment provision, there appears to be no 5% minimum threshold applicable to this provision (*see "Joint pay assessments" below*).

PAY TRANSPARENCY

The Directive introduces concrete pay transparency requirements on employers and rights to information for workers. Importantly, the default position is that there is no worker number threshold for these transparency and information obligations, so they apply regardless of employer size.

The transparency requirements apply both before and during employment (*Article 5, 6 and 7*). Prospective employers must give job applicants information about the initial pay or pay range for a particular position.

Gender pay gap reporting

Under Article 9(1) of the Pay Transparency Directive (*2023/970/EU*), employers will need to provide specific reporting information in relation to:

- The gender pay gap.
- The gender pay gap in complementary or variable components.
- The median gender pay gap.
- The median gender pay gap in complementary or variable components.
- The proportion of female and male workers receiving complementary or variable components.
- The proportion of female and male workers on each quartile pay band.
- The gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.

The information will need to be provided in a manner that ensures an informed and transparent negotiation on pay, such as in a published job vacancy notice or before interview. Employers will be prohibited from asking applicants about their pay history and must ensure that job adverts and job titles are gender neutral and that recruitment processes are led in a non-discriminatory manner. Interestingly, this right to information arguably does not, as drafted, extend to internal applicants as it is expressed to be incumbent on prospective employers only.

During employment, workers will have the right to request and receive, within two months, written information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work or work of equal value (*Article 7*). The request can be made directly or through workers' representatives or an equality body. Employers must inform workers annually of their right to the relevant information and how to exercise this. Employers will also be required to make easily available to workers information on the objective and gender-neutral criteria used to determine pay, pay levels and pay progression, although member states can opt to exempt employers from this if they have fewer than 50 workers (*Article 6*). Another notable point is that pay secrecy clauses in contracts are expressly prohibited.

These requirements will all apply from transposition (member states have until 7 June 2026 to do so, but national legislation may come into force in some jurisdictions before that date), so employers will need to have transparency measures in place by then and will, in principle, also need to have conducted equal value analyses in order to respond to any requests for information received.

UK pay transparency

The new EU regime on pay transparency will sit in stark contrast to the UK regime, making it ever more challenging for UK employers to resist calls for increasing transparency over pay. However, it is unlikely, at least under the current government, that the UK will see any legislative initiatives regarding pay transparency or rights to information in respect of pay. The statutory discrimination and equal pay questionnaire was abolished in 2014 and the furthest the government has gone in recent times is a voluntary pay transparency initiative that was introduced by the Minister for Women in March 2022 (*see News brief "The demise of the discrimination questionnaire: what next?", www.practicallaw.com/2-558-0385; www.gov.uk/government/news/government-launches-pay-transparency-pilot-to-break-down-barriers-for-women*).

The UK gender pay gap regime

The new EU gender pay gap regime under the Pay Transparency Directive (*2023/970/EU*) (the Directive) will be considerably different than the UK gender pay gap reporting regime (*see feature article "Gender pay gap reporting: reflections on a gap year", www.practicallaw.com/w-014-6427*). This is one potential area of indirect effect of the Directive for employers in Great Britain as workers, or their representatives, may well push for them to apply the Directive requirements as a minimum reporting standard for cross-group comparison.

Some of the notable differences between the two regimes are that:

- The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (*SI 2017/172*) (2017 Regulations) do not require employers to report by categories of worker, so no equal value assessment is required. The averaging approach under the 2017 Regulations means that employers typically explain any gap on the basis of demographics, such as the relative lack of women in senior leadership roles, whereas gaps identified under the Directive will have a greater focus on equal pay.
- In addition to a reporting obligation, the Directive requires employers to address any identified pay gap that cannot be justified objectively on gender-neutral grounds and to work with applicable workers' representatives in doing so.
- The Directive has lower headcount thresholds for reporting than the UK's 250 employee threshold.
- The 2017 Regulations do not require employers to report on benefits and variable pay, which are included in the Directive's broad definition of pay.
- Remedies and sanctions for breaching the 2017 Regulations are far more limited than those imposed by the Directive.

