

Non-compete restrictions in employment contracts under the spotlight once again

On 26 November 2025 the Government published a working paper setting out options for the reform of non-compete clauses in employment contracts.

What is the background to this proposal?

Non-compete restrictions in employment contracts have come under intense scrutiny over the last decade, with repeated calls for restricting their use.

In May 2016, David Cameron's Government launched a Call for Evidence which sought views on whether non-compete clauses stifled innovation and unfairly hindered workers from moving freely between employers. The responses to that consultation were fairly polarised with established businesses favouring the current law but new ones looking for more flexibility. However, further work in this area was ultimately shelved in the wake of the Brexit vote.

Yet it was back on the table again just a few years later. In December 2020, Boris Johnson's Government launched a consultation on proposals for limiting, or potentially even banning, the use of non-compete clauses in employment contracts. The consultation put forward two proposals. The first was that non-competes should only be enforceable where the employer compensated the employee for the length of the

restriction, potentially combined with a maximum length of three, six or 12 months. The second was to ban non-competes altogether. However, the proposals were moth-balled, with no response to the consultation ever published by the Government.

Then in May 2023 Rishi Sunak's Government announced that it intended to legislate to limit the length of non-competes in employment contracts to three months (with no requirement to compensate the employee for the length of the restriction). However, the change of Government in 2024 meant this proposal never made it onto the statute books.

Given the Labour Government's focus on the wide-ranging employment law reforms contained in the Employment Rights Bill, many assumed that non-compete reform was a distant memory. It, therefore, came as a surprise to learn that reform of non-competes, is once again, back on the table. On 26 November 2025, the Government published a Working Paper inviting views on options to reform non-compete clauses in employment contracts.

What is proposed in the Working Paper?

The Government's stated aims in reforming non-competes is to advance the following objectives:

- **Boosting labour market dynamism** by making it easier for workers to move jobs or start their own business.

- **Reducing barriers to recruitment** so that businesses (particularly those scaling-up) can access the talent they need.
- **Promoting competition and innovation** by maximizing opportunities for innovators, experts and entrepreneurs.
- **Protecting workers** so that they do not have to face extended periods of time out of the labour market in their area of expertise.

The Working Paper goes on to set out five possible options for reform of non-compete clauses:

- **Option 1: Introduce a statutory limit on the length of non-compete clauses:** it is said that a statutory limit would protect workers by limiting the time they are unable to work in their area of expertise. However, the Government does not indicate what that statutory limit should be. Although arguments supporting a three-month limit are acknowledged, the Government expresses concern that it would leave some lower-paid workers facing the

prospect of three months out of work in their chosen area. Concern is also expressed that a statutory limit of any sort could be interpreted as an “industry standard” and lead to an assumption that non-competes of that length would be enforceable in *all* cases. The Government underlines that this is not the intention – the existing principles would continue to apply, namely that where the restraint of trade doctrine applied, a clause in restraint of trade will be unenforceable unless the employer can demonstrate it is reasonable.

- **Option 2: Introduce a statutory limit on the length of non-compete clauses according to company size:** as a variation on Option 1, it is suggested that the Government could apply different statutory limits according to company size – with lower limits (e.g. three months) for large companies and higher limits (e.g. six months) for smaller companies. It is said that this approach would aim to promote competition by making it easier for those working in large companies to move to competitors or start a competing business. This would also give smaller organisations an advantage over larger companies in that they could utilise longer non-compete restrictions. On the other hand, the downside of this approach is that it leaves those working in smaller companies, especially those in lower paid sectors, exposed to longer non-competes.

- **Option 3: Ban non-compete clauses:** a more radical

suggestion is to ban the use of non-compete clauses in employment contracts altogether. The Working Paper says this would have the dual benefit of supporting worker mobility and boosting labour market dynamism. Further, employers might respond to a ban by offering positive incentives to retain staff (such as increased pay, bonuses or greater flexibility) which would benefit workers further. Alternatively, employers might deploy garden leave as an alternative to non-competes, which would also benefit workers since they would be paid. Concern is expressed about the possibility of employers strengthening their use of other restrictive covenants, and confidentiality and intellectual property clauses. The Government said it would need to ensure that other restrictions were not used in a way that would have a similar effect to a non-compete clause.

- **Option 4: Ban non-compete clauses below a salary threshold:** a more moderate version of Option 3 would be to permit the use of non-competes only where a worker earns over a certain salary threshold. This Working Paper highlights there is international precedent for this approach, for example, the Washington State ban on non-competes for workers earning below approximately £93,000. It is said the impact of the policy would vary depending on the level at which the threshold was set – with a suggestion of aligning it with the additional rate tax threshold of £125,140 being mooted. A partial ban such as this would achieve some of the benefits of an outright ban and provide greater protection to lower paid workers. Yet this proposal has several drawbacks including difficulties in calculating pay (and the potential for satellite litigation about

what should and should not be included in pay calculations) and the risk of creating certain incentives and cliff edges around pay levels that might lead to unintended consequences. It would also leave higher-paid and higher-skilled workers out of scope of the ban.

- **Option 5: Combining a ban below a salary threshold with a statutory limit:** a final option would be to combine Options 1 and 4, namely a ban below a salary threshold, with non-competes up to a maximum of three months allowed for those earning above the threshold. This would eliminate non-competes for lower paid workers while ensuring that non-competes could be deployed for higher paid workers in a limited way.

Finally, the Working Paper highlights that the Government is interested in hearing views and evidence on whether the threat of high legal costs presents obstacles to workers in contesting the enforceability of restrictive covenants. It is also interested in suggestions for how the Government might tackle this issue.

What don't we know?

There are a number of important points not made clear in the Working Paper:

▪ **What is an “employment contract” for these purposes?** Will the proposals apply to contracts of employment only or also to other agreements which are collateral to the employment relationship e.g. shareholders’ agreements, long term incentive plans (LTIP) or carried interest agreements? In *Duarte v Black & Decker Corp* EWHC 2720 (QB), the High Court held that restrictive covenants contained in an LTIP agreement separate from the employment contract was no bar to the LTIP agreement being treated as an “individual employment contract” for the purposes of deciding the governing law. It is possible that a similar approach will be taken in the new legislation. The Working Paper is also silent on whether settlement agreements between employer and employee are within scope.

▪ **Will “workers” be covered?** The Working Paper refers reforming non-competes in “employment contracts”, yet in the body of the part it refers in places to “employees” and in other places to “workers”. Therefore, it is unclear whether the intention is to capture workers as well as employees. If the proposals do *not* extend to workers then this would mean that longer non-competes could still be used for certain independent contractors or LLP members.

▪ **Will the law apply to existing employment contracts?** It is not clear whether the proposals would apply retrospectively or only to new contracts. In the event

that it applied retrospectively, employers would potentially need to renegotiate non-compete restrictions (depending on which proposals are taken forward). Thought should also be given to strengthening other terms to offset the reduction in the non-compete restriction. For example, notice periods, non-solicit and non-dealing covenants. However, in order to ensure the enforceability of any revised terms some form of “consideration” would need to be given to the employee in return for their agreement.

- **How will the new law work alongside garden leave clauses?** As the Working Paper recognises, the risk is that employers will respond to the loss of non-competes by extending periods of notice in order to place the employee on garden leave and keep them out of the market that way. This would undermine the stated intention of the proposals and so it seems likely that the interplay of garden leave and non-competes will need to be addressed. In our anecdotal experience, employers in some sectors responded to the Federal Trade Commission’s (now abandoned) rule banning non-competes by seeking to significantly increase employee’s notice periods.

Next steps?

Responses to the Working Paper must be submitted by 18

February 2026. It is said that the responses will inform the Government's engagement with relevant stakeholders before a decision is made about which proposals (if any) are taken forward.

No indication is given about when any such proposals might be implemented but given that a further programme of stakeholder engagement is envisaged before the Government settles on a policy, it seems unlikely that any legislation would come into force in the course of 2026.

[Working paper on options for reform of non-compete clauses in employment contracts](#)

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