



IPRT Submission on **Criminal Justice (Spent Convictions) Bill 2012**

June 2012 (updated Feb 2015)



Previous IPRT Submissions – Advocating for a Broad Approach

IPRT has been campaigning around the need for Spent Convictions legislation since 2006 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, given the passage of time and the impact on those affected by the delay, it is now imperative the Bill is progressed 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”, defined as a sentence of imprisonment for a term of more than 12 months or a suspended sentence of more than 2 years. 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 over 40 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 case studies from the many people who have contacted us with their concerns in relation to spent convictions; these have been anonymised, but are otherwise true stories.

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.

- 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, the second conviction does 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."

"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)

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 the limitation on only two convictions being classified as spent convictions is unnecessary and should be removed.**

Case Study 3: Ciarán's story

In 1996, when Ciarán was 24 years of age, he was sentenced to 18 months in prison for possession of Class C drugs with intent to supply. He served his full sentence. He later went to college, where he completed his BA and LLB. Today he is 43, working, and has a family.

Ciarán has not offended in 19 years: "I have never even received a penalty point." Nevertheless, he will not be able to benefit from the Spent Convictions Bill, because of the maximum limit of 12 months imprisonment to which the scheme will apply.

Ciarán believes this is a failure by Ireland to offer an incentive to move on from offending behaviour.

3. Conviction Free Period (Schedule 2)

The Bill sets out a matrix of rehabilitation periods for various combinations of custodial and non-custodial sentences. The Council of Europe recommends¹ that Member-states provide for an automatic period of rehabilitation after a “reasonably short time” and that, because use of criminal records may jeopardise the convicted person’s chances of social reintegration, they should therefore be restricted to the utmost.

In comparison with the rehabilitation periods utilised in the context of the UK scheme, the currently proposed periods of rehabilitation in the Bill are generally disproportionate in length vis-à-vis the nature and quality of the corresponding sanction (see comparison table below).

The proposed matrix in Schedule 2 Part 1 is also particularly complex and a simplified version would assist legal certainty. Overall, IPRT believes that a simplified table of more proportionate rehabilitation periods should replace the current proposal.

Sanction	UK Rehabilitation Period	Irish Rehabilitation Period (proposed)
Fine	1 year	2/3 years
Community service orders	Length of order + 1 year	2/3 years
Suspended sentences	As for prison sentences (see below)	3 years for suspended sentence <12 mths 4 years for suspended sentence >6 mths <2 yrs (suspended sentences over 2 years never become spent)
< 6 mths imprisonment	Sentence + 2 years	4 years
>6 mths and < 30 months	Sentence + 4 years	5 years for a sentence >6 mths but <12 mths (custodial sentences over 12 months never become spent)
> 30 mths and < 48 mths	Sentence + 7 years	Never spent
> 4 years	Never spent	Never spent

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) are vague and require further clarification.

5. Insurance (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.

¹ Council of Europe Recommendation on the Criminal Records and the Rehabilitation of Convicted Persons No. R (84) 10

6. Requests for Information (Sections 5 and 8)

IPRT agrees with the position of the IHREC that the legislation should expressly preclude requests for information on convictions that become spent under the Act from those who may use such questions to attempt to circumvent the proper operation of the Act. While currently the proposed legislation entitles a person not to reveal such information if asked, an express prohibition on making such requests would be preferable.

In respect of the position of Irish citizens travelling to other jurisdictions, IPRT urges the State to ensure that clear reciprocal arrangements are in place for the mutual recognition of spent convictions, a practice which already exists between Canada and the United Kingdom. **IPRT believes that if another State requests information in respect of a citizen's criminal record, any conviction which is properly deemed to be spent under Irish law should not appear in the State's response to such a request.**

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 objective 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.**

Case Study 4: John's story

John's criminal record continues to impact on his life more than 15 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 15 years.

Today John works in the financial industry, based in another European country. Three years ago 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."

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. IPRT does 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.**

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.**

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 [more than] 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.”

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

The main purpose of the Bill is to assist the rehabilitation of offenders who often experience difficulties securing employment as a result of having a conviction. 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. The Bill should therefore be accompanied by a corresponding strengthening of existing equality legislation.

- We reiterate our support for the recommendation of the Irish Human Rights Commission that section 6 of the Employment Equality Act 1998 should be amended to include the additional ground of discrimination on the basis of criminal conviction.**

Case Study 6: Siobhán's story

10 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 [10] 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.

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