

# **Responding Effectively to Domestic Burglary: A Critique of the Criminal Justice (Burglary of Dwellings) Act 2015**

**Tom Kiely<sup>1</sup> and Susan Leahy<sup>2</sup>, Lecturer in Law, University of Limerick<sup>3</sup>**

## **Abstract**

This article analyses the Criminal Justice (Burglary of Dwellings) Act 2015. Written from the author's respective experiences as criminal law practitioner and legal academic, the article seeks to highlight the limited practical effects of the legislation. The Act introduced two changes to the law in a bid to target repeat offenders, that is, the potential for refusal of bail for repeat offenders and the introduction of consecutive sentencing for such offenders upon conviction. The article argues that although the legislation was no doubt well-intentioned, the belief that it would operate to curb offending in this area was misguided. What is actually required in this area is not reactionary law-making but sustained investment in preventative measures such as further resourcing of the Gardaí to target burglars before they offend.

## **Introduction**

This article critiques the Criminal Justice (Burglary of Dwellings) Act 2015, which was “designed to keep repeat burglars off the streets and to improve the safety of our communities”.<sup>4</sup> The Act has two main effects, that is, to allow for the refusal of bail for repeat offenders and to permit consecutive sentencing for such offenders upon conviction. Drawing on both authors' experience, this article offers an overview of the legislation and a practitioner's perspective on the limited practical effects of the Act. The article argues that while the legislation was no doubt well-intentioned, its potential to combat burglary is minimal. Rather, the Act represents a good example of populist and reactionary law-making which masks the need for more expensive preventative measures to tackle this form of

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<sup>1</sup> Solicitor, Kiely McCarthy Solicitors, Limerick.

<sup>2</sup> BCL, PhD, LL.M. Co-Director of the Centre for Crime, Justice and Victim Studies, School of Law, University of Limerick.

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<sup>4</sup> “Minister Fitzgerald publishes Criminal Justice (Burglary of Dwellings) Bill 2015”, 7<sup>th</sup> September 2015. Available at: <http://justice.ie/en/JELR/Pages/PR15000458> (Last Accessed: 6<sup>th</sup> September 2017).

criminal activity, that is, adequate resourcing of the Gardaí and provision of funding for preventative measures.

### **The Context for the Introduction of the Criminal Justice (Burglary of Dwellings) Act 2015**

The Act came into force on 17<sup>th</sup> January 2016 and was enacted as part of a wider initiative to target burglary offences in Ireland. Commenting on the legislation, then Minister for Justice, Frances Fitzgerald TD, commented that:

“The new Burglary Act provides an important additional layer of support to Gardaí in implementing Operation Thor as these new provisions for tougher sentences and stricter bail for repeat offenders will now be available as persons charged as part of Operation Thor come before the courts.”<sup>5</sup>

Operation Thor was launched in November 2015 and with the aim of “actively target[ing] organised crime gangs and repeat offenders through co-ordinated crime prevention and enforcement activity based on intelligence and the latest crime trends and patterns to protect communities”.<sup>6</sup> Key initiatives within Operation Thor included:

- Increased visibility in local communities to prevent burglaries and related crimes
- More high visibility checkpoints
- Increased patrolling on the motorway network denying criminals use of the roads
- Enhanced use of intelligence, technology and data to target prolific offenders and organised crime gangs.
- A strong focus on working with communities to reduce opportunities for burglaries to take place

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<sup>5</sup> “Commencement of the Criminal Justice (Burglary of Dwellings) Act 2015”, 17<sup>th</sup> January 2016. Available at: <http://www.justice.ie/en/JELR/Pages/PR16000017> (Last Accessed: 7<sup>th</sup> September 2017).

<sup>6</sup> “An Garda Síochána Launches National Anti-Crime Strategy – Operation Thor”. Available at: <http://garda.ie/Controller.aspx?Page=15036> (Last Accessed: 7<sup>th</sup> September 2017).

- A national awareness campaign to inform people on how to enhance the security of homes.<sup>7</sup>

To support Operation Thor, the Government provided approximately €5m in additional funding which was to be used “to provide additional patrols, checkpoints, and rapid armed response where necessary, as well as national and local awareness campaigns”.<sup>8</sup> It was estimated that the funding would provide over 100,000 additional Garda patrolling hours.<sup>9</sup>

### **The Practical Effect of the Act**

The Criminal Justice (Burglary of Dwellings Act) 2015 has impacted on two aspects of the pre-existing law applicable to burglary offences: bail applications and sentencing. Each of these aspects of the Act will be discussed and critiqued in turn.

