



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um Fhiontar, Trádáil agus Fostaíocht

Tuarascáil maidir leis an nGrinnscrúdú Réamhreachtach ar Scéim Ghinearálta an Bhille um an gCeart chun Cianobair a Iarraidh, 2022

Iúil 2022

Joint Committee on Enterprise, Trade and Employment

Report on the Pre-Legislative Scrutiny of the General Scheme of the Right to Request Remote Work Bill, 2022

July 2022

Table of Contents

Réamhrá an Chathaoirligh/Chair's Foreword	2
Recommendations.....	4
Introduction	8
Background and Policy Context.....	10
The DETE public consultation	11
General Scheme.....	12
WRC Code of Practice on the Right to Disconnect.....	17
Benefits of the Right to Request Remote Work.....	17
International Review	20
Summary of Stakeholder meetings	23
Key issue 1: Head 12 - The number of grounds to refuse a request.....	23
Key issue 2: The Right of Appeal to the WRC	26
Key issue 3: Supports for remote and hybrid work	28
Key issue 4: Remote and hybrid work concerns.....	31
Key issue 5: Head 14 - Requirement for a remote working policy.....	35
Key issue 6: Rural regions and hubs	37
Key issue 7: Head 18 - Codes of Practice	39
Key issue 8: Head 6 - Six months service	41
Key issue 9: Head 7 and submitting another request	44
Key Issue 10: Costs of beginning to work from home	47
Open to change	47
APPENDIX 1- Membership of the Joint Committee.....	49
APPENDIX 2-Terms of Reference of The Joint Committee	50
Appendix 3- Reference links	53

Réamhrá an Chathaoirligh/Chair's Foreword



In February 2022, the Tánaiste and Minister for Enterprise, Trade and Employment referred the General Scheme of the Right to Request Remote Work Bill to the Committee for Pre-Legislative Scrutiny.

The Committee agreed to undertake pre-legislative scrutiny and has sought to scrutinise the proposed legislation, providing recommendations on areas where it believes changes or amendments are warranted.

The purpose of the Bill is to make remote working a permanent feature of Ireland's workforce in a way that can benefit all. The Bill aims to provide a legal framework around which requesting, approving, or refusing a request for remote work can be based. It also aims to provide legal clarity and procedures to employers on their obligations for dealing with such requests.

The proposed Bill is just one element of the Government's broader Remote Working Strategy. The increase in home working since March 2020 as a result of COVID-19 has brought remote working to the forefront of working life in Ireland and globally.

Remote working has now moved into the mainstream of workplace issues. For the vast majority of workers and their employers this was their first experience of remote working and while it was challenging for some, there is now a big demand to make this temporary arrangement permanent.

The sudden introduction of homeworking often resulted in less-than-ideal working conditions for both employers and employees. This Bill aims to provide a comprehensive framework to support different working arrangements on a more permanent basis.

The Committee made twenty recommendations in the hope that they will assist the Tánaiste and Minister for Enterprise, Trade and Employment in improving this important piece of legislation. When this legislation proceeds, the Joint Committee requests that the key issues raised in this report and the conclusions reached during

the Pre-Legislative Scrutiny process are taken on board by the Government and implemented.

Among the heads identified by the Committee and witnesses for further examination include the number of grounds to refuse a request (Head 12), the requirement for a remote working policy (Head 14), Codes of Practice (Head 18), the six-month service requirement (Head 6), submitting another request (Head 7), the time-limit for a response to a request (Head 10) and the Right of Appeal to the Workplace Relations Commission (Head 16).

The Committee welcomes the views of the Department in their second appearance when publicly stating they are looking at strengthening the redress provisions and the Right of Appeal as well as the reduction in the grounds for refusal. In addition, they are considering a reduction of the enumerated grounds for refusal, considering inputs on areas including qualification periods, flexibility and impacts on SMEs.

The Joint Committee look forward to further engagement on the Bill and I hope that when enacted it will be an important first step in supporting a changed working environment. The interest in remote working in the long term remains strong for a lot of workers and many will want to continue with at least some remote working after the pandemic with greater access to different working arrangements.

I wish to thank all stakeholders and the Department for their contributions and submissions to assist the Joint Committee in their analysis of the Bill. I must thank Members of the Committee for their collaborative work in agreeing this report. I would also like to thank the Secretariat for its work on this report and all those who assisted the Joint Committee with its consideration of the Bill.



Deputy Maurice Quinlivan, T.D.,
Cathairleach,
6 July 2022

Recommendations

1. The Committee advocates improving the initial right of the worker by removing the need to work 26 weeks before request.
2. The Committee proposes the service timeframe should be reduced from 26 weeks to 12 weeks or less.
3. The Committee acknowledges difficulties faced by small and medium enterprises regarding the drafting of policies relating remote working. Bureaucracy should be kept to a minimum for such enterprises and supports should be provided where this is the case.
4. The Committee notes there appears to be an anomaly whereby it's not an offence to not have a policy, but it is an offence if you don't inform employees of your policy. The Committee recommends revisiting the wording of Head 14.
5. The Committee recommends that codes of Good Practice are quickly evolved so that once in place, refusals must be grounded in a stated policy from employers, founded on these codes.
6. The Committee proposes the principles underpinning a reasonable Code of Practice should now be set out in law and allow the WRC to design how they should be applied in different workplace situations.

The Committee notes this would give employers model policy designs to apply with limited administrative cost.

7. The Committee advises that to accompany the primary legislation above with a WRC Code of Practice, to elaborate on and encourage reasonableness on the part of the employer and employee.
8. The Committee proposes legislation should mandate the WRC to draw up a Code of Practice in the first instance upon which the policies of employers would be based. This code could be changed as required as technology and other factors change and evolve.
9. The Committee notes if remote working is agreed and operationalised the Code of Practice should allow for a review so that both the employer and the employee could revisit their working arrangements which may include a reversal in certain circumstances. There should be flexibility regarding the number of requests to remote work.
10. The Committee recommends a balance must be struck that gives employers and the WRC time to adapt. However, after a reasonable passage of time, the policy of an employer should be open to challenge if it is leading to a high level of refusals of reasonable requests. If individual appeals result in overwhelming the WRC, appeals against the policy of an employer could be an alternative approach to resolving issues.
11. The Committee recommends introducing tighter grounds in primary legislation so that unreasonable refusal should be open to challenge. The Committee recommends that employers and employees approach this legislation with the intent of granting remote work requests where possible.

The Committee further proposes creating an expectation in legislation that employers' policies are expected to adapt to the codes of practice.

12. The Committee proposes that the legislation should align with the General Scheme of a Work Life Balance and Miscellaneous Provisions Bill 2022.

13. The Committee further recommends the 12 weeks provision should be retained in the circumstances where an employer is developing its remote working policy for the first time.

14. The Committee notes the employer should retain the right to respond within 12 weeks if the employer can cite a reason such as the need to engage health and safety consultants or check a proposed remote working location for internet quality.

15. The Committee recommends the amount of time that the employer must respond to the first request should be reduced.

The Committee further notes legislation as proposed only deals with the employee making the request to work remotely. In some instances, employers may wish to change how they operate and might ask employees to work remotely.

16. The Committee further recommends Head 12 should be altered by revisiting the wording of, and strengthening objectivity in grounds (a, b, c, d, g, h, i, j, k and m).

17. The Committee recommends the proposed Bill should consider, encourage and support 'remote first' or 'digital first' environments, which ensures equality between workers regardless of their location.

18. The Committee recommends remote working should incorporate hybrid and flexible working as well.

19. The Committee notes the Bill starts with the statement of quite limited workers' rights. It is reasonable to give business the time to adapt. However, the intention should be that unreasonable refusal should be open to challenge.

20. The Committee heard working remotely does have implications for both employees and employers.

The Committee notes that in the first instance legislation in this area should encourage dialogue and exploration of the issues at a meeting to be held between both parties at a very early stage following the submission of a request to work remotely.

