Title:	Impact Assessment (IA)
Contempt in the face of the court **IA No:** LAWCOM0017	**Date:** 17/10/2012
Lead department or agency: Law Commission	**Stage:** Consultation
Other departments or agencies: Ministry of Justice	**Source of intervention:** Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Criminal law team: 020 3334 0200

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£m			No	NA

What is the problem under consideration? Why is government intervention necessary?

"Contempt in the face of the court" is disruptive conduct in the course of court proceedings. It is a wide offence, and there is no comprehensive list of all forms of contempt in the face. The normal procedural rules relating to criminal offences do not apply, and the current laws and procedures for contempt in the face are unclear. There is uncertainty and inconsistency in different courts' approaches, procedures and sanctions. It is not clear whether alleged contemnors have the right to bail or to legal advice. Intervention is required to reduce the potential for unfair treatment and to limit the scope for wasteful cases and appeals. There are concerns that certain current laws and procedures may not be compliant with the European Convention on Human Rights (ECHR).

What are the policy objectives and the intended effects?

The policy objectives and intended effects are:

1. to clarify the law on contempt in the face of the court by removing uncertainties, filling the gaps in the existing provisions and consolidating the law on contempt in the face of the court;
2. to clarify the court procedures for dealing with contempt in the face of the court and to ensure that they are fair, ECHR compliant and efficient, with more effective use of court time and resources;
3. to increase public confidence in the criminal justice system by demonstrating that courts can deal effectively with contempts, while at the same time respecting the rights of defendants.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 - do nothing.

In Option 1 we put forward several stand-alone reform proposals relating to separate areas of law or procedure. Policy 1A: reform the powers of the Crown Court and the magistrates' courts to deal with contempt in the face. As an alternative to policy 1A, Policy 1B would reform the powers of the Crown Court only. Policy 1A is our preferred approach. Policy 2: Give alleged contemnors (in either court) the right to consult a legal representative. Policy 3: Reform the procedural powers of the Crown Court. Policy 4: Give alleged contemnors in the Crown Court the right to bail, subject to certain exceptions. Policy 5: Reform the sanctions which the magistrates' courts can impose for contempt. Our preferred outcome is that all options are implemented to ensure effective reform of all areas of law and procedure. However, it should be noted that the policies do not overlap and that they could be implemented independently of one-another.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes/No	**< 20** Yes/No	**Small** Yes/No	**Medium** Yes/No	**Large** Yes/No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

Summary: Analysis & Evidence

Policy Option 1

Description: Reform of both the Crown Court's and the magistrates' courts' powers and procedures

FULL ECONOMIC ASSESSMENT

Price Base Year 11/12	**PV Base Year** 2012	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low		3		
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

No costs that can be monetised.

Other key non-monetised costs by 'main affected groups'

Transitional: Training costs: Judicial College, Her Majesty's Courts and Tribunal Service (HMCTS). Expected to be small or negligible. An initial spike in appeals (HMCTS, Legal Services Commission (LSC)). This will be less expensive if 1B is adopted instead of 1A.
On-going: Some additional bail hearings: HMCTS, LSC. Not possible to quantify but cost is expected to be minimal (and will be offset by savings on custody costs when fewer individuals are denied bail).

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

No benefits that can be monetised.

Other key non-monetised benefits by 'main affected groups'

HMCTS, LSC: law and procedures will be more certain: less time and money wasted on legal argument. Prison Service: possibility of suspended sentences in the magistrates' courts: flexibility and less expenditure on prison costs. Increased certainty and ECHR compliance: less risk of ECHR claims, with linked costs. Increased certainty in the law for alleged contemnors, courts, and members of the public. Consistency between the Crown Court and magistrates' courts. Increased public confidence in the courts system.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

We have assumed that any training costs will be small or negligible. We have assumed that the new powers will not be significantly broader than the existing powers, and that the new statutory procedures and rights for contemnors are largely codifications of existing practice.

A summary of the potential costs and benefits of each proposal is given at page 22.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:						**In scope of OIOO?**	**Measure qualifies as**
Costs:	**£0**	**Benefits:**	£0	**Net:**	£0	No	NA

EVIDENCE BASE

Introduction

Background

1. This document forms part of a suite of four impact assessments relating to Law Commission's Consultation Paper No 209, Contempt of Court. The four separate areas are as follows:

(1) contempt by publications;

(2) publication, publishers and the new media;

(3) contempt by jurors;

(4) contempt in the face of the court.

