

Locke Lord QuickStudy: UK Non-Compete Changes ?

Locke Lord LLP

WRITTEN BY

[Nick Elwell-Sutton](#)

RELATED OFFICES

[London](#)

Hot on the heels of the US Federal Trade Commission's proposed ban on non-compete covenants, the UK Government announced similar plans to implement legislation to limit non-compete covenants in employment contracts to a period of three months in order to boost competitiveness. The announcement was notable for its stark lack of details other than to say it would not affect notice periods, garden leave, or non-solicitation covenants and the only indication as to implementation was that it would be brought forward "when time allows."

Non-compete covenants in employment contracts in the UK range in the period they apply for with three months towards the shorter end of the spectrum and 12 months generally the maximum, but only where there is a legitimate reason for a period that long, an example being for insurance brokers to tie in and protect an annual insurance renewal cycle.

In many respects the UK Government's announcement raises more questions than it answers and while it does not say that it will apply retroactively to existing non-competes, it equally does not make clear that it will apply only prospectively to new employment contracts. Other areas of uncertainty are what exactly will constitute an employment contract? Many equity, LTIP and carried-interest schemes contain non-compete covenants and are collateral to an employment contract and it is quite possible these will be captured either by design or accident. It is also unclear if amendments to an existing employment contract upon promotion or change of role or any contained in a settlement agreement may be affected. Further areas of uncertainty include whether it will apply only to "employees" in the strict sense or to other classifications of individual such as "workers," independent contractors, partners, and LLP members.

The immediate response of employers faced with these changes is likely to be to revisit their existing standard employment contracts and they would be well advised to consider including garden leave, non-solicitation and non-dealing restrictions if those are not already included. Other options to enhance business protection are to remove the common practice where time spent on garden leave is offset against the post-termination non-compete period and possibly to introduce longer notice periods altogether. It is common for termination notice periods from each party to mirror each other but (subject to statutory minimums to the employee) there is no legal requirement for this and so it is possible for an employer to have asymmetrical notice periods, for example that the employer can terminate on three months' notice but the employee was required to give six months' notice or that notice could only be given by the employee within a certain time window.

RELATED INDUSTRIES + PRACTICES

- Labor + Employment