#### ***Bail***

Section 1 of the 2015 Act amends s 2 of the Bail Act 1997 (as amended) to permit the denial of bail where an applicant has a previous conviction for domestic burglary, as well as two or more pending charges. Section 2(1) of the Bail Act provides that “[w]here an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person”.<sup>10</sup> A “serious offence” is defined as an offence specified in the Schedule to the Act for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of five years or by a more severe penalty.<sup>11</sup> In exercising its jurisdiction to refuse bail under s 2, the court must take into account and may, where necessary, receive evidence or submissions regarding:

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<sup>7</sup> Above, fn. 6.

<sup>8</sup> Above, fn. 6.

<sup>9</sup> Above, fn. 6.

<sup>10</sup> It is noteworthy that the State can also object to bail on the basis of the so-called “O’Callaghan Rules” which hail from the decision in *The People (at the suit of the Attorney General) v O’Callaghan* (1966) 1 IR 501. These rules are discussed below.

<sup>11</sup> Section 1.

- (a) The nature and degree of seriousness of the offence with which the defendant is charged and the sentence likely to be imposed on conviction;
- (b) The nature and degree of seriousness of the offence apprehended and the sentence likely to be imposed on conviction;
- (c) The nature and strength of the evidence in support of the charge;
- (d) Any conviction of the defendant for an offence committed while s/he was on bail;
- (e) Any previous convictions of the defendant including any conviction the subject of an appeal (which has neither been determined nor withdrawn) to a court;
- (f) Any other offence in respect of which the accused person is charged and is awaiting trial.

It is noteworthy that where the court has considered one or more of the foregoing, it may also take into account the fact that the accused person is addicted to a controlled drug within the meaning of the Misuse of Drugs Act 1977.

Section 1 of the 2015 Act inserts a new s 2A into the Bail Act, which provides as follows:

“In addition to taking into account the matters referred to in subsection (2) in exercising its jurisdiction under subsection (1), where-

- (a) an application for bail is made by a person charged with a serious offence which is a relevant offence, where the relevant offence is alleged to have been committed in a dwelling, and
- (b) the circumstances specified in subsection 2B exist in respect of the person making that application,

a court, in exercising that jurisdiction, shall consider the existence of those circumstances as evidence that the person is likely to commit a relevant offence in a dwelling.’

For the purposes of the 2015 Act, a “relevant offence” is defined as an offence under s 12 or s 13 of the Criminal Justice (Theft and Fraud Offences) Act 2001, that is, burglary<sup>12</sup> or aggravated burglary.<sup>13</sup> “Dwelling” includes:

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<sup>12</sup> Section 12(1) provides that a person is guilty of burglary if s/he:

- (a) enters any building or part of a building as a trespasser and with intent to commit an arrestable offence, or

- (a) a building or structure (whether temporary or not) which is constructed or adapted for use as a dwelling and is being so used,
- (b) a vehicle or vessel (whether mobile or not) which is constructed or adapted for use as a dwelling and is being so used, or
- (c) a part of a dwelling.<sup>14</sup>

Thus, the provisions of the Act apply to a domestic burglary or aggravated burglary and, for ease of discussion, “relevant offence” will be hereafter referred to as “domestic burglary”.

Section 2A applies where an individual who is charged with a domestic burglary has a conviction for a domestic burglary which was committed in the period of five years immediately prior to the application for bail irrespective of whether or not the person committed that relevant offence before or after s/he had attained the age of 18 years and, at the time of the bail application, one of the following criteria is also satisfied:

- (a) the accused has convictions for at least two further domestic burglaries within a period commencing six months before and ending six months after the alleged commission of the offence which is the subject of the bail application<sup>15</sup>; OR
- (b) the accused is charged with, and is awaiting trial for, not less than two further domestic burglaries alleged to have been committed within a period commencing six months before and ending six months after the alleged commission of the offence which is the subject of the bail application; OR
- (c) the accused has a conviction for a further domestic burglary and is charged with, and awaiting trial for, a domestic burglary committed or alleged to have been committed

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(b) having entered any building or part of a building as a trespasser, commits or attempts to commit any such offence therein.

