

Domestic Violence

In 2013, the Commission published a [Report on Aspects of Domestic Violence \(LRC 111-2013\)](#) (3rd Programme of Law Reform, Project 24) which followed the publication of its [Issues Paper on Domestic Violence: Bail \(LRC IP 1-2013\)](#) and [Issues Paper on Domestic Violence: Harassment \(LRC IP 2-2013\)](#). The Report examines two specific issues concerning the current law of domestic violence.

The first issue dealt with in the Report is whether current bail law as it applies to domestic violence cases should be retained or reformed. In particular, the question raised is whether, when a person is charged under the Domestic Violence Act 1996 with breaching a barring order or safety order, should it be made possible to refuse bail on the basis that the person might commit another offence while on bail. This is called refusing bail for preventative reasons. The Constitution allows bail to be refused on this ground if a person is charged with a “serious offence” and where it is reasonably considered necessary to prevent the commission of another serious offence by that person while on bail. The Bail Act 1997 defines a “serious offence” as an offence that must carry at least 5 years imprisonment on conviction and which is also specifically listed in the Bail Act 1997 itself. The offence of breach of a domestic violence order currently carries a maximum sentence of 12 months imprisonment. The Report discusses whether the law should be reformed to make it a serious offence.

The Report recommends that the current law should be retained and that the offence of breach of a domestic violence order should not be changed into an offence that could carry 5 years imprisonment on conviction. Among the reasons listed in the Report for this conclusion is that such a change would not be in keeping with the general purpose of the Domestic Violence Act 1996, which is to ensure that victims of domestic violence can get access to effective protection through barring orders and safety orders. This could be put at risk if breach of an order was made a very serious criminal offence. The Commission’s Report also notes that the current law on bail allows a court to impose conditions that prohibit a person from making contact with the person who has applied for a barring order or safety order and that if the accused breaks any such condition their bail can be revoked. The Commission also recommends that there should continue to be a clear policy of prosecuting not only breaches of barring orders and safety orders but also that if this is accompanied by an underlying serious offence, such as assault causing harm or harassment, this should be prosecuted also.

The second issue discussed in the Report is whether the offence of harassment in the Non-Fatal Offences Against the Person Act 1997 addresses sufficiently the problem of stalking in domestic violence cases. The Report notes that most prosecutions for harassment involve domestic cases, and usually involves stalking by former spouses and partners. The current law requires that the harassment must involve “following, watching, pestering, besetting or communicating” and must be done “persistently.” The Commission’s Report points out that the requirement of “persistence” means that a person can be convicted of harassment where stalking involves a single long episode of continuous following or pestering. By contrast, under English law the harassment or stalking must involve at least two separate types of conduct. The Report concludes that the current requirements in the 1997 Act impose appropriate legal thresholds and standards that should be met in order to convict a person of stalking. The Report also notes that some

emerging types of unacceptable behaviour, such as the use of social media to post fake or misleading information, may not come within the current law on harassment. The Commission concludes that this and other forms of cyber-bullying should be examined as part of the project on that topic in its Fourth Programme of Law Reform: see heading 4.4, above.