ISME
Irish SME Association

17 Kildare St.,
Dublin 2.
14th June 2021

ISME thanks the members of the Joint Committee on Enterprise, Trade and Employment for your invitation to address you.

Summary and Opening Address

- As our economy progressively reopens post-pandemic, SMEs are faced with acute financial, labour, operational, health and safety, and political engagement issues.
- Despite the presence of so many large multinationals in Ireland, almost 68% of Irish workers are employed by SMEs.
- Almost half that number work in a business with fewer than 50 employees.
- SMEs are the bedrock of the Irish economy, and the survival of the greatest number of them possible must be the priority of this house.
- Almost one-third of the Irish Times Top 1,000 companies in Ireland meet the Eurostat definition for an SME. By the time you find the last company listed, you will find a business turning over €16m per annum, with 45 employees. Ireland is an economy and a society of small businesses.
- We have seen remarkably few insolvencies to date, but this number is set to rise, quickly. It is imperative that you do all you can to enact SCARP before that happens.
- While grant supports have been enthusiastically used by SMEs during the pandemic, debt supports have not. The EWSS wage support remains absolutely essential in those parts of the economy that have yet to fully reopen.
- Irish people do not benefit from being citizens of the second-most expensive economy in the EU. Therefore the 9% VAT rate should be maintained indefinitely, and the higher rate should permanently revert to its historic rate of 21%.
- Redundancy costs are likely to be a significant burden for many employers in the medium term. The Statutory Redundancy Rebate for employers should never have been removed nine years ago. It should be reinstated in full, or the 0.5% levy on employers' PRSI which financed the rebate fund since 1979 should be removed.
- The PUP is acting as a significant brake on return to work in many areas of the economy such as agriculture, hospitality, grooming and accommodation, and should be tapered more rapidly.
- While we do not oppose improvements in employee entitlements in principle, we believe the financial implications of many of them are not understood by legislators. The social fund must be used as the backstop for increased levels of employee support, as it is on

the continent. This will require higher levels of employee contribution.

- Significant disincentives persist against employees returning to the workforce in the €18k-€30k income bands. We ask legislators to look at the four key proposals in our "Jobs Kill Zone" report in this regard.
- There is a disgraceful lack of clarity concerning the rights of employers (and employees) to know the vaccination status of co-workers returning to the workplace. This places employers in the invidious position of being "damned if they do, and damned if they don't." This is unacceptable, and must be addressed before a minority of cynical members of the legal profession attempt to exploit it.
- GDPR is not an impediment to ascertaining the vaccination status of a returning employee.
- There is a continued failure by Government to engage with SME employers. The only current standing liaison body between Government, employers and employee representatives is the Labour Employer Economic Forum (LEEF) and it excludes SME representatives. This is unsustainable.
- This failure to engage with small enterprise employers is having a serious impact of the development and update of the Work Safely Protocol, since its focus on large enterprises excludes consideration of 99% of Ireland's employers.

Financial Issues.

ISME was a constituent member of both the Local Jobs Alliance and the SME Recovery Plan during the pandemic, as we recognised the dramatic implications a government-mandated shutdown would have on local businesses and jobs. The principles of the SME Recovery Plan are worth reiterating here:

> **SME's are vital to our social fabric:** They provide critical jobs at a local level across the country and anchor our communities.
>
> **An SME Bailout is Required:** SME's now need a bailout with recovery funds (capital and liquidity) on favourable terms of at least €15bn to reboot the recovery of society and our economy.
>
> **SME's need a post crisis boost to demand**: There is no point in having well capitalised SME's ready to do business if there is no demand.

SMEs have been grateful for the supports provided to date: the TWSS and EWSS schemes in particular have been availed of by a consistent two-thirds[1] of our membership.

The Irish Times published its "Top 1,000" companies list on Friday 11th June. By the time we get to the company in 694th place, we have met the first test for an SME under the Eurostat definition of a 50-million-euro turnover.

The Top 1,000 companies represent 0.4 of one per cent of the companies in the Irish business

[1] https://isme.ie/isme-covid-19-survey-april-2021/

demography. The fact is that the vast majority (99.8%)[2] of Ireland's approximately 270,000 businesses are SMEs and the vast majority (92%) of these are micro companies, that is businesses with less than 10 employees. Yet, from an SME perspective, the Oireachtas continues to pass legislation which appears to us to be written exclusively for large enterprise.

