



Submission to the Workplace Relations Commission on a Right to Disconnect Code of Practice

January 2021

Introduction

Dublin Chamber is the representative body for businesses in the Greater Dublin Area and has long been active in advocating for increased Government guidelines and policies in relation to the changing world of work, remote & flexible working, and, in advancing with the direction of the European Commission on such matters. Dublin Chamber welcomes the opportunity to make this submission to the Workplace Relations Commission (WRC) in response to its public consultation on a Code of Practice for the Right to Disconnect.

In March 2020 Dublin Chamber launched its Smarter Working Guide, a toolkit document to aid businesses in implementing remote and flexible working practices. This guide highlighted the possibility of the 'Right to Disconnect' as a trend and something to be aware of, and encouraged employers to demonstrate consideration in their contacts with employees outside of traditional working hours.¹ Dublin Chamber broadly supports the principle of the Right to Disconnect and the promotion of wellbeing and work-life balance for the labour force generally. The Smarter Working Guide also details the multiple ways in which flexible working can be implemented as different types of flexibility from core working hours or staggered working hours, to compressed working, or focus on goals over hours worked are among the options. Different flexible working practices will be more suitable for different sectors, organisations, and employees, thus indicating that it would be difficult to introduce any strict Right to Disconnect codes of practice across the board.

The necessary public health measures that were introduced to combat the Covid-19 pandemic meant that working from home became widespread across businesses overnight at the same time as greater flexibility was needed for employees to balance caring duties. This acceleration has resulted in a wider conversation around flexible and remote work and a general consensus that flexible and remote working can be beneficial across society. This has been recognised in the Programme for Government and in the launch of the National Remote Work Strategy, and by the business community. Therefore any new rules around the Right to Disconnect should work in support of flexible and remote working. In Dublin Chamber submissions to Government, we have called for greater clarity and guidelines for employers in a number of areas so as to better implement remote and flexible working to the

¹ Dublin Chamber Smarter Working Guide, <https://www.dublinchamber.ie/getattachment/Business-Agenda/Smarter-Working-Guide/Dublin-Chamber-Smarter-Working-Guide.pdf?lang=en-IE>

benefit of businesses and employees.² While the addition of the Department of Enterprise, Trade and Employment webpage to advise and give the appropriate signposting to employers on working remotely is positive, there remains some areas where additional clarity and consideration for the changing nature of work would be welcome, this includes best practice around communications with employees in a more flexible work environment.³

Further to this, Dublin Chamber surveying shows that approximately a third of businesses do not have enough information on what a Right to Disconnect might mean in the Irish context to be able to assess if it is necessary and to gain their support for its implementation.⁴ There is a clear need for more information and a more detailed consultation on what the WRC proposes for inclusion in a Code of Practice on the Right to Disconnect and what it may mean for any review or amendment to the Organisation of Working Time Act (1997) in order to provide a more detailed set of recommendations.

International Context

While the Right to Disconnect conversation has taken place across the EU in recent years, there is a limited number of countries that have completed the process of introducing the legislation. However, non binding legislation stipulating that EU countries must ensure employees have the right to disconnect effectively was passed in a December 2020 vote in the European Parliament.⁵ With the next steps for the European Commission being to pursue passing a directive covering the Right to Disconnect, it is prudent for the WRC to provide guidance in this area and Dublin Chamber is broadly supportive of examining its suitable application in the Irish context.

France implemented Right to Disconnect legislation in 2017 and Spain began its implementation in 2019. In the case of both countries, the Right to Disconnect was established in a package of legislation relating to the workplace. In these cases, the context for the introduction of a Right to Disconnect was somewhat different to Ireland where much of the general right to disconnect is covered by existing legislation; mostly this is through the Organisation of Working Time Act (1997).

The high profile EU Directive on Work Life Balance came into effect in August 2019 and pushes the agenda on flexibility. In light of this high level directive and overall policy direction for the EU, it is clear that the direction of Europe is towards supporting flexibility and that this should be noted when drafting the proposed Code of Practice.

