



AN BILLE UM CHIONTUITHE SPÍONTA, 2011
SPENT CONVICTIONS BILL 2011

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
 2. Interpretation.
 3. Rehabilitated person and spent conviction.
 4. General effect of spent conviction.
 5. Exceptions to general effect of spent conviction for excluded employment.
 6. Disclosure of spent conviction and other restrictions.
-

ACTS REFERRED TO

| | |
|----------------------------------|---------------|
| Child Care Act 1991 | 1991, No. 17 |
| Ethics in Public Office Act 1995 | 1995, No. 22 |
| Probation of Offenders Act 1907 | 7 Edw 7, c.17 |
| Sex Offenders Act 2001 | 2001, No. 18 |



AN BILLE UM CHIONTUITHE SPÍONTA, 2011
SPENT CONVICTIONS BILL 2011

BILL

entitled

5 AN ACT TO PROVIDE THAT CERTAIN CONVICTIONS MAY
BE REGARDED AS SPENT FOR CERTAIN PURPOSES
WHERE THE CONVICTED PERSON HAS NOT BEEN
CONVICTED OF ANY OTHER OFFENCE WITHIN SPECI-
10 FIED PERIODS OF YEARS, AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Spent Convictions Act 2011. Short title and commencement.

(2) This Act comes into force on such day or days as the Minister for Justice, Equality and Defence may by order appoint.

15 2.—In this Act, unless the context otherwise requires: Interpretation.

“circumstances ancillary to a conviction” has the meaning assigned by *section 4(5)*;

“court” means any court exercising jurisdiction in civil or criminal matters;

20 “excluded employment” has the meaning assigned by *section 5(2)*;

“excluded sentence” has the meaning assigned by *section 3(3)*;

“Minister” means the Minister for Justice, Equality and Defence;

“rehabilitated person” has the meaning assigned by *section 3*;

25 “relevant rehabilitation period” has the meaning assigned by *section 3(4)*;

“sentence” means—

30 (a) any custodial order made by a court in connection with a criminal conviction providing for the deprivation of a person’s liberty for a period of time imposed by a court, and includes any such sentence which is suspended, whether in whole or in part,

- (b) any other non-custodial order made by a court in connection with a criminal conviction, including any disqualification, penalty, fine, prohibition or order postponing sentence;

“sexual offence” has the meaning assigned by the Sex Offenders Act 2001; 5

“spent conviction” has the meaning assigned by *section 3*.

Rehabilitated person and spent conviction.

3.—(1) Subject to the conditions in *subsection (2)* and the other provisions of this Act, where an individual, in this Act referred to as a “rehabilitated person” has been convicted of an offence or offences, whether before or after the commencement of this Act, the conviction of the rehabilitated person shall be referred to as a “spent conviction” and shall have the effects referred to in *section 4*. 10

(2) The conditions referred to in *subsection (1)* are that—

(a) the conviction did not involve the imposition by the Court of an “excluded sentence” within the meaning of *subsection (3)*, 15

(b) the rehabilitated person did not have a sentence imposed upon him or her in respect of any offence during the “relevant rehabilitation period” within the meaning of *subsection (4)*, and 20

(c) the rehabilitated person has complied with all conditions of the sentence.

(3) An “excluded sentence” means—

(a) a sentence imposed in respect of any offence triable for the Central Criminal Court, 25

(b) a sentence imposed in respect of a sexual offence, and

(c) a sentence for a term exceeding six months.

(4) “Relevant rehabilitation period” means—

(a) in respect of a custodial sentence for a term not exceeding six months, a period of seven years from the date of conviction, and 30

(b) in respect of any non-custodial order, including disqualification, penalty, fine or prohibition, a period of five years from the date of conviction or when such order ceased to have effect, whichever is the earlier. 35

(5) For the purposes of *subsection (4)* the relevant rehabilitation period is interrupted by a subsequent conviction for any offence during the seven year period or the five year period, as the case may be, and the new relevant rehabilitation period shall be deemed to begin from the date of any such conviction, but this shall not apply in the case of a dismissal under *section 1(1)* of the Probation of Offenders Act 1907. 40

General effect of spent conviction.

