



Make Work Pay: Non-disclosure agreements (NDAs)

Consultation on regulations to prevent the misuse of NDAs in cases of workplace harassment or discrimination

15 April 2026

Closing Date: 8 July 2026

Foreword

This Government was elected on a pledge to rebuild our economy so that it serves working people's interests once again.

That's why, within our first 100 days, we delivered on our promise to introduce the Employment Rights Act 2025 as part of our plan to Make Work Pay. This will bring employment rights legislation into the 21st century, extending the protections many British companies already offer their workers to all.

We will not build a robust and growing economy through employment insecurity. Instead, we are building an economy based on fair competition between businesses, greater productivity in the workplace, job security for workers, and fair reward for hard work.

The Employment Rights Act 2025 introduces a new measure that will address the misuse of non-disclosure agreements (NDAs) by employers who want to silence workers about harassment and discrimination in the workplace. While NDAs can have legitimate purposes, they should not be used to take unfair advantage of workers. Unfortunately, evidence has emerged in recent years that some employers have been doing just that.

This evidence shows that an imbalance of power between employers and workers has been exploited by some employers through the use of NDAs, fostering a culture of silence and impunity. We cannot allow this to continue.

This measure will void any provision in an agreement, such as a contract of employment or settlement agreement, between a worker and their employer in so far as it prevents a worker from speaking out about relevant harassment or discrimination.

This consultation seeks your views on the regulations under which NDAs may still be valid – from the conditions which an NDA must meet, to the list of individuals that workers who have signed valid NDAs are still able to speak to. These regulations will set conditions to protect workers, ensuring they have a greater say in whether they want an NDA and an understanding of what they are agreeing to.

Throughout this process, we have engaged closely with employers, legal and HR representatives, and charities. Their experiences and insights have shaped our approach.

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The Rt Hon Peter Kyle MP

Secretary of State for Business and Trade and President of the Board of Trade

A handwritten signature in blue ink that reads "Peter J. Kyle".



Kate Dearden MP

Minister for Employment Rights and Consumer Protection

A handwritten signature in blue ink that reads "Kate Dearden".

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Introduction

Key points

- This consultation paper seeks feedback to inform the development of regulations that, together with new section 202A in the Employment Rights Act 1996, will restrict the use of NDAs in cases of harassment and discrimination.
- It also seeks views on whether section 202A should be expanded to cover a broader group of individuals in the future.
- This consultation is only about NDAs that prevent disclosures about relevant harassment and discrimination – it is not about NDAs protecting other confidential information, such as trade secrets and sensitive commercial information.
- As is common practice for government consultations some of the questions are framed around a specific proposal the government is considering, and questions are asked as to whether you agree with that approach. To note this does not mean it will be the final government position, and all views are welcomed on all proposals.

Restricting the use of NDAs in cases of harassment and discrimination

NDAs are agreements between two or more parties that seek to keep certain information confidential. They are often used legitimately by employers in employment contracts or settlement agreements to protect commercial or other sensitive business information. However, they can also be used to prevent parties from disclosing information about workplace misconduct.

Evidence has emerged in recent years, including through several parliamentary inquiries,¹ about the misuse of NDAs by some employers to silence workers from speaking out on sexual harassment complaints and other misconduct. Some employers have exploited the inherent power imbalance in the workplace to get NDAs signed, creating a culture of secrecy and sometimes leaving perpetrators in place to offend again. NDAs can also have impacts on the health and wellbeing of workers by preventing them from discussing their experiences with others, such as support services.

New section 202A of the Employment Rights Act 1996, to be inserted by the Employment Rights Act 2025, seeks to address this problem. It will render void any provision within an agreement made between an employer and a worker that seeks to prevent the worker from speaking out about:

- “Relevant harassment or discrimination”; or
- Their employer’s response to the relevant harassment or discrimination, or the making of an allegation of relevant harassment and discrimination.

Any confidentiality clause in an agreement between an employer and a worker made after the commencement of section 202A will be captured (i.e. it will not apply retrospectively to existing

¹ For example, the [Treasury Select Committee](#) and [Women and Equalities Select Committee](#) point to a number of cases where allegations of harassment and discrimination were suppressed.

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agreements), including non-disclosure, non-derogatory and non-disparagement clauses. For simplicity, we will collectively refer to these provisions as ‘NDAs’ in this consultation paper.

Section 202A will not void NDAs in agreements that meet specific conditions for an ‘excepted agreement’ to be outlined by the Secretary of State in regulations. Regulations can also be made to set out who workers with excepted agreements can still speak to and extend section 202A to other individuals, who do not currently meet the standard definition of “worker” in the Employment Rights Act 1996.

“Relevant harassment and discrimination” refers to certain types of misconduct as defined in the Equality Act 2010. This includes direct and indirect discrimination (section 13, 19 and 19A), disability and reasonable adjustments discrimination (sections 15 and 21), gender reassignment discrimination (section 16), pregnancy and maternity discrimination (sections 17 and 18) and harassment, including sexual harassment, (section 26).

For the harassment or discrimination to be “relevant”:

- It must be carried out (or alleged to have been carried out) by the employer or another worker of the employer; **or**
- The victim (or alleged victim) of the harassment or discrimination must be the worker that entered into the NDA or their work colleague. For example, this would capture a scenario where a worker is sexually harassed by the employer’s client (i.e. not their employer or work colleague).

Purpose of this consultation

We acknowledge that workers may sometimes want confidentiality in cases of harassment or discrimination.

That is why, before commencing section 202A, the government in this consultation paper is inviting feedback on the proposed criteria for an “excepted agreement” that will be set out in regulations (see **Chapter 2**). We are also seeking feedback on the types of individuals and bodies that workers with excepted agreements can still speak to, irrespective of what is said in their agreement (e.g., their lawyer or doctor) (**Chapter 3**).

Separately, the government is seeking feedback about whether section 202A should be extended in the future to people who do not currently meet the standard definition of “worker” in the Employment Rights Act 1996; for example, agency workers supplied to a ‘host employer’ and the self-employed (**Chapter 4**).

Other NDA reforms

Section 202A builds on several other new legal restrictions on NDAs designed to protect workers and others from harm. These restrictions include:

- **A ban on certain NDAs in higher education:** From 1 August 2025, higher education providers in England are prohibited under part A1 of the Higher Education and Research Act 2017 from entering into NDAs with staff, students, members or visiting speakers in relation to a complaint about sexual abuse, sexual harassment, sexual misconduct, or other forms of harassment and bullying.
- **Restrictions on NDAs for victims of crime:** NDAs entered into on or after 1 October 2025 are unenforceable under section 17 of the Victims and Prisoners Act 2024 insofar as they seek to prevent victims and direct witnesses of crime (or those who reasonably

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believe they fall within these categories) from making certain disclosures to specified bodies and for specified purposes. For example, to bodies with law enforcement functions for reporting a crime, to regulators for cooperating with them in relation to the crime, or to certain bodies for accessing confidential advice or support.

The government intends to strengthen this protection and bring it more in line with section 202A of the Employment Rights Act 1996. The Victims and Courts Bill, currently before the Parliament, will repeal section 17 of the Victims and Prisoners Act 2024 and replace it with a protection that will void NDAs to the extent that they seek to prevent victims and direct witnesses of crime from disclosing information about the criminal conduct to anyone and for any purpose.

A note on language

We outline below the key terms that we use throughout this consultation paper.

