Title: Restricting the use of non-compete clauses **IA No:** DBT015(F)-23-LM **RPC Reference No:** RPC-BEIS-5241(1) **Lead department or agency:** Department for Business and Trade (DBT) **Other departments or agencies:** N/A	**Impact Assessment (IA)** **Date:** 12 May 2023 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** lm.correspondence@beis.gov.uk

Summary: Intervention and Options

RPC Opinion: Green

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
- £ 12.7m	- £ 12.7m	£ 1.5m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

A non-compete clause restricts an individual's ability to compete against their former employer for a fixed period of time when they are no longer under their employment. There is currently no provision in the UK employment statutory framework for non-compete clauses. Under current common law, there are very few constraints on the use of non-compete clauses in employment contracts and our estimates suggest that they are widely used across the labour market, with around 5 million employees subject to a non-compete clause in Great Britain and a typical duration of around 6 months. This can adversely impact both the worker affected, as their future mobility is restricted, and the wider economy due to the impacts on competition and innovation.

What are the policy objectives of the action or intervention and the intended effects?

The Government is committed to building a high-skilled, high-productivity, high-wage economy that delivers on our ambition to make the UK the best place in the world to work and grow a business. The policy is intended to make it easier for individuals to start new businesses, find new work and apply their skills. The policy objectives are to enhance the flexibility and dynamism of the UK labour market, and boost overall competition and innovation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

We have considered four options (including a 'Do Nothing' option):

- Do Nothing – Government would not intervene to restrict the use of non-compete clauses. The existing common law approach would continue.
- Option 1 – Government would make all non-compete clauses across the labour market unenforceable.
- Option 2 – Government would require employers to pay the worker for the duration of the non-compete clause. The levels of compensation considered include 60%, 80% and 100% of the employee's average pay.
- Option 3 (preferred option) – Government would make all non-compete clauses that are longer than three months unenforceable. The existing common law approach would continue for non-compete clauses that are three months or less. This option would lead to a lower direct cost to business than Option 2 and lead to a lower risk of unintended consequences than Option 1.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 5 years after implementation year

Is this measure likely to impact on international trade and investment?		N/A		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by Kevin Hollinrake MP, Minister for Enterprise, Markets and Small Business at the Department for Business and Trade: Date: 12/05/2023

Summary: Analysis & Evidence

Policy Option 3

Description: Option 3 – Legislate to introduce a statutory limit of three months

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2023	Time Period 10 years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: - 14.9**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	14.9		0	**14.9**

Description and scale of key monetised costs by 'main affected groups'

We have monetised the direct one-off familiarisation costs as businesses familiarise themselves with the legislation.

Other key non-monetised costs by 'main affected groups'

Businesses using non-compete clauses could incur an ongoing indirect disruption cost due to the loss of trade secrets, client relationships and other confidential information, and a reduction in investment in innovation and tighter controls over information sharing. This cost could be passed onto consumers in the form of higher prices. Workers that experience a change to their non-compete clause could incur a cost if their current employer reduces investment in innovation activities that are beneficial to them and implement tighter controls over information sharing.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

We have not monetised any benefits resulting from the policy given evidence limitations.

Other key non-monetised benefits by 'main affected groups'

Businesses could benefit from higher profits due to spillover benefits of existing innovations and incentives to invest in their own innovation activities. Workers could benefit higher pay and wellbeing as they have greater flexibility to move to a competitor or set up a competing business where it is in their interest to do so. Consumers could benefit from lower prices and the availability of new and higher quality goods and services. The Exchequer could benefit from lower spending on in-work and out-of-work benefits, as well as higher tax receipts, as fewer workers 'wait out' their non-compete clause.

Key assumptions/sensitivities/risks	Discount rate	3.5

The evidence base is not clear-cut and is an emerging area of policy and analytical interest. We have made significant efforts to improve our evidence base, including by commissioning two business surveys and one employee survey. However, the evidence landscape remains highly complex. The economic impacts of the policy are therefore subject to a significant amount of uncertainty and will depend on how businesses and workers respond. We have taken an overall cautious approach in our analysis, including through our interpretation of survey data, and used sensitivity analysis as appropriate.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 1.7	**Benefits:** 0	**Net:** 1.7	

Evidence Base

Policy context

1. A non-compete clause is a form of restrictive covenant[1] that employers insert into employment contracts. A non-compete clause restricts an individual's ability to compete against their former employer for a fixed period of time when they are no longer under their employment, either through moving to a competing firm or starting a competing business.

2. The law applicable to non-competes is part of English common law. It has been, and continues to be, developed by the courts on a case-by-case basis. There is currently no provision in the UK employment statutory framework for non-compete clauses. The law is predicated on the presumption of unenforceability, derived from the common law doctrine of restraint of trade. The courts have recognised the tension between a person's freedom to trade, and the need to uphold contracts and to protect legitimate interests, as part of a contract. All non-compete clauses, and other restraints of trade, are presumed unenforceable, unless the following can be demonstrated (i.e. the non-compete clause is 'reasonable'):

    a) It protects a legitimate business interest of the ex-employer;

    b) It is no wider than reasonably necessary to protect that legitimate business interest; and

    c) It is not contrary to the public interest.

3. The onus is on the ex-employer to take the dispute to a civil court if it believes that an ex-worker has breached a non-compete clause and the issue cannot be resolved informally between the two parties. The onus of proving reasonableness with respect to (a) and (b) is on the employer, while the burden shifts on workers for (c). A number of factors have been taken into account by courts when determining when a covenant (such as non-compete clauses) is reasonable. These include, but are not limited to:

    - The position at the time the contract was made;
    - The worker's status;
    - The nature of the market and of the employer's business;
    - Any industry standards for covenants;
    - The duration of the covenant;
    - The geographical extent of the covenant;
    - The harm caused by the covenant.

4. The inclusion of a non-compete clause can offer significant value to a business, even where the clause is likely to be found unenforceable in the courts were it to be challenged. There is a particular concern around the psychological effect of the inclusion of a non-compete clause, even if unlikely to be enforceable. Some workers may perceive the non-compete clause as binding and abide by it, fearing legal repercussions. Even when workers consider it unlikely that the non-compete clause is enforceable, the financial barriers of taking a case through the courts could be a sufficient disincentive, particularly for low-earners.

5. Non-compete clauses are distinct from other restrictive covenants that are used by businesses to protect their interests. Examples of other restrictive covenants include:

    - non-solicitation clauses – used to prevent a worker from soliciting workers and customers from their employer or ex-employer's business for a period after they leave the business;
    - non-dealing clauses – used to prevent the departing worker from having 'dealings' with the ex-employer's clients for a period after they leave the business;

[1] A covenant is a binding agreement between two or more parties.

- non-poaching clauses – similar to non-solicitation clauses, used to prevent an ex-worker hiring employees of their former employer's business;
- goodwill protection clauses – prevent the seller of a business going immediately into competition with the buyer of that business after the sale.

6. Non-compete clauses are also distinct from 'gardening leave'. 'Gardening leave' arises in cases where either the employer or the worker gives notice, but the employer does not want the worker to attend work for the period of the notice or go and work for a competitor or set up a competing business during that time. The employment relationship continues during that time. As such, the worker continues to be remunerated under the terms of the contract, but is asked to stay at home, rather than attend work. During the notice period, the contract of employment remains in existence. The effect of this is that the worker remains bound by their contractual obligations, including the implied duty of fidelity (e.g. not to disclose to third parties the employer's confidential information and not to work in competition with the employer).

2016 Call for Evidence

7. In May 2016, a call for evidence was published in order to identify whether non-compete clauses written into employment contracts were stifling innovation, particularly for start-up businesses[2]. The intention behind the call for evidence was to fully understand what is meant by non-compete clauses, when and why they are used, their prevalence, what the benefits and disadvantages are, whether there are transparency or misperceptions, and what the issues are.

8. The call for evidence received a relatively small number of responses (83) from a range of stakeholders. The consensus view across the majority of responses was that restrictive covenants were a valuable tool for employers to use to protect their business interests and do not unfairly impact on an individual's ability to find other work. Common law developed in this area for over a century and was generally acknowledged to work well. Having built a picture of the UK experience via the call for evidence, the Government concluded that it was not necessary to take any further action in this area at this stage.

2020-21 Consultation

9. Since the 2016 Call for Evidence, the Covid-19 pandemic has had a profound impact on the labour market. Therefore, the Government is re-considering measures to boost innovation, create the conditions for new jobs and increase competition. This has led to renewed interest in reforms to non-compete clauses to make it easier for individuals to start new businesses, find new work and apply their skills to drive the economic recovery.

10. In this context, a further consultation was published in December 2020, receiving 104 responses from a range of stakeholders. The consultation sought views on the option of making non-compete clauses enforceable only when the employer provides compensation for the period the clause prohibits the individual from working for a competitor or starting their own business. The consultation also sought views on complementary measures, including options to enhance transparency and placing statutory limits on the length of the non-compete clauses. As an alternative to these options, the consultation also sought views on an effective ban on the use of non-compete clauses. We did not publish a Consultation Stage Impact Assessment alongside the consultation as the evidence base was limited to provide a meaningful and informative assessment of the expected impact of the policy options.

11. Most respondents (60%) agreed with the approach to apply the requirement for compensation to contracts of employment. Several noted that this approach would discourage the widespread use of non-compete clauses and strikes the appropriate balance between the employer's right to protect its legitimate interests and the need to avoid non-compete clauses being used inappropriately and/or unnecessarily.

[2] https://www.gov.uk/government/consultations/non-compete-clauses-call-for-evidence

12. Others noted that it would have the benefit of creating a financial disincentive for longer non-compete clause, and would compensate individuals who may be unable to apply their skills and expertise in their field for a period. 29% of respondents did not support this approach, with many feeling that the existing system works well and concerned about the financial burden. Others felt that a requirement for compensation may disadvantage smaller employers who may not be in a financial position to provide compensation.

13. Most respondents (67%) supported the measure to improve transparency by requiring employers to disclose the exact terms of the non-compete clause agreement in writing before they enter into the employment relationship. 15% of respondents did not support this approach and a further 18% chose not to answer this question. For those that did not agree, frequently cited reasons included that non-compete clauses should already be clearly set out in writing (usually in an employment contract) and that the requirement would add a layer of red tape to employers. Others noted that it did not provide any protection to the employee as the imbalance in the bargaining relationship means that they are likely to sign in any case.

14. Most respondents (60%) supported the inclusion of a maximum limit on the period of non-compete clause, whilst 27% did not support this approach. Those in favour noted that this would provide clarity and certainty for all parties and allow individuals to start new businesses or take up alternative employment in their field sooner. Those against noted that the existing common law approach provides necessary flexibility where exceptional cases may require a longer period. They also noted that employers might respond by increasing the length of non-compete clause up to the statutory maximum (i.e. could result in longer non-compete clauses being used than otherwise have been the case).

15. Most respondents (53%) were opposed to a ban on non-compete clauses, whilst 36% supported a ban. Those who opposed a ban cited a number of risks and unintended consequences such as a loss in investor confidence (particularly in start-ups), a potential shift of certain jobs / functions out of the UK to jurisdictions where non-compete clauses can be enforced, increased litigations in other areas such as intellectual property and trade secrets, and tighter control on information sharing within organisations. Some respondents felt that these effects could have a detrimental impact on innovation and that the potential benefits of a ban were unlikely to outweigh the risks. Those who were supportive of a ban cited potential benefits including greater freedom for people to take up new employment and start new businesses, increased competition and innovation, more flexibility and mobility in the labour market with the potential for a positive effect on wage growth, fewer barriers to recruitment, clarity for both employers and individuals, and the potential for fewer legal disputes and litigation.

International approach to regulating non-compete clauses

16. A number of countries have taken innovative approaches to regulating non-compete clauses in recent years and these case studies, and their applicability to the UK context, informed the options presented for consultation in November 2020. For example, in Germany, non-compete clauses are only enforceable if the employers agree to pay at least 50% of the renumeration that the employee received during the employment relationship, the term of the clause does not exceed two years, and the agreement is signed in writing. Employers can waive a non-compete clause during the employment relationship but the obligation to pay compensation remains for 12 months.

17. In Washington State, non-compete clauses are only enforceable if, when hired, the employer discloses the terms of the covenant in writing to the prospective employee no later than acceptance by the employee of an offer of employment (or, if entered into after commencement of employment, the employer provides independent consideration) and the employee earns more than $100,000 a year (or, for an independent contractor, earns over $250,000 per year) (to be adjusted annually for inflation). In California, a non-compete is generally unenforceable. It can be enforceable in certain limited situations (e.g. against the seller of a business, a former business partner, or a former member of a Limited Liability Company). Employers in California may also lawfully prohibit their employees from using trade secrets and an employer may prohibit former employees from using confidential information to solicit employees.

Rationale for intervention

18. The UK has one of the most flexible labour markets among advanced economies, ranking highly in international measures such as the World Economic Forum's Global Competitiveness Index[3] and the Employment Flexibility Index[4]. The rationale for intervention in this Impact Assessment hinges on whether there is a case to further boost competition for employees, thereby boosting innovation across the economy. There has been extensive research on the current level of UK competition and innovation, as well as the corresponding wider social benefits.

Current state of competition and innovation

19. The 2021 BEIS 'Evidence for the UK Innovation Strategy' report[5] and 2022 Competition and Market Authority's (CMA) 'State of UK competition' report[6] point towards a partial recovery in measures of competition since the 2008-09 recession. However, some indicators of competition (such as concentration, i.e. the extent to which industries are dominated by a small number of large firms) remain above levels seen prior to 2008. Meanwhile, the proportion of innovation active businesses has remained below its peak in 2012-14, and R&D expenditure as a share of GDP has remained below international competitors.

20. Over a longer time period, there is also evidence from the Resolution Foundation / LSE Economy 2030 Enquiry[7] that there has been a long-term decline in the rate at which employees move jobs (with the starting point potentially in the 1980s but somewhat inconclusive, depending on the data source used)[8]. This may indicate a long-term decline in competition for employees.

21. However, we cannot necessarily attribute these trends to changing business behaviour on use of non-compete clauses, as there is no time series data available on the use of these clauses. There are a large number of factors that drive business decisions to invest in innovation activities and employee decisions to move jobs (for example, housing costs, family ties, cyclical and structural demand conditions, among many others). Non-compete clauses only restrict moves to a competitor or to set up a competing business. On the assumption that employees, on average, would prefer to move within the same sector (e.g. due to sector-specific skills), non-compete clauses would be expected to have an overall downward effect on job mobility.

The case for boosting innovation

22. The BEIS Innovation Strategy, published in 2021, notes that 'Innovation is vital for economic growth and productivity improvements as well as creating more and better-paid jobs' and 'it is the presence of high social returns from innovation to the wider society that provides the rationale for government investment in innovation'[9]. While the potential for private returns, in the way of increased profit and economic activity, acts as an incentive for firms to innovate, there also exist social returns to innovation. Other firms benefit from innovation through knowledge spillovers, whereby they can borrow and adopt new processes or knowledge to increase their own profits. Benefits to consumers arise in the form of new goods, improvements in product quality and processes, or where there are spillover effects of innovation into the delivery of public sector goods and services. This potential for a wider welfare gain is not accounted for when organisations decide whether to invest, meaning that innovation is undervalued in the free market.

[3] https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

[4] https://www.llri.lt/wp-content/uploads/2019/12/Employment-flexibility-index2020.pdf

[5] https://www.gov.uk/government/publications/evidence-for-the-uk-innovation-strategy

[6] https://www.gov.uk/government/publications/state-of-uk-competition-report-2022

[7] https://economy2030.resolutionfoundation.org/reports/changing-jobs/

[8] The Resolution Foundation / LSE 2030 Enquiry report refers to trends before the Covid-19 pandemic.

[9] https://www.gov.uk/government/publications/uk-innovation-strategy-leading-the-future-by-creating-it

23. The BEIS 2014 'Science and innovation: rates of return to investment' report[10] shows that the annual private rate of return from R&D and innovation averages around 20 to 30%, but the social returns are two to three times higher. The research finds that measures of economic outcomes at the national level, such as output and productivity, outpace outcomes at the firm level. This is because there exist large positive spillover effects from innovation. Social returns include increases in profits for firms who can make use of the innovations created by other firms or the public sector, as well as harder-to-measure returns to wider society such as gains to health, well-being, security and efficiency in the policy making process and the delivery of public services. Similarly, a study by the LSE Centre for Economic Performance[11] finds the marginal social returns of R&D to be four times greater than its private returns. The study specifically examines the impact of investment on US firm performance through its spillover effects and estimates spillover effects to be 'remarkably stable' between 1985 - 2015.

24. In the long-run, innovation is seen as key to generating sustained improvements in living standards and addressing global challenges. Analysis by the LSE Centre for Economic Performance highlights that innovation and diffusion could help address multiple structural challenges facing the UK economy, including poor productivity and regional disparities in economic performance. The OECD Innovation Strategy[12] suggests that innovation, together with entrepreneurship, is fundamental to generating more productive economic activity and enabling new sectors and jobs. The strategy further outlines ways in which government can support innovation: directly, through public investment; or indirectly, through ensuring public policy and regulatory frameworks are conducive to innovation.

The case for boosting competition

25. The UK's level of productivity has been historically lower than that of other advanced economies. Evidence from the ONS shows that the UK's productivity level was lower than other major advanced economies such as the US, France and Germany in 2019[13]. Though the causes of this are numerous and complex, sub-optimal levels of competition may partly contribute to this trend in some markets**.** The 2020 CMA 'State of UK competition' report states that 'competition can directly benefit individual consumers and the economy as a whole – as businesses seek to win customers by offering lower prices or higher quality goods and services and through encouraging innovation and promoting efficiency, all of which can contribute to economic growth and productivity. This is especially important given the need to support recovery in the economy following the coronavirus pandemic'[14].

26. The 2015 CMA 'Productivity and competition: a summary of the evidence' report finds that there is a strong body of empirical evidence showing that competition can drive greater productivity[15]. There are three main ways in which competition drives productivity. First, within firms, competition acts as a disciplining device, placing pressure on the managers of firms to become more efficient. Second, competition ensures that more productive firms increase their market share at the expense of the less productive. These low productivity firms may then exit the market, to be replaced by higher productivity firms. Third, competition can drive firms to innovate, coming up with new products which can lead to step-changes in efficiency.

27. However, the evidence on competition and innovation relations is complex, with no consensus about the exact relationship. On the one hand, in the presence of competition, firms will aim to innovate to gain a cost advantage, to differentiate their products or to bring new products to the market. On the other hand, the financial incentive for firms to innovate stems from the ability to generate positive returns from successful innovations, which suggests a need for ex-post market power.

---

[10] https://www.gov.uk/government/publications/science-and-innovation-rates-of-return-to-investment

[11] https://ideas.repec.org/p/cep/cepdps/dp1548.html

[12] https://cep.lse.ac.uk/_new/publications/abstract.asp?index=7666

[13] https://www.ons.gov.uk/economy/economicoutputandproductivity/productivitymeasures/bulletins/internationalcomparisonsofproductivityfinalestimates/2020#:~:text=1.,above%20the%20UK%20in%202019.