While many politicians have expressed surprise or shock at the collapse of Stobart Air,[3] the only surprise for ISME Council members is that it did not happen sooner. The effects of the pandemic on main-street premises occupancy have been evident for some months now. ISME has consistently avoided estimation of how many SMEs will become insolvent following the pandemic, but the Research Technical Paper produced by the Central Bank[4] in April found that losses were incurred in over 30% of enterprises with a further 30% only breaking even through 2020. The abstract to the report reads:

> *Over 70 per cent of firms experienced some fall in turnover with a median fall of 25 per cent. The impact of the shock appears uncorrelated with past firm performance which highlights its exogenous nature. Expenditure fell by 8.5 per cent on average with 40 per cent of firms cutting spending. Losses were incurred in over 30 per cent of enterprises with a further 30 per cent just breaking even. We found that about 61 per cent of SMEs received wage subsidies, 20 per cent of firms used tax warehousing while fewer than 6 per cent of firms used lending initiatives. Policy support take-up is more likely among those more affected by the downturn, while the smallest firms appear less likely to use support than larger firms.*

The report notes loss-making in the hotel-restaurant, construction and self-employed sectors in particular.

While no one expects the State and the Exchequer to bail out firms indefinitely, the exogenous nature of the pandemic-related downturn cannot be ignored when considering the supports for small business. Furthermore, we know and accept that not all businesses will emerge from this pandemic. However, many businesses which become insolvent because of it can be rescued if access to an affordable examinership regime is available. Having lobbied for such a regime since the start of the pandemic, ISME was delighted to welcome the SCARP proposals[5] announced by Minister of State Troy on 19th May. A robust resolution mechanism could see 10% to 15% of insolvent businesses rescued as going concerns; unfortunately, we are likely to see many thousands of small enterprises fail over the next year or so.

Of the financial supports available to our sector, credit is not available at affordable rates, or with reasonable terms and conditions compared to our European neighbours. The information supplied by DETE on the supports provided[6] to business throughout the pandemic shows that while grant supports are heavily availed of by business, debt supports (with the exception of the Future Growth Loan Scheme) are not. Despite an 80% State guarantee, the Credit Guarantee Scheme has had €296m of approvals against €2bn of capital available (15%). It is notable that the Future Growth Loan Scheme is based on longer-term

[2] https://www.cso.ie/en/releasesandpublications/er/bd/businessdemography2018/
[3] https://www.theguardian.com/business/2021/jun/12/aer-lingus-passengers-stranded-as-operator-stobart-air-ceases-trading
[4] New Survey Evidence on COVID-19 and Irish SMEs
[5] Announcement of Small Company Administrative Rescue Process
[6] COVID-19 and Brexit Business Supports Tracker 21st May 2021

debt, a factor which should be considered with the other schemes performing less than optimally.

We believe the EWSS will need to persist for some time to come, or we will suffer the consequences of large numbers of redundancies. We recognise that some sectors will recover more quickly than others, so any EWSS extension is likely to be sectoral in nature.

The 9% VAT rate was sold as a concession to the hospitality industry, when, as the second most expensive economy[7] in the EU, we should be considering measures to permanently reduce consumer prices. Similarly, the 23% upper rate (which was introduced at the same time as the 9% rate was brought in) should permanently revert to the historic 21% rate.

As we face the likelihood of a significant number of post-pandemic redundancies, we need to correct the mistake made during the Great Recession and reverse the removal of the statutory redundancy rebate. Employers have been levied 0.5% on PRSI in respect of the redundancy fund since 1979, yet this levy was not removed when the rebate was removed.

Labour Issues.

The labour market must return to normal, which will require a rapid taper of the Pandemic Unemployment Payment (PUP), especially to part time workers. Regrettably, we note a state of denial about the effects the PUP payment is having upon recruitment in certain sectors where part-time, seasonal or casual working is regular,[8] [9] particularly in agriculture, hospitality, grooming and accommodation.

The Statutory Sick Pay (SSP) proposal will entitle employees to three paid sick days in 2022, five in 2023, seven in 2024 and ten in 2025. Leave to be paid at 70% of weekly wage, capped at €110 per day. It should be noted that ten sick days equates to an absence rate of 4.2% over a standard working year, which would be regarded as problem absenteeism in most quarters of the private sector. 4.2% absence equates to the average of that availed of in the public service in 2019.[10] While we recognise that most private sector employees will understand that sick pay should only be availed of by those who are ill; were it to approach levels taken in some areas of the public service,[11] it would be unaffordable for many employers.

We ask you also to be mindful of the act that in the service sector, there is a double hit for employers under SSP: they will have to pay SSP to the absent worker, and they will have to replace that worker in order to sell their services.

The current SSP proposals also fail to recognise the role the social fund plays in other countries such as the Netherlands, where the cost of longer-term sick pay is underwritten for small employers.

Meanwhile, the Organisation of Working Time (Reproductive Health Related Leave) Bill 2021

[7] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Comparative_price_levels_of_consumer_goods_and_services
[8] https://www.independent.ie/news/money-for-nothing-the-impact-of-pup-and-universal-basic-income-40500525.html
[9] https://www.irishtimes.com/news/ireland/irish-news/record-number-of-teenagers-seeking-summer-jobs-plugging-the-gap-for-employers-1.4590773
[10] https://assets.gov.ie/135949/4a984bcf-0cfb-41e6-8903-704297cac06a.pdf
[11] https://www.irishexaminer.com/news/arid-30937390.html

and the Organisation of Working Time (Domestic Violence Leave) Bill 2020 are also before the Oireachtas. These would grant entitlement to employees who had suffered miscarriage or domestic violence.