Term	Description
Section 202A	<p>Section 24 of the Employment Rights Act 2025 inserts new section 202A into the Employment Rights Act 1996.</p> <p>Once brought into force, this new section will void any provision in an agreement insofar as it prevents a worker from making a disclosure about relevant harassment and discrimination (defined in this table) or about an employer's response to either the relevant harassment or discrimination itself or their response to the allegation or disclosure the worker made.</p> <p>It also includes powers to make regulations regarding excepted agreements, permitted disclosures and to extend the application of the measure to individuals who do not meet the definition of employee or worker (defined in this table), which section 202A currently applies to.</p>
Non-Disclosure Agreements (“NDA”)	<p>NDAs are contractual agreements or clauses within contractual agreements, between two or more parties which seek to keep certain information confidential. For example, they are commonly used in settlement agreements, employment contracts or contracts for one business to provide a service to another business.</p> <p>NDAs will sometimes be used to prevent one or all of the parties to the agreement from speaking out about harassment or discrimination (see definition in this table).</p>
An Excepted Agreement	<p>An agreement between a worker and their employer that will not be void under section 202A if it meets certain conditions which are to be set out in regulations, following the outcome of this consultation (see Part 2).</p>

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<p>Harassment and discrimination</p>	<p>This includes certain types of misconduct as defined in the Equality Act 2010.²</p> <p>Specifically, direct and indirect discrimination (section 13, 19 and 19A), disability and reasonable adjustments discrimination (sections 15 and 21), gender reassignment discrimination (section 16), pregnancy and maternity discrimination (sections 17 and 18) and harassment, including sexual harassment, (section 26)</p>
<p>Relevant Harassment and Discrimination</p>	<p>This is an instance or an alleged instance of harassment or discrimination where:</p> <ul style="list-style-type: none"> • The harassment or discrimination is carried out (or alleged to have been carried out) by the employer or a fellow worker (i.e. another worker of the employer). The victim may or may not be the worker signing the NDA. <ul style="list-style-type: none"> ○ For example, it could include harassment that a worker witnesses their employer carry out against a customer; or • The victim (or alleged victim) of the harassment or discrimination is the worker that enters into the NDA or their fellow worker (i.e. another worker of the employer). The perpetrator may or may not be a fellow worker or the employer. <ul style="list-style-type: none"> ○ For example, it could include harassment the worker suffers at the hands of the employer’s client (i.e. not their employer or fellow worker). <p>An example of harassment or discrimination which is not ‘relevant’ would be where a worker sees a client harass another client and enters into an NDA about the incident with their employer. This is not ‘relevant’ harassment because:</p> <p>(a) the perpetrator was not the employer or a fellow worker, and</p> <p>(b) the victim was not the worker entering into the NDA or a fellow worker.</p>
<p>Permitted Disclosures</p>	<p>Disclosures of information relating to relevant harassment and discrimination that a worker with an excepted agreement can make to certain individuals or bodies for particular purposes, regardless of any confidentiality provisions in the agreement. Permitted disclosures will be set out in regulations, following the outcome of this consultation (see Part 3).</p> <p>We use the term “permitted disclosure” as a shorthand to refer to these individuals/bodies the worker with an excepted agreement can make disclosures to, and for what purposes.</p>
<p>Employee/Worker</p>	<p>When we refer to these terms, they have the meaning given in section 230 of the Employment Rights Act 1996.</p>

² [Equality Act 2010](#)

Consultation details

Issued: 15 April 2026

Respond by: 23:59, 8 July 2026

Enquiries and responses to:

NDAconsultation@businessandtrade.gov.uk

Write to:

Non-Disclosure Agreements, Employment Rights Directorate
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Consultation reference:

Consultation on regulations to prevent the misuse of NDAs in cases of workplace harassment or discrimination

Audiences:

- businesses
- trade unions
- business groups or representatives
- consumers
- non-governmental organisations
- members of the public
- all other interested parties

Territorial extent

Employment rights is a reserved matter in respect of Scotland and Wales but transferred in respect of Northern Ireland. The regulations will extend to Scotland, and England and Wales.

How to respond

Respond online – [Make Work Pay: Non-Disclosure Agreements \(NDAs\) consultation](#)

or

Email to: NDAconsultation@businessandtrade.gov.uk

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or

Write to:

Non-Disclosure Agreements, Employment Rights Directorate
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

We strongly encourage that responses are made via the online platform. Using the online survey will assist our analysis of the responses, enabling more efficient and effective consideration of the issues raised.

If you are responding in writing, please make it clear which question or paragraph number each comment relates to.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

When responding, please state whether you are responding as an individual or representing the views of an organisation. Please also specify which consultation you are responding to, as the government is running various consultations at the same time.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We are trialling Artificial Intelligence (AI) solutions to support the delivery of our functions. Unless made expressly clear to you, we will not solely use AI to either make or inform decisions about you. We will apply effective data minimisation techniques to all such uses of your data.

Your responses, including any personal data, may be shared with a third-party provider, or other government department or organisation acting on behalf of the Department for Business and Trade under contract or an equivalent agreement, for the purpose of analysis and summarising responses for us and they may use technology, such as artificial intelligence. Further detail on how AI is used, including its scope and safeguards and third-party sharing is available in our Privacy Notice.

An anonymised version of responses in a list or summary of responses received, and in any subsequent review reports may be published. We may also share your personal data where required to by law. You can leave out personal information from your response entirely if you would prefer to do so.

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Wherever possible avoid including any additional personal data in free-text responses beyond that which has been requested or which you consider it necessary for DBT to be aware of.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

Quality assurance

This consultation has been carried out in accordance with the governments [consultation principles](#). If you have any complaints about the way this consultation has been conducted, please email: enquiries@businessandtrade.gov.uk

Chapter 1: About you

Wherever possible please avoid including any additional personal data in free-text responses beyond that which has been requested or which you consider it necessary for DBT to be aware of.

Please provide the following information to help us understand the context of your response:

Q1. Please indicate whether you are responding as:

- An individual
- An academic, or on behalf of an academic or research organisation
- An employer
- A legal representative
- A business representative organisation (please specify)
- A trade union or staff association (please specify)
- A charity or interest group
- Other – please specify

(Free text box if selected Other)

Q2. If responding as an employer, business, business owner or business representative, approximately what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250+ employees)
- Don't know
- Not Applicable

Q3. Which region are you located in?

- North-East
- North-West
- Yorkshire and The Humber
- East Midlands
- West Midlands
- East of England
- London
- South-East
- South-West

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- Wales
- Scotland
- Northern Ireland

Q4. What sector are you based in?

- Accommodation & food service activities
- Activities of households as employers; undifferentiated goods and services-producing activities of households for own use
- Administrative & support service activities
- Arts, entertainment and recreation
- Agriculture, forestry and fishing
- Construction
- Education
- Electricity, gas, steam and air conditioning supply
- Financial & insurance activities
- Human Health and social work activities
- Information & communication
- Manufacturing
- Mining and quarrying
- Production
- Professional, scientific and technical activities
- Public administration & defence; compulsory social security
- Real estate activities
- Services Sector
- Transportation & storage
- Water supply; sewerage, waste management and remediation activities
- Wholesale and retail trade; repair of motor vehicles and motorcycles
- Other service activities
- Other – please state

Chapter 2: Conditions for an excepted agreement

Key points

- This chapter seeks feedback on the government’s proposed conditions for an ‘excepted agreement’ in cases of harassment and discrimination.
- The recommended approach presented here aims to ensure that workers have a greater say in whether they want an NDA and an understanding of what they’re agreeing to, which will help address the imbalance of power between workers and employers.

Under new section 202A of the Employment Rights Act 1996, agreements between employers and their workers will not be able to prevent workers from speaking out about relevant harassment or discrimination, unless the agreement meets specific conditions to be outlined in regulations. These agreements are referred to in the Employment Rights Act 2025 as an “excepted agreement”.

We have included this exception because the use of NDAs in cases of harassment and discrimination may sometimes be appropriate. For example, where a worker wants to maintain confidentiality as part of a settlement agreement to bring closure to an unpleasant or distressing experience.

Before commencing section 202A, we are inviting feedback on our proposed conditions for an excepted agreement that will be set out in regulations. The overarching aim of these conditions is to protect workers against the misuse of NDAs where employers are using them to cover up relevant harassment and discrimination.

Routes for securing a settlement agreement

There are a number of ways to resolve an employment dispute and reach a settlement, either before or after a claim is made to an Employment Tribunal.

The parties (worker and employer) may:

- **Negotiate directly and enter into a private settlement agreement** including through private mediation with a neutral third party, provided statutory requirements are met.
- **Negotiate with each other with the impartial assistance of the Advisory, Conciliation, and Arbitration Service (Acas)** to reach a settlement, which is recorded in a **COT3 agreement**.

Where an Employment Tribunal claim has been issued, the Tribunal may encourage the parties to resolve their dispute through: using the services of Acas or through **judicial mediation, judicial assessment or an alternative dispute resolution appointment**. If settlement is reached, it is most commonly recorded as:

- A private settlement agreement
- An Acas COT3 agreement

Confidentiality and NDAs in private settlement agreements and COT3 agreements

Confidentiality provisions or NDAs often form part of a legally binding settlement. They are most commonly included within:

- 1. Private settlement agreements**

- 2. COT3 Agreements facilitated through Acas**

- a. Before most employment tribunal cases can be lodged with the Employment Tribunal the prospective claimant must notify Acas who will offer an early conciliation service. If the parties agree to participate, then during early conciliation an impartial Acas conciliator will seek to ‘promote a settlement’ between the parties so that the dispute may be resolved without Tribunal proceedings. The early conciliation period lasts for up to 12 weeks. If an agreement is not reached the claimant can submit an employment tribunal application.

