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.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.