2. Although the different areas of the consultation paper (and of the impact assessments) do not all overlap, there are some common themes throughout our proposals which indicate the need for reform. First, many areas of the law or procedure on contempt are unclear and this can result in a risk of unnecessary challenges and litigation, with associated cost to the criminal justice system. In addition, there is a risk of reputational loss to the justice system, and of unfairness to publishers, jurors, defendants, court staff and others. There is an additional risk of financial wastage (for example, if the law on contempt is ineffective in preventing juries having to be discharged there is a consequent cost of retrials). Second, reform is necessary to ensure that the laws and procedures on contempt are ECHR compliant. Reform will ensure that the rights of defendants, jurors, publishers and court staff are protected, and that the risk of appeals on human rights grounds (with the consequent costs they entail) is reduced. Finally, reform is necessary in order to ensure that the contempt laws can deal effectively with modern media and can take account of developments in technology, such as easy access to online material. In this way, our reforms will future proof the law on contempt.

3. This impact assessment concerns our proposals for reform of the law and procedures relating to contempt in the face of the court. It focuses on the Crown Court and the magistrates' courts. Although the Criminal Procedure Rule Committee has made important progress in clarifying the position, the substantive law remains unclear and the Committee itself referred this topic for consideration by the Law Commission as an item in the Eleventh Programme.

Problem under consideration

4. There is no comprehensive definition of "contempt in the face of the court". It concerns "some form of misconduct in the course of proceedings, either within the court itself or, at least, directly connected with what is happening in court". Examples include assaulting people in court, insulting court officials, or disruptive behaviour.

Table 1: Current law and the associated problems

Current law	Key features and associated problems
1. The Crown Court's power to deal with contempts in the face of the court derives from its inherent jurisdiction and from common law, and magistrates' courts powers to deal with this form of contempt derive from section 12 of the Contempt of Court Act 1981 ("the 1981 Act").	There is inconsistency between the Crown Court and the magistrates' courts, as their powers derive from different sources. The mental element which someone must have in order to commit this offence is unclear. The offence in the magistrates' courts is under-inclusive – a court has held that "insults" do not include "threats". Section 12 of the 1981 Act contains several offences.
2. There is currently no statutory provision (for either the Crown Court or the magistrates' courts) requiring that contemnors be given access to legal advice and to their families.	Although the Criminal Procedure Rules indicate that contemnors should be given access to a lawyer (and this seems to be what happens in practice), there is no statutory provision which gives contemnors the right to seek legal advice and to have a friend or family member informed about their detention. If alleged contemnors are not given access to legal advice, there is a risk that the proceedings may breach article 6 of the ECHR, which guarantees the right to a fair trial.
3. The powers of the Crown Court when dealing with contempt in the face are unclear.	It is not clear whether the Crown Court has the power to suspend an order of committal for contempt. It is also unclear whether the Crown Court can revoke an order of committal and order the discharge of a contemnor. The Crown Court's powers are not defined in statute.
4. There is no statutory right to bail for people who commit this kind of contempt in the Crown Court	The Court of Appeal assumed there is the possibility of bail in the case of *Jales* ([2007] EWCA Crim 393, [2007] Criminal Law Review 800), and the Law Commission thinks this must be the case, but bail is not necessarily granted in all cases. There is no case law directly on point.
5. Magistrates' courts do not have the power to suspend an order of committal.	Magistrates' courts currently have the power to sentence contemnors to up to one month's detention and/or a fine not exceeding £2,500. There is no power in the magistrates' courts to suspend an order of committal. This reduces their flexibility and may lead to unnecessary expenditure on prison places.

Rationale for intervention

5. The conventional economic approach to government intervention, to resolve a problem, is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging consumers) or if there are strong enough failures in existing interventions (for example, waste generated by misdirected rules). In both cases the proposed intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributional reasons (for example, to reallocate goods and services to more needy groups in society).

6. In the case of contempt in the face of the court, the lack of clarity in the law and gaps in procedural guidance have introduced uncertainty and inconsistency in the approaches adopted by the legal process. Intervention is required to reduce the potential for unfair treatment and to limit the scope for costly appeals and ultimately facilitate a more efficient system.

7. In addition, the current uncertainty risks breaches of defendants' human rights under the ECHR, including the right to be free from arbitrary detention, the right to be tried according to law which is known and accessible, and the right to a fair trial. An improved procedure removes the risk and ensures that we are ECHR compliant.

Policy objectives

8. The policy objectives are:

1) to clarify the law on contempt in the face of the court;
2) to consolidate the law on contempt in the face of the court;
3) to clarify the court procedures for dealing with contempt in the face of the court and to ensure that they are fair, ECHR compliant and efficient;
4) to increase public confidence in the criminal justice system.