Private statutory settlement agreements are subject to some key conditions in order to be valid, for example section 203 of the Employment Rights Act 1996, requires that a worker must receive advice from an independent advisor on the terms and effect of the agreement, and that the agreement is in writing. Section 147 of the Equality Act 2010 sets out similar conditions for a settlement agreement in relation to Employment Tribunal claims under that Act.³

COT3 Agreements facilitated through Acas have separate statutory protections in place, including that these agreements are made under the guidance of an impartial “Acas conciliator” who provides independent advice to both parties on the terms of the agreement that either party may propose, and who must be satisfied that both parties understand the meaning and effect of the terms before authorising the conclusion of the agreement.

Whilst both these processes provide some protection, including to ensure that workers are aware of the meaning and effect of the proposed terms of an agreement, there are currently no explicit conditions or limitations to address the misuse of confidentiality clauses or NDAs in cases of harassment and discrimination.

The government is considering how best to ensure that both these routes provide sufficient protections for workers against the misuse of NDAs to silence workers regarding relevant harassment and discrimination, while acknowledging their different statutory bases and processes.

We are therefore consulting on a set of conditions that we believe ensures workers are:

1. Protected from coercion or being pressured into silence
2. Sufficiently informed about what they are agreeing to and;
3. Empowered to decide if the agreement is definitely what they want.

We think that these outcomes should apply to all agreements where an NDA or confidentiality clause relates to relevant harassment and discrimination, irrespective of the route undertaken to secure an agreement between a worker and employer. We are interested in understanding how that could be achieved across all routes and have asked some questions accordingly.

³ While Section 203 of the Employment Rights Act 1996 and Section 147 of the Equality Act 2010 set out similar conditions for settlement agreements, for the purposes of this consultation, we will henceforth be referring to Section 203 only.

A worker should receive independent advice before entering into an excepted agreement

Proposal: Before entering into an excepted agreement, we believe it should be a condition that the worker has received independent advice in writing on the terms and effect and legal limitations of the proposed confidentiality obligations from an independent adviser. This written advice should also explain the legal limitations of the NDA.

Rationale: Currently, for a private settlement agreement (which can include an NDA) to be valid, section 203 of the Employment Rights Act 1996 requires that a worker has received advice from a “relevant independent adviser” on the terms and effect of the agreement. An adviser can be a qualified lawyer, a fellow of the Institute of Legal Executives employed by a solicitors' practice, an authorised officer of an independent trade union or a certified advice centre worker (e.g. from the Citizens Advice Bureau or a law centre).

Our intention is to replicate and expand on this requirement to ensure a strong level of protection applies to all types of agreements where an NDA or confidentiality clause relates to relevant harassment and discrimination. This would ensure that for an NDA (whether in a private settlement agreement or not) to be valid a worker must have received written advice from a relevant independent adviser, defined in line with section 203 of the Employment Rights Act 1996, on:

- The terms and effect of the proposed NDA; and
- The legal limitations of the NDA.

For example, this would mean that an adviser would be required to explain the scope of confidential information covered by the proposed agreement, any conditions or restrictions that need to be complied with in relation to disclosures and the legal consequences of breaching them. It would also mean that the adviser is required to outline the legal limitations of the NDA, such as an NDA cannot prevent a worker from:

- Co-operating with a criminal investigation or prosecution.
- Reporting an offence to the police or other law enforcement agency.
- Making a protected disclosure (known as ‘whistleblowing’) under the Employment Rights Act 1996, or any disclosure required by law.

It would also mean that an adviser would be required to explain that an excepted agreement cannot prevent a worker from sharing information with the individuals and bodies to be prescribed in regulations (see Part 3: Permitted Disclosures below).

We propose that the advice from the relevant independent adviser should be in writing, which we believe will make it clearer for workers and may help to resolve any issues that arise in the future. We do not propose to prescribe the form of this advice.

As previously mentioned, section 203 does not apply to Acas facilitated COT3 agreements. This is because in the conciliation process, an Acas conciliator

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advises both parties impartially on the terms and effect, and legal limitations of the proposed agreement, (unless otherwise satisfied that the parties understand the terms, e.g. because they already have legal representation). We are considering if for the purposes of these regulations an “independent advisor” could also be defined to include an ACAS conciliator in order to ensure sufficient protection is provided by the different routes that workers may take towards securing a settlement agreement.

We also propose replicating another element of section 203 in regulations:

We believe that an excepted agreement should include the name of the adviser, and the adviser should have indemnity insurance. This could mean that a worker is able to contact the named adviser, for example if they have a question in the future about the excepted agreement. This will also mean that advisers are financially protected if they give negligent or incorrect advice and that workers can claim compensation if the advice causes them harm. As noted previously, section 203 does not apply to Acas facilitated COT3 agreements. In this case, a COT3 agreement names Acas as the body which has overseen the agreement and parties can contact Acas with any future questions about the agreement. Indemnity insurance for the Acas conciliator is not required as Acas, as a public body, is liable for the conciliator’s actions in carrying out their functions, which provides recourse for workers in the event of any concerns.

We do not propose to require employers to cover the cost of the independent advice. Section 203 does not currently require employers to pay for advice, although we understand that it is common practice for them to contribute to the cost of taking advice to ensure that a settlement agreement is legally valid. We expect this approach will be taken by many employers in relation to excepted agreements as well, especially as many will form part of settlement agreements. We also think there are practical difficulties in requiring employers to pay for advice, such as whether the worker should or should not be able to select the adviser and how costs to the employer would be contained.

We believe this proposal will help workers to better understand their rights and bring more consistency to the advice provided by advisers. This reflects feedback the previous government received to a similar proposal in its 2019 consultation on the misuse of NDAs.

Questions

Question 1. Do you agree it should be a condition that the worker has received independent advice on the terms and effect, and the legal limitations of a proposed excepted agreement, before entering into the agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 2. Do you agree that the independent advice must be given in writing?

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- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 3. Do you agree that employers should not have to cover the cost of independent advice?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 4. For private settlement agreements, do you have any concerns about requiring the worker to receive independent written advice on the terms and effect, and legal limitations of the NDA?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 5. For Acas facilitated COT3 agreements, do you have any concerns about requiring the worker to have received independent advice in writing on the terms and effect, and legal limitations of the NDA?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 6. Should Acas conciliators should be included as relevant independent advisors?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 7. Should an independent advisor be required to provide other advice in writing to a worker, in addition to those proposed in this section, on:

- The terms and effect of the proposed NDA; and
- The legal limitations of the NDA.

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**
- e) **If yes, please explain what other advice you think should be provided in writing and why.**

A worker should express their preference in writing to enter into an excepted agreement, following the receipt of independent advice

Proposal: Before entering into an excepted agreement, we believe that a worker should express their preference in writing to enter into the agreement, following the receipt of independent advice. This would be expressed to their employer in writing.

Rationale: The intention of this approach is that an excepted agreement is only entered into with the worker's clearly stated informed consent. We believe this will help to protect the worker from coercion. After the worker has received independent advice on the terms and effect of the proposed confidentiality obligations in the agreement, the worker would need to express in writing to their employer that it is their preference to enter into the proposed excepted agreement. If a worker does not express their preference, the NDA would not be an "excepted agreement" and would be void in so far as it sought to prevent the worker from speaking out about relevant harassment or discrimination.

We do not propose prescribing the style and form of a worker's expressed preference – only that it needs to be in writing and expressed to the employer. We expect workers will receive advice from their relevant independent adviser on the most appropriate way to do this, which may take the form of an email or written document to the employer.

Employer suggesting confidentiality

Alongside this condition, we believe it is important to consider whether an employer should be permitted to suggest confidentiality.

One approach is to prevent employers from suggesting confidentiality or requesting that a worker signs an excepted agreement. This could reduce the risk of a worker being coerced into signing something that they do not wish to sign or accepting terms that they are unhappy with by only allowing an excepted agreement to be entered into at the request of the worker.

