COMPLIANCE CHECKLIST

Is your Hiring AI Legal?

A short checklist for HR directors on UK GDPR Articles 22A to 22D, the ICO's 2026 findings and the EU AI Act deadline.

Your AI may already be making the hiring decision

If an algorithm scores, ranks or rejects candidates before a person looks at them, UK law is likely to treat that as an automated decision. Most HR teams don't realise it.

In March 2026 the ICO published findings drawn from more than 30 employers. Most said their tools only "supported" recruiters. The ICO found that many were in fact making decisions with no meaningful human involvement, without the safeguards the law requires. It also wrote to 16 organisations about their use of automation in recruitment.

The rules changed in 2026 as well. The UK relaxed its restrictions on automated decisions, but replaced them with safeguards every employer must provide. In the EU, the AI Act classes recruitment AI as high-risk from 2 December 2027.

The opportunity is real. Used well, AI can shortlist faster and more consistently than manual CV screening. The employers who benefit will be the ones who can show their AI is fair, explainable and overseen. This checklist shows you how.

The three rules every HR director needs to know

Rule	Status	What it means for hiring
UK GDPR Articles 22A to 22D, replacing Article 22	In force since 5 February 2026 under the Data (Use and Access) Act 2025	Solely automated decisions with a significant effect, such as rejecting a candidate, are now permitted under any lawful basis, including legitimate interests, but only with safeguards. You must tell candidates, let them make representations, offer human intervention and let them contest the decision. Stricter limits apply where special category data is involved.
ICO report on automation in recruitment	Published 31 March 2026, alongside draft ADM guidance	Evidence from more than 30 employers, gathered through voluntary engagement. Many tools described as "decision support" were in fact deciding. Human review must be active, informed and able to change the outcome. Impact assessments were often too thin. 16 organisations received letters, and recruitment remains an ICO priority.
EU AI Act, as amended by the Digital Omnibus	Recruitment AI is high-risk (Annex III) from 2 December 2027, moved from 2 August 2026	Can apply to UK employers whose AI is used to hire people in the EU. Deployers must follow the provider's instructions for use, assign trained human oversight, monitor the system, keep logs and inform workers. AI literacy measures already apply.

The bottom line: UK law now permits automated hiring, but only with safeguards you can evidence. The EU deadline of 2 December 2027 is a reason to start now, not a reason to wait.

The checklist

Tick each item only when you can show the evidence.

1 Know where automation decides

- [ ] Map every point where a tool scores, ranks, filters or rejects candidates
- [ ] For each, decide honestly: is a person meaningfully involved, or is it solely automated?
- [ ] Record whether the decision has a significant effect (shortlisting and rejection usually do)

2 Make human review real

- [ ] Reviewers can see the reasons behind a score, not just the score
- [ ] Reviewers have the authority and the time to overturn the tool
- [ ] Reviewers are trained on the tool's logic, limits and risks
- [ ] You track how often reviewers disagree with the tool (near zero is a warning sign)

3 Get the lawful basis and DPIA right

- [ ] Lawful basis documented for each automated step
- [ ] Special category data (health, ethnicity, disability) kept out of automated decisions unless a legal exception applies
- [ ] A data protection impact assessment completed and reviewed in the last 12 months

4 Tell candidates, and let them push back

- [ ] Job adverts and privacy notices say when and how automation is used
- [ ] Candidates can make representations, request human review and contest a decision
- [ ] Reasonable adjustments offered to anyone who can't use automated assessments

5 Test for fairness, continuously

- [ ] Outcomes monitored across groups on a schedule, not just at launch
- [ ] Accuracy and performance figures known and shared with decision makers

6 Hold vendors to account

- [ ] Vendor has explained how the tool works, how it is tested for bias and how it should be used
- [ ] Contract covers audit rights, decision records and support for candidate challenges

7 Prepare for the EU AI Act, if you hire in the EU

- [ ] Measures in place to support AI literacy among staff who use AI, such as training
- [ ] No emotion recognition used on candidates or staff
- [ ] A plan for deployer duties by 2 December 2027: oversight, logs, monitoring and worker notices

Five tips for this quarter

01 **Stop calling it "decision support" until you've checked.**
The ICO's main finding was that this label often hides solely automated decisions.

02 **Add one sentence to every job advert.**
Say that automation is used, what it does, and how to ask for human review.

03 **Watch your reviewers, not just your tool.**
If people accept nearly every AI score, the ICO is likely to see a rubber stamp.

04 **Send your vendor five questions.**
How does it work? How is bias tested? What does it record? How should it be used? How can a decision be challenged?

05 **Put 2 December 2027 in the board calendar now.**
EU deployer duties take time to build, and AI literacy measures already apply.

Ready to put these safeguards in place?

Via delivers your top five interview-ready candidates in 24 hours, built by a team with 50+ years of recruitment experience and a mission to make the job market fairer. Every shortlist is reviewed by a recruiter, every match decision is recorded with its reasoning, and candidates can ask for a human review.

Join the webinar
"Is your Hiring AI Legal?": a 45-minute live session for HR directors, with Q&A.

Book a demo
See how Via builds a shortlist in a 20-minute walkthrough.

Talk to Via about safeguards built in →

Sources

1. ICO, Recruitment rewired (March 2026)
2. The Data (Use and Access) Act 2025 commencement regulations, SI 2026/82
3. Regulation (EU) 2026/1744 (Digital Omnibus on AI), Official Journal of the EU, 24 July 2026
4. DLA Piper, UK: ICO report on automated decision-making in recruitment
5. Brodies, What the ICO's latest report means for employers
6. Lewis Silkin, The Digital Omnibus on AI enters into force

This briefing is general information, not legal advice. Check your own position with a qualified adviser.