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An Comhchoiste um Dhlí agus Ceart

Tuarascáil maidir leis an nGrinnscrúdú
Mionsonraithe ar an mBille um Chosc ar
Ghnéas i gcomhair Cíos, 2022 [BCP]
Deireadh Fómhair 2022

Joint Committee on Justice

Report on Detailed Scrutiny of the Ban
on Sex for Rent Bill 2022 [PMB]
October 2022



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33/JC/25

Table of Contents

CATHAOIRLEACH'S FOREWORD	2
COMMITTEE MEMBERSHIP	3
Joint Committee on Justice	3
CHAPTER 1 - Introduction	6
Purpose of the Bill	6
Procedural basis for scrutiny.....	6
CHAPTER 2 – DETAILED SCRUTINY.....	8
Summary of Written Submissions	8
1. Define the policy issue this Bill intends to address and the scope of this issue	9
2. Current legislative context and other legislation which may address this issue	10
3. Wider EU or international context	13
4. Implementation of Bill and if there will be performance indicators to monitor if Bill meets its objectives	14
5. Alternative or additional policy, legislative and non-legislative approaches considered.....	15
6. Additional points and recommended changes to the Bill	16
Engagement with Stakeholders.....	19
Summary of Evidence	20
1. Stakeholders welcome the intention behind this Bill and the need for legislation of this nature 21	
2. Difficulty in prosecuting cases involving sex-for-rent	23
3. Need for tighter definitions within the Bill	24
4. Lack of statistics on the extent of sex-for-rent situations in Ireland and the need to conduct further research in this area	25
5. Existing legislation in this area and similar legislation in other jurisdictions	26
6. Supporting victims to report instances of sex-for-rent to the Gardaí	27
Legal Scrutiny of Bill	28
Summary of the Office of Parliamentary Legal Advisors (OPLA) Advice.....	29
CHAPTER 3: RECOMMENDATION TO THE DÁIL	31
APPENDICES.....	32
APPENDIX 1 – ORDERS OF REFERENCE OF THE COMMITTEE.....	32
APPENDIX 2 - FRAMEWORK FOR COMMITTEE SCRUTINY OF PMBs.....	41
APPENDIX 3 - LIST OF STAKEHOLDERS AND SUBMISSIONS	43

CATHAOIRLEACH'S FOREWORD

The Ban on Sex for Rent Bill 2022, a Private Members' Bill sponsored by Deputy Cian O'Callaghan, seeks to create an offence of requiring or accepting sex as a condition of accommodation and to create an offence of arranging or facilitating the requirement or acceptance of sex as a condition of accommodation.¹

The Committee welcomed the objective of this Bill to try and decrease the incidence of 'sex-for-rent' arrangements and the resulting exploitation of vulnerable individuals. In conducting detailed scrutiny on this Bill, the Committee invited written submissions seeking the views of various stakeholders on this Bill. A public engagement was held with several of these stakeholders, which provided an opportunity for Members and witnesses to discuss various elements of this Bill. The Bill was also sent to the Office of the Parliamentary Legal Advisers (OPLA) to ascertain the legal and constitutional implications of such proposed legislation. An analysis of these submissions, the evidence provided during the Committee's public hearing and the OPLA analysis forms the basis of this report.

The Committee, in considering the matter, recognised that its function is to legislate, however, this comes with particular responsibilities and care must be taken when recommending the progression of legislative proposals.

I would like to commend Deputy O'Callaghan for his dedication in proposing and advocating for the progression of this legislation and for his efforts to address and tackle this serious issue. I would also like to express my gratitude on behalf of the Committee to all those who sent in written submissions and to the OPLA for their insight into this important Bill.



James Lawless TD (FF) [Cathaoirleach]
October 2022

¹ Ban on Sex for Rent Bill 2022, Explanatory Memorandum
<https://data.oireachtas.ie/ie/oireachtas/bill/2022/28/eng/memo/b2822d-memo.pdf>

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Jennifer Carroll MacNeill TD
(FG) [Leaschathaoirleach]



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Brendan Howlin TD
(LAB)



Martin Kenny TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(GP)



Vincent P. Martin
(IND)



Michael McDowell (FF)



Lynn Ruane
(IND)



Barry Ward
(FG)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
4. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.

CHAPTER 1 - Introduction

This is the report on detailed scrutiny of the Ban on Sex for Rent Bill 2022.

The Bill was referred to the Select Committee on Justice on 23rd March 2022. At a meeting of the Select Committee on 26th April 2022 it was agreed that detailed scrutiny of this Bill would be undertaken by the Joint Committee. However, it was noted that the decision on whether this Bill would progress to Committee stage is solely a matter for the Select Committee.

Purpose of the Bill

The purpose of the Bill is to create an offence of requiring or accepting sex as a condition of accommodation (addressed under Section 2 of the Bill) and to create an offence of arranging or facilitating the requirement or acceptance of sex as a condition of accommodation (addressed under Section 3 of the Bill).

Procedural basis for scrutiny

Private Members Bills referred to Select Committee are subject to the provisions of Dáil Standing Order 178 and the Memorandum of Understanding, between the Oireachtas and the Government, which was adopted on 15th January 2019.

Dáil Standing Order 178(1) provides that “..the Bill shall be subject to scrutiny by the relevant Committee” and paragraphs (2) and (3) respectively state that “Scrutiny, shall be conducted from a policy, legal and financial perspective...” and that “where the relevant Committee has completed scrutiny of a private member’s Bill, it shall– lay a report thereon before the Dáil, and... send a Message to the Dáil–

- (i) confirming that scrutiny has been completed and reported on, and
- (ii) containing a recommendation on whether or not the Bill may proceed to Committee Stage.”

Paragraph (4) of Standing Order 178 permits scrutiny of the Bill in Joint Committee: “Nothing in these Standing Orders shall preclude a Joint Committee from undertaking

scrutiny, and reporting thereon, save that only the relevant Committee may decide on the recommendation as to whether or not the Bill may proceed to Committee Stage.”

CHAPTER 2 – DETAILED SCRUTINY

Summary of Written Submissions

This note summarises the key issues raised in the submissions received.

This briefing will focus on key issues identified in the submissions by

- Rape Crisis Network Ireland (RCNI)
- Ms. Ann Murphy, Irish Examiner.
- Residential Tenancies Board (RTB)
- Threshold
- Department of Justice

These submissions addressed questions relating to the ‘Framework for Committee Scrutiny of Private Members’ Bills (PMBs)’ and a summary of the answers provided is detailed below.

1. Define the policy issue this Bill intends to address and the scope of this issue

The objective of the Ban on Sex for Rent Bill 2022 is to address and deter instances of landlords requesting sex in lieu of rent or in exchange for cheaper rent.

The Bill intends to combat this through creating two offences, the first of which would criminalise persons who require or accept sex as a condition of accommodation [provided in section 2 of the Bill] and the second of which would criminalise those who facilitate or arrange the requirement or acceptance of sex as a condition of accommodation, particularly publishers or those who host advertisements for these arrangements [provided in section 3 of the Bill].

Stakeholders highlighted that there is no data on the prevalence of sex-for-rent arrangements in Ireland but pointed out that there have been many reports of instances of 'sex-for-rent' demands, increasingly within the last five years.

Data gathered by the UK homeless organisation Shelter found that 30,000 women in Britain were propositioned by a landlord between March 2020 and January 2021, rising to 59,000 women who had been propositioned in the period between March 2020 and September 2021.

Submissions stated that the Residential Tenancies Board (RTB) had announced in 2020 that it planned to develop a survey to examine the specific issue of sex-for-rent, but that this had not occurred yet. In its submission, the RTB confirmed that they do not have data in relation to the prevalence of sex-for-rent arrangements. The RTB re-iterated their view that sex-for-rent is a criminal matter and should be brought to the attention of the Gardaí and addressed through the criminal system and they welcomed the intention of this Bill to address instances of sex-for-rent as a criminal issue. For non-criminal matters the RTB pointed out that they offer a dispute resolution service to both tenants and landlords.

2. Current legislative context and other legislation which may address this issue

Submissions highlighted that there appears to be no other Bills or General Schemes that will combat the issue of sex-for-rent arrangements and the Department of Justice confirmed that this behaviour is not currently a criminal offence.

The Department pointed out that it would be important when drafting this Bill to note that any agreement to pay for accommodation with sexual acts would not be enforceable under contract law. In addition, they highlighted that non-consensual acts are already offences within law, as Sexual Offences legislation makes it clear that consent must be freely and voluntarily given and that sex without consent is counted as rape, which can be punished with a conviction up to life imprisonment.

Applying existing legislation covering consent, rape or the sale of sex, to prosecute sex-for-rent arrangements

Stakeholders pointed out the possibility of applying legislation surrounding the sale of sex to prosecute instances of sex-for-rent, or applying legislation under the area of consent, which would be covered by the *Criminal Law (Sexual Offences) Act 2017*. However, other submissions pointed out that the wording of certain provisions in current legislation surrounding rape or consent prevent it from covering instances of sex-for-rent.

For example, it was highlighted that the wording of current provisions on payment for sex, in section 7A of the *Criminal Justice Act, 1993*, includes the offence of ‘payment etc. for sexual activity with prostitute’, which would not apply to the majority of sex-for-rent arrangements as vulnerable tenants are not prostitutes.

Similarly, the phrasing of current legislation on rape, under section 2(1) of the *Criminal Law (Rape) Act, 1981* and consent, under section 9 of the *Criminal Law (Rape) (Amendment) Act, 1990* makes it difficult to apply these provisions to situations of sex-for-rent. Submissions pointed out that it is unclear whether duress of circumstances will impair the legal validity of consent to a sexual act in sex-for-rent arrangements. Additionally, as upheld in the Supreme Court ruling in *DPP v C O’R*, if an individual claims they held an ‘honest belief’ that they were a consenting participant to any sexual activity,

this could be used as a defence to a charge of rape, and it would be the responsibility of the jury to interpret from the surrounding circumstances whether the owner held this honest belief or not.

Therefore, there would be a risk that a rape charge could be defeated on these grounds in relation to instances sex-for rent.

As a result, it was argued that current legislation is not satisfactory to prosecute this issue as utilising the above provisions to try and prosecute for sex-for-rent would require 'shoehorning' to bring these arrangements within the remit of the above offences. It was also pointed out that stigma persists in relation to offences like rape or prostitution, which could deter people from reporting instances of sex-for-rent if these offences remained the only way through which to prosecute such crimes.

It was argued that creating a new offence through this Bill would properly capture the specific nature of sex-for-rent as an offence and abide with the 'fair-labelling' principle of criminal law.

The Department stated they support the objectives of this PMB in principle, but that the Attorney General had pointed out two main concerns with the Bill as proposed:

- Concern that the current Bill is not precise enough in its definition of terms used and the proposed boundaries of the offence; recommended that substantial amendments would be needed to define and clarify the conduct that is to be criminalised by the Bill.
- Concern that the Bill does not consider how the new offences it would create will interact with existing sexual offences or domestic violence legislation.

The Department suggested that while it would be possible to amend the Bill as proposed to address the legal flaws, it would be difficult to align it with the existing offence of paying for sexual services for the purposes of prostitution, under the *Criminal Law (Sexual Offences) Act 1993*, due to the huge variation in penalties between the two.

They stated that further consideration and legal advice is needed before recommending the best legislative approach for this issue of sex-for-rent, but that it may be preferable to

address the issue through amendment the existing offence of payment for sexual acts for the purposes of prostitution.

3. Wider EU or international context

Submissions highlighted that while other jurisdictions have had similar investigative reports on instances of sex-for-rent, evidence from the UK provides some insight into the prevalence of sex-for-rent as an issue and the inadequacies of current laws to prosecute landlords for these offences.

