

## CRIMINAL JUSTICE (SPENT CONVICTIONS) BILL 2012

## REGULATORY IMPACT ANALYSIS

## 1. Summary RIA

| Summary of Regulatory Impact Analysis (RIA)   |  |
|---|--|
| <b>Department/Office:</b><br>Department of Justice and Equality   | <b>Title of Legislation:</b><br>Criminal Justice (Spent Convictions) Bill 2012 |
| <b>Stage:</b><br>Text of Bill   | <b>Date:</b><br>April 2012   |
| <b>Related Publications:</b><br>Spent Convictions Bill 2011<br><br>Spent Convictions Bill 2007<br><br>Law Reform Commission Report on Spent Convictions 2007  |  |
| <b>Available to view or download at:</b><br><a href="http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2011/1511/b1511d.pdf">http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2011/1511/b1511d.pdf</a><br><br><a href="http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/4807/document1.htm">http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/4807/document1.htm</a><br><br><a href="http://www.lawreform.ie/fileupload/Reports/Report%20Spent%20Convictions.pdf">http://www.lawreform.ie/fileupload/Reports/Report%20Spent%20Convictions.pdf</a> |  |
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| <b>What policy objectives have been pursued?</b><br><br>Providing a system whereby those convicted of minor offences do not need to disclose those offences when applying for certain jobs or licences, provided they have remained conviction free for a period since conviction.  |  |
| <b>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the option below and indicate whether a preferred option has been identified.</b><br><br>1. Do nothing.<br><br>2. Introduce legislation to provide for the non disclosure of convictions for minor offences, where the person has remained conviction free for a number of years.   |  |
| <b>Preferred Option:</b><br><br>Introduce legislation to provide for 2 above.   |  |

| <b>OPTIONS</b> |  |  |  |
|----------------|--|--|--|
|                | <b>COSTS</b>   | <b>BENEFITS</b>  | <b>IMPACTS</b>   |
| 1.             | No significant direct costs.   | <ul style="list-style-type: none"> <li>No benefits.</li> </ul>   | <ul style="list-style-type: none"> <li>A large number of people who are law-abiding continue to have to disclose a past conviction when applying for a job, with the attendant risk of not getting the job.</li> </ul> |
| 2.             | No significant direct costs. An Garda Síochána will incur some expenditure adapting their systems to allow for the recording of spent convictions separately from other convictions. | <ul style="list-style-type: none"> <li>An incentive to remain conviction free after conviction thus reducing recidivism.</li> <li>Improved employment prospects for ex-offenders to the overall benefit of society.</li> </ul> | <ul style="list-style-type: none"> <li>People no longer have to declare past convictions where they are not relevant to the employment sought.</li> </ul>  |

## **2. Policy Context and Objectives**

Under Section 258 of the Children Act 2001, persons who are convicted in relation to offences committed before they reached 18 years of age can have those convictions “spent” after a three year conviction-free period. No similar provision applies to those over 18 when they committed an offence.

Ireland is one of only two European Union Member States that does not have legislation providing for either the non disclosure or expunging of past convictions for adults. The UK, for example, has had such legislation since the passage of the Rehabilitation of Offenders Act 1974. This gap in our criminal justice infrastructure has been the subject of much debate, and was dealt with in the Law Reform Commission Report on Spent Convictions in 2007.

That Report included a draft Bill, which was subsequently introduced as a Private Members Bill and later taken over as a Government Bill. The Bill lapsed with the dissolution of the last Dáil. In June 2011, the Spent Convictions Bill 2011, again based on the Law Reform Commission draft, was passed at Second Stage.

There is a broad acceptance that those who come into contact with the criminal justice system and are convicted, particularly at a young age, should not have to carry the burden of that conviction with them for the rest of their lives, particularly where they have not had any subsequent convictions. The

objectives of this are two fold. On the one hand, it is designed to remove the requirement to disclose past minor convictions and allow people to get on with their lives. On the other hand, it is designed to discourage recidivism, as there is a clear advantage to a person does not have to disclose a conviction when applying for a job. Under the terms of the Bill, only two convictions can become spent.

### **3. Identification and Description of Options**

The following options were considered:

1. Do nothing.
2. Introduce legislation to provide for a self-administered spent convictions regime under which relatively old minor convictions do not have to be disclosed.

### **4. Analysis of Costs, Benefits and Impacts for ALL Options**

- 1. Do nothing.*

To do nothing would maintain the status quo and continue to require a sizeable number of citizens to declare old convictions when applying for employment, regardless as to how minor the offence was, the length of time since it was committed or the fact that they have no convictions since. This is a harsh regime that does not sit easily with the idea that a person pays their debt to society and society has an interest once that has been done, in the person reintegrating into society and not reoffending.

- 2. Introduce legislation to provide for a self-administered spent convictions regime under which relatively old minor convictions do not have to be disclosed.*

The implementation of the Bill's proposals is expected to give rise to minor additional costs for An Garda Síochána. These will arise from the requirement to distinguish between spent and other convictions in their criminal records database. Otherwise, as the scheme is self-administered, no other costs will be incurred. As an eligible conviction will be automatically considered "spent" after the appropriate rehabilitation period, there will be no requirement for processing applications and the associated administrative resources. The proposals in the Bill will have only minor impacts in relation to Garda time and resources since, as mentioned, the criminal records already exist and are already checked in the case of vetting for sensitive employment posts.

The social and economic impacts of the Bill's proposals are very positive. The proposals will help the re-integration and rehabilitation of past offenders, better assist qualifying persons with the requisite conviction free periods to

find employment, build careers and re-establish themselves in society without the need to disclose the existence of a past criminal conviction in all circumstances.

## **5. Consultation**

All Government Departments, as well as the following Agencies were consulted during the drafting of the Bill: the Adoption Board; the Central Bank of Ireland; the Data Protection Commissioner; the Director of Public Prosecutions; An Garda Síochána; the Health Service Executive; the Ombudsman for Children; the Private Security Authority, Public Appointments Service, Road Safety Authority and the National Transport Authority. The Department also had the benefit of observations on the Spent Convictions Bill 2007 provided by the Irish Human Rights Commission and the Irish Penal Reform Trust.

## **6. Enforcement and compliance**

The scheme provided by the Bill is self-administered and there are no offences created by the Bill. It continues to be open to someone to declare a spent conviction after the Bill has been enacted if they wish to do so. Equally, there is no change in the current situation if someone dishonestly fails to disclose a conviction where required to do so, whether spent or not.

## **7. Review**

The Bill, once enacted, will be kept under review to ensure that it is meeting its objectives.

## **8. Publication**

The Regulatory Impact Analysis will be published on the Department's website.

May 2012