

# **Draft Scheme of the Right to Request Remote Working Bill 2022**

## **Part I**

### **Preliminary and General**

#### **Long Title**

1. Short title, citation and commencement.
2. Definitions
3. Regulations
4. Expenses
5. Voidance of modification of certain provisions in agreements

## **Part II**

### **Application of the Act**

6. Minimum Service Levels to Submit Request
7. Limitation to submit another application within statutory timeframe
8. The Request for Remote Working
9. Withdrawing a request for remote working
10. Time -Limit for an Employer to return a decision
11. Agreeing a request for remote working
12. Declining a request for remote working
13. Right to Appeal
14. Requirement for Employers to have a formal remote working policy

## **Part III**

### **Employment Rights**

15. Protection of employees from penalisation

## **Part IV**

### **Disputes**

16. Decision under Section 41 or 44 of the Workplace Relations Act 2015

## **Part V**

### **Offence**

17. Creation of an offence for Failure to have a remote working policy

## **Part VI**

### **Miscellaneous**

18. Codes of Practice
19. Amendment of Enactments
20. Records
21. Review of the Act

## **Part I: Preliminary and General**

### **LONG TITLE**

An Act to provide employees with a statutory right to make, or to have made on their behalf, a request for Remote Working, to require an employer to deal with a request as soon as possible but not later than 12 weeks after receiving it, to provide that an employer may refuse a request if it cannot be accommodated on reasonable grounds, to place a requirement on employers to maintain a policy on remote work which can be inspected by employees and the Workplace Relations Commission, to provide for reference of the matter to the Workplace Relations Commission if an employer does not deal with a request in accordance with the process specified in this Part, and to provide for related matters

### **Explanatory Note**

The Long Title of the Bill will be considered further on consultation with the Office of Parliamentary Counsel.

**Head 1** provides for the short title, citation and commencement.

Provide for a short title:

(i) This Act may be cited as the Right to Request Remote Working Bill 202

(ii) This Act shall come into operation on such day as may be fixed by order made by the Minister, and different days may be so fixed for different provisions and for different purposes.

**Explanatory Note**

This Head gives the short title of the Bill and provides for the Bill to come into operation on such day or days as may be fixed by the Minister after it is signed into law by the President.

Short title and commencement date will be further considered in consultation with the Office of Parliamentary Counsel.

## Head 2 – Definitions

In this Act –

“Act of 1994” means the Terms of Employment (Information) Act 1994;

“Act of 2015” means the Workplace Relations Act 2015;

“Adjudication Officer” has the meaning given by section 40 of the Workplace Relations Act 2015;

“Collective agreement” means

an agreement by or on behalf of an employer on the one hand and by or on behalf of a body or bodies representative of the employees to whom the agreement relates on the other hand and includes the following:

- (a) Employment Regulation Order
- (b) Registered Employment Agreement
- (c) Sectoral Employment Order

“*contract of employment*” means –

(a) a contract of service or apprenticeship, and

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency, within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not that third person is a party to the contract), whether the contract is express or implied and if express, whether it is oral or in writing.

“*Employee*” means a person of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant within the meaning of the Civil Service Regulation Act, 1956 shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014), or of a harbour authority (or health board, or a member of staff of an education and training board shall be deemed to be an employee employed by the authority or board as the case may be:

“ employer”, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of “ contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer;

“Remote Working” -means the practice of an employee carrying out their contractual work duties at their residence, or in some other location that is not their employer's place of business.

“*The Minister*” – means the Minister for Enterprise, Trade and Employment

**Explanatory Note**

The definitions are based on standard definitions drawn from Irish legislation.

*“Contract of Employment”* – is taken from the Terms of Employment Information Act 1994

*“employee”* and *“employer”* are standard definitions contained within the Terms of Employment Information Act 1994.

### **Head 3 – Regulations**

(1) The Minister may –

- (a) by regulations, provide for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) make regulations generally for the purpose of giving effect to this Act.

(2) A regulation or order under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling that regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

#### **Explanatory Note**

This is a standard provision.

