



SUBMISSIONS REPORT

Report on the submissions received from the Public
Consultation on the Introduction of a Right to
Request Remote Working

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Introduction

On 15th January 2021, Ireland's first National Remote Work Strategy to make remote working a permanent option for life after the pandemic was published. The Strategy is built on three fundamental pillars:

1. Create a Conducive Environment
2. Develop and Leverage Remote Work Infrastructure
3. Build a Remote Work Policy and Guidance Framework

In the context of Pillar 1 (Create a Conducive Environment for the adoption of remote work) a commitment was made to legislate to provide employees with the right to request remote work over the course of 2021.

In order to provide an opportunity for all interested parties to make their views on this matter known, the Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar TD launched a Public Consultation on 1 April 2021 on the introduction of a Right to Request Remote Work. Introducing the right to request remote working will provide a clear framework around which requesting, approving or refusing remote work can be based.

The consultation process ran for five weeks until 7 May 2021. Engagement with the process was significant and a total of 175 submissions were received from a diverse range of stakeholders including trade unions, employer representative bodies, individual employers and employees and political parties.

Number of submissions received:

- 126 Personal
- 26 Private Companies
- 18 Industry Representative Groups
- 4 Trade Unions
- 1 Political Party

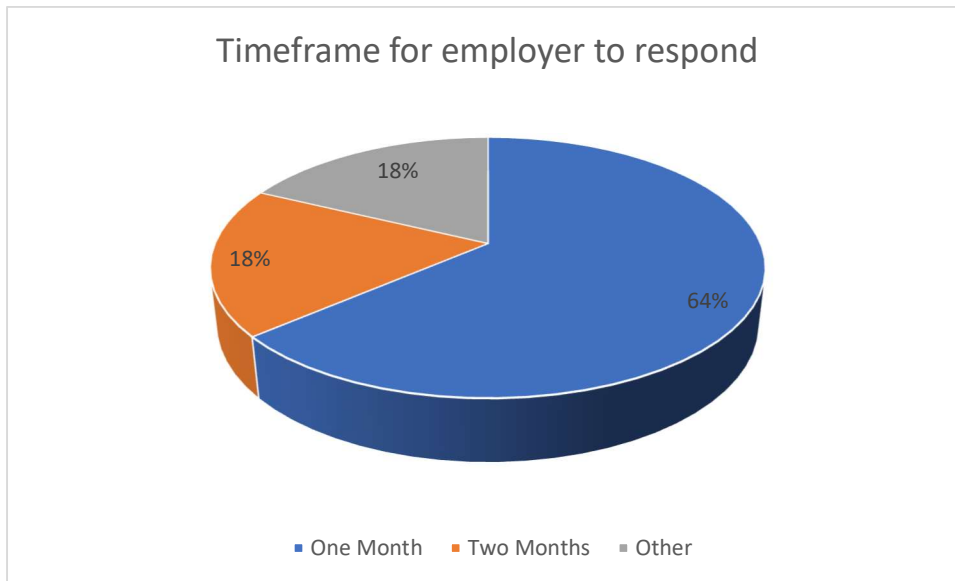
This paper provides a breakdown of the responses to the questions asked in the public consultation and summarises some of the views and opinions offered by stakeholders.

The submissions will inform the deliberative process in drafting the proposed legislation. In addition, a review of International best practice is being undertaken.

It is recognised that not all occupations, or particular roles within an enterprise, will be suitable for remote working. The Government has committed to take a balanced approach with the new legislation.

Question 1

What timeframe for response should apply to employers on receipt of an employee's complete request to work remotely?



In the questionnaire, the options available to respondents were

- 1 Month
- 2 Months
- Other

157 submissions responded to the question.

64% were in favour of one-month timeframe

18% were in favour of two-month timeframe

18% suggested other options –

Of those that responded with “other” there was a wide range of views varying from 2 days to up to 3 months.

Some of the comments from the respondents:

Employee Comments

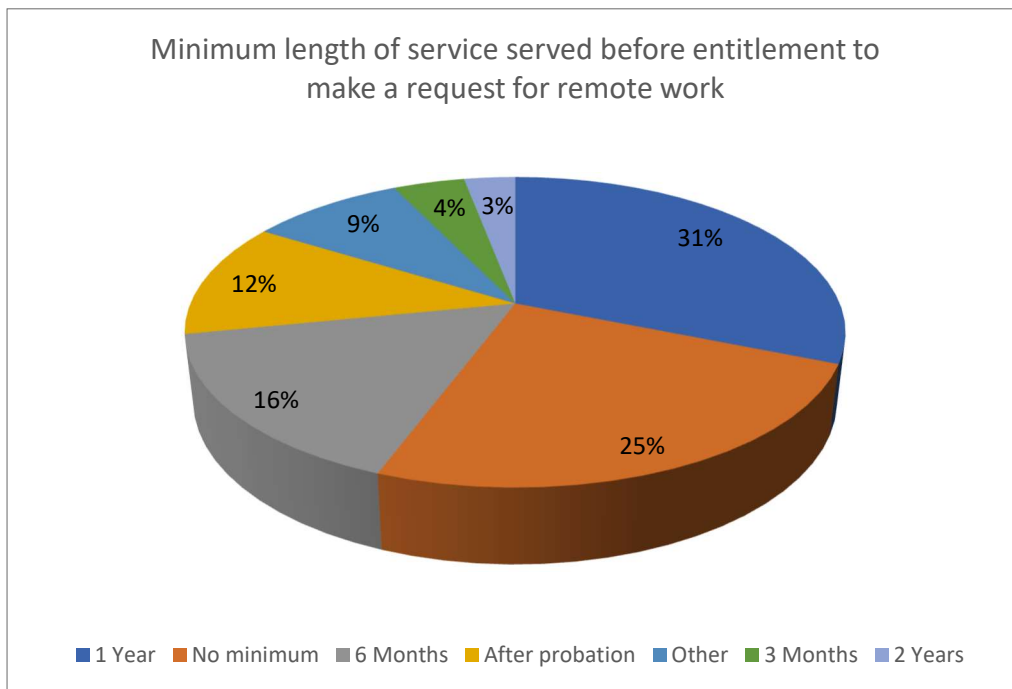
- Timeframe should be maximum of 1 month. Longer timeframes may leave the employee in unwanted situations. This may lead unwanted resignations or lay-offs.
- One calendar month should be sufficient time for any employer, small or large, to decide on a request for remote working. Most decisions will be informed by the organisation's remote working policy, which should already be in place. You also need to be clear on what constitutes a 'response'. A response could be an acknowledgment of receipt of the request only. Do you mean a 'decision'?
- The decision should have immediate effect. If it does not, commencement of remote working could be dragged out by several months by employers failing to give effect to the decision.