² Dublin Chamber Submission to DBEI on Remote Working August 2020
<https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber-Submission-on-Remote-Working-Consultation-to-the-Department-of-Business.pdf>

³ DETE Guidance for Remote Working <https://enterprise.gov.ie/en/What-We-Do/Workplace-and-Skills/Remote-Working/#healthandsafety>

⁴ Dublin Chamber Business Outlook Survey Q4 2020

⁵ European Parliament News <https://www.europarl.europa.eu/news/en/press-room/20201126IPR92512/meps-call-for-an-eu-wide-right-to-disconnect>

Organisation of Working Time Act (1997) and Flexible & Remote Working

Due to the necessary public health measures to combat the Covid-19 pandemic, Ireland has been accelerated toward the future of the world of work, and public discourse around flexible and remote working and on work life balance has come to the fore. While in principle the Right to Disconnect is positive as a means of protecting and encouraging work life balance, it may prove difficult to apply whilst also supporting flexible working. Flexible working is, by definition, flexible, and different businesses will have or will introduce a set of their own policies in this regard in a way that best suits their staff and the specific operations of their business. Dublin Chamber surveying shows that 60% of businesses are either introducing enhanced flexible and remote practices as a result of the Covid-19 experience or are planning to, and a further 22% already had policies in place. These figures indicate that there is very strong intention among the business community to maintain and strengthen the benefits seen in remote and flexible working post Covid-19. Furthermore, focus groups held with Dublin Chamber members with large work forces indicate that the remote working policies that they are likely to introduce as the country emerges from the Covid-19 pandemic will be a hybrid of working in the office space for 60-80% of the work week and remote working for the remainder of the week. The choice of such a hybrid is being based both on employee preference and a requirement to support teamwork, collaboration, and mental wellbeing.

In light of this, we urge that the WRC ensure that a Right to Disconnect Code of Practice remain broad in nature, as over-regulation could have the potential to negate the positive work-life balance impacts that flexible working can provide.

Currently, it can be argued that the Organisation of Working Time Act (1997) provides protection for the employee to disconnect from work through rest periods and work breaks. Dublin Chamber has argued in a number of submissions to Government in relation to remote working that the Organisation of Working Time Act (1997) needs to be modernised and clarified in the context of today's working environment where the traditional 9am-5pm working day will no longer be the norm or the preference for many; therefore requiring a strict cut off point to disconnect is not appropriate.⁶

For example, many with caring responsibilities can benefit from flexible working practices, whereby they move some working hours to later in the evening to suit a child's timetable and to work from home. However, if an employer wishes to stay strictly in adherence to the Organisation of Working Time Act (1997), there may be concern around ability to monitor adequate rest breaks and work breaks in a flexible and remote working environment. This may be even moreso the case for an SME that will have less of a HR capacity.

Workplace wellbeing is increasingly a concern for many employers as there is recognition that 'Digital Burnout' is something to be aware of. A number of businesses are already engaging with their employees to ensure that work-life boundaries are in place. In fact,

⁶ Dublin Chamber Position Paper on the Impact of Covid-19 on Female Labour Participation (November 2020) https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber_Covid-Impact-on-Female-Labour-Participation_October-2020_FINAL.pdf

Dublin Chamber Submission to Government in response to the Public Consultation on Remote Working (August 2020) <https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber-Submission-on-Remote-Working-Consultation-to-the-Department-of-Business.pdf>

surveying shows that businesses recognise that isolation is the biggest concern around remote working, while inability to switch off from work is in the top three concerns.⁷

Surveying shows that just under half of Dublin Chamber members would support the introduction of Right to Disconnect legislation, less than a quarter believe that there is already sufficient protections in place, and, as mentioned above, a third do not know and need further information.⁸

Dublin Chamber recommends that Government and the WRC review the Organisation of Working Time Act (1997) as a whole with the view to updating it to reflect the modern realities of both business requirements and of lifestyle and caring duties. While we acknowledge that the Organisation of Working Time Act (1997) must fulfil Irish obligations under the EU's Working Time Directive (2003/88/EC), aspects of recording of working time can be modernised and the Act can be reviewed in such a way as to support employers and employees to implement remote and flexible working.

Further to the introduction of a Code of Practice, we recommend that Government engage with the business community to highlight the importance of establishing a working culture that does not put undue pressure on employees to engage with emails and work messages outside of agreed hours. Over-regulation could have the potential to negate the positive work-life balance impacts that flexible working can provide.

