



Irish Congress of Trade Unions

**Response to the Department of Justice and Equality
Consultation on Flexible Working**

April 2020

Irish Congress of Trade Unions

Response to the Department of Justice and Equality Consultation on Flexible Working

Background

The Department of Justice and Equality has launched a public consultation “to help develop and improve Ireland’s policy on flexible working”.

“This consultation will inform the development of a policy on flexible working that takes account of the needs of all members of Irish society, particularly those with young children, those with disabilities, employers and of the broader economy”.

The Department have written to Congress inviting us to make a detailed submission as part of the consultation.

“Based on the responses to the consultation, the Government will consider if additional supports are required to meet the needs of businesses and employees and will prepare guidelines for employers on flexible working, which will benefit employers seeking to attract and retain talented employees, and individuals who are trying to reconcile work with family life”.

Initial Observations

The Department’s consultation focusses on Ireland’s policy on flexible working. There are however a number of current related initiatives in this area that are not alluded to by the Department:

- The Irish Government, as part of the EU pillar on social rights, has to transpose (by August 2022) the EU Work Life Balance Directive which includes a commitment “to extend the right to request flexible working arrangements to carers and working parents of children up to eight years old”;
- The Irish Human Rights and Equality Commission have circulated for consultation a draft “Code of Practice on the Promotion of Family-Friendly Measures in the Workplace, in accordance with section 31 of the Irish Human Rights and Equality Commission Act 2014”. This also includes a section on “Best practice to offer flexible working arrangements.”
- Future Jobs Ireland 2019 as part of its “increasing participation in the labour force” commissioned research¹ into remote working in Ireland. The report includes a set of recommendations in relation to flexible working.

¹ <https://dbei.gov.ie/en/Publications/Publication-files/Remote-Work-in-Ireland.pdf>

- A new coalition of businesses, unions, environmentalists, academics and NGOs – Four Day Week Ireland - has joined together to advocate for a gradual, steady, managed transition to a shorter working week for all workers, in the private and public sectors. The initiative is the Irish leg of an international campaign to establish a four-day week² without reductions in pay or productivity.

Congress believes that a more coordinated approach would be more productive in terms of improving flexible working options for people and is concerned that these separate tracks to develop policy and legislation may lead to a lack of coherence in our national response.

Congress recommends that we use the opportunity posed by all of these initiatives to hold an inclusive review process of flexible working in Ireland with a view to agreeing a common way forward.

Flexible Working and the Covid-19 Crisis

The public health emergency we are currently living through has thrust flexible working and remote working options into the limelight. Trade unions have been working to ensure that all employers exercise maximum flexibility in facilitating staff to work remotely and to limit the need for attendance in the workplace to those whose presence there is essential.

What some have referred to as “the remote working experiment” has become the new normal for hundreds of thousands of people.

The next few months will test this experiment as workers and employers adapt to the new set of extraordinary circumstances. Some will no doubt wish to hang onto the freedom and flexibility, the lack of commuting remote working allows, while others may want to get back to the workplace as soon as possible, missing the benefits of an office environment, in terms of collaboration and the immediacy of personal contact. The impact on productivity and on workers general wellbeing will need to be assessed before we leap to conclusions about what does and doesn't work.

Remote Work in Ireland

Remote work is a part of the broader umbrella of flexible work, which encompasses many arrangements such as flexi-time, parental leave, job-sharing and compressed hours. The Department of Business Enterprise and Innovation published a major report on remote working in Ireland in October 2019. It is worth reflecting on this major piece of work in the context of seeking to inform the development of a policy on flexible working.

² <http://fourdayweek.ie/>

This research was a deliverable under Pillar 4 of Future Jobs Ireland 2019, which is concerned with increasing participation in the labour force. However, Minister Humphreys in her introduction acknowledges that the impact of remote work is much broader than this:

“If remote work is embraced as part of innovation and technological change, it has the potential not only to increase participation in the labour force, but to improve productivity, attract and retain talent, and assist in the transition to a low carbon economy. So, it can contribute to the five key Pillars under Future Jobs Ireland 2019 that are crucial for Ireland’s economic success. While remote work holds significant potential for Ireland and has the potential to improve the lives of many workers, I also recognise that it comes with risks that need to be carefully considered”.

The report places a focus on fostering participation in the labour force through flexible working solutions. Such solutions are increasingly a priority from a range of perspectives, from sustainability and positive environmental impacts, to increasing participation amongst women, older people and people with disabilities. The inequalities faced by such groups in the labour market can be explained by the many barriers that exist to their full participation in the workplace – including an absence of the real flexibility in many organisations that would enable people to realise their professional potential.