#### **Head 4 – Expenses**

**4.** – Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance/Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

#### **Explanatory Note**

This is a standard feature of Acts and makes provision for the funding of the Minister’s administration costs.

## **Head 5 – Voidance or modification of certain provisions in Agreements**

**5. (1)** A provision in any agreement shall be void in so far as it purports to exclude or limit the application of any provision of this Act or is inconsistent with any provision of this Act.

**(2)** A provision in any agreement which is or becomes less favourable in relation to an employee than a similar or corresponding entitlement conferred on the employee by this Act shall be deemed to be so modified as to be not less favourable.

**(3)** Nothing in this Act shall be construed as prohibiting the inclusion in an agreement of a provision more favourable to an employee than any provision in Parts II to V.

**(4)** References in this section to an agreement are to any agreement, whether a contract of employment or not and whether made before or after the passing of this Act.

### **Explanatory Note**

This is a standard provision in Irish legislation contained within the Parental Leave Act and the Carers Leave Act amongst others. The intention is that the Right to Request Remote Working Act will provide a floor level of protection to all employees and that existing features of arrangements that render remote working requests impossible will be rendered null and void. However, it is not intended that existing more favourable remote or flexible working arrangements will be undermined by this legislation.

## **Part II**

### **Right to Request Remote Work and Related Matters**

#### **Head 6 – Minimum Service Levels to Submit Request**

**6. (1)** For the purposes of this Act, an employee shall be entitled to submit a request for remote working when the employee concerned has completed at least 26 weeks continuous service with the employer from whose employment the employee is seeking the arrangement to work remotely.

(2) The First Schedule to the Minimum Notice and Terms of Employment Act, 1973, shall apply for the purpose of ascertaining the employee's period of continuous service.

#### **Explanatory Note**

It is the intention of the scheme that a new employment right will be created providing all employees, covered by the Act, with an entitlement to request a remote working arrangement from their employer. Head 6 sets out the eligibility criteria an employee must meet to avail of the statutory right, including that an employee will only become eligible to submit a request once they have worked for their employer for a period of six months.

The wording around this section will need to be considered further in consultation with the Office of Parliamentary Counsel.

### **Head 7 – Limitation to submit another request within statutory timeframe**

7. For the Purposes of this Act, an employee, in the same or substantially similar employment position following a previous request under [Head 6], shall not be entitled to submit a new request under [Head 6] until after 12-months' continuous service following the later of the employer's final [response] to the employee under [Head 10] and the date of the final decision in any appeal process under [Head 16].

### **Explanatory Note**

The intention is that an employee will not be able to submit constant requests and that where the employer has diligently completed the assessment process and any appeal as outlined at head 16 below has been heard that the employee will have to wait a period of 12 months to submit another request. It is not the intention that such a request would be prohibited where an employee has moved to a different role within the same employer.

The wording around this section will need to be considered further in consultation with the Office of Parliamentary Counsel.

## **Head 8 – The Request for Remote Working**

**8. (1)** When an employee proposes to request remote working pursuant to [Head 6], he or she shall, as soon as reasonably practicable give notice in writing of the full details of the proposal to his or her employer including but not limited to.

- (a) proposed remote working location
- (b) Proposed start date for the remote working arrangement
- (c) proposed number, and timing, of working days to be worked remotely
- (d) if the employee made a previous request to the employer under this Act and the date of the most recent previous request
- (e) A self-assessment of the suitability of the proposed remote working locations regarding specific requirements for carrying out the job such as data protection and confidentiality, minimum levels of internet connectivity, ergonomic suitability of proposed workspace and any equipment or furniture requirements.

**(2)** An employer may require their employees to use a precedent form or template to make a request under subsection (1), and where the employer utilises this provision that fact will be reflected within the remote working policy as required by [Head 14].

**(3)** An employee who has given notice to his or her employer under subsection (1) shall, if the employer so seeks in writing:

- (i) furnish to the employer such further particulars and evidence relating to the request; and
  - (ii) meet and discuss the request with the employer during the employee's normal working time;
- in each instance as the employer may reasonably require of the employee.

