**Irish Penal Reform Trust**

**“Breaking the Record”**

**Wednesday 12 June 2013**

**Speaking Notes**

**[CHECK AGAINST DELIVERY]**

Thank Liam for invitation to speak.

Thank Billy Hawkes, Data Protection Commissioner for opening remarks.

Relevant Act/Bill:

1. **National Vetting Bureau (Children and Vulnerable Persons) Act 2012**
2. **Criminal Justice (Spent Convictions) Bill 2012**

Awaiting Report Stage in the Dáil. Stalled while Minister Shatter considers the legal arguments raised in the UK Court of Appeal case *R (on the application of T) & Chief Constable of Greater Manchester and Others*

**Spent Convictions Bill:**

I will start by speaking a little about the passage of the Spent Convictions Bill through the Seanad and my interaction with it.

As a **children’s rights activist** my approach to this Bill surprised some of my colleagues who thought I would be very conservative in this regard and with regards vetting.

Let me be clear, it was for my commitment to children’s rights that the Taoiseach appointed me a Senator back in May 2011 and children’s rights, welfare and protection remain my priority in office.

But, I do not see any conflict in fulfilling my role and advocating for a fair and compassionate system that allows people move on from offending behaviour and secure employment.

UK equivalent of the Spent Convictions Bill is the Rehabilitation of Offenders Act 1974.

At all stages of the Seanad debate on the Spent Convictions Bill, I argued that the UK has had a 40 year head start on Ireland with spent convictions legislation.

During this time the UK Ministry of Justice has strived to strike an appropriate balance between public safety and reducing barriers to reintegration for those who have moved on from offending behaviour.

I noted that a 2011 review of the *Rehabilitation of Offenders Act (1974)* by the Ministry of Justice judged the limit of 30 months sentences, at the time allowed for under the Act, to be too restrictive.

In response, the UK Government, through the *Legal Aid, Sentencing and Punishment of Offenders Act 2012,* reformed the relevant sections of the *Rehabilitation of Offenders Act* by setting the limit at **48 months**.

This is four times the limit as proposed in the Spent Convictions Bill.

I stressed the real opportunity we have in Ireland to capitalise on what the UK has learned and tabled an amendment of “2 years” as a compromise between the current limit of “12 months” and the limit deemed appropriate in the UK of “48 months or less”.

I agreed that the “12 month” limit would cover the vast majority of applicable convictions, 87.2% in 2011 by my estimation, which I argued would be increased to approximately 92% of convictions if the limit was extended to 2 years. **(40 years-was happy to support 48 month)**

There was no moving Minister Shatter on this. He was at pains to point out that the 12 months proposed in the Bill is considerably more generous than in other common law jurisdictions like Australia and New Zealand.

I was very pleased that he accepted my extension to 2 years for “relevant non-custodial sentences”.

In general terms, I believe it is a mark of a fair, just and compassionate society to have arrangements in law that allow individuals to put their offending past behind them and move forward with a clean slate.

I still feel strongly that in order to achieve the objective of the Bill, **“to assist the rehabilitation of offenders, who often experience difficulties securing employment as a result of having a conviction”**, the Bill needs to be as generous and negate as far as possible against the negative, far-reaching and oftentimes discriminatory consequences ex-offenders and their families are currently experiencing.

I have wondered if in taking the more conservative approach is the Government afraid of accusations of undue leniency and being **“soft on crime”**?

It is understandable, given public concern over crime, the fear of crime and its impact on people’s quality of life.

But I see this legislation as a tool **(which must be implemented in conjunction with a raft of other intervention, rehabilitation, treatment and reintegration measures)** to making society safer and fairer for us all.

It is in everyone’s interests to facilitate and encourage the rehabilitation and reintegration of ex-offenders back into society.

A less restrictive Spent Convictions regime would also reflect the qualities in Irish society of compassion and forgiveness and **I just don’t believe the Bill goes far enough.**

**Spent Convictions Legislation Will Apply In Ireland Only:**

Even beyond the issues of time limits and rehabilitative periods, I am acutely aware of the disappointment people are experiencing when they find out that the Spent Convictions regime only applies in Ireland and thus cannot be relied upon where disclosure is sough for visa and residency applications, by immigration officials and so on.

I have already had a number of enquiries from individuals desperately hoping to the contrary.

One young man in writing to me said **“the signing of this Bill really has the potential to change my entire life”.** The provisions of the Bill do apply to him in Ireland but he is applying for residency in another jurisdiction. It was with such a heavy heart that I had to tell that his minor conviction would not be spent where the disclosure is sought by another State.

Once the Bill is finalised and enacted it will be very important that advice and information is made readily available to ex-offenders, employers, and the public about the time periods that apply before convictions are spent and circumstances in which disclosures have to be made.

In the UK for example I know there is an online spent convictions calculator, provided by the charity Unlock, to work out when a conviction is spent.

I just mentioned circumstances in which disclosures have to be made, and let’s face it there are a lot.