ISME is not in the business of opposing every piece of legislation to improve employment entitlements. The state can increase the cost of labour to the greatest extent it wants, but it must accept and own responsibility when it reduces the ability of employers to afford low-skilled or unskilled labour in the market. It is notable that the auto-enrolment proposals under consideration by the Department of Social Protection envisage an employer contribution of 6%, which would take this and employers' PRSI and pension contribution to 17.05% per employee.

In reality, the deduction which is most out of kilter with European norms is employee PRSI at 4%. We need a critical conversation about PRSI at all income levels.

Aside from the unique issues presented by the PUP, we address the wider deterrents to work in our Jobs Kill Zone report.[12] This details the very significant fiscal disincentives for workers in the €18k to €30k per annum income bracket. Remember, €30k per annum equates to a standard hourly pay rate of €14.79/hr, while entry to the marginal tax band for a single person starts at €35,300, or €17.41/hr. the four key recommendations in this report are:

1. Adjusting PRSI to eliminate the very high marginal rate on additional income in the PRSI Transition Zone from €18,304 to €22,048 per annum.
2. Setting the basic rate for qualifying for the medical card at more than 30% above the comparable Jobseeker's assistance rate.
3. Replacing the child element in Jobseeker's payments and all other welfare schemes by significantly increasing Child Benefit, phasing out Working Family Benefit, and at the same time making the higher Child Benefit taxable.
4. Significantly increasing the income thresholds for access to social housing, while reforming or removing the link between income and local authority rent.

Operational, Health and Safety Issues.

The absence of clear direction from Government on the return to work of unvaccinated people is disgraceful. Employers have had to sit back and read a succession of legal commentators opine in the media that while an employer cannot insist on an employee being vaccinated, they still have an obligation under Health and Safety legislation to provide a safe place of work.

GDPR is being mischievously and misleadingly cited as a blockage to the processing of personal information regarding vaccination. This is despite the fact that GDPR makes explicit exemptions to its provisions where life or limb of data subjects or other persons are threatened. Recital 46 states:

> *The processing of personal data should also be regarded to be lawful where it is*

[12] Jobs Kill Zone Report April 2021

> *necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters. (Underlining by ISME).*

Recital 73 states:

> *Restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, the right to object, decisions based on profiling, as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or manmade disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms. (Underlining by ISME).*

We therefore do not believe it is tenable for the Government to cite data protection concerns as an obstacle to employers being made aware of the vaccination status of employees. We have sought clarity[13] on this matter from the Minister on 26th May. We already have multiple queries from member companies concerning staff who have advised their employer and their colleagues that they will not accept vaccination; at the same time, many employees have advised these employers that it's a "them or us" situation; i.e. staff will refuse to work beside unvaccinated colleagues. As we advised the Department, this situation is unfairly exposing employers to the potential of enforcement action by either the HSA (in the absence of adequate measures) or the WRC (in the enforcement of measures). Both of these organisations fall under the remit of DETE.

It is clear from some of the advertising by certain solicitors' firms that they are prepared to test this absence of clarity in the courts. This situation is manifestly unfair, and we do not believe that the courts would look kindly on any business or employer being exposed to this form of "double jeopardy."

[13] ISME Note to Tánaiste re Revised Work Safely Protocol

Political and Engagement Issues.

With the exception of the Retail Forum in DETE and the SME Advisory Group in DPER (which is concerned with procurement matters), there is no standing engagement forum with the SME Sector. This issue is problematic at any time, but it is particularly damaging during a pandemic.

The Return to Work Safely Protocol published by DETE on 8th May 2020, and the Revised Protocol[14] published on 14th May 2021, while useful and well-intentioned, would not have been published in their final format had there been an SME input to their content. As we explained to the then Enterprise Minister in our letter to her in May 2020, the language and content of the protocols is set out with large companies and multinationals in mind, and makes few concessions to the realities for 99% of enterprises.

The failings in this regard are due to the fact that the Labour Employer Economic Forum (LEEF) is the chosen vehicle for contact between employers and employees, despite the fact that LEEF is completely unrepresentative of employers in small enterprise.

If LEEF was representative of small businesses, it would have brought to government attention issues such as antigen testing in the workplace, the need to understand the vaccination status of employees, the high cost of housing for employees, insurance costs, the need for defamation reform, the need for a perjury statute, the need for small enterprise rescue package, and the need for an affordable examinership regime for small businesses.

The reason Government has been brought these issues by ISME rather than via LEEF is not because of a dearth of talent, intellect or expertise in that body; it is because ISME is informed of these issues by its membership base while LEEF, which represents large companies, foreign multinationals and the state sector, is not.

[14] Revised Work Safely Protocol