### **Explanatory Note**

8. The intention of the scheme generally is to provide a balanced mechanism by which eligible workers can request a remote working arrangement. For the purposes of this Head in particular it is considered preferable that the application from the employee contains as much relevant information as possible to inform the employers decision making process.

- (1) The intention is that the request be formal so that the records can be called upon in any subsequent adjudication of an appeal. The intention is to outline the minimum information that must be provided when requesting a remote working arrangement.
- (2) The intention is to allow an employer to implement a standardised form or system for applications in line with the experience and specific considerations for that employer to consider.
- (3) . The intention is to promote discussion between the parties and due consideration of the request by the employer.

The wording around this section will need to be considered further in consultation with the Office of Parliamentary Counsel.

## **Head 9 – Withdrawing a request for remote working**

9. (1) An employee wishing to withdraw a request for remote working shall do so in writing to the employer.

(2) An employer may deem a request withdrawn where an employee fails to provide additional documentation sought by the employer or fails to comply with an invitation from the employer for meeting or discussion of the request, pursuant to [Head 8(3)], and in each such event where the statutory period, provided under [Head 10] for the consideration of the request, has passed.

(3) The employer must acknowledge the withdrawal to the employee in writing effective from the date of receipt of withdrawal request in accordance with subsection (1), or in the case of a deemed withdrawal under subsection (2) on that date.

(4) Where an employee withdraws a request under subsection (1) or has a request withdrawn under subsection (2) the restriction on submitting another application within the statutory timeframe (as outlined at [Head 7]) would not apply and instead after 30 days from the date of the employer's notice under sub-section (3), another application under [Head 6] can be submitted to the employer.

#### **Explanatory Note**

9. (1) The intention is that an employee may wish to withdraw a request post submission for any number of personal or organisational reasons.

(2) The intention here is that where the employee is not fully engaging in the process and the employer has made documentable efforts to interact with the employee regarding the application that the employer can deem the request so withdrawn.

(3) The intention here is that date of withdrawal and the reasons for withdrawal are documented in writing and can be referred to by both parties if required.

(4) The intention is that where the employee withdraws or has a request withdrawn without a formal approval or refusal being granted that the employee would not be restricted for a period of 12 months from submitting a potential subsequent request.

The wording around this section will need to be considered further in consultation with the Office of Parliamentary Counsel

## **Head 10 – Time-Limit for an Employer to return a decision**

**10. (1)** An employer, shall subject to subsection (2), having consulted the employee and/or the trade union (if recognised by the employer) of which he or she is a member, return a decision indicating whether the request for remote working under section 8 is wholly or partially approved or declined.

**(2)** An employer shall return a decision within a reasonable time period which shall be specified in the formal Remote Working Policy, as provided for in [Head14], and in any event the time period shall not exceed 12 weeks from receipt of the request.

### **Explanatory Note**

**10. (1)** The intention is that the request is dealt with promptly rather than allowed to incur unnecessary delay.

**(2)** The intention here is that if there are specific circumstances such as a need to engage health and safety consultants or check a proposed remote working location for Internet quality, an employer may specify a reasonable duration required for returning a decision. This reasonable duration shall be specified in the Remote Work Policy by the employer and will not exceed 12 weeks from receipt of the employee's request for remote work.

## **Head 11 – Agreeing a request for remote working**

**11. (1)** An Employer shall, having concluded their consideration of the request and having consulted the employee or the trade union (if recognised by the employer) of which he or she is a member, confirm in writing if they are agreeing to the request. The format of this confirmation must include but is not limited to —

- (a) Exact details of the proposed remote working arrangement
- (b) Proposed Start Date for Arrangement
- (c) Where approval is for a trial or temporary period the proposed end date.
- (d) Where it is to be for an indefinite duration, details of any ongoing review requirement.
- (e) Details of any equipment to be provided by the employer or allowances payable to the employee to cover costs associated with remote working.