<sup>13</sup> Section 2(4) of the Bail Act, as inserted by s 1 of the 2015 Act.

<sup>14</sup> Above, fn, 13.

<sup>15</sup> The latter offences must have been committed after the accused attained 18 years of age.

within a period commencing six months before and ending six months after the alleged commission of the offence which is the subject of the bail application.<sup>16</sup>

To put the provisions of the 2015 Act in practical context, it is necessary to outline how bail applications work in practice. More or less all bail applications are initially made in the District Court. There are a few exceptions such as in relation to a murder charge where one cannot apply for bail in the District Court. When objecting to bail, the State will do so either on the basis of s 2 of the Bail Act or with reference to what are known as the “*O’Callaghan Rules*” which hail from the decision in *The People (at the suit of the Attorney General) v O’Callaghan*.<sup>17</sup> The latter permit objections to bail on the grounds that an accused is unlikely to appear in court to answer charges and/or that the accused is likely to interfere with the course of justice by interfering with prosecution witnesses. When objecting to bail, the State must clarify whether the objection is based on the *O’Callaghan Rules* or the Bail Act. In any case where the state are objecting to bail they must furnish what is referred to as a “bail pack” which is essentially a disclosure on their part of the objections they are raising to the accused person being granted bail. In every disclosure An Garda Síochána base their objections under the heads as set out in s 2(2) of the Bail Act. If they are also relying on the *O’Callaghan* rules they will include sections regarding convictions for failing to appear in court and previous bench warrants and in relation to their proposed evidence regarding potential interference with witnesses.

Based on the experience of the practitioner author, and anecdotal evidence from practice, it appears that s 2(2A) is not being relied upon by State as a basis for objecting to bail. Naturally, without further investigation, it is not possible to state with certainty why this is so. However, it is submitted by the authors that s 2(2A) may not be being used because s 2(2) already allowed for the type of objections which are specifically delineated by s 2(2A). Section 2 of the Bail Act (as originally enacted) already stated that a Court shall consider a person’s previous convictions, previous offences committed on bail, likely sentence on conviction and anything else they are charged with and is awaiting trial. Burglary is a serious offence and is thus included in the category of offences set out in the schedule to the Bail

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<sup>16</sup> Section 2B. It is noteworthy that, for the purposes of this section, a reference to a conviction for domestic burglary includes a reference to a conviction which is the subject of an appeal: s 2C.

<sup>17</sup> (1966) 1 IR 501.

Act. Thus, the insertion of s 2A was largely superfluous. Moreover, as practitioners and courts are accustomed to using s 2(2) in its original incarnation, it seems likely that they might continue to do so and elect not to use s 2(2A) at all. The potential for this to occur is rendered all the more likely by the complexity of the wording of the latter provision.

The policy objective behind the reform of the bail laws in the 2015 Act was to make it more difficult for prolific burglars to receive bail as the Department of Justice was concerned at the number of persons receiving bail for burglary while on bail for multiple other burglary allegations. However, the experience of practitioners in this area is that bail applications in this area are unlikely to be granted and, indeed, bail applications may not even be common. Anecdotal evidence suggests that Gardaí bringing persons coming before the District Court charged with a burglary offence, or multiple offences, while on bail for other offences (and not necessarily numerous or burglary offences) object to bail and they are rarely unsuccessful. This is because burglary is a serious offence, is included in the schedule attached to the Bail Act and the Courts treat it with the seriousness that it deserves. In fact, the recidivists that the practitioner author of this paper represents usually provide instructions not to apply for bail as they realise that there is no realistic potential of the application being granted. Thus, while the policy objective of the legislation was to make it more difficult for those accused of burglary offences to be granted bail, the reality is that applications for bail in this area were relatively uncommon prior to the 2015 reforms and those applications which were made were not likely to be successful. Thus, the 2015 reforms represent a form of window-dressing rather than the basis for any significant change in the practice of bail applications.