**“Relevant Work”:**

Certain State and Government Departments, anyone applying for or renewing a range of licences, permits or other authorisations, any activity, service or employment made by a Ministerial order and of course the any work or activity specified in the ***National Vetting Bureau (Children and Vulnerable Persons) Act 2012.***

The interplay between the Spent Convictions Bill and the Vetting Act is therefore significant.

**Vetting Act:**

Government response to historical and contemporary failing in relation to children and vulnerable adults (*Ferns, Ryan, Murphy and Cloyne Reports*).

The Vetting Act is part of a suite of legislation and Constitutional reform:

* **Heads of Children First Bill 2012**
* **Withholding Information Bill** Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012
* **Spent Convictions Bill** Criminal Justice (Spent Convictions) Bill 2012
* **Children’s Rights Referendum**

The effect of the **Vetting Act** for people with criminal convictions, however minor and long ago, is that it is lawful for employers in any work or activity specified in the Act to ask about spent convictions and to reject a person for employment on the ground of a spent conviction.

In essence, it provides legal scope to discriminate and in the absence of any anti-discrimination provisions in Irish law concerning criminal convictions, there is no requirement that the discrimination be reasonable and justified.

I am very concerned that some NGOs have chosen employment guidelines that don’t permit any blemish on a person’s record. I look forward to **Mary Cunningham’s** address (**NYCI**) about the development of good practice approaches from the perspective of Community and Voluntary Organisations.

Some organisations approach this broad discretionary scope well:

* Case by case basis
* Volunteering
* Girlguiding UK

[Staff and Volunteers-Shop lifting typically a woman’s offence-childcare typically a women’s profession]

* Scouting UK

[Indecent exposure-public urination]

* Social work and social care worker courses/work

**Details of Non Convictions Furnished to Third Parties:**

Acknowledge balance has to be found between a person’s right to privacy and the welfare and protection of children and vulnerable adults.

I do see a difficulty with soft or specified information and non-convictions being disclosed without any filtering or account being taken of proportionality and relevance to the employment or volunteer position in question.

**Current High Court Case**

I am very interested in a case I read recently in the Irish Independent about a man who claims he failed to get a job as a fire fighter, through Kilkenny Co Council, because a vetting report included details of minor offences he was charged with, but never convicted of.

According to media reports, following the interview process he was ranked first of all the applicants.

His Garda vetting report disclosed 5 “non-convictions” (said to include alleged criminal damage, road traffic matters and theft, all struck out without evidence being heard) and he was refused the post.

**[\*While I don’t know for certain I imagine that these 5 non-convictions relate to the same offence and with this in mind I was also please in the Spent Conviction debate that Minister Shatter accepted my point that clarity was needed with respect to multiple convictions arising out of one incident being seen as one conviction for the purpose of the legislation]**

**[Back to case…**

The Council justified its decision, according to the report, by saying it could not trust him.

The case is currently before Justice Laffoy in the High Court on the basis of the following claims:

1. There was no justification for the inclusion of these details on the vetting report.
2. The dissemination of non-convictions to third parties is in violation of his constitutional rights.
3. Passing on the information denied him his right to a good name and adversely affects his right to a good name.

I am very interested in the outcome of this case and of Minister Shatter’s consideration of the legal points raised in the UK Court of Appeal case R & Chief Constable of Greater Manchester.

(I also look forward to hearing Remy Farrell’s address about relevant European Court of Human Rights jurisprudence and UK case-law).

The Court of Appeal, declared that in two of the three applicant’s cases, the disclosure scheme operating under the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975*violated Article 8 (Right to Private Life) of the European Convention.

This is something that should rightfully and properly be considered by the Minister and it may be the case that the Vetting Act requires some type of amendment to ensure that disclosures of spent and non-convictions satisfies that the disclosure be legitimate, justified, and proportionate. **Finally:**

Difficult road. Cross-party consensus about the need to reduce crime but a lack of joined up thinking about the need to invest in penal reform in order to achieve this end.

Commend IPRT for input into legislative process.

As a Senator I have many competing interests-health, children’s rights, asylum issues.

And regardless of your opinion on the quality of the output (!!) it really is a very hectic and fast paced working environment.

I am very fortunate that my researcher Amy has a legal background…

This is not the case for all Members and furthermore, Independent Members do not have the same access to legal research and legislative drafting resources as the Parties, and I recommend that civil society groups in their interaction with Parliamentarians are targeted with:

* Clear asks
* Evidence based and concise
* Case studies
* International examples
* Wherever possible the amendment (not just the problem)

Re: Why stalled

Our understanding is that the progress of the Bill has been stalled in the Dáil while Minister Shatter considers the legal principles raised in the UK Court of Appeal case, which seems reasonable to me since the issues are highly relevant to both the Vetting Act and Spent Convictions Bill. Also and sadly, there can be no denying that there is a lack of political urgency, fuelled by a lack of public appetite, for penal reform issues and a Bill like this will always be bumped if something else needs pushing through.