(2) Where the employer is unable to agree to the request but is in a position to offer an alternative remote working arrangement, accepted by the employee as at subsection (3), that written confirmation must include at least the same information as outlined at subsection (1) above.

(3) Where the employer has made a counter-offer of an alternative remote working arrangement as at subsection (2) above, the employee must agree to that offer or reject the offer stating their reasons for so doing in writing within one month of receipt of the employer's counter offer.

### **Explanatory Note**

11. (1) The intention is that the confirmation from the employer should contain as much information regarding the proposed changes to the terms of employment, but at least to provide the key changes covered by the remote working arrangement. By tying it to Section 5 (1) of the Terms of Employment (Information) Act 1994 it ensures that the relevant changes in terms are notified and where not there is recourse available under that Act.

(2) The Intention is that where the employer has engaged with the process and tabled a counter-offer that addresses some of the request for remote working, albeit not fully, that they can table such an offer in compliance with their obligations under this Act.

(3) The intention here is that if the employee accepts the counter-offer that there is a record that they did so and if they refused the counter offer they must state the reason why they refused it within one month.

## **Head 12 – Declining a request for remote working**

**12. (1)** An Employer may, having given the application due consideration, decline a request for remote working where satisfied, in its view, that the proposal requested is not suitable on business grounds.

**(2)** The Employer shall place the employee on notice of the grounds for refusal, when returning a decision under [Head 10].

**(3)** Without prejudice to “*business grounds*” in subsection (1), business grounds relied upon by the Employer may include, but are not limited to —

- (a) The Nature of the work not allowing for the work to be done remotely
- (b) Cannot reorganise work among existing staff
- (c) Potential Negative impact on quality of business product or service
- (d) Potential Negative impact on performance of employee or other employees
- (e) Burden of Additional Costs, taking into account the financial and other costs entailed and the scale and financial resources of the employer’s business
- (f) Concerns for the protection of business confidentiality or intellectual property
- (g) Concerns for the suitability of the proposed workspace on health and safety grounds
- (h) Concerns for the suitability of the proposed workspace on data protection grounds
- (i) Concerns for the internet connectivity of the proposed remote working location.
- (j) Concerns for the commute between the proposed remote working location and employer’s on-site location
- (k) The proposed remote working arrangement conflicts with the provisions of an applicable collective agreement
- (l) Planned structural changes would render any of (a) to (k) applicable
- (m) Employee is the subject of ongoing or recently concluded formal disciplinary process

### **Explanatory Note**

12. (1)

This sub-head empowers the employer to decline a request, but only once due consideration of same has been carried out. This sub-head requires that the Employer may only decline where it is, subjectively, satisfied that the proposed arrangement is not suitable based upon “*business ground*”. This wholly subjective assessment has been chosen to ensure that Employers retain the ability to determine working conditions based upon their own subjective assessment of their business needs. However, while the provision requires that the Employer has full discretion to decline, it is still

required that this decision is grounded in an assessment of *business needs* rather than on other spurious or arbitrary grounds.

(2) This provision places the Employer under a mandatory obligation to place the requesting employee on notice of the grounds for refusal. This provision requires that the Employer effect this notice at the same point as “*returning a decision*” under Head 10.

(3) This provision includes a non-exhaustive list of “*business grounds*” which the Employer may rely upon. This list is *not* intended to be binding upon the Employer, as indicated by the inclusion of the permissive term “*may*” and the phrase “*including but not limited to*”, which is intended to indicate that the Employer is entitled to rely on “*business grounds*” which fall without of this list. Further the phrase “*including but not limited to*” is intended to ensure that the list provided does not fetter or confine the definition of “*business grounds*” and so is intended to ensure that the *ejusdem generis* principle of interpretation does not apply. Further, the language “*Without prejudice to subsection (1)*” is similarly intended to ensure that the Employer’s discretion under sub-head (1) is not limited by this sub-head. The list provided is intended by the Department to be purely indicative and not limiting or binding.

In terms of the specific *indicative* grounds included:(b) it is intended that this could mean that the employer cannot reorganise work between existing staff onsite or those on existing hybrid models.