Whilst we want to minimise the risk of coercion as much as possible, this approach may have some unintended consequences. For example, it could prevent the parties from being able to enter into an excepted agreement, even if the worker decided they wanted one. For example, if an employer were to mention the use of an NDA in an initial conversation with the worker, this could be considered as the employer suggesting an NDA and therefore void the option of an excepted agreement even where the worker then decided it was their preference.

In addition, some workers may not be informed of all options available – and may not understand that a confidentiality agreement is a viable option without an employer (such as a HR representative in an organisation) suggesting this.

Alternatively, we could allow for an employer to suggest confidentiality. In this scenario, if a proposed excepted agreement is put to a worker (such as by an employer or their legal representative), the worker will have to get independent

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advice on its terms and effect and, following the receipt of this advice, express their preference in writing to the employer to enter into an excepted agreement. If these conditions are not met, the NDA would not be an “excepted agreement” and would be void in so far as it sought to prevent the worker from speaking out about relevant harassment or discrimination.

Although allowing employers to suggest confidentiality may increase the risk of pressure or coercion, this could be mitigated by some or all of the other conditions we are proposing (e.g., the independent advice requirement and cooling off period). We would look to ensure we are providing a robust set of protections for workers to minimise this risk as much as possible.

We therefore welcome views on whether an employer should be able to suggest confidentiality and as such, we have included questions on both.

Questions

Question 8. Do you agree that it should be a condition in the regulations that the worker has expressed their preference for an excepted agreement in writing following the receipt of independent advice on the proposed agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 9. Do you agree that the regulations should not prescribe the form and style of the worker's preference?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 10. Should an employer be able to suggest confidentiality to their workers?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 11. For private settlement agreements, do you have any concerns about requiring a worker to express their preference in writing to enter into the agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 12. For Acas facilitated COT3 agreements, do you have any concerns about requiring a worker to express their preference in writing to enter into the agreement?

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- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

An excepted agreement should include a cooling off period

Proposal: We believe that an excepted agreement should be required to include an explicit right for a worker to withdraw from the agreement without penalty within 14 calendar days of the agreement being entered into (i.e. a ‘cooling off period’).

Rationale: Employers can set short time limits, typically seven days, for a worker to sign an NDA, creating a “general sense of urgency permeating the negotiation process”, according to a 2023 NDA review by the Solicitors Regulation Authority.⁴ We understand, where there has been a workplace dispute about harassment or discrimination, that parties may wish to resolve the matter as soon as possible. However, we believe it is important that workers have adequate time to consider and reflect on the implications of an excepted agreement, even after they have received independent advice and concluded the agreement.

We believe that a 14-day cooling off period is a sufficient safeguard and will allow workers time to reflect further and properly consider the implications of an NDA and, if they wish, withdraw from the agreement. A 14-day cooling off period is common in consumer law and is a feature of the recent NDA legislation in Ireland.

During the cooling off period, if a worker decided to withdraw from an excepted agreement that was part of a broader agreement (e.g. a settlement agreement), this may also mean withdrawing from that broader agreement. In other words, the cooling off period may, in effect, apply to the whole agreement. As NDAs often form part of a broader settlement agreement, we believe it would be difficult in practice for the cooling off period to apply only to the confidentiality obligations within the excepted agreement. For example, if the other party (employer) was bound by other terms in the agreement, such as a financial payment that is dependent on the worker complying with certain conditions, it could create uncertainty as to whether those conditional terms were upheld if a worker had withdrawn from some terms initially included in the agreement.

However, by requiring a cooling-off period only in respect of the confidentiality clauses in the excepted agreement, this may reduce the risk that an employer makes it more difficult for a worker to cool off their confidentiality obligations without also cooling off an agreed compensation payment that is part of a wider settlement agreement. We would therefore welcome respondents’ views on this issue and whether they think a cooling-off period should be required only in respect of the confidentiality clauses in an expected agreement.

We do not propose to allow workers to waive the cooling off period, to ensure they are sufficiently protected from undue pressure to do so. However, we are seeking feedback on this issue.

Further options for consideration

Allow the worker to waive the cooling off period.

⁴ [SRA | Thematic Review: The use of Non Disclosure Agreements in workplace complaints | Solicitors Regulation Authority](#)

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There may be legitimate reasons why workers may want to waive the cooling off period, including where a worker may prefer to settle promptly.

Having a mandatory cooling off period may make it difficult to settle claims close to or during any scheduled hearing in the Employment Tribunal, as the excepted agreement could be withdrawn within 14 days of being entered into, which may lead to uncertainty for the parties (worker and employer) as to whether the hearing will go ahead. It could also create delays in the Employment Tribunal process. For example, if a hearing was cancelled due to an agreement being signed and the agreement was then withdrawn, the Employment Tribunal process would have to be resumed. This is likely to be at a different later date, potentially in 12 months or longer, creating delays for the parties for settlement.

A mandatory cooling off period could also introduce complications for calculating the time limits within which a worker can bring a claim to an Employment Tribunal. When a worker notifies Acas of their intention to bring a tribunal claim, employment tribunal time limits are paused for up to 12 weeks under section 207B of the Employment Rights Act 1996. This provides time for the parties to engage in conciliation if they wish, or they may pursue a private settlement agreement during this time.

Introducing a cooling off period could create uncertainty for parties if a worker withdraws from an excepted agreement made while the statutory pause is in effect - whether it was concluded privately or via an Acas COT3 agreement.

These interactions may cause difficulty for parties in accurately calculating time limits. This may lead to additional administrative disputes over the calculation of time limits, either during subsequent settlement discussions or as part of litigation at tribunal. By allowing the worker to waive the cooling-off period this may help to facilitate an earlier settlement to claims, and enable more certainty, where this is the worker's preference.

Shorten the cooling off period.

We have proposed a 14-day cooling off period, but we could shorten it to 7 days or 10 days to better support early settlement, whilst still providing additional protections for workers. For example, Acas statutory guidance on private settlement agreements stipulates that time should be allowed to consider an offer in relation to settlement agreements, which may include confidentiality clauses or NDAs. According to the guidance, employers should give a worker a reasonable amount of time to consider the written offer and get independent advice. The Acas Code of Practice on settlement agreements recommends allowing at least 10 days to consider a settlement agreement. In support of a shorter cooling off period, evidence suggests settlement behaviour often occurs late in the dispute process. A survey of 500 HR professionals by law firm Birkett LLP found that 62% of employment tribunal claims are settled before the final hearing, with around 24% settling the day before the hearing begins.⁵

⁵ [Employment Tribunals Impact Report | Birketts LLP 2025](#). Survey responses collected between 11 and 26 July 2024.

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This suggests that a shorter cooling-off period at the point of agreement may better support parties to reach a settlement, where this is their preferred outcome, while reducing the risk that the cooling-off period extends beyond the hearing date when an agreement is reached close to the final hearing. However, where settlement takes place on or close to the day before the hearing, a mandatory cooling off period would still result in delays.

We would welcome views on the further options outlined for consideration for the cooling-off period.

Review period

We think there are two alternative approaches to a cooling off period. The first is to give workers a statutory period to consider a proposed NDA *before* they agree to it – this is often called a ‘review period’.

Review and cooling off period

The second is to provide workers with both statutory review and cooling off periods. This is the approach adopted in New York, where a complainant must be given 21 days to consider the proposed agreement (the period can be waived by the complainant) and a non-waivable 7-day cooling off period to withdraw from the agreement after they have signed it.

We do not believe a statutory review period is required in addition to the proposal to require independent advice and other proposals outlined for an excepted agreement. Guidance also currently recommends that workers have a reasonable period to review a proposed NDA. For example, the Solicitors Regulation Authority Warning Notice reminds solicitors and firms that they have a duty not to take unfair advantage of an opposing party when dealing with NDAs.⁶ Taking unfair advantage would result in a breach of professional obligations and includes behaviour such as “imposing oppressive and artificial time limits on a party to agree the terms of the NDA”.

Questions

Question 13. Do you agree that an excepted agreement should be required to include a cooling off period?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain your answer.

Question 14. Do you agree that 14-days is a sufficient length of time for a cooling off period?

- a) Yes

⁶ [SRA | Use of non-disclosure agreements \(NDAs\) | Solicitors Regulation Authority](#)

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- b) No
- c) Don't know

Question 15. If no, what length of cooling off period would you consider appropriate, and why?