Employer Comments

- Given the organisation and assessments that will be required (which may be at any physical location in the country), the employer will need a minimum of 2 months to consider the appropriateness of a request. It should also be provided that such a timeline can be extended if there are multiple requests (as this may require multiple assessments around the country).
- We would deem two months an appropriate timeframe to respond to a colleague following receipt of the request to work remotely. Correspondingly, we would deem it appropriate that colleagues make an application to work remotely, eight weeks in advance of the desired date for the remote working arrangement to take effect.
- As an initial observation it is submitted that timelines that apply to different employment rights should be uniform and standardised as much as possible. It is important that the introduction of new rights does not happen in a silo and instead is cognisant of other rights and notice requirements. If the Department determines that a shorter timeframe ought to apply, then it is submitted that 4 weeks/28 days is preferable to "1 month". In that respect, it is noted that 4 weeks' notice applies to maternity leave, paternity leave, and adoptive leave.

Question 2(a)

What minimum length of service is appropriate for an employee to have served in the employment of the employer before having an entitlement to make a request for remote work?



167 submissions responded to the question

31% were in favour of a one-year timeframe

25% were in favour of having no minimum timeframe

16% were in favour of 6 months

12% were in favour of having an entitlement once probation was complete

9% listed other answers

4% were in favour of 3 months

3% were in favour of 2 years

Of those that chose to respond with a specific figure the majority chose one year. However, a quarter proposed no minimum timeframe to be entitled to submit a request.

Some of the comments from the respondents:

Employee comments

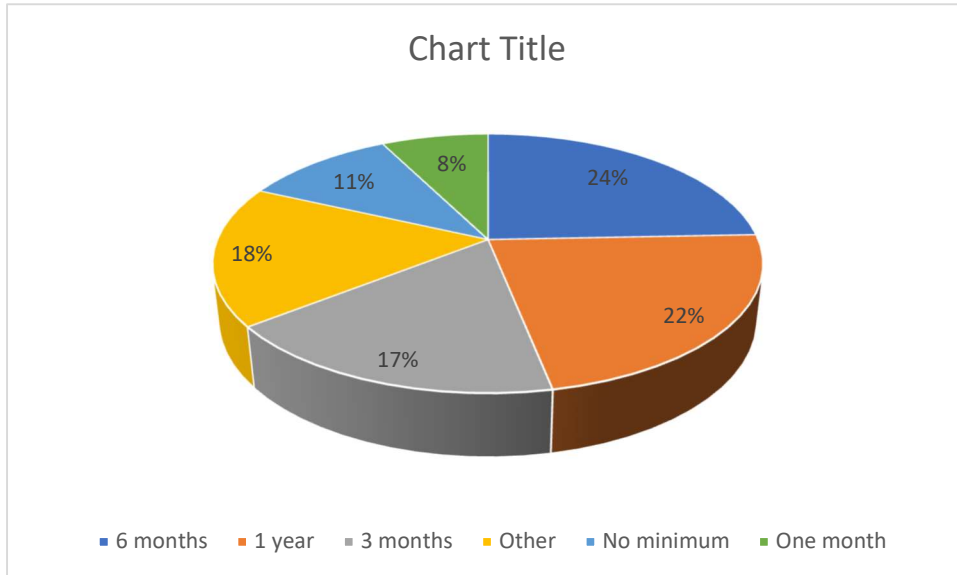
- It should not be determined by length of service per say, but more importantly that both the employer and employee have a sense of trust of each other, the employer knows the capability and experience of the employee, and equally so that the employee is familiar enough with the job requirements to allow them work remotely.
- There are situations where it may be something an employer would be willing to accommodate from commencement of employment which should be allowed for.
- If it is a benefit that a staff member knows they want, it would be best for them to have an open conversation with their potential employer at this point – but it is essential for employers that they can then refuse if this is a role which they deem to be required to be done from the workplace.

Employer Comments

- An employee should have served a minimum of 12 months before having an entitlement to make a request for remote work. This will be to ensure that the employee has adequate opportunity to integrate properly into a business and create the necessary collegial relationships as well as obtain a strong understanding of an organisations culture.
- Cost considerations exist. A Hays Recruitment survey in 2018 suggested almost 50% of employees that voluntarily leave a position do so within the first 12 months of employment. Employers should be able to adequately assess the likelihood of retaining the employee (as far as possible) prior to making a significant cost investment in home office equipment etc.
- Some roles may require an element of face-to-face induction, onboarding and training. In this case the new start should be available for face-to-face onboarding in their first 3 months of employment.
- An employer may have undertaken a recruitment process in good faith with a new starter with a view to them being based at the employer's workplace. In doing so, the employer may have agreed that other existing office-based employees can work remotely or flexibly etc. Difficulties will emerge, including difficulties with other employees where a new employee engages in that recruitment process based on working at the employer's place of work only to then immediately request remote working as soon as they commence.

Question 2(b)

After what duration can another request be submitted if the first request was declined?



160 submissions answered the question

24% were in favour of 6 months

22% were in favour of 1 year

18% were in favour of another criteria

17% were in favour of 3 months

11% were in favour of having no minimum timeframe

8% were in favour of 1 month.

Of those that chose to respond with a specific figure a slim majority chose 6 months, marginally ahead of 1 year. 18% selected other criteria and those responses varied from when the reasons for an initial refusal are no longer applicable, to change in performance or of circumstances.

