

DÁIL ÉIREANN

AN COMHCHOISTE UM FHIONTAR, TRÁDÁIL AGUS FOSTAÍOCHT

JOINT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT

Dé Céadaoin, 18 Bealtaine 2022

Wednesday, 18 May 2022

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Richard Bruton,	Garret Ahearn,
Francis Noel Duffy,	Ollie Crowe,
Paul Murphy,	Róisín Garvey,
Louise O'Reilly,	Paul Gavan,
David Stanton.	Marie Sherlock.

I láthair / In attendance: Senator Emer Currie.

Teachta / Deputy Maurice Quinlivan sa Chathaoir / in the Chair.

General Scheme of the Right to Request Remote Work Bill 2022: Discussion (Resumed)

Chairman: The proceedings of Oireachtas committees will be conducted without the requirement for social distancing, with normal capacity in the committee rooms restored. However, committees are encouraged to take a gradual approach to this change. Members and witnesses have the option to attend meetings in the relevant committee room or online via Microsoft Teams. All those attending the committee room and environs should continue to wash their hands properly and often, avail of sanitisers outside and inside the committee rooms, be respectful of other people's physical space and practise good respiratory etiquette. If they have any Covid symptoms, no matter how mild, they should not attend in the committee meeting room. Members and all in attendance are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. Members participating remotely are required to participate from within the Leinster House complex, as they are all fully aware. Apologies have been received from Deputy Shanahan.

The purpose of the meeting is to continue our discussion of the general scheme of the right to request remote work Bill 2022, which was referred by the Tánaiste and Minister for Enterprise, Trade and Employment, Deputy Varadkar, for pre-legislative scrutiny by the committee. The Bill aims to provide a legal framework around which requesting, approving or refusing a request for remote work can be based. It also aims to provide legal clarity and procedures to employers on their obligations for dealing with such requests. The committee has discussed the proposed legislation with officials from the Department of Enterprise, Trade and Employment, representatives from IBEC and the Irish Congress of Trade Unions, ICTU, and representatives from Grow Remote and Glofox. Having heard the views of various industry bodies, I am pleased that today we have an opportunity to consider matters further when we will hear from the Department of Enterprise, Trade and Employment. I welcome from the Department, Mr. Dermot Mulligan, assistant secretary, Ms Áine Maher, principal officer, and Mr. Mark Doheny, assistant principal officer.

Before we start, I wish to explain some limitations to parliamentary privilege and the practice of the Houses in respect of references witnesses may make to other persons in their evidence. The evidence of witnesses physically present or who give evidence from within the parliamentary precincts is protected pursuant to both the Constitution and statute by absolute privilege. Witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of a person or entity. Therefore, if witnesses' statements are potentially defamatory in respect of an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative they comply with any such direction.

The opening statements have been circulated to members. To commence our consideration of this matter, I invite Mr. Mulligan to make his opening remarks.

Mr. Dermot Mulligan: I thank the Chairperson and members for their further invitation to attend the committee today to discuss the draft general scheme of the right to request remote working Bill. I welcome the opportunity to do so and thank the committee for its work to date

on this issue. As members may recall from our previous engagement during this pre-legislative scrutiny process, I am the assistant secretary and head of the workplace relations and economic migration division in the Department. Joining me today is Ms Áine Maher, principal officer with responsibility for employment rights policy, and Mr. Mark Doheny, assistant principal officer with responsibility for employment rights policy.

As I indicated in my appearance in February, and as the Tánaiste has said on numerous occasions, we have a listening ear on the draft legislation and are open to changes to it. As the committee will be aware, the Government's remote work strategy was published in January 2021 and commits, under pillar 1, to legislate to provide employees with the right to request remote work. We recognise that the Covid-19 pandemic resulted in remote working becoming a reality for many of us, often quite abruptly. It is important to reflect on the valuable contribution made by both workers and employers during this difficult time.

People showed great resilience and flexibility in adapting quickly to a very significant shift towards working from home. We agree that the progress made towards a more flexible and balanced approach to our working lives should not be lost. That is why the Tánaiste and the Department have publicly committed to ensuring that this legislation is as clear and balanced as possible, in order to positively assist both workers and employers to adopt remote working practices.

That being said, it is important not to conflate the experience of home working during the pandemic with remote working under a regular scenario. Using a global health crisis as the basis for legally requiring employers to continue to allow all workers to work remotely would not be a fair, balanced and proportionate proposal. It is also clear that not all occupations, industries or roles will be appropriate or suitable for remote working. Therefore, it is not practical to introduce an automatic legal right to remote work.

We thank the delegates from ICTU and IBEC for their contributions at the second session of pre-legislative scrutiny. We noted that while both parties made very helpful and constructive observations, there appeared to be some divergence of views on how to legislate in this space. In this context, I emphasise that the intention of this legislation is to act as a floor-level protection to ensure that all workers, be they full time, part time or on fixed-term contracts, have the legal right to formally request remote or hybrid working and for their employer to be obliged to consider that request and respond to it.

It is not the intention of the draft legislation to negatively impact on employers' ability to attract and retain talent in a competitive jobs market, nor to undermine existing remote working arrangements that may offer more favourable terms overall. We want all workers to have the right to request remote work and not just certain categories of worker. As the Tánaiste has said on several occasions, as long as the business gets done and services are provided, employers should facilitate remote working where they can. We also welcome the submissions to the committee from Grow Remote and Glofox. They gave personal testimony on the positive impacts of increased remote work, while also speaking to some of the challenges encountered by business and workers alike in navigating the step change towards remote and hybrid forms of working.

Based on our engagement with the members of the committee and taking on board feedback from our stakeholders, the Department is currently examining how best to strengthen the redress provisions and the right of appeal in the draft legislation. In addition, we are considering a reduction of the enumerated grounds for refusal. Our engagements with both ICTU and IBEC,

in particular, have been constructive and informative to date and we are considering their inputs on areas including qualification periods, flexibility and impacts on SMEs. The report of this committee, following the conclusion of the pre-legislative scrutiny process, will also be very valuable in this regard and we will carefully consider its contents.

Remote working has the potential to fundamentally change the nature of where, how, when and why people work. This could, in turn, bring about positive economic, spatial, environmental, cultural and societal change for our country. We know that remote work could help to achieve a wide range of public policy objectives. These include increasing participation in the labour market, attracting and retaining talent, enabling balanced regional development, alleviating accommodation pressures, improving work-life balance and reducing carbon emissions and air pollution. In response to this huge potential for public good, these draft legislative proposals are being brought forward by the Government to make remote working a permanent feature of Ireland's workforce, in a way that can benefit all. I thank the committee for its engagement with us during the development of this draft legislation and look forward to further discussion today.

Chairman: Thank you, Mr. Mulligan, and thank you again for appearing before the committee. It is your second time here, and we have had extensive discussions during two other meetings as well. You said in your introduction that there are some divergences in views. That is putting it mildly.

I will now invite members to discuss the issue with the officials. I remind members participating remotely to use the raise hand function on Teams. More importantly, when they finish speaking, please take it down. I call Deputy O'Reilly, who has 14 minutes.

