Employment Rights Act 2025: Consultation launched on non-disclosure agreement prohibitions

Under the Employment Rights Act 2025, employers will be prohibited from using non-disclosure agreements (NDAs) to prevent disclosure of information relating to harassment or discrimination. The Government has now launched its consultation on the substance of these rights.

The consultation, which is due to close on 8 July 2026, was published along with a press release confirming the Government's intention to bring the changes to NDA regulation into effect in 2027.

The prohibitions under the Employment Rights Act 2025 will apply to NDAs that seek to prevent individuals from speaking about "relevant harassment or discrimination" by their employer or fellow workers, including allegations. This also includes the employer's response to the allegation or information. For more information on the substance of these rights, please see our previous coverage.

Definitions

The consultation confirms the following definitions applying to the paper (and as a result, the intended legislative changes):

- NDAs are "*contractual agreements or clauses within contractual agreements, between two or more parties which seek to keep certain information confidential*". Examples of likely locations of NDAs are said to be settlement agreements, employment contracts or business service agreements.

- "Excepted agreement" means an "*agreement between a worker and their employer that will not be void*" if it meets certain conditions. In practice, this means an NDA that can be validly entered into as an exception from the general prohibition. The definition suggests that an "excepted agreement" could not be made as part of a business service contract, as it is required to be specifically between the worker and their employer.

- "Relevant harassment and discrimination" means an instance, or alleged instance, of harassment or discrimination under the Equality Act 2010 where:
    - It was carried out, or is alleged to have been carried out, by the employer or another worker of the employer (noting that the victim of the treatment does not have to be the worker signing the NDA). For instance, this could include harassment that a worker witnesses from their employer towards a customer; **or**

    - The victim (or alleged victim) is the worker that

enters into the NDA or their fellow worker of the same employer (noting that the perpetrator does not have to be a worker of that same employer). For instance, this could include harassment that the worker suffers at the hands of a customer.

Harassment or discrimination will not be "relevant" in situations where a worker sees a client harass another client, as neither the perpetrator nor the victim was the employer, the worker or a fellow worker.

Proposals subject to consultation

The consultation covers a number of proposals affecting three key areas:

- The conditions that must be satisfied in order to enter into an excepted agreement;

- Details of what might qualify as a "permitted disclosure", meaning a disclosure that can always be made even where parties have entered into a valid excepted agreement; and

- The potential for the relevant prohibitions to be expanded in future to cover NDAs involving individuals other than employees or workers.

Excepted Agreements

The qualifying conditions to enter into an excepted agreement, essentially meaning a valid and enforceable NDA, will be of crucial importance to both employers and employees. If an NDA does not qualify as an excepted agreement, it will not prevent the employee or employer from speaking to anyone about the relevant harassment or discrimination.

No detail on such agreements has yet been provided in the Employment Rights Act 2025, and the consultation therefore seeks views on the broad range of options that the Government is considering.

These can be summarised as follows:

Method of Entering into an Excepted Agreement

- **Requirement to receive independent advice:**
  - This option would require workers to obtain independent advice in writing on the terms and

effect, and legal limitations, of the proposed NDA from an independent adviser. The advice would also need to cover the disclosures that can still be made (i.e. the scope of “permitted disclosures”).

- This would be similar to the requirement under Section 203 of the Employment Rights Act 1996 for workers to receive independent advice on the terms and effect of a settlement agreement. However, it would be extended to also cover COT3 agreements facilitated by ACAS, with ACAS (as a body) also proposed to qualify as an advisor for these purposes.
- Employers will not be required to pay for the relevant advice, although many would contribute as they do currently for qualifying advice as part of a settlement.

- An open invitation has been put forward for suggestions of any other topics that the advice would be required to cover.

- **Worker’s expression of written preference:**
  - This option would require the worker, following the receipt of independent advice (see above), to express their preference in writing to enter into an NDA.

  - The consultation considers whether employers should be permitted to suggest confidentiality, and notes the disadvantages should they not be allowed to do so; in particular, the Government notes the risk that employees may not be informed

of all available options, as well as the fact that the initial mention of an NDA by the employer would later prevent the employee from validly entering into an NDA (even if this were their genuine wish). The proposals conclude that the risks of pressure or coercion in permitting employers to suggest NDAs are likely to be able to be mitigated through other conditions.