Some of the comments from the respondents:

Employee comments

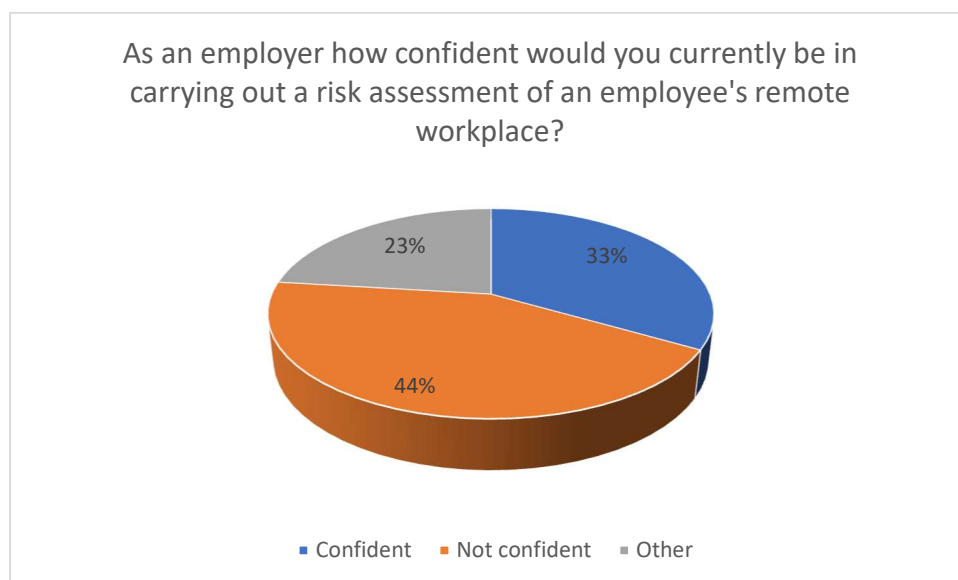
- Resubmitting may create a tension between employer and employee. I believe there should be a committee where an employee can request an independent review for the result. Depending on the result, the independent reviewer can suggest a resubmit period and improvements on both parties to find a working solution.
- Employees should be able to resubmit annually if refused.
- Considering that an increasing number of employees are on contracts as opposed to permanent positions, 6 months is a significant amount of time for most employees in the current labour market context. Therefore, I would be inclined to recommend that requests can be made within 3-4 months of a previously declined request and a maximum of 6 months could apply if necessary.

Employer Comments

- There should be a period of 12 months between any application. Furthermore, where reapplying, the employee should be required to support this application with details as to what has changed in the intervening 12-month period which now makes a role suitable for remote working. This will be imperative to assist with managing an employee's expectations regarding home working.
- If a request has been declined there should be a reason why the request has been declined. For example, in our organisation, Safety Officers must be on site full time, if the request is declined at the start of the employment, the situation will not change in a couple of months later as the role is still a full-time site-based role.
- It would depend on the reasons for declining the request in the first instance.

Question 3

As an employer, how confident would you currently be in carrying out a risk assessment of an employee's proposed remote workplace? What, if any, additional information, guidance or assistance might you require?



Of the 175 submissions returned 39 responded to this question and they encompassed employer and employer representative groups only.

A majority of 44% responded that they were not confident to carry out such an assessment.

33% responded that they were confident

23% didn't specify being either.

Drilling down further, 56% of those who responded provided additional comments that comprehensive guidelines in relation to health and safety would assist or are required in order to raise confidence.

Some of the comments from the respondents:

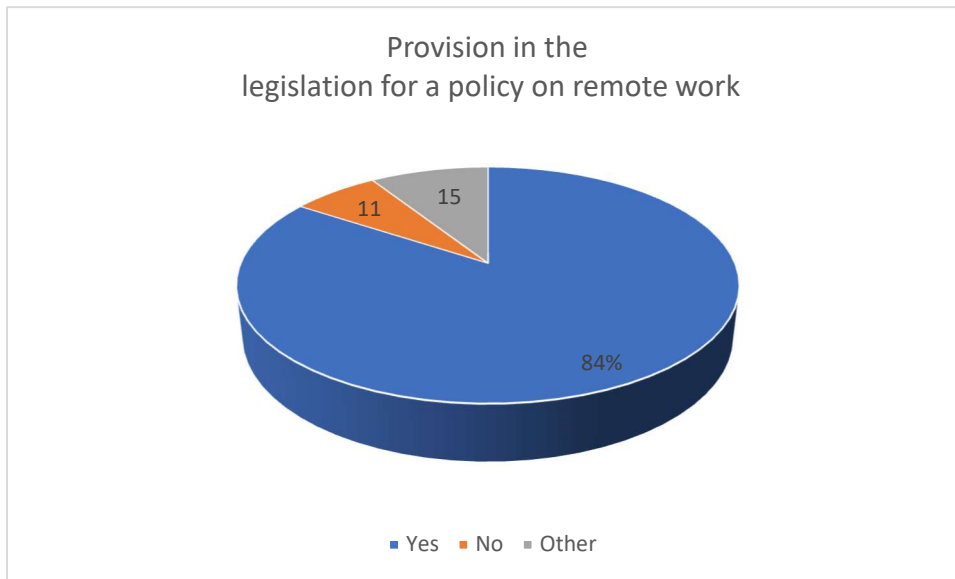
- feedback from our members notes that there continues to be uncertainty as to the obligation for ensuring wider workspaces are safe (be it in a hub, at home, or elsewhere). There is concern as to the extent of the employer's liability should an accident occur in the remote location, be that in the home office or co-working hub. For that reason, we suggest that risk assessments should only extend to an

employee's workstation and not the workplace as this could lead to a myriad of potential health and safety and/or insurance issues.

- legislative change will be necessary to ensure that both employers and employees have a clear understanding as to their responsibilities, rights and duties under the Safety, Health and Welfare at Work Act, 2005 ('the 2005 Act'). This extends to providing employers with a legislative basis to conduct remote workplace risk assessments.
- I think this is an area that would cause issues for smaller employers, they would probably have to hire somebody to do this on their behalf and then if they have to provide additional equipment the costs may be an issue for employers.

Question 4

Should there be a provision inserted in the legislation that employers must have a policy on remote work which can be inspected by employees and the Workplace Relations Commission?



165 submissions replied to the question

84% were in favour of a policy on remote work

11% were not in favour

15% provided another answer.

Drilling down into the figures further, 16% of respondents suggested that policy content should be specified in a Code of Practice or that such a code would provide clarity and best practice.

Some of the comments from the respondents:

Employee comments

- In an ideal world, not sure I see the need for the employee to have a right to inspect the policy. If a policy is required by law, then most employee manuals should have a policy on remote working already inserted. For whatever reason, if an employer

chooses not to publish a remote working policy, then yes employees should have the right to view the policy in an appropriate time frame (i.e., 7 days).