Introduction

The General Scheme of the Right to Request Remote Work Bill 2022, was approved by Cabinet on 25 January 2022. The Tánaiste and Minister for Enterprise, Trade and Employment, Mr. Leo Varadkar TD, referred the General Scheme to the Joint Committee on Enterprise, Trade and Employment on 1 February with a request to commence Pre-Legislative Scrutiny at the Committee's earliest convenience. The Committee commenced pre-legislative scrutiny on the Bill on 9 February. The Committee held four meetings on the General Scheme and requested submissions from five stakeholders.

Procedural basis for scrutiny

Pre-Legislative consideration was conducted in accordance with Standing Order 173, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

The primary focus of these meeting was to allow for an engagement between the Members and stakeholders to discuss possible areas of the General Scheme which may need to be amended. This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this report.

Date

Witnesses

Meeting 1 – 9 February

Officials from the Department of Enterprise, Trade and Employment Workplace Relations and Economic Migration Unit

- Mr Dermot Mulligan, Assistant Secretary.
- Ms Wendy Gray, Principal Officer.
- Mr Mark Doheny, Assistant Principal.

Meeting 2 - 2 March Ibec and ICTU

- Ms Maeve McElwee, Director of Employee Relations. *Ibec*
- Ms Nichola Harkin, Head of Employment Law Services. *Ibec*
- Dr. Laura Bambrick, Social Policy Officer. *ICTU*
- Ms Patricia King, General Secretary. *ICTU*

Meeting 3 – 27 April Grow Remote & Glofox

- Ms Joanne Mangan, Employer Lead. *Grow Remote*
- Mr Finn Hegarty, Co-Founder and CPO. *Glofox*

Meeting 4 – 18 May

Officials from the Department of Enterprise, Trade and Employment Workplace Relations and Economic Migration Unit

- Mr Dermot Mulligan, Assistant Secretary.
- Ms Áine Maher, Principal Officer.
- Mr Mark Doheny, Assistant Principal.

Background and Policy Context

In September 2020, the Department of Enterprise, Trade and Employment (DETE/The Department) commenced work on the development of a national Remote Work Strategy. The Strategy would build on the findings of the Remote Work in Ireland report and draw on the results of the Public Consultation on Remote Working undertaken in July last year. The Strategy was published in January 2021.

The purpose of the Bill is to make remote working a permanent feature of Ireland's workforce in a way that can benefit all – economically, socially, and environmentally. In April 2021 a new Code of Practice on the Right to Disconnect was published by the WRC - to remind employers of their obligations and to ensure workers understand their rights. While it is accepted that different working arrangements will suit different employees within their respective business environments, the right to be able to maintain clear boundaries between work and leisure is universal.

A National Hub network, ConnectedHubs.ie, was launched at the end of May 2021 by Minister Humphreys and an €8.9m 'Connected Hubs' Call for applications was announced in July 2021 with grants ranging from €10,000 to €250,000 for existing hubs & Broadband Connection Points. The funding will benefit 117 projects for a wide range of works in Hubs nationwide.

June 2021 saw the Tánaiste's launch of DETE's 'Making Remote Work' strategy. October 2021 saw the Minister for Finance announce an enhanced income tax deduction for remote workers as part of Budget 2022. This amounts to 30% of electricity, heating, and broadband expenses. Currently in Ireland, all employees can request remote work from their employers but there is no legal framework around which a request can be made and how it should be dealt with by the employer.

The Right to Request Remote Work Bill will provide a legal framework around which requesting, approving, or refusing such a request can be based. It will also provide legal clarity to employers on their obligations for dealing with such requests. The intention of the Bill is to create a floor and introduce a legal framework with a set of protections.

The DETE public consultation

As part of the development of the legislation a public consultation process was launched on 1 April 2021 and ran for five weeks until 7 May 2021.

Engagement with the process in April and May was good and a total of 175 submissions were received from a mix of stakeholders. Among the issues arising were:

- A call for guidelines on what should be contained in a remote work policy for employers
- Concerns about additional costs for employers, particularly SMEs regarding providing equipment for staff in remote settings as well as on the premises
- A call for guidance in monitoring and recording employees' working time, particularly when working remotely
- Health and safety concerns around remote working, which include concerns for the mental health of people working remotely
- Many commented that comprehensive guidelines for health and safety would be helpful to raise confidence
- Several stakeholders commented that an accompanying Code of Practice for Remote Working should be considered and would provide clarity for both employees and employers

The consultation had significant input from both employer and employee representatives. The consultation had a question about what reasonable grounds might be to refuse remote work were. The consultation provided a framework to allow requests for remote work to be dealt with in a structured way that allows employers and employees to have clear conversations and to build in certain floor-level protections.

General Scheme

Head 1 provides for the short title, construction, collective citation and any necessary commencements.

Head 2 provides for standard definitions drawn from Irish legislation.

Head 3 is a standard provision which provides that the Minister may by regulations, provide for any matter referred to in this Act as prescribed or to be prescribed, and make regulations generally for the purpose of giving effect to this Act.

Head 4 is a standard feature of Acts and makes provision for the funding of the Minister's administration costs.

Head 5 is a standard provision in Irish legislation. The intention is that the Right to Request Remote Working Act will provide a floor level of protection for all employees and that existing features or arrangements that render remote working requests impossible, will be rendered null and void. However, it is not intended that existing more favourable remote or flexible working arrangements will be undermined by this legislation.

Head 6 sets out the eligibility criteria an employee must meet to avail of the statutory right, including that an employee will be eligible to submit a request once they have worked for their employer for a period of six months. However, an employer shall be free to offer remote work from day one if desired.

Head 7 provides that an employee will not be able to submit repeated requests if his or her request was denied. Where the employer has diligently completed the assessment process and any appeal has been heard, the employee will have to wait a period of 12 months to submit another request. It is not the intention that such a request would be prohibited where an employee has moved to a different role within the same employer.

Head 8 provides that the application for remote working from the employee contains as much relevant information as possible to inform the employer's decision-making process.

(1) The intention is that the request be formal so that the records can be called upon in any subsequent adjudication of an appeal.

(2) The intention is to allow an employer to implement a standardised form or system for applications in line with the specific considerations for that employer to consider.

(3) The intention is to outline the minimum information that must be provided when requesting a remote working arrangement.

Head 9 provides for the withdrawal of a request for remote working by an employee.

Head 10 provides for a time-limit for an employer to return a decision in relation to a request from an employee. The employer can set out his/her own specific time limit in the Code of Practice which shall be not more than 12 weeks.

Head 11 provides for agreeing a request for remote working. In subsection (1) the intention is that the confirmation from the employer should contain as much information regarding the proposed changes to the terms of employment, and at least provide the key changes covered by the remote working arrangement.

In subsection (2) the intention is that where the employer has engaged with the process and tabled a counteroffer that addresses some of the request for remote working, albeit not fully, that they can table such an offer in compliance with their obligations under this Act.

In subsection (3) The intention is that if the employee accepts the counteroffer that there is a record that they did so and if they refused the counteroffer, they must state the reason why they refused it within one month.

Head 12 provides for the declining of a request for remote working. The intention is that where a request is declined, that it is clear to the employee the reason the request has been declined. An employer may, having given the application due consideration, decline a request for remote working stating the business grounds for so doing which may include but are not limited to —

- (a)The nature of the work not allowing for the work to be done remotely.
- (b)Cannot reorganise work among existing staff.
- (c)Potential negative impact on quality.
- (d)Potential negative impact on performance.
- (e)Planned structural changes.
- (f)Burden of additional costs, considering the financial and other costs entailed and the scale and financial resources of the employer's business.
- (g)Concerns re the protection of business confidentiality or intellectual property.
- (h)Concerns re the suitability of the proposed workspace on health and safety grounds.
- (i)Concerns re the suitability of the proposed workspace on data protection grounds.
- (j)Concerns re the internet connectivity of the proposed remote working location.
- (k)Inordinate distance between the proposed remote location and on-site location.
- (l)If the proposed remote working arrangement conflicts with the provisions of an applicable collective agreement.
- (m)Ongoing or recently concluded formal disciplinary processes.

