



Submission to the Department for Enterprise, Trade, and Employment in response to its Public Consultation on the Right to Request

May 2021

Introduction

Dublin Chamber is the largest business membership organisation representing the business community of the Greater Dublin Area and its membership spans the spectrum of sectors and size, from SME to MNC.

Dublin Chamber has long worked in support of flexible and remote working practices, having launched its *Smarter Working Guide*, a guide for businesses on how to implement flexible and remote working, in April 2020.

Over the past year and more Dublin Chamber has been actively advocating for clarity in relation to remote working guidance for businesses and for national policy goals to support flexible working as a more comprehensive and inclusive strategy for the future of work, remote working being one significant element of flexible working practices. It is essential that stakeholders and policymakers continue to understand remote working as being an appropriate term for those that remote work a couple of days a week, as well as in that minority of cases where people or a business operate in a 100% remote working context. This is essential because it is clear from Dublin Chamber data collection that hybrid working whereby 60-80% of time is spent in the office with the remainder as an option for remote working is the most likely for most firms.

The Chamber has made submissions in response to the public consultation on Remote Working held in August 2020 as well as to the public consultation on the Right to Disconnect, and has been actively gathering qualitative and quantitative data on business sentiment in relation to remote working through surveying and focus group sessions.¹

Dublin Chamber welcomes the opportunity to make this submission to the Department of Enterprise, Trade, and Employment in response to the proposed legislation on a Right to Request remote working and notes that a number of key concerns in relation to the

¹ Dublin Chamber Submission to DBEI on Remote Working
<https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber-Submission-on-Remote-Working-Consultation-to-the-Department-of-Business.pdf>
Dublin Chamber Smarter Working Guide <https://www.dublinchamber.ie/getattachment/Business-Agenda/Smarter-Working-Guide/Dublin-Chamber-Smarter-Working-Guide.pdf?lang=en-IE>
Dublin Chamber Qualitative and Quantitative Flexible and Remote Working Data
https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber_Remote-and-Flexible-Working_Quantitative-and-Qualitative-Data_April-2021_FINAL.pdf
Submission to WRC on the Right to Disconnect
https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/DubCham_Right-to-Disconnect-Submission-to-WRC_January-2021_FINAL.pdf

employer's right to reject a request to remote work and in relation to the value of onsite office work are addressed in the consultation paper. In the following, Dublin Chamber responds to each of the questions outlined in the Right to Request consultation paper and provides additional comments and feedback to conclude.

Question 1: Timeframe for employer to respond

a) *What timeframe for response should apply to employers on receipt of an employee's complete request to work remotely;*

- ***1 month***
- ***2 months***
- ***other?***

Eight weeks must be allowed for an employer to process a request to work remotely, with the provision that employers can make a faster decision if they see fit, for example in reply to an urgent employee request.

Also, an employer must be given the flexibility of requiring a substantial lead in time after agreeing to allow remote working before the employee begins their remote working arrangement.

This longer timeframe will ensure that an employer does not reject a request to work remotely due to time pressure. In this way the longer time to allow for a response to a request can work to the advantage and best outcome for both employer and employee as a rushed response is avoided.

Question 2: Length of service before having entitlement

a) *What minimum length of service is appropriate for an employee to have served in the employment of the employer before having an entitlement to make a request for remote work?*

The employee must have passed probation and 12 months service, at a minimum. Employers should be able to retain the right to allow remote working before probation is passed or before this 12 month timeframe if this is what is deemed as appropriate by the employer.

For many businesses, the option to work remotely and/or flexibly will be an aspect of strategy for attraction and retention of key talent. For these reasons it should be made clear that it is allowable for an employer to offer remote working at any time, including during discussions of salary and working conditions.

b) *After what duration can another request be submitted if the first request was declined?*

An employee must wait at least 12 months before a new request is made unless the employer has agreed to review the decision to allow remote working at an earlier interval.