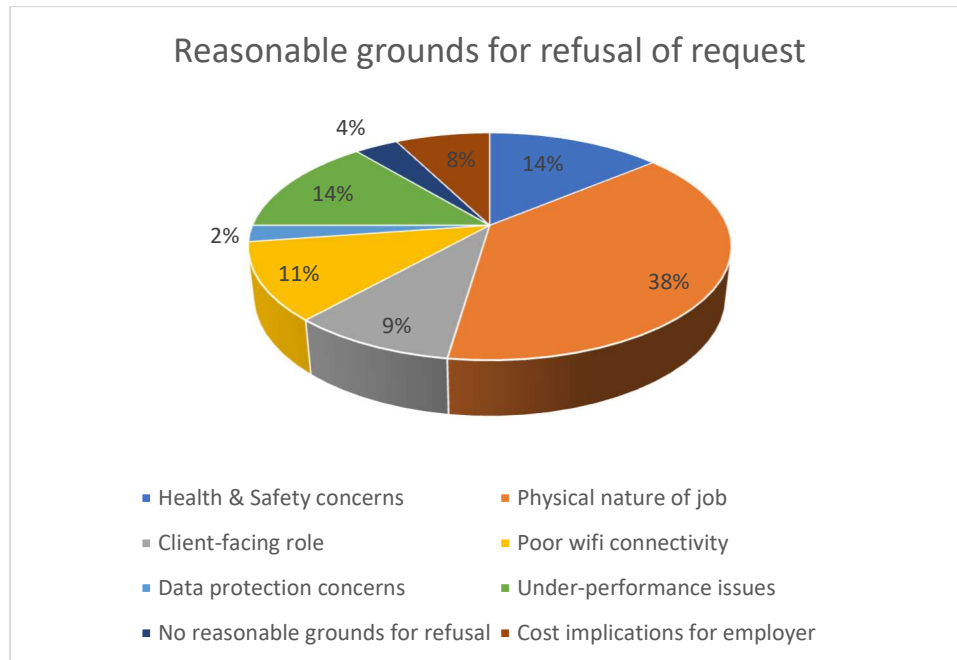
- Government should give explicit guidelines of what should be included in a policy.
- Also, companies need to be given a reasonable period to digest the legislation and to write and implement a policy. Thus 6 months to a year would not be unreasonable.

Employer comments

- There should not be any provision inserted in the legislation that employers must have a policy on remote work which can be inspected by employees and the Workplace Relations Commission. Such a document is too subjective and has too much of a strategic impact on a business to allow for this to be covered by an inspection. Allowing this to be inspected may lead to recommendations by an inspector which cannot be tolerated from a strategic business impact.
- Guidelines on what such a policy should contain from the WRC would be very helpful.
- Agree to the premise of a remote working policy, however businesses, especially SMEs, need support in creating such a policy in addition to a strong lead in time for this to be put in place. We recommend that any requirement for a remote working policy should be accompanied by a Code of Practice on the topic.

Question 5 a

Reasonable grounds for refusal of request for remote working



160 submissions responded to the question. (a number of submissions listed more than one ground for refusal of a request).

38% considered the physical nature of the job to be reasonable grounds for refusal of a request for remote working.

9% considered it reasonable to refuse requests in respect of client-facing roles.

4% considered that there are no reasonable grounds for refusal of a request.

A number of submissions considered that the grounds for refusal of a request should be included in a Code of Practice. There was a significant number of respondents who cited insufficient wi-fi/broadband connectivity as a reason.

Some of the comments from the respondents:

Employee comments

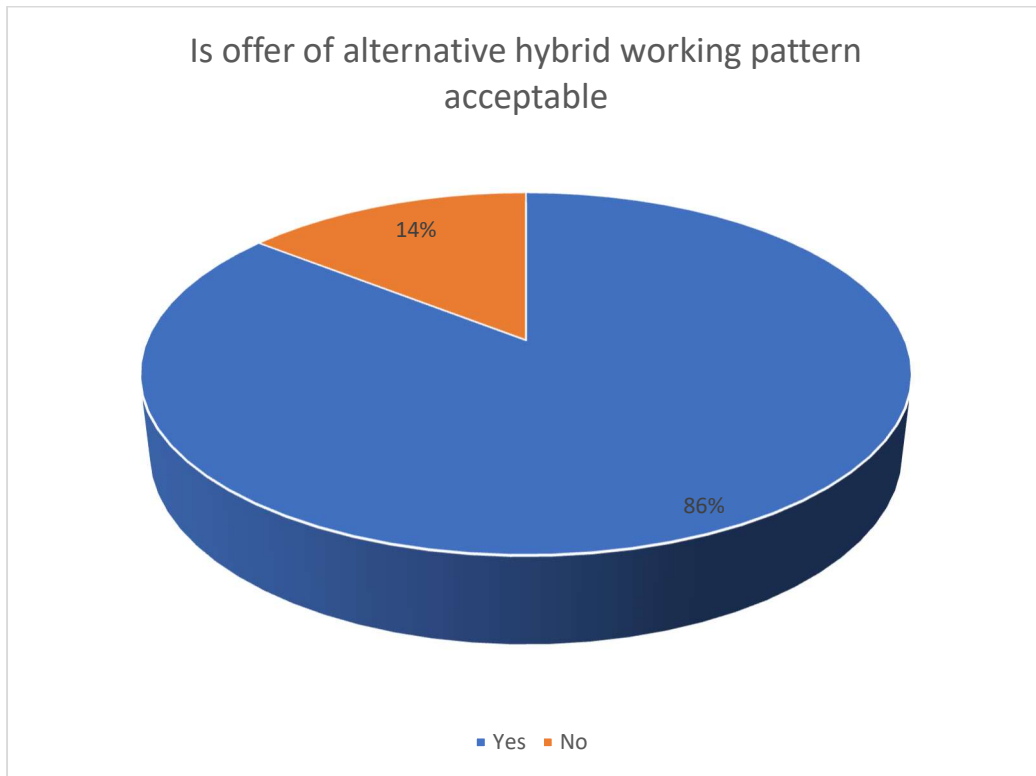
- The nature of the work is not suitable, there is a public service requirement that requires a number of staff be present in an official office or where a staff member is too new to the work and requires on the job training.
- Causes safety problems, causes roster problems (where a roster is required to support business functions), leads to financial or organisational problems (which cannot be resolved) or is not supported by sufficient work.
- As a software employee, I work from home since 16 March 2020 effectively. If I am expected to finish a task within some amount time, it does not matter where I finish this task from e.g., home or office as long as I finish the task. I am worried that my employee can refuse working from home after pandemic without valid reasons. If the role worked from home during pandemic, employer should provide same opportunity after pandemic too.

