



IPRT
Irish Penal Reform Trust

IPRT Submission on
Criminal Justice (Spent Convictions) Bill 2012

June 2012 (updated Jan 2013)



Previous IPRT Submissions – Advocating for a Broad Approach

IPRT has been campaigning around the need for Spent Convictions legislation for over six years and has made a number of submissions to Government and the Oireachtas on previous drafts of legislation. The key issues which we identified in our submissions on the earlier drafts of the Bill remain at the centre of our position on the present Bill. These are:

- **The need for the Bill to apply to a wide range of convictions.**
- **The need for the rehabilitation periods to be set at reasonable, proportionate and practical levels.**
- **Any differential treatment of particular areas of employment should be kept to a minimum and must be justified.**

The present Bill also raises some other issues which we have addressed in our proposed amendments as detailed in this paper. However, overall IPRT is strongly supportive of the general approach taken, and we hope that the Bill can be enacted as quickly as possible.

1. Excluded Sentences (Section 1)

The range of convictions covered by the Bill is central to its effectiveness and the number of individuals who can benefit from the legislation. The foundational definition contained in section 1 is that of “excluded sentences”, including the definition of all sentences of more than one year in prison. IPRT notes that, after a review of the equivalent UK legislation, English law now provides for sentences of up to four years being covered by the legislation. Building on the UK’s experience of 38 years, IPRT proposes that:

- **The definition of “excluded sentences” in section 1 of the Bill should be amended to at least “sentences of 30 months or less” (the previous UK position), or preferably to “sentences of 48 month or less”**
- **Rehabilitation periods should be amended proportionately in line with any changes to the definition of “excluded sentence”**

Case Study* 1: Liam’s story

More than ten years ago, Liam was arrested under Section 15A and received a 6 year sentence with the final 2 years suspended. He completed his Leaving Certificate in prison, along with various other courses. Upon release, he successfully completed the Trinity Access Programme (TAP) and a Degree in Social Science in NUI Maynooth, following which he did a Post Graduate Diploma in Adult and Community Education. He is now qualified to teach various courses, as recognised by the Teaching Council.

He currently does a range of voluntary work including working with young offenders in St. Patrick’s Institution and The BASE in Ballyfermot. He also delivers a level 5 FETAC course in Community Drug Care in The Pathways Centre, and runs a study skills course for offenders who have been released from prison and also helps on a one to one basis with ex-offenders.

“I would like to do various jobs in my chosen area but cannot even apply for a lot of positions due to my previous conviction. I feel as though I have given a lot back to society, now live a respectable crime free life and also wish to gain employment but am unable to do so. This is partly due to the current economic crisis but largely due to the fact that my conviction will be with me for life. The stigma of the conviction will hang over me for the rest of my life and no amount of voluntary work or academic success will ever change that.”

***We have included a number of representative case studies from the many people who have contacted us with their concerns in relation to spent convictions; these have been anonymised.**

Furthermore, IPRT believes that where an individual is given a wholly suspended sentence, which is not subsequently revoked, all such sentences should be treated as a non-custodial sentence. The key consideration here is that the court deemed it appropriate to suspend the sentence of imprisonment. In practice, we believe that it would be unjust to treat someone with a longer suspended sentence more harshly than someone with a shorter sentence of imprisonment.

- **IPRT believes that all sentences which are suspended in whole and which are not subsequently revoked should be treated as relevant non-custodial sentences.**

Case Study 2: Cian's story

Cian, who is in his early 40s, has two criminal convictions from one incident in 2005. He received a one year and a three year sentence, both of which were suspended for 3 years and which were served without incident. However, these convictions do not fall under the 'relevant non-custodial sentences' in the proposed Bill.

"In today's society we value the qualities of forgiveness, acceptance and equality. The law states that an individual found guilty in court serves a sentence handed down by the presiding judge. I don't believe that it is right for society to continue to judge an individual for life, unless the courts decide that the individual poses a threat to society."

"The bill does not make any distinction between a 12-month custodial sentence and a 12-month suspended sentence. [...] I believe a non-custodial sentence reflects the person's previous character and gives a person the chance to prove to the court that you had made a mistake. The Spent Convictions Bill should go further to include people like myself who were involved in an isolated incident, and where the sentence handed down by the judge was fully suspended."

2. Number of Convictions/Events (Section 2)

One key difficulty in the current bill arises where a number of separate convictions may be recorded in relation to one event; particularly when considered with the provision in section 2 (2) (e) that only two convictions can be considered spent for any individual.

The operation of the system of prosecution of offences in Ireland means that often one act may constitute a number of different offences; and furthermore, a number of different but connected charges may be brought forward with regard to the same incident; e.g. a public order offence and a criminal damage offence; or a driving without tax and other road traffic offences.

The principle that any person who has demonstrated his or her good behaviour and character by completion of a rehabilitation period should benefit from the proposed spent conviction regime is at the heart of the proposed Bill. Therefore, anyone who would seek to benefit from the scheme on more than two occasions would have qualified through lengthy rehabilitation periods on each occasion. IPRT sees no reason why, in such exceptional circumstances, an individual should not be able to benefit from the Bill on a third or subsequent occasion, given that previous convictions will have been taken into account at the point of sentence.

- **IPRT believes that convictions handed down at one court sitting should be considered as one "conviction" for the purposes of the Act.**
- **We also believe that the limitation on only two convictions being classified as spent convictions is unnecessary and should be removed.**

Case Study 3: Conor's story

More than thirty years ago, when Conor was just over 18 years of age, he reversed into another car in the car park of a local disco as they were leaving the dance. He was uninsured and did not remain at the scene. The damage was minor: he broke his rear lens and damaged the other person's car wing. He fully compensated the other person. At court he was convicted on 3 charges:

- Sec 106, RTA 1961. Failure to stop at scene of accident. 3 Months disqualification.
- Sec 53, RTA 1961. Dangerous driving. Licence endorsed.
- Sec 56, RTA 1961. No insurance. Licence endorsed.

He has only ever been in the courts as a defendant for this issue: "I have no 'hard feeling' toward the justice system and I fully accepted the decision of the court and have been law abiding to this day. I do not have, or ever had, any penalty points."

"I feel that because I have had only one court appearance, albeit with 3 charges, I am being treated less favourably than someone who committed 3 separate offences. From my point of view I would be delighted if there was some extra recognition for someone who only had one court appearance/transgression in their entire lifetime."

"Today I am a working PAYE employee of a large company. I contribute to my local community through my work for the local Group Water Scheme and other local bodies. However I will still be a criminal as this [Bill] stands and that depresses me."

3. Conviction Free Period (Schedule 2)

The Bill sets out a matrix of rehabilitation periods for various combinations of custodial and non-custodial sentences. While IPRT welcomes the more liberal and pragmatic approach to rehabilitation periods in the present Bill, the proposed matrix in Schedule 2 Part 1 is particularly complex and a simplified version would assist legal certainty. We also believe that 6-7 years is an excessive period of rehabilitation for an offender in the qualifying category. We believe that comparison with the UK scheme may be instructive.

- **IPRT believes that a simplified table of rehabilitation periods could replace the current proposal. The formulation below is just one possible example of an alternative (all from date of conviction):**
 - o **Lower fines: 1 year**
 - o **Higher fines or non-custodial sentences: 2 years**
 - o **All suspended sentences (not revoked): the period for which the sentence is suspended or 3 years (whichever is the lower)**
 - o **Suspended sentences up to 1 year (part or whole revoked) or sentences of imprisonment up to 1 year: 4 years**
 - o **Sentences of imprisonment between 1-4 years: 5 years.**

4. Court Proceedings (Section 6)

We welcome the exclusion of spent convictions from general court proceedings. However, IPRT queries what circumstances might require courts to deviate from that general approach "where justice cannot be done except by so admitting or requiring the evidence [of spent convictions]" as set out in section 6 (2). The exclusions in 6 (3) relating to a number of specific types of legal proceedings seem reasonable and proportionate, although the exclusions in section 6 (3) (c) and (d) seem vague and may require further clarification.

5. Limitations for insurance policies (Section 7)

The differential treatment in 7 (1) (a) of the specific category of convictions for insurance fraud when applying for further insurance is notable as this is the only area in the Bill where a particular category of offence is deemed relevant to a particular context for disclosure. IPRT understands that the approach of matching specific convictions to specific contexts of disclosure could prove overly complex if applied more generally, but there may be some areas of employment where such an approach might also be usefully taken.

- **The most notable exclusion provided for in section 7 (1) (b) (i) is an exclusion whereby Garda investigation of crimes is to be treated differently from other contexts of disclosure. IPRT believes that this exclusion is unnecessary and that convictions should remain spent in this context also.**

6. Information sought by Other States (Section 8)

The Bill makes clear that it will not impact on an individual's duty to disclose convictions to foreign authorities. However, that does not mean that foreign states might not treat spent convictions differently from other convictions. Already there is a precedent with regard to Canada, whereby convictions deemed to be spent under the UK Rehabilitation of Offenders Act will be treated differently from other convictions. It is not clear at this point whether Irish spent convictions might be dealt with in the same way, but this matter might be usefully raised with the immigration authorities of the main receiving states for Irish tourists and migrants.

Case Study 4: John's story

John's criminal record continues to impact on his life nearly 14 years after his conviction. In the late 90s, aged 22, he was convicted of fraud and sentenced to nine months' imprisonment, suspended for two years. At the time of his sentencing, he was two months into an out-patient treatment programme for substance abuse. In mid-1999, he completed the programme and he has been drink and drug free for over 13 years.

Today John works in the financial industry, based in another European country. Last year he had the opportunity of returning home to a new role but as a criminal record check was required, he declined the offer. He also fears being asked to travel to the company's base in the U.S.

"What I did was wrong and I had no problem accepting responsibility for the crime then or now. At the time of my conviction, I was just happy that I was not being sent to prison and could continue my treatment programme. However not only has my criminal record had an impact on possible job opportunities, it also feels that the suspended sentence I received is more like a life sentence – for doing something stupid when I was young and too high on drink and drugs to fully comprehend the repercussions of my actions."

"I am a good person and have given back in my local community, training school soccer teams. I also applied to do some volunteer work with a children's organisation and despite my concerns over being accepted due to my criminal record, they were satisfied that this did not present a problem; I volunteered for them for nearly two years. Additionally, I have also supported fellow addicts and have given talks in schools, recounting my story. I would like to think that I have helped in some way to make them more aware of the problems alcohol can cause."

"Yet, despite all that, it seems that my criminal record will ultimately define what I can achieve in life. I find it ironic that those who were largely responsible for the economic crisis have not been held accountable; yet, I took responsibility for my actions and 14 years on I am still repaying my debt."

7. Relevant Work (Section 9 and Schedule 3)

The exclusion of certain areas of employment is among the most significant parts of the Bill and the area which gives rise to IPRT's main concerns about the potential impact on individuals seeking to benefit from the Bill.

Regarding the provision in section 9 (2) for new areas of employment to be excluded from the Bill, a question arises as to which criteria will apply for the Public Appointments Service and Minister to determine new areas of work. Section 9 (3) provides that any additional areas of employment should only be introduced in consultation with other Government Departments, and, as **IPRT believes that the exclusion of areas of employment engages important issues of equality and privacy, we believe the Bill should also provide for consultation with the Irish Human Rights and Equality Commission and with the Data Protection Commissioner.**

8. Connection to Vetting (Schedule 3)

With regard to the categories of relevant employment set out in Schedule 3, IPRT's general concern is that the categories of work named relating to children or vulnerable adults are areas of employment which are properly addressed through vetting requirements. We do not believe that these sensitive areas of employment should be excluded from spent convictions. Rather, vetting regulation should identify clearly those limited areas of employment where additional security checks may be required, and set in place clear regulations around the types of information that may be obtained (e.g. only convictions and not charges brought; and only certain types of convictions); and the use that can be made of such information.

- **The categories of “relevant work” relating to work with children and vulnerable adults should be removed from the Spent Convictions Bill as it is addressed in the National Vetting Bureau Act 2012.**

Case Study 5: James' story

James has always been open in job applications about his criminal conviction, dating back to the early 90s, for possession of cannabis resin (1 Gram) and which resulted in a £25 fine. Until recently, it did not present an obstacle to working with children and young people, including some of the most vulnerable and at risk children in the state – James has worked in secure units, keyworked with children who were the subject of child protection cases, worked as a mentor/positive role model for young people involved with the probation service, and with young people at risk of early school leaving. However, in late 2010, he was refused a position because of this conviction – despite his work experience and 20 years conviction-free.

“I have used my experience positively to help educate some of the young people I work with in the dangers of using drugs, and to not make the mistakes I did. However, not only is there no ‘second chance’ legislation in this country, but I have no legal recourse in terms of discrimination. It is my opinion that to demonise and victimise me over a stupid mistake I made nearly 20 years ago is callous. The good news is that I have since got a new job working with children/young people, and they did not give a fiddler's about the previous conviction.”

9. Licences (Section 10)

Given the inherent public safety and security issues in arrangements for security personnel and firearms, IPRT accepts that strict regulation in these areas of licensing may be appropriate. However, we also believe that these areas can be distinguished from other areas of licensing.

- **IPRT queries the justification for several of these exclusions, particularly with regard to (a)-(d) around public service vehicles.**

10. Separation of Spent Convictions from Others (Section 11)

IPRT welcomes the provisions in section 11 of the Bill allowing for separate statements of spent and unspent convictions to be made available. More general concerns about the information that is provided through the Garda Vetting Unit remain outstanding, particularly regarding information where prosecutions were brought against an individual but there was no conviction, and also information about Orders made under Section 1(1) of the Probation of Offenders Act, which are non-convictions.

11. Definition of Sexual Offences (Schedule 1)

As we understand the drafting of this Schedule, the intention of the drafters is to exclude from the Bill all convictions for sexual offences which are currently offences, but not to exclude convictions under historic sexual offences which have since been repealed or found to be unconstitutional by the courts. In our earlier submission on previous drafts of the Bill, IPRT questioned whether the blanket exclusion of sexual offences is necessary; particularly where any person seeking to work with children or vulnerable adults will be subject to vetting.

- **IPRT believes that there is no objective basis for dealing with sexual offences differently from other offences. We believe that the distinction based on sentence length is the most appropriate way to differentiate the severity of different offences.**

12. Equality Legislation

IPRT believes that, quite apart from the duty or obligation of an individual to disclose a prior conviction, the issue of spent convictions also raises important issues of potential discrimination.¹

- **We reiterate our support for the recommendation of the Irish Human Rights Commission that the Employment Equality Act 1998 should be amended to include the additional ground of discrimination on the basis of criminal conviction.**

¹ See *IPRT Submission to the UN Universal Periodic Review 12th session of the UPR Working Group of the Human Rights Council* October 2011, para. E, p. 5. It reads: "IPRT recommends that spent convictions legislation be introduced and that the grounds of discrimination under the Employment Equality Act 1998 be extended to include discrimination on the grounds of a criminal conviction."

Case Study 6: Siobhán's story

7 years ago, Siobhán shoplifted a bar of chocolate and was caught by shop security. "I was so afraid I could not tell them my name. I had never ever been in trouble as a kid - if a teacher gave out to me, I cried - and the thought of being in trouble with the law scared me to pieces. Security said if I didn't co-operate they would call the guards. I didn't and so they did. I was arrested and appeared in court. I ended up with a €20 fine for theft."

"I feel that this has impacted me beyond belief. It was 7 years ago and I still feel as bad as I did then. While it may seem small in the wider world of criminal justice, this offence has affected me tremendously. I was excluded from working with a community project for refugee women that I was interested in becoming involved in because of it - not to mention the many care assistant jobs I couldn't apply for as the recruiter was seeking only to hire someone with a 'clean record'."

"I made a mistake and no-one is more sorry than me [...] I am not a bad person, just someone who, because of a lack of support/ coping abilities at a hard time in her life, lost her way. It makes me sad because our system, by not having spent sentences, does not recognise change and so is not really rehabilitative in the way it claims to be."

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, building alliances and growing our organisation. Through its work, IPRT seeks to stimulate public debate on issues relating to the use of imprisonment, including on sentencing law and practice in Ireland.

Irish Penal Reform Trust (IPRT)
4th Floor, Equity House
16-17 Upper Ormond Quay
Dublin 7
T: 01 874 1400
E: info@iprt.ie
W: www.iprt.ie