

## **Joint Committee on Enterprise, Trade and Employment Pre-Legislative Scrutiny of the Right to Request Remote Work Bill 2021**

### **Opening Statement**

I wish to thank the Joint Committee for the opportunity to address you on the Right to Request Remote Work Bill.

Ibec has been deeply engaged on the issue of remote working for some time. In addition to the statement I will make today I have provided the Joint Committee with a more detailed submission setting out the views of our members on the Bill. We have also provided the Department with detailed submissions on the opportunities and challenges presented by remote working. I would be happy to share these further submissions with any members who may be interested.

Ibec and its members recognise the benefits that flexible working solutions, including remote working, can bring to a workplace. Of course, as well as the benefits remote working can bring to both parties, there are complex considerations for individual businesses, not least of which is the significant cost impact.

It is imperative that a fair balance is drawn between the importance of achieving reconciliation of professional and private life and the need to sustain employment and enhance economic competitiveness. It is also crucial to recognise that while many employers can and will offer remote working to employees, there are some sectors and employers for whom remote working simply cannot be facilitated.

Ibec notes that the draft Bill is just one element of the Government's broader Remote Working Strategy. Ibec has previously welcomed Government commitments to invest in necessary infrastructure such as remote working hubs, alignment with childcare facilities, and the National Broadband Plan, as well as reviewing tax arrangements to incentivise remote working. We look forward to seeing further progress on these matters.

While we are generally supportive of the Government's Remote Working Strategy, we question whether enacting legislation in this area is the most effective way of promoting remote working in our society.

Employers are currently facing an unprecedented amount of legislative and policy reforms in the employment rights space. Legislation in respect of statutory sick pay, whistleblowing, gender pay gap and extended family leave entitlements are all expected in the coming 12

months – and that is nowhere near an exhaustive list in terms of new employment related regulation that businesses must consider and implement.

Government must consider these legislative proposals in a way that properly takes account of the cumulative cost and burden of administration for employers.

Furthermore, businesses and their staff are continuing to learn what works for their sector and many employers are already iterating on various forms of remote, hybrid and flexible work options. The reality is that offering remote and/or hybrid working, where feasible, is increasingly a competitive factor and employers will ensure they take the necessary steps to attract and retain talent. We believe that legislating for a statutory right to request remote work at this stage is premature and may stymie the ability for employers and employees to manage remote working in a creative and dynamic way. It is undoubtedly the case that remote work in some form will remain a permanent feature of the labour market. However, it would surely be prudent to take some time to experience the ‘post pandemic’ workplace before seeking to regulate this area by way of legislation.

There is, therefore, a significant question around the necessity to introduce a statutory right at this stage. If the intention is to provide a framework for employers and employees, then we are 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. A non-statutory framework, with appropriate Government supports, is likely to yield much more positive support and results.

If this proposed legislation is enacted, it must not be overly rigid or prescriptive. There is no “one-size-fits-all” solution to managing this issue. 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.

Ibec welcomes the broad grounds included in the draft Bill under which businesses may consider applications for remote working. We note the criticism these provisions have received from certain parties. However, 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.

Quite apart from the suitability of the role for remote working, not all remote working locations will be appropriate for home working. 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. However, it is the case 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. They must be permitted to refuse requests for remote working where there are concerns relating to these issues.

For some employers, the cost implications of granting a request for remote working may be prohibitive. This is particularly so given the general expectation on employers to provide whatever equipment it deems reasonable for employees working remotely. Ibec notes that where remote working is facilitated on a long-term basis, a higher standard will likely be required to be met to ensure compliance with health and safety, data protection and employment rights legislation. Facilitating remote working may impose a disproportionate cost burden on some employers which they will simply not be in a position to absorb. Again, these employers must be given the discretion to decline a request where the financial position of the company so dictates.

Ibec is very concerned by the mandatory 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 failure to do so. We 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. It will lead to absurd situations where a small cafe, for example, will be required to have a remote working policy in place despite the fact that remote working could never be offered to employees.

In addition, this proposal to introduce a legislative requirement to have a policy in place will have a number of unintended consequences. These include driving employers to have the narrowest possible policy to ensure the number of claims, litigations and/or employee relations issues arising are reduced to the greatest extent possible. If enacted as currently drafted, it would stymie innovation and creativity and certainly not encourage employers to be as agile or flexible as they otherwise would be.

Remote working poses some very practical challenges for employers. Just a sample of some of the questions with which employers are currently grappling include – where equipment and property belonging to an employer is in an employer's home, who is responsible for insuring it? How does an employer ensure that confidential information is adequately and properly secured when an employee has highly sensitive information in their homes? How does an employer comply with their statutory obligation to record employees' working time when they are working remotely and thus, not clocking in and out of the office?

We have requested guidance from the Data Protection Commission, the Workplace Relations Commission and the Health and Safety Authority with respect to how best employers can manage risks such as these associated with remote working.

The area of health and safety in remote and hybrid working models is particularly complex for employers to navigate. Employers understand that health and safety at work rests with the employer regardless of whether an employee works remotely. In response to COVID-19 and increased levels of employees working from home, the HSA published an FAQ document, including advice on ergonomic assessments of an employee's home workspace, equipment provision and good practice when using digital technologies. Ibec submits that further guidance from the HSA in certain key areas is required as more permanent remote and/or hybrid working arrangements are put in place. One area where clarity is required concerns work related accidents that occur at home and particularly, on what exactly is reportable if there is a work-related accident at home. It is important that guidance is provided by the HSA in this regard, as the extent of an employer's obligations and responsibilities determines any potential liability that may arise for employers.

To conclude, employers recognise the benefit of remote working, not least the ability to attract and retain talent. Nevertheless, the challenges faced by employers go far beyond the need to ensure adherence to employment rights legislation. The cost and administrative burden will be significant. For remote working to become a viable flexible working solution for both parties, Ibec submits that detailed guidance and Government supports and incentives are required, rather than a piece of 'inflexible' legislation.

The concept of remote working remains an evolving one, the benefits and challenges of which will continue to emerge in the post-pandemic workplace. Where legislation is enacted in this area, it must be sufficiently agile to enable employers and employees alike to reap the benefits remote working can offer.

I will conclude by thanking members of the Joint Committee for the opportunity to present Ibec's views on this draft legislation.

**END**