### ***Sentencing***

Section 2 of the 2015 Act amends s 54 of the Criminal Justice (Theft and Fraud Offences) Act 2001 to “require a court which decides to impose custodial sentences for multiple

burglaries to impose such sentences consecutively”.<sup>18</sup> Section 2 inserts a new s 54A into the 2001 Act which provides that where an adult:

- (a) is being sentenced to imprisonment for a domestic burglary,
- (b) has a conviction for another domestic burglary<sup>19</sup> committed in the five years immediately before the commission of the offence for which s/he is currently being sentenced, and
- (c) was sentenced to imprisonment for another domestic burglary committed in the period starting six months before and ending six months after the relevant offence for which s/he is now being sentenced,

any sentence of imprisonment which the court chooses to impose for the offence for which he or she is currently being sentenced must be consecutive to any sentence of imprisonment imposed for those prior domestic burglary offences.

As with the discussion on bail, it is useful to look at what is already in place in order to contextualise the changes which the 2015 Act proposes to introduce and consider whether they are likely to have an effect in practice.

There has always been a common law power to impose consecutive sentences. It was legislated for under s 20 of the Criminal Law (Ireland) Act 1828. Despite the repeal of that Act, it was saved by the Statute Law Revision Act 1983. The current statute which deals with the mandatory element of consecutive sentence is s 11 of the Criminal Justice Act 1984. At a basic level, this provision provides that where an individual is being sentenced for an offence committed while on bail for an offence for which they are currently serving a sentence, then any sentence imposed must be consecutive to that sentence. The 2015 Act makes a difference in that there is a mandatory consecutive sentencing regime where someone is serving a sentence and the new offence for which sentence is being imposed was committed six months before or after that sentence and the offender was not necessarily on bail for the offence for which he is serving the prison sentence. A provision like this may be welcome from a community lobbyist’s perspective and from a Garda perspective. However, it is questionable whether it has had, or will have, any real practical effect on sentencing or indeed the actual

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<sup>18</sup> *Criminal Justice (Burglary of Dwellings) Act 2015: Explanatory Memorandum*, at 3. Available at: <https://www.oireachtas.ie/documents/bills28/bills/2015/7615/B7615d-memo.pdf> (Last Accessed: 7<sup>th</sup> September 2017).

<sup>19</sup> For the purposes of this provision, it is irrelevant whether a sentence (of imprisonment or otherwise) was imposed.



amount of time those who commit domestic burglary are incarcerated for. The impact in the District Court is almost certain to be minimal due to the fact that the District Court cannot impose sentences totalling over 24 months regardless of the number of offences before it. The impact on Circuit Court sentencing is also likely to be slight as consecutive sentences are nearly always given in that court where an offender who is convicted of two or more offences which are unrelated to each other.

Whatever sentencing regime prevails, Irish courts will always obey the principle of totality. The court still has discretion as to the length of what sentence they impose, whether they suspend it or whether a sentence will even be imposed. What has changed is the obligation to make certain sentences consecutive to each other where previously they did not have to. Since the introduction of this legislation, there is no evidence of a spike in sentences being imposed for burglary or burglaries, as the case may be. Because of the principle of totality, what is more likely to happen is that where a court is faced with a mandatory consecutive sentence regime then they are likely to give two or more smaller sentences consecutive to each other as opposed to two or more larger sentences running concurrently. Thus, as with the 2015 Act's provisions on bail, the reform in the area of sentencing would seem to be of more symbolic than practical effect.

### **Critique**

Having reviewed the reforms introduced by the 2015 Act and its minimal practical impact, it is now worth considering why this legislation was enacted in the first place and, more significantly, what initiatives may have proved more worthwhile to tackle the problem of domestic burglary. There is no doubt but that efforts to tackle domestic burglary are necessary. Burglary was the most common incident experienced by respondents to the *Garda Public Attitudes Survey 2016*, with 25% of the 682 victims who responded to the survey reporting being a victim of burglary.<sup>20</sup> The problem of burglary, in particular in rural communities<sup>21</sup>, is a frequent story in Irish media outlets. Further, there is evidence of high

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20 An Garda Síochána, *Public Attitudes Survey*, (An Garda Síochána, 2016) at 9.