Question 3: Risk assessment of a proposed remote workplace

As an employer, how confident would you currently be in carrying out a risk assessment of an employee's proposed remote workplace? What, if any, additional information, guidance or assistance might you require?

Feedback from approximately 200 Dublin Chamber member companies gathered through focus group sessions in early 2021 indicates that there is a widespread concern in relation to conducting risk assessments for the home remote work environment. These concerns are chiefly around cost, liability, and employees' right to privacy. Currently, employers are operating without clarity as to what a sufficient risk assessment entails and the scope of the remote environment that this assessment must cover.

The cost and capacity implications in relation to risk assessments for SMEs are considerable. Many SMEs lack the HR and health and safety capabilities internally to handle onerous risk assessment processes and cannot afford to outsource. Furthermore, SME Chamber members have voiced concern around what level of risk assessment will be deemed acceptable for insurers, and, if allowing remote work will increase insurance costs. If a business has concerns around cost of appropriate tech and remote work set up, it may be advisable in that scenario that they do not allow remote working at all as to allow it may be of risk to both the employee and the business.

While larger companies have greater HR capabilities, the concerns around the cost of carrying out risk assessments, what is deemed as up to standard in relation to health and safety in a home working environment, and increased insurance costs mirror those of SMEs. This cost consideration for larger companies has the potential to impact competitiveness and the attractiveness of Ireland as an FDI location.

The *Guidance on Working from Home for Employers and Employees* issued by the Health and Safety Authority in March 2021 is very welcome. However there needs to be greater consideration of how businesses are to conduct risk assessments, the cost associated with these assessments, and the role of the employee in relation to the standard and scope of risk assessments. There also needs to be a strong level of employee responsibility for their own health and safety and this needs to be communicated through legislation and by Government.

Another aspect to consider in the requirement and scope of a home remote work risk assessment is the right to privacy of the employee. Employers wish to respect an employee's home and right to a private home life and will not want to make judgements on an employee's home environment or dictate that environment. Furthermore, the physical scope of how much of the employees' home environment needs to be assessed must be established.

Additionally, provision for risk assessment for remote work taking place outside of the employee's home or dedicated remote work environment must be considered, for example in a remote work co-working space or in a public location such as a library or coffee shop.

Risk assessment templates, checklists, and indicators as to what is deemed standard for a risk assessment should be provided by Government and newly launched with a targeted campaign to employers with strong lead in time ahead of the Right to Request legislation.

This risk assessment must include full Health and Safety consideration. The templates and checklists included in the Health and Safety Authority *Guidance on Working from Home for Employers and Employees* while useful do not adequately take note of the complexities and nuances of many employees' living situations. For example, those who live in shared accommodation or in a home without space for a dedicated work desk and ergonomic chair.

Similarly, it should take account of situations where remote working takes place on just one or two days a week, where it may not seem appropriate to have a full office set up in the home.

Provision for such instances must be considered to avoid the scenario whereby an employee's request to remote work is denied because they cannot show or provide that they have the dedicated space for a full desk and office chair set up. Without providing for these cases in risk assessment and health and safety guidance, there may be unintended consequences of a two- tiered world of work whereby those with more space and those who can afford more space are able to work remotely and have improved work life balance, while those who cannot afford or access more space cannot avail of remote working. In some cases, an employer's reasoning for allowing limited remote working may be that the proposed remote work environment is not suitable for full time or majority remote working.

Furthermore, allowances that enable real flexibility must be considered whereby an employer may allow ad-hoc afternoons or days when working from home or from an alternative location is permitted. It would be counterproductive if new legislation were to impede progress being made in the workplace around employers and employees working together to enable greater flexibility and work-life balance in organisations.