Currently, there does not seem to be any plans to strengthen the UK regime. In principle, the government should have reviewed the 2017 Regulations by March 2022, as it is five years since they were implemented, but that review process remains overdue.

JOINT PAY ASSESSMENTS

Where pay reporting reveals a gender pay gap of at least 5% in any category of workers that cannot be justified on the basis of objective and gender-neutral factors, and has not been remedied within six months of submission of the report, employers will be obliged to conduct a pay assessment. In principle, this will be similar to an equal pay audit. It will have to be conducted in co-operation with workers' representatives with the objective of identifying, remedying and preventing unjustified pay gaps.

This is likely to be the most onerous requirement imposed by the Directive. In addition to the requirement to carry out an assessment, there will be a number of practical challenges resulting from this requirement, for example:

- Conducting an audit is a burdensome and time-consuming obligation. It will require a detailed assessment of equal value, and a detailed analysis of the workforce and potential objective and gender-neutral factors that justify pay differences (referred to as material factors in the UK regime) in order to meet the requirements of Article 10(2). It is not always straightforward to identify the material factors that have an impact on pay in a large-scale cross-workforce exercise and the language of the Directive also implies that these

factors should be tested for indirect discrimination.

- Conducting an audit could leave employers exposed to material equal pay liabilities, which employers must remedy within a reasonable period of time and in close co-operation with workers' representatives and, potentially, also labour inspectorates or equality bodies (*Article 10(4)*).

- The requirement for audits to be conducted in co-operation with workers' representatives means that the audit process will be subject to significant scrutiny by employees, potentially leading to industrial relations challenges and wider employee relations issues.

- The underlying audit requirement places significant emphasis on conducting pay reporting accurately and, in particular, identifying (and likely reporting on) material factors that justify any identified differences in pay.

Another important issue is the Directive's assumption that employers will either have, or will introduce, job classification or job evaluation systems (*Article 10(4)*). While this is not an express requirement, compliance will be difficult unless the employer has a clear system for categorising individual roles. The final sentence of Article 10(4) states, in the context of measures arising from a joint pay assessment, that these measures should include an analysis of the existing gender-neutral job evaluation and classification systems or the establishment of those systems.

Many employers are understandably reluctant to do this but it is viewed by many equality bodies, including the Equality and Human Rights Commission, as being the panacea of equal pay. While employers often have some form of career grading structure, roles within the structure are not always of equal value. They will therefore need to consider whether their existing structure will meet the test of equal value and, if not, whether to make changes to it. Introducing a new grading structure is a time-consuming exercise and there will be limited time to make these changes.

REMEDIES AND ENFORCEMENT

This is a Directive with teeth. Where workers' equal pay rights have been breached, member states must ensure that workers are entitled to unlimited compensation in respect of all of the losses sustained (*Article 16(1)*). This must include full recovery of back pay and related bonuses or payments in kind (together with interest), as well as compensation for lost opportunities, non-material damage, any damage caused by other relevant factors (which may include intersectional discrimination) and interest on arrears.

Importantly, in equal pay litigation, where an employer has not fulfilled its transparency obligations under Articles 5, 6, 7, 9 and 10, the burden of proof will be on the employer to prove that there was no discrimination in relation to pay. Even if an employer has complied with its transparency obligations, all an individual has to demonstrate is a prima facie case of unequal pay (*Article 18*).

Limitation periods in litigation must be at least three years, and there is an equivalent to the UK's concept of concealment; that is, that limitation should only run from when an individual is aware or should reasonably to be aware of an infringement (*Article 21*). In the context of individual litigation, member states should impose a claimant-friendly costs regime (*Article 22*).

In addition to individual litigation, member states must establish specific penalties for infringements of the equal pay rule, including fines that guarantee a real deterrent effect (*Article 23*). The Directive does not establish a minimum level of fines but specifies that member states should take into account any aggravating or mitigating factors, including intersectional discrimination.