(l) Structural changes could encompass anything from cost saving plans to be implemented to re-allocation of work between units or individual employees.

(j) This would be for the employer ultimately to decide but is intended to cover cases where the distance of the remote location from the onsite premises would render it unrealistic to expect the employee to be able to attend the office as required.

(k) This is to provide for a situation where via collective bargaining an employer and their employees and workers representatives conclude an agreement concerning remote working arrangements in that organisation, an employer can reject outright any request which is in contravention with that agreement. For example, if the agreement is for hybrid models and a request is for 100% remote working, the employer may reject on grounds of contravention with the collective agreement.

(m) an ongoing or recently concluded disciplinary process may be grounds for refusal and the code of practice can establish what is a reasonable reference period in this regard.

## Head 13 –Right to Appeal

**13. (1).** An employee who makes a request under Head 6 may make a complaint in accordance with Part 4 of the Act of 2015 in respect of the following matters:

(a) his employer has failed to return a decision in compliance with Head 10;

(b) his employer has failed to provide a notice of the grounds for refusal in compliance with Head 12(2), or

(c) the employer's notification under Head 9 was given in circumstances that did not satisfy the requirements in Head 9(1) or (2).

(2) An employee shall not be entitled to present a complaint under Part 4 of the Workplace Relations Act 2015 in respect of a contravention of section 13 (1) until two weeks after the commencement of an internal appeal process provided for within their employer's remote working policy as required by [head (14)], the contract of employment or applicable collective agreement.

### Explanatory Note

13. (1) This sub-head makes provision for an employee who has made a request under Head 6 to make a complaint to the WRC in respect of non-compliance with the requirements of this Bill by their Employer.

Specifically, under sub-head (1)(a), the employee may make a complaint where their employer, on foot of a request made under Head 6, has failed to “*return a decision*” in compliance with Head 10, *i.e.* within the time period stated by the employer in the Remote Work Policy as provided for in Head 14 that the employee can refer a complaint regarding their application to the Workplace Relations Commission. This is to avoid unnecessary delay for the employee in receiving a decision from their employer.

Further, under sub-head (1)(b), the employee may make a complaint where their employer, on foot of a request made under Head 6, has failed to provide a “*notice of the grounds for refusal*” in compliance with Head 12(2). For the avoidance of doubt, it is noted that the right to make a complaint to the WRC under this Head is not intended to extend to a right to complain in respect of the substance or merits of an Employer's decision to decline a request under Head 12(1). The right to complain only extends to a failure to effect notice of the reasons grounding that declination, as required under Head 12(2).

Further still, under sub-head (1)(c), the employee may make a complaint where their employer, on foot of a request made under Head 6, has failed to act in compliance with their notice obligations arising under Head 9.

(2) The intention is that a complaint could not be submitted in advance of the resolution of any internal appeal mechanism provided for by the remote working policy, the contract of employment or by terms of collective agreement.

## **Head 14 – Requirement for Employers to have a formal remote working policy**

**14.** (1) Every employer shall establish and maintain a written statement (to be known and referred to in this Act as a “Remote Working Policy”), specifying the manner in which remote working requests of their employees will be managed, the time frame in which a decision will be made and the specific conditions which will apply to remote working generally within the organisation.

(2) Without prejudice to the generality of subsection (1), every employer shall have regard to the code of practice provided for by [Head 18] in formulating the Remote Working Policy.

(3) Every employer shall bring the Remote Working Policy, in a form, manner and, as appropriate, language that is reasonably likely to be understood, to the attention of—

(a) his or her employees, at least annually and, at any other time, following its amendment in accordance with this section,

(b) newly-recruited employees upon commencement of employment.

### **Explanatory Note**

14. (1) The intention is that each employer should set out their own policy for facilitating remote working, with as much information as possible to inform the employee and manage their expectations of the process of requesting remote work. Section 21 of the Protected Disclosures Act 2014 was used as precedent for the adoption of the phrase “establish and maintain.”

(2) It is envisaged that the code of practice will outline potential key details that should be a feature of every remote work policy with employers then free to adapt and add items relevant to the specific nature of the work or workplace.

