



**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/Revised-Acts)

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.

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