Head 13 provides a Right of Appeal for employees to the Workplace Relations Commission, where a request for remote working has not been responded to by an employer within the time provided for by Head 10, where the employer has failed to provide a “notice of the grounds for refusal” in compliance with Head 12(2) or where an employer has failed to act in compliance with their notice obligations arising under Head 9. Subsection (2) provides that a complaint cannot be submitted in advance of the resolution of any internal appeal mechanism provided for by the remote working policy, the contract of employment or by terms of collective agreement.

Head 14 provides that employers must have a formal remote working policy. Subsection (2) provides that every employer shall have regard to the Code of Practice provided for by Head 18 in formulating the remote working policy.

Head 15 provides for protection of employees from penalisation for having exercised his or her entitlement to request remote working.

Head 16 provides for a decision under Section 41 or 44 of the Workplace Relations Act 2015. The intention of this Head is to bring this Act within the scope of the Workplace Relations Act 2015. Disputes arising in relation to entitlements under the Act would be subject to investigation by the Workplace Relations Commission and rulings of the Labour Court. The compensatory redress an employee is entitled to, with regards to all the specifics of the individual case, shall not exceed 4 weeks' remuneration. Further, the WRC and/or Labour Court will be empowered to direct the Employer to comply with relevant requirements of the Bill where a complaint is found to be well-founded, within the time period specified.

Head 17 provides for the creation of an offence for failure to have a remote working policy, as required in Head 14. This provision is to incentivise employers to comply with this new proposed requirement to implement and maintain a remote work policy. The head also provides for the creation of a Fixed Penalty Notice under S. 36 of the Workplace Relations Act.

Head 18 provides for Codes of Practice. The main purpose of this Code of Practice is to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of remote working, to aid with the implementation of the new legislation, and to advise on the likely features of remote working policy documents as required by Head 14.

Head 19 provides amendment of enactments. This Head is intended to amend the Workplace Relations Act 2015 to bring the Right to Request Remote Work Act fully within scope of its provisions.

Head 20 provides for amendment of the Terms of Employment (Information) Act 1994 to bring the requirement for the employer to share the Remote Working Policy with the employees within the scope of section 3 (1) of that Act.

Head 21 provides for records. This is a standard feature of Acts and makes provision for the employer to be required to maintain records regarding applications for remote work.

WRC Code of Practice on the Right to Disconnect

The increased adoption of remote work is not without challenges. Employees also have trouble switching off and keeping regular working hours. A Code of Practice on a Right to Disconnect was published in April 2021, to remind employers of their obligations and to ensure workers understand their rights related to refraining from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours.

There are three rights enshrined in the Code:

- the right of an employee to not have to routinely perform work outside their normal working hours
- the right not to be penalised for refusing to attend to work matters outside of normal working hours
- the duty to respect another person's right to disconnect (for example: by not routinely emailing or calling outside normal working hours)

Benefits of the Right to Request Remote Work

The Committee notes there are multiple benefits that can be derived from remote work, which will help to achieve numerous public policy objectives. These benefits include increasing participation in the labour market, attracting and retaining talent, enabling balanced regional development, alleviating accommodation pressures, improving work/life balance, improving child and family wellbeing, reducing the amount of time spent commuting, and reducing carbon emissions and air pollution.

Pre-pandemic one in 20 workers (4.9%) regularly worked remote. With the arrival of Covid, remote working went mainstream within a matter of days. The impacts of increased remote work can be substantial and remote working has the potential to fundamentally change the nature of where, how, when, and why people work. This in turn will bring about economic, spatial, environmental, cultural, and societal change.

Research has highlighted different impacts for employees and employers. In the case of employees, remote working is linked with negative effects on mental health, with workers experiencing feelings of isolation, loneliness, and stress.

Employers too face challenges. Feedback has highlighted how remote working does not easily enable creativity, group dynamics, shared ownership, and collegiality. If these obstacles cannot be overcome, it could result in long-term impacts on firms' productivity. Research has also found that remote working can lead to an innovation deficit due to difficulties in collaborating with colleagues.

On a broader scale, remote work could also have a negative impact on national employment levels. With remote work becoming increasingly popular, there could be challenges in attracting and retaining talent in Ireland. Broader issues such as data protection and taxation policy also arise in the case of employees who may wish to locate outside of Ireland.

Whilst increased remote work could help to revitalise villages and towns across Ireland, it could result in challenges for cities as increasingly workers may choose to work from other locations.

Another consideration is how remote working can impact differently, depending on gender, with care burdens and reduced visibility of remote workers having potentially negative impacts for women in the workplace.

The Committee noted the benefits of working from home. In addition to the specific benefit to the individual, there is the benefits in a climate change context of people commuting less. There are huge benefits that extend beyond access to a form of work-life balance, etc. It is likely to be the case that remote working boosts productivity in many occupations but reduces it in others.

The recent Government paper on 'An Evaluation of the Impacts of Remote Working' stated potential emissions savings made from reduced transport usage are likely to exceed any extra household emissions, leading to net environmental gains from remote working. The Evaluation of the Impacts of Remote work paper estimates that remote working has the potential to save 164,407 tonnes of CO₂ a year, with an equivalent monetary saving of €7.6m. These potential benefits depend on a variety of factors, however, and the analysis assumed that there would be no secondary

environmental effects such as remote workers taking more frequent, shorter trips during the day.

The recent Government paper further stated estimated annual increases in heating and electricity costs for households are €79 and €30 respectively. Potential savings from reduced commuting are estimated to be €413 per remote worker. Remote workers can save an average of 93 hours per year through reduced commuting – with an equivalent monetary benefit of €1,103.

ICTU's submission noted employers recognise the benefit to themselves, especially in relation to draw and attract talent and particular skill sets into businesses and industries. The opportunity to be able to look at a wider market, to be able to identify people who are not within necessarily within the immediate vicinity of the office or environment in which companies are working is an enormous benefit. It also means that there are more individuals in the labour market who potentially are not now participating but are much more open to participating in remote or hybrid settings.

Glofox noted the shift to remote work enabled them to access and retain talent across the world. It gave them a competitive advantage by providing the flexibility to hire people wherever they are based.

International Review

At present 12 Member States have legislative provisions governing remote working (Austria, Belgium, Czech Republic, Estonia, Finland, France, Luxembourg, Netherlands, Portugal, Romania, Slovakia, and Spain). The others are the UK, New Zealand, and Australia. However, the form the provisions take vary considerably from country to country.

Currently Ireland is one of six EU Member States (along with Croatia, Germany, Hungary, Malta, and Poland) that are pursuing the introduction of legislation governing remote working. The UK is currently re-evaluating their legislation as it has been in place pre-pandemic since 2014.

Countries all over the world are grappling with the problems of ‘always-on’ culture and the risks posed by digital, flexible, and remote working to workers’ health and the right to leisure. In Europe, France led the way on legislating for a specific right to disconnect, but it has experienced teething problems in its implementation. Germany has dealt with similar issues to Ireland, albeit that these have been discussed to a significantly greater extent in legal academic commentary. There are clear lessons for Ireland to learn from these experiences.

While the provisions of the law impose an obligation to negotiate on the right to disconnect, they do not impose an obligation to reach an agreement. If no agreement is reached, the employer is still required to draw up a charter setting forth the terms and conditions under which employees can exercise their right to disconnect.

The UK

Employees in the UK have the right to make a flexible working request if they:

- Have worked for their employer for at least 26 weeks
- Are legally classed as an employee
- Have not made any other flexible working request in the last 12 months.

