

Reintegrating people with convictions

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Amending spent convictions and/or equality legislation could help reintegrate people with convictions.

People with previous convictions (PWCs) frequently face barriers to employment, education, housing, insurance, and various forms of civil participation due to their criminal records. These barriers make it more difficult for PWCs to reintegrate into society and contribute to their risk of reoffending.

Relevant stakeholders have proposed two areas of legislative reform that would promote social inclusivity for PWCs:

- ▶ The **expansion of the current scheme for spent convictions** (explained below).
- ▶ An **amendment to the *Equality Acts* to prohibit discrimination** on the grounds of a criminal record.



An official label of offender restricts people from obtaining conventional human and social capital and this can explain why reoffending becomes a person's primary option.

Department of Justice, 2022

Difficulties faced by people with convictions

A 2023 academic study on labour market discrimination against people with convictions found that PWCs face a form of discrimination that is 'unfair, ineffective and counterproductive'. The Irish Human Rights and Equality Commission (IHREC) notes the real-life impact of having to disclose previous convictions to third parties, including the withdrawal of employment offers, exclusion from third level education, loss of housing and refusal of insurance policies. These barriers hamper PWCs' social integration and participation.

High rates of reoffending

These difficulties, particularly in finding stable employment, are closely tied to the risk of reoffending, and there are high rates of reoffending amongst those who have served a prison sentence. Statistics for 2020 show that the one-year reoffending rate is four in ten. After three years, the rate is higher – three in every five people released from prison in 2017 had reoffended by 2020. Reoffending is particularly common for theft-related offences, where 71% of those convicted will reoffend.



95% of PWCs and 92% of employers who participated in a 2023 IPRT survey agreed that there are barriers to employment (and/or higher education) for people with convictions in Ireland.

Irish Penal Reform Trust, 2024

Amending the Equality Acts

At present, there is no legislative protection against discrimination based on a criminal conviction. One of the most significant barriers to PWCs' rehabilitation and reintegration is their difficulty in finding employment due to their conviction(s). The Irish Penal Reform Trust (IPRT) published a report in 2024 which highlighted this issue.

The *Employment Equality Acts 1998–2015* (EEA) prohibit discrimination in employment (including vocational training and work experience) under nine specific grounds (for example, gender, disability). The *Equal Status Acts 2000–2018* (ESA) prohibit discrimination in the provision of goods and services, accommodation, and education on the same nine grounds.

IHREC and the IPRT recommend that the EEA and ESA (together known as the 'Equality Acts') be amended in one of two ways:

- ▶ Incorporating previous criminal convictions within the definition of a new protected ground prohibiting discrimination based on socio-economic status;
- ▶ Creating a new standalone protected ground prohibiting discrimination based on previous criminal convictions.

The addition of a standalone 'criminal convictions' ground received significant support from stakeholders in the 2021 review of the *Equality Acts* conducted by the Department of Children, Equality, Disability, Integration and Youth.

These reforms would **still permit relevant vetting** in certain circumstances (for example, the vetting carried out in compliance with the *National Vetting Bureau (Children and Vulnerable Persons) Act 2012*). The Criminal Justice (Rehabilitative Periods) Bill 2018 (discussed below) has proposed an amendment to the EEA, to prohibit discrimination against PWCs in the context of employment.

Spent convictions legislation

The primary aim of spent convictions legislation is to facilitate the rehabilitation and reintegration process for PWCs. The *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* provides for the current spent convictions scheme. The 2016 Act has been described by some legal practitioners as "narrow, disproportionate and ineffective" in comparison to schemes in comparable countries. A number of relevant stakeholders have called for reform of the 2016 Act.

Current legislation on spent convictions

The 2016 Act provides that a limited range of minor offences become spent after a period of seven years, providing the convicted person does not reoffend during their 'rehabilitation period'. An adult convicted of an offence covered by the 2016 Act does not have to disclose the conviction after seven years, except in certain circumstances.

Sections 4 and 5 of the 2016 Act provide that the following convictions may become spent after seven years:

- ▶ All convictions in the District Court for motoring offences or minor public order offences (separate conditions apply to dangerous driving convictions).
- ▶ A single conviction (other than a motoring or public order offence) in the District Court or Circuit Court which resulted in **a prison term of 12 months** or less (or a fine).