A survey carried out for the report found that flexibility is one of the key motivators for people engaging, or seeking to engage with remote work, with 43.5% of respondents identifying greater flexibility as their primary motivator for working remotely. It also found that:

- Remote work was found to be more prevalent in the Private Sector (63%), compared with the Public Sector (28%).
- 48.5% of respondents worked remotely, while 51.5% did not.
- 16.2% of total remote workers reported that they engaged in co-working, which was more popular in the Private Sector (19.1%, compared with 6.9% of Public Sector workers).
- Working remotely on a weekly basis was the most popular form (51% of all respondents, but 64.6% of respondents working in the Finance, Insurance or Real Estate sector).
- Engaging in remote work on a daily basis was the most common arrangement when excluding Finance, Insurance or Real Estate. This is driven by the ICT sector and the Professional, Scientific or Technical sector, which combined account for nearly 60% of overall respondents who reported to work remotely every day.
- Daily remote work is significantly less common in the Public Sector (10% of Public Sector responses).

- More sparse instances of remote work, on monthly or occasional bases, were more common amongst Public Sector respondents.
- Laptops were the most common device (85% of remote workers), followed by a desktop computer (8%). Self-identified remote workers were more likely to work using a device provided by their employer although over a third used their own devices.
- Homeworking was the most popular mode (69.5%).
- A substantial proportion (20.7%) work remotely from multiple locations. The least common modes were working from a hub or co-working space (4.9%) and working when travelling (4.4%).

Remote Working Internationally

A number of international policies were also considered in order to identify good practice and potential learnings, in particular from countries such as the Netherlands and Finland, which have a high proportion of homeworkers.

Under the guidance of Advisory, Conciliation and Arbitration Service (ACAS), employees in the United Kingdom have the right to request flexible working arrangements and employers must respond within 3 months.

In the Netherlands, certain employees also have the right to request placement at a different location or at home and employers are restricted to an array of specific grounds that they can use to reject the request.

In France a law mandates unions and employers to negotiate on certain areas, including the right to disconnect. The legislation leaves it to unions and employers to guarantee the efficiency of such a right in a manner that matches the way the business operates so that, in reality, the right to disconnect is not uniform.

In New Zealand, all employees can ask at any time to change their hours, days or place of work.

Finland will shortly introduce a new Working Time Act to give the majority of full-time employees the right to decide when and where they work for at least half their working hours.

The report goes on to look at influencing factors for workers and employers before examining the implications of the findings which include:

1. Guidance

Multiple stakeholder groups identified the absence of official guidelines for employers, employees and HR professionals on the topic of remote work and many are unclear on

how to manage the various aspects of what remote work entails. The main areas highlighted in the research are:

- **Equality** – Employers would benefit from clear guidance which facilitates the introduction of a remote working policy including the setting out of fair and objective grounds for refusing a remote working request.
- **Health and Safety** –A lack of clarity on Occupational Health and Safety emerged as a key influencing factor for employers considering the introduction of a formal remote working policy.
- **Employment Conditions and the Right to Disconnect** - Employers would benefit from increased clarity and support in balancing their employees’ right to privacy and the practical elements of performance measurement and monitoring working hours. Disconnecting from work is an increasingly important issue for employees engaging in remote working solutions.
- **Data Protection** - Guidance is needed on balancing data security and cybersecurity when engaging in remote work, particularly given GDPR and the Data Protection Act 2018, which offers enhanced privacy protection rights to individuals in relation to the processing of their personal data.
- **Training** -Training for employees working remotely and for managers in managing distributed teams is a major enabler in the successful implementation of remote working policies.

2. Data

In order to make informed policy in this area, up to date data should be gathered in the following areas:

- **Employees** - There is a lack of national Labour Force data which captures the prevalence and types of remote work in Ireland. A dedicated periodic exercise in gathering data on people engaging in remote work across Ireland would provide insights to the nuance of these working situations and would provide a more secure basis to inform policy.
- **Employers** - There is a need for quantitative evidence on employers engaging with remote working solutions. The collection of this data would help to create a fuller picture of the adoption of remote work which could be monitored to understand trends.
- **Hub Infrastructure** - At present, there is no data available on the national infrastructure of hubs in Ireland. This acts as a key barrier to promoting the adoption of remote work in hubs. It would be beneficial if a national exercise was carried out to understand the number of hubs in existence, their classification, their offering, occupancy levels and awareness of the supports available to them.