Deputy Louise O'Reilly: I thank our guests for attending. It is much better when we are in the room. That is my personal preference.

Mr. Mulligan said in his statement that the Minister indicated that he and his Department have a listening ear. Where was that when this was being drafted? Ms Patricia King from the Irish Congress of Trade Unions, ICTU, appeared before the committee, as Mr. Mulligan mentioned in the submission, and she indicated that this legislation did not go through what would be a normal and established consultation process with the trade unions. It is quite obvious that it did not, given where the legislation is and the fact that Mr. Mulligan is saying that he is willing to engage with substantial amendments to it. This is not meant disrespectfully to the volume of work that went into it but it is an indication that the Minister and the Department got it badly wrong. One of the reasons is that the normal consultation process was bypassed. Can Mr. Mulligan explain where this came from if it did not come from a consultation with the trade unions and, indeed, with IBEC and others? That does not appear to have happened.

Mr. Dermot Mulligan: We did a fairly extensive consultation on the legislation. Before that, in fact, there was a consultation process as well on the national strategy, Making Remote Work, to progress remote working generally. We had 145 written submissions, so it was an extensive consultation process. We looked carefully at the submissions we got. As I noted earlier, there has been a divergence of views in respect of the views expressed in those submissions and since then. It is a matter of us trying to put in place a framework to allow requests for remote work to be dealt with in a structured way that allows employers and employees to have that conversation in a structured way and to build in certain floor-level protections.

Deputy Louise O'Reilly: With respect, if there was consultation, the listening ear has to be a new thing because the submissions that were made cannot have been taken on board. Other-

wise we would not be here discussing substantial revisions that will be necessary to make this fit for purpose. I accept that there was a process of consultation, but Mr. Mulligan will have to accept as well that it was not robust enough. Certainly, Ms King had the view that she was not involved in the normal consultation process in which she, as the head of ICTU, would have been expected to be involved. That is what has brought us to this point.

Mr. Mulligan will know that this proposed legislation has gone down like a lead balloon with workers. He will have heard that. Even some employers have said they would not have written it like this. Perhaps there is a lesson in this for the Department and specifically for the Minister, that it is not enough to engage in consultation unless one is going to listen and take on board what is being said. This legislation is going to be judged on whether it delivers for workers and whether it compels an employer to be fair. We are not trying to legislate for the majority of employers who I am sure are grand, but for those who will not grant reasonable requests. Can Mr. Mulligan enlighten us as to where the 13 sweeping, and I would call them subjective, grounds for refusal came from? It cannot have come from the consultation process. I have read a good number, probably not all, of the submissions and I did not see anyone asking for that, not even the toughest employers. Can Mr. Mulligan elaborate on where they came from?

Mr. Dermot Mulligan: Actually it came from the submissions we received as part of the consultation process. I will ask Mr. Doheny to comment on that.

Mr. Mark Doheny: We had significant input from both employer and employee representatives. We specifically had a question in the consultation about what were thought might be reasonable grounds to refuse. In effect, there were 27 to 28 different variations of reasons for refusal brought in. I noted from their testimony here that representatives of IBEC said that they felt some were not even reflected within the 13. The grounds were intended as something that might be reasonable for a particular scenario.

Obviously, this is a statutory employment right and it is going to apply to all. It is a step change with an employee having the power to essentially renegotiate a key part of the contract, and we have to be mindful of the potential impact on employers. The stated grounds were stated broadly because a broad number of grounds were given, and they were given repeatedly. It was not a case of it being one isolated event. Even workers in their submissions gave grounds. We had well in excess of 100 personal respondents and some of them said that the broadband speed where they were would have been a factor in why they believed they could not get it. We made an effort to reflect all of them and the broadness of the grounds is reflective of the submissions we received.

Deputy Louise O'Reilly: Does the Department accept that those grounds will have to change now, wherever they came from?

Mr. Dermot Mulligan: We are looking at changing the grounds and seeing how they can be adjusted. We have been very clear about that.

Deputy Louise O'Reilly: I hope that when the Department does the look back on this, it will inform how it deals with this stuff into the future. I have long argued that remote working should be considered a separate and distinct form of work, as shift work would have been when it was considered a couple of decades ago. It is its own form of work and it must have its own structures in place. The pandemic heightened that activity. Over the years even the civil and public service was slow to embrace what we initially called teleworking. That probably tells how old I am. Then it became e-working and now it is remote and hybrid working. The fact is

that it was very slow and then it was very sudden. There is a massive lost opportunity, and we are in the post-pandemic period now, that the time was not used to put the structures in place.

Mr. Mulligan said in his submission that the Department is looking at strengthening the redress provisions and the right of appeal as well as the reduction in the grounds for refusal. These are fairly substantial amendments that will have to be made. With respect, I suggest that we would not be here if the consultation process had been a little more robust. What exactly is the Department looking at when it refers to strengthening the redress?

Mr. Dermot Mulligan: The Minister asked us to look at whether we can ensure that the grounds for refusal are more than merely procedural. We are looking to see what that looks like and whether it is possible to operationalise that without creating a right to have remote working granted. What we are trying to create is a right to request remote work, but not a right to have remote work. How does one craft the legislation to do the former but not the latter? For example, it has been suggested that perhaps in looking at an employer's refusal it is whether one could look at that with some type of reasonableness test, or on objective grounds whether it was reasonable and so forth. What we are looking at currently is whether it is possible to do that from a constitutional point of view without infringing the constitutional rights of a business owner and without actually creating a right to have remote working as opposed to a right to request remote working.

Deputy Louise O'Reilly: I would not have a problem with the right to have remote working, but perhaps that is just me. I suggest that the Department start from the premise that all requests are granted unless there is a good reason not to. It has to trust people as well. Some people's work cannot be done remotely. We could not have our emergency department nurses working remotely. However, I doubt if any of them is going to request it either. If the Department was to come at this from the positive perspective, as it were, of the worker, one would assume all requests would be granted, save for cases where there is a good reason not too, rather than starting with a menu of options for saying "No", and we then build on that and undermine the redress and so forth. The Department has come at it from the wrong perspective, to be frank, and it was a bad place to start.

Another question is with regard to the previous statements whereby work that was done during the pandemic would not count as a reason. Therefore, if a person successfully worked, and I am thinking about someone going to the WRC or Labour Court to argue it, he or she must be able to argue that he or she did so, albeit in trying circumstances, and because he or she had to and not perhaps because his or her employer wanted. Does Mr. Mulligan agree, however, that if a person goes to the WRC or Labour Court, he or she must be able to argue that he or she successfully did it for two years? That must surely count for something in any consideration. It makes a bit of a mockery of two years of successful working from home for workers if they cannot then rely on that in requesting remote work or a hybrid arrangement.

Mr. Dermot Mulligan: I would not want to get into what argumentation should be used in front of the WRC in a dispute. I just made the point in the opening statement that the conditions that were necessary for us all to work and do what we needed to do during a global pandemic are not the same as a normal scenario.