21 See, for example: Hilliard, "IFA Call for harsher sentencing to combat rural crime", *Irish Times*, 12th January 2016 and "Reports on crime reveals 'startling' results in rural areas", *Irish Times*, 17th May 2017, and; Raleigh, "'Highly Sophisticated' Eastern European thieves making a fortune in burglaries targeting rural Ireland", *Irish Independent*, 8th April 2017. See also: Moore Walsh and Walsh, *National Agriculture Crime*

levels of recidivism for those convicted of burglary. Figures from An Garda Síochána Analysis Service relied on by the Minister for Justice to support the 2015 Act revealed that 75% of burglaries are committed by 25% of burglars.<sup>22</sup> Statistics from the Central Statistics Office Report in 2015 showed that while the average recidivism rate within three years for offenders released from custody in 2009 was 47.5%, the recidivism rate for burglary and related offences was significantly higher at 69.9%.<sup>23</sup> Given the violation which domestic burglary represents and the special protection which is afforded to the protection of the home in the Irish Constitution, it is important that this offence is effectively tackled. Thus, it is unsurprising that the government sought to devise a suitable response to this category of crime.

Nevertheless, one cannot escape the idea that the means chosen to do this was not driven by sustained reflection or consideration of what a best practice solution to the problems posed in this area might be. Rather, what is seen is a reactive suite of measures driven by “tough on crime” populist punitiveness which responded to the desire for a sound bite to show that “something is being done” about domestic burglary. As Hamilton notes, contrary to other jurisdictions, there is a tendency for “get tough” policies in Ireland to concentrate on reforms at the “front-end” of the system (i.e. increases in police powers and erosions on the rights of defendants) as opposed to reforms at the “back end” of the system (i.e. the use of imprisonment).<sup>24</sup> Legislation such as the 2015 Act serves this purpose excellently, feeding the public’s desire for “get tough on crime” policies without the State having to invest in expensive preventative measures to effectively tackle domestic burglary. Admittedly, Operation Thor which accompanied the 2015 Act has been more successful and involved financial investment in practical measures to tackle burglary offences. As noted above, Operation Thor comprises increased visibility of Garda patrols and targeting of known and prolific offenders, aided by the provision of approximately €5 million in additional funding to

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*Survey*, (Waterford: 2017) which was conducted in association with the Irish Cattle and Sheep Farmers’ Association: Available at: <https://icsaireland.ie/wp-content/uploads/2017/03/ICSA-WIT-Agriculture-Crime-Survey-Report-1.pdf> (Last Accessed: 3rd July 2017).

<sup>22</sup> Above, fn. 1.

<sup>23</sup> The study was drawn from the cohort of individuals who were released from prison by the Irish Prison Service in 2009, (7,507). Of these, 3,563 (47.5%) re-offended within a three-year period: Central Statistics Office, *Prison Recidivism (2009 cohort)*, (Dublin: Central Statistics Office, 2015). Available at: <http://www.cso.ie/en/releasesandpublications/er/prir/prisonrecidivism2009cohort/> (Last Accessed: 2<sup>nd</sup> July 2017)

<sup>24</sup> Hamilton, “Penal Policy in Comparative Perspective: Notes from a Small Country” in Healy et al, (eds), *Routledge Handbook of Irish Criminology* (Routledge, 2015), at 457.

Gardaí to provide for additional patrolling hours.<sup>25</sup> CSO figures on crime during the 12 months to September 2016 showed that there were 8,857 fewer burglaries recorded than for the same period the previous year, a drop of 31.2%.<sup>26</sup> This reduction was attributed largely to Operation Thor with then Minister for Justice, Frances Fitzgerald noting that it was “‘encouraging’ that the regional breakdown of CSO figures shows that Operation Thor is benefitting communities right across the country”.<sup>27</sup> Recent examples of successes for Operation Thor include a number of reports in June this year of targeted projects which led to significant numbers of arrests in various counties across the country.<sup>28</sup> Such statistics are encouraging and demonstrate that practical actions, although more costly than legislation such as the 2015 Act, are effective. Further, reports of increased policing and arrests of prolific offenders no doubt satisfy the public to some extent that “something is being done” about burglary. However, despite its successes, Operation Thor is, like the 2015 Act, a primarily reactive operation, responding to burglary after the fact. Far less attention has been given to how burglaries might be prevented which would, after all, be a far more positive outcome than simply punishing the offenders once the harm of the offence has been visited upon the victims. As noted in the *Garda Inspectorate Report* in 2014, one of Robert Peel’s nine basic principles of policing (which form the foundation for policing around the world) is that “[t]he test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it”.<sup>29</sup> Thus, it is worth considering some proactive measures which might be taken to help to prevent domestic burglaries.