3. Collaboration

Increased collaboration would ensure a more cohesive Governmental approach to remote work which could be fully supported and understood across the stakeholders concerned. It would provide the opportunity for Departments and Agencies to build on and complement the work of each other. Increased collaboration could be achieved through the formation of an Interdepartmental Group comprising of relevant Departments and State Agencies who could align national policies and strategies.

Congress believes that there is much useful information and policy guidance contained in this report and that it can be a useful resource in designing policy and legislation to define Ireland's flexible working agenda.

However, collaboration needs to extend beyond Government Departments and Agencies and Congress recommends that it should encompass social dialogue between employers and trade unions in order to take account of the needs of all members of Irish society, including those with young children, those with disabilities, workers, employers and the broader economy.

Flexible Working

The ILO³ has observed that competitive demands have led to changes in working-time arrangements at the enterprise level, while changes in labour supply, and particularly the larger numbers of women in paid employment, are contributing to a growing concern about conflicts between paid employment and personal responsibilities, such as caring for family members. Measures to assist workers improve the balance between their working and personal lives have therefore taken on greater importance.

Changes in working time arrangements have given rise to a number of emerging issues, including:

- The rise in the number of jobs that do not guarantee any specific working hours during a calendar day or week. Unions campaigned for measures to regulate this phenomenon culminating in The Employment (Miscellaneous Provisions) Act 2018 which bans zero hour contracts and gives workers in casual and precarious work jobs improved security around their working hours.
- Problems arising out of split shifts, which may require workers to be available a few hours in the morning and then again in the evening, which, often means that workers have no real rest period during the day, especially in cases where commutes may be long and costly.
- Tele-work involves various forms of organising and/or performing work using information and communication technologies that is carried out away from the

³ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_649907.pdf

employer's premises on a regular basis. Advantages for workers include a reduction in commuting times, greater autonomy and flexibility in the organisation of work as well as a better work-life balance. The disadvantages of such forms of work include the tendency to work longer hours, an overlap between paid work and personal life and the intensification of work.

- The right to be disconnected⁴ is considered as a way forward in dealing with the blurring of the boundary between work and rest and the danger of “working without end” due to the growing use of the ICTs. Some countries have already introduced measures to mitigate the worry and stress associated with constant connectivity. Such measures may require enterprises to negotiate the “right to be disconnected” in the context of bargaining on occupational equality and the quality of life at work. In addition, some companies have implemented measures to limit the need for workers to check their emails outside normal working hours or to allow employees to register time spent working outside the employers' premises as working time, which opens up the possibility of overtime compensation.
- “Gig-economy work” (or “on-demand economy” work) describes work brokered through on-line platforms. These forms of work raise important issues concerning labour protection as workers in the gig economy are almost invariably classified as independent contractors and thus do not have access to the rights of workers covered by a recognised employment relationship, including rights established by working time regulation.

Unions have been highlighting that while new forms of working time arrangements, some linked to digitalisation, in principle may seem to provide greater flexibility and autonomy for workers and employers, this often does not translate into a reality in practice. Instead, irregularity and unpredictability of working hours combined with the unclear employment relationships have become an increasing feature of work, in particular for workers in low paid and insecure jobs.

For example, when it comes to the gig-economy, competitive pressures due to the wide availability of the internet, which augment the pool of workers competing for jobs, mean that wages are driven down so that workers may be forced to work longer hours to make an adequate living. Moreover, as some jobs are only posted or need to be carried out during certain times of the day, the flexibility enjoyed by workers to set their own hours may be limited. Given that work is posted from different locations and time zones, it may also require night work or work during unsocial hours.

Flexible working can be invaluable in helping people achieve a balance between work and home life and we believe that it should be the default position. As well as offering benefits to people across the workforce, making flexible working available in all but the most exceptional of circumstances would be a catalyst for promoting greater gender equality by giving families a greater say in how and when they share their caring responsibilities. (However, care must be taken to ensure that the taking up of such options is shared

⁴ <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/right-to-switch-off>

between genders so as not to become another mechanism contributing towards gender inequality, including lack of promotional opportunities etc.). It could also help to address some of the barriers disabled workers face in the workplace.

Flexible work schedules and other types of flexible working time arrangements can provide some of the most cost-effective solutions to achieve work life balance. However, the specific type of working time flexibility involved has a distinctive impact on work life balance. In general one can distinguish between working time flexibility that is employer-led and that which is worker-led.

Employer oriented flexibility includes, for example, schedules that are being determined and varied according to the operational requirements of the business, such as shift work, hours averaging arrangements (including annualised hours) and on-call work.