Data collected by the homeless charity Shelter in 2017 found that 4% of renters in the UK had been propositioned by their landlord in the previous 12 months and that 3% had been propositioned in the previous 5 years. As highlighted in [Point 1](#), further research by Shelter found that 59,000 women had been propositioned by a landlord in the period between March 2020 and September 2021.

In January 2019 the Crown Prosecution Service issued revised guidelines to allow legislation surrounding the sale of sex to be applied to prosecute sex-for-rent arrangements. However, stakeholders highlighted that so far there has only been one prosecution in the UK under this legislation for a sex-for-rent offence.

There had been efforts to create a provision within the *Police, Crime, Sentencing and Courts Act 2022* to create a specific offence for instances sex-for-rent, however this amendment was rejected by the House of Commons at a later stage.

Other recent legislative efforts to address this issue include a proposal by the UK Government that they would ban advertisements for sex-for-rent arrangements and that publishers would be prosecuted but this Bill has not yet passed through Parliament.

4. Implementation of Bill and if there will be performance indicators to monitor if Bill meets its objectives

Submissions highlighted that implementation of the Bill would result in websites offering classified advertising being targeted, such as Craigslist, VivaStreet, and Locanto, to identify advertisers that are offering accommodation in exchange for sex.

Key indicators would need to be established by investigators in relation to these ads, as not all landlords who seek sex-for-rent arrangements specify their requirements in advertisements. These indicators would include

- a lack of photographic materials relating to the property;
- the non-existence of a rental price or stating a nominal fee e.g., €10;
- failing to identify the exact location of the advertised property;
- and targeting a property specifically at a female.

Submissions highlighted that there are no performance indicators currently contained within the Bill.

Stakeholders referred to evidence provided by the Garda Síochána to the Oireachtas Committee on Housing, Local Government and Heritage where it was stated that there is no specific PULSE incident Type, ICCS Crime Type or Legislative Act that could record incidents of sex-for-rent. In addition, searches in the PULSE system between January 2021 and January 2022 did not show any complaints lodged in relation to instances landlords propositioning potential tenants for sex.

It was pointed out that the lack of research into situations of sex-for-rent arrangements means that there are no statistics available to monitor how this Bill may affect the incidence of sex-for-rent and it was recommended that further research be undertaken in this area.

5. Alternative or additional policy, legislative and non-legislative approaches considered

Submissions highlighted that legislation alone will not prevent exploitative sex-for-rent offers from occurring.

It was highlighted that pressures caused by Ireland's housing crisis, such as the general lack of rental accommodation, high rents and the increasing pressures on the existing housing supply, have increased opportunities for landlords to exploit prospective tenants who may be vulnerable and urgently need to find accommodation. It was pointed out that the Ukrainian humanitarian crisis will significantly increase the demand for housing, making it all the more urgent that this problem be addressed.

Alternative recommendations to prevent sex-for-rent arrangements included

- Additional measures in the areas of housing and tenant rights should be introduced and the shortage of affordable housing for rent needs to be addressed.
- The Bill does not address the vulnerability of tenants in these situations and a victim may choose to continue in a sex-for-rent arrangement rather than risk becoming homeless if they report such situations. Therefore, protections for tenants should be considered, such as creating a victim-friendly reporting mechanism, to counter underreporting of sex-for-rent abuses by vulnerable tenants.

6. Additional points and recommended changes to the Bill

The following additional points of note were raised in relation to the Bill as currently phrased:

- **Private correspondence:** The Bill will not address the private correspondence between the advertiser and the prospective tenant, unless either party publishes such correspondence. Stakeholders highlighted that many sex-for-rent propositions are made after the prospective tenant has contacted an advertiser in relation to a property and that these offers can also be made verbally. This would make it difficult to prosecute in many cases, as most properties are privately owned and do not contain CCTV.
- **Foreign nationals often targeted:** Many of the individuals targeted by sex-for-rent requests are foreign nationals arriving to Ireland, who may not be aware of this legislation and who may be reluctant to approach Gardaí to make a complaint if they are involved in such a situation, for reasons including lack of trust in authority, or a fear that they will not be believed or taken seriously.
- **Range of scenarios and tenure contexts:** It was highlighted that the legislation should take into account the range of possible scenarios and tenure contexts in which offering accommodation in exchange for sex may occur. For example, licence arrangements, where the person providing the accommodation resides in the same dwelling, currently fall outside the Residential Tenancies Act and this arrangement could also occur between a head tenant and sub-tenant without the property owner's knowledge.
- **Section 3 of Bill welcomed:** Stakeholders welcomed the offence of arranging or facilitating the requirement or acceptance of sex as a condition of accommodation. It was pointed out that intervening at an early point would make it more difficult for landlords to find vulnerable individuals and would 'unburden' vulnerable tenants from being responsible for reporting the arrangements and prevent some vulnerable individuals from ever experiencing such a situation. It was recommended that this offence be drafted more narrowly to avoid clashing with

existing laws on aiding, abetting, counselling or procuring the commission of an offence.

- **No support for those previously impacted:** The Bill will offer no support to people who may have previously been in a tenancy which involved a ‘sex-for-rent’ exchange. It was pointed out that this could cause strain for homeless supports in future, as there is little evidence of how many people are living in sex for accommodation exchanges. It was pointed out that if the Bill included supports for those who report these sex-for-rent exchanges it could encourage others in similar situations to report against their landlords.
- **‘Provider’:** Under the term “provider”, it also needs to be considered that those offering sex-for-rent arrangements often are people who are sub-letting rooms unknown to their own landlord and so are not acting on behalf of the landlord (the “provider”).

Recommended changes to the Bill

Submissions highlighted several areas within the Bill where they recommended the following changes, among others:

- The words “advertise, offer, seek to provide, provide” should be inserted before the phrase “require or accept” “sex”, in order to make it more specific and workable as a criminal offence. [Section 2(1)]
- A definition should be considered which would cover all the sexual acts which are offences if carried out without the consent of the other person. It was suggested that Section 9(6) Criminal Law (Rape) (Amendment) Act 1990, as inserted by Section 48 Criminal Law (Sexual Offences) Act 2017, could be used as a possible model for this if adapted. [Section 2(1)]
- The wording of Section 2(1) should either list all the situations in which the landlord or prospective landlord might seek the sexual services of a prospective or current

tenant in return for some form of housing benefit to that person; or else the wording should use a blanket term such as “housing advantage” or “housing benefit” or “accommodation-related benefit” to the tenant.

- ‘Related services or transactions’ should have a clear definition and these services or transactions should be listed. *[Section 2(1)]*
- Accommodation should have its own definition and be broad enough to cover any types of residential property held by occupier. *[Section 2(1)]*
- Clarify definition of “provider” of accommodation within the Bill, as currently this could include a partner who owns the property in which s/he lives in with his or her life partner. *[Section 2(2)]*
- “Publisher” should be defined more clearly. *[Section 3(1)]*
- Phrasing of Section 3(3) should be altered to address situations where the publisher has been informed of the risks of publication of an advertisement, but the ad has not yet been published as well as those where it has.
- “Remedial action” should be defined to make clear which remedial actions are acceptable and would avoid criminality. *[Section 3(3)]*
- “Reasonable time” should be defined to make clear the point at which criminal responsibility arises. *[Section 3(3)]*

Engagement with Stakeholders

The Joint Committee on Justice invited submissions from stakeholders in relation to the Ban on Sex for Rent Bill 2022.

On 21st June 2022, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of Stakeholders present at Committee meeting:

Organisation				Witnesses
Rape Crisis Network Ireland (RCNI)				Ms. Caroline Counihan, Legal Policy Director
Ms. Ann Murphy, Irish Examiner.				Ms. Ann Murphy, news reporter with the Irish Examiner.
Threshold				Mr. Gavin Elliott, Legal Officer Ms. Ann-Marie O'Reilly, Policy Officer
Department of Justice				Ms. Rachel Woods, Assistant Secretary, Criminal Legislation Ms. Lisa Doherty, Principal Officer, Criminal Legislation

A link to the full transcript of the engagement can be found [here](#).

Summary of Evidence

The Cathaoirleach invited Deputy O’Callaghan, as sponsor of the Bill, to make some opening remarks on the Bill which was followed by contributions and observations from witnesses and Members.

In his opening remarks, Deputy O’Callaghan thanked the witnesses and organisations which were taking part in the engagement and he welcomed constructive feedback from witnesses and Members as to how the Bill could be improved and strengthened.

He said that the Bill has two specific purposes – the first of which is to introduce a specific criminal offence for anyone who demands sex in lieu of rent or for reduced rent and the second to introduce a specific offence for advertising sex in lieu of rent, which would apply to individuals placing an advertisement, on a platform or publication or anyone involved in facilitating sex-for-rent arrangements.

Deputy O’Callaghan outlined his reasons for bringing forward this legislation indicating that there had been several reports and media coverage on this issue over the last few years, in particular articles by *the Irish Examiner* and also by *Prime Time*, which highlighted examples of renters being offered or pressured into sex-for-rent situations by their landlords.

In bringing forward legislation in this area, the Deputy underlined that there is no specific criminal offence or legislation against sex-for-rent practices. He pointed out that the Garda PULSE system does not specifically record sex-for-rent complaints under a distinct category.

The Deputy highlighted the lack of research and data on the true extent of this problem in Ireland. He stated that some evidence has found that migrants and those with less access to support networks, have been targeted with offers of sex-for-rent, with ads being placed specifically on websites that are more often used by such groups. There had also been stories in recent times of people fleeing the war in Ukraine being targeted for sex-for-rent propositions.

While Deputy O’Callaghan acknowledged that this Bill would not solve the wider problems surrounding this issue, such as the lack of available housing, ensuring safeguards for

renters and power imbalances between renters and landlords, he hoped the Bill would go some way to act as a deterrent against these practices and encourage renters to bring forward complaints of sex-for-rent, as the Bill is specifically designed to target cases of this nature.

Following Deputy O’Callaghan’s remarks, witnesses delivered their opening statements and the Cathaoirleach then opened the discussion to the Members of the Committee.

In the course of the public hearing, a number of important points were raised by stakeholders and Members, which are as follows:

1. Stakeholders welcome the intention behind this Bill and the need for legislation of this nature

- Stakeholders and Members welcomed the intention of this Bill.
- Stakeholders pointed out that it is urgent that legislation of this nature be introduced as swiftly as possible, to deter the abuse and exploitation underlying sex-for-rent propositions.
- Stakeholders emphasised the increased vulnerability of those susceptible to ‘sex for rent’ because of Ireland’s housing crisis.
- Stakeholders stressed the importance of the provision for the creation of two new offences in the legislation; one penalising the advertising of sex for rent offers and the other penalising the hosting of such advertisements by platforms.
- Stakeholders welcomed the value of this legislation in sending a message that the behaviour targeted by the Bill is unacceptable and should be sanctioned.
- Stakeholders pointed out that there is a gap in current legislation in this area, in that offers of this nature can only be criminalised if the other party is a prostitute. They welcomed the fact that this Bill would fill this legislative gap.
- Officials from the Department of Justice highlighted that the Department agrees that sex-for-rent offences should be prosecuted and that the Minister has recognised that there is a gap in current legislation that needs to be addressed to ensure these offences can be identified and prosecuted. In the context of this Bill being brought forward, they highlighted that current legislation deems that any

agreement to pay for accommodation with sexual acts is invalid and not enforceable under contract law. Sexual offences legislation is also clear that consent must be freely and voluntarily given and that sex without consent amounts to rape, which is punishable on conviction by up to life imprisonment.

