

Criminal Justice (Burglary of Dwellings) Bill 2015 Regulatory Impact Analysis

1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Justice and Equality	Title of Legislation: Criminal Justice (Burglary of Dwellings) Bill 2015
Stage: Publication of Bill	Date: July 2015
Related Publications: Criminal Justice (Burglary of Dwellings) Bill 2015	
Available to view or download at: www.oireachtas.ie (when published)	
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<p>What policy objectives have been pursued?</p> <p>The more effective prosecution and sanctioning of burglary offences.</p> <p>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.</p> <p>1. Do nothing.</p> <p>2. Introduce legislation to address concerns regarding prolific burglars.</p> <p>Preferred Option:</p> <p>Introduce legislation to address concerns regarding prolific burglars receiving bail in circumstances where multiple cases are pending and to provide for consecutive sentencing in appropriate cases.</p>	

OPTIONS			
	COSTS	BENEFITS	IMPACTS
1.	No direct costs, but negative impacts of repeat offending continue.	None.	Garda concerns regarding prolific offenders not addressed. Repeat offending continues.
2.	Only cost arising is that of processing legislation through to enactment.	Bail law modified so that prolific offenders can be denied bail in appropriate cases. Burglary law modified so that consecutive sentences can be applied in appropriate cases.	Gardaí enabled to tackle prolific burglars more efficiently and effectively.

2. Policy Context and Objectives

Central Statistics Office statistics show that there were 28,583 recorded Burglary and related offences in the 12-month period ending in Q1 2015, representing an increase of 2,113 (+8.0%) when compared with the corresponding period ending in 2014. A broad review of the criminal justice system's response to the problem of burglaries is being carried out. There are concerns that the criminal justice system may not be taking full account of the seriousness of burglaries of private dwellings. Even if the monetary loss is relatively minor, the fact that their home has been violated can be quite traumatic for the victims and there is a danger that in every case, a simple burglary of a house may escalate into offences against the person. That review has highlighted that a significant number of burglaries is committed by a relatively small of offenders and targeting these prolific offenders has the potential to significantly reduce the harm being caused. In the context of the review, two issues which can be ameliorated by legislative provisions have been identified. One relates to prolific offenders who continue to receive bail despite being arrested and charged for further burglaries multiple times while on bail. The other relates to the fact that relatively short sentences are imposed when multiple burglary offences are taken into account.

A decision to grant bail in a particular case is a matter for the court, which is, subject only to the Constitution and the law, independent in the exercise of its judicial functions. There is a constitutional presumption in favour of bail because, in the eyes of the law, a person is innocent until proven guilty. The provisions of the European Convention on Human Rights also restrict the extent to which the right to bail can be limited.

Prior to the Sixteenth Amendment of the Constitution, bail could be refused essentially only on the grounds that the accused person would be likely to abscond or interfere with witnesses or evidence. Section 2 of the Bail Act 1997, which gave effect to the Sixteenth Amendment of the Constitution, permits the courts to refuse bail to a person charged with a serious offence where refusal of bail is reasonably considered necessary to prevent the

commission of a serious offence by that person. A “serious offence” is an offence listed in the Schedule to the Bail Act that is punishable by at least five years imprisonment. All offences under the Criminal Justice (Theft and Fraud Offences) Act 2001 are listed in paragraph 17 of the Schedule to the Bail Act and are therefore serious offences for the purposes of the Act. The experience of the Garda Síochána has been, however, that prolific burglars with numerous previous convictions and numerous pending cases often obtain bail in the face of Garda objections.

3. Identification and Description of Options

The following options were considered:

1. Do nothing.

2. Introduce legislation to:

- a) address the bail problem by providing that previous convictions for domestic burglary coupled with pending charges shall be considered as evidence that an accused person is likely to commit further domestic burglaries. This provision will leave the courts all necessary discretion to vindicate the constitutional rights of an accused person in relation to bail.
- b) Provide for the related problem of concurrent sentences being handed down for multiple burglaries. Information from the Garda Síochána indicates that when a suspect is charged and bailed for burglary he will readily commit further offences in the knowledge that multiple offences may be taken into account when being sentenced for the initial offence and a single concurrent sentence applied. This head requires that any sentence of imprisonment imposed for a second or subsequent burglary committed within a twelve month period shall be consecutive to any previous sentence of imprisonment.

The provisions of this Bill are proportionate. While they affect the constitutionally guaranteed right to liberty set out in Article 40.4.1 - “No citizen shall be deprived of his personal liberty save in accordance with law” - they are restricted in their application to persons who have been convicted in the previous five years of burglary of a dwelling and who stand charged or convicted of multiple current burglaries of dwellings.

The importance of the dwelling is recognised by Article 40.5 of the Constitution which states “The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law”. The courts have recognised that -

“The offence of burglary committed in a dwellinghouse is in every instance an act of aggression, an attack on the personal rights of the citizen as well as a public crime and is a violation of him or her.”

- Court of Criminal Appeal (Hardiman J) in *Director of Public Prosecutions v. Barnes* [2006] IECCA 165

Having considered the options examined in the review, the Minister considers that option 2 is the optimal choice.

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

Option 1. Do nothing

To do nothing would be to ignore the public interest and Garda concerns regarding prolific burglars.

Option 2. Introduce legislation to address concerns regarding prolific burglars

The costs are those of developing and enacting legislation. The legislation will enable the Gardaí to address particular problems they have identified in the criminal justice system so that prolific burglary offenders can be refused bail in appropriate cases. Burglary law will also be modified so that consecutive sentences can be applied in appropriate cases.

5. Consultation

The Bill has been drafted in consultation with the Office of the Attorney General and the Garda Síochána.

The General Scheme of the Bill was referred to the Joint Oireachtas Committee on Justice, Equality and Defence on 15 April 2015. The Committee decided on 6 May 2015 that pre-legislative scrutiny was not necessary.

6. Enforcement and compliance

The provisions of the Bill concern the criminal law. Enforcement is therefore a matter for the Garda Síochána, the Director of Public Prosecutions and the courts.

7. Review

The new provisions will be kept under ongoing review as to their practicality and workability as a matter of course.

8. Publication

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

July 2015