[14] https://www.gov.uk/government/publications/state-of-uk-competition-report-2020

[15] https://www.gov.uk/government/publications/productivity-and-competition-a-summary-of-the-evidence

28. Recent academic literature often refers to an 'Inverted U' shape between competition and innovation, whereby increasing competition at lower levels leads to increases in innovation and, once competition becomes especially fierce, innovation will begin to fall. Griffith and Reenen (2021)[16], having performed a review of recent evidence, conclude 'The relationship has held up reasonably well over time, although on average the positive effect of competition still seems to dominate empirically'. Nonetheless, this raises a question as to whether encouraging 'too much' competition could lead to detrimental effects on innovation. This can be mitigated by targeting interventions towards sectors or markets where competition appears to be particularly weak.

The case for restricting the use of non-compete clauses

29. In theory, non-compete clauses can act as a valuable 'contracting device' between employers and employees, enabling an alignment of incentives and encouraging investments, including in innovation activities. The first part of the argument is that non-compete clauses incentivise employers to share access to valuable information (such as trade secrets, client lists, and other confidential information) and invest in innovation activities as they have greater protections in case the employee considers moving to a competitor or setting up a competing business. The second is that, when presented with a non-compete clause during pre-employment negotiations, employees will only agree if they are adequately compensated, such as through higher pay, access to training, or other non-wage benefits. From an innovation perspective, the second part of the argument is important as it acts as a channel through which business behaviour is disciplined, i.e. non-compete clauses are only used where they are needed to encourage investment in innovation. On this basis, non-compete clauses solve a number of incentive problems in the labour market (i.e. non-compete clauses are a valuable 'contracting device') and benefit both the employee and employer, assuming that the choice to enter into a non-compete clause is voluntary and subject to negotiation.

30. However, evidence explored later in this section indicates that many businesses are able to introduce non-compete clauses at minimal cost, i.e. the bargaining between employee and employer is not acting as a sufficient channel to discipline business behaviour. This weakens the link between current use of non-compete clauses and incentives to invest in innovation activities, and is expected to lead to higher-than-optimal number of non-compete clauses across the labour market.

31. The evidence explored later in this section also shows that sectors with higher-than-average use of non-compete clauses include finance and insurance, information and communication, and professional services. The 2022 CMA report shows that the first two sectors have high or increasing industry concentration levels (often used as an indicator of competition, this shows the combined market share of the largest firms in a sector), while the third sector has shown a large increase in rank resistance (the likelihood of the very top firms in the sector remaining the top firms)[17]. However, our evidence also shows that non-compete clauses are used across the economy and the policy options considered in this Impact Assessment are not market- or sector-specific.

32. The evidence does not provide clear-cut conclusions. However, trends in the level of competition in sectors where employees are more likely to be subject to a non-compete clause, alongside evidence that businesses are often able to extract the benefits of non-compete clauses at minimal cost, suggests that there are new innovations and spillover benefits from existing innovations that are currently 'foregone'.

33. Beyond productivity and innovation considerations, the current use of non-compete clauses could have a detrimental impact on worker wellbeing as they are not sufficiently compensated for restrictions on their future bargaining power and job flexibility. Restricting the use of non-compete clauses would not directly discourage any job moves, but rather expand the available opportunities to individuals to improve their wellbeing. This could be either through taking up opportunities to join a competitor or set up a competing business or, if worker remain with their current employer, through greater use of positive incentive mechanisms.

[16] http://eprints.lse.ac.uk/113816/1/dp1818.pdf

[17] https://www.gov.uk/government/publications/state-of-uk-competition-report-2022

34. The dimensions of wellbeing set out in HM Treasury's supplementary guidance to the Green Book[18] include the quality of the person's job as well as physical and mental health, relationships (including wider interactions in a neighbourhood or community), environmental factors (such as pollution levels or access to nature), housing quality, among others. Wellbeing can be considered as a standalone dimension of good work, an outcome of the other dimensions of good work, or a combination of both[19].

35. In this context, the economic case for intervention to restrict the use of non-compete clauses can be broadly split into two categories:

    - **Market failures** – imbalance of power (some employers may be using non-compete clauses to gain monopsony power over the employee, leading to the employee having lower bargaining power in future pay negotiations and having fewer viable outside options); asymmetric information (the employee may not be aware of the non-compete clause, or its future implications, when they sign their contract); spillover costs (non-compete clause could negatively impact the wages of employees in similar occupations who do not have a non-compete clause in their contract, whilst also leading to 'foregone' benefits due to lower diffusion of innovation capability and lower overall spending on innovation); and first mover disadvantage (if all businesses in a sector are using non-compete clauses, there is a disadvantage to being the first to reduce use). These market failures could indicate that there are economically viable job moves that are not occurring due to the way in which non-compete clauses are being used by businesses. Government intervention could address these market failures, improve the efficiency of the labour market and, as a result, lead to better overall economic outcomes.

    - **Equity considerations** – the status quo reflects an outcome where entrepreneurs, start-ups, and employees joining occupations or employers where non-compete clauses are may be at an unfair disadvantage. Government intervention could result in a transfer of economic value (e.g. wages, profits or consumer welfare) from employers currently using non-compete clauses to employees, consumers and their competitors.

36. In the following sub-sections, we explore evidence of the potential scale and distribution of these market failures and equity considerations and, in turn, the role that non-compete clauses might be playing in explaining economic outcomes (such as job mobility, wages, innovation activities, among others). This analysis includes a literature review and analysis of the findings from BEIS-commissioned surveys of employees and employers.

Literature Review

37. The academic literature on non-compete clauses largely focuses on the US and makes use of the varying degrees of enforceability of non-compete clauses across US states. Some of the findings are framed as descriptive correlations, rather than causal links. We are not aware of any studies that look specifically at non-compete clauses in a UK context. This section provides a high-level review of the literature on the effects of non-compete clauses on a range of economic outcomes.

Job Mobility

38. There appears to be a broad consensus among the literature that non-compete clauses lead to lower job mobility overall, and in particular within the same industry. For example, a 2019 paper 'The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship'[20] finds that increases in the enforceability of non-compete clauses lead to declines in employee departures across seniority levels, driven by employees in knowledge-intensive occupations. The greatest declines occur in moves within the same industry and to positions that increase the employee's seniority, suggesting that non-compete clauses damper upward mobility. The paper also finds that higher enforceability of non-compete clauses leads to a decline in departures to early start-ups as an employee (the findings for departures to 'founding' a start-up are less clear).

[18] https://www.gov.uk/government/publications/green-book-supplementary-guidance-wellbeing

[19] https://whatworkswellbeing.org/resources/job-quality-and-wellbeing/ ; https://www.carnegieuktrust.org.uk/publications/measuring-good-work-the-final-report-of-the-measuring-job-quality-working-group/

[20] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3040393

39. This finding is consistent with other studies that look at specific occupations, such as inventors (the 2009 paper 'Mobility, Skills and the Michigan Non-Compete Experiment'[21] finds that enforcement of non-compete clauses led to a strong decrease in the mobility of inventors, with a greater effect for those with firm-specific or technology-skills that are not widely marketable beyond direct competitors), managing executives (the 2009 paper 'Ties that Truly Bind; Noncompetition Agreements, Executive Compensation, and Firm Investment'[22] finds that tougher enforcement of non-compete clauses strongly reduces executive mobility, particularly decreasing the likelihood that an employer will experience a within-industry managerial transfer), among others. Looking at the incentives for employees to move across regions, a 2014 Paper 'Regional Disadvantage: Employee Non-Compete Agreements and Brain Drain'[23] finds that innovative 'knowledge employees' tend to migrate to places where non-compete clauses are un-enforceable.

Wages and Training

40. There is some evidence in the literature that non-compete clauses are associated with higher incidence of training and lower wages. For example, the 2019 paper 'Consider This: Training, Wages, and the Enforceability of Covenants Not to Compete'[24] notes that 'an increase from no enforcement of non-competes to mean enforceability is associated with a 14% increase in training, which tends to be firm-sponsored and designed to upgrade or teach new skills' and 'despite the increases in training, an increase from non-enforcement of non-competes to mean enforceability is associated with a 4% decrease in hourly wages'. The paper also finds that non-compete enforceability reduces the returns to tenure in occupations where non-compete clauses are often used. The paper does not find any link between training paid by the employee and the enforceability of non-compete clauses.

41. A 2017 paper 'Why are low-wage employees signing noncompete agreements?'[25] explores the possible reasons for the use of non-compete clauses among low-paid work (they look at hairdressers, where there are clear benefits to the employer of a non-compete clause given the importance of client attraction and retention) and find evidence that they are used as a form of transfer from the employee to the employer, when the wage is constrained downwards by a minimum wage.

42. A 2021 paper 'The labor market effects of legal restrictions on employee mobility' finds that increases in the enforceability of non-compete clauses decreased employees' earnings[26]. Moving from the 10th to 90th percentile in enforceability is associated with a 3-4% decrease in the average employee's earnings. The earnings effects are almost entirely driven by declines in implied hourly wages. The effect is even stronger among occupations, industries and demographic groups in which non-compete clauses are used more frequently. The paper refers to a back-of-the-envelope calculation whereby making all non-compete clauses unenforceable across the US would increase average earnings among all employees by 3.3% to 13.9%. The paper also finds evidence that strict enforceability of non-compete clauses erodes employees' ability to leverage tight labour market to achieve higher earnings.

43. However, the negative effect of non-compete clauses on wages does not appear to be generally applicable. For example, the 2020 paper 'The Impacts of Restrictive Mobility of Skilled Service Employees'[27] finds that doctors who sign non-compete clauses tend to earn 8 percentage points more than doctors who do not sign non-compete clauses, with a cumulative effect of 35 percentage points after ten years on the job, and that this is driven by higher returns to job tenure. This is consistent with the argument that non-compete clauses lead to higher employer-level investment in patient relationships and more referrals of patients to doctors, as doctors are prevented from taking patients with them to another practice in the same geographic market.

---

[21] https://www.jstor.org/stable/40539267

[22] https://academic.oup.com/jleo/article-abstract/27/2/376/2194339

[23] https://faculty.insead.edu/jasjit-singh/documents/Personal/Marx_Singh_Fleming_RP_PRINT.pdf

[24] https://journals.sagepub.com/doi/abs/10.1177/0019793919826060

[25] https://www.aeaweb.org/conference/2018/preliminary/paper/4rYKeNfr

[26] https://www.haverford.edu/sites/default/files/Department/Economics/Lipsitz_Labor%20Market%20Effects%20of%20Legal%20Restrictions.pdf

[27] http://kurtlavetti.com/UIPNC_vf.pdf

Innovation

44. Non-compete clauses can act as a brake on entrepreneurial activity, both by blocking the emergence of new companies and by making it harder for them to grow. Once the company is incorporated, the founders must hire employees with relevant skills to expand the business. Unless sufficient employees can be found amongst recent graduates or the pool of unemployed, existing firms are the primary source of potential hires – especially for firms with specific expertise needs. Therefore, start-ups could find themselves at a disadvantage in labour markets as their potential hires' mobility is restricted by non-compete clauses that they have signed, and they may lack of the legal and financial resources to challenge the non-compete clause. At the same time, non-compete clauses can also enable the existing firm to make more innovative investments, as they are more confident of retaining employees that have skills and experience that are linked to the investment.

45. A 2011 paper 'Noncompete Covenants: Incentives to Innovate or Impediments to Growth'[28] finds that, relative to states that enforce non-compete clauses, an increase in the local supply of venture capital in states that restrict the scope of these agreements has significantly stronger positive effects on the number of patents and the number of firm starts. A 2011 paper 'Ties that Truly Bind: Noncompetition agreements, Executive Compensation, and Firm Investment'[29] finds that tougher enforcement of non-compete clauses reduces overall R&D spending. Similarly, a 2003 paper 'Liquidity Events and the Geographic Distribution of Entrepreneurial Activity'[30] finds that the creation of new start-ups following events like IPOs or acquisitions (which provide employees with the financial resources and credibility to pursue an entrepreneurial idea) is attenuated where non-compete clauses are enforceable. Likewise, a 2017 paper 'Screening Spinouts? How noncompete Enforceability Affects the Creation, Growth and Survival of New Firms'[31] finds that non-compete clauses act as a brake on entrepreneurial entry (although this effect is limited to intra-industry spin-offs in which one company leaves to find a rival in the same industry; employees founding start-ups in different industries are unaffected).

46. However, there is also evidence that non-compete clauses can incentivise *riskier* business spending on R&D which, in turn, could lead to higher innovative potential. For example, a 2014 paper 'Do non-competition agreements lead firms to pursue risky R&D projects?'[32] finds that companies undertake riskier R&D paths in US states with stricter enforcement of non-compete clauses, compared to states that do not enforce non-compete clauses as strictly. This is consistent with the argument that non-compete clauses enable businesses to pursue path-breaking inventions as they have a greater ability to retain inventors and, therefore, are less worried that knowledge could flow to competitors.

Conclusion

47. The economic literature from the US indicates that business use of non-compete clauses can restrict job mobility, put downward pressure on wages, and impede innovation. However, there are also signs that non-compete clauses can be associated with higher investment in training, that the depressive effect of non-compete clauses on wages may not be applicable across all occupations, and that non-compete clauses can enable riskier R&D investments that could lead to innovative breakthroughs.

48. Some of the findings are framed as descriptive correlations, rather than causal links. In addition, findings based on the US labour market may not be applicable to the GB context, where there is no regional variation in the legal framework governing the use of non-compete clauses, and there are different institutional frameworks and norms that determine the contracting between employees and employers. In this context, BEIS conducted further research in the use of the non-compete clauses in the GB to ensure that any policy intervention is necessary, proportionate and aligned with Government objectives for the labour market.

[28] https://pubsonline.informs.org/doi/abs/10.1287/mnsc.1100.1280

[29] https://academic.oup.com/jleo/article-abstract/27/2/376/2194339

[30] https://journals.sagepub.com/doi/pdf/10.2307/3556656

[31] https://pubsonline.informs.org/doi/10.1287/mnsc.2016.2614

[32] https://onlinelibrary.wiley.com/doi/abs/10.1002/smj.2155

BEIS-commissioned research

YouGov survey of employees

49. BEIS commissioned a survey of around 10,000 employees across the UK to explore the current use of non-compete clauses and gather supporting evidence for the economic case for intervention. The survey was conducted by YouGov and fieldwork took place between 11th April and 9th May 2022. The survey was carried out online and figures were weighted to be representative of all UK employees. All figures quoted have been re-weighted to account for 'Don't Know' responses.

50. Table 1 shows the responses to questions on whether the employee has a non-compete clause in their contract and, if yes, the duration of the non-compete clause. Around 19% indicated that they have a non-compete clause in their contract. There was a relatively high share of 'Don't Know' responses to this question (around 21%), generating some uncertainty in our estimates. Based on an employee population of around 28.7m in Great Britain[33], this would indicate that around 5.6m employees could have a non-compete clause in their contract. The sectors where employees were more likely to have a non-compete clause include Business Services (e.g. consultancy, law, PR, marketing, scientific and technical activities), Finance and Insurance, and Information and Communication; together, these three sectors account for around a third of all non-compete clauses in the labour market.

51. Among respondents that indicated that they have a non-compete clause in their contract, there are a wide range of durations. The most common duration was more than 3 months and less than or equal to 6 months. Around 70% of employees with a non-compete clause indicated a duration longer than 3 months. There was a relatively high share of 'Don't Know' responses to this question (around 22%), generating some uncertainty in our estimates.

Table 1: YouGov employee survey – Whether employee has a non-compete clause in their contract and duration of non-compete clause

Do you have a non-compete clause in your contract?[34]		*How long does your non-compete clause last for after leaving your employer? (months)*					
Yes	No	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12
19%	81%	12%	18%	34%	10%	15%	12%

52. Table 2 shows that most employees with a non-compete clause (around 72%) were aware of the non-compete clause prior to signing their contract. The remainder indicated that they became aware of their non-compete clause between signing their contract and starting their job, when starting their job, when deciding to leave their job, or at some other point. The final category included cases where employers introduced non-compete clauses part-way through employment (e.g. when the employee was promoted) or where the employee became aware of their non-compete clause when another employee tried to move employers. This evidence suggests that there are a significant number of cases (around 28%) of asymmetric information between employers and employees on the presence of a non-compete clause before contracts are signed. There are no clear trends across durations of non-compete clauses.

[33] BEIS analysis of ONS Business Population Estimates (2021)

[34] This question asked with the following preamble: "Non-compete clauses are sometimes used in contracts of employment to restrict an individual's ability to work for a competing business, or to establish a competing business, for a defined period after they leave a business. Non-compete clauses are different to other restrictive covenants (such as non-poaching clauses, non-solicitation clauses and non-dealing clauses) and gardening leave, which are also sometimes used in contracts of employment."

Table 2: YouGov employee survey – When employee became aware of non-compete clause							
When did you become aware of the non-compete clause in your contract?	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Before signing your contract	69%	72%	72%	68%	78%	73%	**72%**
Between signing your contract and starting your job	11%	14%	13%	11%	8%	10%	**11%**
When starting your job	15%	11%	11%	14%	6%	11%	**12%**
When deciding to leave your job	1%	2%	2%	5%	2%	1%	**2%**
Other	4%	2%	2%	2%	6%	5%	**3%**

53. Table 3 shows that, overall, around 90% of employees who were aware of the non-compete clause prior to signing their contract chose not to negotiate. Employees with shorter non-compete clauses were more likely to indicate that they had negotiated with their employer; this is to be expected as the duration is a key feature of the non-compete clause and we assume that employees would negotiate for a shorter duration.

Table 3: YouGov employee survey – Did employee negotiate with employer (for employees who were aware)							
Did you negotiate with your employer on the non-compete clause before signing the contract?	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Yes – successful	12%	16%	6%	5%	8%	5%	**7%**
Yes – unsuccessful	1%	3%	2%	0%	3%	4%	**2%**
No	87%	81%	92%	90%	89%	90%	**90%**
Prefer not to say	0%	0%	1%	5%	0%	0%	**1%**

54. Among employees who did not negotiate on the non-compete clause with their employer, we also consider whether they felt that they were in a position to negotiate (but chose not to) or did not feel they could negotiate. Table 4 shows that only around 21% of employees who did not negotiate on the non-compete clause felt that they were in a position to do so (but chose not to). However, around 51% indicated that the non-compete clause was presented as a non-negotiable aspect of the contract while 26% indicated that they felt otherwise unable to negotiate (e.g. due to worries that their employer would withdraw their job offer). This evidence suggests that there are a significant number of cases where there is an imbalance of power between employees and employers.

Table 4: YouGov employee survey – Whether employee felt they could negotiate							
Did you feel you were in a position before signing your contract where you could have negotiated the non-compete clause if you wanted to?	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Yes	21%	28%	23%	20%	17%	17%	**21%**
No – presented as non-negotiable	48%	49%	50%	54%	53%	52%	**51%**
No – other	32%	24%	24%	26%	28%	30%	**26%**
Prefer not to say	0%	0%	3%	0%	3%	1%	**1%**

55. The results so far suggests that a number of employees may not be sufficiently compensated for the restrictions placed on their mobility due to the non-compete clause, either because they were unaware of the non-compete clause when signing their contract or because they felt unable to negotiate on the non-compete clause. When the survey asked employees about their perception of the impact of the non-compete clause on their current pay, most indicated 'neutral' with a similar number on either side of this, as shown in Table 5. However, the results do show a greater prevalence of responses indicating a negative or significantly negative impact on employees' current pay for longer non-compete clauses.

