

Banning non-competition clauses – how will you be affected?



The UK government is currently consulting on the need for clauses that restrict the activities of employees after their employment ends (post-termination restrictive covenants). The intention is clear – to kick-start the UK's economic recovery following the Covid-19 pandemic.

At present, non-compete clauses preventing employees from working for a competitor, or setting up a competitive business post-termination, are enforceable provided they are necessary to protect an employer's legitimate business interest and are no wider in scope than is reasonable. There are two changes being contemplated.

The proposed changes

The compulsory payment for the non-compete period

The first option put forward by the consultation is a mandatory compensation route, meaning post-termination non-compete clauses would only be enforceable if the employer provided compensation during the restricted period. This may lead to a reduction in litigation with employers being less likely to breach whilst receiving compensation. It could also ensure employers limit their use to only where truly necessary, with the additional cost discouraging employers from applying a non-complete clause for an unnecessary period.

Making non-competition clauses unenforceable

The second, more radical, proposal is to render restrictive covenant clauses unenforceable in contracts of



employment, effectively banning their use. The basis for this approach is the perception that removing the restrictions would increase innovation and competition by enabling individuals to start new businesses and by allowing mobility of skills and ideas between companies and regions, therefore positively impacting economic growth.

What is the realistic impact?

Businesses benefit from the protection of these restrictions, without any cost at present. The possibility of the restrictions becoming unenforceable is of understandable concern. The fear is that businesses will be damaged if they cannot protect their business interests by keeping staff out of the market for a limited period. It seems unlikely that the UK will prohibit their use entirely. The majority of businesses that responded to a Call for Evidence in 2016 favoured restrictive covenants as a valuable way of protecting business interests.

The more likely outcome is the introduction of mandatory payments of financial compensation for the duration of the non-compete restrictions. This is the typical position in most European countries where the payment varies depending on the number of restrictions and their scope. The sums involved would necessitate a genuine assessment of which employees need to be restrained and the minimum period the employer will genuinely need to re-establish the business relationships.

If you wish to have your say, then [read and respond to the consultation](#).

How we can help

For further information about the consultation scope or related questions, please get in touch with [Melanie Stancliffe](#), partner, in the employment team.



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