## Non-Compete Clauses Call for Evidence Response Form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is:

Name:

Organisation (if applicable):

Address:

Please return completed forms to:

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Please select the option that best describes you from the list below.

|  |  |
| --- | --- |
|   | Business representative organisation/trade body |
|  | Central government |
|  | Charity or social enterprise |
|  | Worker |
|  | Large business (over 250 staff) |
|  | Legal representative |
|  | Local Government |
|  | Medium business (50 to 250 staff) |
|  | Micro business (up to 9 staff) |
|  | Start up |
|  | Small business (10 to 49 staff) |
|  | Trade union or staff association |
|  | Other (please describe) |

### Examples of ‘non-compete clauses’

There is no commonly accepted definition of a non-compete clause, and it is not a term used in UK statute. However, the term is being increasingly used in academic literature. For the purposes of this call for evidence, by “non-compete clauses” we are referring to any clause in an employment contract that seeks to restrict a worker’s ability to compete against their former employer after they leave. They are often also referred to as restrictive covenants. Examples, of which we are aware, include:

1. Restrictions to an ex-worker’s ability to work for a competing business.
2. Restrictions which prevent an ex-worker from having dealings with the employer’s customers or clients.
3. Restrictions preventing an ex-worker from hiring workers of the former employer.

d.   Restricting a worker from setting up a business in a geographical location that would disadvantage their ex-employer.

#### Question 1a

#### Are any of the examples above incorrectly being framed as a non-compete clause? If so, why?

Yes [ ]  No [ ]

Click here to enter text.

#### Question 1b

**Are you aware of other examples of clauses in an employment contract which restrict a worker’s ability to compete against a former employer? If so, please can you provide examples of these.**

Click here to enter text.

#### The Prevalence of non-compete clauses in the UK

The UK employment framework allows employers and workers to agree and negotiate worker contracts. As a result government does not hold any information on worker contracts or non-compete clauses. This means Government is not able to immediately see what the scale is of the use of such clauses, or where and in which circumstances they are used. There is an assumption that they tend to be used in higher skilled roles in the UK, and is why they may stifle the creation of start-ups.

Question 2a Do you have examples where non-compete clauses have been used?

#### Click here to enter text.

**Question 2b In your experience, are non-compete clauses particularly used in certain sectors or are they generally used across the labour market?**

[ ]  Certain Sectors [ ]  Across the Labour Market [ ]  Not sure

**Question 2c If you answered that non-compete clauses are particularly used in certain sectors – which ones? And what is the justification for their use in those specific sectors?**

Click here to enter text.

Question 2d: In your experience, are non-compete clauses used only or particularly in relation to higher skilled roles in the UK such as science or tech based jobs? If yes what are they?

Yes [ ]  No [ ]  Not sure [ ]

Click here to enter text.

1. **Have you as an employer used a non-compete clause? (Employers only)**

We need to understand why an employer would use a non-compete clause, and if so what the justification would be as one can only be enforceable if it protects a legitimate business interest and be for a reasonable time. For example, a drugs research business could argue that preventing one of their scientists from working for a direct competitor for two years after termination of employment is proportionate, but the same could not be said if they sought to prevent the scientist taking up a job in a bank. Even so, the employer would have to make the case that the same effect could not be achieved through other means – for instance, through a confidentiality clause.

**Question 3a Have you as an employer used a non-compete clause?**

[ ]  Yes [ ]  No

**Question 3b If you have used one. What was the type of job and what were the terms and restrictions you included in the non-compete clause?**

Click here to enter text.

**Question 3c What was your justification for including a non-compete clause?**

Click here to enter text.

**Question 3d Do you use non-compete clauses only for certain jobs or do you use them as a blanket term across your business and worker contracts?**

[ ]  Certain Jobs

[ ]  Across all contracts

[ ]  I don’t use them

**If you do use them, what jobs do you use them for?**

### Click here to enter text.

**Question 3e Have you had to challenge an ex-worker you believe has breached such a clause? If so, please provide as much information as you are able to explain the issue, what action you took, and the outcome.**

### Click here to enter text.

1. **Have you ever been subject to a non-compete clause as a worker? (Workers only)**

We need to understand if workers are aware of non-compete clauses in their contracts and how transparent they are.

**Question 4a Have you ever been subject to a non-compete clause as a worker?**

[ ]  Yes [ ]  No

**Question 4b If you have been aware of a non-compete clause in a contract you have held with an employer, what was the job and what were the terms and restrictions of the non-compete clause?**

### Click here to enter text.

**Question 4c Were you aware of the non-compete clause in your contract when you signed your contract, and what the implications were for you? Did your employer explain the implications? Was it transparent?**

Click here to enter text.

**Question 4d Have you ever dis-regarded a non-compete clause? If so, please explain the issue, if your employer responded or challenged you, and the outcome.**

Click here to enter text.

**Question 4e Have you tried to challenge a non-compete clause, either formally or informally? If so, please provide as much information as you are able to explain the issue, what action you took, and the outcome.**

Click here to enter text.

1. **Have you experience of where a non-compete clause has affected or prevented the ability of workers to move from one job to another new business or employer, or hindered their ability to start up their own business?**

We would like to gather evidence to understand the nature and scale of the impact of non-compete clauses

**Question 5a Have you had a non-compete clause which has influenced your decision to leave or stay with an employer, or start a new business yourself?**

[ ]  Yes [ ]  No

**Question 5b If yes, what was the job (where the non-compete applied), and what were the terms of the clause?**

Click here to enter text.

**Question 5c Have you been influenced in a decision to hire or not hire someone by the terms of an existing non-compete clause?**

[ ]  Yes [ ]  No

**Question 5d If you have answered ‘yes’ to Q5c, please explain the terms of the non-compete clause, and the impact of the decision on the business, and the sector and specific job.**

Click here to enter text.

1. **Could there be any repercussions or unintended consequences if Government restricted some forms of non-compete clauses?**

If Government were to find evidence to suggest non-compete clauses are stifling start-ups, or being used unreasonably, one option might be to restrict their use in certain circumstances.

**Question 6a Would legislation to restrict the use of non-compete clauses in certain circumstances affect your business? If so, how?**

Click here to enter text.

**Question 6b Would legislation to restrict the use of non-compete clauses in certain circumstances affect your business? Please give information.**

Click here to enter text.

**Question 6c Could you restrict their use in certain circumstances through non-legislative measures?**

Click here to enter text.

**Question 6d As an employer, would intellectual property law and confidentiality clauses suffice to protect your interests if legislation to restrict the use of non-compete clauses came into force? If not, why?**

[ ]  Yes [ ]  No

Please explain

Click here to enter text.

**Question 6e What types of businesses would (or ought) to benefit from additional restrictions on the use of on-compete clauses?**

Click here to enter text.

# In your experience (as an employer, individual, or in your capacity as an advisor) are non-compete clauses transparent?

It is not immediately clear how transparent non-compete clauses are to workers and whether they understand the implications. In the same way, it is not clear whether employers understand the purpose of non-compete clauses and use them appropriately and alongside intellectual property law and confidentiality clauses, which are different to non-compete clauses.

Even without non-compete clauses, intellectual property rights will protect the legitimate interests of a former employer. These rights operate independently from any contract between an employer and its workers. For example, the law of confidence will prevent current or former workers from personally using their employer’s trade secrets or confidential customer lists. Similarly trade mark and passing-off law will prevent former workers from suggesting that they have a connection with the business in which they formerly worked unless the former employer agrees to this. Copyright law will prevent a former worker from copying written works created in the course of his former employment where he does not have the consent of the former employer.

However intellectual property law does not prevent a former worker from taking advantage of the general experience he has acquired in the course of a former employment. Therefore, the legislation as it stands should not act as a barrier for someone leaving one business to set up their own on the basis of their personal knowledge and experience.

**Question 7a Are you aware of guidance or do you seek guidance on the use of non-compete clauses and the associated intellectual property law and confidentiality clauses? What sources do you use?**

Click here to enter text.

**Question 7b Could guidance be improved to assist both employers and workers in their understanding of how non-compete clauses should work, what business interests could legitimately be considered as justification for non-compete clauses, and how to prevent such clauses from being inserted in contracts inappropriately?**

Click here to enter text.

**Question 7c Do you think new or improved guidance would improve confidence around the valid use of non-compete clauses and where confidentiality and intellectual property is a more appropriate way to protect business interests?**

Click here to enter text.

**Question 7d If you provide advice to employers in structuring and using non-compete clauses, what principles do you consider important to take into account?**

Click here to enter text.

**Question 7e If you provide advice to workers in negotiating or challenging non-compete clauses, what principles do you consider important to take into account?**

Click here to enter text.

**Please use this space for any general comments that you may have, comments on the layout**

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply [ ]

(Respondents should be thanked for their views and we should say whether we will acknowledge individual responses. Acknowledging responses can help foster good relations with new partners, however, most of the Department’s stakeholders are regular contributors to consultations and would probably consider acknowledgements to be an unnecessary expense. Current practice is to acknowledge on request only, actioned by a tick on the questionnaire using letter, postcards or e-mails)

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

[ ]  Yes [ ]  No

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