To be clear, however, the Government is very keen that remote working would be progressed and developed. As I said in the opening statement, there is much potential from all sorts of points of view. It is to be progressed and developed and that is the policy. In many situations, however, the working environment was not ideal during the pandemic. I do not think we

can assume that because everyone worked successfully during the pandemic, that could not be improved on in normal times.

Deputy Louise O'Reilly: I respectfully disagree. I also suggest that Mr. Mulligan does not have data to back that up. He has a feeling that most people did not work successfully from home. I will tell him that I have a feeling that most people did work successfully from home. I know that because they tell me that. Mr. Mulligan knows that as well, however, because the same as me and others, he probably also worked successfully from home. Again, this is where I fundamentally disagree with the starting point for this. It is not starting from the point of view of trusting workers and assuming they will do the right thing. I am not surprised given the person that is heading it up, but still contained within this legislation is an assumption that workers are going to be hanging the latch when they are at home, and that the balance must be in favour of the employer preventing it. It is actually a really positive move for workers. I genuinely wish the Tánaiste and his Department had come at this from the perspective of trusting workers and building on that which was done during the pandemic.

The lesson many people learned during the pandemic was that remote and hybrid working can work. The regret was that it was not done in a staged and planned manner, and that it was simply a case of snapping the fingers and saying now everyone has to work from home. People managed that despite the housing crisis and the overcrowded accommodation in which they were living. They managed it despite ropery broadband and despite sitting at the end of the bed with a laptop balanced on their lap, in many circumstances, but they managed. The Department is missing a trick if this legislation does not come from the perspective of positively looking at how workers do this. All that is in it - not all, but a substantial portion - and what is being discussed in the media and by others is the right for an employer to say "No". I think that is the wrong place to start.

Chairman: The Deputy's time is up. She has time for a quick question.

Deputy Louise O'Reilly: As my time is up, I will ask one very quick question. How many people in Mr. Mulligan's Department are currently availing of working from home arrangements?

Mr. Dermot Mulligan: We have a blended working policy at the moment. We are working a minimum of two days per week in the office. That will be changing over the next few weeks.

Deputy Louise O'Reilly: Changing to what?

Mr. Dermot Mulligan: To higher than two days.

Deputy Louise O'Reilly: And it is working well?

Mr. Dermot Mulligan: It is working but I do not have the details. I can give the Deputy a briefing on that separately as I do not have the data now.

Deputy Louise O'Reilly: That would be excellent because that would be a very good place to start.

Chairman: The next person who has indicated to speak is Senator Crowe, who has seven minutes.

Senator Ollie Crowe: I thank our guests for joining the committee. As we are all familiar, when this was last discussed before the committee, there was widespread agreement that the

Bill in its current format was weighted too heavily in favour of employers. The comments this morning with regard to a reduction in grounds being considered, strengthening the redress provision and the right to appeal are welcome. Obviously, businesses will have genuine reasons they cannot facilitate some requests but the legislation can certainly strike a better balance than it does currently.

It would seem, for example, that the reasons employers can offer in terms of concerns around businesses, mainly around confidentiality and intellectual property, are unnecessary given the safeguards that can be put in place from an IT standpoint. Naturally enough, confidentiality and intellectual property are a constant risk for some companies but I do not see the risk being higher whether an employee is working from home on a company laptop or working in an office. Is that one of the grounds that may be removed? Could I get more detail on what grounds are being considered for removal?

Mr. Dermot Mulligan: I thank the Senator very much. Business associations have actually said they are concerned about protection of intellectual property, IP, and, indeed, general data protection regulation, GDPR, rules in respect of people working from home, and the suitability of the home environment in that context for remote working. I will just make the comment that this observation has been made to us.

In terms of the grounds, I do not know; we have 13 published in the Bill. We are looking at those quite fundamentally. We are not getting into the particulars of saying this one in, that one out. We are looking at it more fundamentally than that as to the structure of that part of the Bill. That is a work in progress. We have heard the view that there are too many grounds and that the way it is structured is not appropriate. As Mr. Doherty said, the business associations said there are not enough grounds and that others should be included as well. We are looking fundamentally at the nature of that section to see how it could be amended.

Senator Ollie Crowe: Okay. I thank Mr. Mulligan for that. To confirm and to be clear, he is stating that from an IT standpoint, a person working from home is a risk more so than if he or she is working in the office. Is that what he is telling us this morning?

Mr. Dermot Mulligan: I am sorry; maybe I misheard the Senator. I thought he said “IP”, as in intellectual property.

Senator Ollie Crowe: Yes, absolutely.

Mr. Dermot Mulligan: I thought that was what the Senator was talking about. I was not sure what he meant in relation to IT.

Senator Ollie Crowe: Mr. Mulligan is saying that people working from offices is a better safeguard. Is that correct?

Chairman: Can the Senator clarify whether he is talking about IT or IP? I think Mr. Mulligan may have misheard him.

Senator Ollie Crowe: I am talking about IP.

Mr. Dermot Mulligan: What employers are saying to us is that they have concerns with regard to the protection of intellectual property whenever employees are working from home. I am not saying they are ruling it out. They are saying it raises issues for them that need to be managed.

Senator Ollie Crowe: Okay. I thank Mr. Mulligan. In my opinion, it is more important to get this legislation right than to pass it quickly. We do not want to lose momentum, however, in terms of enhancing remote working. What sort of timeline does the Department have at this stage?

Mr. Dermot Mulligan: Our timeline is for this to be done as soon as possible. Once we get the report of the committee, we will examine it carefully and consider what changes to make to the Bill. We will do that as soon as possible after getting the report of the committee.

Senator Ollie Crowe: In Galway city, the area I represent, there are several public servants who have stated that they are going back to work permanently on a five-day week basis, whereas there are other public servants who are working to a hybrid model, as they should be. Mr. Mulligan mentioned that his own crew has a hybrid option involving two days and that he is open to increasing that. How long will the uncertainty continue? I am concerned that there is one rule for one group and another rule for another group yet they are both working for local authorities in Galway, whether that is Galway City Council or Galway County Council. Naturally, it is much more difficult for workers who have to travel 45 miles or 50 miles to work, but their counterparts up the road are able to work from home two or three days per week, as is right.

Mr. Dermot Mulligan: I ask Mr. Doheny to comment on that point.

Mr. Mark Doheny: As regards the public service and the wider public sector, in March the Department of Public Expenditure and Reform published its roadmap for hybrid working in which it identified certain customer-facing or front-line roles that may not have scope for remote working at this time but may have such scope down the line. It is rolling out that roadmap to the wider public sector. It is operating to its own timeline. Certain jobs may have an element that will require on-site attendance. The Bill specifies that the policy of the organisation should establish roles that would have suitability, or roles that are inherently unsuitable, perhaps, for remote working. As regards the individual roles referred to by the Senator, I do not know what those roles are but it would be a matter for the public sector and the respective Departments and local authorities to comment in line with their requirements as employers.