Government led consultation with businesses should be carried out around risk assessment criteria and what can be reasonably expected from all employers in relation to equipment, both in terms of what an employee can facilitate in their remote work set up, and in relation to the type of risk assessment that is required of the employer and by insurers. For example, is an employee self- assessment with a checklist suitable; or does a supervisor need to observe the assessment via video call; or does a health and safety professional need to make the assessment in person? Can an employer come to an agreement with the employee to agree to remote working conditions if the employee agrees to doing their own risk assessment with acceptance of health and safety liability? Each of these options will vary in cost and in time commitment, and in ability for SMEs. There must be a set standard for risk assessment that takes account of the nuances of an employee's home environment and space, SME HR capability, and cost implications. These criteria need to provide a level of confirmation that the employer is suitably covering their liability around employee health and safety.

Dublin Chamber recommends that an employer should be responsible to make a risk assessment to ensure a safe work environment of an employee's workstation only.

Question 4: Remote work policy requirement

Should there be a provision inserted in the legislation that employers must have a policy on remote work which can be inspected by employees and the Workplace Relations Commission?

(The policy could set out details such as the type of work that may be suitable for consideration of remote work and equally work that is not appropriate or suitable for

remote work. In some companies the potential for remote work may be zero or extremely limited.)

This type of provision is already in use. For example, Section 20 of the Safety, Health and Welfare at Work Act 2005 requires employers to prepare, or cause to be prepared, a written “safety statement” and a copy of a safety statement, or relevant extract of it, shall be kept available for inspection.

If a requirement for a remote working policy is put in place, support must be afforded to the business community to create appropriate policies and guidance must be given as to what must be included, this would be best achieved through a Code of Practice. While many larger organisations are innovative and have well considered policies in relation to flexible and remote working already in place, many businesses do not have the capability, knowledge, or resources to put one in place. For the most part, this is the case for SMEs. Considering the extraordinarily difficult economic pressure that many businesses are under due to the impact of Covid-19, significant resourcing and templates will need to be afforded to SMEs in particular to establish such policies. These templates need to be suitable for the hybrid working week of some days onsite/in office with a possible number of days working remotely from home. The templates and Code of Practice should take note of the differing home working environments and spaces that will be available to employees.

Additionally, HR and management upskilling to coordinate a staff that avails of flexible and remote working should be made available to businesses as this is an entirely new way of working that provides a new set of challenges and skills requirements. Surveying from Q1 2021 shows that 1 in 4 businesses have found that they require upskilling and that the Covid-19 crisis has brought this need to light. As remote working is now a national strategy, it is appropriate that the associated skills gap is addressed without further expense to the employer.²

Also, a lead in time for businesses to establish such a policy should be built in ahead of any introduction of a Right to Request being established in legislation. The guidance from Government on setting such a policy should include the direction that an employer can and should include a stipulation that remote working agreements can be revoked by the employer and that the employer can reject a request to work remotely for a variety of reasons.

Dublin Chamber welcomes the caveat in the Right to Request Consultation Paper that for some businesses and forms of work the potential for remote work will be limited or zero, and that in cases where a zero remote work stipulation is relevant this can be outlined in/as the business’s official remote work policy.

Question 5: Reasonable grounds for refusal

a) *What are reasonable grounds for refusing a remote working request? Please list.*

- Operational requirements
- Cost implications
- Company culture (creation and maintenance)

² Dublin Chamber Business Outlook Q1 2021

https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dub-Chamber_survey-report_Q1_v3_3.pdf

- Need for onsite teamwork and collaboration
- Client and internal meetings
- Training and supervision
- Connectivity and technical issues, for example unstable broadband
- Need for business to have onsite presence covered for full working week
- An employee's ability to ensure data privacy in relation to the employer's work matter and client/customer information, and general GDPR compliance.
- Following a risk assessment, the home environment is not conducive to home working
- Staff refusal to complete training or agree to formal working arrangements
- It is important to note that for some roles, parts of some roles, and some industries, remote working in its entirety is not applicable and this should be reasonable grounds for refusal.

b) *Is it acceptable that an employer offers an alternative hybrid working pattern with a combination of remote work and onsite work, in response to any request for remote working? (For example, if an employee is requesting 50% remote working and an employer wishes to offer 20% or a lower percentage than the amount requested.)*

It should be entirely a decision to be made by the employer as to the level of remote working that they will allow their employee and the reasons for the level of remote working allowable should be similar to those reasons for why an employer can reject a request to remote work outright. Reasons for a business having in their remote work policy a ceiling as to the amount of remote work allowed should include for operational, communications, and teamworking reasons. Ensuring that an employer can respond to a request to remote work with an offer of a lower level of remote working than was requested but that is deemed appropriate to the role or the organisation is essential as this will ensure that some level of remote working is made possible for an employee instead of a total refusal of a request to remote work.