Employer comments

- Concerns with the appropriateness of a proposed location. This would include the compliance with health and safety requirements, GDPR and other confidential information that may be processed as well as maintaining corporate confidentiality and trade secrets.
- The employee may have supervisory and/or training responsibilities in respect of other employees. This could require attendance in the workplace.
- The need for a period of support, training, development, collaboration involving face to face interaction, change of business which requires different ways of working, concerns over stress or related to disciplinary action.

Question 5(b)

Is it acceptable that an employer offers an alternative hybrid working pattern with a combination of remote work and onsite work?



Of the 160 respondents 86% of submissions received considered that it is acceptable that an employer offers an alternative hybrid working pattern with a combination of remote work and onsite work.

Some of the comments from the respondents:

Employee comments

- Negotiation would obviously be best, however if work goals are achieved, why would the employee not be granted what they request.
- Only where such offer is not the bare minimum to allow the employer say that they are offering remote work, e.g., if it is only allowed 1 day per week at a maximum however the employee could perform their work remotely on greater number of days.

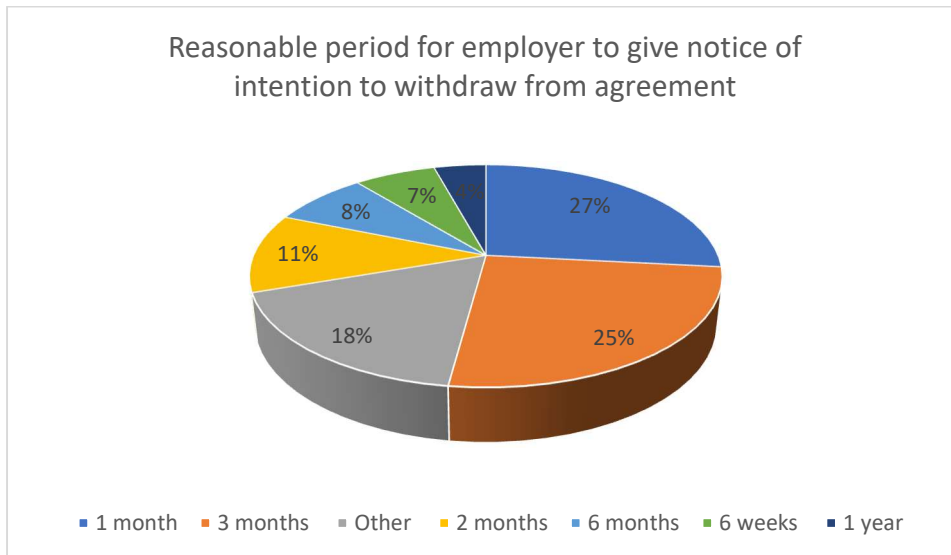
- If an employee requests 20% / 50% / 100% remote working, this has been given serious consideration by the employee in what works best for them and after a year of working remotely, it has shown what does and doesn't work for employees. Full-time attendance in the office will suit and be required for some. Full-time remote working will suit others while some may prefer a hybrid arrangement. Consideration should be given by employer to employee's preference and perhaps employees reasons discussed prior to final decision of employer. If employee's physical absence from the office does not create additional costs, affect quality, standards or performance on the work, or customers, a remote work request should not be denied. The employer would need to state a valid reason/reasons to request employees to attend the workplace if the employee wished to work remotely. Reason: the employee may reply to the employer's statement in a fair manner.

Employer comments

- In the event that an employer is considering refusing a request to work remotely, employers should be encouraged to, wherever possible, offer an alternative hybrid working pattern which combines remote work and onsite work. For example, there may be certain aspects of a role which can be carried out remotely and employers should be encouraged to facilitate this as far as is reasonably practicable when dealing with a request to work remotely. It should be stipulated that any alternative suggestions around hybrid working which are put forward by an employer will be considered as part of the referral of a dispute to the Workplace Relations Commission.
- The vast majority of members surveyed confirmed that it should absolutely be acceptable that where an employer offers an alternative hybrid working pattern (e.g., with a combination of remote work and onsite work), in response to any request for remote working, that should be sufficient to comply with any legislative requirement. A significant number of surveys carried out globally have identified that the hybrid/blended model is the preferred model for many employers and employees alike. Any legislation should specifically detail that offering a hybrid working model will be deemed to be in compliance with a request from an employee to work remotely.
- I believe a request to wfh longer term is not an option at the moment due to our business model and we already having a sufficient offering on the table. Giving Monday's and Fridays as wfh days already. Beyond that in a scenario where we can accommodate all employees without restrictions it's not something we would approve for a longer period, ad hoc days here and there, yes.

Question 6(a)

If an employer seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?



165 submissions replied to the question

27% were in favour of 1 month

25% were in favour of 3 months

18% gave another response

11% were in favour of 2 months

8% were in favour of 6 months

7% were in favour of 6 weeks

4% were in favour of 1 year

Of those who responded, a slim majority were in favour of one month with almost equal numbers favouring 3 months.

Some of the comments from the respondents:

Employee comments

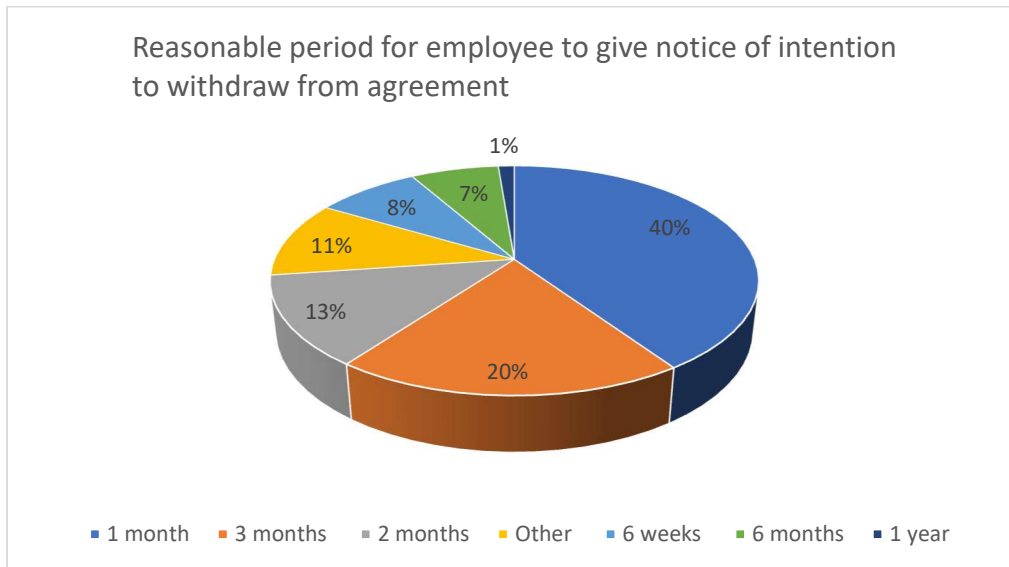
- This should be same notice period for leaving the job as outlined in the contract. Employee may need to find a new job due to this arrangement.
- It should be linked to the length of time the employee has been working remotely. If someone has been working remotely for over 1 year, a period of at least 6 months would be required. The notice needs to consider the employees situation. They may not be living close to the office anymore and may need to relocate with a recall back to the office.
- A good period of notice should be offered to ensure employee can make necessary arrangements to travel to work.

Employer Comments

- We suggest that an employer should provide the same notice that the employee is expected to provide when requesting remote working.
- The withdrawal from the agreement would be driven by circumstance. Appropriate consideration would be given to the employee in terms of a reasonable length of time needed to update their working situation and go back to a fully onsite arrangement.
- Should be subject to reasonable alternatives being considered and explored where appropriate.

Question 6(b)

If an employee seeks to withdraw from the arrangement, what is a reasonable notice period of intention to do so?



158 submissions responded to the question.

40% were in favour of a period of 1 month

20% were in favour of 3 months

13% were in favour of 2 months

11% gave another response

8% were in favour of 6 weeks

7% were in favour of 6 months

1% were in favour of 1 year

Some of the comments from the respondents:

Employee comments

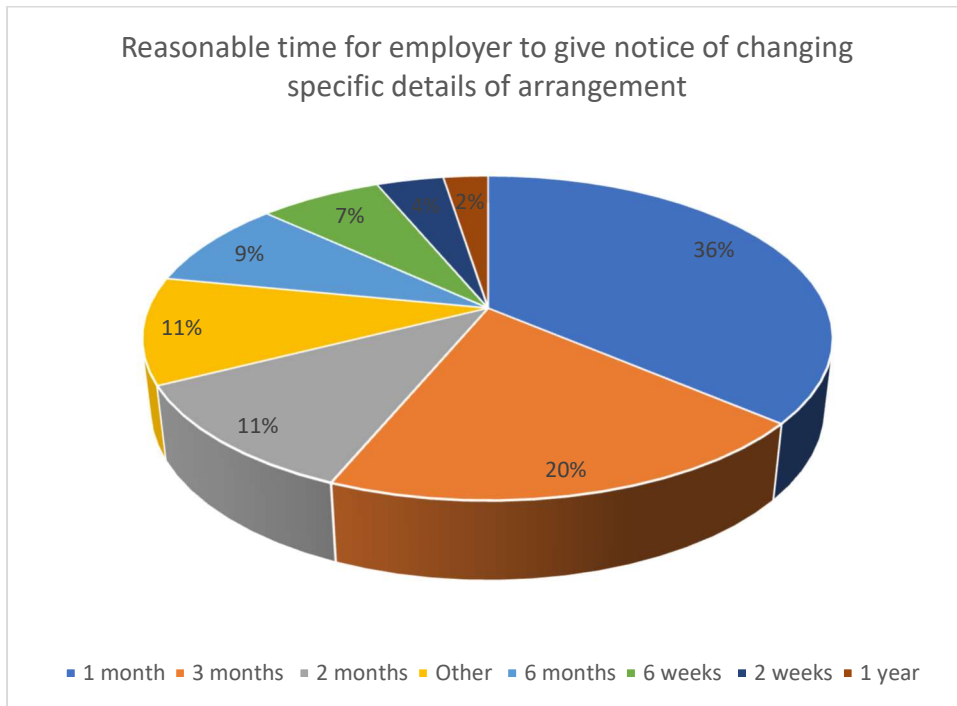
- This could be at the discretion of the employer
- 1 month depending on circumstances e.g., if employee can no longer work from home with immediate effect
- there is no automatic right for an employee to change back to their previous working arrangements if their circumstances change. This, again, would need to be the result of a new arrangement between the worker and their employer.

Employer Comments

- The majority of companies surveyed felt that a 2-month notice period would be appropriate and reasonable for the various scenarios outlined in the questions above. However, there are a wide variety of circumstances where a shorter or longer timeframe would be appropriate, and any legislation should not be overly prescriptive in this regard. Any time frame must also give employers adequate notice to put necessary measures in place (e.g., IT infrastructure, equipment) while also working through the administration process of each request.
- We propose that 6 weeks is the reasonable notice period of intention to withdraw.
- The notice period should be the same in all cases, and three months will be adequate to allow for alternative arrangements to be put into place.

Question 6(c)

If an employer seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?



160 submissions responded to the question.

36% were in favour on 1 month

20% were in favour of 3 months

11% were in favour of 2 months

11% gave another response

9% were in favour of 6 months

7% were in favour of 6 weeks

4% were in favour of 2 weeks

2% were in favour of 1 year

Some of the comments from the respondents:

Employee comments

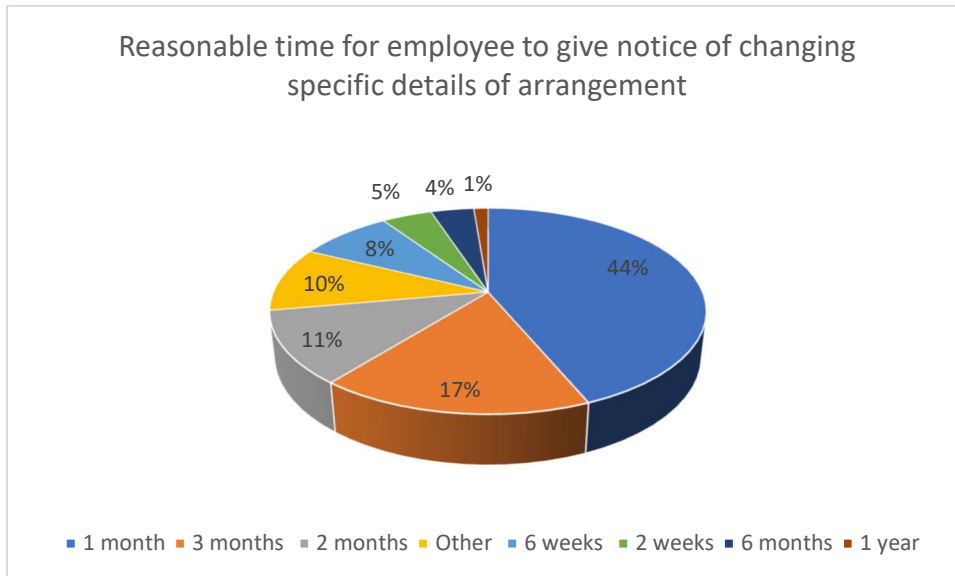
- A reasonable notice period would be one month. It would also be reasonable that if the work performance changed that any arrangements would be continually reviewed.
- 3 - 6 months. Remote working, or hybrid working is a very family friendly option that has implications on drop off/pick up from childcare. Alternative plans will have to be put in place if the daily schedule is to change and crèche waiting lists are very long.
- If an employer changes specific details of an arrangement agreed/accepted by an employee, the employee should have the right to revert to the arrangements in place prior to the remote work arrangement.

Employer Comments

- Three months will be adequate to allow for alternative arrangements to be put into place. However, where a business is facing emergencies or under threat, this period should be reduced to no more than two months.
- 4 weeks or sooner if there is a mission critical reason.
- Any accepted remote working arrangements are subject to ongoing review by the employer. They then consider that one month's notice for all of the above is reasonable, with the exception of extenuating circumstances on behalf either the employer or employee where a shorter time period may be agreed between the parties.

Question 6(d)

If an employee seeks to change the specific details of the arrangement, what is a reasonable notice period of intention to do so?



158 submissions responded to the question.

44% were in favour of 1 month

17% were in favour of 3 months

11% were in favour of 2 months

10% gave another response

8% were in favour of 6 weeks

5% were in favour of 2 weeks

4% were in favour of 6 months

1% were in favour of 1 year

Some of the comments from the respondents

Employee comments

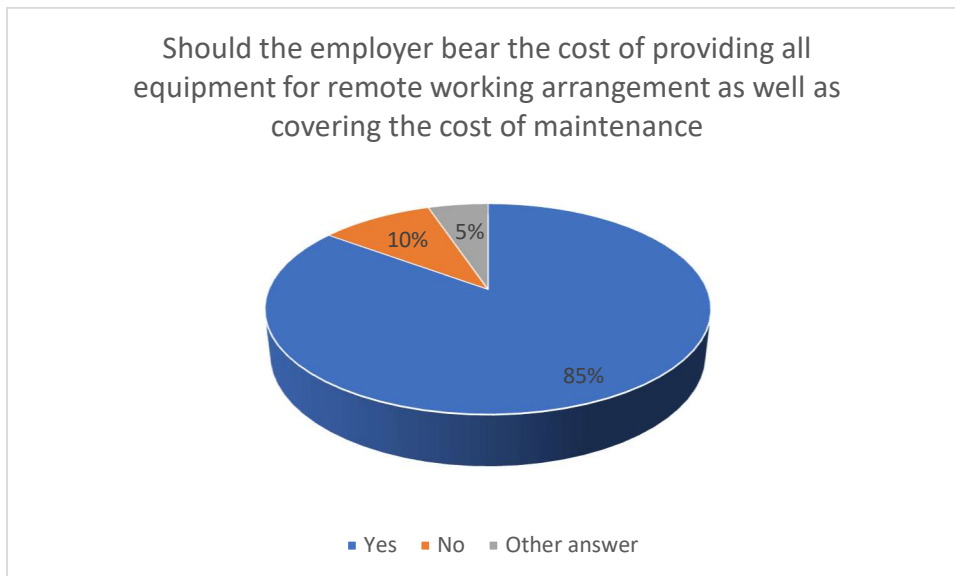
- Maybe not at all, what happens if the employee's space in the office has now been reassigned? Our office size has been scaled down. How does an employer now accommodate this request?
- There is no consultation question in relation to how long a remote working arrangement will last under the proposed legislation and if in any circumstances it can be indefinite. As a result, SIPTU submits that clear provision for the duration of a remote working arrangement is included in the proposed legislation, together with minimum and maximum notice periods for the purpose of withdrawing or implementing changes, which are relative to the duration of the remote working arrangement agreed.
- In practice, reasonable notice requirements will very much depend on the nature of the work/business.

Employer comments

- An employee must provide a request to change the details of an arrangement, including to withdraw from the arrangement entirely; the employer can then process this request within a similar timeframe to that for an initial request for remote working, that of eight weeks. If there is no operational requirement to consider on behalf of the employer, for example if the office desk space is readily available, it may be suitable for the employer to allow an employee to withdraw from the agreement with less notice and this can be decided at company level.
- We would note that in legislating for these grounds, employers and employees would require greater clarity on the allowable reasons for seeking to terminate such arrangements.
- At least one month during which time the employer shall consider the request being made and the impact of same. The employer should, having taken all matters into consideration, decide whether it can accept the proposed change and should inform the employee of its decision.

Question 7

Should the employer bear the cost of providing all equipment for a remote working arrangement as well as covering the cost of maintenance?



154 submissions replied to the question

85% were in favour of the employer bearing the cost

10% were not in favour

5% provided another answer which includes 50/50 split for hybrid, employee providing furniture but employer IT/ICT equipment only.

12% of those who responded suggest the introduction of a Government grant or tax incentive similar to the Cycle-to-Work scheme.

Some of the comments from the respondents

Employee Comments

- These matters should be defined in the employer's remote working policy. It should be clear to both parties where responsibility lies. One size won't fit all. Some smaller employers, for example, may wish to facilitate working from home but are not in a financial position to provide two sets of equipment (workplace and remote workplace). Such concerns should not act as a barrier to an arrangement that would work well and to the advantage of both parties.