Senator Ollie Crowe: I thank Mr. Doheny. People in my constituency are telling me that, basically, it is up to each HR department within the local authorities to decide whether employees may apply for the hybrid model. I do not wish to get into individual cases but, to be clear, there is a local authority very close by and its employees are still on a hybrid model involving two or three days a week, as they ought to be. I hear Mr. Doheny's point in respect of there being a small percentage of jobs that cannot be done from home, but that number of jobs is minimal. In the context of the public service, it is unusual that the HR department in a particular local authority can make one rule, while that in another local authority can make a different rule. I ask our guests to comment on that.

Mr. Mark Doheny: Our understanding is that they are all operating under the overall Department of Public Expenditure and Reform guidelines. Within that, each Department or parent authority formulates its own policy. However, there is a programme for Government commitment to 20% remote working in the public sector and measures are being created to achieve that. There may be service provision levels that require certain jobs to be on site but that is a task for HR units to centralise and get in line with the overall public policy.

Senator Ollie Crowe: Is it appropriate for HR units within local government to fail to fa-

cilitate talks with union officials?

Mr. Dermot Mulligan: I do not think we would comment on the activities of HR departments in local authorities. We are here to consider the Bill, which seeks to create a right to request remote working and a framework that might facilitate some of the conversations and contact to which the Senator is referring and that obviously needs to take place.

Chairman: I thank Mr. Mulligan and Senator Crowe. In fairness, the Department tried to answer the Senator's questions without going into specifics.

Deputy David Stanton: I welcome our guests and thank them for their presentations. I refer to head 14, relating to the requirement for employers to have a formal remote working policy. Do our guests agree that there are many employers, some of which are small employers employing a small number of people, whose workers will not be able to work remotely? Some of the employees may be working remotely in an unusual way. For example, is it reasonable to expect an employer with a plumbing business that carries out plumbing in households and employs two or three people to have a remote working policy? There are other employers who might have a shop with one or two people working in it. It is not possible for those people to serve customers remotely. Is it fair to ask people such as that to have a remote working policy in the first instance? Could consideration be given to some employers being exempted from having a remote working policy and having to go through the associated bureaucracy? Alternatively, it could be kept so simple that it would just be a matter of the employer stating that he or she does not have a remote working policy because none of his or her employees would be impacted by it. There are many employers with a small number of employees which could be impacted by this and if they did not have such a policy, it would be an offence. I ask our guests to tease out that issue.

Under head 8, employees are asked to carry out a self-assessment. That seems vague. Is there a proposal to have some kind of template for that self-assessment? Reference is made to proposed working locations and specific requirements for carrying out the job, such as data protection and confidentiality and so on. Some employees may not be able to do that. That may need to be tightened up.

Head 10(2) provides that an employer shall return a decision within a reasonable time and specifies a 12-week period. That is three months, which is an awfully long time. It may be that the period should be shortened to one month. That would be reasonable. I acknowledge that 12 weeks is the outside limit, but it is still an awfully long time.

Head 12, to which other members have referred, relates to grounds for an employer declining a request for remote working. One of the grounds is that an employer cannot reorganise work among existing staff. Much of the remote work we are discussing seems to me to be desk-top type of work. Whether an employee is in the same room or building or a different location, it should be possible to reorganise work. There is reference to a potential negative impact on performance and quality. Both of those metrics are subjective and difficult to argue against. I am uncertain of the value of those provisions.

I understand the need for the provision relating to Internet connectivity, but what happens if that connectivity improves? If it is not working, it is not working. Of course, the connectivity should be tested.

I refer to the ground relating to concerns in respect of the commute between the proposed

remote working location and the employer's on-site location. I suggest that should not make a difference unless it is some kind of blended arrangement whereby a person has to be in the office for one or two days and so on. Other than that, it should not matter.

I refer to the final ground, which provides that a ground on which an employer may rely is that the employee "is the subject of ongoing or recently concluded formal disciplinary process". That should be removed. Those circumstances should not be mixed up with a request for remote working.

Head 6 refers to the requirement for an employee to have 26 weeks' continuous service. I have spoken to several people who are currently working in this area. They tell me that it is an employee's market right now. The requirement for 26 weeks service seems to imply that the employee in question is a new employee. If an employee wants the right to work remotely, should that not be negotiated on entry, at the very beginning? People to whom I have spoken who are working remotely and newly employed make it a condition of accepting the job at interview that they have the right to work remotely. That is one of their conditions. Maybe that should be done at the start.

Those are my questions and comments. I thank our guests.

Mr. Dermot Mulligan: I ask Ms Maher to address some of those questions.

Ms Áine Maher: Regarding the Deputy's point about the policy and the requirement for a policy, we fully agree that we want to make this as simple and straightforward as possible for businesses and to allow employees to avail of this. We referenced the codes of practice. This is something we will look at in terms of the codes providing practical and pragmatic guidance to workers and employees on how such a policy would be developed and what it might cover. We agree with the Deputy's main point. We want to make it simple and accessible and we are mindful of not placing an onerous administrative burden on anyone.

We take the point around self-assessment. We do not want to inadvertently transfer any obligations. We want to make this a fairly simple and streamlined process. We will look at self-assessment in the draft and reflect on the comments the Deputy and his colleagues on the committee might make in their report.

Regarding the six-month eligibility criteria, a minimum term of employment is a relatively common provision around accessing a suite of employment rights through legislation in Ireland. As far as I am aware, parental and carer's leave entitlements require 12 months continuous service so it is relatively well-established. We will examine the Deputy's comments around the length of time.

We are looking at grounds for refusal in the round for subjectivity and other areas. Obviously, we will be guided by the committee's report. I will finish on the point about continuous service. The Deputy is right. In the current very tight and competitive market, many employers are already offering remote-only or hybrid work patterns on an entry model. Of course, in a competitive market, employees are free to negotiate on entry. The intention of this legislation is not to supplant any more favourable arrangements for remote or hybrid work that are already being offered.

Deputy Richard Bruton: First of all, I do not agree with the disparaging remarks made by Deputy O'Reilly about the Tánaiste, who is not here to defend himself. These remarks should not have been put to an official to comment upon. Regarding head 12, a lot of attention is be-

ing paid to what or should not be on the list. The reality is that whether or not the employer picks one of these is entirely subjective. It is not an exhaustive list and is not justiciable in any way so unless we remove the subjectivity or the justiciable or adjudicable element, I am not sure whether working on the list offers a lot. I wonder whether we could use the fact that the employer must have a policy to require not a subjective decision but a decision that is rooted in the policy so that if a request is rejected, it is rejected on the grounds of something in the policy. That would then provide an opportunity for the WRC to look at the adequacy of the policy so there would not necessarily be a lot of individual cases going to the WRC but an employer's policy could be presented to the WRC for adjudication as to whether it met the code. It is an offence, which I presume is a criminal offence or least a fineable offence, not to have a policy. Is the Department looking at that area? What will be in the code? Has the Department given thought to what the code is like? What are the do's and don't's of a policy? Once the policy is produced, there must be reasonable grounds that the employer will follow them when it is making decisions. This legislation contains the power to use a code in quite a powerful way if it is designed in that fashion. Can we move away from the subjective? What is going to be in the code that could become an evolving requirement to facilitate more and more remote working as we go?