The 2016 Act does not apply to a conviction for sexual offences (except in very specific circumstances, as set out in the Act) or an offence that was tried in the Central Criminal Court (these are more serious offences). Section 258 of the *Children Act 2001* provides that a person may not be required to disclose a conviction where the offence was committed before the person reached 18 years of age, provided certain conditions are met.

There is no limit on the number of select public order or minor motoring offences that can become spent. However, there is a restriction on the number of other offences, such as theft, minor drug possession or dangerous driving. Only one such conviction can become spent. If a person receives more than one of these convictions, then none of the convictions may become spent. As noted above, theft and drug related offences have rates of high reoffending.

Proposed reform

The Department of Justice has undertaken a review of the operation of the 2016 Act and conducted research with a view to amending the Act. Additionally, a Private Members' Bill has proposed reforms.

The Criminal Justice (Rehabilitative Periods) Bill 2018

The Criminal Justice (Rehabilitative Periods) Bill 2018 is a Private Members' Bill sponsored by Senator Lynn Ruane. It proposes amendments to both the 2016 Act and to the EEA. The Bill seeks to amend and extend the provisions of the 2016 Act, broadening the range of convictions that may be regarded as spent convictions. It also provides for proportionality in determining the applicable period before a conviction becomes spent. The Bill also seeks to amend the EEA to prohibit employers from treating a person less favourably because of spent convictions. This did not extend to discrimination based on unspent convictions. In 2021, the Bill passed the Seanad with bi-partisan support. During the 33rd Dáil, Government was supportive of the Bill and committed to amending the 2016 Act.

It has been suggested by academic commentators, legal practitioners, IHREC, the IPRT and the Joint Committee on Justice and Equality that, while the 2018 Bill is a welcome improvement on the 2016 Act, the proposed reforms do not go far enough to bring Ireland up to international best practice.

Review of the 2016 Act

The 2020 Programme for Government committed to reviewing the 2016 Act with a view to broadening the range of convictions that are considered spent. In 2020, the Department of Justice launched a public consultation on spent convictions, focusing their review on five key issues:

- ▶ Restricted applicability (this means limited to sentences up to 12 months)
- ▶ Limited to only one conviction
- ▶ Lack of proportionality
- ▶ Lack of recognition of youth justice issues
- ▶ The victim's perspective

The Department also conducted research on spent convictions legislation in Ireland and comparable countries. A final report was compiled by the Department to inform the future amendment of the 2016 Act. As of July 2024, the issue 'remains under consideration'.

Additionally, the Joint Committee on Justice and Equality published their Report on Spent Convictions in October 2019, recommending changes to the 2016 Act.

There is a broad consensus among relevant stakeholders that reform of the 2016 Act is desirable, and that the 2016 Act should reflect the principles of relevance and proportionality.

New strategies for reintegration

In addition to legislative reform, the then Minister for Justice, Helen McEntee TD, indicated in June 2024 that the Department would soon publish a new strategy to address the systemic barriers to employment faced by PWCs. This follows on from the Department's 2021–2023 'Working to Change' Strategy. Civil society groups have also proposed new strategies to assist reintegration and employment opportunities for PWCs. For example, Spéire Nua, a social enterprise that helps ex-offenders to reengage with their communities, has published recommendations for a new 'strengths based' positive disclosure model.

The key recommendations for reform made by stakeholders are:

Spent convictions

- ▶ Removing the numerical limit of one sentence that may become spent. It has been proposed that either the limit should be increased to two, a larger number, or removed entirely.
- ▶ Expanding the category of convictions that can become spent, from the current 12-month limit to up to two years for custodial sentences and four years for non-custodial sentences.
- ▶ Including a distinction between offences committed by young adults (18–24 years of age) and adults (over 24).
- ▶ Spent convictions legislation should acknowledge the principle of proportionality: the length of the rehabilitative period before a conviction can become spent should be dependent upon the severity of the sentence passed.

Equality Acts

- ▶ Amending equality legislation to prohibit discrimination against PWCs (where their convictions are spent or otherwise) in both employment and areas such as access to education, housing, and other services, including insurance, while retaining appropriate vetting procedures where necessary.

Other

- ▶ Inquiries and vetting procedures should be informed by relevance: that is consideration of the relevance of a previous conviction to the purpose of the vetting/inquiry.
- ▶ Ensuring that the spent convictions regime is in line with current laws on privacy and GDPR regulations.