(3) It is envisaged that as the policy evolves over time employees should be informed about any and each change of the Remote Work Policy and that new employees would be informed of the Remote Work Policy as close to the start of the employment relationship as possible. The Terms of Employment (Information) Acts 1994-2014 will be amended to include it as one of the pieces of information that must be specified both initially for new recruits and when changes occur.

**Part III**  
**Employment Rights**

**Head 15 – Protection of employees from penalisation**

(1) An employer shall not penalise an employee for proposing to exercise or having exercised his or her entitlement to request remote working.

(2) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2015, relief may not be granted to the employee in respect of that penalisation both under this Act and under those Acts.

(3) In this section ‘penalisation’ means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) an unfavourable change in conditions of employment of the employee, transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.

**Explanatory Note**

This section is intended to ensure that an employee cannot be penalised for availing of a right to request remote work as provided for under this Act in line with similar provisions in existing legislation, see section 14 of the Parental Leave Act and Section 13 of the Carers Leave Act.

**15 (1)** – An employer cannot penalise an employee for availing of a remote working request under this Act.

(2) An employee cannot avail of relief under both this Act and the Unfair Dismissals Act.

(3) The intention is that availing of a remote working request;

- (a) –will not be considered as appropriate grounds for suspension, layoff or dismissal,
- (b) –will not be considered as appropriate grounds for demotion or loss of opportunity for promotion,
- (c) –cannot result in an unfavourable change in employment conditions,
- (d) -cannot result in disciplinary action, reprimand or other penalty,
- (e) -cannot result in coercion or intimidation.

## Part IV

### Resolution of Disputes

#### Head 16 – Decision under Section 41 or 44 of the Workplace Relations Act 2015

**16. (1)** A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention under Head 13 shall do one or more of the following namely —

- ( a ) declare that the complaint was or, as the case may be, was not well founded, and
- ( b ) where the decision is that the complaint was well founded, award compensation in favour of the employee to be paid by the employer, [and
- (c) where the decision is that the complaint was well founded:
  - (i) in respect of a complaint under section 13(1)(a), direct the Employer to return a decision in compliance with Head 10 within a period of 4 weeks;
  - (ii) in respect of a complaint under section 13(1)(b), direct the Employer to provide a notice of the grounds for refusal in compliance with Head 12(2) within a period of 4 weeks; or
  - (iii) in respect of a complaint under section 13(1)(c), direct the Employer to return a decision in compliance with Head 10, within the period of time remaining unexpired pursuant to Head 10(2) at the point in time notice was given in non-compliance with section 9(1) or (2).

(2) An award of compensation referred to in *subsection (1)(b)* shall be of such amount as the adjudication officer or the Labour Court, as the case may be, considers just and equitable having regard to all the circumstances but shall not exceed 4 weeks' remuneration in respect of the employee' s employment calculated in such manner as may be prescribed.

(3) A decision of the Labour Court under section 44 of the Act of 2015, on appeal from a decision of an adjudication officer to which this section applies, shall affirm, vary or set aside the decision.

#### **Explanatory Note**

The intention of this Head is to bring this Act within scope of the Workplace Relations Act 2015, so that complaints arising in relation to entitlements under the Act, but specifically limited to the complaints listed under Head 13(1), would be subject to adjudication by the Workplace Relations Commission and of the Labour Court. The compensatory redress an employee is entitled to, with regards to all the specifics of the individual case shall not exceed 4 weeks' remuneration. Further, the WRC and/or Labour Court will be empowered to direct the Employer to comply with relevant requirements of the Bill where a complaint is found to be well-founded, within the time period specified.

Please note s.7 of the Terms of Employment (Information) Act, 1994 has been used as a precedent for drafting purposes.

## **Part V**

### **Offence**

#### **Head 17 – Creation of an offence for Failure to have a remote working policy**

**17. (1)** An employer who, without reasonable cause, fails to bring to the attention of its employees the established and maintained Remote Working Policy required by section [Head 14] shall be guilty of an offence.

