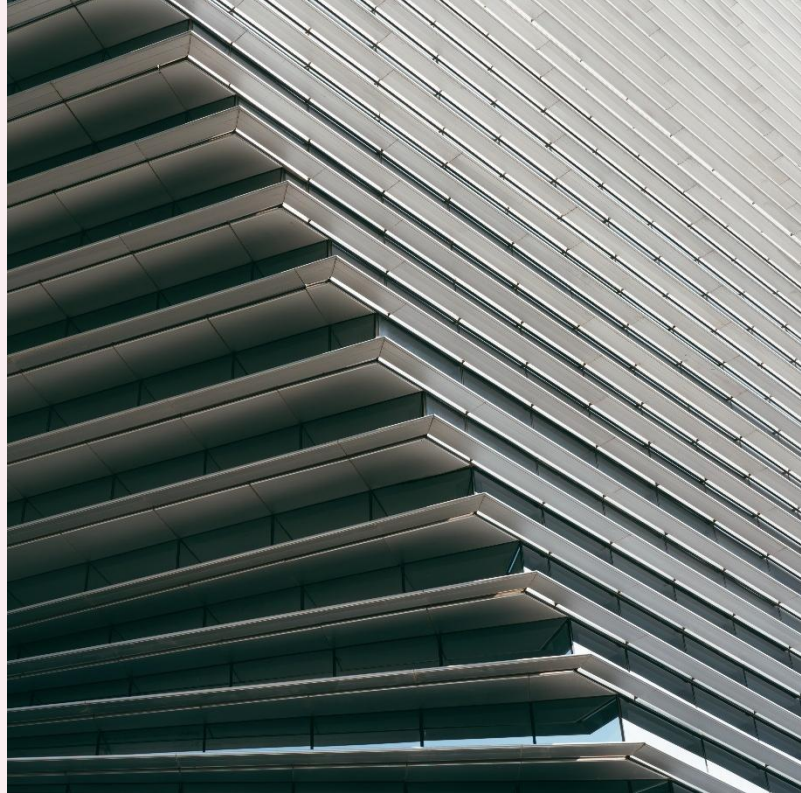


Restrictions on non-disclosure agreements: government consultation provides some clarity

April 2026



Amendments being introduced by the Employment Rights Act 2025 (ERA '25) will restrict the use of non-disclosure provisions (NDAs) that prevent a worker from disclosing relevant harassment or discrimination, unless the agreement meets specific conditions for an “excepted agreement” that will be set out in regulations. The Government has commenced a [Consultation](#) that explores, amongst other things, the proposed criteria of an excepted agreement and who disclosures may be made to even where an excepted agreement is in place.

Key issues

- 1 Excepted Agreements (Permitted NDAs)
- 2 Permitted Disclosures
- 3 Time Limits
- 4 Application of regime to others
- 5 Practical Implications for Employers

Amendments being made to the Employment Rights Act 1996 ('ERA '96 changes') (by way of the ERA '25), will render void any provision in an agreement between an employer and a worker that prevents the worker from making disclosures about:

- Relevant harassment or discrimination (as defined in the Equality Act 2010, including direct and indirect discrimination, disability discrimination, gender reassignment discrimination, pregnancy and maternity discrimination, and harassment, including sexual harassment), or
- The employer’s response to such harassment or discrimination, or to the making of an allegation.

This will apply to all forms of confidentiality clauses, including non-disclosure, non-derogatory statement, and non-disparagement clauses, entered into after the commencement of the ERA '96 changes. The reforms will not apply retrospectively.

The legislative changes do not affect NDAs that protect other forms of confidential information, such as trade secrets or commercially sensitive information.

Excepted Agreements (Permitted NDAs)

NDAs may still be valid in limited circumstances, known as "excepted agreements", provided they meet strict conditions to be set out in regulations. The consultation proposes the following key requirements for an excepted agreement:

Independent Advice: The worker must receive independent written advice from a qualified adviser (such as a solicitor, certified adviser, or ACAS conciliator) on the terms, effect, and legal limitations of the NDA.

Employers will not be required to pay for this specific independent advice for the excepted agreement to be valid. In practice, though, many employers already pay towards the employee's independent adviser's fees in relation to a settlement agreement. Whether the employer's contribution budget will increase to reflect this additional advice will become a commercial decision.

COT3 agreements: Under the proposals, COT3 agreements that contain NDAs or confidentiality clauses relating to relevant harassment or discrimination will be subject to the same requirements as private settlement agreements for an excepted agreement. The independent advice requirement will be adapted for COT3 agreements.

Informed Consent: The worker must express their preference in writing to enter into the agreement, after receiving independent advice. It appears that including such a preference as boilerplate language in the draft settlement agreement given to the individual may not satisfy this requirement. If not, that would impose an additional administrative burden on parties seeking to agree a settlement agreement.

Employers will not be precluded from suggesting an excepted agreement may be used.