4.—(1) Subject to *section 3* and the other provisions of this Act, a rehabilitated person shall be treated for all purposes in law as a 45

5 person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction and, notwithstanding the provisions of any other enactment or rule of law to the contrary, no evidence shall be admissible in any proceedings before a Court to prove that the rehabilitated person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction.

10 (2) Subject to *section 3* and the other provisions of this Act, where a question seeking information about an individual's previous convictions, offences, conduct or circumstance is put to him or her or to any other person otherwise in proceedings before a court—

15 (a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly, and

20 (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent sentence in the answer to the question.

25 (3) A person convicted of fraud, deceit or an offence of dishonesty in respect of an insurance claim shall not be excused by *subsection (2)* from admitting any such conviction on any insurance proposal or form.

(4) Subject to *section 3* and the other provisions of this Act—

30 (a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him or her to disclose a spent conviction or any circumstances ancillary to a spent conviction, and

35 (b) subject to the provisions of *section 5* concerning any excluded employment, a spent conviction, or any failure to disclose a spent conviction, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any way in any occupation or employment.

40 (5) For the purposes of this Act, “circumstances ancillary to a conviction” means—

(a) the offence or offences which were the subject of that Conviction;

(b) the conduct constituting that offence or those offences, and

45 (c) any process or proceeding preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.
50

Exceptions to general effect of spent conviction for excluded employment.

5.—(1) Nothing in *section 4* shall affect the obligation of a rehabilitated person or of any person to disclose any conviction, including a spent conviction, where an individual seeks employment or any position or office in an “excluded employment” within the meaning of *subsection (2)*.

5

(2) “Excluded employment” means—

- (a) any office, profession, occupation or employment involving the care for, supervision of or teaching of any person under 18 years of age, or of any person who, by virtue of their limited mental capacity, is a vulnerable person, 10
- (b) any office, profession, occupation or employment in the provision of healthcare,
- (c) membership of the judiciary, barrister, solicitor, court clerk, court registrar or any employee of the Courts Service, 15
- (d) civil servant, public servant, or any office within the meaning of the Ethics in Public Office Act 1995,
- (e) firearms dealer,
- (f) traffic warden, 20
- (g) employment as a member of the Defence Forces,
- (h) employment as a prison officer, as a member of the Probation Service, or membership of a Prison Visiting Committee,
- (i) employment as a member of an Garda Síochána (including Reserve Membership), 25
- (j) accountant or dealer in securities, and
- (k) director, controller or manager of a financial institution or of any financial service provider which is regulated by the Central Bank. 30

Disclosure of spent conviction and other restrictions.

6.—(1) Nothing in this Act shall affect—

- (a) the right of the President to grant a pardon or commute a sentence in accordance with the provisions of the Constitution,
- (b) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction, 35
- (c) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction, or 40
- (d) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty 45

the period of which extends beyond the rehabilitation period applicable to the conviction in accordance with *section 3*.

5 (2) Nothing in this Act shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's spent conviction or to circumstances ancillary thereto—

(a) in any criminal proceedings before a court (including any appeal or reference in a criminal matter),

10 (b) in any proceedings relating to adoption or to the guardianship, custody, care or control of, or access to any person under the age of 18 years, including proceedings under the Child Care Act 1991, or to the provision by any person of accommodation, care or schooling for any person under the age of 18 years,

15 (c) in any proceedings in which a rehabilitated person is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he or she can sense the determination of the issue or, as the case may be, the admission or requirement of the evidence
20 notwithstanding the provisions of *section 4(1)*.

(3) If at any stage in any proceedings before a court the court is satisfied, in light of any considerations which appear to it to be relevant (including any evidence which is being or may thereafter be
25 put before it), that justice cannot be done in a case except by admitting or requiring evidence relating to a persons spent conviction or to circumstances ancillary thereto, the court may admit or, as the case may be, require the evidence in question notwithstanding the provisions of *section 4*, and may determine any
30 issue to which the evidence relates in this regard, so far as necessary, of those provisions.