Dublin Chamber research shows that for most businesses a hybrid remote and flexible working option whereby 60-80% of time is spent in the office is the optimum. Very few employers have stated that 100% remote working for employees is possible.³

Question 6: Withdrawal of remote working

It is intended that any accepted remote working arrangement will be granted subject to ongoing review by the employer.

a) *If an employer seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?*

³ Dublin Chamber Qualitative and Quantitative Data on Remote Working April 2021
https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber_Remote-and-Flexible-Working_Quantitative-and-Qualitative-Data_April-2021_FINAL.pdf

Eight weeks' notice, or less by way of mutual agreement with the employee.

b) If an employee seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?

An employee must provide a request to change the details of an arrangement, including to withdraw from the arrangement entirely; the employer can then process this request within a similar timeframe to that for an initial request for remote working, that of eight weeks. If there is no operational requirement to consider on behalf of the employer, for example if the office desk space is readily available, it may be suitable for the employer to allow an employee to withdraw from the agreement with less notice and this can be decided at company level.

c) If an employer seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

Eight weeks' notice, or less by way of agreement with the employee.

d) If an employee seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?

An employee must provide a request to change the specific details of an arrangement; the employer can then process this request within a similar timeframe to that for an initial request for remote working, that of eight weeks..

Question 7: Provision of equipment

Should the employer bear the cost of providing all equipment for a remote working arrangement as well as covering the cost of maintenance?

[It should be noted that the employer cannot require the employee to install programmes or applications on devices owned by the employee, or to use these devices for remote services.]

If an employer is operating a fully remote working business model, they should be responsible for equipping and covering the cost of maintenance for a home or remote working set up. However, if an employee has access to an onsite work-space, the employer cannot be made fully responsible for the cost and maintenance of remote work set up.

The prospect of a duplication of cost for the remote work office and the business's physical office is a considerable concern for businesses. Dublin Chamber member feedback indicates that there is an acceptance among the business community that the ad-hoc 'kitchen table' set ups necessitated by the pandemic and resultant lockdown measures are not suitable long-term, and that more suitable environments for working from home should be enabled by employers with financial support from Government.

The concept of providing employees with a remote office set up, or indeed requiring that employees use a specific remote work set up, is nuanced, and poses numerous questions around employees' right to privacy and autonomy in the home, and in relation to employer

risk and liability. Additionally, the term 'all equipment' is vague. For example, does this include technology and office furniture? Will insurance and risk assessment criteria require a certain kind of office chair and desk? If this office furniture is required from a business's liability and insurance perspective, will an employee have the right to reject such items from their home or will rejecting this equipment entitle an employer to reject a request to work remotely? It is important that considerations are afforded to employees that live in shared accommodation and to those who do not have a 'spare bedroom' office space and still wish to work from home on a limited basis.

This duplication in cost of a home office and a central office footprint could pose a threat to Ireland as an FDI location if a significant additional cost is placed on an employer. This cost could potentially tip the scale against Ireland as an attractive location for FDI.

Considering that remote working is now supported through a national strategy and considering the good faith under which employers have operated in relation to remote work during the Covid-19 pandemic and in planning for more flexible work policies into the future, it is essential that Government provide financial support through grants or tax incentives to employees and businesses in relation to remote work equipment and infrastructure on an ongoing basis.

Question 8: Monitoring of activity

Should the employer have entitlement to monitor the activity of the employee?

[It is proposed that the employer should have entitlement to monitor only to the extent necessary to verify the compliance of labour obligations and duties.]