**(2)** A person guilty of an offence under this section shall be liable on summary conviction to a class C fine.

**(3)** Summary proceedings for an offence under this section may be brought and prosecuted by the Commission.

**(4)** In proceedings for an offence under this section, it shall be a defence for the accused to prove that he or she exercised due diligence and took reasonable precautions to ensure that this Act was complied with by the accused and by any person under the control of the accused.

**(5)** Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

#### **Explanatory Note**

(1) This is to incentivise employers to comply with this new proposed requirement and ensure that they prepare a remote work policy.

(2) The intention is that person guilty of an offence under this section shall be liable on summary conviction to a class C fine currently €2,500. However, a Workplace Relations Commission Inspector may issue a fixed payment notice in lieu of prosecution for less egregious offences, as provided for under Head 19 below.

(3) The intention is that the WRC would retain the option to pursue the ultimate sanction via the district court , a similar provision is contained in section 6 (B) of the Terms of Employment (Information) Act.

(4) The intention is to give employers a reasonable cause defence, similar provision is contained in section 6 (B) of the Terms of Employment (Information) Act.

(5) This is a standard provision.

## Part VI

### Miscellaneous

#### Head 18 – Codes of Practice

18. (1) In this section

“ code of practice” means, in relation to a section of this Act, a code that provides practical guidance as to the steps that may be taken for the purposes of complying with the Act;

“ the Commission” means the Workplace Relations Commission.

(2) The Commission may and, at the request of the Minister, shall, prepare a code of practice for the purposes of any section of this Act or, in the case of a request by the Minister, a section of this Act specified in the request.

(3) In preparing a code of practice referred to in subsection (1) or (2), the Commission shall invite such organisations representative of employers, such organisations representative of employees, and such other bodies, as the Commission considers appropriate to make submissions, whether orally or in writing, to it in relation to the proposed code of practice and shall have regard to any such submissions made to it, in response to the invitation, by such organisations or bodies.

(4) The Commission shall submit a copy of a code of practice prepared by it under this section to the Minister who may—

( a) by order declare the code (which shall be scheduled to the order) to be a code of practice, or

( b) make such modifications to the code as he or she considers appropriate and declare the code as so modified (which shall be scheduled to the order) to be a code of practice,

for the purposes of the section or sections concerned of this Act.

(5) The Minister may, at the request of the Commission or of his or her own volition after consultation with the Commission, by order—

( a) amend or revoke a code of practice, the subject of an order under subsection (4) or this subsection (and the code of practice shall, in case it is amended by the order, be scheduled, in its amended form, to the order),

and

( b) declare, accordingly, the code of practice, as appropriate—

(i) to be no longer a code of practice,

or

(ii) in its form as amended by the order, to be a code of practice, for the purposes of the section or sections concerned of this Act,

and

(c) revoke, as the case may be, the order concerned under subsection (4) or the previous order concerned under this subsection.

(6) A failure by a person to observe a code of practice under this section shall not of itself render that person liable to any civil or criminal proceedings.

### **Explanatory Note**

The main purpose of this Code of Practice is to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of a statutory right to request remote working, to aid with the implementation of the new legislation, and to advise on the likely features of remote working policy documents as required by head 14.

(1) Establishes the subject matter for which the code will operate and that it will be compiled by the WRC.

(2) The intention is that the WRC may prepare a code of its own volition. However, when requested by the Minister they shall prepare a code.

(3) This provides that the WRC shall consult widely and representatively amongst employee and employer stakeholders in the course of preparing the code.

(4) This provides that the code as prepared by the WRC will be submitted to the Minister who can where so required make any necessary amendments before it is published.

(5) This provides that the Minister can at the request of the WRC or of his or her own volition should he or she deem it necessary amend or revoke any section of the code or the code itself should it be required.

(6) This states that not adhering to the code in itself will not constitute an offence but it may be considered as part of the adjudication process.