Table 5: YouGov employee survey – Impact on current pay							
What do you think is the impact of the non-compete clause on your current pay?	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Significantly positive	5%	7%	2%	5%	1%	1%	**3%**
Positive	5%	12%	9%	11%	10%	6%	**8%**
Neutral	82%	72%	78%	67%	74%	71%	**76%**
Negative	5%	7%	9%	11%	11%	11%	**9%**
Significantly negative	3%	2%	2%	6%	4%	10%	**4%**

56. Table 6 shows the responses when employees were asked about the impact of their non-compete clause on longer-term pay progression. There is a clearer overall trend towards negative or significantly negative impact and this trend appears more pronounced for employees with longer non-compete clauses.

Table 6: YouGov employee survey – Impact on longer-term pay progression							
What do you think is the impact of the non-compete clause on your longer-term pay progression?	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Significantly positive	4%	10%	2%	1%	3%	0%	**3%**
Positive	6%	13%	13%	9%	8%	4%	**9%**
Neutral	79%	65%	68%	69%	66%	65%	**70%**
Negative	6%	11%	15%	17%	15%	18%	**14%**
Significantly negative	4%	1%	3%	4%	8%	13%	**5%**

57. Therefore, there is evidence of a lack of bargaining between employees and employers prior to committing to the non-compete clause and, among longer non-compete clauses, employees tend to perceive a negative impact on the current pay and longer-term pay progression.

58. Another perspective on the rationale for intervention is provided by a question on the employee's perception of the probability that their employer enforces their non-compete clause. Around half of respondents indicated that it would be likely or very likely that their employer enforces their non-compete clause, as shown in Table 7. These employees are likely to experience a deterrence effect; however, this does not necessarily mean that their non-compete clause is reasonable to protect the business' interests, as employers are able to take a number of enforcement steps (such as informal communication with the employee) before the reasonable-ness of the non-compete clause is tested in courts. Around half of respondents indicated that it was unlikely or very unlikely that their employer enforces their non-compete clause. This could be interpreted as a perception from the employee that their non-compete clause is not reasonable, i.e. the presence of the non-compete clause, or its scope, extends beyond what would be considered reasonable. However, non-compete clauses could still slow down job moves to competitors or to set up competing business for some of these employees, depending on their level of risk aversion.

Table 7: YouGov employee survey – Probability that employer enforces non-compete clause							
In your current job, how likely to you think it would be that your employer enforces the non-compete clause if you moved to a competitor or set up a competing business?	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Very likely	12%	25%	17%	25%	20%	24%	**18%**
Fairly likely	21%	35%	32%	30%	33%	27%	**30%**
Not very likely	31%	29%	39%	30%	35%	34%	**34%**
Not at all likely	36%	11%	12%	15%	12%	14%	**17%**

59. A similar overall trend can be observed when looking at the responses to two questions on whether non-compete clauses have blocked the employee from moving to a competitor or to set up a competing business. These responses provide a snapshot at a single point in time. As shown in Table 8, around 7% of respondents indicated that this has occurred to a 'large extent' in each question. We interpret these responses as indicating that employers had enforced the non-compete clause. Based on our estimate that there are around 5.6m employees with non-compete clauses in the labour market, these responses suggest that at least 400,000 employees would be working for a competitor or would have set up a competing business in absence of the non-compete clause.

Table 8: YouGov employee survey – Whether non-compete clause has prevented employee move							
To what extent has the non-compete clause prevented you from…	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
… moving to a competitor (i.e. you would have moved to a competitor if you did not have a non-compete clause)?							
To a large extent	4%	14%	6%	5%	6%	15%	**7%**
Somewhat	5%	11%	14%	18%	16%	11%	**11%**
A little	7%	6%	10%	15%	10%	8%	**9%**
Not at all	85%	68%	70%	63%	68%	65%	**73%**
… starting a competing business (i.e. you would have started a competing business if you did not have a non-compete clause)?							
To a large extent	4%	15%	6%	10%	6%	14%	**7%**
Somewhat	4%	10%	11%	13%	9%	8%	**9%**
A little	6%	6%	4%	8%	8%	7%	**5%**
Not at all	86%	70%	79%	69%	76%	70%	**79%**

60. As shown in Table 9, around two-thirds of employees considered their non-compete clause was reasonable given their access to information and seniority, while around one-third reported No. Employees were generally more likely to report No when they had a longer non-compete clause. We expect these responses to reflect, at least in part, employees' views reported through other survey questions (such as the impact of the non-compete clause on their current and longer-term pay).

Table 9: YouGov employee survey – Whether employee considers non-compete clause as reasonable							
Do you think it is reasonable for your employer to include the non-compete clause in your contract? Please think about your clause specifically and your level of seniority within the organisation.	*How long does your non-compete clause last for after leaving your employer? (months)*						
	<= 1	> 1 and <= 3	> 3 and <= 6	> 6 and <= 9	> 9 and <= 12	> 12	**All**
Yes	69%	81%	65%	56%	63%	49%	**64%**
No	31%	19%	35%	44%	37%	51%	**36%**

61. Overall, the YouGov employee survey indicates that there are a significant number of non-compete clauses across the labour market (around 19% of all employees, or 5.6m employees) with a wide range of durations. There is evidence of a 'deterrence effect' on employee departures to a competitor or to set up a competing business; and also evidence that some businesses are willing to enforce the non-compete clause. However, while most employees are aware of their non-compete clause prior to signing their contract, a substantial number were unaware. In addition, among those that were aware, employees negotiated with their employer in a relatively small number of cases. This suggests that many employers are able to introduce non-compete clauses in contracts at minimal cost and, therefore, this weakens the link between the presence of the non-compete clause the reasonable-ness to protect business interests (or, alternatively, incentives to invest in innovation activities) based on a rationality argument.

62. Even in cases where the non-compete clauses are considered as reasonable, there could still be a case for intervention on equity grounds (e.g. where employees are not sufficiently compensated for restrictions on their mobility) and market failure grounds (e.g. where moves to a competitor or to set up a competing business would lead to higher overall innovation and productivity).

63. While these survey responses significantly improve our evidence base on non-compete clauses, there are outstanding questions on whether businesses consider individuals on a case-by-case basis (even if they do not inform them of the non-compete clause until after they have signed their contract) or whether businesses use non-compete clauses as a 'default'. In addition, there are questions on how business enforcement works in practice and whether many disputes are settled before reaching the courts (and, therefore, before a legal resolution on the reasonable-ness of the non-compete clause). Finally, there are questions on the use of non-compete clauses across occupational and skill groups. These questions are explored in a second BEIS-commissioned YouGov survey of businesses and a BEIS-commissioned IFF Research survey of businesses.

YouGov survey of businesses

64. BEIS commissioned a survey of employers to improve our evidence on the outstanding policy and analytical questions. The survey sample consisted of 1,517 senior HR professional and decision-makers. The fieldwork was undertaken by YouGov between 2 December 2021 and 15 December 2021. The responses have been weighted to be representative of business size, sector and industry. All figures quoted have been re-weighted to account for 'Don't Know' responses.

65. When designing the survey questions, it was anticipated that businesses would be unable to provide reliable, robust responses if questions around the enforceability were asked directly, particularly as this is determined by courts on a case-by-case basis. As a result, we used an alternative approach where we asked businesses whether non-compete clauses were used as a "default" in employment contracts (e.g. the businesses uses a standard template that includes a non-compete clause) and whether, in the past year, the business had taken any steps to enforce a non-compete clause (e.g. informal communication with the employee, letter to the employee prior to legal action, legal proceedings (such as in courts)).

66. The first question of the survey asked whether the business used non-compete clauses for any of their workforce and, if yes, the relevant occupational / skill categories. Table 10 shows that around 52% of businesses used non-compete clauses in at least one occupational group in the YouGov survey (hereafter, 'businesses that use non-compete clauses'). While non-compete clauses are more commonly used in higher-skilled occupations, Table 10 provides evidence that they are used across the skills distribution.

Table 10: YouGov business survey – Whether businesses use non-compete clauses		
Base: All businesses, by size	*Does your business make use of non-compete clauses for the following categories of workers? (rounded to nearest percent)*	
	Yes	No
Small and micro		
High-skill	33%	67%
Upper-mid skill	25%	75%
Low-mid skill	16%	84%
Low skill	10%	90%
One or more skill group	**36%**	**64%**
Medium and large		
High-skill	58%	42%
Upper-mid skill	42%	58%
Low-mid skill	18%	82%
Low skill	12%	88%
One or more skill group	**59%**	**41%**
All businesses		
High-skill	51%	49%
Upper-mid skill	37%	63%
Low-mid skill	17%	83%
Low skill	11%	89%
One or more skill group	**52%**	**48%**

67. Table 11 shows that 82% of businesses that used non-compete clauses used them as a 'default' in employment contracts for at least one occupational group. We re-format the responses to estimate the share of businesses that use non-compete clause for a particular group that also uses them as a 'default' in that skill group: the findings in Table 11 shows that the share of businesses that uses non-compete clauses as a 'default' generally increases with skill level. The use of non-compete clauses as a 'default' does not necessarily mean that they are unenforceable (for example, there could be situations where all workers have access to information that is valuable to a competitor, such as in small and micro businesses where all workers work in a smaller office space).

Table 11: YouGov business survey – Whether businesses use non-compete clauses as a default		
Base: businesses that use non-compete clause for each skill group	*Do you use non-compete clauses as the default in employment contracts (e.g. you use a standard template that includes a non-compete clause) for the following categories of workers? (rounded to nearest percent)*	
	Yes	*No*
High-skill	89%	11%
Upper-mid skill	85%	15%
Low-mid skill	81%	19%
Low skill	80%	20%
One or more skill group	**82%**	**18%**

68. Table 12 shows that around 33% of businesses that used non-compete clauses indicated that they had taken some form of enforcement action in the past year. More detailed analysis (not shown in table) shows that around 17% of businesses that used non-compete clauses reported that they had informal communication with a worker; a similar figure report they had sent a letter to a worker (16%); and a smaller share indicated that they had issued legal proceedings such as in courts (6%). The comparatively smaller number of businesses that had enforced non-compete clauses through court proceedings over the past year, suggests that many disputes are resolved prior to this point. The earlier stages of the dispute process are likely to be less costly for the employer and, therefore, an employer does not necessarily need to believe that the non-compete clause is enforceable to undertake those steps.

69. There was a relatively high share of 'Don't Know' responses to the question on whether businesses had taken any enforcement steps (around 20%), generating some uncertainty in our estimates. In addition, the survey design does not enable us to estimate the number of individual instances that the business responses refer to nor dis-entangle the underlying reasons behind the trends. However, if we were to take a simple approach where we allocate one employee per business, based on around 1.4 million businesses, of which around 730,000 (52%) use non-compete clauses, this would indicate around 250,000 employees could have prompted their employer to take steps to enforce the non-compete clause (equivalent to around 4% of the total 5.6 million employees who have a non-compete clause in their contract).

70. We re-format the responses to estimate the share of businesses that use non-compete clause for a particular skill group that has taken one or more enforcement action in that skill group: the findings in Table 12 show that the share of businesses that have taken one or more enforcement actions is highest among those that use non-compete clauses in low-mid skill occupations, with figures lower in the other skill groups. There are a number of possible interpretations and, to some extent, the findings may appear surprising. In part, the findings could simply reflect the underlying probability that the employee leaves the firm.

Table 12: YouGov business survey – Whether businesses have taken any enforcement steps

Base: businesses that use non-compete clause for each skill group	*Over the past year, have you taken any steps to enforce non-compete clauses for the following categories of workers? (rounded to nearest percent)*	
	One or more enforcement action	None
High-skill	37%	63%
Upper-mid skill	39%	61%
Low-mid skill	45%	55%
Low skill	36%	64%
One or more skill group	**33%**	**67%**

71. Overall, the findings from the YouGov business survey support the findings from the YouGov employee survey. The YouGov business survey shows that medium and large businesses are more likely to use non-compete clauses; and so small and micro businesses may disproportionately benefit from a policy intervention that restricts the use of non-compete clauses, as they would be more exposed to the benefits (easier to hire employees with the right skills) than the costs (loss of protection). It also shows that many businesses are more likely to use non-compete clauses among higher-skilled groups (such as managerial and professional occupations) and that businesses often introduce non-compete clauses as a 'default' among their workforce.

IFF Research survey of businesses

72. BEIS commissioned a survey of around 690 businesses in the UK to explore how business' use of non-compete clauses might change if one of the options presented in the consultation (mandatory compensation) were introduced. This survey was designed specifically for this purpose and included a larger number of questions on non-compete clauses than the YouGov surveys (where there were questions on a number of other areas related to labour market policy). However, the flipside is that this survey consisted of a relatively smaller sample, generating some uncertainty in our estimate. In addition, the survey questions were framed around three levels of compensation (60%, 80% and 100% of the employee's average pay). The survey did not ask businesses to estimate their specific willingness to pay to retain the non-compete clause. Therefore, the survey responses cannot be used to derive the full demand curve for non-compete clauses without further assumptions.

73. The survey was conducted by IFF Research and made use of a mixed-method approach (online and telephone). Fieldwork took place 23 August and 24 September 2021. Interviews were conducted with the person in the business with overall responsibility for HR issues and the management of the employee life cycle. The sample for the survey consisted of businesses that were recruited to the Industry Pulse Research Panel between 12 October 2020 and 8 January 2021. The Industry Pulse Research Panel was recruited using an approach often used for business surveys including the Employer Skills Survey.

74. A total of 5,000 businesses were originally recruited to this panel. If these businesses had provided a usable email address during the recruitment process (or when participating in any other projects that used the panel for sample), and they had not opted-out of the panel by the time the fieldwork for this project was launched, they were sent an email invitation to participate in this research. This email introduced businesses to the research and contained a link to the online survey. A total of 4,590 emails were sent out and 291 businesses took part in the survey online. IFF Research subsequently undertook a telephone chasing exercise to encourage more businesses to participate in the survey via telephone. A total of 401 interviews were completed by telephone, taking the overall number of completes to 692. All figures quoted have been re-weighted to account for 'Don't Know' responses.

75. At the start of the survey, businesses were asked if they were aware of non-compete clauses prior to participating in the research. As shown in Table 13, around 73% said they were aware of non-compete clauses and 27% said they were not aware. Micro businesses were most likely to report that they were not aware of non-compete clauses prior to participating in the survey. This was the case for 28% of small and micro businesses, whereas it was the case for a lower proportion of medium and large businesses (20%).

Table 13: IFF Research business survey – Awareness of non-compete clauses

Base: All business, by size	*Were you aware of non-compete clauses? (rounded to nearest percent)*	
	Yes	No
Small and micro	72%	28%
Medium and large	80%	20%
All	**73%**	**27%**

76. The next part of the survey asked businesses whether they used non-compete clauses for any of their employees. As shown in Table 14, around 23% of businesses said that they used non-compete clauses for any of their employees, whereas 77% did not (including 27% that said they were not aware of non-compete clauses prior to participating in the research). The use of non-compete clauses appeared to increase with business size, with only 20% of micro and small businesses reporting that they used non-compete clauses, compared to 38% for medium and large businesses.

Table 14: IFF Research business survey – Use of non-compete clauses (overall)		
Base: All business, by size	*Does your business use non-compete clauses for any of your employees? (rounded to nearest percent)*	
	Yes	No
Small and micro	20%	80%
Medium and large	38%	62%
All	**23%**	**77%**

77. Businesses that used non-compete clauses gave a range of responses when they were asked for the proportion of their employees that have non-compete clauses in their contracts. As shown in Table 15, medium and large businesses were more likely to report that only a small proportion of their employees have non-compete clauses in their contracts. Whilst 23% of all businesses that used non-compete clauses reported that less than 10% of their employees have non-compete clauses in their contracts; this was far more common among medium and large businesses (48%) than it was among small and micro businesses (13%). By contrast, it was far more common from micro and small businesses using non-compete clauses to report that these were written into the contracts of all their employees. Although this was the case for 40% of all businesses that used non-compete clauses; this rose to 49% among small and micro businesses, compared to 20% for medium and large businesses.

Table 15: IFF Research business survey – Use of non-compete clauses (share of workforce)						
Base: Businesses that use non-compete clauses, by size	*Approximately what proportion of your employees have non-compete clauses in their contracts? (rounded to nearest percent)*					
	< 10%	10 – 25%	26 – 50%	51 – 75%	76 – 99%	100%
Small and micro	13%	10%	15%	12%	2%	49%
Medium and large	48%	16%	6%	4%	6%	20%
All	**23%**	**12%**	**12%**	**9%**	**3%**	**40%**

78. Businesses that used non-compete clauses gave a range of responses when they were asked whether they used non-compete clauses in specific occupational groups. As shown in Table 16, the use of non-compete clauses was most common among Managers, Directors and Senior Officials (90% of businesses that used non-compete clauses and employed people in this occupational group said they used non-compete clauses at this level), Professional Occupations (71%), Sales & Customer Service Occupations (64%) and Associate Professional & Technical Occupations (58%). These findings share some similarities to research from the US[35] where, for example, non-compete clauses are found to be particularly prevalent in architecture, engineering, computer, mathematical and management occupations (which broadly align with the first three occupational groups, although the mapping of US to UK SOC is more granular than this). The follow-up question asking businesses to estimate the share of those employed in each occupational group that had non-compete clauses in their contracts received a large number of 'Don't Know' responses and are therefore consider too unreliable to report.

[35] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625714

Table 16: IFF Research business survey – Use of non-compete clauses (by occupational group)									
Base: Businesses that use non-compete clauses, by size	*In each of the following occupational groups, do you use non-compete clauses? (rounded to nearest percent)*[36]								
	1	2	3	4	5	6	7	8	9
Small and micro	90%	77%	63%	46%	48%	21%	67%	23%	15%
Medium and large	92%	60%	49%	18%	27%	19%	59%	16%	9%
All	**90%**	**71%**	**58%**	**37%**	**40%**	**20%**	**64%**	**20%**	**12%**

79. Businesses were also asked to report the minimum, average and maximum duration of non-compete clauses within their organisation. The average or most common duration of an employee's non-compete clause period is 6 months (which was the case for 53% of businesses that used non-compete clauses) followed by 12 months (which was the case for 31% of businesses that used NCCs). Overall, the responses indicated that non-compete clauses could range from a minimum of 1 month to a maximum of 24 months.

80. Finally, the survey asked businesses whether they compensated any of their employees during the period post-termination in which the non-compete clause is in effect, and whether they used other restrictive covenants or garden leave alongside non-compete clauses in contracts. A very small minority (4%) of businesses that used non-compete clauses said that they compensated any of their employees during the non-compete clause period. A range of reasons were provided for not compensating employees, with the responses indicating a recognition of precedent and consistency across an employer's workforce that have non-compete clauses, the added disincentive to move to a competitor of not compensating the employee, and the absence of a requirement to compensate the employee. The responses also indicated that it was reasonably common for employers to use gardening leave alongside non-compete clauses (36% of businesses that used non-compete clauses said they did this) as well as other restrictive covenants (35% of businesses that used non-compete clauses said they did this). Overall, 62% of businesses that use non-compete clauses also use gardening leave, other restrictive covenants, or both.