- a) 7 days
- b) 10 days
- c) Other.
- d) **Please explain why.**

Question 16. Should any required cooling off period only apply to the confidentiality clauses within an excepted agreement?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why**

Question 17. Should workers be allowed flexibility to waive the cooling off period?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 18. Do you have any concerns about requiring a 'cooling-off' period for private settlement agreements?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 19. Do you have any concerns about requiring a 'cooling off' period in an Acas facilitated COT3 agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 20. Do you agree that there should not be a mandatory statutory review period before an excepted agreement is entered into?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why and what length the review period should be.**

Question 21. Should both a review and cooling off period be conditions of an excepted agreement?

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- a) Yes
- b) No
- c) Don't know
- d) **Please explain why**

A written copy of the excepted agreement should be provided to all parties

Proposal: We believe that an excepted agreement should be provided to all parties in writing, and in a format accessible to the parties (worker and employer), including by any party with a disability. For example, this could include the excepted agreement to be provided in large print document or in a form that allows for electronic accessibility. This will ensure that workers are able to refer back to the details of the agreement and check their understanding of it.

Rationale: There is currently no requirement for a worker to be provided with a copy of the agreement they have signed, although often a written copy is provided. For example, some agreements and other contracts can be agreed upon orally.

Failing to provide a written (and accessible) copy to someone who has entered into an excepted agreement prevents them from referring back to the details of the agreement. For example, the specific circumstances that are covered by the agreement or who the worker is able to make disclosures to (if there are additional parties specified). Alongside the proposal to include a cooling off period in excepted agreements, requiring the provision of a written copy of the agreement would ensure that workers have sufficient time to read it and check their understanding of it.

For example, the Solicitors Regulation Authority (SRA) has published a warning notice on the use of NDAs, most recently updated in August 2024, which states that solicitors should not prevent someone who has entered into an NDA from keeping or receiving a copy.⁷ This is related to the solicitor's duty not to take unfair advantage.

We believe that going further by requiring that a written copy (and in a format accessible to the parties) of the excepted agreement be provided to all parties will help to ensure that workers have a better understanding of what they have signed and what their rights are in relation to the excepted agreement. This reflects feedback that we have received from stakeholders, and the existing advice of the SRA.

Further options for consideration

In addition to requiring the excepted agreement to be provided in writing to all parties, we could also look to standardise the language included. The Solicitors Regulation Authority published a warning notice on the use of NDAs, most recently updated in August 2024, which encourages the use of standard, plain English by solicitors.

Requiring in regulations an excepted agreement to be written in standard, plain language could help to ensure that workers have a better understanding of what they have signed and what their rights are in relation to the excepted agreement.

⁷ [SRA | Use of non-disclosure agreements \(NDAs\) | Solicitors Regulation Authority](#)

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This could also have some disadvantages. In some circumstances, the use of technical language may be required, for example, if an NDA covers matters related to the company that are technical in nature or complex. This could also lead to legal uncertainty for the parties (worker and employer) should a challenge be made to the validity of the NDA on the grounds that an NDA was not considered to be in 'standard, plain language'. For example, this could lead to the Employment Tribunals having to make decisions around what constitutes "plain English" or "easy to understand language" which could undermine the NDA agreed between the parties and cause uncertainty for others entering into NDAs with similar language.

We also believe that the requirement for a worker to receive independent advice on the terms and effect and legal limitations of the proposed confidentiality obligations before entering into an excepted agreement would provide the worker with a clear understanding of what they are signing.

The requirement for the agreement to be written in standard, plain language could be reflected in regulations, but we believe this issue would be better suited to guidance, we would therefore like to gather views on this.

Questions

Question 22. Do you agree that a written copy of the excepted agreement should be provided to all parties to the agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 23. Do you agree it should be a requirement that an excepted agreement is made available to the parties in any accessible format they may need?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 24. Should an excepted agreement be written in plain language?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 25. Should regulations require an excepted agreement to be in plain language?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

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Question 26. Should guidance, rather than regulations, set out that an excepted agreement should be written in plain language?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

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An excepted agreement can only be entered into where it would prevent a worker speaking out about an incident (or alleged incident) of relevant harassment or discrimination which has already taken place

Proposal: We believe it should be a condition that it is only possible to enter into an excepted agreement if the incident of relevant harassment or discrimination has (or is alleged to have) already taken place.

Rationale: We do not believe that an excepted agreement should be used to prevent a worker from speaking out about harassment and discrimination that may occur in the future. Currently, 'pre-dispute' NDAs are used by some employers in employment contracts to prevent workers from speaking out against instances of harassment and discrimination that may occur in the future. Our proposal would mean that these confidentiality provisions would be unenforceable and could not be in an 'excepted agreement', reflecting the broader policy objectives of this reform.

Questions

Question 27. Do you agree it should be a condition that an excepted agreement can only be entered into where it would prevent a worker speaking out about an incident of relevant harassment or discrimination which has already taken place?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain why.**

Other conditions

An excepted agreement should be time-limited

Another potential condition to those outlined above could be to require the excepted agreement to stipulate a time-limit for which confidentiality obligations can be in place. This could be agreed by the employer and the worker as part of the settlement agreement process. There are currently no restrictions on the parties (worker and employer) negotiating and agreeing to make the confidentiality obligations of an agreement time limited, but it is not a mandatory requirement to include a time limit.

There is existing precedence on time limits in NDAs in international legislation. For example, legislation in the Canadian provinces of Ontario and Prince Edward Island requires that excepted agreements be “of a set and limited duration”.⁸ ⁹ As another example, in Ireland, excepted agreements must be “of unlimited duration, other than where the employee elects otherwise”.¹⁰ These approaches help ensure that the worker has the ability to choose a timeframe that works for them.

Requiring a time-limit for confidentiality obligations in an excepted agreement could help prevent long-term secrecy; for example, reducing the chance that perpetrators remain hidden and are able to continue harmful behaviour. In addition, it could support transparency and accountability in the workplace by discouraging organisations from using confidentiality agreements as a tool to protect reputations at the expense of individual victims and workplace safety. It could also provide a choice for workers as to how long they would like to keep the matter confidential. Where an employer considers the confidentiality clause as a factor in their financial settlement offer, having a time limit may result in a lower settlement offer for workers.

Going further, the regulations could require a maximum time-limit for which confidentiality obligations in an excepted agreement can be in place. For example, assigning a fixed-term period of no longer than 3 years, after which, any confidentiality obligations in the agreement that would prevent disclosures about relevant harassment or discrimination will end. However, given the variability of the scenarios this legislation could affect, there are risks to taking this blunt approach for example some workers may prefer permanent confidentiality.

We would welcome views on this option and if respondents think it would be a helpful additional safeguard or if other safeguards proposed would be sufficient.

Questions

Question 28. Should the confidentiality obligations relating to relevant harassment and discrimination in an excepted agreement be required to be time-limited?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

⁸ [Bill 124, Stopping the Misuse of Non-Disclosure Agreements Act, 2023 - Legislative Assembly of Ontario](#)

⁹ [Non-disclosure Agreements Act, 2022 – Prince Edward Island](#)

¹⁰ [Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024, Section 5](#)

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Question 29. If a time-limit is required, should government stipulate a maximum time-limit?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 30. If yes, what should the maximum time-limit be? Please explain why.

- a) 1 year
- b) 2-3 years
- c) 4-5 years
- d) 6-10 years
- e) No set duration, the worker is able to choose a time-limit if they would like to
- f) [Open text response]

The government recognises that there may be other conditions for an excepted agreement that could be used to help safeguard against the misuse of NDAs in cases of relevant discrimination and harassment that may not be outlined in this consultation. We would welcome views on any other conditions that should be considered.

Questions

Question 31. Are there any other conditions or safeguards that should be required for excepted agreements to help prevent the misuse of NDAs in cases of discrimination and harassment?

Please describe any additional conditions you would recommend and explain how they would help address potential risks or improve protections for individuals.

[Open text response]

Chapter 3: Permitted disclosures

Key points

- This chapter seeks feedback on the government’s proposed list of individuals who workers can make “permitted disclosures” to after having signed an excepted agreement.
- The recommended approach presented here aims to ensure that a worker can continue to seek appropriate advice and support, even after having signed an excepted agreement.