Mr. Dermot Mulligan: I might ask Mr. Doheny to say a few words about the code of practice and what might be included in it. We are thinking very actively about that.

Mr. Mark Doheny: We envisage the code of practice providing a standard template similar to existing codes of practice whereby it would almost be a template for formulating an organisational policy. We envisage that it would cover areas such as identifying roles that would inherently suitable for remote work and looking at the nature of work and the internal appeals mechanism. We see that being firmly fleshed out in the code of practice. It would in general establish best practice with handling requests, submission handling and return of a decision. We are at an early stage in terms of engagement with the WRC on the issue. However, it is a policy consideration that is active at the minute.

Mr. Dermot Mulligan: The Deputy's point about subjectivity, the grounds and the detail on the grounds would bring the WRC into a very detailed consideration of the context, which presents some difficulty. Perhaps an assessment of the policy of the employer against the code of practice might offer some way of creating objectivity and allowing the WRC to make an objective assessment that does not require it to get involved in the detail of an individual's circumstances, the circumstances of the business and the business context. We will reflect on that point.

Deputy Richard Bruton: If it is an offence not to have a policy, is it an offence to have a policy that ignores half the code of practice?

Mr. Dermot Mulligan: At this point, my understanding is that it is not an offence. That is not what is intended. Perhaps that might be something the WRC could take into account whenever an appeal is made to it. If the policy is out of line with the code of practice, that might be something the WRC would take into account when it is making its decision.

Deputy Richard Bruton: Is there any method short of stating that somebody is guilty of an offence? Is it possible to develop some process of change over time so that if someone declares it is reasonable not to accept a person's request now, they would be under some obligation to remove the vulnerability of the data protection system if that was the ground? Can we get to something that is more a case of evolving good practice rather than coming in with a sledge-

hammer? Where a policy is inadequate, can we use a nudging process rather than a black-and-white adjudication process?

Mr. Dermot Mulligan: Possibly. We are contemplating how to frame this legislation in a way that does not create a right to remote working but only a right to request remote working. One of the options open to an adjudication officer is to refer a situation back to an employer to consider it again. To use the example given, the employer's policy could be referred back to the employer for review in the context of the code of practice and, indeed, a situation can be referred back to an employer to be reconsidered. That is rather than saying employer X or employee Y should be granted remote working. That would create a right to remote working, which is further than what the legislation has in mind. We must find a mechanism in between that allows the adjudication officer, as part of a process, to ensure the employer considers the issue in an appropriate way.

Senator Róisín Garvey: I thank Mr. Mulligan for coming in. This is very exciting because we have never done this before. We have had no remote working Bill or legislation of any kind. It is good coming out of the Covid-19 pandemic that it made us realise how much we can do working from home. It is really important that we bring forward legislation. There has been much work done on this.

I have a few questions and comments. I worked from home remotely full-time for 12 years and I know the pros and cons. I have long lived experience around remote working. What have other countries done and how has it worked? We could learn from other countries that have been doing this for a long time before us. I would like to know a bit about that and I presume much of the work done by the delegation was based on what was found in other countries. What was the best practice discovered in Ireland? For example, I worked for a non-governmental organisation, NGO, for 12 years full-time working from home. I wonder if the witnesses reached out to companies that are already doing remote working from home to learn about what they know about what works or does not work.

If the committee recommends workers could contest their employer's refusal on any grounds, how would that work and is that realistic? Somebody could be a block layer on a building site and request remote working, for example, so we must scrutinise our Bill because one cannot always expect to be allowed to work from home in every instance. We know that would be illogical.

I disagree with one of the previous speakers and it would be madness to be able to request remote work from day one on the job. If I am an employer and I create a new job, it would have a job description. If the job description does not state that the worker can work remotely full-time, he or she should not expect to be able to apply for a job and demand to work from home. There must be a bit of logic and cop-on. If a person wants to work from home full-time, he or she should apply for a job where it is offered from day one. I can see the need for people coming into the office to work for a certain period before an employer would know the person could do the job properly and does not need further training. Once that happens, the worker may be able to work from home, plough on and get the job done.

If the Bill is passed, we must ensure two elements are covered. We must ensure the working environment in a home is appropriate for the employee, and that will probably have to come down to the employer. That would be an extra cost on the employer and I would like to hear about how we plan to support the employer in covering those costs in some way. The other question relates to carbon reduction that this could bring. It is really positive and we must

push on with it so that as many people as possible work from home and reduce our fossil fuel dependency.

When I was working from home full-time, it was really important for me to meet other people. I got involved in creating the first remote working hub in Ennistymon so I would have a place to go. I briefly experienced the hub in Cahirsiveen and I realised the importance of such a facility to somebody who works from home and may only get to the main office in Dublin once every three months. We would go mad working from home all the time if we did not meet people. It is really important if we bring the Bill forward that we take remote working seriously. It is not about letting people working from home full-time. We must give them the option to go to an office somewhere, hop on the Wi-Fi and have other people around them. That is from a social and mental health perspective and it is really important.

I welcome the Bill. It will be challenging to get it completely perfect and one can never please all the people all the time. It is important we bring a Bill forward as soon as possible to get remote working to a position where we can catch up with many other parts of Europe. We learned much during the Covid-19 pandemic so I imagine the delegation has learned much about what employers have managed to do in that time.

Mr. Dermot Mulligan: I thank the Senator for those comments and sharing her personal experience, which is useful. I will ask Mr. Doherty to speak to the international experience, as he reviewed that area, as well as the consultation.

Mr. Mark Doherty: With the international review, there are three countries we examined closely with a similar right to request flexible working. These are the UK, Netherlands and New Zealand. In each of those scenarios, remote working is one of the options available under flexible working and we looked at their best practice. The UK is looking at that again and currently revising practice. Its legislation predated the Covid-19 pandemic and despite the fact it has been in place since approximately 2014, there have been difficulties regarding the uptake of remote working. It is actively looking at the area now and we are engaging with the UK in that regard to see if we can take lessons from it. The UK follows a similar structure and employers are obliged to have a policy, and in those cases there are reasonable grounds for refusal. The number differs around countries, ranging from nine in some countries to eight or six. It depends on the individual scenario.

In the rest of Europe many countries have remote working or teleworking by agreement only where there is an agreement between the employee and employer. It is covered in collective bargaining rather than a legislative right. We looked at countries with a similar structure and attempted to take lessons from them.

The employer is responsible for health and safety obligations in the workplace, whether remote, in a hub or in somebody's home. The Health and Safety Authority has provided guidance for that throughout Covid-19 in respect of the obligations on employers performing health and safety assessments on workplaces, etc. There would not be a transfer of obligations to the employee in this legislation and it is not intended.

The Senator mentioned carbon reduction and that is a goal for the Government as a whole. There are a number of policy objectives that can be assisted by remote working, including increasing activation in disadvantaged groups in the labour market or greater regional dispersal. Carbon reduction is a key priority but we are also mindful that this would be a bit of a step change in the employer-employee relationship and we must be balanced and proportionate with

the legislative measures we bring forward. We are attempting to do that.