Cooling Off Period: The excepted agreement must include a right for the worker to withdraw from the NDA without penalty within 14 calendar days of signing. The consultation is seeking views on whether withdrawal within the 'cooling off period' would only be in relation to the confidentiality obligations or would amount to a withdrawal from the entire settlement agreement within which they are contained. If the former approach is adopted, careful drafting will be required. Whilst employers may also wish to adjust the financial/wider compensation package as a consequence (a premium having been added for the confidentiality) this would presumably amount to a 'detriment'?

The Government does not propose to allow workers to waive the cooling off period; albeit it acknowledges that this could be problematic and seeks further views on: (i) whether workers be allowed flexibility to waive the cooling off period; (ii) a mandatory statutory review period *before* an excepted agreement is entered into; (iii) whether both a pre-signing review period *and* a post-signing cooling off period should be conditions of an excepted agreement?

It is unclear how a cooling off period could work in the context of an 'on the steps' of the Tribunal settlement or in the cases of an executive exit where a formal exit announcement has been made.

Written and Accessible: The agreement must be provided in writing and in an accessible format for all parties. The Government is considering whether the plain language requirement should be set out in the regulations or simply addressed in guidance. Enshrining it in regulations has the potential for significant satellite litigation.

Incident-Specific: Excepted agreements can only relate to incidents of harassment or discrimination that have already occurred; “pre-dispute” NDAs are not permitted. Confidentiality clauses in employment contracts would accordingly not be effective to prevent disclosures of harassment or discrimination.

Permitted Disclosures: Even where an excepted agreement is in place, it is proposed that workers must be able to make disclosures to certain individuals and bodies, including:

- Law enforcement authorities (eg HSE, FCA, ICO, SFO);
- Qualified lawyers;
- Regulated professionals (e.g., tax advisers, doctors, social workers);
- Victim support services;
- Regulatory bodies (e.g. SRA, EHRC and presumably FWA?);
- An individual or an organisation that provides services for the purpose of advising individuals on their employment rights, conciliation, arbitration and mediation as it relates to settlements (e.g. ACAS);
- Trade union representatives;
- Individuals authorised to receive information on behalf of any of the above;
- Close family members (as defined in the regulations).

It is unclear whether an employer will be permitted to require the worker to secure a confidentiality undertaking from any additional groups included in the Permitted Disclosure Lists; setting aside the practicalities of an employer being able to police this.

The government is considering adding other groups or individuals to the list; for example, prospective employers, friends and wider family. It is acknowledged that the definition of 'friend' is potentially ambiguous; would a work colleague or social media contact qualify for example? Accordingly, the Government is not minded to include 'friend' in the list. Previously it was suggested that spiritual counsellors, community elders, ombudsmen, or personal supporters might feature in the list of Permitted Disclosures; however, they are not specifically mentioned in the consultation.

Time Limits: The consultation seeks views on whether excepted agreements should be time-limited (e.g., a maximum of three years), or if the worker should have the ability to choose a time limit or opt-out.

Application of regime to others: the Government is considering whether the scope of the legislation should be extended in the future to cover agency workers, secondees, work experience placements, self-employed individuals, and others not currently within the statutory definition of “worker”.

Practical implications for employers

Operational Complexity: Employers are likely to face increased administrative burdens to comply with the new requirements; for example,

Implementation Timeline

- Consultation 15/04/2026 to 08/07/2026.
- No indicative timeframe has been given for the government response ('in due course') or for publication of the regulations. However, the [Employment Rights Act: timeline](#) was updated shortly after the Consultation was published adding the NDA reforms to the employment law reforms coming into effect in 2027.
- The new NDA restrictions will not apply retrospectively; only settlement agreements/NDAs made after the legislation comes into force will be affected. Confidentiality provisions in pre-existing employment contracts and NDA's will not be rendered void by the new regime.

boilerplate language in a settlement agreement indicating the worker's informed consent will not be permissible under the current proposals; instead separate written communications will have to be dealt with.

Settlement Uncertainty: The mandatory cooling off period could delay the finality of settlements, especially in time-sensitive situations such as imminent tribunal hearings. There is also a risk that workers could withdraw from agreements after settlements have been reached, creating uncertainty and potential disruption to business operations.

Confidentiality Limitations: The expanded list of permitted disclosures may reduce the effectiveness of NDAs in protecting business reputation and sensitive information, as disclosures to a wide range of individuals and bodies would potentially be allowed.

Financial Implications: While employers are not required to pay for independent advice, in practice workers will look to have the potentially increased costs of their legal advice covered by the employer under a settlement agreement.

Risk of Litigation: depending on the final approach ambiguities around plain language requirements, time limits, and the definition of "close family" or other permitted recipients could lead to disputes over enforceability and increased litigation risk.

Impact on Willingness to Settle: If employers perceive that NDAs offer limited confidentiality, they may be less willing to enter into settlements or may offer lower settlement amounts, potentially reducing the scope for amicable dispute resolution.

Useful Links

[Government Press Release](#)

[Consultation on regulations to prevent the misuse of NDAs in cases of workplace harassment or discrimination](#)

[Employment Rights Act: timeline](#)

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