Under the law there is a right to request flexible working which may be to:

- reduce hours to work part-time
- change start and finish time
- have flexibility with start and finish time (sometimes known as 'flexitime')
- do contract hours over fewer days ('compressed hours')
- work from home or elsewhere ('remote working')
- share the job with someone else.

Employees can ask to change for a variety of remote and hybrid options. There is no legal right for an employee to appeal a flexible working request. An employee is required to have worked for the employer for a minimum term of six months.

There is a time limit provision that requires all requests, including any appeals, to be considered and decided upon within a period of three months from first receipt. An employee can submit another request after 12 months.

The employer may reject a request, but it must be for one of the eight business reasons as set out in the legislation.

In the UK, the Department for Business, Enterprise, and Industrial Strategy is in the process of completing a consultation reviewing its flexible working legislation, including whether the eight business reasons an employer can reject a request remain valid.

Australia

Further afield, in Australia, there is no general right to request remote working. However, some employees who have worked for the same employer for at least 12 months can request flexible working arrangements, such as changes to hours, patterns, or locations of work. To make the request they must:

- be the parent or carer of a child who is school-aged or younger
- have a disability, or be a carer
- be 55 years and older
- be experiencing violence from a family member or supporting family or household members experiencing family violence.

New Zealand

The Employment Relations Amendment Act 2014 provides all employees, both full and part time and at any stage of the employment process, with the right to apply for flexible working. Although the Act gives employees a process, it does not prescribe the outcome of an application. Employers are required to respond to a flexible work application in writing within one month of receiving the application and it must be considered in good faith with further discussion with the employee.

Asia

In Asia neither Japan nor South Korea currently provide for a statutory right to request remote work or have indicated plans to introduce it. However, the Covid pandemic has led to increased uptake in remote working in South Korea and a Code of Practice for employers has been put in place.

Neither Canada nor the United States provide for a right to remote or flexible work at national level.

Summary of Stakeholder meetings

During the public hearing, several important points were raised. A summary of the key issues discussed and identified in evidence to the Committee is laid out here.

Members of the Committee agreed the Bill in its current form is heavily stacked against the employee. In fact, to some extent, in some sectors, it is likely that employers will have to offer either significant hybrid working or remote working to attract employees and the skills that they need. That will be a reality in certain occupations and sectors of the marketplace.

Key issue 1: Head 12 - The number of grounds to refuse a request

In the first meeting the Department noted in their opening statement that they are reviewing the General Scheme with a view to strengthening the Right of Appeal. The Tánaiste has asked for the wording to be reassessed and enhanced. Members agreed much of the commentary surrounding the Bill has not been positive.

The number of grounds to refuse the request throughout Europe varies from five to eight. The Department responded and confirmed they are also reviewing the number of grounds with a view to getting the balance right. The intention of the legislation is to create a framework with a right for employees to request remote working and employers must then respond in a reasonable way. This Bill is providing for the framework to have an application heard, for the employer to consider it properly and for a reasonable response to be given regarding why the request should not be granted.

The Committee noted in the hearings the specific number of grounds for refusal and an additional “business grounds” to cover a scenario the legislation may not have accounted for. The Committee agreed the grounds for refusal are cumbersome and require change.

The Department stated a willingness to revisit the number of grounds and the wording. There is a concern in the Committee that with this refusal of it as not suitable on business grounds, very trivial cost issues could be offered, and it appears there is no opportunity for an adjudication.

Ibec believes the non-exhaustive, indicative list of business grounds for declining a request for remote working included in the draft Bill are fair and objective. In this regard, Ibec note the requirement that a decision to decline a request be grounded in an assessment of business needs rather on other spurious or arbitrary grounds, and they believe this to be appropriate.

Ibec welcomes the broad grounds included in the draft Bill under which businesses may consider applications for remote working. It is important to emphasise the need for employers to be given discretion to consider requests for remote working in accordance with their own business needs and objectives.

Ibec states, it is important to consider an employer's discretion to consider requests for remote working in accordance with their own business needs and to reject those requests which are not suitable for business and operational reasons.

Ibec believes facilitating remote working may impose a disproportionate cost burden on some employers which they will simply not be able to absorb. Again, these employers must be given the discretion to decline a request where the financial position of the company so dictates.

Ibec submits that it is reasonable to expect that employees who request to work remotely can identify a suitable and secure work area which, where necessary, is not too far from an employer's on-site location. The obligation to ensure a proper and safe place of work, ensuring data security, confidentiality, and the protection of intellectual property at a place of work are paramount considerations for employers.

ICTU contends Head 12 of the Bill is not suitable in its current form. Thirteen grounds that are "include but are not limited to" are not what is intended by the Department. ICTU believes some of the thirteen grounds listed are reasonable and some are not. A reasonable right of refusal would be given on objective grounds, including an objective grounds provision would overcome this.

ICTU further noted an example of existing legislation with preferable provisions. The Protection of Employees (Part-Time Work) Act 2001 and the contract Act contain objective grounds. Employers are therefore already obliged to show that certain decisions were based on objective grounds. At the moment, decisions under this legislation are completely subjective and there is no right to appeal a decision on the basis of the grounds used. If legislation took account of the objective grounds and stated that if an employer refuses to grant it, that decision can be appealed.

Grow Remote and Glofox support changes to Head 12, the current number of grounds for refusal in the Bill are in their view, too subjective and open to misinterpretation. There is strong evidence that remote working enables employees to be more productive, not less, yet this reason gives weight to the myth that people who work remotely are not working as hard as those in the office. They urge the Committee to recommend changes to this head in order that the spirit and letter of the eventual Bill will shift entirely towards supporting companies to say yes to remote working.

Grow Remote believe the reasons for refusal should reflect the feasibility and reality of whether the job can be done. Job role, lack of internet connectivity and desk space or a place to work due to health and safety reasons, are valid reasons for jobs that cannot be done remotely. In contrast, location should not be a factor when it comes to remote working or quality of work being impacted.

Head 12(m) Ongoing or recently concluded formal disciplinary processes.

Grow Remote questioned the need for this ground. If this ground were included, it would mean defaulting to the office is the only option when something has gone wrong or to do certain things. Performance management issues will not necessarily be solved simply by bringing the employee in.

Key issue 2: The Right of Appeal to the WRC

Head 16 confers the employee with a “right to appeal”, whereby a complaint can be made to the WRC on the following grounds: the employer has failed to return a decision within the timeframe in compliance with Head 10; or the employer has failed to provide a notice of the grounds for refusal in compliance with head 12; or an employer’s notification under head 9 was given in circumstances that did not satisfy the requirements of head 9(1) or (2).

ICTU notes it is noted that the right to make a complaint to the WRC under this Head is *not* intended to extend to a right to complain in respect of the substance or merits of an employer’s decision to decline a request under Head 12(1). The right to complain only extends to a failure to effect notice of the reasons grounding that declination as required under Head 12(2).

Currently in the Heads of the General scheme is a Right of Appeal as drafted. The Committee noted the current wording is limited in scope. An employee currently can appeal on procedural grounds only, such as a late response to the request.

The Department remains committed to revisiting the wording of the legislation but remains conscious to the limits that may apply taking regard to the employer’s business and the rights and responsibilities of the employee.

The Department want to promote remote working in Ireland and are open to all the benefits of it, trying to find our way to strike the balance in an appropriate way between the various interests.

The Department noted the internal appeals process is a requirement under the remote working policy. It is intended that at organisational level, there would be an internal review before going to the formal review at the WRC to increase discourse and encourage consultation and conciliation at organisational level, rather than taking statutory recourse.

Head 13 refers to "the commencement of an internal appeal process provided for within their employer's remote working policy". In the Workplace Relations Act 2015, a claim must be taken within six months and can be extended by an additional six months in set criteria. The Department noted it is not proposed to change that for this Bill.