Congress notes the findings of a research study, commissioned by the Financial Services Union and undertaken by the University of Limerick, on “Technology, Work and Skills: The Impact of Technology on Employees⁵” which reveals that women and men had some different experiences of workplace technology. Women were more likely to expect that there would be a significant level of automation of their role and that their work was being monitored through technology.

The study recommends that greater attention needs to be paid to possible gender implications of workplace technology. We recognise that while there may be some advantages to technology in regards to work life balance (WLB), e.g. in facilitating homeworking, there is evidence that the emergence of organisational cultures which either demand or institutionalise the use of technology to remain engaged with work outside of working hours erode the advantages that technology creates in relation to WLB. Unions will continue to work to protect workers from such negative impacts of future technology on work, which includes legislation to provide workers for the right to disconnect and to end the informal extension of the working week and the over-use of technology for work purposes.

There is a need for further analysis and action on the gender implications of workplace technology, particularly in those sectors and jobs which are most at risk.

Worker-oriented flexibility, on the other hand, refers to working time arrangements where employees have some degree of choice or influence over the timing (and sometimes also the place) of their work. Some prominent models are flexi-time arrangements, time-banking and compressed work weeks.

It is also possible for many different types of working time arrangements to be ‘balanced’, meaning that they are specifically designed to meet the needs of both workers and enterprises.

Congress believes that agreed flexible working options can be mutually beneficial and believes it is time to introduce legislation to make flexible working the norm across the

⁵ <https://www.ul.ie/news-centre/news/university-limerick-report-calls-measures-prevent-overuse-technology>

economy. It is important to stress that we do not see this as including one-sided flexibility, available only on the employer's terms. The flexible working arrangements that we are seeking to normalise are those which reflect genuine, two-way flexibility, helping workers balance work and their life outside the workplace.

Congress would strongly oppose the introduction of any steps which promote employers' ability to have an 'on demand' workforce, while minimising their obligations to the people who work for them. There is a presumption that there is autonomy of choice of work in the labour market, but the rise of insecure work has brought with it increased levels of forced flexibility.

EU Work Life Balance Directive

In 2019 the European Union adopted legislation—the Work-Life Balance Directive⁶—designed to help parents and carers to combine their working and family lives. This is definitely a major step forward. But it is by no means the end of the battle to give women equal opportunities in the labour market and to enable workers to care for their children and other dependants in a fair, humane and stress-free way. Consequently, Congress will not only be pushing the Irish government to transpose the law as rapidly and comprehensively as possible, but also negotiating for even better work-life balance arrangements, not least in the area of flexible working.

Reconciling work and family care is a concern for workers in every sector throughout their working lives. Yet women still shoulder the bulk of responsibility for caring and this has an impact on their working lives, often forcing them to take part-time or lower-paid jobs or drop out of the labour market altogether. Work life balance entails a combination of measures allowing men to play a greater role in childcare and giving women access to flexible working, public services and childcare. It means that governments must recognise the diversity of family life in the 21st Century.

Congress insists that trade unions must now be consulted and involved in the process of converting the Work Life Balance Directive into national law. The new Directive sets minimum standards, but through collective bargaining unions can build on the basic legal rights, securing extra protection for carers as well as the full implementation of those rights.

Under the Directive the right for parents to request such flexible working arrangements has been extended to include working carers. Disappointingly however, it has failed to grant the right for flexible working time, instead providing only for the right to request it.

There is no doubt however that the Directive is good for citizens, business and the economy:

- Parents and carers will profit from a better work life balance. Moreover, the foreseen increase in women's employment, their higher earnings and career

⁶ <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&newsId=9438&langId=en>

progression will positively impact their and their families' economic prosperity, social inclusion and health.

- Companies will benefit from a wider talent pool and a more motivated and productive labour force, as well as from less absenteeism. The rise in women's employment will also contribute to addressing the challenge of demographic ageing and ensuring national financial stability.
- Reconciliation policies must not be considered as benefits for women or parents only but rather as a deeper change in employment policies and functioning of businesses, from which all employees, regardless of their gender and family status, as well as employers can benefit.
- Good work life balance has a positive impact on the wellbeing of workers. It can also contribute to achieving major policy goals: stimulating employment (especially among women and older workers) and growth; promoting children and youth development; and achieving gender equality.

Congress believes that the implementation of the Directive would be a good start but that the employees' right to request modification should be unlimited. The reality is that the range of reasons people request flexible work - mental illness, domestic violence, ageing family members, and other pressures - do not afflict employees at predictable intervals, and only up to a maximum number of times per calendar year. Real flexibility and real options for workers require latitude to request modifications to work arrangements as necessary.