- **Cooling-off period:**
  - This option would allow the worker a 14-day period to withdraw from any excepted agreement without penalty, to allow them ample time to consider the implications and reduce any pressure placed by the employer to sign the NDA.
  - The Government acknowledges that in effect, this would likely need to apply to the whole agreement in order to avoid uncertainty about whether other terms (particularly financial payments) remain active; however, views are sought on whether alternatives could be workable.
  - Views are also sought on whether the worker should be able to waive this period, particularly in light of the fact that making it mandatory would make it more difficult to settle claims in tight timeframes (e.g. during or just before Employment Tribunal hearings) and introduce uncertainty as to how these types of processes can be revived if the agreement is cancelled. An inability to waive the period could also lead to confusion around relevant time limits to pursue a claim, and

consequently lead to additional disputes.

- In addition, the Government proposes the alternative options of a shorter cooling off period, a statutory review period before signing an NDA, or a combination of the two.

- **Written copy of agreement:**
  - This option would require the employer to provide the worker with a written copy of the agreement that is accessible to them (e.g. printed in large font if required). Whilst most employers will already do so, and solicitors must not prevent a written copy being provided (under their regulatory obligations), this requirement would be intended to ensure that the worker understands their rights and obligations.
  - The consultation proposes an additional, more onerous option, of requiring the use of standard language for any excepted agreement or a requirement that it is in standard, plain language. This may cause issues where technical language is required, and could lead to future disputes over whether an NDA is valid based on what is considered ‘plain English’. The Government suggests that these types of matters may therefore be better as part of guidance rather than regulations.

Contents of an Excepted Agreement

- **Backwards-looking only:** This requirement would mean that excepted agreements can only cover incidents (or allegations about incidents) that have already taken place, and cannot prevent workers from speaking out about harassment or discrimination that might occur in the future. This would stop forwards-looking NDAs from being able to be included in employment contracts (or any other agreements) to cover incidents that could take place in future; such provisions would not be 'excepted' and therefore would be unenforceable.

- **Time-limited:** This requirement would mean that the parties must agree a time limit for the NDA, with the aim of discouraging "*long-term secrecy*" and providing a choice for workers as to how long they want a matter to remain confidential. This may lead to lower settlement offers if the employer values confidentiality highly. Another option proposed would go further, setting a maximum time limit in regulations (e.g. no longer than 3 years), however the Government acknowledges that this would be a blunt approach when workers might prefer permanent confidentiality.

Permitted disclosures

The consultation also seeks views on the categories of disclosure and recipients which should always be allowed, even where the parties have entered into a valid NDA as part of an excepted agreement. In practice, these are categories of person that the Government considers that workers should always be able to speak to as a matter of principle, and an employer should not be able to prevent this.

The permitted categories suggested in the consultation broadly mirror those applying to the current version of the Victims and Prisoners Act 2024 (see our coverage here) (**VPA 2024**), but are more tailored towards the employment rather than a criminal context. They include essential functions like law enforcement and regulatory bodies, legal or tax advisers, victim support services, advisory services, trade union representatives (in some circumstances) and close family members.

Most notably, like the current version of the VPA 2024, the permitted disclosure must be made for the purpose of seeking support from the relevant function; for instance, disclosures to a regulatory body must be for the purpose of disclosing or co-operating as part of an investigation or advisory service about the relevant harassment or discrimination. Unlike the present VPA 2024, there is no carve-out suggested in the consultation for disclosures made purely for the purpose of bringing information into the public domain; it is therefore possible that these would remain "permitted" disclosures.

We note that the Government has separately proposed to remove the list of categories and purposes of permitted disclosures in the VPA 2024 altogether, meaning that disclosures about criminal activity may always be made to anyone, for any purpose. The consultation does not address whether this

approach could also ever be planned for relevant discrimination and harassment, although it would seem perhaps less likely given that this would invalidate the concept of an "excepted agreement". For more information on the proposed changes to the VPA 2024, please see our briefing here.

As a further option, the consultation also suggests that the list of potential recipients of permitted disclosures could be even broader, including prospective employers or friends / wider family. However, the Government notes that these recipients would not be bound by any sort of confidentiality restrictions, which may prevent employers from being willing to enter into excepted agreements in the first place (even where requested by the employee). A more reasonable alternative may be setting out specific, negotiated categories, such as a named friend.

Application to other individuals

The current prohibition on NDAs due to take effect under the Employment Rights Act 2025 applies to employees and "limb (b)" workers under Section 230(3) Employment Rights Act 1996.

A further future option considered in the consultation is the question of expanding protection to other individuals whom the Government considers may be "*vulnerable to the misuse of NDAs in cases of harassment and discrimination*". Potential options suggested include:

- Individuals working for someone other than their employer, such as agency workers or secondment workers;

- Those on work experience placements;
- Nurses and midwives in training; and
- NHS workers (where operating as self-employed contractors).

The consultation also invites suggestions for any other type of self-employed workers who should benefit, such as those in the music industry.

Key takeaways

This long-awaited consultation provides helpful reassurance to employers and employees that the provisions of the Employment Rights Act 2025 will not amount to a 'ban' on NDAs. It offers several practical and workable suggestions for determining when an NDA can properly be entered into and enforced, many of which would not require employers to go much further than they do already (particularly when it comes to settlement agreements and the provision of legal advice).

Any restrictions on the contents and scope of a valid NDA are likely to be met with more resistance, particularly the 'blunt' tools of using prescribed language or a statutory time limit (as the Government has acknowledged). Similarly, any suggestion of expanding the categories of disclosures which will always be permitted is likely to be unpopular, particularly where it includes third parties who are not bound

by regulatory functions or other confidentiality obligations.

Notably, the consultation pays little attention to how the various proposals would work in the context of business services agreements (despite these being a common place for NDAs to arise, as noted in their definitions). This is particularly notable when it comes to making a valid excepted agreement, which is defined as an agreement between a worker and their employer (implying that NDAs in business services agreements will never be enforceable). Equally, if the proposal to make forwards-looking NDAs unenforceable is taken forward, this would render pointless any upfront restrictions in business contracts (and even perhaps employment contracts).

What remains clear throughout the consultation is that the Government acknowledges the importance of NDAs to employees as well as to their employers, and that there is a clear intention for them to be valid and enforceable where they are truly desired by both parties. Responses to the consultation are likely to shape any implementing regulations and offer certainty as to how this can be achieved.

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Withdrawing job offers: why “subject to” does not mean risk-free

In *Kankanalapalli v Loesche Energy Systems Ltd*, the Employment Appeal Tribunal (EAT) confirmed that a binding contract may be formed before employment starts. Standard conditions such as references or right to work checks may not prevent that. Where no notice terms are agreed, employers may still be required to give (and pay) reasonable notice to terminate.

What happened in this case?

The Claimant was offered a project manager role on 23 September 2022, with a proposed start date of 1 November 2022. As is standard practice, the offer was stated to be subject to satisfactory references, a right to work check, and a six-month probation period. No notice provisions were set out in the offer.

On 26 September 2022, the employer confirmed additional terms, including a £3,000 relocation contribution repayable if the Claimant left within 12 months, and suggested that he secure a 12-month tenancy. The Claimant accepted the offer the same day and indicated that he would sign and return the relevant documents shortly. The next day the employer replied that it looked forward to him joining them. The Claimant began onboarding, providing personal details and referee information. On 6 October 2022, the employer requested right to work documents, which were provided that day.

On 7 October 2022, the employer postponed the start date to 3 January 2023 due to a delay in a client contract. The Claimant queried how he would be paid in the meantime, having already made travel arrangements. Then on 11 October 2022, the employer withdrew the job offer due to delays in the project. It proposed a new conditional offer dependent on a "notice to proceed".

The Claimant brought a breach of contract claim. The Employment Tribunal found that the offer had been accepted by the Claimant's email of 26 September 2022. However, it held that the conditions (namely the satisfactory references and right to work check) had not been fulfilled. This meant that the offer was conditional at the point it was withdrawn, meaning no binding contract was in place. Alternatively, if a contract *was* in place, there was an implied term that as the Claimant had less than one month's service, the employer would not have been required to give him any notice. This was on the basis of the standard terms and conditions that the employer said it would have given to the Claimant.

The claim was dismissed. The Claimant appealed to the EAT.

What was decided?

Were the "subject to" terms conditions precedent or conditions subsequent?

The conditions in question were the right to work checks, the employment references, and a six-month probation period.

The EAT found that the Tribunal had taken too narrow an approach in treating the conditions as "conditions precedent" i.e. conditions that prevent a binding contract from forming until they are fulfilled. Instead, the conditions relating to references, right to work and probation were properly characterised as "conditions subsequent" i.e. a binding contract had formed but could be terminated if the conditions were not met.

In reaching that conclusion, the EAT emphasised that the key terms of the role had been agreed and that both parties had begun taking steps towards the start of employment, including arrangements for his security pass. Further, the referee form stated that *"I understand that my employment may be terminated without…satisfactory references"*, rather than providing that there was no contract until these had been supplied. It also placed weight on the inclusion of a probationary period, which could only operate once employment had begun.

Taken together, this pointed towards a binding contract already having been formed, with the conditions operating as potential grounds for termination rather than barriers to formation.

Separately, the EAT noted that if the conditions *had* been conditions precedent, this did not mean there was an unrestricted right to withdraw the offer. Instead, the correct approach would have been for the Tribunal to have considered whether the employer was under an obligation not to withdraw before the date on which the conditions should have been fulfilled.

Was a notice term implied?

The EAT held that, in the absence of an express notice provision, a term of reasonable notice should be implied, and that this could exceed the statutory minimum period under the Employment Rights Act 1996.

The employer had referred to its standard conditions which offered one week's notice in the probationary period, but no notice if the employee has less than one month's service. However, the EAT said internal practices, and other employees' contracts, did not amount to a binding custom and practice capable of supplying a contractual term.

What was reasonable notice?

The EAT said that it is not the case that notice is presumed to start from zero and that there must be a reason to increase it. Section 86 of the Employment Rights Act 1996 (which sets out statutory notice requirements) only contains minimum thresholds – this should not be taken as meaning that they apply in the absence of any other provisions. What is "reasonable notice" may exceed those minimums.

On the facts, the EAT concluded that three months' notice was reasonable. This reflected the seniority of the role, the length and nature of the recruitment process, and the fact that the Claimant was to relocate. The employer's suggestion that the Claimant commit to a 12-month tenancy was also significant. The EAT rejected the employer's argument that this should have been reduced during the probation period – this had never been suggested to the Claimant.

In those circumstances, withdrawing the offer without notice

amounted to a breach of the implied term to give three months' notice.

Other claims

The EAT rejected the Claimant's claims for holiday pay and the relocation payment. Employment had not commenced, so no entitlement to holiday pay arose. The relocation payment was conditional on starting employment and was, therefore, not payable.

The EAT substituted judgment in favour of the Claimant for three months' notice pay.

What does this mean for employers?

This decision is a useful reminder that "subject to" wording is not necessarily enough to prevent a contract of employment from arising. Where an offer sets out the key terms and both parties proceed on the basis that employment will begin, a Tribunal may find that a binding contract is already in place.

What are the key practical takeaways for employers?

- **Be clear about the impact of conditions:** state clearly whether any conditions prevent a contract forming or apply after formation and set deadlines for satisfying them.

- **Include notice provisions in offer letters:** ensure offer letters specify notice rights that apply once a contract has formed, including any reduced notice that applies until the end of any probationary period.

- **Manage the process carefully:** onboarding steps and communications can indicate that a contract is already in place so be careful with the language used. HR should check any communications to be sent from managers.

- **Avoid relying on informal practice:** internal norms or other employees' contracts will not usually be enough to imply terms.

Kankanalapalli v Loesche Energy Systems Ltd

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TUPE under review: what employers need to know about the Government’s Call for Evidence

The Department for Business and Trade has launched a wide-ranging review of the TUPE regulations. Employers have until 1 July 2026 to make their voices heard.

What is the background?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 – known as TUPE – sit at the heart of almost every business sale, merger, outsourcing arrangement and service provision change. They are also, in the experience of most HR professionals and in-house teams, among the most complex and demanding pieces of employment legislation to navigate in practice.

On 8 April 2026, the Department for Business and Trade (**DBT**) published a Call for Evidence on TUPE as part of the Government’s broader “Plan to Make Work Pay” programme. The review follows hot on the heels of the Employment Rights Act 2025 and signals that further legislative change is on the agenda.

The Call for Evidence is explicitly framed around two, sometimes competing, objectives: making TUPE easier for businesses to operate, while simultaneously strengthening protections for employees who are subject to a transfer. Ministers have been candid that they want both outcomes and are seeking evidence to understand whether the current regulations deliver either goal satisfactorily.

At this stage, however, the Government is gathering information and experience from employers, employees, trade unions, legal practitioners and business representative bodies. Depending on the results, it may go on to develop policy proposals and consult on those.

The six areas under scrutiny

The Call for Evidence covers six broad areas:

The current framework

The Government asks whether the existing framework strikes the right balance between employer flexibility and employee protection, covering terms and conditions, consultation rights, collective agreements and pensions. Notably, occupational pension benefits tied to old age, invalidity or survivors remain exempt from automatic transfer under TUPE. The review invites views on whether that exemption remains appropriate, signalling potential change in this area.

Identifying a "relevant transfer"

One of the most persistent practical difficulties with TUPE is the threshold question: does it apply at all? The definition of a "relevant transfer" (i.e. an economic entity retaining its identity, or when a service transfers to a new provider) has generated extensive case law and significant uncertainty, particularly in complex outsourcing arrangements. The Government asks how clear the current test is in practice and whether it needs to be reformed.

Process and practicalities

The Call for Evidence asks about the areas where employers experience difficulty in the TUPE process: planning, employee liability information, consultation, terms and conditions post-transfer, and/or situations involving insolvency. These are the friction points where legal disputes commonly arise, and where clearer rules could benefit business.

Variation of terms and conditions

Under the current rules, employers cannot vary terms and conditions where the reason for doing so is the transfer itself. Variations are only permissible for economic, technical or organisational (**ETO**) reasons entailing changes in the workforce and the employee agrees to the change, or in certain other limited circumstances.

In practice, the bar on harmonisation is one of the most commercially significant features of TUPE. Acquiring businesses frequently find themselves managing workforces on incompatible terms for years after a transfer, creating both operational complexity and employee relations difficulties.

The Government is asking whether this framework is clear, fair and proportionate.

Guidance and support

The review asks how useful the existing Government and Acas guidance is in practice. This reflects a longstanding criticism from employers and practitioners that the guidance does not give businesses the practical direction they need when navigating novel or complex transfers.

Cost and impact

The Government is seeking quantitative evidence on the cost burden of TUPE compliance, both direct costs such as legal advice, HR resource and restructuring costs, and indirect ones including delay to transactions and difficulty in workforce planning.

What does this mean for employers?

It would be premature to predict specific reforms at this stage. What is clear is that the Government is open to relaxing some aspects to facilitate smoother transactions, while tightening others to strengthen employee protections.

Employers should be particularly alert to the possibility of changes to the ETO framework, which currently provides the main route for post-transfer harmonisation of terms. Reform to the service provision change rules is also plausible. Any

tightening of the information and consultation obligations, or of the protective award exposure for non-compliance, would have immediate and significant financial consequences for employers involved in transfers.

It is also worth setting this review in its broader legislative context. The Employment Rights Act 2025 has strengthened employee rights across multiple areas. Any TUPE reform is likely to be developed in that spirit.

Responses may be submitted online, by email to tupepolicy@businessandtrade.gov.uk, or in writing to the TUPE Policy Team at the Department for Business and Trade, Old Admiralty Building, London SW1A 2DY. The response deadline is 11.59pm on 1 July 2026.

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Employment Rights Act 2025: second consultation launched

on trade union access rights

On 8 April 2026, the Government published its response to the completed consultation on the new rights of trade unions to access workplaces, as well as a draft statutory Code of Practice on the practicalities of this right (the Code) and an accompanying second consultation on that Code.

These consultations and the Code aim to shape the substance of the rights given to trade unions under Section 59 of the Employment Rights Act 2025 and will inform regulations and any secondary legislation which will determine how the rights take effect.

The new rights of access will affect all employers, regardless of whether their workplace currently has a union presence.

Progress to date

Under the new framework, trade unions will have new rights to access workplaces and engage with workers in order to meet, recruit and support them or facilitate collective bargaining. This includes both physical and digital access. Unions are expected to work with employers to agree an "access agreement" for this purpose, which will then be recorded by the Central Arbitration Committee (**CAC**). If they cannot agree, either party can make a referral to the CAC to determine whether (and how) access should be granted.