The Senator made a point about social interaction and we got it over and over again in the public consultation. Many private individuals who had been working from home saw the benefits but they also saw some of the downside. There may be greater fatigue and difficulty switching off. There may also be difficulties arising from a lack of social interaction. They are considerations and many businesses have taken that on board in formulating policies and aiming for some aspect of a blended or hybrid scheme. The use of hubs may be considered at an organisational level. The Department, along with the Department of Rural and Community Development, has certainly put much money into funding hubs. That has been done in various funding schemes. There is consideration across a number of Departments in that regard.

Ms Áine Maher: I echo Mr. Doheny's points on carbon reduction and the wider suite of public policy benefits. I fully agree with the Senator that those aspects are very important. I also agree with her important point around remote hubs and other ways in which we can ensure workers have the ability to interact socially. Remote hubs are included in the overall remote working strategy from which the commitment to legislate in this area stemmed. As Mr. Doheny referenced, colleagues in the Department of Rural and Community Development are working with a range of stakeholders on how best to utilise our current infrastructure around remote hubs to see whether it can be enhanced.

On the Senator's wider point, I understand the witnesses from Grow Remote reflected on the mindset shift around remote and hybrid work and the different options and opportunities, including remote hubs, that are increasingly becoming available to workers. They referred to their mapping and data-gathering exercise that will provide information on where people who are currently working remotely are based. We are following that research closely.

Senator Róisín Garvey: It is never going to be easy to legislate on this issue because there always will be employees who might try to take the piss and there also will be employers who might just say "No" to remote working because they are control freaks. It is difficult because each employer and employee is individual and every job is individual. It is a challenge to legislate because the law applies to everybody. I appreciate the nuance that is needed in this regard.

When I worked remotely from home and sometimes felt the need to see other humans, I had to pay to use the local hub. My employer would not pay for it. Consideration might be given to introducing a reduced rate for people in that situation or requiring employers to pay for it if they are letting people work full-time from home. I had it in my head that if I am using my home office to work for an employer, I am saving that company from having to rent or otherwise provide office space for me. It is something to think about. In using my own electricity and heating, I saved my employer a lot of money. I would expect a company to set employees up properly to work in their own home. In my case, my employers did that but, at the same time, I had to pay to use the hub and I paid for my own heating and electricity usage. The company did pay for my broadband usage, or most of it, which was good.

I wish the witnesses the best of luck in this. It will not be easy to please everybody. I would love to hear about the mistakes that have been made in Britain. I do not know whether we should set our bar in accordance with anything that is done there. If my memory serves me correctly, it has never been a place that is great at managing workers' rights. However, we must learn from others. I am not sure what the witnesses have learned from Grow Remote or other companies that have facilitated remote working and whether such learning has helped them to formulate the Bill. I thank them for their continued work on this issue.

Mr. Dermot Mulligan: To clarify, the reference to Grow Remote and Glofox related to proceedings at this committee. We have not had bilateral discussions with those companies.

Senator Róisín Garvey: Have the witnesses considered what provisions will apply in respect of people who are allowed to work full-time from home? I suppose they need to get the Bill completed first and then we can move to working out those details. I will talk to them after the Bill is done. With my 14 years of experience working from home, I have loads of ideas. I wish them the best of luck.

Senator Emer Currie: I am very supportive of this Bill. I thank Mr. Mulligan for his opening statement, in which he referred to his intention to look at a reduction in the number of grounds for refusal and to strengthen the redress provisions and the right to appeal. I will focus in the time available to me on heads 6 and 12.

This legislation to allow for the right to request remote working is part of an overall strategy to give people better access to employment and more job opportunities, especially in locations where there are not the same opportunities as there are elsewhere. We want people to be able to work where they want to work. It is about embracing locationless work. For me, the fundamental aspect of the legislation is around unlocking that potential, which is why the qualification period of 26 weeks is problematic. If somebody wants to work fully remotely in Kerry or Donegal, for instance, they will have work in the office, wherever that may be, for 26 weeks in order to prove themselves and be able subsequently to work remotely. We have tried to show through the example of Grow Remote and Glofox that, in fact, people can on-board remotely. Location is still embedded in parts of the legislation. The 26-week requirement is problematic if we are supposed to be delivering more jobs in different parts of the country.

There was reference to parental leave. The right to that leave is not a right to request. If a person asks for parental leave, the employer may postpone it for six months but, on the spectrum of rights, it is very much a right to have rather a right to request. These proposals for remote working, however, will only give a right to request. Internationally, we are moving towards day one. The witnesses specifically referenced the UK but other countries are moving in the same direction.

I want to ask about resources. This Bill offers a floor of rights but, as I said, it is a part of a transformation under which the ambition is to facilitate jobs in parts of the country where there is less access to employment opportunities. It is part of a digital transformation. What resources will be put in place to back this up? Companies need to be future-proofed.

In regard to the grounds for refusal, as set out under head 12, the approach being taken in other countries is that the presumption is “why not?” when it comes to an employer approving remote working, rather than focusing on the employee having to give reasons it should be allowed. The provision in this legislation is open-ended, with the employer, having given the application due consideration, being able to decline a request for remote working on reasonable business grounds, which may include, but are not limited to, a list of specified reasons. Within that list, the language is quite soft, with reference to potential negative impacts and concerns. In New Zealand, to give an example, the provision is that an employer may refuse a request only if that employer determines it cannot be accommodated on one or more grounds, as specified in the legislation. It is the same with the UK legislation, which sets out the specific business grounds for refusal. The legislative provisions in those jurisdictions are much tighter than what is proposed in this Bill, both in terms of the language used and the specified reasons for refusal. The grounds for refusal should be reasonable and demonstratable. There is a policy aspect to

this and if there is a link there that makes it easier to set out what is reasonable and demonstrable, then I will take the witnesses' views on that.

There are some provisions in the Bill that, in my view, should not be included. Refusal is permitted where the employer cannot reorganise the work among existing staff. However, the remote worker is just as much a team member as is any other employee. An inordinate distance between the proposed remote location and on-site location is given as another reason for refusal. Again, we are locking in location when this is supposed to be about opening up the possibility of locationless work. Refusal is also permitted where there are ongoing or recently concluded formal disciplinary processes involving the requesting employee. There is a problem here in that an employee having a difficulty in getting to the office may be part of the reason that he or she is under a disciplinary process.

Chairman: The Senator is running out of time. If she wants answers to her questions, she will need to allow the witnesses to respond.

Senator Emer Currie: I will leave it there. I am particularly interested in the provisions under heads 6 and 12.

Mr. Dermot Mulligan: I ask my colleague, Ms Maher, to come in on some of those points.