We recommend that to address the possibility of unreasonable or unlawful expectations for employees to remain engaged in work-related communications outside of regular working hours, the Government should provide a set of guidelines for workplace communications and engage in a campaign with the business community to establish and enforce best practice norms that are suitable for a more digitised economy and way of working. This should be done in conjunction with a broad and unrestrictive Code of Practice from the WRC.

Dublin Chamber argues that a Code of Practice on the Right to Disconnect should relate directly back to, and support guidelines from Government on remote and flexible working. Both the guidelines and the Code of Practice need to support remote and flexible working, not overly regulate it beyond the point of practicable application.

Dublin Chamber recommends that any introduction of a Code of Practice on the Right to Disconnect be created in the context of a changing world of work, where remote and flexible working practices contribute to the work-life balance of the employee, therefore a Right to Disconnect Code of Practice should not be overly limiting in relation to when and how communications are made. A Code of Practice should give broad guidelines on how it can enable employees to disconnect when they are finished their work day, so for example stating that employees are not required to reply to emails after or before a certain time in the day that may serve as core working hours, but that employees that are working flexible hours can send and look at emails to suit their flexible hours as agreed.

Dublin Chamber argues that the Code of Practice should resemble a broad set of guidelines on communications that includes varying options to suit different sectors and scales of

⁷ Dublin Chamber Business Outlook Survey Q4 2020

⁸ Dublin Chamber Business Outlook Survey Q4 2020

business. Any Code of Practice must make provisions across a scale to suit both a large multinational and an SME.

International Business and FDI

Ireland is home to many global businesses and Dublin is an attractive hub for FDI. A significant number of international household names have made Dublin a HQ office citing its location and its workforce as contributing factors to choosing the location as a base from which to do business internationally.

Further to this, many organisations, including indigenous Irish businesses, have worked hard to internationalise. Dublin Chamber works with businesses as a partner in the European Commission's Enterprise Europe Network to further this agenda.

In order to do business internationally, there needs to be scope to connect while accommodating different timezones. This may mean for some employees that there will be a requirement for communications outside of traditional working hours. In light of this, any Code of Practice needs to make provision for the global nature of today's business environment whereby an employer can come to an agreement with an employee around this need to connect. Provisions for appropriate agreement between the employer and employee should be included, whether this be in terms of time 'given back' to the employee as time in lieu through flexible work practices, or otherwise.

Dublin needs to remain as an attractive home to FDI, for this to remain the case, the international aspect of business needs to be accounted for in any Code of Practice for the Right to Disconnect.

Conclusion & Recommendations

Dublin Chamber broadly supports the principle of the Right to Disconnect, recognising that 'Digital Burnout' must be prevented and that employee wellbeing must be protected in an increasingly digitised economy and world of work.

We welcome the move to develop a Code of Practice for the Right to Disconnect. However, considering the feedback from the business community in relation to the requirement for further information on what a Right to Disconnect might mean in order to support it, and the feedback that many believe enough cover is afforded through existing legislation, we argue that further consultation is required on such a Code when further details on how it may be drafted and applied can be made available. In particular, the Code of Practice needs to work cohesively with the newly launched *Making Remote Work - National Remote Working Strategy*.⁹

Furthermore, Dublin Chamber recommends that a full review of the relevance of the Organisation of Working Time Act (1997) be carried out to ensure that legislation is suitable to support remote and flexible working practices and that employer obligations around recording of working time are reasonably practicable in a modern working environment.

⁹ <https://www.gov.ie/en/publication/51f84-making-remote-work-national-remote-work-strategy/>

Finally, there should be an evaluation of the cover that the Act already provides for the Right to Disconnect.

Ireland is home to many international businesses, in order for it to remain as an attractive FDI destination the functionality of business played out on a global scale must be maintained. Dublin Chamber recommends that provision is made for a 'need to connect' with other time zones.

Lastly, we caution that this Code of Practice must not be overly stringent so that it does not constrict the positive move from the business community toward flexible working, as well as remote working, and the contribution this plays to work life balance, and, we urge that any Code of Practice is created in such a way as to be practicable for any size of organisation.