The Government's initial consultation covered the

practicalities of making an access request, notifying the CAC, the length of negotiation periods and the factors that the CAC will consider when assessing requests. For information on the initial consultation, which ran from 23 October 2025 to 18 December 2025, please see our coverage here.

Response, the draft Code and consultation

The Government has now published their response to the first consultation along with the draft Code, which takes account of the proposals that the Government is taking forward as described in their response.

The Code provides practical guidance for making and responding to a request, how to facilitate engagement constructively and how the CAC will exercise its powers if the employer and union cannot agree. It is intended to cover both the new primary legislation under Chapter 5ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 (as inserted by the Employment Rights Act 2025) and new proposed secondary legislation.

The key impacts to note of the Code in its current form are as follows:

- Requests will need to be made in writing, with email as the preferred option but with flexibility to use post if appropriate. If two or more unions make a joint application for access, they should prepare the request together and implement access arrangements jointly.

- There will be a standardised template for requesting access, with a baseline set of information requirements for the union to provide. There will be a similar template and set of information requirements for the employer's response to a request, and if the request is rejected the employer must make clear which elements are rejected and provide relevant reasons. Standard templates will also be provided for notifications to the CAC of successful access agreement, and for notifying variation and/or revocation of agreements.

- As part of any rejection, the employer must also specify if they have received an access request from any other union, or if they are engaged in negotiations with another union. The employer must also provide contact details, which we anticipate will likely be for the purpose of discussing the rejection.

- The timelines for responding to a request, the negotiation period and referring to the CAC have all been extended, which the Government states is aimed at balancing the need for timely access with the practicalities of requests for both employees and unions. The relevant periods will be:
    - 15 working days for an employer to consider and respond to a request, which can be extended by

agreement with the union;

- 25 working days for negotiation between the union and employer; and

- 55 working days for the union to make a referral to the CAC (i.e. 15 working days following the conclusion of the negotiation period).

- Guidance will cover the practicalities of access, such as who will be permitted to attend meetings, use of workplace facilities and accounting for non-typical working patterns. Employers and unions should negotiate in good faith, and guidance will set out the process for continuing negotiations beyond the initial period.

- A minimum of 5 working days' notice must be given before the first instance of access takes place, and agreements must have an expiry date (maximum two years from the date on which they come into force). Agreements can be extended beyond this date through a joint application to the CAC.

- The CAC will not grant access to employers with fewer than 21 workers, however in future this may be adjusted so that the size-based exemption does not apply to workplaces covered by a statutory national bargaining framework (such as the national bargaining frameworks for adult social care and school support staff). There will also be some other narrow safeguards to require refusal of access, for instance if doing so would prejudice the prevention, detection or prosecution of crime.

- The CAC will have a set list of circumstances where it is otherwise reasonable for access not to be granted, meaning that a request will be denied. These include the presence of a recognised union already in the workplace (although this will not be a default), multiple requests for access from different unions, or any ongoing statutory recognition process.

- Employers will be required to take reasonable steps to facilitate access but should not be required to make any significant changes to do so, and the preference is for access to be facilitated using existing facilities and systems. The CAC may consider it reasonable to refuse access if it would require excessive resources from the employer (such as new meeting spaces or IT systems, or material operational disruption).

- Model” terms of access agreements will be set out to use as a reference point when drafting an agreement. These are not mandatory to use, however consistency with them will mean that a request for an access agreement is more likely to be granted by the CAC.

- Employers and unions will be encouraged to resolve disagreements before taking formal action. The CAC will have the power to issue penalties for breach of an access agreement, taking account of factors such as the gravity and duration of a breach and any reasons. The maximum penalties will be:
    - Up to £75,000 for a first penalty;
    - Up to £150,000 for a second penalty, reflecting repeated non-compliance under the same access agreement; and
    - Up to £500,000 for a third breach under the same access agreement (potentially issued repeatedly if non-compliance continues).

The Government has opened a new consultation on the Code’s guidance and the draft templates, seeking views on whether the proposals are sufficiently clear, detailed, appropriate and

workable. This will close on 20 May 2026, after which the Government plans to introduce secondary legislation into Parliament along with the final Code of Practice, expected to take effect in October 2026.

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