This section focuses on who those who have signed an “excepted agreement” should still be able to speak to. Our intention is that where a worker has signed an excepted agreement, they are still able to disclose information relating to relevant harassment and discrimination to certain individuals or bodies. We refer to this as being a “permitted disclosure”.

To be clear, under section 202A, if a worker enters into an NDA with their employer that is not an ‘excepted agreement’, that NDA will not be able to prevent them from speaking to anyone about relevant harassment and discrimination. Where an excepted agreement is agreed, the parties (worker and employer) could still agree to specify within that NDA certain individuals who the worker can talk to over and above the “permitted disclosures” specified in regulations. For example, the parties could agree to specify that a worker could speak to a ‘named friend’ as part of the confidentiality agreement.

Furthermore, it is already the case that an NDA cannot stop a worker from whistleblowing by making a protected disclosure under the Employment Rights Act 1996. An NDA also cannot stop anybody from reporting a crime to the police. NDAs signed on or after 1 October 2025 also cannot validly prevent victims of crime in England and Wales from sharing information with certain individuals to get advice and support. Information can be shared for certain purposes related to the criminal conduct, notwithstanding the terms of an NDA. From 12 December 2025, NDAs signed on or after this date cannot validly prevent victims of Crime in England and Wales from sharing information with an additional two groups, the Criminal Injuries Compensation Authority (CICA) for the purpose of making a claim and the Courts and Tribunals for the purpose of challenging a decision of the CICA.

However, there may be circumstances where it would be suitable for a worker to seek support or advice from further individuals or bodies. This section asks who workers should be able to make permitted disclosures to even after they have entered into an excepted agreement.

A worker who has signed an excepted agreement should be able to make permitted disclosures to groups or individuals specified in the regulations

Proposal: We believe that, following the signing of an excepted agreement, a worker should be able to make disclosures to the following individuals or groups for the following purposes:

- **Any person who has law enforcement functions.** We define this as police or other bodies which investigate or prosecute crime for the purposes of allowing these bodies to carry out their functions. Other bodies could include (but are not limited to):
 - Health and Safety Executive
 - Financial Conduct Authority

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- Information Commissioner’s Office
- Serious Fraud Office

- **A qualified lawyer or a registered foreign lawyer.** “Qualified lawyer” would be defined to include authorised persons in relation to a reserved legal activity for the purposes of the Legal Services Act 2007 for the purpose of seeking legal advice about the relevant harassment and discrimination.¹¹ The definition of “qualified lawyer” would also include the law firm itself.

- **Any individual who is entitled to practise a regulated profession or a tax advisor.** We define “regulated profession” as someone who must meet certain legal rules to do their job. This might include having the right qualifications, being registered with a regulator, or using a protected job title. For example, a doctor or paramedic (regulated by the General Medical Council and Health and Care Professions Council respectively), a social worker (regulated by Social Work England or Social Care Wales) for the purposes of obtaining professional support in relation to the relevant harassment and discrimination. ‘Regulated professions’ would have the same meaning as in the Professional Qualifications Act 2022 (section 19). We also propose to include tax advisors, which is not a regulated profession, who could provide advice on any financial compensation received.

- **Any individual or organisation who provides a service to support victims.** We define this as support services that a worker may seek out for the purpose of getting confidential and independent support from them related to the effects of the relevant harassment or discrimination. For example, a health and care professional, such as a counsellor; or voluntary sector services, such as an Independent Sexual Violence Advisor, who follow strict confidentiality principles. Disclosures would be permitted to victim support services for the purpose of obtaining support from that service in relation to the relevant harassment and discrimination.

- **A regulatory body.** We define this as a body that supervises a particular industry or business activity, sets professional industry standards and considers misconduct. For example, the Solicitors Regulation Authority, which regulates solicitors in England and Wales, and the General Medical Council, which regulates medical practitioners in the UK. Another example is the Equality and Human Rights Commission (EHRC) that enforces aspects of the Equality Act 2010 which makes it unlawful to discriminate against or harass individuals based on protected characteristics. Workers will be able to share information with regulators for the purpose of making a disclosure or co-operating with them when they are investigating or advising on the relevant harassment and discrimination.

- **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.** For example, the Advisory, Conciliation and Arbitration Service (Acas) that provide impartial

¹¹ <https://www.legislation.gov.uk/ukpga/2007/29/contents>

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advice to employers, employees and their representatives including services to facilitate dispute resolution. Workers will be able to share information with Acas officers for the purposes of obtaining confidential advice and support in relation to the relevant harassment and discrimination or their excepted agreement.

- **A trade union representative accompanying workers in grievance and disciplinary cases, a trade union equality representative or a trade union representative authorised to give advice on settlement agreements.** Union representatives may advise and accompany workers before and/or during grievance or disciplinary hearings provided that the trade union has stated in writing that they have the relevant experience or training to act as a worker’s companion. Equality representatives can be concerned with a wide range of diversity issues from the promotion of diversity management to helping ensure legal compliance, including engaging employers on a range of equality issues. Union representatives may advise on a workers settlement agreement regarding relevant harassment and discrimination. Workers will be able to share information with trained union representatives for the purposes of obtaining confidential advice and support in relation to the relevant harassment and discrimination or their excepted agreement.
- **A person who is authorised to receive information on behalf of a person specified in all of the above** for the purposes mentioned. This could include a receptionist at a law firm who is allowed to receive information from prospective clients on behalf of lawyers in the firm, or an interpreter who is allowed to receive information on behalf of the police.
- **Close family members** for the purpose of receiving support in respect of the relevant harassment and discrimination. This would include a close relative, child, parent, partner for the purpose of obtaining support. A person is a “partner” of another person if they are married to each other, in a civil partnership with each other or in an intimate personal relationship with each other which is of significant duration. A close relative is considered to be a sibling, grandparent, aunt or uncle, whether of the full blood or half blood or by marriage or civil partnership.

Rationale: The intention of this proposal is that, following signing an excepted agreement, there may be circumstances where it is appropriate for a worker to seek advice or support from certain individuals, irrespective of the confidentiality provided by the agreement.

There is precedent for permitted disclosures. Under existing legislation (Section 17 of the Victims and Prisoners Act 2024), an NDA signed on or after 1 October 2025 will not be enforceable against victims of crime in relation to the disclosure of information to the following groups and for the following purposes related to the relevant conduct:

- Police or other bodies which investigate or prosecute crime, for investigating or prosecuting the relevant conduct.
- Qualified lawyers and registered foreign lawyers, for seeking legal advice about the relevant conduct

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- Regulated professionals for obtaining professional support in relation to the relevant conduct. This includes regulated healthcare professionals, social workers, and teachers, for example.
- Victim support services, for obtaining support in relation to the relevant conduct. These services include charities and organisations that offer confidential, independent support; helplines, counselling, and therapy; and advisors, like Independent Sexual Violence Advisers (ISVAs), who follow strict confidentiality rules.
- Regulators of regulated professions, for cooperating with the regulator in relation to the relevant conduct.
- The Criminal Injuries Compensation Authority (CICA), for making a claim for compensation in relation to the relevant conduct (as of 12 December 2025).
- Courts and tribunals, for challenging a decision of the CICA made in connection with such a claim for compensation (as of 12 December 2025).
- To a person authorised to receive information on behalf of any of the above, for the relevant purposes mentioned above. This could include a receptionist at a law firm who is allowed to receive information from prospective clients on behalf of lawyers in the firm, or an interpreter who is allowed to receive information on behalf of the police.
- A victim's close family, for the purpose of obtaining support in relation to the relevant conduct. This includes a victim's child, parent, or partner for the purpose of getting support in relation to relevant conduct.

We are proposing that we build on the existing list as set out in the Victims and Prisoners Act 2024. We also acknowledge that there may be other groups or individuals particularly relevant to NDAs in cases of relevant harassment and discrimination who may not be included in this list and we are therefore seeking views on this approach. For example, this could include prospective employers, or those outside of the employment relationship such as friends and wider family.

Questions

Question 32. Do you agree a worker should be able to make disclosures to the individuals and bodies included in the proposal above, when a worker has entered into an excepted agreement?

Please select from the list those individuals and/or bodies which you agree workers should be able to make disclosures to.

- a) Any person who has law enforcement functions.
- b) A qualified lawyer
- c) Any individual who is entitled to practise a regulated profession or a tax advisor
- d) Any individual who provides a service to support victims
- e) A regulatory body.
- f) A trade union representative accompanying workers in grievance and disciplinary cases, a trade union equality representative, or a trade union representative authorised to give advice on settlement agreements.
- g) A person who is authorised to receive information on behalf of a person mentioned in all of the above
- h) Close family members
- i) Don't know

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j) If no to any of the above, please explain why.

Question 33. Are there any individuals or organisations not included in the proposal above that you think a worker should be able to make a disclosure to?

- a) Yes
- b) No
- c) Don't know
- d) If yes, please explain who and why.

Other individuals

Prospective employers

There could be circumstances under an excepted agreement where disclosure to a prospective employer, such as a recruiter, company or individual that you are seeking employment from may be helpful during the recruitment process. For example, an NDA may limit a worker's ability to disclose information about why they may have gaps in employment, or reasons for departure from previous roles.

Including prospective employers on the list of permitted disclosures would not mean that a worker would be obliged to disclose any information about their excepted agreement. It would be up to the worker as to how much information they would like to disclose. We recognise that, while some workers may wish to keep information related to their NDA confidential, there may be situations where a worker would like to describe circumstances in their employment history, and adding prospective employers would ensure this was possible.

It should be noted that the future employer would not be bound by an excepted agreement as agreed between parties (worker and previous employer) and therefore would not be required to keep confidentiality to the previous employer. This could make an employer less inclined to enter into an excepted agreement, including where a worker has requested it, given the possibility of future disclosure.

Questions

Question 34. Should individuals with excepted agreements be able to disclose to prospective employers?

- a) Yes
- b) No
- c) Don't know
- d) Please explain why.

Family and friends

As noted above, we consider a close family member to include: a close relative, child, parent, partner, or sibling for the purpose of obtaining support. A person is a "partner" of another person if they are married to each other, in a civil partnership with each other or in an intimate personal relationship with each other which is of significant duration. A close relative would mean a sibling,

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grandparent, aunt or uncle, whether of the full blood or half blood or by marriage or civil partnership.

However, the government recognises that ‘a close family member’ could exclude other individuals that could provide a support network to an individual, for example, friends. There is no single overarching definition for a friend which means there is significant ambiguity as to who would qualify – for example, a work colleague, social media contact, a classmate, a lifelong acquaintance. This could also significantly undermine an employer’s willingness to enter into an excepted agreement, should the worker desire one, as the worker could have multiple friends and these ‘friends’ would not owe the employer any duty of confidentiality under the excepted agreement. This could therefore impact on a worker’s ability to secure an excepted agreement, where it may be in their interests to do so.

We therefore believe that friends should not be a permitted disclosure in the regulations. As noted above, this would not prevent the parties (worker and employer) agreeing as part of the terms of an excepted agreement to specify certain individuals who a worker can still talk to. For example, the parties could agree in an NDA to specify that a worker could speak to a ‘named friend’.

Questions

Question 35. Should individuals with excepted agreements be able to disclose to close family, as defined above?

- a) Yes
- b) No
- c) Don’t know
- d) If no, please explain why and any changes you think should be made to the definition of “close family”**

Question 36. Should individuals with excepted agreements be able to disclose to any other individuals for example wider family members, friends or anyone else?

- a) Yes
- b) No
- c) Don’t know

Question 37. If you answered yes to Question 36, how would you define the wider group of individuals?

[Open text response].

Chapter 4: Application to other individuals

Key points

- This chapter seeks feedback on whether section 202A should, at some point in the future, apply to individuals not covered by the usual definition of worker in section 230(3) of the Employment Rights Act 1996.

Section 202A will apply to agreements between employers and their workers. This will cover individuals who fall within the usual definition of “worker” in section 230(3) of the Employment Rights Act 1996, including employees and ‘limb(b)’ workers.

The government is considering whether section 202A should, in the future, apply to other individuals not covered by the usual definition of worker who may be vulnerable to the misuse of NDAs in cases of harassment and discrimination, including certain groups of self-employed.

Although there are countless different working relationships that individuals and businesses can agree to, broadly the law reduces these into one of three main types of status for employment rights:

- an **employee** who has the most rights but also has the most responsibilities and obligations towards their employer.
- a **limb (b) worker** – i.e. a worker who is not an employee and who has fewer rights and obligations than an employee.
- a **self-employed individual** who has the least protection but also tends to have fewer personal obligations and has significant flexibility in their work and/or delivers a service to a customer or client as part of a business or professional undertaking.

The term limb (b) worker is a reference to one of the two “limbs” in the legal definition of a “worker” under Section 230(3) of the Employment Rights Act 1996. Limb (a) of the definition covers those with a contract of employment (employees).

Section 230(3) of the Employment Rights Act 1996 defines a worker as an individual who has entered into or works under:

- a) contract of employment or
- b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

In some instances, the government has extended specific employment rights and protections to other groups of individuals. An example of this can be found with whistleblowing protections in the Employment Rights Act 1996 (originally introduced by the Public Interest Disclosure Act 1998), where section 43K provides for an extended meaning of ‘worker’ for whistleblowing protections.

For the purposes of this part of the consultation, we have broadly categorised other individuals to include:

Individuals that work for someone that is not their employer

This could include:

- **Agency workers:** An individual that has a contract with an employment agency but works temporarily for a hirer. For example, an agency worker could request, or be asked by the ‘hiring’ organisation, to sign an NDA to cover the duration of the period for which they have worked for the hirer. Section 202A would currently not apply to the NDA between the agency worker and the hirer because the hirer is not their employer.
- **Secondment workers:** An individual who is temporarily assigned to work for a different organisation. During this period, the employee remains formally employed by their original employer and is typically covered by their existing terms of employment, whilst working on a project or gaining new experience with the host organisation. Section 202A would currently not apply to an NDA between the seconded worker and the host organisation because the host organisation is not their employer.

If section 202A were extended to include these individuals, it would mean that a provision in an agreement between these individuals and the hiring or host organisation would be void in so far as it stopped the individual from speaking out about relevant harassment or discrimination. To have a valid NDA, the individual and the organisation would need to make sure the agreement meets the conditions for an excepted agreement. Another effect of the extension would be that harassment or discrimination involving these individuals would count as “relevant harassment and discrimination” for other workers employed by the organisation.¹² For example, if an employee of the host organisation signed an NDA with the host organisation (their employer) that tried to stop them speaking up about harassment they saw a secondee experience from a customer, that provision in the NDA would be void under section 202A.

Questions

Question 38. Should section 202A apply to individuals who work for someone other than their employer?

- a) Yes
- b) No
- c) Don't know

Question 39. If yes, what additional individuals should be covered?

- a) Agency workers
- b) Secondment workers
- c) Others. Please explain why.

Other Individuals in an employment-type arrangement

There are a number of other individuals that are not captured under section 230(3) of the Employment Rights Act 1996. These individuals could however be vulnerable to the misuse of NDAs in cases of harassment and discrimination, including certain groups of self-employed. These include:

¹² This is because these individuals would become “another worker of an employer of the worker” in section 202A(2).

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- **Work experience placement:** is typically a period of temporary, supervised work experience, often as part of a training programme that provides practical experience in a professional environment. If the individual on the placement is not a worker, section 202A would not currently apply to an NDA between that individual and the person or organisation they are placed with.
- **Nurses and midwives in training:** are typically provided with work experience as part of a course of education or training approved by – or under arrangements with – the Nursing and Midwifery Council. If a student nurse or midwife is not an employee or worker, section 202A would not currently apply to an NDA between that individual and the person or organisation they are placed with.
- **NHS workers:** In some cases, NHS practitioners such as doctors, dentists, ophthalmologists, and pharmacists may operate as self-employed contractors and are therefore not workers under Section 230(3) of the Employment Rights Act 1996. An NDA entered into between an NHS practitioner and the relevant health body would not currently be covered by Section 202A.

Questions

Question 40. Should section 202A apply to individuals not covered by the usual definition of “worker” in Section 230(3) of the Employment Rights Act 1996?

- a) Yes
- b) No
- c) Don't know

Question 41. If yes, what additional individuals should be covered? Please explain why.

- a) Work experience placement
- b) Nurses and Midwives in training
- c) NHS worker
- d) Other. Please state. [Open text response]
- e) **Please explain why.**

Self-employed individuals

The government recognises that there may be self-employed individuals who are vulnerable to the misuse of NDAs and would also benefit from being covered by section 202A. For example, the Women and Equalities Select Committee report *Misogyny in Music 2024*, highlighted the vulnerability of those working in the music industry, many of which are self-employed freelancers, to issues of discrimination and harassment noting: “abuse and discrimination are not unique to the industry but they are amplified in music by the high number of freelance workers in the sector—which gives rise to significant power imbalances in working relationships and precarious employment practices”.¹³ Extending section 202A to the self-employed is a challenging task given the nature of the relationship between self-employed individuals and those that engage their services.

¹³ [Misogyny in music - Women and Equalities Committee](#). Paragraph 3

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Self-employed individuals carry out their work in many different ways, and there are not always consistent features across the working relationships they have with those who engage their services. For example:

- the contract for services may or may not be in writing;
- it may or may not allow the individual to delegate their work to others;
- it may involve working on a short-term project lasting a matter of hours or a long-term assignment lasting for several months; and
- their client or customer may be a business, other organisation or a private individual (for example engaging a person to carry out work in their home).

As the self-employed individual is not their client's or customer's employee or worker, section 202A would not apply to an NDA between that self-employed individual and the client or customer they are providing services for. We would therefore like to understand if there are any specific groups of self-employed individuals that you think should be covered by Section 202A.

Questions

Question 42. Are there any specific groups of self-employed individuals that should be covered by section 202A that have not be outlined in this section?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what specific groups these are and reasons you think they should be covered by section 202A.**

The government may consider a staggered approach to implementation by commencing section 202A as it currently applies to individuals covered by the usual definition of "worker" in the Employment Rights Act 1996, with the possibility of extending it to other individuals as proposed in this section at a future point.

Next steps

This consultation will close at 23:59, 8 July 2026. Following the closure of this consultation, we will analyse all responses and publish a government response in due course.

Summary of consultation questions

Question 1. Do you agree it should be a condition that the worker has received independent advice on the terms and effect, and the legal limitations of a proposed excepted agreement, before entering into the agreement?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain why.

Question 2. Do you agree that the independent advice must be given in writing?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain why.

Question 3. Do you agree that employers should not have to cover the cost of independent advice?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain why.

Question 4. For private settlement agreements, do you have any concerns about requiring the worker to receive independent written advice on the terms and effect, and legal limitations of the NDA?

- a) Yes
- b) No
- c) Don't know
- d) If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.

Question 5. For Acas facilitated COT3 agreements, do you have any concerns about requiring the worker to have received independent advice in writing on the terms and effect, and legal limitations of the NDA?

- a) Yes
- b) No
- c) Don't know
- d) If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.

Question 6. Should Acas conciliators should be included as relevant independent advisors?

- a) Yes
- b) No
- c) Don't know
- d) Please explain why.

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Question 7. Should an independent advisor be required to provide other advice in writing to a worker, in addition to those proposed in this section, on:

- The terms and effect of the proposed NDA; and
 - The legal limitations of the NDA.
- a) Yes
 - b) No
 - c) Don't know
 - d) If no, please explain why.**
 - e) If yes, please explain what other advice you think should be provided in writing and why.**

Question 8. Do you agree that it should be a condition in the regulations that the worker has expressed their preference for an excepted agreement in writing following the receipt of independent advice on the proposed agreement?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain why.**

Question 9. Do you agree that the regulations should not prescribe the form and style of the worker's preference?

- a) Yes
- b) No
- c) Don't know
- d) If no, please explain why.**

Question 10. Should an employer be able to suggest confidentiality to their workers?

- a) Yes
- b) No
- c) Don't know
- d) Please explain why.**

Question 11. For private settlement agreements, do you have any concerns about requiring a worker to express their preference in writing to enter into the agreement?

- a) Yes
- b) No
- c) Don't know
- d) If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 12. For Acas facilitated COT3 agreements, do you have any concerns about requiring a worker to express their preference in writing to enter into the agreement?

- a) Yes
- b) No
- c) Don't know
- d) If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

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Question 13. Do you agree that an excepted agreement should be required to include a cooling off period?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain your answer.**

Question 14. Do you agree that 14-days is a sufficient length of time for a cooling off period?

- a) Yes
- b) No
- c) Don't know

Question 15. If no, what length of cooling off period would you consider appropriate, and why?

- a) 7 days
- b) 10 days
- c) Other.
- d) **Please explain why.**

Question 16. Should any required cooling off period only apply to the confidentiality clauses within an excepted agreement?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 17. Should workers be allowed flexibility to waive the cooling off period?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 18. Do you have any concerns about requiring a 'cooling-off' period for private settlement agreements?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

Question 19. Do you have any concerns about requiring a 'cooling off' period in an Acas facilitated COT3 agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain what these concerns are, what might be the costs or implications and how might these be mitigated.**

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Question 20. Do you agree that there should not be a mandatory statutory review period before an excepted agreement is entered into?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why and what length the review period should be.**

Question 21. Should both a review and cooling off period be conditions of an excepted agreement?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 22. Do you agree that a written copy of the excepted agreement should be provided to all parties to the agreement?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 23. Do you agree it should be a requirement that an excepted agreement is made available to the parties in any accessible format they may need?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 24. Should an excepted agreement be written in plain language?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 25. Should regulations require an excepted agreement to be in plain language?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 26. Should guidance, rather than regulations, set out that an excepted agreement should be written in plain language?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

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Question 27. Do you agree it should be a condition that an excepted agreement can only be entered into where it would prevent a worker speaking out about an incident of relevant harassment or discrimination which has already taken place?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why.**

Question 28. Should the confidentiality obligations relating to relevant harassment and discrimination in an excepted agreement be required to be time-limited?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 29. If a time-limit is required, should government stipulate a maximum time-limit?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 30. If yes, what should the maximum time-limit be? Please explain why.

- a) 1 year
- b) 2-3 year
- c) 4-5 years
- d) 6-10 years
- e) No set duration, the worker is able to choose a time-limit if they would like to
- f) [Open text response]

Question 31. Are there any other conditions or safeguards that should be required for excepted agreements to help prevent the misuse of NDAs in cases of discrimination and harassment?

Please describe any additional conditions you would recommend and explain how they would help address potential risks or improve protections for individuals.

[Open text response]

Question 32. Do you agree a worker should be able to make disclosures to the individuals and bodies included in the proposal above, when a worker has entered into an excepted agreement?

Please select from the list those individuals and/or bodies which you agree workers should be able to make disclosures to.

- a) Any person who has law enforcement functions.
- b) A qualified lawyer
- c) Any individual who is entitled to practise a regulated profession or a tax advisor

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- d) Any individual who provides a service to support victims
- e) A regulatory body.
- f) A trade union representative accompanying workers in grievance and disciplinary cases, a trade union equality representative, or a trade union representative authorised to give advice on settlement agreements.
- g) A person who is authorised to receive information on behalf of a person mentioned in all of the above
- h) Close family members
- i) Don't know
- j) **If no to any of the above, please explain why.**

Question 33. Are there any individuals or organisations not included in the proposal above that you think a worker should be able to make a disclosure to?

- a) Yes
- b) No
- c) Don't know
- d) **If yes, please explain who and why.**

Question 34. Should individuals with excepted agreements be able to disclose to prospective employers?

- a) Yes
- b) No
- c) Don't know
- d) **Please explain why.**

Question 35. Should individuals with excepted agreements be able to disclose to close family, as defined above?

- a) Yes
- b) No
- c) Don't know
- d) **If no, please explain why and any changes you think should be made to the definition of "close family".**

Question 36. Should individuals with excepted agreements be able to disclose to any other individuals for example wider family members, friends or anyone else?

- a) Yes
- b) No
- c) Don't know

Question 37. If you answered yes to Question 36, how would you define the wider group of individuals?

[Open text response].

Question 38. Should section 202A apply to individuals who work for someone other than their employer?

- a) Yes
- b) No
- c) Don't know

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Question 39. If yes, what additional individuals should be covered?

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- b) Secondment workers
- c) Others. Please explain why.

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Question 41. If yes, what additional individuals should be covered? Please explain why.

- a) Work experience placement
- b) Nurses and Midwives in training
- c) NHS worker
- d) Other. Please state. [Open text response]
- e) **Please explain why.**

Question 42. Are there any specific groups of self-employed individuals that should be covered by section 202A that have not be outlined in this section?

- a) Yes
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- d) **If yes, please explain what specific groups these are and reasons you think they should be covered by section 202A.**

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