When considering crime prevention, much can be learned from theories of situational crime prevention, a branch of criminology which focuses on how crime might be reduced by changing environments and the development of effective strategies to make crime more

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<sup>25</sup> The 2017 Budget allocation for An Garda Síochána included allowance for the continuance of Operation Thor, its funding to be included within the €71.5 million which was allocated for overtime payments for Gardaí: Phelan, “Budget 2017: Anti-burglary initiative Operation Thor to continue for another year”, *Irish Times*, 11<sup>th</sup> October 2016.

<sup>26</sup> Central Statistics Office, *Recorded Crime, Quarter 3, 2016*, (Dublin: Central Statistics Office, 2016). Available at: <http://www.cso.ie/en/releasesandpublications/er/rc/recordedcrimequarter32016/> (Last Accessed: 2<sup>nd</sup> July 2017).

<sup>27</sup> Gleeson, “Burglaries fall steeply during 12 months to September”, *Irish Times*, 19<sup>th</sup> December 2016.

<sup>28</sup> See, for example: “Gardai arrest 24 in Thomastown for theft, assault, fraud, drug offences”, *Irish Times*, 15<sup>th</sup> June 2017; Dunne, “Gardai make series of arrests as part of Operation Thor”, *Irish Times*, 22<sup>nd</sup> June 2017; McMahon, “Gardai arrest 13 and seize €32K drugs as part of ‘Operation Banner’”, *Irish Independent*, 20<sup>th</sup> June 2017.

<sup>29</sup> Garda Inspectorate, *Report of the Garda Inspectorate: Crime Investigation*, (Dublin: Garda Inspectorate, 2014), para 1.1

difficult to commit, sometimes referred to as “target-hardening”. Such initiatives are forward-looking, seeking to predict how crime might be committed and where it is likely to occur and devise ways to reduce the opportunities for criminal activity to take place. One large scale example of this type of initiative is “Secured by Design” (SBD) in the UK which is “the title for a group of national police projects focusing on the design and security for new and refurbished homes, commercial premises and car parks” which focuses on “‘designing out crime’ through physical security and processes”.<sup>30</sup> The Garda Inspectorate Report noted that “[r]esearch over thirty years shows that police recorded crime levels are lower on SBD estates, residents in those estates felt safer and importantly offenders felt less comfortable entering SBD properties”.<sup>31</sup> The practical workings of initiatives such as SBD are described well by the Garda Inspectorate Report:

“In other jurisdictions, crime prevention specialists are particularly engaged at the early stages of planning applications for new major developments, providing advice on all aspects of crime prevention design. As part of the planning application process, plans are sent to local police divisions for their views. In major developments, police crime prevention officers play a significant role and planning committees take into account recommendations from crime prevention officers, before planning decisions are made. Sometimes changes can be small, such as increased lighting or security fencing and sometimes the recommendations can be extensive, such as including CCTV systems or redesigning parts of the development.”<sup>32</sup>

The Inspectorate noted that the Gardaí “are committed to ‘Crime Prevention through Environmental Design’” (CPTED) and offer services on the Garda website, but they found limited evidence that the Gardaí are engaged with manufactures and architects to design out crime in new homes and buildings in Ireland’ and at the time of the Report, there was no formal process to pass plans to Garda Crime Prevention Officers for their input and advice. Thus, the Inspectorate recommended that “An Garda Síochána agrees a protocol with local authorities to ensure that major development planning applications are reviewed by crime prevention officers trained in environmental design”.<sup>33</sup> This would be a most welcome initiative which could lead to significant reductions in not only burglary, but also other crimes that affect neighbourhoods such as anti-social behaviour. Further, involving Gardaí

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<sup>30</sup> See: <http://www.securedbydesign.com/about-secured-by-design/> (Last Accessed: 2<sup>nd</sup> September 2017).

<sup>31</sup> Above, fn, 29, para 1.3.

<sup>32</sup> Above, fn, 29, para 1.3.

<sup>33</sup> Above fn. 29, recommendation 1.2.

and implementing CPTED at initial planning stages of new developments may not be significantly resource-intensive.

A further preventative measure related to theories of situational crime prevention recommended by the Garda Inspectorate is a review of the effectiveness of Community Alert and Neighbourhood Watch Schemes<sup>34</sup> with a view to increasing their effectiveness. Since 1985, An Garda Síochána has developed 1,345 Community Alert Schemes (rural schemes), 2,345 Neighbourhood Watches Schemes (urban schemes) and a number of business watch and specialist schemes such as Campus Watch.<sup>35</sup> However, the Report noted that there are very few Garda metrics that measure the success of schemes and the Inspectorate was unable to establish if schemes are actually operating in crime hot-spots and in the right places and whether crime in the areas where schemes are operating is increasing or decreasing.<sup>36</sup> Thus, it was recommended that An Garda Síochána “conducts an analysis of crime hot-spots to identify priority areas for relaunching dormant schemes or developing new ones”.