Ibec expressed concerns in relation to the timeframe of the appeals process. Head 13(2) provides that employees may present a complaint to the WRC two weeks after the commencement of an internal appeal process provided for within their employer's remote working policy. It is important discussions around requests for remote working are resolved, wherever possible, amicably and at workplace level and that adversarial and combative outcomes are avoided. Ibec further contends, complaints should not be permitted to be made to the WRC before the resolution of any internal appeals process

Ibec submits, they accept the desire to avoid unnecessary delay for the employee in receiving a decision from their employers, reasonable time must be given to enable internal processes to be completed prior to claims being submitted to the WRC.

ICTU recommend to the Committee, that the Bill be amended to provide for an appeal to the WRC on the grounds that the request was unreasonable or was not objectively justified. As currently written, the Bill only allows for a complaint to the WRC on technical grounds, such as the decision was late. It doesn't allow an employee to appeal the reason for refusing the request. An appeal to the WRC taking issue with the substantive decision of the employer must be provided.

Further, there must be provision for an appeal to the WRC for an employee penalised, victimised, or discriminated against because of having requested, appealed, or engaged in remote working. The limit of 4 weeks' pay, by way of compensation, is wholly inadequate and out of line with the limit of 104 weeks' pay that is available under existing legislation.

In their joint submission, Glofox and Grow Remote believe Head 13 needs to be modified. They support the modification to allow for appeals to the Workplace Relations Commission, WRC, to be based on the substantive decision of the employer, not merely on procedural grounds. They urge the Committee to strengthen

the legislation in order that employers must have a firm rationale for refusal that is based on objective and measurable reasons.

Key issue 3: Supports for remote and hybrid work

The challenge of setting up an employee to work from home initially can be cumbersome for both the employee and the employer. Costs relating to heating, broadband and office equipment must be considered and evaluated.

Equipment

There is also an implied issue with respect to the equipment that might have to be made available. If somebody requests to work remotely and that request is granted, it seems to be implied that, on foot of that, the employer will have to make equipment available at the remote location. If it does not, the issue of the employer being responsible for the health and safety of the employee who makes the equipment available arises.

On equipment, the employer is responsible for providing the correct equipment for an employee to carry out their role. Similarly, with health and safety, that obligation on employers should not change. Many employers would want to provide the appropriate protections and security protections on a laptop or other equipment.

There is an upfront cost in setting up people to work remotely. If they work in their home, it is common practice in most companies to provide employees with everything needed to do so, including a laptop, monitor, mouse, keyboard, and usually a desk and chair.

The cost for these companies, is usually a stipend for employees to purchase the equipment or provide the equipment. It depends on the size of the company. Larger companies provide it and send it out when the employee starts. Smaller companies may give the employee some money. The stipend can vary.

Mental health or isolation

The Department supported the view that employers have a duty of care for employees with respect to their mental health and employees also have a responsibility. The Department explained further that supports for employees, energy and set-up costs, slow broadband, and mental health supports, is envisaged all those issues ask being key components of the Code of Practice. The Bill provides for a Code of Practice, which will establish best practice for employers and employees regarding how schemes will work at organisational level.

Grow Remote and Glofox advocate for remote working but and contend there is not necessarily anything wrong with the hybrid model, if it is done in a remote-first way. An employer saying that every employee needs to be in the office every Monday and Friday but can work remotely the other days of the week is not an ideal situation, because the employer is not giving flexibility to employees to live where they choose. The flexibility needs to be there for the employee for him or her to make the choice of whatever suits him or her within the confines of the role.

Glofox attest, there are some challenges with the social interaction as well of being remote from the beginning, but the company bring people together once per month or once per quarter. In terms of onboarding, they bring those people together once per month. One needs that human interaction especially at the start.

Heat, light, and broadband

Remote working can be expensive, if one is at home all day in respect of heating, lighting and so forth, where the carbon emissions can go up if one is working at home rather than working at a central employment point.

Glofox submitted, some of their members in Dublin would also say that they sometimes have trouble with their broadband. Outside of the cities and in some of our more rural locations, there are gaps in service which hinders people's ability to work remotely. People need to have adequate broadband to be able to work remotely. There are some areas where there is great broadband, places where one would not expect that to be the case. It is about making sure that it is consistent and available equally to everyone, wherever they need it.

Knowledge

Grow Remote submitted remote working over the past two years is not how to envisage remote working in the future. One of the most important aspects of making remote working work is careful, deliberate planning on the part of companies, with support and guidance to help them along the journey.

Grow Remote founded an alliance called the Remote Alliance and brought together some of the companies that are in the process of transformation, including eBay, ESB, Vodafone and Liberty Insurance. The purpose was to hear from them about how they are addressing the challenges and to share solutions publicly.

Concerns for SME's

ISME wrote to the Committee and asked the Committee to be conscious of the impact of the legislation on small businesses and notes that 96% of Irish businesses employ 19 people or fewer. Another issue ISME highlighted, that back-office functions that can be done remotely outside Ireland. These functions can be performed remotely not just from Ireland, but from further afield in southern and eastern Europe, and beyond. This is a trend ISME are already witnessing in businesses, including some micro businesses.

Key issue 4: Remote and hybrid work concerns

There are issues around data protection, commuting, intellectual property, IP, confidentiality, insurance, working time directives, and health and safety.

Head 12(3)(j) concerns commuting. The Committee had concerns that inserting this provision ignores the decisions others here have highlighted. These decisions people have made during the pandemic to relocate because of the costs of rent and buying property in some of the main urban areas. It is a ground of concern because the proposed Bill is asking employers to decide on the appropriateness of a commute.

The risk is apparent of a space where employers may then be able to make decisions about the type of commute and, effectively, differentiating between workers, which can be inappropriate and not the intention of the legislation. Provision is made in these heads concerning the location of where a person works. This issue is therefore already covered and inserting this proposed provision regarding the length of commute is a concern.

The balance between employers and employees was a concern expressed by stakeholders and Members in each hearing. The Department has asserted this balance is a work in progress and has committed to reviewing some of the heads following these hearings.

The Committee is concerned about the added costs on the employee if one is at home all day in respect of heating, lighting and, where the carbon emissions can go up if one is working at home rather than working at a central employment point.

Data

The Committee noted the views of Ibec that there will be cohorts of employees who will find it more difficult than others to identify a suitable work area in their homes. The obligation to ensure a proper and safe place of work, ensuring data security, confidentiality, and the protection of intellectual property at a place of work are paramount considerations for employers. Ibec contends employers must be permitted to refuse requests for remote working where there are concerns relating to these issues.

Some employers are concerned about privacy and security, especially in remote working hubs where several people are working at desks side-by-side. Employers

have expressed a view, that if there is to be remote working, a discrete, secure space where their employees will work is required, so that they are doing cannot be overheard or made available to competitors and so on.

Ibec notes that where remote working is facilitated on a long-term basis, a higher standard will most likely be required to be met to ensure compliance with health and safety, data protection and employment rights legislation. Facilitating remote work may impose a disproportionate cost burden on some employers that they will simply not be able to absorb.

In contrast, ICTU notes employers have tolerated significant challenges around data security and privacy. This concern arises in relation to younger cohorts of workers, many of whom are living in shared accommodation, significant privacy issues arise. Businesses may need to consider who they share their home with, where they lock away information, and whether others in the home also have rights to work remotely.

Health and safety

The Health and Safety Authority publication 'Guidance on Working from Home', which sets out the responsibilities of employers and employees. It also refers to a risk assessment of the employee's workstation in the home. The nature of that risk assessment will vary from home to home and occupation to occupation but there are issues there that will need to be worked through.

ICTU submits when a worker works from home, the home becomes a workplace, under current legislation. The employer would be expected to act for the employee to be safe in the workplace and, therefore, the role of the Health and Safety Authority is important in order that, again, the Bill get this balance right.

ICTU and Ibec agree further clarity is required around the issue of health and safety in the context of this Bill. One area where clarity is required concerns work-related accidents that occur at home and what exactly is reportable if there is a work-related accident at home. Greater clarification is required on a few occasions around the issues that will pertain to home working and the obligations and responsibilities on both parties in that case.

If the home becomes a workplace, there may be implications for insurance cover. Insurance of equipment continues to be an issue. The workforce has operated within a pandemic environment for two years, including our insurers, employees, and employers, and employers have looked at this as being temporary, albeit that its temporary nature has been extended. When businesses start to look at permanent solutions to this, they will start to see different issues coming through and they need to have that clarification.

Glofox submitted when new joiners come on board, on an annual basis they complete health and safety assessments for their workspace and where they are working. They have insurance which covers them for home workers, and they have various controls around security to make sure Glofox are protected when folks are out of the office.

In addition, all the stakeholders would welcome further clarity from the HSA in relation to on-site inspections, liability, and insurance.

Work/life balance

In beginning to work from home, separating work and home can be a difficult balance there are risks of a greying of boundaries between work and life when employees work from home. It is important that there is a legal framework in place to protect employees from overworking.

Grow Remote believes the onus is on employers and managers, particularly to support a work life balance and a disconnect from the workday. Wellness needs to be top of mind for employers. In a remote first company, employees would know from day one that they are not expected to answer a work email outside of working hours.

Email signoffs include a wording to the effect that if the person receives the email outside their working hours, they do not need to answer it. The right to request remote working introduces a benefit of flexibility. People like to schedule work around their life, but do not want work to take over their lives.

In terms of working from home and the blurring of the lines between home life and work life, it is a factor. There is an onus on the employee and the employer to make sure this does not happen.

Remote working is a different way of working and it does require a different way of thinking on the part of the employee. It requires people to be a little bit more self-motivated but also more disciplined in terms of structuring their own time. This also needs to be supported from managers, People managers need to check in every day with members of their team, even if that is just asking how they are or how they are getting on. Regular one-to-one communication is important in all aspects of remote working.

Key issue 5: Head 14 - Requirement for a remote working policy

Head 14 states the requirement for a remote working policy and for this policy to be reviewed annually. The Department stated the plan is to provide templates for companies to work through in drafting their policies, assisting them so that they do not have the burden of trying to come up with things themselves. The Department will assist companies and promote templates for how to write a policy, including policies that state the business cannot facilitate remote working.

The Committee questioned if the mandatory policy may be time-wasting and expensive for a company or business to have to prepare a policy in this area if none of their workers can work remotely. Certain sectors of services where people work in nursing homes, for instance, where people must go in, or in restaurants where people must attend, or plumbing companies where people must be physically on site.

Head 17 creates an offence for failure to have a remote working policy. Ibec are concerned by the requirement for all employers, regardless of size or sector, to have a remote work policy in place and the creation of a criminal offence for a failure to do so. Ibec believe this requirement is entirely disproportionate and is based on a misplaced assumption that the legislation can set out a one-size-fits-all approach to this issue.

Ibec contends, if enacted as currently drafted, the Bill would stymie innovation and creativity and certainly would not encourage employers to be as agile or flexible as they otherwise would be. Ibec supports presenting a policy with an explanation of why it cannot be availed of in this sector without the need of a yearly renewal, as the role will not change to support working from home in particular sectors.

Ibec submitted they are concerned by the proposed creation of a criminal offence for failure to have a remote working policy in place.

ICTU noted the burden of requiring small business to have a policy in place. There are many very small employers and businesses where there is no reality to people working remotely because of the nature of the work they provide. To make it a criminal offence to not have a policy in place that would be reissued every 12 months seems disproportionate in the extreme.

Glofox agreed on the opt-out policy, it makes sense for certain businesses that would not necessarily need this requirement to have this exemption, whether this is construction or services for businesses.

Grow Remote noted including a requirement in the legislation to have a policy, even when remote working may not be available, is a good approach. Situations arise where that policy would evolve and need to be revisited over time.

Key issue 6: Rural regions and hubs

The Department highlighted they are conscious of the impact of rural and regional areas and hub development is a priority to support the challenges employees face. Officials stated €9 million was announced last summer to further support and enhance remote working hubs in regional and rural areas.

The Committee heard from Glofox on the topic of remote working hubs. Glofox give employee's the choice as to whether they want to come in. Glofox have an office in Dublin, and a couple of smaller offices around Ireland as well, and they give them a choice. If the employee does not have a suitable working arrangement in their house where it could be shared accommodation straight out of college, they would compensate them in going into a local hub.

Grow Remote agreed on the benefits of remote working hubs. Remote working hubs as an answer to many of the questions of remote working. Remote working hubs support the social aspect and interaction as not everybody likes to work in their home.

An employee may wish to get away from the house for a day or a week and the hubs are a good solution to that as one can meet other people and can connect and network. This can further benefit the local economy as the employee may can also pop to the local coffee shop on their lunch. They are a benefit for the local economy and they also answer other issues around, for example, Internet availability. If an employee does not have a good enough Internet service, one can use a hub.

The main concern that arises with each of these hubs nationwide is whether the employer or the employee pays for the day in the hub. Grow Remote believes ideally this cost should be covered by the employer, it would encourage further use nationwide if it was not an additional cost on employees and would welcome clarity on the issue.

Grow Remote submitted remote working hubs are a complement of any remote or hybrid working model as it offers choice in another place to work. Working remotely means working without a specific location. A hub is an option, and it complements the home. It also complements the office. Employees may see the advantages of

using a hub, instead of the home to maintain normality, it feels like one is going into a workplace even though it is just the local town.

Employers may also be concerned about security or privacy within the remote hubs, hub owners are more than happy to talk to businesses about. It is about bringing the hub owners and that organisation together with employers to find ways to better utilise those hubs.

The business case for remote working has not been worked out in terms of the economics. There is an upfront cost, but also potential cost saving for the business in terms of office space and rates paid on that space, which are significant, and in terms of better retention and less attrition, sick days, and absenteeism.

Grow Remote submitted many companies have regional offices. For example, Liberty Insurance has a couple of offices around the country, as does the ESB. Some of the banks are using their regional premises and branches as hubs for their employees. Shopify, since before the pandemic, uses local hubs and premises, such as hotels, to bring employees together.

As Glofox provided, it has clusters of employees nationwide. Utilising remote working hubs may be a good approach and a great way of investing in different rural region and offer another opportunity for the employees to meet is always a positive thing. Hubs can bring that advantage in managing one's work in a structured way. Consideration might be given to introducing a reduced rate for people in that situation or requiring employers to pay for it if they are letting people work full-time from home.

Key issue 7: Head 18 - Codes of Practice

The purpose of the Code of Practice is that there would be a written guideline agreed in a consultative process. Section 29 of the Workplace Relations Commission Act provides that in any proceedings before a court, the Labour Court or the WRC, a Code of Practice shall be admissible in evidence, including any provision of the code which appears to the court to be relevant to any of the questions arising in the proceedings. There are issues around data protection, intellectual property, confidentiality, insurance, working time directives, and health and safety.

The Committee notes the important issue to consider a Code of Practice because if it is required to change the primary legislation, hoping to get an outcome that strikes a balance, that is a difficult job to do. It would be better if the WRC had scope to test this reasonableness and establish codes that are flexible enough for different circumstances.

The Health and Safety Authority has issued guidance relating to working from home. That plays a big part in how to balance the rights and responsibilities of employers and employees in a working from home situation.

The Committee noted Ibec's question of whether enacting legislation in this area the most effective way of is promoting remote working. Employers are currently facing an unprecedented amount of legislative and policy reforms in the employment rights space. Ibec further supported the Government intention to provide a framework for employers and employees, Ibec is of the view that best practice guidance in the form of a Code of Practice would provide a much more agile and flexible way to address this whole area, particularly in circumstances where there is no one-size-fits-all approach that will work across all sectors.

ICTU contends a Code of Practice that does not have any enforceability is of little help. It creates a set of principles that suggest what should be done to do a job right from the perspective of both worker and employer. ICTU would not be in favour of the details of this new legislation being contained in a Code of Practice as there is no support for employees about exercising the right to remote work. The requirement in the proposed Bill for employers to publish their policies. ICTU believes the Code of Practice should assist consistency in that.

In contrast, Ibec felt a Code of Practice would be more useful to address some of the issues concerning the proposed legislation. A Code of Practice could provide more flexibility in dealing with the Bill. A statutory Code of Practice would have significant standing. There are a number of statutory Codes of Practice that have significant standing within our employment rights framework. It can be linked to legislation, in that failure to comply with the Code of Practice could be relevant to an adjudicator's decision, which could make it an effective mechanism for dealing with some of the challenges.

Ibec submits, previous codes of practice on grievance and disciplinary investigations have been a fundamental pillar of our industrial relations and employment rights and have demonstrated how codes of practice can have a very strong impact.

Glofox submitted working with Grow Remote, they have come up with a playbook to share those best practices, whether those involve onboarding, how to manage people remotely and-or establishing a remote first culture. Both companies submitted positively on having a guide to ensure learning with other businesses.

The Department envisage the Code of Practice providing a standard template similar to existing codes of practice whereby it would almost be a template for formulating an organisational policy. They envisage that it would cover areas such as identifying roles that would not be suitable for remote work and looking at the nature of work and the internal appeals mechanism. It would in general establish best practice with handling requests, submission handling and return of a decision.

Key issue 8: Head 6 - Six months service

The Committee expressed concerns about the six-month requirement. Head 6 deals with employees having to wait 26 weeks when they start before they can even ask to work remotely. The Committee is concerned about where the right balance is on a six-month requirement for both the employee and employer. The Committee heard from stakeholders on all points of view.

The six-month requirement will create a barrier to access fully remote working hubs before a request can be made to allow for a relationship to be built up between the employer and the employee can be an unintended negative impact for those living in rural areas who would like to remote work from the beginning in a full-time capacity. The concern is further complicated by the achievement of employees in overcoming challenges in the last two years of the Covid-19 pandemic to be onboarded, trained, and supported from the start due to the exceptional health issues at the time.

The Department noted in the public consultation employers that had been facilitating remote workers from the start of employment. They mentioned that it was an onboarding process and that the initial six-month period was very difficult to get full handle on in a fully remote environment. It certainly was something that stuck out and it was repeated by Ibec and individual employers, and even some employees in the consultation.

The Department clarified the process taken to decide on six months. Various pieces of legislation have such provisions necessitating the serving of a certain time. This certain time to be served in the context of eligibility for rights, including in the cases of parental leave, carer's leave, and unfair dismissal, for example. The Department stated it was happy to take on the views of the Committee, if the Committee feel this is an unfair length of time.

Under the proposed legislation as it stands, an employee must have worked for an employer for six months before he or she can request a right to work remotely. Employers then have three months to consider the request and can demand more elements or meetings to discuss the request further, it would be close to a year before an employee has an answer. Employees who want to appeal the matter to the WRC could be waiting for up to a further year.

ICTU supports a reduction in the number of weeks from six months to 13 weeks. Under the Minimum Notice and Terms of Employment Act, which provides that someone must give 13 weeks in terms of their notice and so on to an employer.

ICTU further notes reasons relied upon by the employers to refuse a request must be justified on objective grounds that relate to the real needs of the business and are appropriate and proportionate having regard to all the circumstances of the business and the employee.

Ibec noted, it does not believe six months service to be an unreasonable amount of time to be inducted and learn to adapt in a new role, with introductions to colleagues, culture, and learnings. The support of three months to reply to a request allows for employers in smaller companies to balance the organisational needs such as other leave requests.

Ibec noted further, the 26-week waiting period is typically there and it is protective for lots of employers, it is not to say that an organisation could not accept a request earlier or that it could not reflect on a person's particular circumstances.

In contrast, Glofox and Grow Remote questioned the need for Head 6 of the General Scheme. This eligibility criterion is unnecessary in their view and urge the Committee to recommend the removal of this requirement from the draft Bill. By imposing a six-month eligibility criterion, the legislation restricts one of the key benefits of remote work, the removal of location as a barrier to employment.

When new hires must be in the office for the first six months of their tenure with a company, they will have no option but to live within commuting distance of the office. This requirement serves to reinforce a common misconception about remote working, that is, that it is not possible to effectively onboard and ramp up a new hire remotely.

Remote-first companies such as Glofox have proven that it is entirely possible to onboard a new hire remotely and for new employees to feel engaged and connected from day one without any need to default to the office setting. Grow Remote would like to see the eligibility criteria removed in a practical level.

The proposed law confines the right to request remote work to workers employed on a contract of employment as defined in the Terms of Employment Information Act 1994. These employees must have worked for the employer for at least six months continuous. The employee must also have not submitted a request in the previous 12 months.

In their submission, ICTU recommended take the definition of a contract of employment from the National Minimum Wage Act 2000 or the Payment of Wages Act 1991. This will extend the right to request to workers on atypical working arrangements, such as agency workers and temps. Secondly, take the sum of those contracts into account when calculating the length of service.

Key issue 9: Head 7 and submitting another request

The Committee noted the definition of "remote work" states it is an umbrella term and that the concept of flexible work is part and parcel of the ability to work remotely. In this head, it queried the reasoning behind a 12-month gap between the submission of a request to an employer and subsequent submission of another request.

The Committee heard that under Head 6 and the response time of 12 weeks may unnecessarily delay a request outcome or any appeal and may need to be revisited. The Committee further noted the widespread agreement that the Bill in its current format was weighted too heavily in favour of employers.

The Department noted the difficulty that arises in drafting legislation to cover all scenarios that may occur in the workplace as in some circumstances there is not necessarily a need for the State to intervene in such specific cases and to legislate for any kind of temporary or emergency arrangement to be put in place.

Ibec submitted the 12-month period is also reasonable in circumstances where nothing else has changed. As Ibec understands, an employee could not regularly submit requests to seek a right to remote working where the employer would then be obligated to undertake a formal process and write up a business case on every occasion. In larger and mid-size workplaces that could become unfeasible and would become contentious because if nothing has changed, the likelihood is the employer will continue to refuse the request.

In New Zealand, the provision is that an employer may refuse a request only if that employer determines it cannot be accommodated on one or more grounds, as specified in the legislation. It is the same with the UK legislation, which sets out the specific business grounds for refusal. The legislative provisions in those jurisdictions are much tighter than what is proposed in this Bill, both in terms of the language used and the specified reasons for refusal. The grounds for refusal should be reasonable and demonstratable.

The Department responded they are attempting to weigh up the balance between, making it easier for people to request remote work and facilitate remote working where possible, while also, being mindful of business needs for employers and rights employers have around ensuring their business can continue.

ICTU recommended that the draft Bill recognises the potential for a self-assessment requirement to be unduly onerous on the employee and effectively act as a barrier to exercising their entitlement to request remote working, and that responsibility ultimately lies with the employer for health and safety and data protection. The WRC Code of Practice on remote working should include a checklist or an initial risk assessment form for the employee or hub management to complete of the proposed remote working location. Where an employer seeks further information from the employee a time-limit for a response should be specified to avoid a situation where the employee who does not respond immediately could be deemed to have withdrawn the request.

Ibec noted with approval the provision in Head 8(3) for employers to seek further information from employees other than that listed in Head 8(1) and to meet with employees to discuss requests. Ibec contend, it is crucial that this draft legislation does not become overly prescriptive in respect of the management of requests for remote working. Employers across sectors are currently engaging closely with employees with respect to requests for remote and flexible working and they must be given the space and discretion to continue to do this in a productive and amicable manner.

ICTU recommend that a decision be returned to the employee within 4 weeks, not 12 weeks. Already under the Parental Leave Act the employer is required to respond to a request for flexible working arrangements within 4 weeks. Before turning down a request, the employer should be required to set up a meeting with the worker and their representative within 2 weeks of receiving the request to discuss options and look for an arrangement that will work for everyone. A final decision in writing with explanation should be communicated to the worker within 2 weeks of the meeting. Therefore, the whole process would take a maximum of 4 weeks.

Ibec accept the timeframe envisaged in the draft Bill for the processing of remote working requests. It will be possible for many employers to process requests for

remote working in a shorter timeframe than that allowed for in the draft Bill. However, it is important that the draft Bill provides the time required where employers must carry out risk evaluations and prepare risk prevention plans with regards to remote working locations or are required to consider other more complex requests.

ICTU believes it is important to recognise that the circumstances of either the employee or the employer may change. ICTU supports a restriction period for submitting a new request should therefore be 13 weeks rather than 12 months.

Key Issue 10: Costs of beginning to work from home

For many employers, businesses, companies, and workers, this is very new and very challenging. The shift to remote work has been quite a costly exercise for a lot of companies. The larger multinationals have been able to pivot more easily because their infrastructure and technology was set up to work remotely before the pandemic. They are international businesses and are used to working with distributed teams. It is the small to medium-sized companies in the main that have really struggled with remote working.

Ibec noted in its submission the costs that arise when setting an employee or business up for a remote or hybrid model. Ibec are keen for Government to take account of the cumulative cost and burden of administration for employers about recent legislation. For some employers, the cost implications of granting a remote working request may be prohibitive. This is particularly the case given the general expectation on employers to provide whatever equipment they deem reasonable for employees working remotely. Facilitating remote work may impose a disproportionate cost burden on some employers that they will simply not be able to absorb.

Grow Remote submitted companies are being asked to make the transition to remote working, however, are also expecting them to undertake a significant, costly, and time-consuming transformation project. Grow Remote believes better funding supports and nationwide awareness campaigns are required to support this.

Grow Remote believes to support these businesses, Grow Remote would like to see a local enterprise office, LEO, fund or grant system set up like what has been provided in the past for digital readiness for companies. The cost is an up-front cost so in the longer term there will be a cost saving for businesses if they make the move to remote in terms of being able to reduce their real estate footprint and other efficiencies that may be gained through remote working.

Open to change

In their second appearance, the Department submitted in their opening statement that the Tánaiste and the Department have publicly committed to ensuring that this

legislation is as clear and balanced as possible, to positively assist both workers and employers to adopt remote working practices.

The Department's intention of this Bill, is to act as a floor-level protection to ensure that all workers, be they full time, part time or on fixed-term contracts, have the legal right to formally request remote or hybrid working and for their employer to be obliged to consider that request and respond to it.

The Department submitted, it is not the intention of the draft legislation to negatively impact on employers' ability to attract and retain talent in a competitive jobs market, nor to undermine existing remote working arrangements that may offer more favourable terms overall. Government wants all workers to have the right to request remote work and not just certain categories of worker.

In their second submission, the Department stated it is looking at strengthening the redress provisions and the Right of Appeal as well as the reduction in the grounds for refusal. In addition, the Department are considering a reduction of the enumerated grounds for refusal, considering inputs on areas including qualification periods, flexibility and impacts on SME's.

In putting in place a framework to allow for a right to request remote work, The Department must balance the various interests and views, including those of businesses, business owners, employers, employees, and trade unions.

The Committee has heard some quite divergent views as to what has been proposed. The Department aims to review those views and to try to find a way that advances the overall agenda to achieve the objectives, which the Department agree are good ones and important to get to, but to do so in a way that does not infringe the rights and responsibilities of the various interests. One of those is business owners' constitutional rights in respect of their businesses.

APPENDIX 1- Membership of the Joint Committee

Deputies

Maurice Quinlivan (SF)	Cathairleach
Richard Bruton (FG)	
Francis Noel Duffy (GP)	
Joe Flaherty (FF)	
Paul Murphy (S-PBP)	
James O'Connor (FF)	
Louise O'Reilly (SF)	
Matt Shanahan (Ind)	
David Stanton (FG)	

Senators

Garret Ahearn (FG)
Ollie Crowe (FF)
Róisín Garvey (GP)
Paul Gavan (SF)
Marie Sherlock (Lab)

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 8 September 2020.
2. Deputy Maurice Quinlivan was appointed as Chair on 8 September 2020.
3. Senators appointed to the Committee by order of the Seanad on 25 September 2020.
4. Deputy James 'O Connor replaced Deputy Niamh Smyth on 26 November 2020.

APPENDIX 2-Terms of Reference of The Joint Committee

a) Scope and Context of Activities of Committees (*derived from Standing Orders – DSO 84, SSO 70*)

- 1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
- 2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;
- 3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;
- 4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (i) a member of the Government or a Minister of State, or
- (ii) the principal officeholder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- 5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

b) Functions of Departmental Committees (*derived from Standing Orders – DSO 84A and SSO 70A*)

- (1) The Select Committee shall consider and report to the Dáil on-

- (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
- (b) European Union matters within the remit of the relevant Department or Departments.

- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

- (a) Bills,

- (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187
 - (c) Estimates for Public Services, and
 - (d) other matters as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency, and effectiveness in the use of public moneys, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:
- (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by The Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or
Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and

- (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
 - (a) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other members of the European Parliament.
- (8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Appendix 3- Reference links

- **The Draft General Scheme**

<https://www.enterprise.gov.ie/en/Legislation/Legislation-Files/Draft-Scheme-of-the-Right-to-Request-Remote-Working-Bill-2022.pdf>

- **The PLS meetings**

Meeting 1- with the Department Session 1

<https://www.oireachtas.ie/en/oireachtas-tv/video-archive/Committees/5247>

Meeting 2 – with Ibec and ICTU

<https://www.oireachtas.ie/en/oireachtas-tv/video-archive/Committees/5365>

Meeting 3 – with Glofox and Grow Remote

<https://www.oireachtas.ie/en/oireachtas-tv/video-archive/Committees/5670>

Meeting 4 - with the Department session 2

<https://www.oireachtas.ie/en/oireachtas-tv/video-archive/Committees/5830>

- **The DETE Remote Work RIA**

<https://www.enterprise.gov.ie/en/Legislation/Legislation-Files/Right-to-Request-Remote-Work-Bill-2021-RIA.pdf>

- **The DETE Remote Work Strategy**

<https://www.gov.ie/en/publication/51f84-making-remote-work-national-remote-work-strategy/>

- **The DETE International Review**

<https://www.enterprise.gov.ie/en/Publications/Publication-files/Right-to-Request-Remote-Work-International-Review.pdf>

- **HSA guidance on working from home**

https://www.hsa.ie/eng/topics/remote_working/homeworking_guidance_9mar21_v8.pdf

- **The DETE Submissions report**

<https://www.enterprise.gov.ie/en/Publications/Publication-files/Submissions-Report-Right-to-Request-Remote-Working.pdf>

- **An Evaluation of the Impacts of Remote Working**

<https://www.gov.ie/en/publication/13c38-an-evaluation-of-the-impacts-of-remote-working/>

- **DETE guidance for working remotely**

<https://enterprise.gov.ie/en/What-We-Do/Workplace-and-Skills/Remote-Working/Guidance-for-working-remotely.html>

- **Remote Working Checklist for Employers**

<https://enterprise.gov.ie/en/Publications/Remote-Working-Checklist-for-Employers.html>

Houses of the Oireachtas

Leinster House

Kildare Street

Dublin 2

Do2 XR2o

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Connect with us



Download our App