- If the employee is specifically pushing for remote working, then they should be expected to make a contribution towards some equipment, however for items that would be provided as standard in the workplace such as laptop these should be provided by the employer where they can be used both at work and at home. Smaller items such as pens and paper should be provided by the employee or brought home from the office.
- A significant contribution is required by the employer, but it should be flexible to allow people to fit out their specific space – different desk sizes, furniture requirements. Reusing existing furniture or IT kit where appropriate should be encouraged.

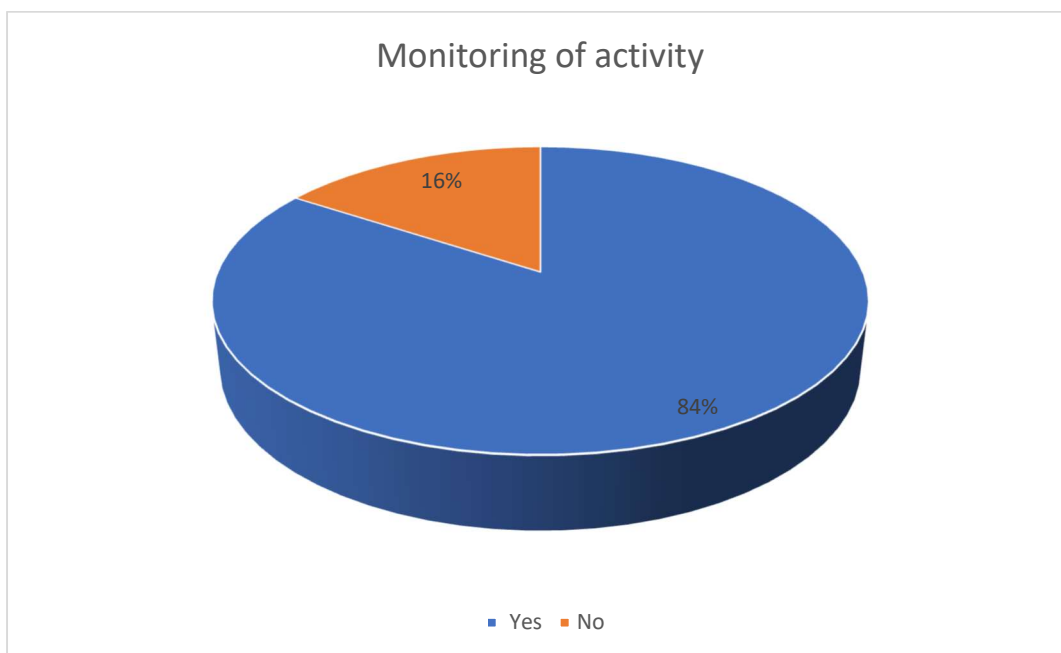
Employer Comments

- Yes, the employer should bear the cost + maintenance. The employee may be prohibited from installing any personal programmes or applications on company supplied equipment
- The provision of home or remote working equipment in a tax efficient manner should be introduced. For example, the bike to work scheme has proved very successful. A similar tax efficient scheme for purchasing remote working equipment along with the employer provision of technology would assist the success of future remote working arrangements.
- Where the remote working request is made by the employee, there should not be an obligation on the employer to provide a second set of furniture or equipment. Similarly additional costs incurred including wifi, light and heat, insurance etc. should be borne by the employee where they have requested a remote working option. Such costs should be tax deducted and perhaps be deducted through the payroll process. The costs of maintaining equipment remotely, is likely to be more expensive than in a centralised location and this must be considered.

Question 8

Monitoring of activity

Should an employer have entitlement to monitor the activity of the employee?



146 submissions responded to the question.

84% considered that an employer should have entitlement to monitor the activity of the employee. However, the vast majority of submissions were only in favour of monitoring to the same extent applicable in the office environment.

Responses stated that monitoring should only be permitted to a level required to ensure compliance with the Organisation of Working Time Act and Health and Safety legislation, and that the employees right to privacy and GDPR must be respected by employers.

Some of the comments from the respondents

Employee comments

- Yes, but this should be via completion of work/tasks/deadlines rather than cameras, tracking software. Question of intrusion on family privacy and employees being made to feel that they cannot appropriately balance time with the family and their work.
- Depending on the job there are always metrics the employees have to fulfil. That should be the only measurement for them on how active a person is. If they are in the office, it will be the same.
- The employer should have arrangements in place to monitor employee's activity in order to be compliant with the Organisation of Working Time Act and Health and Safety. However, micromanaging should be avoided. Employees must be aware that their activity may be monitored.

Employer comments

- Yes. Employers have a legitimate interest in monitoring employee activity in general, and it is submitted that this particularly extends to individuals who are working remotely and not under direct supervision. This area is already heavily regulated and litigated, both in respect of the Data Protection Acts but also in respect of case law emanating from bodies like the European Court of Human Rights.
- Time and performance management are integral elements of the working environment and the employer must be able to continue such performance management unhindered. The employee must be available to the employer at the times required by the employer in line with the original contract of employment. It is likely that curbs on the ability of employers to engage in performance management could damage Ireland's positioning as a business-friendly location for FDI.
- It is positive to note that the consultation document proposes that "all employees granted remote working will be required to maintain records of their time and attendance as required by the [OWTA]." Employers will require further details in this regard. We have repeatedly called for further guidance, as a matter of urgency, in monitoring and recording employees' working time, particularly when working remotely. The timely publication of such guidance is ever more urgent considering the recent publication of the Code of Practice on the Right to Disconnect.

Other general comments from respondents

- There was acceptance from many employees and employers that facilitating remote working would lead to significant additional costs for employers, particularly SME's.
- The call for grants/tax breaks for employers and employees was referenced repeatedly.
- Employees employed in the South but living in the North needs consideration particularly with regard to tax treatment.
- Both employers and employees have health and safety concerns around remote working, which includes concerns for mental health of workers working remotely.
- GDPR/privacy concerns.
- Potential for reduced carbon footprint/less travel.
- Better work/life balance.
- Benefit to local/rural communities.
- Reduced housing costs – employees would not have to live in proximity to urban centres of employment.
- Legislation should not be too prescriptive and allow for flexibility.
- Several stakeholders commented that an accompanying Code of Practice for Remote Working should be considered and would provide clarity for both employees and employers.
- There is a concern amongst employers regarding insurance and potential liability implications for homeworking. A number of respondents commented that they would like to see the proposed scheme before commenting further on some questions posed in the public consultation.