The Organisation of Working Time Act 1997 must be adhered to, and a level of monitoring will be required to aid the employer's adherence to the Act. While Dublin Chamber is of the view that the Organisation of Working Time Act 1997 does not reflect the realities and increasingly flexible working practices of the modern working world, in the immediate term it must be adhered to by employers, and this will require a level of monitoring of employees.

In addition to monitoring an employee for compliance with labour obligations and duties, employers should have the entitlement to monitor the activity of the employee through traditional models of time-sheets or through login to internal communications platforms if they see fit and if the level of monitoring is reasonably in line with monitoring the delivery of agreed operational goals and/or agreed KPIs, and to ensure that working hours are logged. A manager will have the same responsibility to monitor work outcomes in a hybrid remote work set up and this needs to be reflected in the employer's entitlement to monitor.

An increased and/or new level of monitoring of delivery of work goals may be required in availing of remote working. This is to the benefit of the employee and the employer to ensure that productivity and wellbeing are maintained during working hours.

Lastly, GDPR must be complied with in all scenarios, the Data Commissioner should give clear instruction as to the allowable monitoring of activities that is allowed to take place between an employer and a remote working employee.

Any other comments:

Broadly Welcome Principles

Dublin Chamber broadly welcomes the principles that will apply to a right to request remote working in Ireland as detailed in the Right to Request consultation paper, and notes that the paper references the fact that onsite office working is and will remain a necessary and positive aspect of working life for reasons relating to teamwork, communication, and innovation, in addition to operational reasons.

In particular, Dublin Chamber welcomes that the Right to Request remote work at a location outside of Ireland will not be legislated for as this could cause significant difficulty in relation to tax and could impact on FDI and talent retention.

We also welcome the stipulation that any remote working allowance is subject to ongoing review at the discretion of the employer.

Financial Costs to Businesses

Concerns in relation to the stipulation that an employer must conduct Initial Risk Evaluation and have in place a Risk Prevention Plan that applies to an employee's proposed remote workspace is of concern due to employee privacy and cost implications.

The implementation of remote working practices raises the prospect of significant financial cost for employers in relation to remote working office equipment, HR and management resourcing and risk assessment, and technology infrastructure.

In consideration of the role of remote working in national strategy, and the steps now being taken to support employees in the Right to Request, it is essential that all responsibility and cost is not placed on the employer. For example, an employee must continue to take responsibility for their own health, safety, and general welfare when working remotely, similarly to when in the office environment. Also, the full cost implications of remote working cannot be placed upon the employer and it cannot be placed fully on the employee. If the cost is fully placed with the employee, this may cause issues for SMEs in the competition for talent as many larger companies may offer financial support to employees that an SME cannot afford.

Government must review current tax allowances for home working. Currently, the amount that an employee can claim from Revenue is negligible and requires a considerable level of documentation.

Other tax relief measures need to be considered in tandem. For example, tax saver commuter allowances will need to be reviewed in consideration of a reduction from a five day to a three day weekly commute.

Additionally, employers with international staff are concerned about tax cost implications should it be the case that they have to facilitate staff living in other countries who would pre-Covid and pre-remote work have been based in Dublin.

With the introduction of a Right to Request, Government must consider financial supports afforded to employers in relation to home offices for remote working, including grants and accelerated capital allowances. Financial supports for remote work set up need to include support for:

- i. initial outlay by employers to put in place the necessary infrastructure around tech for out of office working and a full fit out for a workforce to remote work post pandemic;
- ii. an ongoing support scheme for costs of home office set up with regard to office furniture and technology, as an appropriate home office set up is important for employer liability reasons as well as for employee physical and mental wellbeing.

Flexibility and Organisation of Working Time Act 1997

The Organisation of Working Time Act 1997 needs to be reviewed and guidance around flexible working times in the context of remote working established. While Dublin Chamber notes that the Organisation of Working Time Act 1997 provides for compliance with the EU Working Time Directive, the changing world of work now renders the Act unsuitable to support national remote working, work-life balance, and FDI goals.