## **Head 19 – Amendment of Enactments**

### **Amendment of the Workplace Relations Act 2015 and the Act of 1994**

**19. (1)** Schedule 5 part (1) of the Act of 2015 is amended by the insertion of –

“31. Sections 9, 10 and 12 of the Right to Request Remote Working Act 2022”, and

**(2)** Section 41 (7) of the Act of 2015 is amended by the insertion of –

“(h) in the case of a dispute relating to the entitlement of an employee under the Right to Request Remote Working Act 2022, it has been referred to the Director General after the expiration of the period of 6 months beginning on the day immediately following the date of the occurrence of the dispute,” and

**(3)** Schedule (1) part (1) of the Act of 2015 is amended by the insertion of the following –

“24. Right to Request Remote Working Act 2022”, and

**(4)** Schedule (6) Part (1) of the Act of 2015 is amended by the insertion of the following –

“39. Section 16 of the Right to Request Remote Working Act 2022”, and

**(5)** Schedule 6 Part (2) of the Act of 2015 is amended by the insertion of the following –

“39. Section 16 of the Right to Request Remote Working Act 2022”

**(6)** Section 36(5) of the Act of 2015 is amended by the addition of the following paragraph after paragraph (d):

“(d) section 17 of the Right to Request Remote Working Act 2022.”**(7)** Section 3 (1) of the Act of 1994 is amended by the insertion of –

“(n) A Copy of the Employers Policy on Remote Working as required by section 14 of the Right to Request Remote Working Act 2022”

### **Explanatory Note**

This Head is intended to amend the Workplace Relations Act 2015 to bring the Right to Request Remote Working Act fully within scope of its provisions, including:

- (1) giving the WRC jurisdiction to hear complaints of specific breaches of this Act;
- (2) confirming the time limits for an employee bringing such a complaint;
- (3) giving the WRC jurisdiction to inspect an employer’s business to ensure compliance with this Act;
- (4) setting out the redress that the WRC can award to employees;
- (5) setting out the redress that the Labour Court can award to employees;
- (6) giving the WRC jurisdiction to issue Fixed Payment Notices under section 36 of the Act of 2015 where an employer has not put in place a Remote Working Policy pursuant to Head 14.

.

(6) This Head is intended to amend the Terms of Employment (Information) Act 1994 to bring the requirement for the employer to share the Remote Working Policy with the employees within the scope of section 3 (1) of that Act.

## **Head 20 – Records**

**20.** (1) An employer shall keep, at the premises or place where his or her employee works or, if the employee works at two or more premises or places, the premises or place from which the activities that the employee is employed to carry on are principally directed or controlled, such records, in such form, if any, as may be prescribed, as will show whether the provisions of this Act are being complied with in relation to the employee and those records shall be retained by the employer for at least 3 years from the date of their making.

(2) The Minister may by regulations exempt from the application of subsection (1) any specified class or classes of employer and regulations under this subsection may provide that any such exemption shall not have effect save to the extent that specified conditions are complied with.

(3) An employer who, without reasonable cause, fails to comply with subsection (1) shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a class D fine.

(5) Without prejudice to subsection (3), where an employer fails to keep records under subsection (1) in respect of his or her compliance with a particular provision of this Act in relation to an employee, the onus of proving, in proceedings before an adjudicator or the Labour Court, that the said provision was complied with in relation to the employee shall lie on the employer.

### **Explanatory Note**

This is a standard feature of Acts and makes provision for the Employer to be required to maintain records regarding the Remote Work Policy and all employees' requests for remote work.

## **Head 21 – Review of the Act**

**21. (1)** The Minister shall, not earlier than 2 years and not later than 3 years after the commencement of this Act, after consultation with persons whom he or she considers to be representative of employers generally and persons whom he or she considers to be representative of employees generally, conduct a review of the operation of this Act and shall prepare a report in writing of the findings of the review and shall cause copies of the report to be laid before each House of the Oireachtas.

### **Explanatory Note:**

This Head provides that the Minister can conduct a review after 2 years of the commencement of the legislation to consider the mechanism for requesting remote working arrangements and to examine uptake of remote working generally so that it may be established if any amendments or further actions are required.