Conclusion from consultation and three surveys

81. There is evidence that non-compete clauses are being used across the labour market. While non-compete clauses are more commonly used in higher-skilled, higher-paid occupations, there is evidence that they are used across the occupational distribution. In theory, all of these non-compete clauses could be 'reasonable' in protecting business interests. Our evidence shows that employers take a range of enforcement steps on non-compete clauses. However, there is evidence of an imbalance of power and asymmetric information when employees agree to a job with a non-compete clause attached. This suggests that many employers are able to introduce non-compete clauses in contracts at minimal cost and, therefore, this weakens the link between the presence of the non-compete clause and the reasonable-ness to protect business interests (and incentives to invest in innovation activities). This is expected to lead to higher-than-optimal number of non-compete clauses across the labour market. This also leads to a wellbeing loss to employees that are subject to non-compete clauses as they are not sufficiently compensated for the restrictions on their future mobility.

[36] 1 – Managers, Directors & Senior Officials; 2 – Professional Occupations; 3 – Associate Professional and Technical Occupations; 4 – Administrative and Secretarial Occupations; 5 – Skilled Trades Occupations; 6 – Caring, Leisure and Other Service Occupations; 7 – Sales and Customer Service Occupations; 8 – Process, Plant and Machine Operatives; 9 – Elementary Occupations

Policy objective

82. The Government is committed to building a high-skilled, high-productivity, high-wage economy that delivers on our ambition to make the UK the best place in the world to work and grow a business. The policy is intended to make it easier for individuals to start new businesses, find new work and apply their skills. Overall, the policy objectives are to enhance the flexibility and dynamism of the UK labour market, and boost overall competition and innovation.

Options considered

83. A minimal policy intervention would ensure that workers are fairly compensated and non-compete clauses are only included in contracts in cases where they legitimately protect business interests. A more ambitious policy intervention would reduce the use of non-compete clause beyond the 'reasonableness' test under existing common law. The economic case for a more ambitious intervention depends on the case that higher competition will lead to overall higher innovation (with the resulting wider benefits to society).

84. This Impact Assessment considers three options (in addition to a 'Do Nothing' scenario) for the Government's response to the problem under consideration:

- **Option 0:** Do Nothing (i.e. counterfactual)
- **Option 1:** Legislate to make all non-compete clauses unenforceable (i.e. complete ban of non-compete clauses)
- **Option 2:** Legislate to introduce mandatory compensation for the duration of the non-compete clause, set at 60%, 80% or 100% of the employee's pay
- **Option 3:** Legislate to introduce a statutory limit on the duration of the non-compete clause.

85. Alternative legislative policy options have also been considered and do not feature in the final short-list of policy options. This is because there is insufficient evidence to conclude that these options would materially drive down the use of non-compete clauses across the labour market and contribute to the policy objectives. Table 17 outlines the alternative legislative policy options that were considered at the long-list stage.

86. Non-legislative options have also been considered. These include the publication of guidance to enhance both employers' and workers' understanding of non-compete clauses and a dedicated communications campaign to raise awareness. However, these options, as standalone measures, would not place any new restrictions on the use of non-compete clauses. Businesses who choose to use non-compete clauses could continue to do so. Workers who are subject to non-compete clauses would continue to face the existing uncertainties around the enforceability of the non-compete and the existing barriers to testing this in the courts. The Government is however considering publishing guidance alongside the legislation and will use the communications tools and resources available to raise awareness and understanding of non-compete clauses.

Table 17: Alternative legislative policy options considered at long-list stage	
Alternative policy option	**Summary of rationale for not including in short-list**
Modifying the common law test to require that the court gives greater regard than they currently do to certain factors including the need to encourage or promote competition and innovation.	Under this option the Court would continue to give weight to the business needs of the employer and other factors that determine whether a covenant is reasonable, but would balance that against the factors prescribed by legislation. However, there is evidence that the Courts already give regard to these factors when considering whether a post-termination non-compete clause is enforceable (for example, see *Dranez Anstalt v Hayek*).
Introducing a requirement for legal advice to be taken on the non-compete clause before it is signed.	This option could address situations where employers have greater negotiating power over the non-compete clause. However, this option would also be counter to the policy objective to promote flexibility and dynamism in the labour market, as it would introduce frictions in the recruitment process.
Requiring employers to disclose the exact terms of the non-compete clause agreement in writing before they enter into the employment relationship (one of the measures considered in the consultation).	A non-compete clause should already be clearly set out in writing (usually in an employment contract) for it to be enforceable. This option could address situations where the employee is unaware of the non-compete clause before entering into the employment relationship. However, this option would not address situations where employers have greater negotiating power over the non-compete clause.
Introducing a statutory limit on the length of non-compete clauses for workers who earn below a certain salary threshold.	This option is a variation of Option 3 and could allow for targeting towards specific groups of workers. However, the salary threshold would introduce additional complexity for businesses and individuals when seeking to understand whether the non-compete clause was caught by the statutory limit or not. There are also fairness considerations in an option where targeting is based explicitly on a salary threshold. Depending on where the threshold is set, the impact of this option on workers in higher-paid, higher-skilled occupations would be limited.

Option 0: Do Nothing (i.e. counterfactual)

87. Under this option, the existing common law approach would continue. This is not the preferred option as our evidence shows the presence of market failures (e.g. imbalance of power and asymmetric information when employers and workers agree to the non-compete clause) such that individuals are not adequately compensated for restrictions on their future mobility and employers are able to introduce non-compete clauses in cases where they are not needed to incentivise investment in innovation activities. As we do not have time series evidence on the use of non-compete clauses and the existing common law approach has been, and continues to be, developed by the courts on a case-by-case basis, we make a simplifying cross-cutting assumption that the use of non-compete clauses would remain stable over time in the counterfactual.

Option 1: Legislate to make all non-compete clauses unenforceable (i.e. complete ban of non-compete clauses)

88. Under this option, all non-compete clauses across the labour market would be unenforceable. This is not the preferred option as non-compete clauses can, in some cases, act as a valuable 'contracting device' between workers and employers and enable investments, including in innovation activities. The 'blanket' nature of this option also generates significant risks of unintended consequences.

Option 2: Legislate to introduce mandatory compensation for the duration of the non-compete clause

89. Under this option, employers would be required to pay the employee for the duration of the non-compete clause. This is not the preferred option as it imposes a significant direct cost on business. This option could disadvantage smaller businesses that may be less likely to have the required financial resources. The 'blanket' nature of this option also generates significant risks of unintended consequences.

Option 3: Legislate to introduce a statutory limit on the duration of the non-compete clause (preferred option)

90. Under this option, non-compete clauses that are longer than the statutory limit of three months would be unenforceable. This option generates a lower policy risk of unintended consequences (relative to options 1 or 2) as businesses will retain the option to use non-compete clauses of up to three months (where it is reasonable) under the same conditions as pre-intervention. This option is expected to impact around 70% of non-compete clauses in the counterfactual.

Monetised and non-monetised costs and benefits

Appraisal approach

91. As per the Regulatory Policy Committee guidance[37] we have attempted to provide a robust assessment of the impacts of the whole policy at the primary legislation stage, including an EANDCB figure. As the policy is open-ended, we use the default time horizon of 10 years to assess costs and benefits, as suggested by HM Treasury's Green Book[38].
92. This policy is expected to have significant indirect impacts that are not captured by the EANDCB figure. As one of the policy objectives is to increase the job mobility rate, we expect that the policy will lead to redistribution across the economy, from the ex-employer to the new employer as well as the employee that was, in the counterfactual, subject to a non-compete clause (there are a number of channels through which employees might benefit, which will be explored later in this section). In one of the policy options, this redistribution across the economy is brought into the direct costs as a transfer from the ex-employer to the employee.
93. HM Treasury's Green Book advises that 'if there are significant unmonetised effects associated with an intervention, efforts should be made (where it is possible and meaningful) to quantify them in some other way' and 'the focus of appraisal should be on benefits and costs important to the decision being considered'. We have therefore attempted to monetise the redistribution across the economy through novel and experimental methods. These figures are subject to a number of assumptions and limitations.
94. The valuation approach we have undertaken for the wider redistribution in the economy is linked to the concepts of 'stated preference' (defined in HM Treasury's Green Book as a 'technique for eliciting values for something that is not-marketed, and is derived from responses to expertly designed surveys') and 'willingness to pay' (defined as a 'technique for the inference of a value of a non-marketed good or service from the amount that respondents to an expertly designed survey are willing to pay to acquire a good or service').
95. To produce an order-of-magnitude assessment of the potential redistribution across the economy, we make use of the responses to the IFF Research survey. However, the survey questions were framed around three levels of compensation (60%, 80% and 100% of the worker's average pay). The survey did not ask businesses to estimate their specific willingness to pay to retain non-compete clauses. Therefore, the survey responses cannot be used to derive the full demand curve for non-compete clauses without further assumptions.

[37] RPC, (2019), RPC case histories – assessment and scoring of primary legislation measures. Scenario 1a in the primary legislation guidance.

[38] https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent/the-green-book-2020

Identifying costs and benefits

96. The evidence base on non-compete clauses in the UK is not clear-cut and is an emerging area of policy and analytical interest. The economic impacts of the options considered in this Impact Assessment are therefore subject to a significant amount of uncertainty and will depend on how businesses and employees respond to the policy.

97. Based on our review of the economic literature, we have identified the following costs and benefits. When classifying costs as direct or indirect, we have been guided by RPC Case Histories[39], i.e. we have considered whether the impacts are immediate or 'unavoidable' outcomes of the legislation, and the number of 'steps in the logic chain' between the introduction of the measure and the impact taking place. As per guidance in HM Treasury's Green Book on how to appraise the social value of the policy, we have considered impacts on a wide range of groups, including businesses, employees, consumers and the Exchequer.

Direct (monetised) impacts

98. Across all policy options, we expect businesses to incur a direct familiarisation cost (i.e. businesses must familiarise themselves with the new policy to understand how this affects their business). For Option 2 (mandatory compensation), we expect an additional direct cost to business: in cases where businesses want to avoid paying compensation, they will incur an administrative cost to remove the non-compete clause from the employee's contract; in cases where businesses are willing to pay compensation, they will incur a compensation (wage) cost when the worker leaves the firm. The compensation is a direct transfer to the relevant worker.

Indirect (un-monetised) impacts

99. Overall, we expect the policy options to have significant indirect impacts on businesses, workers and the wider economy. The policy options are expected to increase the rate at which workers leave their current employer to a competitor or to set up a competing business. The overall net impact on some headline labour market and business indicators (such as pay and spending on innovation activities[40], among others) is ambiguous. The main drivers of the overall net impact include the innovative potential of the competitor (or start-up) relative to employers currently using non-compete clauses, the drivers of workers' decisions to switch employers,, the 'deterrence effect' that non-compete clauses are currently having on worker moves, and the response of employers using non-compete clause to mitigate the effects of the policy.

100. We have produced an order-of-magnitude assessment of the potential redistribution across the economy through experimental analysis of the responses to the IFF Research survey. The estimates can be interpreted as representing the ongoing disruption incurred by businesses currently using non-compete clauses. These could represent the decrease in profits due to the loss of trade secrets, client lists and other confidential information, in cases where the worker joins a competitor or sets up a competing business during the window where the employer is no longer protected by a non-compete clause. These estimates can also be interpreted as the 'foregone benefits' as these businesses reduce their investment in innovation activities and restrict the sharing of information within the organisation.

[39] https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019

[40] This Impact Assessment uses the definition of innovation activities that is referred to in the UK Innovation Survey 2021 report. The definition includes any of the following activities: 1. The introduction of a new or significantly improved product (good or service) or process; 2. Engagement in innovation projects not yet complete, scaled back, or abandoned; 3. New and significantly improved forms of organisation, business structures or practices, and marketing concepts or strategies; 4. Investment activities in areas such as internal research and development, training, acquisition of external knowledge or machinery and equipment linked to innovation activities. https://www.gov.uk/government/statistics/uk-innovation-survey-2019-main-report

101. In turn, these costs may be passed onto workers (if businesses reduce investments that are beneficial to the worker or restrict information sharing within the organisation) or consumers (if businesses increase consumer prices to mitigate lower profits). These costs may also be mirrored to some extent by benefits to competitors (if these businesses are able to monetise the trade secrets, client lists or other confidential information brought by the worker when they move). Finally, these costs may be mitigated through higher ongoing pay or non-pay benefits to workers in their current jobs to incentivise retention, representing a transfer to workers. The experimental estimates of the redistribution across the economy are not included in the NPV and NPSV figures as we do not have robust evidence to assess the share that is transferred to workers, consumers and competitors.

102. We expect there may be further, additional, indirect impacts due to the policy (i.e. not captured in our assessment above). For example, competitors could benefit from additional positive spillover benefits of existing innovations created by the employee's previous employer. These businesses may also benefit from higher profits due to an increase in spending on innovation activities. Workers could benefit from higher pay and wellbeing due to greater flexibility to move to a competitor or set up a competing business when it is in their interest to do so. Workers could also benefit in cases where businesses currently using non-compete clauses extend gardening leave. Consumers could benefit from lower prices and the availability of new and higher quality goods and services due to an increase in competition. We do not quantify these impacts as they are too uncertain and will depend on the response from businesses and workers.

One-off direct cost to business (all options): Familiarisation

103. Businesses will incur a one-off cost associated with familiarising with the legislation. We assume this familiarisation would consist of the relevant employee(s) in the business reading and understanding the new requirements and any accompanying guidance, considering the implications on the business, and, if necessary, consulting with other relevant employees (e.g. line managers).

104. In Option 2 (mandatory compensation), we expect that businesses would need to amend employment contracts in cases where they choose not to pay compensation. This is considered separately as a one-off (monetised) direct administrative cost. In Option 1 (complete ban) and Option 3 (statutory limit), it is the policy intention that businesses would not be explicitly required to amend existing employment contracts so that they reflect the legislation, although this would be considered best practice. Similarly, we expect the same to apply to new employment contracts. These impacts are expected to be limited and are considered separately as a one-off (unmonetised) indirect administrative cost.

105. To derive the number of businesses that could be impacted by the familiarisation costs, we have used the responses to the IFF Research survey (see Table 14) and YouGov business survey (see Table 10) on whether businesses use non-compete clauses for any of their workforce. We then apply these figures to the total number of businesses in Great Britain with 1 or more employees, derived from the Business Population Estimate (BPE)[41]. The results are shown in Table 18. We recognise that a broader population of businesses may want to familiarise themselves with the legislation to consider the potential implications; however, the legislation would not directly apply to these businesses based on their current behaviour.

[41] BEIS analysis of Business Population Estimates 2021, https://www.gov.uk/government/collections/business-population-estimates

Table 18: Number of businesses using non-compete clauses, by business size				
Business Size	**Number of businesses in Great Britain** *(rounded to nearest 10,000)*	**Share of businesses using non-compete clauses** *(rounded to nearest percent)*		**Estimated number of businesses using non-compete clauses** *(rounded to nearest 10,000)*
		IFF Research survey	YouGov Business survey	
Micro and small	1,390,000	20%	36%	280,000 – 500,000
Medium and large	50,000	38%	59%	20,000 – 30,000
Total	1,440,000	23%	52%	300,000 – 530,000

106. Table 19 outlines the baseline assumptions for the individual(s) responsible for familiarisation and the range of time taken. As Government has not previously legislated in this area, we expect that businesses will require a reasonable amount of time to familiarise themselves with the legislation and consider the implications for their business. We expect Option 1 (complete ban) to be the most straightforward. We expect Option 3 (statutory limit) to be a bit more complex, as businesses would need to consider the durations of non-compete clauses in their workforce to assess the implications. Meanwhile, we expect Option 2 (mandatory compensation) to be the most complex as businesses would need to estimate the wage cost if they retain non-compete clauses within their organisation, which is likely to vary worker-by-worker, depending on how compensation is required to be calculated in legislation. Across all options, we expect that businesses would need to consider the case for alternative mechanisms to incentivise retention and protect their interests.

107. To inform the range of time taken for familiarisation, we have made use of the responses to a question in the YouGov survey on the time taken to familiarise (e.g. understand what the requirements and basic processes are) with the current statutory flexible working policy. The survey found that 18% of employers estimated it takes up to 10 mins, 30% take between 10-30 minutes, 31% take 30-60 mins and 22% take more than 1 hour[42].

108. The assumption of 30 mins to familiarise with a change to employment legislation has been commonly used in previous Impact Assessments (e.g. the National Living Wage in 2016, Employment Rights (Miscellaneous Amendments) Regulations 2019, and Agency Employees (Amendment) Regulations 2019). We consider this a sensible assumption for Option 1 (complete ban), but consider that Option 2 (mandatory compensation) and Option 3 (statutory limit) are likely to be more complex. Therefore, we have applied a higher estimate of 120 mins in Option 2 (mandatory compensation) and 60 mins in Option 3 (statutory limit). In practice, we expect the time taken to familiarise to vary business-by-business.

109. The breakdown of responses by business size in the YouGov survey suggests that the time spent for familiarisation increases with the size of the business. However, the individual responsible for familiarisation in small and micro businesses is likely to be the sole director or owner of the business (i.e. the opportunity cost of this individual's time may in fact be greater than the average hourly wage of a Corporate Manager, since time taken out from running the business might be expected to have a more significant impact on overall profitability of the business).

110. On balance, we have therefore decided not to differentiate the per-employee time taken for familiarisation by business size. Instead, we assume that familiarisation is undertaken by a Corporate Manager / Director in small and micro businesses (as they are less likely to have a dedicated HR function) and one HR Manager / Director and three HR Administrative Assistants in medium and large businesses[43].

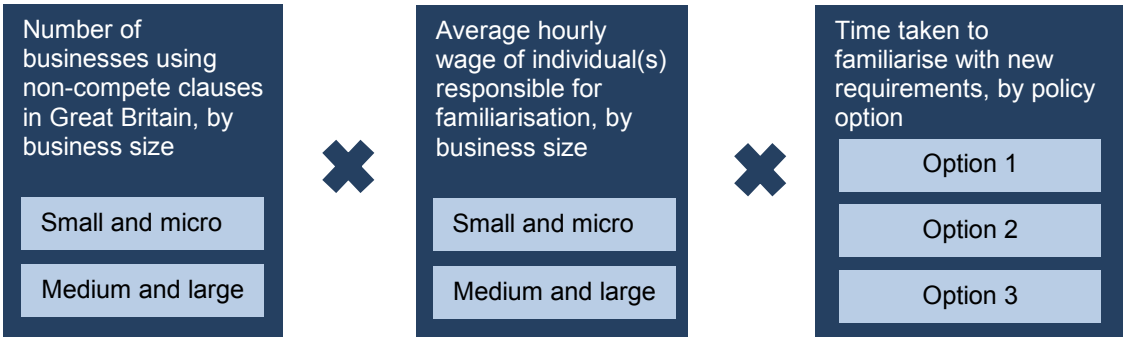
[42] Figures re-weighted to exclude 'Don't know' responses to survey questions. This is consistent with all other figures presented in this impact assessment.
[43] This is similar to other Impact Assessments, e.g. https://bills.parliament.uk/bills/3191/publications and https://bills.parliament.uk/bills/3237/publications

111. Provisional 2021 ASHE data[44] gives the mean hourly pay of a Corporate Manager / Director as £28.40[45], HR Manager / Director as £26.52 [46], and HR Administrative Assistant as £12.50[47]. We uplift these hourly costs by 17.9% to cover non-wage labour costs, such as employer-paid pension and National Insurance contributions[48].