Additionally, while businesses broadly support the idea of the recently announced Code of Practice on the Right to Disconnect, the practice may prove difficult to monitor as many businesses are allowing increased flexibility for staff in relation to their working hours to facilitate work-life balance.

Also, Ireland, and Dublin specifically, is a hub for international business, and it is essential that the business environment remains supportive of this in relation to flexibility around working hours across different time zones and operational decision-making on behalf of the employer.

In consideration of the changes through the Right to Disconnect and Right to Request, Dublin Chamber recommends a review of the Organisation of Working Time Act (1997).

Management Skills and Employee Wellbeing

The future of work has been drastically accelerated by the experience of the Covid-19 pandemic and many businesses are in the process of altering their operations and practices to support employees to have greater flexibility and work life balance. However, this has resulted in an increased need for new HR skills and communications skills to manage a workforce that is working more flexibly, working remotely, and over online platforms. HR and management are also in the position of navigating a number of additional new legislative changes and employee rights. Additionally, due to the pandemic and the complexities of remote working and concern over employee wellbeing, additional resources to manage employee mental health and wellbeing is being found necessary by employers. These additional needs are a resource and training issue for businesses and the need will be long-term. In consideration of this, it is essential that Government provide employers with the resources to continue to act in their employees' and businesses' best interest by using the appropriate management, HR, and wellbeing practices and policies for a rapidly changing working environment.

Female Labour Market Participation

While Dublin Chamber welcomes the stipulation that a right to request remote working in Ireland must ensure the continuation of access to promotion and career opportunities to

remote working employees, there needs to be greater detail as to how this will be achieved in practice.⁴ During the Covid-19 experience, international reports indicate a disparity in home duty burden between men and women during lockdown measures and stints of home-schooling. There is concern that post pandemic women with caring duties will become unseen in remote working roles in order to attend to home duties. Female labour market participation and progression will be impacted if flexible and remote working is not promoted appropriately.

In August 2020 and in March 2021 Dublin Chamber focus groups on female labour market participation. Several concerns were vocalised by Chamber members from across the spectrum of sectors and business size around the potential for a negative impact of remote working should it be considered as an answer to childcare issues. However, participants were also broadly very supportive of the positive impacts that remote and flexible working practices can have on female labour participation and advancement should the appropriate steps be taken to ensure that these options are not solely seen as for women with caring duties. Remote working cannot be viewed as the answer to childcare and should not be supported as such in national policy development.

Focus groups also reflected the concern around female career progression and visibility. Maintaining and encouraging female labour participation and progression must include the active promotion of flexible work practices across genders and should include a similar effort in ensuring that both male and female parents are similarly encouraged and enabled to access the parental, paternity, and maternity leave to which they are entitled to foster a sense of equality. This policy approach also works in support of Ireland's obligations under the EU Directive on Work Life Balance.

Broadband Connectivity

Good broadband connectivity is an essential for remote working. Government must deliver on broadband infrastructure if a Right to Request is brought into legislation.

Communication Campaign Management

It is essential that when the Right to Request legislation is passed the expectation from employees is managed through the manner in which it is communicated by Government to the wider public. The stipulations around the employer's right to reject a request to remote work or allow only a certain level of remote working must be communicated clearly. Similarly, it must be made clear that employees must also take responsibility for their own health and wellbeing when remote working, in addition to their employer acting to ensure employee safety and wellbeing.

Lastly, remote working should be promoted and referenced in the context in which most employees and employers will apply it, that is as part of a hybrid work week whereby a number of days are spent onsite/in the office and a number of days can be availed of to work remotely. Remote working is not and should not be understood as only applicable in the sense of working remotely 100% of a work week.

⁴ Dublin Chamber Position Paper on the Impact of Covid-19 on Female Labour Participation
https://www.dublinchamber.ie/DublinChamberofCommerce/media/banners/Dublin-Chamber_Covid-Impact-on-Female-Labour-Participation_October-2020_FINAL.pdf