Ms Áine Maher: I thank the Senator for her questions. On head 6 and her comments around unlocking the potential for locationless work, I want to emphasise that this is about a right to request remote work in jobs where such a facility is not specified or where the employer is not already engaging in such accommodation. It is in no way the intention of this legislation to undercut the many companies that are already offering hybrid or remote-only options and are recruiting on that basis, as specified from day one in the job description. As we heard from the representatives of Grow Remote when they contributed to the committee's discussion on this issue, a lot of employers in the current jobs market are already offering those opportunities from day one. I referred to parental and carer's leave. A minimum term of employment, as I said, is a relatively common provision in a lot of different legislation, not just on parental and carer's leave. The new Sick Leave Bill, as drafted, also requires a minimum term of employment. This is intended as a floor, not a ceiling.

Senator Emer Currie: It is part of a national strategy, though.

Ms Áine Maher: It is, and it comes, in fact, from the working strategy, as the Senator will know. Those are the reasons there is a minimum term of employment. I know that the Senator's view is that the 26 weeks stands out. On the basis of our engagement and the public consultation, there was a divergence of views on this. Some wanted a lot more. I am conscious of the Senator's time.

Senator Emer Currie: In the consultation we were more likely to hear from people who had reservations rather than the people who can show that this transition can be successful.

Mr. Dermot Mulligan: I spoke in my opening statement about the various grounds, on which we also had some discussion earlier. What I said was that we are looking fundamentally at the grounds to see how they can be changed. There have been a lot of divergent views, as Ms Maher said, but there is satisfaction about the way this is structured. We are looking at the grounds fundamentally to see how we can improve them. That is part of a wider review of the grounds for appeal to the WRC and how we can do this in a way that puts in place an effective framework to allow employees the right to request remote work but not necessarily the right to

get remote work. That is quite complicated to do but it all-----

Senator Emer Currie: It has been done.

Mr. Dermot Mulligan: -----sits together in respect of the grounds for appeal and then the role of the WRC in all that.

Deputy Paul Murphy: I thank Mr. Mulligan for his presentation. The concluding part of the opening statement refers to all the positives: the positive economic, spatial, environmental, cultural and societal change for our country, increased participation, attracting and retaining talent etc. There is also the report published by the Department this morning, which points to an average of €413 a year in savings for workers working remotely from reduced commuting costs, the monetary value in reduced carbon emissions of over €7 million and a time saving of 93 hours a year, which is valued at just over €1,000, quite a low valuation. It works out at about €11 an hour less than most workers get paid. Mr. Mulligan factors in the fact that people can have cheaper and better quality housing and reduced need to pay for childcare. The positives are enormous and are spelled out towards the end of Mr. Mulligan's opening statement. That does not really tally, however, with the Department's and the Government's approach to this, which is very minimal, in reality. What we are talking about is the right to request rather than the right to do and, therefore, a corollary of the right of refusal on the employer's side. Why is that? Why do all these positives not weigh more heavily in the Department's considerations?

Mr. Dermot Mulligan: The Deputy is right - and we are very clearly in agreement on this - about the potential for good across a whole range of policy areas, including in the interest of employers and firms, in the interest of employees, in the interest of the environment and so on. We are very clear about that. That is why we have a national remote work strategy, of which this right to request remote work is a key recommendation. However, in putting in place a framework to allow for a right to request remote work, we have to balance the various interests and views, including those of businesses, business owners, employers, employees, trade unions and so on. The committee has heard some quite divergent views as to what has been proposed. As a Department, it is for us to review those views and to try to find a way that advances the overall agenda to achieve the objectives, which we both agree are really good ones and important to get to, but to do so in a way that does not infringe the rights and responsibilities of the various interests. One of those is business owners' constitutional rights in respect of their businesses. We have legal advice as to how far we can go in that regard and we have to take that into account as well. In addition, as has been said here today and on other occasions, in the marketplace many employers are offering fully remote work from day one, some are offering hybrid working and so on. There is a whole range of situations in the real world, whereas, from the point of view of the legislation, we need to put in place a framework that seeks to be fair to everyone and seeks to put in place protections in order that employers deal with everyone's application fairly and that employees deal with their applications and their requests in a responsible manner as well. We need to try to find a middle way or to get a balance that allows for the development of this agenda in a good way, a structured way, and one in which we achieve all the things the Deputy and I have talked about today as public goods.

Deputy Paul Murphy: The trade unions are also on board with the positive things here. When Mr. Mulligan talks about the balance in this, he is talking about business interests and business owners not being in favour of doing this. There is not much balance there. If you give the right of refusal to employers, you have not really given much of a right to workers. Workers can ask their employers for things today. They do not really need legislation to have the right to request something, and the current situation is that employers have the right to say no.

Under the current heads, they will still have the right to say no. I ask Mr. Mulligan to expand on that point. Is he saying the Department has legal advice that it would be unconstitutional, for example, to give certain categories of workers the right to remote work? Is that why the Department is focused on this right to request?

Mr. Dermot Mulligan: What I am saying is that, from a legal point of view, there are limits to the extent of the rights we can give to employees as to what rights they can request or demand, if we want to put it that way, from their employers. There is legal advice to that effect.

Deputy Paul Murphy: What or where are those limits? When Mr. Mulligan says there are limits, I want to know what those limits are so we know what we are dealing with.

Mr. Dermot Mulligan: That legal advice is based on assessments of constitutional rights, which come down to individual situations, so it would depend on the circumstances of the case. I know that that is not a satisfactory answer. Business owners have a constitutional right in respect of the ownership and control of their businesses. That is the core of it, but what the exact rights are in different situations would vary from situation to situation.

Deputy Paul Murphy: The State legislates for very many aspects of workers' conditions in work. Employers could make the case that minimum wage legislation is a restriction on their constitutional right to private property and right to run their businesses as they like. Clearly, however, it is largely accepted that that would not be accepted. There is clearly an accepted level of intervention on the part of the State into the relationship between employer and employee. Is Mr. Mulligan saying it would be unconstitutional to provide to certain categories of workers a right to remote working? Is that where the limit is?

Mr. Dermot Mulligan: I do not really want to have a discussion on constitutional jurisprudence, but-----

Deputy Paul Murphy: I am just asking, though, what the bottom-line advice is, as opposed to-----

Mr. Dermot Mulligan: As the Deputy says, there are situations where the Oireachtas has decided the constitutional rights of business owners are balanced against the constitutional rights of employees and so on. There are limits that have to be taken into account and that is informing how we structure this Bill.

Deputy Paul Murphy: Can I ask one final question?

Chairman: Very quickly.

Deputy Paul Murphy: Mr. Mulligan talked about looking at the grounds for refusal. Is he considering getting rid of the blanket business grounds for refusal?

Mr. Dermot Mulligan: As I said earlier, we are considering, in quite a fundamental way, that head and all those grounds. I would not single any one out but we are looking at it quite fundamentally.

Senator Paul Gavan: I thank the participants for their patience this morning. They spoke, quite rightly, about balance and proportion and a framework that is fair to everyone. That is what we all want to achieve. I reviewed earlier the international review of the right to request remote working. It is a very useful document but it does prompt the question of why, having reviewed legislation from a host of different countries, including New Zealand, did the Depart-

ment opt initially for a law based, effectively, on the British Tory law passed in 2014? Why is that, given how restrictive it is, and given that we know from 2020 data that the law has not worked? It has only resulted in a 4% increase in flexible working across Britain.