Table 19: Individual(s) responsible for familiarisation, time taken and average hourly wage (including uplift for non-wage labour costs)

Business Size	Person responsible for familiarisation	Time taken per person	Average hourly wage (including uplift)
Small and micro	1x Corporate Manager / Director	Option 1: 30 mins Option 2: 120 mins Option 3: 60 mins	£33.50
Medium and large	1x HR Manager / Director		£31.28
	3x HR Administrative Assistants		£14.74

112. The methodology to calculate familiarisation costs is outlined in the following diagram. The range in the final estimates is driven by the range of estimates of the number of businesses using non-compete clauses in Great Britain, by business size (see Table 19). The other assumptions are allowed to vary according to business size and policy option, but, within those, are held constant at a single estimate.



113. Overall, we estimate that the direct one-off familiarisation cost would be between £5.4m and £9.5m in Option 1 (complete ban), between £21.5m and £38.1m in Option 2 (mandatory compensation), and between £10.7m and £19.0m in Option 3 (statutory limit). Our central estimates are the mid-points in each range.

One-off direct cost to business (Option 2 only): Amending non-compete clauses in contracts

114. We expect that businesses would not be required to remove non-compete clauses from employment contracts in cases where there are no longer enforceable due to the legislation, i.e. any non-compete clauses under Option 1 (complete ban) and non-compete clauses that are longer than 3 months under Option 3 (statutory limit). However, in Option 2 (mandatory compensation), we expect that businesses would need to amend employment contracts in cases where they choose not to pay compensation. This could include cases where businesses remove non-compete clauses entirely or decide to shorten them.

[44] ONS, Index of Labour Costs per Hour UK, https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14
[45] SOC Code: 11
[46] SOC Code: 1135
[47] SOC Code: 4138
[48] BEIS analysis of Index of Labour Costs per Hour, 2019Q4 – 2020Q3 https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhourilch/julytoseptember2020

115. Businesses are currently able to unilaterally waive a non-compete clause at any point during the employment relationship. To address the risk that employers insert non-compete clauses and then unilaterally remove them at the end of the employment relationship, the consultation considered an option where employers would be required to pay compensation for some or all of the period of the non-compete clause, unless a defined period of time (e.g. 6 months) has elapsed between the waiving of the clause and the end of the employment relationship. Using 6 months as an example:

- The employer could at any time during the employment relationship waive the post-termination non-compete clause in writing to the worker. The employer's obligation to pay compensation would cease to exist after 6 months have elapsed from the day the clause was waived.
- Were the employer to give notice to waive the non-compete 6 months prior to the end of the employment relationship, the employer would not be required to provide the worker with any additional compensation once the employment has ended.
- If, on the other hand, the employer waits to give written notice until a month before the end of the employment relationship, the employer then would be required to compensate the employee for 5 months after the employment relationship has ended. The worker would be able to compete immediately after the employment relationship has ended.

116. Our estimates of the number of non-compete clauses where businesses choose not to pay compensation if Option 2 (mandatory compensation) were introduced are drawn from responses to the IFF Research survey. The survey did not ask respondents to consider how the system described above, which is a departure from current arrangements, would affect the number of non-compete clauses where they choose not to pay compensation. Given current arrangements give them flexibility to waive closer to the end of the employment relationship, respondents may have err-ed towards over-estimating the non-compete clauses where they choose to pay compensation.

117. Therefore, the estimates drawn from the IFF Research survey arguably represent a ‘first wave’ of amendments to non-compete clauses (e.g. in cases where employers had introduced them as a ‘default’) and many of the remaining stock would have a ‘question mark’ next to them. Under current arrangements, employers could then make a decision on the non-compete clauses with a ‘question mark’ at the end of the employment relationship (or when notice is provided). At this stage, the worker’s departure from the employer would be certain and the employer would have more information on the worker’s destination. Therefore, the number of instances where businesses choose to incur the one-off direct administrative cost would increase, as employers waive an additional number of non-compete clauses where they are sufficiently reassured that the worker will not join a competitor or set up a competing business.

118. Table A5 in Annex A shows that around 79 – 85% of non-compete clauses are estimated to be amended under a ‘first wave’ if mandatory compensation were set at 60% of employee’s average pay. The corresponding ranges for 80% and 100% of employee’s average pay are 89 – 95% and 92 – 97%, respectively. Based on the available evidence, we are unable to robustly estimate the additional number of instances where businesses waive non-compete clauses closer to the end of the employment relationship. This will depend on the business’ exposure if the worker were to join a competitor or set up a competing business and the probability of the worker doing so before the end of the non-compete clause. For example, the business may consider that other incentive mechanisms, which may not have been in place during the ‘first wave’ of decision-making, are sufficient to deter the worker from joining a competitor or setting up a competing business. The commercial value of the trade secrets that the worker is aware of (where the value derives from the fact that it is a secret) or client relationships is also expected to be non-constant over time and the value may have decreased since the employee agreed to the non-compete clause.

119. Ultimately, these scenarios are difficult to predict and will likely vary significantly. Given these limitations, we do not monetise the one-off direct administrative costs associated with these scenarios. However, we note that this would be more-than-outweighed by the decrease in the estimated ongoing direct wage cost (see next section) as businesses would choose to amend non-compete clauses, and reduce the direct wage costs, where it is in their interest to do so. Therefore, we are taking an overall cautious approach.

120. For the 'first wave' of changes to non-compete clauses, as outlined in Annex A, the one-off direct administrative cost to business will depend on whether we apply a per-employer or per-worker interpretation. The former assumes full standardisation, i.e. an employer will amend, in one go, all of the contracts where they are not willing to incur the direct wage cost or wish to reduce this cost. However, our evidence shows that non-compete clauses are often not standardised within a given business. This variation in the counterfactual means that a given business could incur the administrative cost multiple times. At the extreme, businesses could incur the cost for each employee, such that the amendments are tailored to each worker's circumstances.

121. We use the number of employers that use non-compete clauses in the counterfactual and indicate their use would change in each mandatory compensation scenario (see Annex A) as our per-employer estimate; this is our Low estimate for the one-off direct administrative cost. We use the number of non-compete clauses that are removed or shortened under each mandatory compensation scenario (see Annex A) as our per-worker estimate; this is our High estimate for the one-off direct administrative cost. In practice, we expect that the business response would fall within this range, i.e. there would be some, but not complete, standardisation.

122. The 2008 Employment Law Admin Burdens Survey[49] found that the average time needed to amend a written statement was 73.75 minutes. This consisted of the time needed to familiarise (18.44 mins), gather (18.44 mins), prepare (8.11 mins), report (12.54 mins) and meet (16.23 mins). For the purposes of our appraisal, we subtract the time needed to familiarise (as we assume this is already counted in our estimates of familiarisation costs) and the time taken to gather information (as we expect that the information on the non-compete clauses will already be present in the employee's employment contract). There is an argument that some, or all, of the time taken to prepare may already be counted in our familiarisation costs; however, given the uncertainty over this, we have taken a cautious approach and not subtracted the time taken to prepare. This leaves us with an estimate of around 30 mins.

123. We assume that the amendment to employment contracts is undertaken by a Corporate Manager / Director in small and micro businesses (as they are less likely to have a dedicated HR function) and one HR Manager / Director and three HR Administrative Assistants in medium and large businesses. Provisional 2021 ASHE data[50] gives the mean hourly pay of a Corporate Manager / Director as £28.40[51], HR Manager / Director as £26.52 [52], and HR Administrative Assistant as £12.50[53]. We uplift these hourly costs by 17.9% to cover non-wage labour costs, such as employer-paid pension and National Insurance contributions[54].

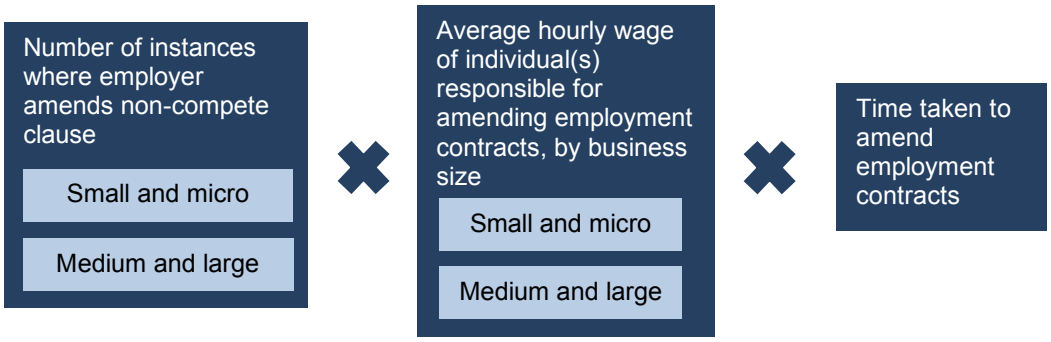
Table 20: Individual(s) responsible for amending employment contract, time taken and average hourly wage (including uplift for non-wage labour costs)

Business Size	Person responsible for amending employment contract	Time taken per person	Average hourly wage (including uplift)
Small and micro	1x Corporate Manager / Director	30 mins	£33.50
Medium and large	1x HR Manager / Director		£31.28
	3x HR Administrative Assistants		£14.74

124. The methodology to calculate the cost of amending employment contracts to amend non-compete clauses is outlined in the following diagram. The range in the final estimates is driven by the per-employee and per-employer interpretations. For the per-worker estimate, we hold fixed the number of non-compete clauses that are shortened or removed at the mid-point estimate.

[49] Department for Business Enterprise & Regulatory Reform, Employment Law Admin Burdens Survey 2008 Final Report, December 2008.
[50] ONS, Index of Labour Costs per Hour UK, https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14
[51] SOC Code: 11
[52] SOC Code: 1135
[53] SOC Code: 4138
[54] BEIS analysis of Index of Labour Costs per Hour, 2019Q4 – 2020Q3 https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhourilch/julytoseptember2020

125. For the per-employer estimate, we hold fixed the number of businesses that use non-compete clauses in the counterfactual at the mid-point estimate. We make use of our estimates (outlined in the 'Rationale for Intervention' section) of the share of businesses that use non-compete clauses by business size (for the per-employer estimate) and the share of employees with non-compete clauses that are employed by business in each size band (for the per-worker estimate).



126. Overall, we estimate that the direct one-off cost to business of amending employment contracts to remove or shorten non-compete clauses would be between £6.1m and £82.4m if mandatory compensation is set at 60%, between £6.4m and £92.4m if mandatory compensation is set at 80%, and between £6.5m and £95.0m if mandatory compensation is set at 100%. The wide ranges are driven by extreme assumptions on the degree of standardisation. In practice, we expect that the business response would fall within this range, i.e. there would be some, but not complete, standardisation. Our central estimates are the mid-points in each range.

Ongoing direct cost to current employer (Option 2): Transfer of pay from employer to worker

127. Paragraphs 117 to 120 outline the approach we have taken to interpreting the IFF Research survey responses and the estimated number of non-compete clauses where businesses choose to pay compensation if Option 2 (mandatory compensation) were introduced. We calculate the ongoing direct wage cost to employers based on a 'first wave' of amendments to non-compete clauses. This is an overall cautious approach. The relevant number of months where businesses incur a wage cost is shown in Table A7 in Annex A. In practice, we expect that the overall number of non-compete clauses where business would pay compensation is smaller than what we have inferred from the IFF Research survey. This is because, based on our interpretation of the survey responses, we would expect some non-compete clauses to have a 'question mark' next to them and to be removed closer to the end of the employment relationship (i.e. when businesses have more information on the employee's destination and, in some cases, would be sufficiently reassured that the employee wouldn't join a competitor or set up a competing business). Our estimates of the direct wage cost should be interpreted as a cautious upper bound.

128. To calculate the annual direct wage costs in Option 2 (mandatory compensation), we need to estimate the probability that these employees leave their employer every year. Continuing our interpretation of the IFF Research survey responses, we assume that the stock of non-compete clauses where businesses choose to pay compensation, as outlined in Table A7 in Annex A, is independent of any employee-specific signal that they intend to leave their employer. Therefore, we assume that the relevant probability rate reflects a general expectation, across all employees where businesses choose to pay compensation, of the likelihood that an employee leaves their employer (the 'departure rate'). We assume that the relevant departure rate incorporates any destination for the employee, except where they move to competitor or to set up a competing business. Therefore, we expect that non-compete clauses, with the associated compensation, would have a full deterrence effect on employees post-intervention, i.e. the financial disincentive (potential loss of compensation) is sufficient to prevent any employees from choosing to move to a competitor or set up a competing business.

129. First, we estimate the economy-wide departure rate in the counterfactual. We estimate this through analysis of five-quarter longitudinal LFS datasets between 2012 and 2019, where each dataset begins in January – March one year (Q1) and ends in January – March the following year (Q5). There is no single, agreed definition of what constitutes a competitor; therefore, we have used 1-digit sector as the best available proxy. Departures are assessed based on a 'tenure reset' approach where employees report that they have been working for their current employer for less than 3 months, or are unemployed or inactive, and were an employee in the previous quarter. The departure rates are expressed as a share of all employees in Q1 and averaged across the 8 five-quarter longitudinal datasets. The most recent dataset used ends in January – March 2020 to avoid distortions due to Covid-19. Based on this approach, we estimate an economy-wide departure rate of 12.3% per year in the counterfactual. If we were to apply this rate to the population of employees (estimated to be around 28.7m[55]) this would indicate around 3.5m departures per year.

130. There are a number of challenges to using these estimates to derive the counterfactual and post-intervention departure rate (excluding to a competitor) for employees whose employer chooses to pay compensation. We have undertaken a scenario-based exercise to frame conceptually the possible counterfactual departures for workers with non-compete clauses. When designing these scenarios, we have considered the following questions:

- Does the employee depart from their employer at all?
- If yes – does the employee join a competitor or set up a competing business before the end of their (counterfactual) non-compete clause? What about once the (counterfactual) non-compete clause expires?

131. We have designed scenarios to allow us to identify the cases where the impacts of Option 2 (mandatory compensation) are likely to be more significant and the types of workers that may be affected. The scenarios are therefore defined on the basis of two points in time: when the worker leaves their employer in the counterfactual and when the counterfactual non-compete clause expires.

- **Scenario 1:** Workers do not leave their employer at all in the counterfactual. This could represent a number of situations and depends on the relative value of current and outside options for the worker. For example, workers may be sufficiently compensated by their current employer or, alternatively, outside options (excluding a move to a competitor) may be particularly unattractive.
- **Scenario 2:** Workers leave their employer in the counterfactual (but not initially to a competitor); this includes moves to inactivity (retirement, health reasons, etc) or unemployment. When the non-compete clause expires, workers move to a competitor or set up a competing business. Given the move to a competitor within a fairly short period of time (usually non-compete clauses last for a maximum of two years) we interpret this as indicating an overall worker preference to work for a competitor. These workers may have incorporated the delayed move to a competitor when deciding to leave their current employer (e.g. they may have a confirmed job offer and their new employer is willing to delay the start date by the duration of the non-compete clause). We expect that workers in this group are more likely to be in higher-paid jobs as they are more likely to be able to afford a period of worklessness. In some cases, low-paid workers may find themselves in this group due to involuntary job exits or particularly strong 'push' factors in their current job.
- **Scenario 3:** This is similar to scenario 2 but, when the non-compete clause expires, workers do not move to a competitor or set up a competing business. We interpret these cases as indicating an overall worker preference not to work for a competitor or set up a competing business given the relatively short period of time (typically, around 6 months) between when the worker leaves their employer and the expiration of the non-compete clause. The impacts of Option 2 (mandatory compensation) are likely to be more limited in these situations. For example, this could be because employers are more likely to waive the non-compete clauses towards the end of the employment relationship for workers that fall in this scenario. This will depend on the extent to which the employer has sufficient information to identify that the employee falls in this scenario.

[55] BEIS analysis of ONS Business Population Estimates (2021)

However, we also note that this scenario could also include workers who are less able to afford a transitionary period of worklessness or, once they have started working for a non-competitor, shift to an overall preference to remain with a non-competitor given the costs of switching employers.

- **Scenario 4:** Workers leave their employer to join a competitor or set up a competing business before the (counterfactual) non-compete clause expires. We interpret these cases as indicating that the worker challenges their employer's willingness to enforce the non-compete clauses and, in the end, is successful. The impacts of Option 2 (mandatory compensation) are likely to be more limited in these situations. For example, this could be because employers are more likely to waive the non-compete clauses towards the end of the employment relationship for workers that fall in this scenario. This will depend on the extent to which the employer has sufficient information to identify that the worker falls in this scenario.

132. We are unable to directly observe workers that are subject to a non-compete clause in the longitudinal LFS datasets. This means we are unable to robustly estimate the share of workers with non-compete clauses in the counterfactual that fall into each of the scenarios above. In turn, this generates significant challenges to robustly estimate the counterfactual or post-intervention departure rates for workers who would receive compensation.

133. Workers subject to non-compete clauses in the counterfactual may have a particularly high departure rate (excluding to a competitor), relative to the rest of the workforce, as non-compete clauses redirect some workers to other destinations (depending on the extent to which non-compete clause deter moves to a competitor). We also expect the policy to lead to a post-intervention boost to the departure rate for workers whose employer chooses to pay compensation due to the additional financial incentive to abide by the non-compete clause. However, the presence of a non-compete clause, both in the counterfactual and post-intervention, could signal jobs where moves to a competitor are particularly attractive to the worker relative to other exit options, when compared to the rest of the workforce.

134. Given the significant challenges identified above, we have taken an overall cautious approach and made a number of simplifying assumptions. As a baseline, we have assumed that (a) other than the effect of the non-compete clauses, workers with and without non-compete clauses have the same departure rates, (b) there is no boost in departures post-intervention for workers whose employer choose to pay compensation due to the additional financial incentives, and (c) no workers receive any compensation after the end of their employment relationship in the counterfactual[56]. To mimic some of the variation we would expect if we varied those assumptions, we have then considered extreme scenarios for the effect of non-compete clauses on the departure rate for workers with non-compete clauses in the counterfactual:

    - In our Low scenario, we assume that non-compete clauses have no effect on departure rates (excluding to a competitor) in the counterfactual.
    - In our High scenario, we assume that non-compete clauses have a full deterrence effect on worker moves to a competitor and all of these workers are redirected towards other destinations in-scope of the departure rate in the counterfactual.

[56] This assumption means that we can interpret the post-intervention departure rates as representing the additional policy impact. This assumption is expected to have limited impact as a very small minority (around 4%) of businesses that use non-compete clauses said that they compensated any of their employees during the non-compete clause period in the IFF Research survey. The relevant question in the YouGov business survey suggest a higher incidence of compensation (around one-third of employees with non-compete clauses when re-weighting to account for 'Don't Know responses); however, there were a large number of 'Don't Know' responses (around one third of all responses) and so the findings are not considered robust.