There should also be no restriction on the right to request a modification of work arrangements only after completing a minimum period of service with the employer. A right is a right. It must not be reduced to a privilege that is contingent on whether or not the employee has demonstrated his or her 'worthiness' in the eyes of the employer.

Particular attention should be paid to workers seeking to balance work and caring responsibilities and for whom access to genuine flexible working arrangements is crucial. Family carers are the main source of care provision for those in need of care due to a long-term illness, disability or frailty living in the community.

- Approximately 4.1% of the Irish population are carers.
- 54.6% of carers are in the labour force.
- 61% of carers are female, 39% male.
- An ageing population will mean increased demand for care will soon exceed supply.
- Consequently, balancing work with care obligations will become an increasingly important health, social and economic issue.

While there are existing entitlements in the Carer's Leave Act 2001, there is a need for improved terms and conditions for carers seeking to reconcile work with caring responsibilities, which would enable carers to remain in touch with the labour market to the greatest extent possible.

The transposition of the EU Work Life Balance Directive which provides for:

- A minimum of 5 days carers leave per year, per worker.
- Right for carers & parents to request flexible work arrangements.

Training could be provided to line managers on managing flexible workers and their outputs, and employers could be further encouraged to support workers with caring responsibilities through flexible working arrangements when the need arises.

There could also be a role for the WRC in raising awareness of Carers Leave and consideration given to expanding workers' rights to Carers leave as part of the transposition process.

Congress notes once again that the Directive is a minimum standard and will continue to strive for more ambition, including payment to avoid it remaining an option for the better off only.

Ultimately our call is for all workers, regardless of employment contract, to have a day one right to flexible work. This should be implemented alongside a new duty on employers to advertise all roles as flexible.

The transposition process also provides a useful context for the promotion a national dialogue on work life balance. It could be used for example to promote discussion on a gradual, steady, managed transition to a shorter working week for all workers, in the private and public sectors – as advocated for by the **Four Day Week campaign**. Such a dialogue could change the false narrative that working long hours is good for productivity and a badge of honour, challenge the worst excesses of the 'work-first, always-on' culture, and champion the importance of family time, leisure time, caring work and community work.

Any new arrangements should also include the introduction of protections for those who seek flexible working options, especially when it comes to people's career development opportunities.

Conclusion

In our submission we have emphasised the importance of reasonable limits and protective safeguards in devising various flexible working-time arrangements to ensure protection from prejudice to health and safety as well as guaranteeing work-life balance. We have highlighted that the flexibility afforded by certain types of working time arrangements (such as on-call work) only benefits employers, while encroaching on the working time autonomy of workers without adequate remuneration.

We have highlighted the key importance of regulatory provisions and made the case for social dialogue as an effective means to expand and adapt flexible working arrangements to sectors and workplaces. It will be necessary that respect for the right to collective bargaining is guaranteed in order to maximise this.

Furthermore, it is clear that in practice individual workers have almost no scope to engage in genuine negotiations with their employer about their employment contract. This is due to the significant imbalance in the power relationship between an individual worker, who is dependent on employment for his/her livelihood, and his/her employer.

Back in June 2019, the world's Governments, Employers and Trade Unions negotiated the ILO Centenary Declaration for the Future of Work, 2019⁷.

The Declaration issues a call to action for all member States to:

- Ensure all people benefit from the changing world of work.
- Ensure the continued relevance of the employment relationship.
- Ensure adequate protection for all workers.
- Promote sustained, inclusive and sustainable economic growth, full employment and decent work.

It acknowledges the need to expand time sovereignty and that workers need greater autonomy over their working time, while meeting enterprise needs.

It references that harnessing technology to expand choice and create a balance between work and personal life can help achieve this goal and address the stresses that come with the blurring of boundaries between working time and private time.

It recognises that it will take continued efforts to implement maximum limits on working time alongside measures to improve productivity, as well as minimum hour guarantees to create real choices for flexibility and control over work schedules.

Finally, it refers to the reinvigoration of the social contract - the common understanding between the state and all other actors – including the individual - on how to distribute power and resources in order to achieve social justice.

Urgent action to strengthen the social contract requires increasing investment in people's capabilities and the institutions of work and harnessing opportunities for decent and sustainable work.

Congress recommends that the Government establish a national strategy on the issue of flexible working - through social dialogue between government, workers' and employers' organisations.

**Irish Congress of Trade Unions
April 2020**

7

https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf