



# IPRT Briefing on Criminal Justice (Rehabilitative Periods) Bill 2018 [PMB]

## The Irish Penal Reform Trust

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for progressive reform of Irish penal policy, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system, and to reducing imprisonment. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

## Introduction

Having to disclose previous convictions can act as a barrier to securing employment, which is crucial to breaking the cycle of offending. Effective rehabilitation legislation can remove obstacles to the reintegration of persons with convictions who have demonstrated that they have moved on from past offending behaviour.

IPRT has been campaigning for robust and extensive 'spent convictions' legislation to be introduced in Ireland since 2007, so that certain convictions are not required to be disclosed after the passage of a specified period of time.

While the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*<sup>1</sup> (the 2016 Act) went some way towards introducing a spent convictions regime, it is IPRT's position that the 2016 Act does not go far enough. It is not of benefit to people who committed more than one offence (other than minor motoring/public order offences) in the past, no matter how long ago the offences were committed. It set a blanket 7-year rehabilitation period, providing no relationship between the severity of the sentence and the rehabilitation period, and it did not consider the special position of young adults.

**IPRT therefore strongly welcomes the introduction of the *Criminal Justice (Rehabilitative Periods) Bill 2018*.**<sup>2</sup> The proposed Bill will increase the number of people who can benefit from the legislation by broadening the range of convictions which may become spent, providing for proportionality in deciding when a conviction can become spent, and taking account of the special position of 18-23 year olds.

The Bill is also timely, and follows a recommendation made by the Joint Committee on Justice and Equality in May 2018 to urgently review and revise the current legislation, the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*:

*"The issue of spent convictions must be examined urgently. Offenders should be afforded a second chance, and should not have to carry the stigma and negative consequences of a criminal record for the rest of their lives if they have moved away from offending behaviour. The Criminal Justice (Spent*

1 Irish Statute Book, *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*, <http://www.irishstatutebook.ie/eli/2016/act/4/enacted/en/html>

2 Houses of the Oireachtas (2018) *Criminal Justice (Rehabilitative Periods) Bill 2018*, <https://www.oireachtas.ie/en/bills/bill/2018/141/>

*Convictions and Certain Disclosures) Act 2016 is extremely limited in its application and fails to support rehabilitation of more serious offenders.”<sup>3</sup>*

**Overall, IPRT is supportive of the 2018 Bill as it increases access to a ‘clean slate’ for those with convictions histories who have demonstrated that they have moved on from offending behaviour, and who want to move forward with their lives. While we had hoped the Bill could expand access even further, as we set out below, IPRT welcomes this Bill as a very positive step in the right direction.**

## **Key Sections of the Bill**

The proposed Bill, if enacted, will amend the current legislation, the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* in five key areas:

### **1) Eligibility [Part 2, Section 4]**

- The Bill extends the eligibility of prison sentences that can become spent from the current maximum of 12 months to 24 months for custodial sentences and from 24 to 48 months for non-custodial sentences.
- This means the legislation will broaden access to the regime for those who have received up to a 2-year custodial sentence or up to a 4-year non-custodial sentence.

**However, IPRT believes that the eligibility of prison sentences could be reasonably amended to include ‘sentences of 48 months or less’. This would simply bring Ireland into line with the regime in England and Wales, governed by the *Rehabilitation of Offenders Act 1974*.<sup>4</sup>**

### **2) Raising the limit on the number of convictions eligible to become spent [Part 2, Section 6(b) 3(a) (b)]**

- The Bill raises the limit on the number of convictions eligible to become spent from one<sup>5</sup> to two convictions for offences committed as adults (24+) and from one to three convictions for offences committed as young adults (18-23).
- This expands the number of people to whom the legislation applies to and benefits.

**IPRT believes the proposed raising of the limit on the number of convictions eligible to become spent represents a very modest improvement to the current regime. Core to the spirit of rehabilitation is the principle that any person who has demonstrated their commitment to move on from offending by completion of a conviction-free period should benefit. This Bill would still exclude those who have in their history a period or cluster of higher frequency offending.**

**It is of note that within the 2016 Act there is currently no limit on the number of certain public order or minor motoring convictions which may become spent. It is IPRT’s view that consideration should be given to extending this approach to other types of convictions.**

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3 Houses of the Oireachtas (2018) *Joint Committee on Justice and Equality: Report on Penal Reform and Sentencing*, pp.58-59 [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_justice\\_and\\_equality/reports/2018/2018-05-10\\_report-on-penal-reform-and-sentencing\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2018/2018-05-10_report-on-penal-reform-and-sentencing_en.pdf)

4 Legislation.gov.uk, Rehabilitation of Offenders Act 1974, <https://www.legislation.gov.uk/ukpga/1974/53>

5 This is with the exception of Public Order and Minor Motoring Offences which are unlimited.

### 3) Principle of Proportionality [Part 2, Section 5(1), 4A 1-5, see also Schedule 3 part 1 and 2]

- The Bill introduces the principle of proportionality (creating a link between the severity of sentence passed and the length of the rehabilitative period before that conviction can become spent).
- The proposed periods introduce a fairer and more nuanced approach, and take into consideration the relative severity of the sanctions handed down by the court.

**This is extremely welcome. However, IPRT believes that this Bill could go further and that rehabilitation periods could be shorter in some cases. For example, for a term of imprisonment of six months or less, the ‘relevant’ period that applies in the proposed Bill (for offences committed aged 24 years or over) is four years.<sup>6</sup> This compares to 2 years in England and Wales under the *Rehabilitation of Offenders Act 1974*.<sup>7</sup>**

### 4) A Distinct Approach for Young Adults (18-23) [Part 2, Section 5(1.) 4A(2) & 4A (4), Part 2, Section 6(b) (b), Part 3, Section 7(b) (b), see also Schedule 3, Part 1 and 2, column 4 for relevant rehabilitative periods]

- The present Bill recognises young adults (18-23) as a distinct group. Young adults will be given the opportunity for up to three convictions to become spent. In general, shorter rehabilitative periods will apply to convictions received for offences committed aged 18-23.
- The Bill takes account of the wide body of international and domestic research which finds that the brain and maturity continue to develop beyond adolescence and into the early twenties,<sup>8</sup> and recognises the distinct developmental needs of young adults.
- It also brings the spent convictions regime into closer alignment with the position of the Department of Children and Youth Affairs and *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*.<sup>9</sup>
- Convictions received for offences committed by children aged under 18 are already treated differently under the Children Act 2001, whereby they become spent after a 3 year rehabilitative period (with some exclusions).

**IPRT has long advocated for a distinct approach to young adults in the criminal justice system and therefore warmly welcomes this progressive provision in the Bill. However, we note that the current wording of the Bill includes offences committed by young adults until the day before their 24<sup>th</sup> birthday. IPRT believes this should be further extended until the day before their 25<sup>th</sup> birthday. This would bring the Bill fully in line with *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*, which defines a ‘young person’ as any person under 25 years of age. This is also in line with the upper age threshold of the Youth Work Act 2001.<sup>10</sup>**

<sup>6</sup> The ‘relevant’ period shall be calculated from the effective date of conviction.

<sup>7</sup> This period applies from the day on which the sentence is completed.

<sup>8</sup> IPRT (2015) Turnaround Youth: Young Adults (18-24) in the Criminal Justice System: The Case for a Distinct Approach, <http://www.iprt.ie/files/IPRT-Turnaround-web-optimised.pdf>

<sup>9</sup> *The National Policy Framework for Children and Young People 2014-2020 Better Outcomes, Brighter Futures*, [https://www.dcy.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](https://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf)

<sup>10</sup> Irish Statute Book, *Youth Work Act, 2001*, a ‘young person’ is defined in section 2 <http://www.irishstatutebook.ie/eli/2001/act/42/enacted/en/html>

## 5) Framing and Review

IPRT notes that the language of the Bill shifts the focus from convictions to rehabilitation, which is very encouraging. IPRT believes this Bill, if passed, will go much further than the 2016 Act towards achieving the core rehabilitative purpose of a spent convictions scheme.

IPRT also welcomes a provision in the Bill that would require the Minister for Justice and Equality to review the Act within two years of it coming into operation, with the conclusions of this review to be laid before the Oireachtas within a year of beginning the review.

**It is our view that this mechanism will go some way towards ensuring that the implementation of the legislation will be kept under review to ensure it is delivering what is intended. This approach is consistent with the goals of the Department of Justice and Equality Data and Research Strategy 2018-2020<sup>11</sup>, which recognises that data is a key enabler for better policymaking.**

## Conclusion

**Broadening access to the spent convictions regime means supporting the rehabilitation and reintegration process.**

**This in turn reduces the likelihood of re-offending, reduces crime and reduces the number of victims.**

**IPRT therefore urges the Oireachtas to progress and enact the Criminal Justice (Rehabilitative Periods) Bill 2018 as a matter of priority.**

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<sup>11</sup> Department of Justice and Equality, *Data and Research Strategy 2018-2020, Supporting delivery of "A safe, fair and inclusive Ireland"*, [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_and\\_Equality\\_Data\\_and\\_Research%20Strategy\\_2018-2021.pdf/Files/Department\\_of\\_Justice\\_and\\_Equality\\_Data\\_and\\_Research%20Strategy\\_2018-2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_and_Equality_Data_and_Research%20Strategy_2018-2021.pdf/Files/Department_of_Justice_and_Equality_Data_and_Research%20Strategy_2018-2021.pdf)