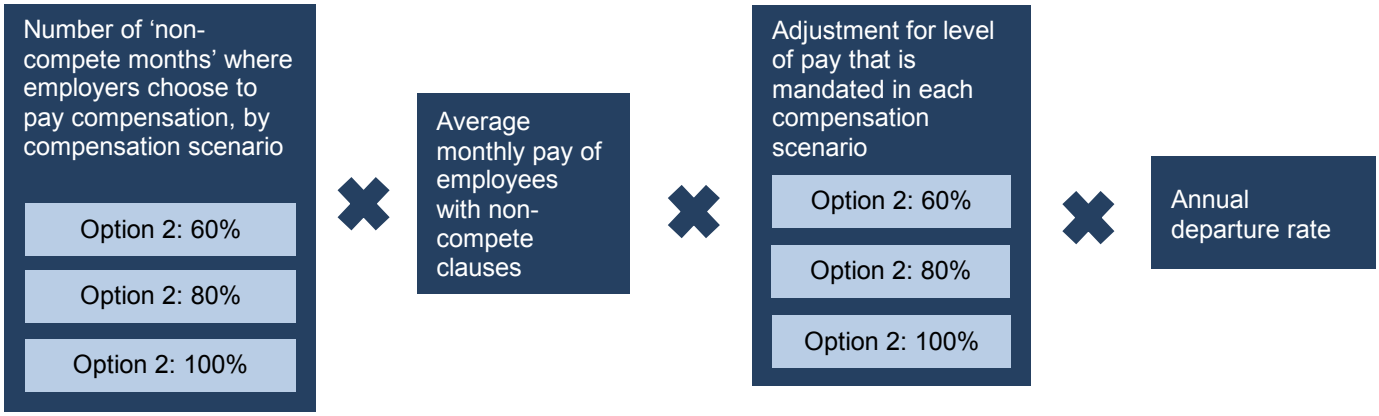
135. Following this approach, we estimate an annual departure rate (excluding to a competitor) for employees paid compensation of between 12.3% and 17.6%, as shown in Table 21.

Table 21: Estimated post-intervention departure rate (excluding to a competitor)			
Description	**Calculation**	**Low**	**High**
Inputs			
Current number of employees	(a)	28.7m	28.7m
Share of employees with non-compete clauses	(b)	19%	19%
Number of employees with non-compete clauses	(c) = (a) * (b)	5.6m	5.6m
Number of employees without non-compete clauses	(d) = (a) - (c)	23.2m	23.2m
Overall departure rate (excluding to a competitor) per year	(e)	12.3%	12.3%
Overall departure rate (to competitor) per year	(f)	4.3%	4.3%
Simplifying assumptions			
Deterrence effect of non-compete clauses	(g)	0%	100%
Share of deterred employees redirected to other destinations	(h)	0%	100%
Share of employees with non-compete clauses already being compensated	(i)	0%	0%
Interim calculations			
Number of employees moving to a competitor per year	(j) = (a) * (f)	1.2m	1.2m
Implied departure rate to a competitor for employees without a non-compete clause	(k) = (j) / { (a) - [(c) * (g)] }	4.3%	5.3%
Implied number of departures to competitor that are deterred due to non-compete clauses	(l) = (c) * (h) * (k)	0	0.3m
Implied departure rate (excluding to a competitor) per year for:			
-- employees with non-compete clauses	(m) = { [(c) * (e)] + (l) } / (c)	12.3%	17.6%
-- employees without non-compete clauses	(n) = { [(d) * (e)] - (l) } / (d)	12.3%	11.0%
Implied number of employees moving (excluding to a competitor) per year	(o) = (a) * (e)	3.5m	3.5m
-- of which employees with non-compete clauses	(p) = (c) * (m)	0.7m	1.0m
-- of which employees without non-compete clauses	(q) = (d) * (n)	2.8m	2.5m
Final calculations			
Post-intervention departure rate (excluding to a competitor) per year	(r) = (p) / (c)	12.3%	17.6%

136. The specific level of compensation required would depend on final policy design. In our consultation, we considered three scenarios: 60%, 80% and 100% of the worker's average pay. Further consideration would need to be given on how to define the worker's average pay: for example, whether this includes discretionary components (such as bonuses or commissions) and the time period that the average is calculated on. We would expect that workers that receive compensation post-intervention are those where there is strongest case from the employer's perspective; we might expect these to be skewed towards higher-paid jobs (assuming that exposure to trade secrets, client lists and other confidential information is higher for more senior staff, which may not hold in some cases). In absence of more specific detail at this stage, we have used responses to a question in the YouGov employee survey on the employee's gross personal income.

137. This includes the individual's total income received from all sources (including wages, salaries, or rents and before tax deductions) and so is likely to be a conservative approach. The survey responses were presented in bands. Our analysis of the survey responses indicate an average monthly income of between £3,690 and £4,405 for workers with non-compete clauses. We have used the bottom and top end of each band to derive the low and high estimates[57].

138. The methodology to calculate the direct wage costs for Option 2 (mandatory compensation) is outlined in the following diagram. There are four assumptions that drive ranges: the number of non-compete clauses where businesses choose to pay compensation, the average monthly pay for workers who receive compensation, and the annual rate at which workers leave their employer post-intervention. Rather than combining the low and high estimates across all of these assumptions (which would lead to a very large range), we individually vary each assumption while holding all other assumptions constant at their mid-point.



139. Overall, we estimate the direct ongoing cost of mandatory compensation to be between £3.2bn and £4.6bn if mandatory compensation were at 60% of the worker's average pay, between £1.8bn and £3.8bn if mandatory compensation were set at 80%, and between £1.1bn and £3.1bn if mandatory compensation were set at 100%. These estimates reflect an overall cautious approach. There are a number of reasons why these estimates are likely to over-estimate the ongoing direct wage cost that businesses would incur in practice (e.g. businesses choose to waive non-compete clauses closer to the end of the employment relationship).

[57] We have used midpoints for all bands except the '£100k+' band, for which we have used earnings of £100k for both low and high estimates. This is because the distribution of wages in this band is unknown as the survey did not provide an upper bound. Further, individuals in this band represent a small share (9%) of employees with non-compete clauses, so the approach taken is unlikely to significantly bias our wage cost estimates.

Table 22: Sensitivity analysis – Ongoing direct wage cost in Option 2 (£ millions, rounded to 2 significant figures)[58]

Assumption varied by compensation scenario	**Estimated direct wage cost** *(rounded to nearest £m)*		
	Low	Central	High
60% of worker's average pay			
Number of non-compete clauses where employers choose to pay compensation	£ 3,200	£ 3,900	£ 4,600
Average monthly pay for individuals who receive compensation	£ 3,600	£ 3,900	£ 4,200
Annual rate at which individuals leave their employer	£ 3,200	£ 3,900	£ 4,600
80% of worker's average pay			
Number of non-compete clauses where employers choose to pay compensation	£ 1,800	£ 2,800	£ 3,800
Average monthly pay for individuals who receive compensation	£ 2,600	£ 2,800	£ 3,100
Annual rate at which individuals leave their employer	£ 2,300	£ 2,800	£ 3,300
100% of worker's average pay			
Number of non-compete clauses where employers choose to pay compensation	£ 1,100	£ 2,100	£ 3,100
Average monthly pay for individuals who receive compensation	£ 1,900	£ 2,100	£ 2,300
Annual rate at which individuals leave their employer	£ 1,700	£ 2,100	£ 2,500

Redistribution from employers currently non-compete clauses to workers, consumers and competitors (all options)

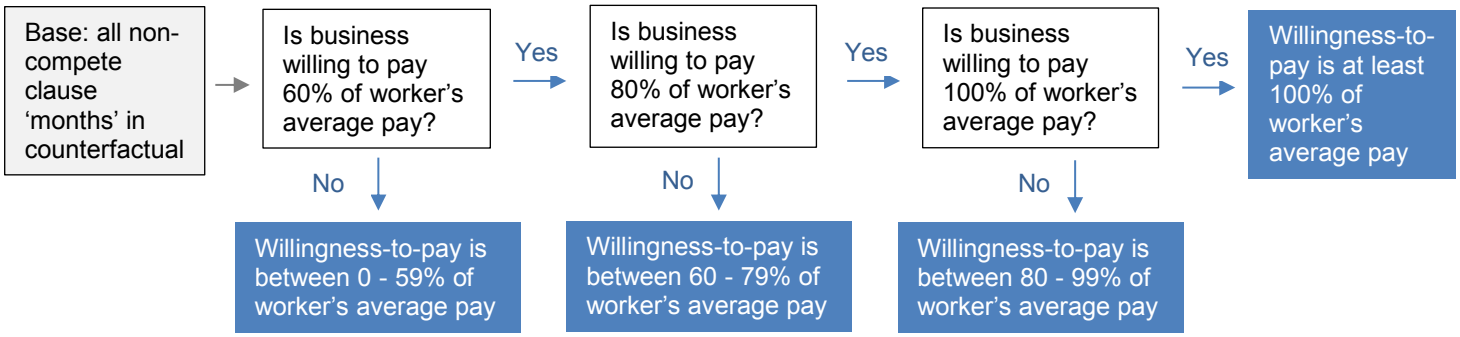
140. We expect the policy options to lead a significant redistribution of economic value (e.g. wages, profits or consumer welfare) from employers currently using non-compete clauses to workers, consumers and their competitors. We do not have robust evidence to make a quantitative assessment of this redistribution. However, we can make an indicative order-of-magnitude assessment of the potential scale of the redistribution through an experimental interpretation of business responses to the IFF Research survey. The survey questions were framed around three levels of compensation (60%, 80% and 100% of the worker's average pay). The survey did not ask businesses to estimate their specific willingness to pay to retain non-compete clauses. Therefore, the survey responses cannot be used to derive the full demand curve for non-compete clauses without further assumptions.

141. We expect businesses currently using non-compete clauses to experience an indirect ongoing disruption cost when workers are prompted by the policy to move to a competitor or set up a competing business before the end of their counterfactual non-compete clause. These costs could represent the loss of trade secrets, client lists and other confidential during a period where the business previously had protection from a non-compete clause. These costs could also represent lower profits due to a reduction in spending in innovation activities. We expect these costs to vary business-by-business; in some cases, the counterfactual non-compete clause provided marginal, or no, value-add to the business, while in other cases, the counterfactual non-compete clauses was essential for the business to protect its interests.

[58] Survey data indicates that employers are more likely to remove (rather than shorten or maintain) a non-compete clause at higher levels of compensation. As such, the effect of a higher compensation requirement is offset by fewer non-compete clauses remaining at the higher compensation level. The net effect is decreasing costs with increasing compensation levels.

142. Table A8 in Annex A outlines our estimates of the incremental number of months of protection from a non-compete clause (non-compete 'months') that are removed as the level of compensation that is mandated is gradually increased. For the non-compete 'months' that are removed when mandatory compensation is set at 60% of the worker's average pay, we infer that business' willingness-to-pay per month is less than 60% of the worker's average pay. For the additional non-compete 'months' that are removed when mandatory compensation is set at 80% of the worker's average pay, we infer that business' willingness-to-pay per month is between 60% and 79% of the worker's average pay. For the additional non-compete 'months' that are removed when mandatory compensation is set at 100% of the worker's average pay, we infer that business' willingness-to-pay per month is between 80% and 99% of the worker's average pay. For the non-compete 'months' that are retained when mandatory compensation is set at 100% of the worker's average pay, we infer that business' willingness-to-pay per month is at least 100% of the worker's average pay.

143. Through this iterative approach, we are able to classify the counterfactual stock of non-compete clause 'months' into four mutually exclusive and completely exhaustive (MECE) categories, as shown in the following diagram:



144. Annex B outlines the simplifying assumptions we have made to generate an indicative order-of-magnitude assessment of the ongoing disruption to businesses currently using non-compete clauses and potential redistribution across the economy. Overall, we have taken a cautious approach and there are a number of reasons why we may be over-estimating the scale of disruption to employers currently using non-compete clauses and the redistribution across the economy.

145. Under Option 1 (complete ban), we estimate that the indirect disruption to business currently using non-compete clauses could be between £2.5bn and £5bn per year. These costs may be passed on to workers (if businesses currently using non-compete clauses reduce investments that are beneficial to the workers or restrict information sharing within the organisation) or consumers (if businesses increase consumer prices to mitigate lower profits). These costs may also be mirrored to some extent by benefits to competitors (if competitors are able to monetise the trade secrets, client lists or other confidential information brought by the worker when they move). Finally, these costs may be partially mitigated if businesses currently using non-compete clauses increase workers' pay or non-pay benefits to incentivise retention, representing a transfer to workers. Ultimately, this will depend on how businesses respond to the policy.

146. Under Option 3 (statutory limit), the ongoing disruption to businesses currently using non-compete clauses is expected to be lower as fewer non-compete 'months' are removed from the labour market due to the intervention and non-compete clauses are only partially removed, i.e. businesses retain some protection during the first three months after the worker leaves.

147. Overall, our estimates of the ongoing disruption to businesses currently using non-compete clauses and the potential redistribution across the economy are highly uncertain. As outlined previously, the survey questions were framed around three levels of compensation (60%, 80% and 100% of the worker's average pay). The survey did not ask businesses to estimate their specific willingness to pay to retain the non-compete clause. Therefore, the survey responses cannot be used to derive the full demand curve for non-compete clauses without further assumptions. Even if the survey had been designed to conduct this type of analysis, the validity of 'stated preference' analysis remains debated and is subject to biases.

Other (un-monetised) indirect impacts

Businesses

148. As outlined in Annex B, we have made a simplifying assumption that businesses already considered the case for introducing or strengthening other mechanisms to protect their interests when responding to the IFF Research survey. These other mechanisms could include gardening leave, other restrictive covenants, and longer notice periods. Businesses would only do so when the benefits outweigh the costs.

149. Around 17% of businesses that currently used gardening leave, other covenants, or both (in addition to use non-compete clauses) reported in the IFF Research survey that their use would increase if mandatory compensation were introduced. We expect that businesses would incur a one-off administrative cost to introduce or strengthen alternative mechanisms in employment contracts. In cases where businesses introduce gardening leave, or extend existing gardening leave, businesses would also incur a wage and reorganisation cost to maintain output while the worker remains on payroll but does not work. We expect the administrative cost to be limited relative to the broader impacts of the policy. The wage and reorganisation costs associated with gardening leave may be more significant. We do not quantify these impacts as we do not have evidence on the counterfactual and post-intervention duration of gardening leave.

150. Competitors could benefit from additional positive spillover benefits of existing innovations created by the worker's previous employer. These businesses may also benefit from higher profits due to an increase in spending on innovation activities, particularly in cases where a lack of skills was a barrier in the counterfactual. Data from the UK Innovation Survey 2021[59] shows that, among the 46% of UK business that were 'broad innovators', around 13% reported a lack of qualified staff as a 'highly important' potential barrier to business innovation. Meanwhile, BEIS research shows that the annual private rate of return from R&D and innovation averages around 20 to 30%. We do not quantify these impacts as they are too uncertain and will depend on the behavioural response from businesses and workers.

Workers

151. The preferred option does not restrict job moves (including to a different sector or region, or to a new role with the same employer) that would be beneficial to the worker. Rather, the policy provides greater flexibility for workers who experience a change to their non-compete clauses to consider moving to a competitor or set up a competing business, in cases where this would be their preferred option and lead to higher pay and wellbeing. There could also be benefits to workers who are subject to involuntary job exits or experience particular strong 'push' factors in their current job, as these workers will be able to join a competitor sooner, where it is in their interest to do so.

152. An ONS article in 2019 finds that job changers experience higher pay growth (by around 4 percent) compared with job stayers[60]. The analysis also finds that job changers that move to a new employer experience higher pay growth than job changers that stay with the same employer. The so-called 'mover's bonus' is higher for employees in higher-skilled occupations jobs. The article notes that pay growth for job changers is more cyclical and quicker to react to economic conditions than pay growth for job stayers, who are more closely tied to pay settlements that lag the cycle. The so-called 'mover's bonus' is higher during a period of economic recovery and lower during downturns.

153. There could also be benefits to workers that do not have a non-compete clause in their contract in the counterfactual, but who are in jobs that are similar to those affected by the policy. When workers with a non-compete clause in the counterfactual move to a competitor or set up a competing business, and secure a pay rise, the average overall wage growth would increase. Businesses would then experience pressure to pay higher wages to existing staff, as well as new staff, to encourage them to stay in the job.

---

[59] https://www.gov.uk/government/statistics/uk-innovation-survey-2021-report

[60] The 2019 ONS article looks at data between 2000 to 2018. The ONS published an updated analysis in 2022; however, this looks at data over a short time period (between 2012 and 2021) and does not include analysis of earnings for employees moving 'between' and 'within' firms. The 2020 and 2021 data is also affected by trends related to Covid-19. 2019 article:
https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/compendium/economicreview/april2019/analysisofjobchangersandstayers
https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/jobchangersandstayersunderstandingearningsukapril2012toapril2021/april2012toapril2021

Exchequer

154. There could be benefits to the Exchequer in cases where workers 'wait out' their non-compete clause in the counterfactual. As outlined previously, we expect this to indicate an overall worker preference to work for a competitor (e.g. due to higher pay). During the non-compete clause period, the worker could be in inactivity, unemployment or working for a non-competitor. We expect workers in this group are more likely to be in higher-paid jobs as they are more able to afford a transitionary period of worklessness. In some cases, low-paid workers may find themselves in this group due to involuntary job exits or particularly strong 'push' factors in their current job. The benefits to the Exchequer could include lower spending on in-work and out-of-work benefits, as well as higher tax receipts. We do not quantify these impacts as they are too uncertain and will depend on the behavioural response from businesses and workers.

Consumers

155. The preferred option is expected to increase the number of new business entrants into the economy by making it easier for employees to set up their own business. In turn, higher levels of competition can lead to benefits to consumers, including lower prices and the availability of new and higher quality goods and services. We do not quantify these impacts as they are too uncertain and will depend on the behavioural response from businesses and workers.

Overall assessment

156. Based on our assessment of the policy impacts, Table 23 shows our estimates of the Equivalent Annual Net Direct Cost to Business (EANDCB), business Net Present Value (NPV), and Net Present Social Value (NPSV). The figures are expressed in 2021 price base year and 2023 present value base year terms. The experimental estimates of the redistribution across the economy are not included in the NPV and NPSV figures as we do not have robust evidence to assess the share that is transferred to workers, consumers and competitors.

Table 23: Summary of monetised impacts (£m, rounded to 2 significant figures)

Policy Option	**One-off direct transition costs**[61]	**Ongoing direct costs**[62]	**EANDCB** *(2021 prices, 2023 present value)*	**Business NPV** *(2021 prices, 2023 present value)*	**NPSV** *(2021 prices, 2023 present value)*
Option 1 (complete ban)	7	0	1	- 7	- 7
Option 2 (mandatory compensation)					
-- 60% of worker's average pay	74	3,900	3,900	- 34,000	- 74
-- 80% of worker's average pay	79	2,800	2,800	- 24,000	- 79
-- 100% of worker's average pay	81	2,100	2,100	- 18,000	- 81
Option 3 (statutory limit)	15	0	2	- 15	- 15

[61] These figures are not discounted.

[62] These figures are not discounted.

157. The policy options considered in this Impact Assessment are expected to reduce the use of non-compete clauses in the labour market to varying degrees and make use of different mechanisms to achieve this. Option 2 (mandatory compensation) is expected to lead to a significant direct ongoing cost to business. Relative to Option 1 (complete ban), our experimental interpretation of survey data indicates that Option 3 (statutory limit) is expected to lead to a smaller ongoing, indirect disruption cost to businesses that currently use non-compete clauses, leading to a lower policy risk of unintended consequences. Businesses will retain the option to use non-compete clauses of up to three months (where it is reasonable) under the same conditions as pre-intervention. Nonetheless, this option is still expected to reduce the duration of most (around 70%) non-compete clauses that are currently in the labour market. Hence, Option 3 (statutory limit) is the preferred option.

Evidence, Assumptions and Risks

158. The evidence base on non-compete clauses in the UK is not clear-cut and is an emerging area of policy and analytical interest. We have made significant efforts to improve our evidence base on the use of non-compete clauses across the labour market, including by commissioning two business surveys and one employee survey. However, the evidence landscape for non-compete clauses remains highly complex. The economic impacts of the policy options considered are therefore subject to a significant amount of uncertainty and will depend on how businesses and workers respond to the policy. This section summarises the key assumptions and risks. These are explored in more detail throughout this Impact Assessment.

159. There are risks associated with the core elements of our evidence base on the use of non-compete clauses in the UK. The YouGov employee survey is our best available evidence. We have estimated that around 19% of employees could have a non-compete clause in their contract. To calculate this estimate, we have re-weighted the survey data to account for 'Don't Know' responses, i.e. the estimate is expressed as a share of responses that either indicated 'Yes' or 'No' to the question. We note that this estimate is broadly similar to the prevalence indicated by studies in the US[63]. However, a substantial number (around 21%) of respondents indicated 'Don't Know' when asked whether they had a non-compete clause in their contract. This could mean that we have either over- or under-estimated the prevalence of non-compete clauses in our analysis. This also generates some uncertainty in the findings derived from survey questions that are asked to the sub-population of respondents that indicated that they do have a non-compete clauses.

160. There are a number of risks associated with the assumptions we have made in the 'Monetised and un-monetised impacts' section of the Impact Assessment. We have taken an overall cautious approach and made a number of simplifying assumptions. We have interpreted the responses to the IFF Research survey as reflecting a 'first wave' of amendments to non-compete clauses and have not monetised the additional amendments that we would expect to occur closer to the end of the employment relationship. We have also made a number of cross-cutting assumptions when interpreting the responses to the IFF Research survey infer to business' willingness-to-pay for non-compete clauses. More generally, the methodologies presented in this Impact Assessment are particularly complex.

161. The overall impact of the preferred option on headline measures of economic performance (e.g. wages and spending on innovation activities) is challenging to foresee based on the available evidence. The preferred option is not market- or sector-specific and is expected to have 'bite' wherever businesses currently use any non-compete clause that is longer than three months. The overall impact will depend on the extent to which non-compete clauses that are currently used in the labour market enable investments in innovation activities and the value attached by businesses to each additional month of protection from non-compete clauses. More generally, it will depend on the response from businesses and workers, including the range of mechanisms that businesses may choose to use to mitigate the policy impacts.

[63] https://dx.doi.org/10.2139/ssrn.2625714 ;
https://www.hamiltonproject.org/assets/files/protecting_low_income_workers_from_monopsony_collusion_krueger_posner_pp.pdf
https://dx.doi.org/10.2139/ssrn.2625714 ;
https://www.hamiltonproject.org/assets/files/protecting_low_income_workeremployees_from_monopsony_collusion_krueger_posner_pp.pdf

162. The reasonable-ness test will continue to apply for non-compete clauses that are shorter than three months; however, there is a risk that some businesses perceive three months as the new 'industry standard'. However, we note that some of the reasons cited by businesses in the IFF Research survey for not using non-compete clauses include that they did not want to restrict staff, non-compete clauses were not perceived to be relevant to sector or they were not perceived to be relevant to business model; these would be expected to still stand following the implementation of the preferred option.

Competition assessment

163. Under the Better Regulation Framework[64], a regulatory provision can be considered to promote competition if it satisfies all of the following criteria:

- The measure is expected to increase, either directly or indirectly, the number or range of sustainable suppliers; to strengthen the ability to compete; or to increase suppliers' incentives to compete vigorously;
- The net impact of the measure is expected to be an increase in competition and the overall result is to improve competition;
- Promoting competition is a core purpose of the measure; and
- It is reasonable to expect a net social benefit from the measure (i.e. benefits to outweigh costs), even where all the impacts may not be monetised.

164. We expect that our preferred policy option will be pro-competition as it lowers a potential barrier for worker mobility in the labour market. Therefore, the preferred option is expected to improve overall competition for workers and make it easier for businesses that are not currently using non-compete clauses to compete. Promoting competition is a core purpose of the measure. The measure is also expected to increase the number of new business entrants into the economy by making it easier for employees to set up their own business.

165. The question on whether we expect a net social benefit from the measure is linked to the debate around the case for reforms to non-compete clauses: this hinges on a comparison between the economic benefits of non-compete clauses (e.g. non-compete clauses can provide workers and employers with a valuable 'contracting device' that enables mutually beneficial investments in innovation activities) and the economic costs (e.g. non-compete clauses may be introduced in employment contracts in the absence of balanced bargaining between the worker and the employer, leading to 'foregone benefits' that are associated with a competitive labour market).

166. Within this debate, there are important considerations on the distribution of economic value between workers and employers, and incumbents and their competitors or start-ups. Non-compete clauses can prevent the flow of economic value from incumbents to competitors or start-ups (through lower between-employer mobility and lower start-up rates) and from employers to workers (through lower pay). The case for reforms is driven by the argument that the redistribution of economic value between these groups will also lead to additional, spillover benefits.

167. Overall, based on the analysis presented in 'Monetised and non-monetised costs and benefits' section, we are unable to conclude that our preferred policy option will have a positive net present social value (NPSV). Therefore, we do not believe that this policy should be excluded from the Business Impact Target, as per the Better Regulation Framework.

[64] https://www.gov.uk/government/publications/better-regulation-framework

Impact on small and micro businesses (SaMBA)

168. Our evidence from the IFF Research survey and YouGov business survey indicates that existing small and micro businesses are less likely to currently use non-compete clauses. Small and micro businesses represent around 97% of all businesses in Great Britain and are expected to experience 88% of the one-off direct familiarisation costs due to the preferred option.

169. Based on the responses from the YouGov employee survey, employees employed by a small or micro business were slightly more likely to report that their non-compete clause was longer than three months than employees employed by a medium or large business (72% versus 69%, respectively). The business size is reported from the employee's perspective in the survey and so could be subject to some error. This suggests that small and micro businesses that do currently use non-compete clauses could experience a higher disruption on a per-worker basis. However, our evidence from the IFF Research survey also shows that small and micro businesses are more likely to report that they would fully remove non-compete clauses in their organisation if mandatory compensation were introduced. This suggests that the distribution of willingness-to-pay for each month of protection of a non-compete clause is skewed towards lower values for small and micro businesses. This would appear consistent with findings from the 2021 BEIS Innovation Survey, where small businesses were less likely to cite secrecy as a source of protection for over 90% of their innovations[65].

170. It is unclear whether existing small and micro businesses would disproportionately experience the benefits due to the preferred option. Small businesses classified as 'broad innovators' in the 2019 BEIS Innovation Survey were more likely to report a lack of qualified staff as a 'highly important' potential barrier to business innovation. At the same time, small and micro businesses were less likely to cite staff recruitment and skills as a major obstacle to the general success of the business in the BEIS Longitudinal Small Business Survey 2020[66]. More broadly, the preferred option is expected to increase the number of start-ups, i.e. new businesses that would be classified as micro and small.

171. On balance, we have decided not to exempt small and micro businesses from the policy. As many workers currently with non-compete clauses longer than three months are employed by a small or micro business, doing so would undermine the policy objectives. It would also create a disincentive for businesses to grow – if they were to expand sufficiently to be classified as a medium sized business, they would no longer be able to use non-compete clauses that are longer than three months, thereby introducing a cost of expansion at the threshold between small and medium sized businesses. This expansion could be driven by investment in innovation activities, which are the types of activities that the policy is intended to encourage.

Equalities assessment

172. Under the Equality Act 2010, the Department for Business, Energy and Industrial Strategy, as a public authority, is legally obligated to have due regard to equality issues when making policy decisions – the Public Sector Equality Duty – and in doing so:

    a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

    b) Advance equality of opportunity between people who share a protected characteristic and those who do not; and

    c) Foster good relations between different groups.

173. The protected characteristics consist of nine groups: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

[65] https://www.gov.uk/government/statistics/uk-innovation-survey-2021-report

[66] https://www.gov.uk/government/statistics/small-business-survey-2020-businesses-with-employees

174. The proposed policies would apply to all workers in GB. Therefore, there are no disproportionate direct impacts from the preferred option on groups with protected characteristics. There are a number of channels through which the policy could potentially have an indirect effect on groups that share a protected characteristic. We are unable to identify the overall effects on specific groups based on the available evidence, however, overall, any indirect impacts are expected to be positive on workers. A more detailed Equalities Assessment can be found in Annex C.

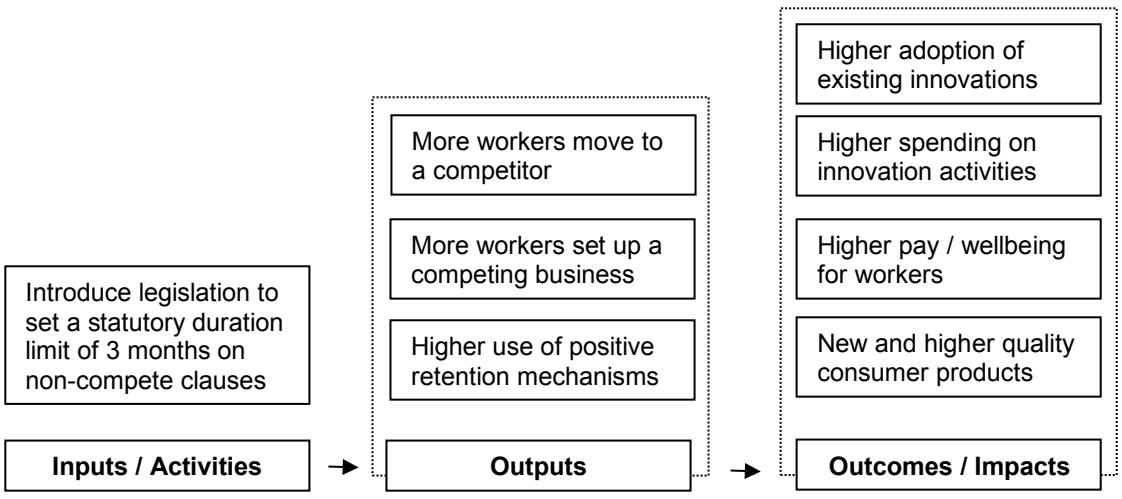
Monitoring and Evaluation

175. To determine whether the policy has met its objectives, we will be monitoring its impacts as well as undertaking a non-statutory Post-Implementation Review (PIR) of this policy 5 years after its introduction. The policy is expected to be implemented through primary legislation and therefore falls outside of the statutory review requirements under the Small Business Enterprise and Employment Act 2015.

176. The non-statutory PIR will seek to assess the following evaluation questions:

- Has the policy led to a change in the number of workers moving to a competitor or to set up a competing business?
- Has the policy led to a change in the number of start-ups?
- Has the policy led to a change in business spending on innovation activities? What is the overall impact?
- Has the policy led to a change in business use of other retention mechanisms? What is the overall impact?

177. The Theory of Change below demonstrates how the introduction of legislation to set a statutory duration limit of 3 months on non-compete clauses could lead to higher competition, innovation, worker and consumer welfare, and productivity. This is the causal basis on which we will evaluate the impact and success of the policy. The assumptions that link the inputs / activities to the end impacts are subject to a significant amount of uncertainty. In particular, the success of the policy will depend on how businesses currently using non-compete clauses will respond to the policy and the comparison between the innovation potential of these businesses and that of the competitor (or new start-up).



178. As such, we will use a range of data sources to assess the policy, particularly the 'impacts' stage of our Theory of Change. Firstly, we already have existing data that has been used throughout this Impact Assessment to inform assumptions to baseline the effects of this policy. This includes responses to our consultation and Call for Evidence, ONS datasets such as LFS, BEIS-commissioned surveys to inform the number of employees and businesses that are impacted (including by sector and employee characteristic), the BEIS Innovation Survey on the number of businesses that are innovation active, and a range of data sources (as collated in the CMA State of Competition Report) on the level of competition across sectors.

179. An increase in competition and innovation is the main expected benefit of this policy. Moving forward, we will monitor the impacts of this policy primarily by continuing to monitor ONS data, BEIS Innovation Survey data, the range of data sources on the level of the competition by sector, and through stakeholder engagement. Through this monitoring, we will gauge whether the policy has led to a noticeable rise in the number of workers moving to a competitor or to set up a competing business and whether there has been a change in business spending on innovation activities.

180. To monitor how business practices to retain their workers have changed, we would again consider commissioning survey or data collection methods to evaluate this. This research would examine how often businesses use other restrictive covenants, gardening leave, notice periods, and other positive incentive methods (such as higher pay or non-pay benefits) alongside non-compete clauses. This research would also examine whether there has been a change in worker awareness of their non-compete clause, how non-compete clauses are negotiated between the worker and employer, and the steps that employers take to enforce their non-compete clause. Through this, we will also be able to examine the risk that businesses perceive non-compete clauses of three months as an 'industry standard' and consider whether further guidance is needed in response to this.

181. We will primarily assess the costs placed on businesses through continued engagement with stakeholders. This includes the magnitude of the familiarisation costs and the disruption costs faced by businesses in cases where employees move to a competitor or set up a competing business as a result of the policy.

182. Any engagement with stakeholders or analysis of published data will be undertaken by internal resources, whereas any primary data collection or interview methods would be commissioned out to an external provider. The non-statutory PIR published will summarise the evidence that we gather on the policy's effectiveness, as well as any learnings that can be applied to future policymaking.

Annex A: Estimated policy 'bite'[1]

1. In this Annex, we estimate the number of employees who experience a change to their non-compete clause for each policy option. Option 1 (complete ban) is more straightforward as all employees with non-compete clauses in the counterfactual will experience a change (estimated to be around 5.6m). In Option 3 (statutory limit) all employees with non-compete clauses that are longer than 3 months in the counterfactual will experience a change (estimated to represent around 70% of the 5.6m figure). However, Option 2 (mandatory compensation) is more complex.

A. Estimate of number of non-compete clauses that experience no change, are partially removed (i.e. shorter) or are fully removed in Option 2 (mandatory compensation)

2. In Option 2 (mandatory compensation), businesses could choose to either keep the non-compete clause as per the counterfactual, partially remove the non-compete clause (i.e. shorten the duration) or fully remove the non-compete clause. To estimate this business response, we incorporate evidence from the IFF Research survey. Our interpretation of the IFF Research survey responses involved a number of assumptions when used to estimate impacts on business; these are considered in more detail in the 'Monetised and un-monetised impacts' section of the Impact Assessment.
3. Businesses were asked in the IFF Research survey how their use of non-compete clauses would change if mandatory compensation were enforced. For example, the survey asked 'If the government were to introduce mandatory compensation rules that meant you had to pay your employees 60% of their average wage during their non-compete clause, do you think that you OVERALL use of non-compete clauses would…?'. A similar question was asked for an 80% and 100% mandatory compensation scenario. Businesses were presented with the following possible response options: cease altogether, decrease significantly, decrease somewhat, stay about the same, increase somewhat, increase significantly, don't know.
4. We have re-weighted the figures to account for the 'Don't Know' responses. A small share of responses indicated an increase in the use of non-compete clauses. In absence of further context, we expect that these responses may reflect a misunderstanding of the question. Therefore, these responses are combined with the 'Don't Know' responses in the reweighting exercise.
5. Table A1 shows the survey findings. The bases differ for each mandatory compensation scenario. This is because the survey questions were routed based on previous answers, e.g. businesses that indicated that would cease altogether their use of non-compete clauses in the 60% compensation scenario were not asked the survey question related to the 80% compensation scenario.

Table A1: IFF Research survey – Change in business use of non-compete clauses

Mandatory compensation scenario	**Base**	**Share of businesses where use of non-compete clauses…**			
		Stays the same	*Decreases somewhat*	*Decreases significantly*	*Ceases altogether*
60% of average pay	All businesses that use non-compete clauses	19%	17%	24%	40%
80% of average pay	Businesses that continue to use non-compete clauses in 60% scenario	23%	20%	38%	20%
100% of average pay	Businesses that continue to use non-compete clauses in 80% scenario	27%	14%	34%	25%

[1] All figures in this Annex are rounded to the nearest 100,000 or percentage.

6. Table A2 shows the survey findings once we have updated the base, such that the figures throughout are expressed as a share of all businesses that use non-compete clauses. Expressing the figures with a common denominator enables us to compare, across mandatory compensation scenarios, the estimated share of businesses where there has been a change in at least one non-compete clauses within their organisation. This figure is estimated to be around 81% under a 60% mandatory compensation scenario, 86% under an 80% mandatory compensation scenario and 87% under a 100% mandatory compensation scenario.

7. As an example, the figure in Table A2 for the share of all businesses that use non-compete clauses where there is no change in any non-compete clause within their organisation (i.e. 'stay the same') under the 80% mandatory compensation scenario is calculated as:

   (*Share of businesses that did not indicate 'cease altogether' under 60% mandatory compensation scenario) * (Among businesses that continue to use non-compete clauses in 60% scenario, the share that indicate 'stay the same' under 80% mandatory compensation scenario)*

   *= 60% * 23% = 14%*

Table A2: IFF Research survey – Change in business use of non-compete clauses – rebased

Mandatory compensation scenario	**Base**	**Share of businesses where use of non-compete clauses…**			
		Stays the same	*Decreases somewhat*	*Decreases significantly*	*Ceases altogether*
60% of average pay	All businesses that use non-compete clauses	19%	24%	17%	40%
80% of average pay	All businesses that use non-compete clauses	14%	23%	12%	51%
100% of average pay	All businesses that use non-compete clauses	13%	17%	7%	63%

8. We convert the figures in Table A2 into a corresponding number of non-compete clauses. To do so, we need to make a number of simplifying assumptions. We have interpreted 'cease altogether' responses as a 100% reduction in the number of non-compete clauses used, 'decrease significantly' as 50 – 75% reduction, and 'decrease somewhat' as 10 – 35%. We have used the lower end of these ranges to generate a 'low disruption' scenario and the upper end to generate a 'high disruption' scenario. The 'low disruption' scenario corresponds to a lower number of non-compete clauses affected due to the policy (i.e. lower disruption to businesses currently using non-compete clauses); the 'high disruption' scenario corresponds to a higher number of non-compete clauses affected due to our policy. Our estimates of the number of non-compete clauses that are removed or remain under each mandatory compensation scenario are shown in Table A3.

9. As an example, the figure in Table A3 for the number of non-compete clauses that are removed under the 60% compensation scenario is calculated as follows:

   'Low disruption' scenario

   *= total number of non-compete clauses * ((share of businesses indicating 'cease altogether' under 60% mandatory compensation scenario * 100%) + (share of businesses indicating 'decrease significantly' under 60% mandatory compensation scenario * 50%) + (share of businesses indicating 'decrease somewhat' * 10%))*

   *= 5.6m * ((40% * 100%) + (24% * 50%) + (17% * 10%)) = 2.7m*

'High disruption' scenario

*= total number of non-compete clauses * ((share of businesses indicating 'cease altogether' under 60% mandatory compensation scenario * 100%) + (share of businesses indicating 'decrease significantly' under 60% mandatory compensation scenario * 75%) + (share of businesses indicating 'decrease somewhat' * 35%))*

*= 5.6m * ((40% * 100%) + (24% * 75%) + (17% * 35%)) = 3.5m*

Table A3: Post-intervention non-compete clauses (removed, retained)				
Mandatory compensation scenario	**Low Disruption**		**High Disruption**	
	Number of non-compete clauses that are…			
	Removed	*Retained*	*Removed*	*Retained*
60% of average pay	2.7	2.9	3.5	2.0
80% of average pay	3.6	1.9	4.6	0.9
100% of average pay	4.3	1.2	5.1	0.4

10. Businesses were also asked in the IFF Research survey whether the average length of non-compete clauses would change if mandatory compensation were enforced. For example, the survey asked 'If the government were to introduce mandatory compensation rules that meant that you had to pay your employees 60% of their average wage during their non-compete clause, do you think that the average length of your non-compete clauses would…?'. A similar question was asked for an 80% and 100% mandatory compensation scenario. Businesses were presented with the following possible response options: decrease significantly, decrease somewhat, stay about the same, increase somewhat, increase significantly, don't know.
11. We have re-weighted the figures to account for the 'Don't Know' responses. A small share of responses indicated an increase in the use of non-compete clauses. In absence of further context, we expect that these responses may reflect a misunderstanding of the question. Therefore, these responses are combined with the 'Don't Know' responses in the reweighting exercise.
12. Table A4 shows the survey findings. The bases differ for each mandatory compensation scenario. This is because the survey questions were routed based on previous answers, e.g. businesses that indicated that would cease altogether their use of non-compete clauses in the 80% compensation scenario were not asked the survey question related to the 80% compensation scenario. We have combined the responses indicating that the average length would 'decrease significantly' and 'decrease somewhat' together in Table A4, but include the distinction in our modelling.