Mr. Dermot Mulligan: We did that international review and I might ask Mr. Doheny to say a few words about that. The Bill we published was based on, and influenced significantly by, the stakeholder consultation we did. Mr. Doheny can talk in a little more detail about that as well. We wanted to come up with a framework suitable for the Irish situation and that would reflect some of the views, including divergent views, expressed by different stakeholders. It was an attempt to find that balance and middle way to create a framework that would allow remote working to develop in Ireland. That is what we want to do. That is the objective so we are working on how to create a framework to allow that to take place.

Mr. Mark Doheny: We did an international review and looked at other countries where there was a right to request remote work. We looked at what they do in other European member states, whether by agreement only or by legislating within the collective bargaining fold. We focused on the ones that had a similar right to request, which had been committed to in the remote work strategy. We did not copy the UK in any way, shape or form. We looked at New Zealand, the Netherlands and the UK and there were positives and negatives in all regards. The UK is tweaking its legislation post Covid and so is the Netherlands. The pandemic has forced every country to look again at the legislation it had in place. The Bill was drawn primarily from the public consultation, stakeholder involvement and contributions. We got very telling and detailed contributions from private individuals, business representative groups and trade unions and all those were reflected in the Bill.

Senator Paul Gavan: I am sorry to interrupt but I will be cut off time-wise and I want to get a few more questions in. I have to be honest; I find it hard to accept that it is just a coincidence that the Bill the Department produced looks almost exactly like the British law, except that it is even more onerous. We will have to agree to disagree on that. It is refreshing to hear that the Department now accepts the Bill needs to be fundamentally changed. My colleague from the Irish Congress of Trade Unions described the original Bill as fundamentally flawed, stacked in favour of the employer and unfit for purpose. I will home in on a couple of key points for change. What was the thinking behind only allowing an employee to appeal a decision on technical grounds? That was an extraordinary feature of this first draft of the Bill. What was the thinking behind that?

Mr. Dermot Mulligan: I talked about this earlier. This was about ensuring an employer responded fairly to the application and, when making a refusal, conducted itself fairly in relation to an application. There is also the matter of how to support the development of a right to request remote working without creating a right to have remote working. That is something we continue to grapple with and we are thinking about how we can do that. As I mentioned earlier, it is quite complicated and very tricky to do that. That is why there was a focus initially on the procedural piece. The Tánaiste has asked us to look at that again to see how we can develop that so it is not merely procedural. We are doing that at the moment.

Senator Paul Gavan: I welcome that. It is a welcome recognition. What about the 12-week rule? This harks back to some of the points Senator Currie made. It is quite a cumbersome first draft of the Bill. It should not take 12 weeks for an employer to respond. In a market where we are hoping to attract very skilled employees, surely we need more flexibility. What was the thinking behind insisting on a three-month timeline for a response from an employer?

Ms Áine Maher: In terms of ensuring requests to work remotely are dealt with in a fair way and are evaluated clearly based on the grounds as set out, the thinking was to provide enough time to allow that to take place. Having said that, the length of time a worker might reasonably expect to wait before their request to work remotely would be considered by their employer currently sits at 12 weeks, as set out in the draft heads. It is possible that we will look at that, weighing up the balance between what we want, which is to make it easier for people to request remote work and facilitate remote working where possible, while also, as my colleague has said, being mindful of business needs for employers and rights employers have around ensuring their business can continue as it is. We can consider those points and I thank the Senator for raising them.

Senator Paul Gavan: What is the timeline from now? We have been talking about this for a while and as the witnesses have acknowledged, they have had huge interactions on it. When can we expect a radically updated version of this Bill?

Mr. Dermot Mulligan: When we get the report of the committee, we will look carefully at the committee's points, consider them and proceed as quickly as possible.

Chairman: The committee will not delay it any further than we have to. We will produce that report as fast as we can. I call Senator Sherlock.

Senator Marie Sherlock: I thank the committee for bearing with me when I had to step out there. I also thank the officials from the Department for coming here today. I am conscious that they have an enormous workload and are having to take time out to come to this hearing today. However, to be frank, I am wondering about the purpose of today's hearing. On 26 January, 16 weeks ago, the Tánaiste said he was open to changes to the Bill. When Department representatives appeared before the committee 14 weeks ago on 9 February - Ms Maher was not there that day but Mr. Doherty and Mr. Mulligan were - they talked about looking further at the legal issues with regard to the redress provisions and the right of appeal. They said then it was a work in progress. The statement today says the Department is still examining the redress provision and the right of appeal and is considering the enumerated grounds for refusal. We have been having a conversation about that for the past hour but I am none the wiser as to what the precise intentions of the Department are with regard to these issues. The Department has a job to do and we as a committee also have one to do here, which is to carry out pre-legislative scrutiny. I have a great concern that our committee is being asked to produce a report in a vacuum because we do not know what the clear intentions of the Department are. I am unsure whether our committee should issue any report in the absence of clear detail from the Department as to what it wants this Bill to look like. This goes back to the question about the precise timeliness. Mr. Mulligan said that he is waiting for us to report back so that he can then decide. He said on 9 February that he is looking at these matters. What update does he have on these? It is not acceptable that so many weeks have passed and we are still not clear as to what exactly the Government is going to produce. The Tánaiste should be here today and the Chairman will be aware that I have said in private session on many occasions that he should be here to give account to the committee. This is not to shoot the officials here but for those officials who are tasked with drafting the legislation, we need to hear more detail because otherwise we are going to be writing a report in a vacuum.

Chairman: I call Mr. Mulligan to respond, please.

Mr. Dermot Mulligan: When we were here the last day, we said that we were looking at things. We heard the different views of different members of the committee and were await-

ing a report from it. I am not sure if it would be appropriate for us to proceed and finalise our thinking as a Department without hearing the views of the committee in a report. As I said at the outset, we are very appreciative of the work of the committee in this area, we welcome the points of view and we are trying to take them on board as expressed both on the previous occasion and today, albeit divergent as some of these are. We acknowledge that is the task ahead of us and when we get the report, we will be working as quickly as we can to progress the issue.

Senator Marie Sherlock: For the record, I am not sure that it is appropriate that our committee produces a report, given that we have so little detail as to what the Government's intentions are in respect of this Bill and I will leave it at that. Gabhaim buíochas.

Chairman: We will definitely take the Senator's comments into consideration when we are doing our report. Is the Senator finished?

Senator Marie Sherlock: Yes, I am indeed, thank you, Chairman.

Chairman: That completes round one of the committee's consideration of the matter today as no one else has indicated their wish to make a contribution.

I thank Mr. Mulligan, Ms Maher and Mr. Doheny for assisting the committee in its consideration of this important matter today. The committee will consider this matter further as soon as possible and we will take into consideration all of the comments made by all of the members. We will have a discussion in private now to decide on how we will conclude that.

The joint committee went into private session at 11.03 a.m. and adjourned at 11.30 a.m. until 9.30 a.m. on Wednesday, 25 May 2022.