Finally, a relatively simple and inexpensive form of target-hardening which could be introduced in Ireland is a large-scale scheme of property-marking. The Inspectorate found that property marking had not really progressed as a concept in Ireland, with CPOs reporting that there is limited equipment made available to do this and that such equipment is not provided from central budgets.<sup>37</sup> The Inspectorate noted that property marking serves two purposes, that is, deterring criminals from stealing property that may be traced back to the scene of a crime and secondly, enabling the police to return any recovered property.<sup>38</sup> Initiatives to encourage property marking identified by the Inspectorate include provision of sponsored ultraviolet marker pens to neighbourhood watch schemes or making electronic marking machines available at Garda stations. The Inspectorate recommended that An Garda Síochána “promotes property marking initiatives through local Neighbourhood Watch and

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<sup>34</sup> These schemes run in rural and urban areas, respectively.

<sup>35</sup> Above, fn. 29, Part 1 at 6.

<sup>36</sup> Above, fn. 29, Part 1 at 5.

<sup>37</sup> Above, fn. 29, Part 1 at 7.

<sup>38</sup> Above, fn. 29, Part 1 at 7-8.

Community Alert schemes” and sponsorship opportunities should be considered to make this recommendation a reality.<sup>39</sup>

Crime prevention is already a clearly defined part of the role of An Garda Síochána. All Gardaí have a role in crime prevention and there are dedicated Crime Prevention Officers (CPOs) within each Division within An Garda Síochána. CPOs “are trained to encourage, promote and advise on crime prevention to both the private and business community”.<sup>40</sup> Moreover, it must be acknowledged that crime prevention is a recognised element of Operation Thor. For example, the “Lock Up, Light Up” public awareness campaign ran in the winter months of 2016 to encourage people to take extra measures to secure their homes in the dark winter evenings.<sup>41</sup> Further, part of the Operation Thor projects which targeted prolific offenders in specific areas also included the provision of advice to local residents via advice leaflets and crime prevention information. However, greater State and Garda resources need to be targeted at the kinds of focused preventative measures posited by situational crime prevention and highlighted in the Garda Inspectorate Report. Although the resources required to research the best approach to implementing such measures in Ireland, as well as the costs of running these interventions and monitoring their effectiveness are not insignificant, measures such as those discussed here hold the greatest potential to deliver meaningful changes in levels of domestic burglary in Ireland.

## **Conclusion**

The 2015 Act is a perfect example of reactionary and ineffective law-making. Although there was a clear need to tackle domestic burglary, this legislation was not the way to achieve it and, perhaps unsurprisingly, anecdotal evidence to date suggest that its practical effects have been virtually non-existent. Tackling domestic burglary requires more than sound bites and token legislative measures. Instead, significant resources must be devoted to the creation of effective practical operations which seek to tackle the problem of domestic burglary at its

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<sup>39</sup> Above, fn. 29, recommendation 1.9.

<sup>40</sup> An Garda Síochána, “Crime Prevention is Everyone’s Business”: Available at: <http://www.garda.ie/Controller.aspx?Page=1921> (Last Accessed: 2<sup>nd</sup> July 2017). The work of CPOs is coordinated by the Garda Crime Prevention National Centre of Excellence (GCPNCE) in Harcourt Street in Dublin 2.

<sup>41</sup> “Lock Up, Light Up- Burglary Prevention Initiative”: Available at: <http://www.garda.ie/Controller.aspx?Page=19292> (Last accessed: 2<sup>nd</sup> July 2017).

root. Operation Thor has to some extent achieved this but is in itself also reactionary, focussing more on arresting prolific offenders than devising effective preventative solutions. It is with the latter that the prospect of real impact is created. As the saying goes, “prevention is better than cure”. This should be the motto for interventions and serious consideration should be given to implementing the prevention recommendations highlighted by the Garda Inspectorate Report if the crime of domestic burglary is to be effectively tackled in this jurisdiction.