PRACTICAL IMPLICATIONS

In short, the Directive is about more than just transparency. It is likely to lead to a significant increase in worker and representative involvement in addressing pay equity and brings potentially onerous requirements to

Related information

This article is at practicallaw.com/w-040-9054

Other links from uk.practicallaw.com/

Topics

Discrimination: employment	topic/4-382-8830
Equal pay	topic/0-382-8832
EU employment and social affairs	topic/8-527-7065
Pay and benefits	topic/0-200-0630

Practice notes

Brexit: implications for employment law in the UK	w-015-6393
Brexit: withdrawal agreement text	w-013-3922
Diversity and inclusion (D&I): UK reporting requirements for companies	w-032-9417
Equal pay: equal value claims and procedure	0-207-5121
Equal pay: overview	2-381-2854
Gender pay gap reporting obligations	0-624-3865
Pay ratio reporting	w-018-9626
Sex discrimination	2-502-9610

Previous articles

Positive action versus discrimination: treading the tightrope (2023)	w-039-2346
Implied terms: what's next in the employment relationship? (2022)	w-037-2672
Managing ESG compliance: challenges for UK listed companies (2020)	w-025-9225
Gender pay gap reporting: reflections on a gap year (2018)	w-014-6427
Gender pay gap reporting: planning for a gap year (2017)	9-639-0989
Harmonising employment practices: the challenges for multinational employers (2015)	6-616-3785
Compulsory equal pay audits: bridging the gender pay gap (2014)	0-579-8026

For subscription enquiries to Practical Law web materials please call +44 0345 600 9355

conduct regular equal pay audits, including an assessment of equal value.

Despite the three-year period for member states to transpose the Directive into national legislation, employers should start considering now their compliance strategy for each member state in which they operate. This will need to be a cross-functional effort, involving at the very least members of the HR, pay and benefits, and legal functions.

Bearing in mind that the key driver behind the Directive is to make it easier to bring equal pay claims, employers should scrutinise their existing pay practices and take appropriate steps to address any issues identified as soon as possible to mitigate the risk of claims. While these measures do not necessarily need to be drastic, employers should take sensible steps to better position themselves for the challenges to come. Of particular importance will be ensuring that workers are correctly and appropriately categorised from the outset and that anomalies are resolved. This is likely to involve a review of any existing career structure and the implications of reporting in line with this structure. Some structures may categorise roles as equal that the employer does not consider to be equal in practice. If that is the case, the employer may wish to consider refining or even changing the structure.

Even where any pay differentials are justified on an objective and gender-neutral basis, increased openness around workforce pay may lead to employee relations issues where pay differences are perceived to be unfair, even if they are not discriminatory. Employers should prepare for increased employee and stakeholder pressure to address any such perceived unfairness.

Unions and works councils are likely to use these new rights and obligations as an additional lever in pay negotiations and collective bargaining. Increased rights to information and increased obligations on employers are likely to lead to increased employee and employee representative involvement and, in particular, a rise in individual and collective equal pay claims. Employers will need to consider carefully how they document and apply material factors when making pay decisions, and the implications of those decisions in both litigation and future reporting.

Multinational employers that have a presence in Great Britain should also be considering which, if any, of the Directive's requirements they will look to implement in Great Britain (*see box "Application in Northern Ireland"*). This is likely to depend on each employer's degree of pan-European harmonisation and integration, and the internal employee and industrial relations climate.

However, British employers should prepare for expectations to be raised and for increasing calls to match the requirements of the Directive. Increased transparency and rights to information will also give British employees access to the pay information of their colleagues in the EU. There is arguably scope for British-based employees to bring equal pay claims on the basis of a cross-jurisdiction comparison with their colleagues in member states, particularly since the government committed in August 2023 to reinstate the single-source test following its repeal under the Retained EU Law (Revocation and Reform) Act 2023 (*see News brief "Retained EU Law (Revocation and Reform) Act 2023: legal upheaval", www.practicallaw.com/w-040-1883*).

For employers that operate in Great Britain only and are not in scope of the Directive, it is still important to be aware of its requirements as they are likely to be viewed as a gold standard by employees, in much the same way as the General Data Protection Regulation (*2016/679/EU*) and the Whistleblowing Directive (*2019/1937/EU*). Therefore, although the Directive does not apply directly in Great Britain, British employers cannot simply ignore it.

Monica Kurnatowska is a Partner, and Rob Marsh is a Senior Associate, at Baker McKenzie.

