



Chambers Ireland’s submission to the Workplace Relations Commission’s public consultation on the Code of Practice on the Right to Request Remote Working

June 2023

About Chambers Ireland

Chambers Ireland is an all-island business organisation with a unique geographical reach. Our members are the Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

Our Network has pledged to advocate for and support the advancement of the United Nations Sustainable Development Goals (SDGs) and, in 2023, we were appointed to be an SDG Champion as part of the 2023-2024 SDG Champions Programme. Accordingly, we use the Goals as a framework to identify policy priorities and communicate our recommendations. We have a particular focus on five of the goals encompassing decent work and economic growth (SDG 8), sustainable cities and communities (SDG 11), gender equality (SDG 5), industry, innovation and infrastructure (SDG 9) and climate action (SDG 13).¹

In the context of the current consultation, remote working is directly applicable to decent work and economic growth and, for this reason, we are making a submission on this topic.

¹ The Chambers Ireland SDGs. Available at: <https://chambers.ie/sustainable-development-goals/>

Key Points

- Chambers Ireland is supportive of more flexible working practices, while recognizing that not every business is able to offer remote or hybrid working for their employees. Similarly, decisions on remote or hybrid working arrangements will differ within businesses depending on particular roles. The Code of Practice should allow such flexibility and individual interpretation across different businesses.
- The Code of the Practice from the Workplace Relations Commission is a necessary intervention to give certainty and clarity to employers on their rights and responsibilities when they receive a request for remote working from an employee.
- The appropriateness of the role for remote working is a key consideration and this will vary from role to role within a business, as well as business to business. Businesses need guidance to help define appropriateness for them.
- Where remote working would require a significant change in the operations of the business in order to facilitate such a request, it ought to be reasonable for the business to say no.
- The Code of Practice should allow for some degree of flexibility in remote working arrangements whereby an employer can request an employee's presence in the office to meet key business needs.
- Remote working could have unintended consequences of perpetuating a gender gap within businesses over time and, longer term, policies will need to be gender-proofed in order to mitigate against this.

Chambers Ireland's Perspective

Chambers Ireland welcomes the open consultative process and the broad engagement with stakeholders on the Code of Practice on the Right to Request Remote Working.

Chambers Ireland supports a more open, adaptable and inclusive employment system that encourages workforce engagement and participation across all levels of society. We welcome a move towards more flexible working practices at a time when labour shortages are a recurring and pressing issue for many of our members. With recent data showing total employment reaching record levels for the state, in excess of 2.6 million, we need to be agile and open to new ways of working.

The discussion on remote or hybrid working is not new, however, Covid-19 has accelerated the transition and, what was implemented as a necessity to ensure business continuity during national lockdowns, has now become the norm for many employers and employees. The reality is that while many businesses are open to providing remote or hybrid working opportunities for their employees, there are also many businesses struggling to make it work on a practical level and many do not necessarily have the capacity to make such allowances.

Therefore, the Code of the Practice from the Workplace Relations Commission is a necessary intervention that should help employers navigate their rights and responsibilities in respect of part 3 of the Work Life Balance and Miscellaneous Provisions Act 2023, which relates to requests for remote working arrangements.

Appropriateness of the position for remote working

The key consideration for any employer navigating a request from an employee to work remotely is the appropriateness of the role. This is difficult to define and employers will require more guidance on how to adequately assess a request from an employee. Section 21 of the Act sets out that an employer shall consider their needs, the needs of their employee and the requirements of the Code of Practice. Employers will therefore look towards the Code of

Practice for defined and robust guidance on how to make this decision across all levels of their organisation. This decision will vary from role to role within a business. For example, in a medical practice, it may be appropriate for a bookkeeper to work remotely, whereas the work of the receptionist may only be possible from the reception desk of the practice.

The decision will also vary from business to business. For example, a receptionist in a non public-facing role, may be able to redirect calls, respond to email and phone queries and manage the day-to-day administration of the business remotely, while a receptionist in a public-facing role will need to be physically present in the workplace.

The employer's resources and the operational capacity to offer remote working arrangements are key. Business needs and requirements should be central to the decision-making process and this should be made clear in the Code of Practice to ensure employers are empowered to make the right decision for their business and employees are fully aware that the decision will take a number of different factors into consideration. A clear multi-level test or checklist for assessing and defining appropriate positions for remote working would be useful for employers. It should prioritise the unique and intricate demands of running a business by focusing on minimising operational disruption and maximizing productivity.

The level of operational adaptation required

Another factor that should be reflected in the Code of Practice is the capacity of the business to offer remote working. While the point above focuses on individual roles, this point focuses on individual businesses and the resources they may have at their disposal to facilitate remote working. Allowing an employee to work remotely highlights a number of technical, health and safety, and security considerations that must be factored into any final decision. Where remote working would require a significant change in the operations of the company in order to facilitate such a request, it ought to be reasonable for the business to say no. Such considerations may include an overhaul of the business' cyber security systems, significant investment in new software and technologies to facilitate remote working, unaffordable

increases in insurance premiums, and other such issues requiring investment. Taken individually, these factors may not be insurmountable for certain employers but taken collectively, they could create unreasonable administrative, financial, or technical burdens, particularly for smaller employers.

Requirement for inbuilt flexibility to meet key business needs

Remote working approval should not preclude an employer from requiring an employee to attend the workplace in person when required in order to meet specific business needs. These needs could include attendance at training programmes, team meetings, wellbeing initiatives, group project work, performance appraisals, company conferences, or staff parties. Teamwork and collaboration are important elements in the positive functioning of any business and there may be occasions where it is deemed essential for remote employees to physically attend the workplace. This requirement may vary from business to business, but the Code of Practice should allow for such instances where appropriate notice is given and the needs of the employee are reasonably accommodated.

Seasonality of work may also impact a remote working arrangement between an employer and an employee. It could be the case that some jobs have busier periods and so remote working may only be appropriate some of the time. In these cases, there is a need for flexibility from the employee, as well as the employer. The Code of Practice should reflect this.

Gender-proofed policy

In the most recent country report for Ireland, published by the European Commission, the number of women participating in the workforce reached a record level of 72% during Covid-19. Increased workplace flexibility could be a significant driver in this growth. However, there is some general concern that a split workforce of both remote and in-person employees could result in some employees being treated more favourably over others when it comes to progression opportunities, project work, or career development. As some data has pointed to

remote working having higher levels of uptake by women, this could have unintended consequences of perpetuating a gender gap within businesses over time. We would caution that, in the long run, policies will need to be gender-proofed to address this risk.

To summarise, we want the Code of Practice to create clarity and certainty for employers running their businesses and their employees. It should minimise any potential administrative, financial and legal burdens by being clear on how to define an eligible remote working role, demonstrating how to assess organisational capacity, highlighting the employer and employee's responsibilities, promoting inclusivity, being clear on record-keeping requirements, and allowing flexibility for the termination or adaptation of remote working requests over time.