Table A4: IFF Research survey – Change in average duration of non-compete clauses			
Mandatory compensation scenario	**Base**	*Share of businesses where average duration of non-compete clauses…*	
		Stays the same	*Decreases*
60% of average pay	All businesses that use non-compete clauses	40%	60%
80% of average pay	Businesses that continue to use non-compete clauses in 80% scenario	31%	69%
100% of average pay	Businesses that continue to use non-compete clauses in 100% scenario	38%	62%

13. We apply the figures in Table A4 to the estimated number of non-compete clauses that remain in Table A3. This enables us to split the estimated number of non-compete clauses into those that are partially removed (i.e. shorter duration) and those that experience no change. Our estimates of the number of non-compete clauses that are fully removed, partially removed (i.e. shorter duration) or experience no change under each mandatory compensation scenario are shown in Table A5. Table A5 shows that around 79 – 85% of non-compete clauses are estimated to be amended under a 'first wave' if mandatory compensation were set at 60% of employee's average pay. The corresponding ranges for 80% and 100% of employee's average pay are 89 – 95% and 92 – 97%, respectively.

14. As an example, the figure in Table A5 for the number of non-compete clauses that are partially removed (i.e. shorter duration) under the 60% compensation scenario is calculated as follows:

'Low disruption' scenario

*= total number of non-compete clauses that remain under 60% mandatory compensation scenario * share of businesses continuing to use non-compete clauses under 60% mandatory compensation scenario that indicated the average length would decrease*

*= 2.9m * 59% = 1.7m*

'High disruption' scenario

*= total number of non-compete clauses that remain under 60% mandatory compensation scenario * share of businesses continuing to use non-compete clauses under 60% mandatory compensation scenario that indicated the average length would decrease*

*= 2.0m * 59% = 1.2m*

Table A5: Post-intervention non-compete clauses (removed, no change, shorter)

Mandatory compensation scenario	**Low Disruption**			**High Disruption**		
	Number of non-compete clauses that are…					
	Removed	*No change*	*Shorter*	*Removed*	*No change*	*Shorter*
60% of average pay	2.7	1.2	1.7	3.5	0.8	1.2
80% of average pay	3.6	0.6	1.3	4.6	0.3	0.6
100% of average pay	4.3	0.5	0.8	5.1	0.2	0.3

B. Summary across policy options

15. Table A6 shows our summary estimates of the number of non-compete clauses that are fully removed, partially removed (i.e. shorter duration) and experience no change for each policy option considered in this Impact Assessment.

Table A6: Post-intervention non-compete clauses (removed, stay the same, shorter)

Policy Option	**Low Disruption**			**High Disruption**		
	Number of non-compete clauses that are…					
	Removed	*No change*	*Shorter*	*Removed*	*No changed*	*Shorter*
Option 1	5.6	0	0	5.6	0	0
Option 2 – *60% of average pay*	2.7	1.2	1.7	3.5	0.8	1.2
Option 2 – *80% of average pay*	3.6	0.6	1.3	4.6	0.3	0.6
Option 2 – *100% of average pay*	4.3	0.5	0.8	5.1	0.2	0.3
Option 3	0	1.7	3.9	0	1.7	3.9

C. Incorporating the duration of non-compete clauses

16. For our analysis in the 'Monetised and un-monetised impacts' section of this Impact Assessment, we need to transform the figures in Table A6 into a corresponding number of months (non-compete 'months'). This is because the analysis for the direct wage cost under Option 2 (mandatory compensation) and the indirect disruption cost across all options is conducted on the level of months (rather than non-compete clauses).

17. To do this, we need to make a number of simplifying assumptions. First, we calculate the average length of non-compete clauses in the counterfactual from the YouGov employee survey data presented in Table 1 in the 'Rationale for Intervention' section. We calculated a weighted average, using the share of employees that fall into each duration category (for example, more than 4 months and less than or equal to 6 months) and the mid-point for each category (using the same example, this would be 4.5 months). For employees indicating that their non-compete clauses was one month or shorter, we have assumed a duration of one month. Similarly, for employees indicating that their non-compete clause was 12 months or longer, we have assumed 12 months. Following this approach, we estimate an average duration of around 5.7 months. Therefore, we estimate that there are around 31.5m non-compete 'months' in the counterfactual.

18. Second, we need to make assumptions on the duration of non-compete clauses post-intervention. We assume that the duration of non-compete clauses that have been fully removed is zero and of non-compete clauses that have experienced no change is around 5.7 months (i.e. same as in the counterfactual). The non-compete clauses that are partially removed (i.e. shorter duration) are more complex. We have interpreted 'decrease significantly' as a reduction in duration of 50% and 'decrease somewhat' as a reduction of 25%.

19. Third, we assume that non-compete clauses that were previously shortened are the first in line to be removed. For example, in the 80% mandatory compensation scenario, we 'force' as many non-compete clauses that were previously shortened (i.e. under the 60% mandatory compensation scenario) into the category of 'removed' in the 80% mandatory compensation scenario as possible. For these non-compete clauses, the corresponding number of months that are removed in the 80% is <u>not</u> equal to the counterfactual duration (around 5.7 months) but rather the already shortened duration. This process is required to avoid counter-intuitive results, e.g. where the number of months removed is higher than the counterfactual number of months. It leads to the following mutually exclusive and completely exhaustive categories for each mandatory compensation scenario:

    - Non-compete clauses that are fully removed, having already been shortened previously;
    - Non-compete clauses that are fully removed, having not been shortened previously;
    - Non-compete clauses that are shortened, having not been shortened previously;
    - Non-compete clauses that remain shortened, having already been shortened previously;
    - Non-compete clauses that experience no change, having experienced no change previously;
    - Non-compete clauses that were previously fully removed.

20. We calculate the number of non-compete clauses that fall into each of these six categories for each mandatory compensation scenario and then multiply by the corresponding number of months. The outcome of this analysis shown in Table A7. It shows the number of non-compete 'months' that are removed due to non-compete clauses being fully or partially removed (i.e. shorter duration) and the number of non-compete 'months' that remain. The final category is then used for our calculations of direct wage costs for Option 2 (mandatory compensation) in the 'Monetised and un-monetised impacts' section of this Impact Assessment.

21. As an example, the reduction in duration for non-compete clauses that are partially removed (i.e. shorter duration) under the 60% mandatory compensation scenario is calculated as follows:

    *((30% * 5.7 * 0.5) + (29% * 5.7 * 0.25)) / (30% + 29%) = 2.1 months*

22. The figure in Table A7 for the number of non-compete clause 'months' that are removed due to partially removed (i.e. shorter duration) non-compete clauses under the 60% compensation scenario is then calculated as follows:

'Low disruption' scenario

*= total number of non-compete clauses that are shorter * 2.1*

*= 1.7m * 2.1 = 3.6m*

'High disruption' scenario

*= total number of non-compete clauses that are shorter * 2.1*

*= 1.2m * 2.1 = 2.6m*

Table A7: Post-intervention non-compete clause 'months' that are removed due to non-compete clauses being partially / fully removed & non-complete clause 'months' that are retained

Policy Option	**Low Disruption**			**High Disruption**		
	Number of non-compete clause 'months' that are…					
	Removed as non-complete clauses are…		*Retained*	*Removed as non-complete clauses are…*		*Retained*
	Fully removed	*Shorter*		*Fully removed*	*Shorter*	
Option 1	31.5	0	0	31.5	0	0
Option 2 – *60% of average pay*	15.3	3.6	12.6	20.0	2.6	8.9
Option 2 – *80% of average pay*	18.6	4.9	7.9	23.9	3.8	3.8
Option 2 – *100% of average pay*	21.0	5.2	5.3	25.6	4.1	1.8
Option 3	0	28.8	2.7	0	28.8	2.7

23. Finally, we calculate the incremental number of months that are removed as the level of mandatory compensation is gradually increased in Option 2 (mandatory compensation). The outputs are shown in Table A8. The figures for the 60% compensation scenario are the same as in Table A7. The figures for the 80% compensation scenario are the difference between the 80% and 60% scenarios in Table A7. The figures for the 100% compensation scenario are the difference between the 100% and 80% scenarios in Table A7. The outputs in Table A8 are used for our calculations of ongoing disruption costs / redistribution from employers currently using non-compete clauses to workers, consumers and competitors in the 'Monetised and un-monetised impacts' section of this Impact Assessment.

Table A8: Post-intervention non-compete clause 'months' that are removed due to non-compete clauses being partially / fully removed & non-complete clause 'months' that are retained – incremental				
Policy Option	**Low Disruption**		**High Disruption**	
	Incremental number of non-compete clause 'months' that are…			
	Removed as non-compete clauses are:		*Removed as non-compete clauses are:*	
	Fully removed	*Shorter*	*Fully removed*	*Shorter*
Option 2 – *60% of average pay*	15.3	3.6	20.0	1.2
Option 2 – *80% of average pay*	3.3	1.3	3.9	0.6
Option 2 – *100% of average pay*	2.3	0.3	1.7	0.3

24. The number of non-compete months remaining for each of the Low and High disruption scenarios is shown in Table A7.

Annex B: Assumptions log – Experimental estimates of redistribution from employers currently using non-compete clauses to workers, consumers and competitors

Assumptions Log		
Assumption	**Detail**	**Discussion**
Number of non-compete clauses that fall in each willingness-to-pay range	We have used the responses to the IFF Research survey (see Table A8) to calculate the number of non-compete 'months' that fall into each willingness-to-pay range.	As outlined previously, we expect our interpretation of the IFF Research survey to represent an overall cautious approach. In practice, we expect that business' willingness-to-pay is lower than indicated in the survey as a share would be removed closer to the end of the employment relationship, signalling that the business was, in the end, unwilling to pay the level of compensation compensated.
Willingness-to-pay in each range	We use the extreme ends of the ranges used in the IFF Research survey. In cases where businesses signalled they were willing to pay at least 100% of the employee's average wage, we apply a single estimate of 100% of the worker's average pay as the survey does not enable us to identify an upper bound.	We are unable to narrow down the inferred willingness-to-pay based on the available evidence. As outlined previously, the survey did not ask businesses to estimate their specific willingness to pay to retain the non-compete clause.
Impacts included in the willingness-to-pay	We assume that the impacts relate to the additional probability that the worker departs to a competitor before the expiration of the (counterfactual) non-compete clause. This includes the loss of trade secrets, clients and other valuable company information. It could also include the reduction in profits due to fewer incentives to invest in innovation activities and tighter control over the sharing of information within the organisation.	The removal of the non-compete clause could also increase the probability that the worker departs at all. The associated cost could include, for example, the potential loss of output while the vacancy is open (particularly if vacancies are hard-to-fill). However, we are unable to robustly isolate the part of the willingness-to-pay that relates to this channel of impact.
Willingness-to-pay across duration	We assume that the willingness-to-pay is constant across the duration of a non-compete clause – e.g. for a 6 month non-compete clause, the first three months and second three months are equally valuable to the employer.	The later months of the non-compete clause could be less valuable to the ex-employer than the initial months. This could be the case if the earlier months have more 'bite' in reducing the probability that the worker leaves the employer or, once the worker leaves their job, the employer's exposure declines at a faster rate in the earlier months. Therefore, we have taken an overall cautious approach.

Assumptions Log		
Assumption	**Detail**	**Discussion**
Information considered by business when responding to the IFF Research business survey	When responding to the survey, we assume that the business took into account a number of factors, including: • Whether other mechanisms were already in place to protect their interests. • Whether other mechanisms could be introduced or strengthened to protect their interests (i.e. the willingness-to-pay is additional to any cost incurred to implement these other mechanisms). • The likelihood that the worker departs to a competitor under current arrangements. • The cost to the business if the worker were to take trade secrets, client lists and other confidential information to a competitor.	These factors were not included as specific prompts in the survey questionnaire. Businesses are unlikely to have had all of this information to-hand when responding to the survey. We expect that businesses would have made a number of generalisations when responding to the survey, particularly as businesses provided a single workforce-level response to the relevant survey questions.

Assumptions Log		
Assumption	**Detail**	**Discussion**
Post-intervention annual rate at which employees move to a competitor or set up a competing business	We derive an economy-wide rate in the counterfactual based on longitudinal LFS data. For non-compete clauses that are removed, we assume the cost to the employer materialises if the worker moves to a competitor at any point within 6 months of leaving their employer. As a baseline, we assume that, other than the effect of the non-compete clauses, workers with and without non-compete clauses move to a competitor or set up a competing business at the same rate. To mimic some of the variation we would expect to see if we varied this assumption, we have then considered extreme scenarios for the deterrence effect of non-compete clauses in the counterfactual: • Low: we assume that non-compete clauses have some, but limited, deterrence effects in the counterfactual. We assume a 50% deterrence effect, based on the responses to the YouGov employee survey on individual's perceptions of the likelihood of enforcement. • High: we assume that non-compete clauses have a full deterrence effect on moves to a competitor in the counterfactual.	Based on this approach, we estimate that employees whose non-compete clause is fully removed move to a competitor at an additional rate of between 4% and 8% per year. This would indicate that between an additional 230,000 and 470,000 employees could be prompted to move to a competitor per year under Option 1 (complete ban). This appears conservative compared to the findings from the YouGov employee survey on the share of employees that have been prevented from moving to a competitor or to set up a competing business (noting the survey question did not specify a time period).

Annex C: Equalities Assessment

Background

1. Under the Equality Act 2010, the Department for Business, Energy and Industrial Strategy, as a public authority, is legally obligated to have due regard to equality issues when making policy decisions – the Public Sector Equality Duty – and in doing so:
    a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
    b) Advance equality of opportunity between people who share a protected characteristic and those who do not; and
    c) Foster good relations between different groups.
2. The protected characteristics consist of nine groups: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
3. This Equalities Assessment considers the potential equality impacts of the preferred option.

Which protected groups could be disproportionately affected by the preferred option?

4. The preferred policy option applies to the workforce overall in GB. Therefore, any disproportionate impacts on particular groups would be considered indirect and as a result of the composition of the workforce. For example, this could be the case if some groups are more likely to have non-compete clauses that are longer than three months in their contract. More broadly, this could be the case if some groups are more likely to work in occupations where non-compete clauses are common or more likely to experience the imbalance of power or asymmetric information before entering into the non-compete clause.
5. We expect that any indirect impact would be overall positive on workers. As outlined in the Impact Assessment, we expect that employees that workers a change to their non-compete clause will, overall, experience an increase in pay and wellbeing. This is because workers face fewer barriers to move to jobs that best suit their needs and are less likely to spend a prolonged period of time out of the labour market. However, we also recognise that these workers may experience a cost due to lower business investment in innovation activities that benefit the worker and more restricted sharing of confidential information, depending on how businesses respond to the policy.
6. More broadly, we expect workers who work in occupations where non-compete clauses are common or who experience the imbalance of power or asymmetric information before entering into the non-compete clause to also experience an overall positive impact. By placing limits on the use of non-compete clauses, this may help to rebalance the unequal bargaining power held by groups with protected characteristics to some extent. Raising awareness of non-compete clauses may embolden these groups to negotiate with their employer.
7. To assess the potential indirect impacts of the preferred option, we consider the distribution of the protected characteristics groups from the following sources: Labour Force Survey and BEIS-commissioned YouGov survey of employees (May 2022):
    - LFS: age, disability, race, religion or belief, and sex;
    - BEIS-commissioned YouGov survey of employees: age, race, religion, sex.
8. Our analysis of the responses to the YouGov employee survey indicates that the following groups were more likely to indicate that they had a non-compete clause that was longer than three months: males, individuals aged 35-44 or 55+; individuals of White or Black ethnic backgrounds and individuals of Hindu faith.
9. Based on our survey evidence presented in the Impact Assessment, non-compete clauses are particularly prevalent for SOC 1 (Managers, Directors and Senior Officials), 2 (Professional Occupations), 3 (Associate Professional Occupations) and 7 (Sales and Customer Service

Occupations). The representation of employees with protected characteristics in each occupational group is shown in the following table. Groups that are over-represented in these occupations may disproportionately benefit from the policy if they experience an increase in pay and wellbeing due to higher competition for employees with similar skills. Our analysis of the LFS shows that groups that are over-represented include:

- Men in SOC 1 and 2, and women in SOC 3 and 7.
- Those aged 35+ in SOC 1, aged 25-44 in SOC 2 and 3, and aged 16-24 and 55-64 in SOC 7.
- Those with a White background in SOC 1, 3 and 7, and Indian and Chinese background in SOC 2.
- No religion in SOC 2 and 3, Christian faith in SOC 1 and 7, Hindu faith in SOC 2, Muslim faith in SOC 7, and Any Other Religion in SOC 2 and 3.
- Not disabled under Equality Act 2010 in SOC 1, 2 and 3, and disabled under Equality Act 2010 in SOC 7.

10. Our analysis of the responses to the YouGov employee survey indicates that the following groups were more likely to indicate that they were not aware of their non-compete clause prior to signing their employment contract: individuals aged 35-44 or 55+; individuals of Mixed or Asian ethnic backgrounds and individuals of Hindu or Muslim faiths. Among those that were aware of their non-compete clause, the survey responses indicate that the following groups are more likely to not negotiate on their non-compete clause: individuals aged 25 to 54; individuals of White or Black ethnic backgrounds; individuals of Christian or Jewish faiths. More broadly, the economic literature indicates that women, those from ethnic minority backgrounds, and younger employees can be particularly exposed to an imbalance of power when negotiating their non-compete clause with their employer (e.g. feeling that non-compete clauses are non-negotiable, incurring a higher penalty for negotiating, or experiencing out-of-work constraints on their mobility that compound the effects of the non-compete clause)[1]. Therefore, these groups may particularly benefit from our policy.

Conclusion

11. This Equalities Assessment concludes that there are no direct impacts on groups who share a protected characteristic. There are a number of channels through which the policy could potentially have indirect effects on groups that share a protected characteristic. We are unable to identify the overall effects on specific groups based on the available evidence, however, overall, any indirect impacts are expected to be positive on workers. We have considered appropriately the need to advance equality and foster good relations.

[1] For example: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3473186 ; https://corporate.findlaw.com/human-resources/non-compete-agreements-take-a-toll-on-specialized-technical.html ; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3173831 ; https://www.regulations.gov/document/FTC-2021-0036-0004