

CONTEMPT OF COURT: APPLICATION FOR DISCHARGE, AUTOMATIC EARLY RELEASE, AND HOME DETENTION CURFEW

The Law Commission's contempt of court project

The Law Commission of England and Wales has published a consultation paper that sets out provisional proposals for reform of the law of contempt of court. The proposed reforms aim to clarify the law of contempt and improve its consistency, coherence, and effectiveness.

The [consultation paper](#) covers a wide range of issues and sets out provisional proposals for reform. The [summary](#) provides an overview of all of the topics covered in the consultation paper.

This document draws together parts of the consultation paper which may be of most relevance to those who have been committed to prison for contempt of court and their legal representatives. It may also be of interest to legal practitioners generally.

With respect to each of the issues identified in this document as most relevant, we provide:

- Extracts from the consultation paper and summary consultation paper summarising the issues.
- Paragraph references and consultation question numbers, for ease of reference.

Most relevant parts of the consultation paper

Under our provisional proposals, committal to prison would remain a sentencing option where there has been a finding of contempt. However, the consultation paper makes a series of provisional proposals which would affect those who are imprisoned for contempt, including reforming the law relating to applications to discharge, early release, and Home Detention Curfew (HDC).

Application for discharge

Currently, contemnors are entitled to apply for discharge at any time during their time in prison. This process is known as “applying to discharge a committal order” and is provided for in the Contempt of Court Act 1981.¹ If the application is successful, the applicant may be released from custody. Courts have discretion when considering applications and will take account of various factors before reaching a decision. The Court of Appeal has said that the court will consider various factors when determining applications, which include:

- Whether the contemnor shows remorse for their conduct.
- Whether the contemnor has demonstrated that they will not commit a further breach if they are discharged early.

¹ Contempt of Court Act 1981, ss 12(4) and 14(1).

- Whether releasing the person from custody early would prejudice the interest of the state in upholding the rule of law.
- Whether the punishment the person has experienced is proportionate to the contempt.
- The length of time already served in prison in relation to the full term imposed and the term required to be served before automatic release.
- Whether the contemnor has, as much as they reasonably can while in prison, put in place proposed living and other arrangements which would minimise the risk of committing any further breach in the event of early discharge.²

The problem, the consultation paper outlines, is that these factors have been set out in case law which is not easily accessible to laypeople, defendants, or those already imprisoned for contempt. In addition, it is not clear how courts exercise their discretion when considering applications, for example, whether some of these factors are more important than others. The way different judges assess applications may also vary, leading to inconsistent outcomes. The consultation paper reaches a provisional view that the criteria for assessing applications for discharge should be clearly set out in statute or official guidance. This would bring some transparency and consistency to the process. However, the consultation paper also recognises that there should be some flexibility for judges to determine each application based on the facts and circumstances surrounding the particular contempt. Therefore, if a list of factors is developed, it should not be exhaustive. If a court thinks that it is important to take into account factors which do not appear on the list, they should be able to do so. We provisionally propose that a list which sets out the factors above should also include a provision which allows courts to take into account any other factor it thinks is relevant.

Relevant paragraphs: 10.96-10.102

Consultation Question: 109

Another problem identified in the consultation paper is that it is not clear whether legal aid is available for a contemnor who applies to discharge a committal order. There should be more certainty about eligibility for legal aid for applications to discharge committal orders. The consultation paper concludes that, because contempt proceedings may result in imprisonment, applications to discharge committal orders should be considered criminal proceedings for the purposes of legal aid. We provisionally propose that the eligibility for legal aid in these circumstances should be expressly stated either in legislation or in a policy.

Relevant paragraphs: 9.14-9.20

Consultation Questions: 93 and 94

Automatic early release

Those committed to prison for contempt are entitled to be unconditionally released after serving half of their sentence. When we published the consultation paper, this reflected the

² These factors were set out in *CJ v Flintshire Borough Council* [2010] EWCA Civ 393, [2010] 2 FLR 1224 at [21].

position for most criminal offenders who were entitled to automatic release after serving half of a determinate (fixed length) prison sentence. We provisionally concluded that there was no need for any change to the position for contemptors.

However, since the consultation paper was published, the law relating to automatic release for criminal offenders has changed. From 10 September 2024, eligible criminal offenders are now required to serve 40 per cent of their sentences (not 50 per cent, as before).³ There has been no corresponding change to the requirement for contemptors to serve 50 per cent before being eligible for automatic early release.

Relevant paragraph: 10.89

Home detention curfew

Home Detention Curfew (HDC) is widely available for criminal offenders and allows those serving sentences of between 12 weeks and four years to be released from custody up to 180 days before the automatic early release date, and placed on certain curfew conditions.⁴ The requirements are that an offender must have served a minimum of 28 days of their sentence (this includes time spent on remand) and at least 14 days must have been served in prison after sentencing.⁵ HDC is not available for those imprisoned for contempt.

The consultation paper concludes that contemptors are disadvantaged when compared to other prisoners as a contempt prisoner cannot be considered for release on HDC at all and (unless an application for early discharge succeeds) will serve their sentence until they are eligible for automatic early release, whereas other prisoners will be eligible to apply to be released on HDC 180 days before they are eligible for automatic early release. We provisionally propose that the law should be reformed so that contemptors who have been imprisoned for 12 weeks or more should be eligible for early release on HDC up to 180 days before their automatic early release date.

Relevant paragraphs: 10.90-10.95

Consultation Question: 108

How to respond to the consultation

We welcome responses to the questions posed in our consultation paper. The easiest way to do this is to access the consultation questions using our [online form](#). You can navigate to the most relevant sections to answer the consultation questions. You do not need to answer all questions to submit a response. Alternatively, you can email us your answers at contempt-of-court@lawcommission.gov.uk.

³ Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024.

⁴ Criminal Justice Act 2003, ss 246, 243A(3) and 244(3).

⁵ Criminal Justice Act 2003, ss 246(2) and 246(4)(ha)(i).