2. Difficulty in prosecuting cases involving sex-for-rent

- Members highlighted their concerns that sex-for-rent arrangements may be hard to prosecute if they become an offence under this Bill. They suggested that unless such offers are made by a printed advertisement or through text messages, they may take place during an oral conversation or through veiled language or innuendo, which could be hard to prove. It was also pointed out that it is already very difficult to successfully prosecute cases of other sexual offences. Members asked how the Department thinks this offence will be proved if it were enacted.
- Officials from the Department agreed that sexual offences can be difficult to prove and said that evidential standards that apply within this Bill would be the same that apply in every other sexual offence. They said that certain sex-for-rent offences may have useful 'physical evidence' in terms of email or text evidence of the offence.
- Similarly, Members pointed to the example of the UK and highlighted suggestions by witnesses that similar legislation in the UK had failed to achieve convictions. They asked witnesses whether the failures in UK legislation had been identified and whether they had been or could be addressed.
- Stakeholders acknowledged that legislation in this area in the UK has not been successful and that there has been only one successful prosecution in the UK since the issuing of prosecution guidelines in 2019.
- Witnesses said that the failure of this legislation is, in part, due to attempts to prosecute offenders under more general, existing legislation dealing with prostitution offences.
- They argued that this demonstrates the need for standalone legislation to be introduced to specifically target sex-for-rent offences, as including these offences into existing offences could risk mislabelling the offences and obscuring the nature of both crimes.
- They said efforts to pass amendments to UK legislation had failed, but this demonstrated that there was an awareness that amendments would be needed to create a specific offence for incidents of sex-for-rent, as this Private Members' Bill seeks to do.

3. Need for tighter definitions within the Bill

- Noting the comments of some witnesses that definitions within the Bill need to be tighter, Members questioned what specific definitions should be made tighter or more precise to strengthen the Bill.
- Witnesses recommended that, for example, the terms ‘sex’ should be defined more clearly, to identify the sexual acts that would be criminalised under this legislation.
- ‘Provider of accommodation’ should also be more clearly defined to clarify the wide range of individuals or circumstances that could be included under this term.
- It is unclear what is meant by ‘publisher’, witnesses recommended that any publication of offensive proposals to any other third party should be a criminal offence.
- Others suggested that the definition of prostitution should be revised so that it could cover situations of sex-for-rent, as it was argued that both circumstances involve situations where someone is induced to provide sexual services in exchange for something else, whether that is money or reduced accommodation.
- Similarly, it was underlined that section 2 as drafted refers to a requirement to engage in sex-for-rent situations but may not cover situations where a landlord asks or suggests that a tenant could engage in this situation. It was recommended that this be more clearly defined to ensure that *suggested* sex-for-rent arrangements are also covered by the legislation and to protect those in vulnerable positions that may feel compelled to engage with these suggested offers of sex-for-rent.
- The Department clarified that, in many cases, other definitions are present on the Statute Book that would serve as a precedent, while other definitions could be adjusted through amendment.

4. Lack of statistics on the extent of sex-for-rent situations in Ireland and the need to conduct further research in this area

- Deputy O’Callaghan and witnesses highlighted the lack of research available on the prevalence of situations of sex-for-rent in Ireland and emphasised that there was a need to collect data in this area in order to ascertain the true extent of this problem.
- As a reference point, witnesses highlighted a study undertaken in the UK by the housing charity Shelter, which found that 59,000 women in the UK had been propositioned for sex in lieu of rent in the 18 months between March 2020 and September 2021. Some witnesses suggested that if the figures from the UK were applied to Ireland, this could equate to almost 4,000 renter households that would have been propositioned for sex-for-rent arrangements. It was also pointed out that England does not have the same housing crisis that is present in Dublin and other areas throughout Ireland.
- Witnesses called for a specific PULSE incident Type to be put in place for the Garda Síochána to document incidents.
- Members and witnesses called for the Department to carry out further research or undertake a survey to establish the extent of instances of sex-for-rent in Ireland.
- Officials from the Department said that while there is no research planned for this area, they agree that it is an area that would benefit from further research, both to ascertain the extent of sex-for-rent as a problem, in order to respond to the problem more effectively and also to ascertain the kinds of tenancy in which this issue more commonly occurs, for example, whether it is more likely to occur within a landlord-tenant relationship or within rent-a-room schemes.

5. Existing legislation in this area and similar legislation in other jurisdictions

- Members questioned whether there was similar legislation in other jurisdictions which had proven effective and which could be examined as a model for Ireland.
- In response, officials from the Department clarified that very few jurisdictions have a specific offence in this area. They said that the jurisdictions that do prosecute these offences do so as part of payment for sexual services or prostitution, as they have defined prostitution as any payment or consideration including accommodation.
- It was pointed out that Northern Ireland uses the same legislation for payment for sexual services but it does not define that in terms of prostitution and rather refers to ‘any consideration’ exchanged for sex. Officials stated that while current Irish legislation would not be suitable in this regard, it may be worth examining whether it would be feasible to amend and widen this area of law, in order to adopt a similar legislative approach to that in Northern Ireland.
- Officials cautioned that any new offence created under this Bill should cohere with the existing legislative framework in this area and stated that further consideration may be required in this regard.
- It was pointed out that a review of Part 4 of the *Criminal Law (Sexual Offences) Act 2017*, which deals with the purchase of sexual services, is currently being carried out. Officials highlighted that this review will inform legislative improvements in this area, regarding how to strengthen the safety and well-being of individuals that engage in sexual activity for payment.
- Officials stated that without the final review of the 2017 Act, the Department does not have a firm position on whether the proposed Private Members’ Bill, or amending existing legislation, in the manner suggested above, would be the better policy option.

6. Supporting victims to report instances of sex-for-rent to the Gardaí

- Members noted in contributions provided by witnesses, that women who had previously been targeted by sex-for-rent propositions had been reluctant to go to the Garda Síochána to report this crime for fear of not being believed, among other reasons. Members urged that victims should be encouraged to report such crimes to Gardaí and that a message should be communicated to victims that they will be taken seriously and listened to when reporting such crimes.
- Witnesses agreed that abusive sex-for-rent situations are often targeted against vulnerable individuals and that the shortage of available housing makes this problem more acute. Witnesses emphasised the need for victims to be supported and feel protected to report instances of sex-for-rent and underlined that there is no reporting mechanism available for victims to do this.
- Witnesses suggested that reporting such offences be incorporated into existing victim-friendly processes, like those created by the 'Supporting a Victim's Journey' implementation plan or be made available through NGOs that support these victims. It was also suggested that the Bill be made to cohere with section 14 of the Residential Tenancies Act, which prohibits penalisation for making a report to certain bodies, in order to encourage renters that may currently be trapped in sex-for-rent arrangements to report their landlords without fear of retaliation or eviction.
- Witnesses recommend the commissioning of a victim-friendly reporting mechanism via the Garda Síochána, if one does not already exist.
- Finally, satellite supports for victims should also be considered to aid victims, in the form of expanded domestic and-or sexual violence services, counselling, housing supports or an extension of the recent rent supplement protocol between the Department of Social Protection and Tusla.

Legal Scrutiny of Bill

A private meeting of the Joint Committee [the Committee] took place on 21st June 2022, following the Committee's public engagement on the Bill, for the purpose of obtaining a legal briefing from the Office of Parliamentary Legal Advisors (OPLA) on its analysis of the Ban on Sex for Rent Bill 2022.

Deputy Cian O'Callaghan was also in attendance at this meeting.

This analysis was undertaken in accordance with the Memorandum of Understanding between the Government and Dáil Éireann on Private Member's Bills adopted on 5th December 2018 and required that the Bill be examined, primarily taking account of the following questions:

- Is the PMB compatible with the Constitution?
- Is the PMB compatible with EU legislation and human rights legislation (ECHR)?
- Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
- Review for serious drafting deficiencies or technical drafting errors.
- Review for potential un-intended legal consequences which may stem from the PMB as drafted.
- Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included?

The OPLA's legal assessment of the Bill and the various positions presented in written submissions to the Committee and the arguments that were expressed in favour of and against the proposed Bill were noted by the Committee.

Summary of the Office of Parliamentary Legal Advisors (OPLA) Advice

1. The intention of the PMB is to create a criminal offence of requiring or accepting sex as a condition of accommodation and to create a criminal offence for the advertising of such a practice. The PMB is therefore a penal statute. It is a well-established presumption in law that penal statutes be construed strictly.
2. Article 38.1 of the Constitution provides that no person shall be tried on any criminal charge save in due course of law. One of the central elements of Article 38.1, as has been interpreted by the courts, is that any law must be drafted in a sufficiently precise and clear manner so as to give fair warning to those that may be subject to it. Laws that are found to be insufficiently precise or lacking in clarity are at risk of being incompatible with the Constitution.
3. The lack of definitions in the PMB, particularly in connection with its core terms, is problematic as the law requires that criminal offences should be clearly and specifically defined. The core term of “sex” is not defined and so on this term alone there is a fundamental lack of clarity in respect of the offence being created by the PMB.
4. While the policy intention of the PMB is clear – to create a criminal offence for the practice of demanding sex in lieu of rent and to create a criminal offence for the advertising of such a practice – there is a significant risk that, due to the lack of clarity in the PMB, it could be found by the courts to be insufficiently precise and to contain vague legislative provisions and, accordingly, to be incompatible with the Constitution.
5. No EU legislation has been identified that the PMB would contravene. Therefore, the PMB does not cause an issue in terms of its compatibility with binding EU law.
6. Article 7 of the European Convention on Human Rights provides for the principle of “*no punishment without law*”. The PMB is vulnerable to a challenge under Article 7 for similar reasons to the constitutional difficulties identified and an

applicant could seek a declaration of incompatibility under the European Convention of Human Rights Act 2003. An applicant would however have to have the constitutional claim (breach of Article 38.1) considered first so a possible breach of the ECHR is a secondary risk to the constitutional issue.

7. The ambiguities contained in sections 2 and 3 of the PMB, in their current form, contain flaws that could present constitutional difficulties due to a lack of precision in the drafting of the elements of the criminal offence.

CHAPTER 3: RECOMMENDATION TO THE DÁIL

Based on its consideration, as outlined above, the Select Committee has determined that the lack of clarity in the definitions of several elements of the Bill, and in particular in the drafting of core terms in relation to the criminal offences created by the Bill, comprise significant legal faults within the Bill as drafted. This could present challenges and difficulties if the Bill is brought before the Courts and the Bill could potentially be found to be unconstitutional.

Furthermore, based on the evidence provided to it, the Committee is also concerned that it may prove difficult to prosecute the offence stipulated within the Bill.

Therefore, the Select Committee recommends that the Ban on Sex for Rent Bill 2022 should not proceed to Committee stage.

However, the Committee commends the intention behind Deputy O'Callaghan's Bill and its objective of addressing the exploitation of vulnerable individuals. The Committee also welcomes the fact that this Bill would address a current legislative gap by criminalising this offence.

APPENDICES

APPENDIX 1 – ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)²; and

² Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months

(excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.³

³ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss
issues for which they are officially responsible: Provided that such an office-
holder may decline to attend for stated reasons given in writing to the Select
Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to
assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such
recommendations as may be made by the Working Group of Committee Chairmen
under Standing Order 120(4)(a).'

APPENDIX 2 - FRAMEWORK FOR COMMITTEE SCRUTINY OF PMBs

PART A: Policy and Legislative Analysis

The 'policy Issue' and the policy and legislative context

1. Define the problem / the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention? What is the scale of the problem and who is affected? What is the evidence base for the Bill?
2. What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation?
3. Is there a wider EU/international context?

Implications and implementation of the Bill's proposals

Policy implications / implementation

4. How is the approach taken in the Bill likely to best address the policy issue?
5. What alternative and/or additional policy, legislative and non-legislative approaches were considered, including those proposed by the Government and what, does the evidence suggest, are the differences between and the merits of each?
6. Are there Government-sponsored Bills (or General Schemes) which are related to and/or broadly aim to address the same issue? Are there merits in combining them?
7. What are the specific policy implications of each proposal contained within the Bill (environmental / economic / social / legal)? Has an impact assessment (environmental/ economic /social / legal) been published (by Government or a third party) in respect of each proposal contained within the Bill?
8. Could the Bill, as drafted, have unintended policy consequences, if enacted?
9. Has the Committee taken due consideration of the opinion of the European Central Bank (ECB) on the Bill, if applicable?
10. How would the Bill, if enacted, be implemented?
11. Are there appropriate performance indicators which the Department, or whoever is ultimately charged with implementing the Bill, can use to assess the extent to which it meets its objective? Does it include formal review mechanisms?

Cost evaluation

12. Will there be enforcement or compliance costs?
13. What are the likely financial costs of implementing the proposals in the Bill, and what is the likely overall fiscal impact on the exchequer?
14. Have cost-benefit analyses (CBA) been provided / published (by Government or a third party) in respect of each proposal contained within the Bill? Will benefits / costs impact on some groups / stakeholders more than others?

PART B - Legal Analysis

15. Is the draft PMB compatible with the Constitution (including the 'principles and policies' test)?
16. Is the draft PMB compatible with EU legislation and human rights legislation (ECHR)?
17. Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
18. Are there serious drafting deficiencies or technical drafting errors (e.g. incorrect referencing to Acts etc.)?
19. Are there potential unintended legal consequences which may stem from the PMB as drafted?
20. Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included? (e.g. if draft Bill contains a prohibition, whether the necessary criminal sanctions - including the class of fine - are included).

APPENDIX 3 - LIST OF STAKEHOLDERS AND SUBMISSIONS

The Committee received submissions from the following stakeholders

- Rape Crisis Network Ireland (RCNI)
- Ms. Ann Murphy, Irish Examiner
- Residential Tenancies Board (RTB)
- Threshold
- Department of Justice

[Submissions are available in the online version of the Committee's Report, which will be accessible at <https://www.oireachtas.ie/en/committees/33/justice/>].

BSFR_01



RCNI Submission on the Ban on Sex for Rent Bill 2022

April 2022

Introduction – Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

Introduction - Submission to the Joint Oireachtas Committee on Justice on the Ban on Sex for Rent Bill 2022¹

This submission is in two parts: the first is an overview of the general issue, the second is specific to selected individual subsections of the Bill as it was initiated. Any recommendations are listed under the Observations on each section. The individual subsections selected for discussion are set out in full below in contrasting type in the order in which they appear in the Bill as initiated.

I General observations on sex for rent:

RCNI's view is that this is a serious form of sexual exploitation and abuse of some of the most vulnerable people, especially women and girls, in our society. The opportunities for this form of abuse are multiplying as the shortage of affordable housing for rent becomes ever more acute, and as women and children fleeing Ukraine continue to enter the country in large numbers. However, they are not the only vulnerable migrants (and others) at risk of this form of exploitation.

The shortage of affordable housing for rent on any basis needs to be addressed effectively so that the pressure on tenants and prospective tenants to accept any accommodation solution, however awful, is removed.

It was clear from the Second Stage debate² on this issue that there is a very good understanding of the nature of the problem of "sex for rent" across all parties and many Independent TDs. Many TDs saw the acute housing shortage, and the gaps in legal protections for many in dire need of rented accommodation, as the root cause of the vulnerability which is exploited by certain unscrupulous landlords.

More positively, there was a general consensus that urgent action is needed on this Bill to deter future abusive "sex for rent" offers and also to mark the gravity of this behaviour by criminalising it and giving the court powers to pass a prison sentence of appropriate length (7 years). However, it was also clear from the debate that no new criminal offence alone can cure this abuse. Other measures are needed in the areas of housing and tenant rights.

RCNI also agrees with contributors to that debate who pointed out potential difficulties with the drafting of the separate offences of requiring or accepting sex in return for a rent rebate or in order to access accommodation in the first place (1) and the offence of "arranging or facilitating" such an offence by publishing an advertisement

¹ Accessible via this web-link: <https://data.oireachtas.ie/ie/oireachtas/bill/2022/28/eng/initiated/b2822d.pdf>

² Accessible via this web-link: <https://www.oireachtas.ie/en/debates/debate/dail/2022-03-23/8/>

on behalf of the prospective landlord (2). However, we think there is nothing in the Bill which could not be cured by some work on the drafting.

RCNI sees this Bill as one important preventative measure which will deter some potential abusers and punish some actual abusers. Its existence will also send a strong message to every responsible person that it is unacceptable to exploit a person's acute need for a roof over their head by making "offers" to supply accommodation and/or a reduced rent in return for sexual services.

In RCNI's view, the landlords who make these offers and whose offers are accepted are (at least arguably) putting themselves at risk of a charge of rape or some other sexual offence, if the other person had no effective choice but to accept, or have no roof over their head. Acceptance in these circumstances cannot be equated with consent as it is defined by our criminal law, ie consent to a sexual act which must be freely and voluntarily given³.

However, if such an offer is not accepted, as the law stands now the maker of the offer cannot be criminalised unless the other person is a prostitute, to use the term in the statutory provision which criminalises the purchase of sexual services⁴. This gap needs to be closed.

Accordingly, we welcome this Bill. We are also very glad to read that the Joint Oireachtas Committee on Justice will undertake pre-legislative scrutiny of this issue. RCNI urges all members of the Oireachtas to work together with the Minister for Justice and the Committee as well as with the proposer of the Bill, Cian O'Callaghan TD, to ensure first of all that it is legally robust and workable and secondly, that it is passed and commenced as soon as possible. It is needed urgently.

II Specific Observations on Individual Sections of the Bill in order:

Offence of requiring or accepting sex as a condition of accommodation

2. (1) It is an offence for a person (A) to require or accept from a person (B) sex as a condition of access to or retention of accommodation or related services or transactions.

(2) For the purposes of this section, A is—

- (a) a provider of accommodation,
- (b) an employee of a provider of accommodation,
- (c) an agent of a provider of accommodation, or
- (d) a contractor of a provider of accommodation.

³ See Section 9(1) Criminal Law (Rape) (Amendment) Act 1990, as substituted by Section 48 Criminal Law (Sexual Offences) Act 2017, accessible online via this web-link: <http://revisedacts.lawreform.ie/eli/2017/act/2/section/48/revised/en/html>

⁴ Section 7A Criminal Law (Sexual Offences) Act 1993, as inserted by Section 25 Criminal Law (Sexual Offences) Act 2017, accessible online via this web-link: <http://revisedacts.lawreform.ie/eli/2017/act/2/section/25/revised/en/html>

(3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a maximum of 7 years or both.

RCNI Commentary:

Subsection (1):

“require or accept”: This wording does not appear broad enough to cover the situation where there is no explicit demand for sexual services from the tenant or prospective tenant, but only a suggestion that such an arrangement might unlock access to the accommodation, or provide that accommodation at a reduced rent or even no rent, or prevent eviction. Neither does it criminalise directly such offensive behaviour as: advertising, offering, or seeking to provide, or providing, any accommodation-related benefit in return for sexual services.

- **RCNI Recommendations:**

- Add the words “advertise, offer, seek to provide, provide” before “require or accept”

“sex”: This is too vague. It does not define which sex acts, in which circumstances, are covered. It needs to be much more specific to be workable as an element of a criminal offence.

- **RCNI Recommendation:**

- A definition which covers all the sexual acts which are offences if carried out without the consent of the other person, should be considered. As a possible model which could be adapted, see Section 9(6) Criminal Law (Rape) (Amendment) Act 1990 as inserted by Section 48 Criminal Law (Sexual Offences) Act 2017⁵.

“as a condition of access to, or as a condition of retention of”: How can it be proved that if the offer is not accepted, the accommodation would not have been offered to the prospective tenant on the usual basis? (perhaps for a higher rent or shorter period). Also, this wording leaves out some situations in which these offers are made. It does not cover the situation where there is an offer to forgive all or part of the rent, including rent arrears, if sexual services are provided by the tenant to the landlord and it does not differentiate between for example, a lease which is coming up for renewal in the ordinary way, and a lease which has expired and where the tenant having been served with the appropriate notices, is now facing imminent eviction.

- **RCNI Recommendations:**

- Consideration should be given to a form of wording which either lists all the situations in which the landlord or prospective landlord might seek the sexual services of a tenant or prospective tenant in return for some form of housing benefit to that person – or else which uses a blanket term such as “housing advantage” or “housing benefit” or “accommodation-related benefit” to the tenant;

⁵ See footnote 3 above for web-link to this Section

- Consideration should also be given to a form of wording which is not restricted to situations in which the landlord has imposed a condition of provision of sexual services. This is not necessary, in our view – a wording such as “in return for” is easier to prove and is clearer.

“accommodation or related services or transactions”: Neither “accommodation” nor “related services or transactions” are defined in this section or elsewhere. RCNI respectfully submits that for the sake of clarity and certainty, they should both be defined. It needs to be clear what is and is not “accommodation” as defined in this Bill and also, it should be clear what does and does not constitute “related services or transactions”.

- **RCNI Recommendations:**

- Consider giving each one of the phrases “accommodation” and “related services or transactions” its own individual definition, as outlined below, and moving these two definitions to Subsection (2), which already contains the definition of (A), a person who provides accommodation or assists the provider in some way with its provision. It seems the most logical place.
- Ensure that “accommodation” does have its own definition and that that definition is broad enough to encompass any residential accommodation to be held, or held, by the occupier or prospective occupier – including a mobile home, houseboat, a room in a house owned by the landlord, a room in a house owned and occupied by the landlord, any separate house, apartment or other own door accommodation, any house or apartment or other own door accommodation shared with others not the landlord, whether it is held or offered on the basis of a tenancy, licence, tenancy at will, or on any other basis, and whether or not the tenancy etc has expired, ie in essence, whether or not the occupier is at risk of eviction because the legal basis on which they were occupying the accommodation is now invalid;
- “related services or transactions”: It is not at all clear what this phrases refers to, and it must be. These related services or transactions should be listed, or at the very least, the applicable services must be listed with a catch-all phrase included, such as “this list of related services or transactions includes, but is not limited to” - whatever the list of the most relevant services or transactions is, in the mind of the drafter.

Subsection (2): This is a purported definition which does not really define what a provider of accommodation is. It is, however, clear that any agent or employee or contractor of the provider is also capable of committing this offence. It might be best to include an open definition of what a provider of accommodation is, and also, to make clear whether this offence can be committed by a company or other legal entity which is not a person. It must be clear where the limits of “provider” are, ie whether it includes landlords who enter tenancy agreements, licensors renting a room in their own homes, people offering accommodation free of charge in return for certain non-sexual services (caretaking type services) – and so on.

- **RCNI Recommendation:**

- A full definition of “provider of accommodation” should be included in the Bill. It should be clear if there any providers of accommodation who are excepted, and in particular, it should be clear

whether any incorporated or unincorporated bodies are included, not least because so much rental property now is owned by corporate landlords.

Offence of arranging or facilitating the requirement or acceptance of sex as a condition of accommodation

3. (1) It is an offence for a person, who may in particular be a publisher, to arrange or facilitate an offence under section 2 (Offence of requiring or accepting sex as a condition of accommodation).

(2) A person commits an offence if they intend to arrange or know that their actions would facilitate an offence under section 2 (Offence of requiring or accepting sex as a condition of accommodation).

(3) A publisher commits an offence if they —

(a) know they are arranging or facilitating an offence under section 2 (Offence of requiring or accepting sex as a condition of accommodation),

(b) reasonably should know their actions would enable the arrangement of or facilitate an offence under section 2 (Offence of requiring or accepting sex as a condition of accommodation), or

(c) were informed that their actions had enabled the arrangement of or facilitated an offence under section 2 (Offence of requiring or accepting sex as a condition of accommodation) and failed to take remedial action within a reasonable time.

(4) A person found guilty of an offence under this section is liable on conviction on indictment to a fine of €50,000.

RCNI Commentary:

Subsection (1): [refers to a person who may be a publisher]

“(1) It is an offence for a person, who may in particular be a publisher”: This wording implies that only natural persons may be convicted of this offence of arranging or facilitating an offence under Section 2. RCNI respectfully suggests that this offence should be capable of criminalising legal persons as well as natural persons, so that a commercial publishing company and an online platform could also be held to account for their actions alongside natural persons. Also, it is not clear what is meant by “publisher” exactly. Is a publisher a person (legal or natural) who disseminates an advertisement looking for tenants/lodgers to provide sexual services to the landlord in return for some accommodation-related benefit even to one other person, is it a person who disseminates it to a closed group of recipients, is it a person who disseminates it to the public at large? RCNI’s view is that any publication of such offensive proposals to any other third person should be a criminal offence.

A simple alternative might be to create two offences, the first of which can be committed only by a natural person, and the second of which can be committed only by a legal person, not a natural person.

- **RCNI Recommendations:**

- Define “publisher” clearly;

- Make a clear distinction in Section 3 between forms of the offence which can be committed by a natural person and those which can be committed either by a natural person or by a legal person;
- Consider redrafting Section 3 to create two offences, only one of which can be committed by a natural person.

Subsection (1):

“arrange or facilitate [an offence under Section 2]..” RCNI’s view is that this is a little imprecise. It needs to be clearer which actions are criminal in nature and in what circumstances. It is not clear whether the act of promoting the acceptance and publication of these advertisements is itself an offence, or whether accepting an advertisement for publication, as opposed to publishing it, is included, to give just two examples. It might be better to give a list of proscribed behaviours and include a catch-all phrase signifying that the list includes, but is not limited to, the listed behaviours. Also, it is not clear what the practical difference is between “arranging” and “facilitating”(if these words are to remain).

• **RCNI Recommendations:**

- Consider either replacing the wording “arrange or facilitate” with an open-ended list of ways in which a person (natural or legal) could assist in the commission of a Section 2 offence, such as “accepting whether for payment or otherwise an advertisement, publishing an advertisement soliciting sexual services in return for an accommodation-related benefit, liaising between advertiser and any respondent to such advertisement, continuing to publish or allow such advertisement to be published once notified of its true nature or intention, or in any other way aiding, abetting, procuring or counselling such advertisement” or
- Defining either “arrange” or “facilitate” as including one or more of these modes of committing the offence and dropping either arrange or facilitate;
- Ensure that Subsection (1) which only defines the actus reus (“bad action” element of the offence) is linked to Subsections (2) and (3) – as drafted it is stand-alone so that it is not clear that either Subsection (2) or Subsection (3) are each part of the offence.

Subsection (2): [refers to a person only]

“A person commits an offence.....if they intend to arrange or know that their actions would facilitate an offence under section 2...”: This subsection reads like a stand-alone offence, but it makes the most sense as a definition of the mens rea (“bad mind”) element of the offence described under Section 3(1), however as drafted, the two are not linked so that it is not clear that the intention is that they both be separate elements of the one offence. How can an intention be an offence on its own without any actus reus (“bad action”) element?

It is not clear either how knowledge that their actions would facilitate an offence under Section 2 is enough to found a criminal offence on its own – any responsible publisher/operator of an online platform has a responsibility to know which their actions would be criminal in nature if put into effect.

- **RCNI Recommendation:**

- Subsection (2) must be linked by the word “and” to Subsection (1) to create a complete criminal offence, ie actus reus (“bad action”) coupled with mens rea (“bad mind”); and
- As Subsection (3) contains an objective element in its definition of mens rea (“bad mind”) in respect of publisher offenders only as it now stands, consider including an objective element also in this subsection, which refers to the actions of persons (not publishers);

Subsection (3): [refers to a publisher only]

“(a) know they are arranging or facilitating an offence under section 2...”: Again the need to define “publisher” is clear, as is the need to define which behaviours are to be criminalised. This subsection needs also to be linked to subsection (1), as it describes only the mens rea (“bad mind”) element of the offence, not the actus reus (“bad action”) element of it as it stands. The same applies to subsection (3)(b) below.

- **RCNI Recommendation:**

- Ensure that Section 3(3)(a) is linked to Section 3(1) above by the word “and” or otherwise, so that both the actus reus and the mens rea elements are present in the offence;
- NOTE: The recommendations under Subsections (1) and (2) above in relation to the need for clear definitions of both “arrange or facilitate” and “publisher” are relevant to this Subsection (3) also.

“(b) reasonably should know their actions would enable the arrangement of or facilitate an offence under section 2...”: This reads like the addition of an objective element (the knowledge of a putative reasonable person about the effect of the arranging or facilitating actions) to the subjective element of the mens rea (“bad mind”) element of the offence. If this is what is intended, a precedent for this should be adapted from existing legislation. This will help both lawyers and judges to interpret it in line with established practice.

- **RCNI Recommendation:**

- Consider replacing the current wording with one adapted from an existing offence, e g Section 2 Criminal Law (Sexual Offences) Act 2006 as substituted by Section 16 Criminal Law (Sexual Offences) Act 2017 (sexual act with a child under 15)⁶ which refers to the knowledge of a reasonable person as to the age of the other person and adjust the wording so that it refers e g: to a reasonable person in the role of owner, director, manager or supervisor with direct responsibility for the content of advertisements received and published;

“(c) were informed that their actions had enabled the arrangement of or facilitated an offence under section 2..... and failed to take remedial action within a reasonable time”: This wording does not take into

⁶ The consolidated text of this offence may be accessed via this web-link:
<http://revisedacts.lawreform.ie/eli/2017/act/2/section/16/revised/en/html>

account the situation where the publisher is informed in advance of publication that their actions would if completed, result in the facilitation etc of an offence – and fails to take appropriate action. The phrase “remedial action within a reasonable time” is also not specific enough. It should define which remedial actions are intended to be covered by this subsection and also, it should impose a clear time limit by which the action must be taken.

- **RCNI Recommendations:**

- Amend the wording to cover situations where the publisher has been informed of the risks of publication of an advertisement, but that advertisement has not yet been published as well as those where it has;
- Define the phrases “remedial action” so that it is clear which remedial actions would be acceptable to avoid criminal responsibility; and
- Define “reasonable time” so that it is clear at what point criminal responsibility arises.

Subsection (4):

“A person found guilty of an offence under this section is liable on conviction on indictment to a fine of €50,000”.

RCNI takes the point made in the Second Stage debate that the current offence of “aiding, abetting, counselling or procuring” an indictable offence under Section 7 of the Criminal Law Act 1997⁷ already provides for a penalty equivalent to that of the main offence and that therefore, this separate offence criminalising those who publicise advertising for prospective tenants or lodgers to provide sexual services in return for some kind of accommodation-related benefit – is not strictly necessary.

However, RCNI’s view is that there is a declarative or normative value in having a separate offence, provided that it does have a maximum penalty as serious as that for Section 2 offences. It makes the point very clearly to publishers that advertising these arrangements is unacceptable and could result in a conviction, a hefty fine, some unwelcome publicity for themselves with possible commercial consequences and at worst – a prison sentence.

The maximum fine is high enough at €50,000, however in our view the addition of a maximum term of imprisonment (we suggest 7 years) would be a desirable addition. It would deter at least some natural persons who would otherwise risk publishing these advertisements. At present, there is no penalty of imprisonment for this offence.

- **RCNI Recommendation:**

- Amend Subsection (4) to include a maximum penalty of seven years imprisonment which would be imposed on any publisher and in the case of a legal person who is a publisher, on any director of that entity.

⁷ The consolidated text of this offence is accessible via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie/RevisedActs)

Conclusion

RCNI acknowledges that this form of sexual exploitation arises in circumstances of a housing crisis and also, the need for action on supply, tenancy rights and government policy which is beyond our remit and the scope of this legislation. However, RCNI concurs with the proposer and supporters of this Bill that actions seeking to take advantage of the situation by exploiting vulnerable people are abhorrent and ought to be criminalised.

Ref: RCNI/LD/Final

Date: 28th April 2022

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BSFR_02(1)

Submission on Pre-Legislative Scrutiny of the Ban on Sex for Rent Bill 2022

By Ann Murphy,
News Reporter, *Irish Examiner*

May 5, 2022

1. The Ban on Sex for Rent Bill 2022 was introduced in the Dail on March 8, 2022, arising out of an investigation into sex for rent in Ireland by the *Irish Examiner* since December 2021. [Landlords seeking sex for rent as housing crisis bites \(irishtimes.com\)](https://www.irishtimes.com/news/ireland/irish-news/landlords-seeking-sex-for-rent-as-housing-crisis-bites-1.4567890)
2. Previously, in September 2019, then Solidarity TD Ruth Coppinger highlighted a case in which a constituent had been offered a sex for rent situation when she told her landlord she would have to move out because she could not afford a rent increase.
3. In January 2020, this reporter discovered a sex for rent arrangement being advertised for a property in the Lough, Cork city, on a website called Locanto. <https://www.echolive.ie/corknews/arid-40137035.html>
<https://www.echolive.ie/corknews/arid-40133708.html>
4. The website is an international one containing a wide range of classified advertisements from advertisers in Ireland and across the world. In late 2021, up to a dozen such advertisements were found on the same website, as well as others on a website called Craigslist, for properties in Dublin, Limerick and Kildare.
5. At present, such advertisements are still being placed on a number of websites against the backdrop of legislation being considered to ban the practice.
6. The latest rent report from Daft for the first quarter of 2022 found there were fewer than 1,400 properties to rent nationally at the beginning of February. In Dublin, there were just 712 properties available, the lowest level since Daft's records began in 2006. The number of properties was also at an all-time low in Munster. The average rent on Daft was €1,524 nationally at the end of 2021, a rise of more than 10 per cent over the year.

Define the problem / the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention? What is the scale of the problem and who is affected? What is the evidence base for the Bill?

7. Information on the precise nature and extent of sex for rent arrangements in Ireland is sporadic and anecdotal, unlike in the UK, where research has been conducted by homeless organisation Shelter. The findings of that study suggested that 30,000 women in Britain were propositioned with sex for rent arrangements between March 2020 and January 2021.
8. No such research has been carried out in Ireland, although the inclusion of a question as part of the annual survey of tenants by the Residential Tenancies Board, in conjunction with the Dublin Rape Crisis Centre, was considered following the incident highlighted in the Dail in September 2019. This however was not acted on.
9. Some advertisements placed on websites offering accommodation in Ireland are explicit in what they are advertising, offering “friends with benefits” arrangements for example.
[female wanted to share house - rooms & shares \(craigslist.org\)](#)
[Room to rent., Naas, 5 BR – Flatshares & Rooms for Rent Naas \(locanto.ie\)](#)
[Beautiful room FREE for sweet girl in City, Dublin \(locanto.ie\)](#)
[Room to rent in exchange for fwb, Dublin \(locanto.ie\)](#)
10. One of the properties advertised in Limerick was for a single lady “with a twist”. The ad said: “Can do reduced rent for occasional fun.” [Room for rent for single lady, Limerick \(locanto.ie\)](#) When contacted by this reporter, posing as a prospective tenant, the landlord made it clear that sexual activity was required on a weekly basis in return for rent of €200 for the first month and €250 per month thereafter. To establish the veracity of the landlord and the existence of the property, this reporter went to the house in the guise of the prospective tenant and met the landlord at the door.
11. Testimony has been provided to the *Irish Examiner* by women offered sex for rent arrangements after they responded to rental accommodation advertisements on Facebook groups, on classified advertisement websites and some more streamline accommodation websites, including daft.ie. In these instances, the offer was not mentioned in the advertisements – but was made in email communication following receipt of queries about the properties.
12. In particular, foreign women have been offered reduced or no rent in return for sex or bed-sharing with landlords in different parts of the country.
13. In recent weeks, a number of advertisements have appeared online targeting Ukrainian women with offers of accommodation in Ireland in return for sex. The most recent advertisement relating to a property in Cavan was titled “Seeking a Ukraine woman” and was explicit in nature, offering a “free bed in exchange for sexual pleasure for me”. The advertiser added: “I can pick you up in Cavan if you can’t drive need this asap please???”
14. In recent days, Council of Europe’s anti-trafficking body, GRETA, issued a guidance note which highlighted that “European states must ensure that assistance and protection are provided by trusted people and in a safe environment” to “prevent situations when individuals offer transportation, accommodation or work to people fleeing Ukraine in exchange for sexual or other services” <https://www.coe.int/en/web/anti-human-trafficking/-/greta-issues-guidance-note-on-addressing-the-risks-of-trafficking-in-human-beings-related-to-the-war-in-ukraine-and-the-ensuing-humanitarian-crisis>

What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation?

15. Currently, there is no proposed Government bill seeking to specifically address sex for rent, nor has there been any previous attempt to tackle it. In January, Housing Minister Darragh O'Brien sought the advice of the Attorney General's office following a series of reports in the *Irish Examiner*. That advice was being considered when Social Democrats TD Cian O'Callaghan introduced the Ban on Sex for Rent Bill 2022 in the Dail on March 8, 2022.
16. There appears to be confusion as to whether current legislation covering the purchase of sex would cover the area of sex for rent demands.
17. The Minister for Justice, Helen McEntee, told the Dail in February that demanding sex in lieu of rent is currently not an offence. However, on March 23, the Tanaiste, Leo Varadkar, said sex for rent may already be illegal "given the fact that the purchase of sex is illegal in Ireland and also our very clear laws around consent."

Is there a wider EU/international context?

18. In November 2021, the issue of sex for rent was highlighted during a debate in the House of Lords on the Police, Crime, Sentencing and Courts Bill.
19. Amendments to the bill were brought forward, seeking to make it a criminal offence for landlords to arrange sex for rent agreements with tenants.
20. Currently, the university of Brighton is seeking a researcher to examine the "phenomenon of sex for rent", with a view to "analyse 'Sex for Rent' in the context of how it is advertised to women in the private rental sector and how this can interplay with vulnerabilities and risks in the private rental sector".

How is the approach taken in the Bill likely to best address the policy issue?

21. The Ban on Sex for Rent Bill 2022 seeks to criminalise both the practice of sex for rent arrangements, and the advertising/hosting of advertisements for such arrangements.
22. While the approach taken in the proposed legislation will address the explicit offering of such arrangements on publishing platforms, it will **not** address private correspondence between the advertiser and the prospective tenant – unless either party publishes or reveals the correspondence. This will make it difficult to prosecute in many cases. Research undertaken as part of the *Irish Examiner* investigation has shown that many of the offers are made **after** a prospective tenant makes contact with an advertiser about a property. The offer of sex in lieu of rent is made in writing on occasion, but also verbally. The latter will make it extremely difficult to prosecute in such cases, particularly as most properties involved are privately owned, most likely without CCTV coverage.
23. Many of the people targeted by sex for rent arrangements are foreigners arriving in Ireland who will not be aware of the legislation, if enacted. Testimony from women previously targeted by such arrangements shows a reluctance to go to An Garda Síochána to make complaints, for reasons including lack of trust in authority, and a fear that they will not be believed or taken seriously.

What alternative and/or additional policy, legislative and non-legislative approaches were considered, including those proposed by the Government and what, does the evidence suggest, are the differences between and the merits of each?

24. The bill is under scrutiny as the Government continues to consider advice from the Office of the Attorney General relating to the issue of sex for rent and how it might be tackled from existing or amended legislation. This has been ongoing since January 2022, when Housing Minister Darragh O'Brien sought the AG's advice.
25. The current legislative moves are being done against the backdrop of the Government's Housing for All programme, aimed at improving access to rental accommodation.
26. It is clear that legislation alone will not tackle the reason why sex for rent incidents appear, anecdotally at least, to have increased in recent times. The lack of rental accommodation, high rents and increasing pressures on existing housing provision including from the Ukrainian humanitarian crisis have all combined to aid landlords seeking to exploit prospective tenants who are desperate to find somewhere to live.

Are there Government-sponsored Bills (or General Schemes) which are related to and/or broadly aim to address the same issue? Are there merits in combining them?

27. Legislation around the sale of sex has been raised as possibly having a role to play in tackling sex for rent demands, by groups including the Rape Crisis Network of Ireland. However, previously in the UK, prostitution laws were used to cover the area, but there has only been one prosecution there for sex for rent under such legislation. In February, Minister Helen McEntee said she was not in favour of Ireland using prostitution legislation to tackle sex for rent.
28. The area of consent is one which could be argued to intertwine with the area of sex for rent. Currently, under the Criminal Law (Sexual Offences) Act 2017, consent is given for a sexual act with another person if s/he "freely and voluntarily" agrees to engage in the act.

What are the specific policy implications of each proposal contained within the Bill (environmental / economic / social / legal)? Has an impact assessment (environmental/ economic /social / legal) been published (by Government or a third party) in respect of each proposal contained within the Bill?

29. There has been no impact assessment carried out as yet in respect of the proposals carried out in the bill.

Could the Bill, as drafted, have unintended policy consequences, if enacted?

30. Aspects of the legislation may stray beyond the rental sector if clarity is not given on the definition "provider" of accommodation in the bill. As it currently stands, the "provider" could include a partner who owns the property in which s/he lives in with his or her life partner. Similarly, "accommodation" may also have to be more clearly defined domestic relationships may inadvertently fall under this bill.
31. Under the term "provider", it also needs to be considered that those offering sex for rent arrangements often are people who are sub-letting rooms unknown to their own landlord and so are not acting on behalf of the landlord (the "provider"), or "an employee of a provider of accommodation", "an agent of a provider of accommodation", or "a contractor of a provider of accommodation".

Has the Committee taken due consideration of the opinion of the European Central Bank (ECB) on the Bill, if applicable?

32. I do not believe the opinion of the European Central Bank (ECB) on this bill is applicable.

How would the Bill, if enacted, be implemented?

33. A fine of €50,000 and imprisonment for up to seven years are being proposed in the legislation. It seeks to criminalise the advertising of sex for rent offers, and the hosting of such advertisements by platforms.

34. Implementation of the legislation would require concentration on websites offering classified advertising, specifically those including Craigslist, VivaStreet, and Locanto, to identify advertisers offering sex for rent arrangements. However, as not all landlords seeking such arrangements specify their requirements specifically in their advertisements, key indicators relating to such advertisements need to be established by investigators. Such indicators include a lack of photographic materials relating to the property, the non-existence of a rental price (or the stating of a nominal fee such as €1 or €10), a failure to identify the exact location of the advertised property, and a targeting of a property specifically at a female.

Are there appropriate performance indicators which the Department, or whoever is ultimately charged with implementing the Bill, can use to assess the extent to which it meets its objective? Does it include formal review mechanisms

35. In correspondence to the Oireachtas Housing Committee, An Garda Síochána outlined that there is currently no specific PULSE incident Type, ICCS Crime Type or Legislative Act that the organisation could rely on to capture such incidents. A series of PULSE searches by the organisation relating to between January 2021 and January 2022 failed to capture any reports or complaints regarding sex for rent incidents in Ireland.



Residential Tenancies Board

RTB Submission for the Joint Committee on Justice: Ban on Sex for Rent Bill 2022

Introduction

The Residential Tenancies Board (RTB) welcomes the Oireachtas addressing this particular issue of “sex for rent” and the opportunity to contribute to this process. The RTB strongly condemns any exploitative behaviour by landlords, or other parties and acknowledges the intent of the Bill to protect tenants and other persons seeking accommodation.

The RTB was established in 2004 to support and develop a well-functioning rental housing sector with a remit that extends to the private rental, Approved Housing Bodies, (AHB) Cost Rental and Student Specific Accommodation (SSA) sectors. The RTB role is to regulate the rental sector, provide information and research to inform policy, maintain a national register of tenancies, resolve disputes between tenants and landlords, initiate an investigation into improper conduct by a landlord, and provide information to the public to ensure tenancies run smoothly and no issues arise.

Context

The RTB is acutely aware that the current market demand continues to grow at a time of restricted supply and access to accommodation is difficult for many tenants. It is recognised that there are many people in very challenging and uncertain situations as a result of the ongoing supply and affordability issues, particularly given the number of households that rent

in Ireland and will continue to do so into the future. This is further impacted by the economic consequences of COVID 19.

One of the strategic priorities for the RTB is to use its data and research to promote a better understanding of the private rented sector, to monitor trends, assess their impact and to feed into government policy and outcomes. As part of this programme, the RTB is conducting an annual survey of landlords and tenants, the purpose of which is to provide the RTB with up to date and robust information on those living and providing accommodation in the rental sector.

The findings of the inaugural survey showed that the vast majority of tenancies are operating well. In the survey 79% of tenants said that their renting experience has been positive or very positive, while 88% of small landlords (who represent the largest share in the market) describe their experience of their current tenants as positive or very positive.¹ Based on these results, the RTB believes that the majority of tenancies are functioning well for both tenants and landlords. The RTB has no data as to the prevalence of “sex for rent” in respect of regulated tenancies but, clearly, any instance is inexcusable and unacceptable.

The RTB is also committed to improving our services to the residential rental sector. To meet the needs of stakeholders, the RTB has introduced a number of measures, including awareness campaigns, a free voluntary landlord accreditation scheme and further developed the RTB website. A key priority is ensuring that information is more widely available and accessible so both tenants and landlords are aware of their rights and responsibilities.

RTB position

The RTB believe that any form of sexual harassment, intimidation or inappropriate behaviour in a person’s home is very serious and a criminal matter. In the first instance, for any criminal matter this should be referred to the Garda for investigation.

For non-criminal matters the RTB offers a dispute resolution service to both tenants and landlords. In particular one of the key rights of a tenant is the right to peaceful and exclusive

¹ The Rental Sector Survey full suite available here <https://www.rtb.ie/rtb-publications>

occupation of their home. This means that a landlord cannot just enter the home of a tenant, they must give appropriate notice to the tenant on any visitation to the property. Any other infringement of rights or inappropriate behaviour can also be referred to the RTB Dispute Resolution Service.

If a tenant feels threatened by a landlord or their authorised agent either verbally or via emails/text messages and it is interfering with the peaceful enjoyment of their tenancy, a case can be taken to the RTB citing breach of landlord obligations.

If issue concerns the conduct of a letting agent, the Property Services Regulatory Authority (PSRA) control and supervise the Property Services Providers (PSPs) i.e., Auctioneers, Estate Agents, Letting Agents and Management Agents and the matter should also be referred to www.psr.ie.

While pathways are open to tenants from the respective regulators, it is important to reiterate that the RTB's position is that "sex for rent" is a criminal matter and must be brought to the attention of the Garda and should be dealt with through the criminal system.

The RTB understands that as a matter of civil law, any agreement, including a tenancy agreement, involving the provision of accommodation in return for sex or sexual favours is unlawful and therefore, cannot be legally enforced by the accommodation provider.

Therefore, the RTB welcomes the fact that the Bill recognises the seriousness of the matter and addresses it as a criminal issue.

Conclusion

The RTB is fully supportive of the intention of the Bill and commends the work undertaken to date. However important matters such as relevant definitions, references to other enactments, penalties, criminal procedures, etc., require careful consideration and further development.

Given the early development of the Bill, the RTB has no further comments to make at the current, scrutiny stage. However, the RTB is happy to provide further observations in relation to the aforementioned detail, when the Bill has reached that stage.

Once again, the RTB would like to thank the Joint Committee on Justice for the opportunity to comment on its scrutiny of the Sex for Rent Bill 2022.



Threshold submission on the Ban on Sex for Rent Bill 2022

6th May 2022

1. Introduction

2. This document represents Threshold's response to the invitation to make submissions on the Ban on Sex for Rent Bill 2022. Specific recommendations, are made briefly after this introduction followed by Threshold's answers to the 11 questions asked the appendix to the invitation.
3. Sex-for-rent arrangements the subject of public concern in recent months following the publication of investigative reports in *The Irish Examiner* and other media outlets, detailing requests for sexual acts in return for accommodation. Due to ongoing pressures caused by Ireland's housing crisis vulnerable tenants have found themselves in horrendous arrangements as they struggle to find any other alternative accommodation. Current laws do not cover these sex-for-rent arrangements. There is no research on the prevalence of this problem in Ireland, though all available evidence suggests it is one which persists. It is imperative that this problem be addressed, particularly in the context of the expected arrival of refugees fleeing war in the Ukraine, who may be particularly vulnerable, and may have to ultimately contend with the Irish rental market.

4. Specific recommendations

5. The following recommendations would aid the effectiveness of the Bill:
 - a. Creating a specific, victim-friendly reporting mechanism to prevent underreporting by vulnerable tenants.
 - b. Providing protections for tenants in these situations to prevent situations where tenants choose to continue with these arrangements as they fear reporting may result in a risk of homelessness.

6. **The ‘policy Issue’ and the policy and legislative context**

7. **Q1: Define the problem / the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention? What is the scale of the problem and who is affected? What is the evidence base for the Bill?**

8. The Bill is designed to combat landlords requesting sex in lieu of rent. The Bill’s current approach is two-pronged, criminalising in the first instance persons who require or accept sex in exchange for accommodation, and secondly those who facilitate or arrange the commission of the first offence, particularly publishers.
9. There is little in the way of research as to the prevalence of this problem in Ireland. There are, however, numerous reports of instances of ‘sex-for-rent’ demands. In 2017, the Irish Times reported the sex-for-rent phenomenon had “begun to appear” in Dublin.¹ In the intervening 5 years reports of sex-for-rent continued to proliferate in Ireland. In September 2019, Threshold stated sex-for-rent propositions were already “not unusual”.² In the same month this issue was raised in the Dáil by TD Ruth Coppinger, who highlighted an individual case of a sex-for-rent proposition in the Rathmines area.³ After reports of sex-for-rent arrangements in the Cork area were broken by the Cork Echo in January 2020,⁴ the Rape Crisis Network reported receiving calls from tenants about inappropriate behaviour from landlords and the RTB announced it was developing a survey to examine the specific issue of sex-for-rent.⁵ This research has not

¹Patrick Kelleher, ‘Sex for rent’ in Ireland: massages, modelling, no money’ *The Irish Times* (Dublin, 13 May 2017) available at: <https://www.irishtimes.com/life-and-style/homes-and-property/sex-for-rent-in-ireland-massages-modelling-no-money-1.3079720>

² Colin Gleeson, ‘Sex for rent’ propositions to vulnerable tenants ‘not unusual’ *The Irish Times* (Dublin, 19 September 2019) available at: <https://www.irishtimes.com/news/social-affairs/sex-for-rent-propositions-to-vulnerable-tenants-not-unusual-1.4023892>

³ *ibid.*

⁴ Ann Murphy, ‘Free rent for sex twice a week with landlord; Shocking advertisement for Cork city flat’ *The Cork Echo* (Cork, 10 January 2020) available at: <https://www.echolive.ie/corknews/arid-40137035.html>; Ann Murphy, ‘More sex-for-rent advertisements uncovered in Cork; anger from human rights campaigners’ *The Cork Echo* (Cork, 11 January 2020) available at: <https://www.echolive.ie/corknews/arid-40133708.html>

⁵ Liz Dunphy, ‘Sex-for-rent landlords warned ‘law is not on your side’’ *The Irish Examiner* (Cork, 13 January 2020) available at <https://www.irishexaminer.com/news/arid-30975201.html>

been conducted.⁶ In late 2021, reports in the *Irish Examiner* further highlighted advertisements of sex-for-rent arrangements in Ireland.⁷ Responding to these reports, the executive director of the Galway Rape Crisis Centre confirmed their services had received similar complaints.⁸ Reports have continued to appear in national newspapers throughout 2022.

10. Further evidence of the existence of the sex-for-rent issue can be gleaned from other jurisdictions, most notably the UK. This is examined under question 3, the wider/international context.

11. Q2: What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation?

12. Sex-for-rent arrangements are not covered by current legislation. This was confirmed recently by Minister for Justice Helen McEntee in the Dáil,⁹ though previously it had been hoped, and indeed it remains arguable, that existing laws on payment for sex and rape might apply in these circumstances.¹⁰

13. The legislative gap is, in part, caused by the wording of current provisions on payment for sex. The current law is captured in section 7A of the Criminal Justice Act 1993.¹¹ This section details the offence of 'payment etc. for sexual activity with prostitute', whereby it is an offence for a person to pay money or any other form of remuneration or

⁶ Ann Murphy, 'Sex-for-rent arrangements put tenants in vulnerable situations' *The Irish Examiner* (Cork, 20 December 2021) available at: <https://www.irishexaminer.com/opinion/commentanalysis/arid-40769502.html>

⁷ Ann Murphy, 'Landlords seeking sex for rent as housing crisis bites' *The Irish Examiner* (Cork, 20 December 2021) available at: <https://www.irishexaminer.com/news/arid-40769499.html>

⁸ Michael Staines, 'These are predators' - Sex for rent reports show how desperate housing crisis has become' *Newstalk* (Online, 20 December 2021) available at: ['These are predators' - Sex for rent reports highlight desperation of housing crisis | Newstalk](https://www.newstalk.com/news/sex-for-rent-reports-highlight-desperation-of-housing-crisis)

⁹ Dáil Debate, Parliamentary Questions: Oral – Minister for Justice 17 February 2022 from 2:31:26, available at

¹⁰ Liz Dunphy, 'Sex-for-rent landlords warned 'law is not on your side'' *The Irish Examiner* (Cork, 13 January 2022) available at: [Sex-for-rent landlords warned 'law is not on your side' \(irishexaminer.com\)](https://www.irishexaminer.com/news/arid-40769499.html); Caroline Counihan, 'Sex for rent and the law', *The Irish Times* (Dublin, 19 February 2022) available at: <https://www.irishtimes.com/opinion/letters/sex-for-rent-and-the-law-1.4806318>

¹¹ As inserted by s 25 Criminal Law (Sexual Offences) Act 2017.

consideration for the purpose of engaging in sexual activity with a prostitute. This provision is not readily applicable to sex-for-rent arrangements as vulnerable tenants are not prostitutes.

14. The current law on rape has similar difficulties applying to sex-for-rent arrangements.

Rape, under section 2(1) of the Criminal Law (Rape) Act 1981, arises where a man "has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it" and "at that time [the man] knows that she does not consent, or he is reckless as to whether she does or does not consent". Consent is defined in section 9 of the Criminal Law (Rape) Act 1990¹² as "freely and voluntarily" agreeing to engage in a sexual act. It is apparent that tenants may not be consenting participants to these acts; as has been argued previously,¹³ consent cannot be truly 'free' and 'voluntary' where an individual's home hangs in the balance. However, significant difficulties remain in the application of this offence to sex-for-rent arrangements. In the first instance, whether duress of circumstances will vitiate the consent to the sex act is, at present, unclear. Presuming this barrier were to be overcome, a further issue would arise where a defendant-landlord holds an 'honest belief' that the tenant was a consenting participant. Referring back to the offence as in statute, it is only committed where the man knows the victim does not consent or is reckless as to whether they consent or not. It is therefore not committed where the man honestly believes that the woman was consenting. This was confirmed by the Supreme Court in *DPP v O'R*,¹⁴ where it was held that an honestly held belief of consent, even on unreasonable grounds, is a defence to a charge of rape, though a jury is entitled to interpret from the surrounding circumstances that the man held no such honest belief. There is a very real possibility of a rape charge being defeated on these grounds in relation to sex-for-rent arrangements.

¹² As inserted by s 48 Criminal Law (Sexual Offences) Act 107.

¹³ Caroline Counihan, 'Sex for rent and the law' *The Irish Times* (Dublin, 19 February 2022) available at: [Sex for rent and the law \(irishtimes.com\)](https://www.irishtimes.com/law-and-order/crime/sex-for-rent-and-the-law-1.4611111)

¹⁴ [2016] IESC 64

15. It should be noted that rape under section 2(1) of the Criminal Law Rape Act 1981 can only be committed by a man having non-consensual sexual intercourse with a woman. Other circumstances (e.g. varying participants, acts, genders) would be brought under section 4 Criminal Law (Rape) (Amendment) Act 1990, so-called 'section 4 rape'. All points concerning the inadequacies of the rape offence in these circumstances hold true for section 4 rape cases.

16. These current legislative regimes are not satisfactory solutions to this issue. Utilising these provisions to address sex-for-rent arrangements requires a considerable amount of shoehorning to bring these arrangements within the remit of the offences. Furthermore, a significant degree of stigma persists in relation to these offences, which may result in underreporting of sex-for-rent arrangements should rape and prostitution offences remain the only avenues for prosecution. Finally, a new offence which accurately reflects the specific nature of sex-for-rent as a crime would accord with the 'fair-labelling' principle of criminal law¹⁵ as well as its expressive function¹⁶ by specifically prohibiting and punishing the insidious behaviour of requesting sex in exchange for accommodation.

17. Q3: Is there a wider EU/international context?

18. Sex-for-rent arrangements have been the subject of reports around the globe in recent years. The UK is a prime example of this broader context. In 2017, the UK housing charity 'Shelter' commissioned a YouGov poll which indicated that 4% of renters in the UK had been offered sex-for-rent by their landlord in the 12 months prior to the research, and 3% had been propositioned in the previous 5 years.¹⁷ Further research by Shelter found

¹⁵ Liz Campbell, Shane Kilcommins, Catherine O'Sullivan and Alan Cusack, *Criminal Law in Ireland: Cases and Commentary* (2nd edn, Clarus Press 2021), at [1-49]

¹⁶ *ibid.* at [1-1]

¹⁷ Poll results available at: https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/gz85usf0nn/YG%20-%20Archive%20-%20190717%20-%20Shelter.pdf ; for reporting, see <https://www.theguardian.com/money/2018/apr/02/sex-for-rent-accommodation-rogue-landlords-campaign>

that over 30,000 women had been propositioned by a landlord between March 2020 and January 2021,¹⁸ with this figure rising to 59,000 in the period between March 2020 and September 2021.¹⁹ The Crown Prosecution Service responded to these reports in January 2019 by issuing revised guidelines indicating that sex-for-rent arrangements could be prosecuted in the UK under existing laws.²⁰ The method of prosecution advised in these guidelines is to charge the landlords with the offences of causing prostitution for gain and/or inciting prostitution for gain. Since the issuance of these guidelines there has been one prosecution brought against a landlord in relation to sex-for-rent arrangements.²¹ Self-evidently, this method of prosecution suffers the same issue described above by labelling the vulnerable tenant a prostitute. Recently, there had been attempts to create provision in the Police, Crime, Sentencing and Courts Act 2022 to create a specific sex-for-rent offence, similar to the current Bill.²² This amendment was later rejected by the House of Commons.²³ The UK Government have since proposed to ban advertisements of sex-for-rent arrangements, with publishers facing prosecution²⁴ but this Bill has not yet passed through Parliament.²⁵

19. Outside of these efforts in the UK, there is little in the way of research into, or legislation dealing with, sex-for-rent arrangements (though reports have proliferated in many other jurisdictions). The evidence available from the UK gives some insight into the

¹⁸ Susie Coen, 'Preyed on by the sex for rent landlords: How pandemic has left women vulnerable to men touting rooms in exchange for sexual favours' *The Daily Mail* (London, 1 January 2021) available at: <https://www.dailymail.co.uk/news/article-9105215/Preyed-sex-rent-landlords-Men-touting-rooms-exchange-sexual-favours.html>

¹⁹ Molly Clayton, 'Revealed: How 60,000 women in the UK are targeted by vile sex-for-rent landlords, according to new study' *The Daily Mail* (London, 16 January 2022) available at: <https://www.dailymail.co.uk/news/article-10406975/How-60-000-women-UK-targeted-vile-sex-rent-landlords-according-new-study.html>

²⁰ Guidelines available at: https://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution#_Toc534624535

²¹ See 'CPS announces first sex-for-rent charges', 25 January 2021, available at: <https://www.cps.gov.uk/south-east/news/announces-first-sex-rent-charges>

²² Nick Lester, 'Crackdown on 'sex-for-rent' predators backed by peers in Government defeat' *The Independent* (London, 12 January 2022) available at: <https://www.independent.co.uk/news/uk/government-house-of-lords-generation-rent-police-labour-b1991906.html>

²³ See: <https://www.bills.parliament.uk/publications/45482/documents/1508> at p 14, Amendment 141.

²⁴ Larissa Kennelly, "'Sex for rent' ads to be banned in Online Safety Bill' *BBC* (London, 17 February 2022) available at: <https://www.bbc.com/news/uk-politics-60406447>

²⁵ Online Safety Bill 2022, available at: <https://bills.parliament.uk/bills/3137/publications>

scope of the issue, as well as the inadequacies of current laws in successfully prosecuting these landlords.

20. Implications and implementation of the Bill's proposals

21. *Policy implications / implementation*

22. Q4: How is the approach taken in the Bill likely to best address the policy issue?

23. There are significant benefits to the creation of a specific offence of offering or requiring sex-for-rent. As described above, the current law is inadequate to successfully prosecute accommodation providers demanding/accepting sex-for-rent. A new offence would be very beneficial in ensuring this behaviour does not escape the remit of the criminal law, and prevent prosecutions trying to place these circumstances within the existing offences of rape and paying for sexual activity with a prostitute. As the above-described evidence from the UK indicates, these offences are not suitable bases for the prosecution of sex-for-rent where it occurs.

24. However, the Bill does not address the vulnerability of the tenant-victim in these situations. If adequate protections for these victims is not provided, it appears likely that underreporting of sex-for-rent arrangements will persist. A vulnerable tenant currently living in a sex-for-rent arrangement may forego reporting their accommodation providers under this new offence (as currently designed) so as to avoid entering homelessness. A more holistic approach to helping these vulnerable tenants may be required, which may require a specialised reporting mechanism.

It should be noted that the practice of offering accommodation exchange for sex may happen in a number of tenure contexts. There may be a traditional landlord/tenant relationship, of the sort covered by the Residential Tenancies Act, but there may also be circumstances where the relationship is less clear. Licence arrangements, where the

person providing the accommodation resides in the same dwelling, currently fall outside the Residential Tenancies Act. The phenomenon may also occur between a head tenant and a sub-tenant without the property owner's knowledge. It is important that any legislation captures the range of possible scenarios.

25. The second offence created in the Bill, the offence of arranging or facilitating the requirement or acceptance of sex as a condition of accommodation, is also of great benefit in combating the sex-for-rent problem. Creating intervention at this early point may prevent many vulnerable individuals from ever entering sex-for-rent arrangements, makes it more difficult for unscrupulous accommodation providers to find those vulnerable individuals, and unburdens the vulnerable tenant from sole responsibility of reporting these arrangements. This offence may need to be redrafted more narrowly/specifically, so as to avoid clashing with existing laws on aiding, abetting, counselling or procuring the commission of an offence.

26. **Q5: What alternative and/or additional policy, legislative and non-legislative approaches were considered, including those proposed by the Government and what, does the evidence suggest, are the differences between and the merits of each?**

27. No alternative approaches have been promulgated at this point.

28. **Q6: Are there Government-sponsored Bills (or General Schemes) which are related to and/or broadly aim to address the same issue? Are there merits in combining them?**

29. No other Bill or schemes currently exist to combat this issue

30. Q7: What are the specific policy implications of each proposal contained within the Bill (environmental / economic / social / legal)? Has an impact assessment (environmental/ economic /social / legal) been published (by Government or a third party) in respect of each proposal contained within the Bill?

31. There are no foreseen environmental or economic policy implications contained in the Bill. The main implication within the first proposal of the Bill is that it is no longer be possible to exchange sexual favours for accommodation. This proposal will have little effect on any other legislation. The main implication of the second proposal of the Bill is that it will no longer be legal to advertise an exchange of sexual favours for accommodation. Similar to the first proposal, it is unlikely that this proposal will have any effect on other legislation.

32. It does not appear that any impact assessments have been published either by the government or by a third party as of yet.

33. Q8: Could the Bill, as drafted, have unintended policy consequences, if enacted?

34. As it is currently drafted, the Bill will offer no support to people who may have previously been in a tenancy which involved a 'sex for rent' exchange. This could potentially cause issues or strain for the homeless supports in the future as we are currently unaware of how many people are living in these exchanges. Furthermore, should the Bill include some mention of supports for those reporting these types of exchanges it may incentivise reporting the issue for the tenants involved. Without these supports in place it seems that a tenant in this type of living arrangement would be acting against their own interest by reporting as the threat of homelessness looms.

35. Q9: Has the Committee taken due consideration of the opinion of the European Central Bank (ECB) on the Bill, if applicable?

36. This is not applicable.

37. **Q10: How would the Bill, if enacted, be implemented?**

38. In its current form, the Bill requires no special implementing measures.

39. **Q11: Are there appropriate performance indicators which the Department, or whoever is ultimately charged with implementing the Bill, can use to assess the extent to which it meets its objective? Does it include formal review mechanisms?**

40. No such performance indicators are currently contained within the Bill. As discussed above, there is very little research into the sex-for-rent issue, particularly in Ireland. It is imperative that such research be undertaken. At present, there are no statistics available which would allow for the effects of this Bill to be measured.

**Department of Justice Submission to the Joint Committee on Justice
on the Ban on Sex for Rent Bill 2022.**

Introduction

The Ban on Sex for Rent Bill 2022 (Private Member's Bill) introduced in Dáil Éireann by Deputy Cian O'Callaghan on 8 March 2022 was debated at Second Stage on Wednesday, 23 March 2022 and the Government did not oppose it.

The stated aim of the Private Member's Bill (PMB) is to create an offence of "requiring or accepting sex as a condition of accommodation and an offence of arranging or facilitating an offence of requiring or accepting sex as a condition of accommodation". The Bill provides for penalties for both offences.

Legal advice received by the Department confirms that such behaviour is not currently a criminal offence.

In its current form, the Department of Justice considers that there is no difficulty with the intent of the Bill; but that it is too general and imprecise with respect to the definition of the terms used therein for a criminal statute and that this could risk being incompatible with the Constitution. Furthermore, and as recognised by Deputy O'Callaghan, further consideration is needed as to how the PMB interacts with existing sexual offences and domestic violence legislation.

It should be noted that any agreement to pay for accommodation with sexual acts is invalid and not enforceable under contract law. In addition, Sexual Offences legislation makes it abundantly clear that consent must be freely and voluntarily given. Submission when a person is forced or has no other choice, is not the same as consent. Sex without consent is rape and is punishable on conviction by up to life imprisonment. While the behaviour that this PMB is seeking to address is abhorrent and exploitative, it is important that lines are not blurred with regard to such non-consensual acts which are already serious offences in law.

The Department recognises the need to address this unacceptable and exploitative behaviour as part of its ongoing work on a number of new legislative measures to further strengthen laws in the area of domestic, sexual and gender based violence. The objectives of the Private Member's Bill are therefore supported in principle. There are, however, a number of difficulties with the approach proposed in the Bill as it stands. The advice of the Attorney General was sought on the proposals in the PMB and concerns raised by that office are reflected in the comments below.

Summary of observations and legal advices

Section 1

Section 1 is the short title and commencement.

This is a standard opening for Bills and the Department has no comment to make on this Section.

Section 2

Section 2 creates an offence of requiring or accepting sex as a condition of accommodation.

In relation to Section 2, in order for the provisions in this Bill to be constitutionally sound, it would be necessary to more clearly define the precise nature of the conduct which is to be criminalised. For example, more clarity would be needed on what is meant by “requiring” sex as a “condition of access” to accommodation, and who falls within the term “provider of accommodation”. The terms “accommodation” and “sex” should also be defined.

Legal advices point to some concerns around the scope of the PMB in the context of personal relationships, which are not intended to be covered by the Bill. For example, in troubled relationships where people are not married but are living together and there is friction, the current formulation could result in complaints of criminal behaviour being made under section 2(1).

Section 7A of the Criminal Law (Sexual Offences) Act 1993, as inserted by section 25(b) of the Criminal Law (Sexual Offences) Act 2017, makes it an offence to pay, give, offer or promise to pay ... “money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute”. While this offence does not cover the circumstances where a tenant is offered accommodation in return for sex, as there is no suggestion that it would occur for the purposes of prostitution, any potential overlap between the two offences would need to be considered.

The proportionality of the penalty for the offence under section (2) of the PMB would itself benefit from further consideration. By way of contrast, a first offence of paying or offering to pay for sexual services for the purposes of prostitution under the 1993 Act has a maximum penalty of €500. The proposed offence under the PMB is up to 7 years imprisonment.

Section 3

Section 3 creates an offence of arranging or facilitating the requirement or acceptance of sex as a condition of accommodation

Section 3 is particularly vague. The mental element of the offence is different for “a person” and “a publisher” but publisher is not defined. An offence by a publisher can be committed by failing to take unspecified “remedial action” in an unspecified “reasonable time” after being informed (it is not clear by whom) that their actions have arranged or facilitated an offence under section (2).

It is also unclear what acts this section is intended to cover. Arranging or facilitating an offence under section (2), which is an arrestable offence as drafted in the PMB, would already be an offence under section 7 of the Criminal Law (Miscellaneous Provisions) Act 1997 which makes it an offence to aid, abet, counsel or procure the commission of an arrestable offence, punishable by the same penalty as the primary offence, in this case up to 7 years imprisonment. The Bill provides a penalty of a fine of up to €50,000.

It would be necessary, at a minimum, to specify the remedial action and required timeframe for action to ensure this offence is clear and enforceable. If the aim of this section is to create an offence of publishing an advert requiring sexual acts as payment or part payment for accommodation, then it would be preferable to provide specifically for that.

Policy and legal implications

There are two principal areas of difficulty with the proposals in the PMB:

Firstly, as outlined above, the Bill in its current form is not sufficiently precise in terms of definition of terms used and with respect to the parameters of the offence.

Secondly, the Bill creates the new offences in a standalone capacity and does not appear to consider how the proposed new offences would interact with existing sexual offences or domestic violence legislation.

The behaviour which the Bill aims to target is unacceptable and exploitative and should be subject to criminal sanction. The proposals in this Bill would, however, require substantial amendment to define and clarify the conduct to be criminalised and careful consideration is needed on the interaction with other legislation in the area of domestic, sexual and gender based violence.

The Department has been considering the issue and does not see any difficulty in the creation of a criminal offence to address it. It would be possible to amend the proposed PMB to address the legal flaws, however, it would be difficult to align it in any consistent manner with the existing offence of paying for sexual services for the purposes of prostitution under the 1993 Act, given the huge disparity in penalties.

For a more consistent approach, it may be preferable to address the issue of “sex for rent” by way of amendment to the existing offence of payment for sexual acts for the purposes of prostitution. Further consideration and legal advice is needed before recommending the best legislative approach to addressing the issue.

Department of Justice
6 May 2022

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