Scale and context

9. Offender Management Caseload statistics[1] indicate the number of individuals received into prison establishments for "contempt of court" each year:

[1] http://www.justice.gov.uk/downloads/statistics/mojstats/offender-management-caseload-statistics-2008-2.pdf?type=Finjan-Download&slot=0000013B&id=0000053A&location=0A640210 (last visited 27 Nov 2012).

Table 2: Individuals received into custody each year for contempt of court

Year	Number of individuals received into custody for contempt of court
2004	435
2005	384
2006	392
2007	297
2008	168

10. This data is not broken down into the different forms of contempt (that is, it is simply the number of individuals sent to prison, by any court, for any type of contempt offence). Prison statistics for later years do not provide the same data. The statistics indicate that the number of custodial sentences handed out for contempt had been decreasing. Although these figures do not accurately describe the number of prison sentences specifically for contempt in the face of the court, they have been included here because they give an indication of the scale of contempt generally.

11. There is no statistical information available on the number of contempts in the face of the court per year in England and Wales. Whenever the available statistics mention contempt, the data is on contempt of court generally, and not the specific contempt of contempt in the face. The Law Commission has, therefore, undertaken a survey in April/May 2012 of judges who sit in the Crown Court and district judges who sit in the magistrates' courts in England and Wales. This survey was undertaken in order to get a better understanding of some of the issues that face some judges in cases of contempt in the face of the court. It is subject to a number of limitations and qualifications, which we outline below.

12. The surveys were sent out to samples of judges, with no emphasis on a particular age, gender or geographical region.

13. An electronic survey was sent to 100 judges who sit in Crown Courts across England and Wales and who attended a compulsory training day at the Judicial College. Forty three complete responses were collected.

14. An electronic survey was also sent to all 145 District Judges (magistrates' courts) across England and Wales, and 52 complete responses were collected.

15. It should be noted that the response rates for both surveys are relatively low. It is therefore not certain that the results are representative for judges across the country. The data should be interpreted with caution, and we have avoided drawing any broad conclusions from the results.

16. In both cases, respondents were asked to outline how many contempts they had been faced with over the previous 12 months, May 2011 to May 2012 period.

17. The results of these surveys give a snapshot of how the law on contempt in the face of the court works in practice and give some indication of the issues arising in such cases. However, again, we do not suggest that they are representative of incidents of contempt in the face of the court throughout the country. The survey was designed to elicit some information about the frequency and character of proceedings for contempt in the face of the court for each individual judge who responded and to identify any areas of the current law which may not be working well. They are included here in order to give readers an idea of how often judges who responded to our survey have to deal with contempt in the face of the court, and what form these contempts may take.

Crown Court

18. In the Crown Court, 7 (16%) respondents to this survey had dealt with alleged contempts in the face of the court during the last 12 months, with 8 instances of contempt in total. In five of those instances the alleged contemnor was a member of the public. The alleged contempts involved either shouting, abuse and obscenities, the filming or recording of proceedings or other disruptive behaviour (such as refusing to attend proceedings, or deliberately disrupting proceedings in some way). Of these instances, 6 cases resulted in a sentence being imposed. Three of these cases resulted in a custodial sentence, and 3 attracted no penalty.

19. The Crown Court judges who responded were asked to outline how they had dealt with the alleged contempt (the number of responses exceeds the number of contempts because more than one course of action could be taken in relation to each contempt).

Table 3: Judges' responses to contempt in the face of the Crown Court, May 2011 to May 2012[2]

Response to contempt	**Number**
Immediate hearing	1
Cannot recall	1
Contemnor removed from court/ordered to leave	1
Individual juror was discharged	1
Hearing after adjournment	2
Allowed the contemnor legal advice	2
Referred the case to another judge	2
Contemnor apologised	2
TOTAL	12

[2] Survey responses. No respondents selected the following options: "Remanded in custody"; "Ordered a police investigation"; "Contemnor told/warned to stop"; "Court rose"; "Ignored it"; "Contemnor left voluntarily"; "Contemnor left and could not be apprehended"; "Entire jury was discharged".

Appeals

20. There is no official data on the number of findings for contempt in the face of the court which are appealed from the Crown Court and the survey did not collect this information. We have used databases of reported cases and transcripts of cases to work out the number of appeals.

Table 4: Number of appeals to the Court of Appeal against a finding of contempt in the face, 2007 – 2012[3]

Year	Number of Appeals
2007	2
2008	1
2009	1
2010	0
2011	3
2012	1
Total	**8**

Magistrates' courts

21. In magistrates' courts, 31 respondents to our survey had dealt with instances of alleged contempt in the face of the court during the period May 2011 to May 2012. Respondents reported at least 82 instances of contempt in total.4 Six respondents had dealt with 5 or more instances of contempt. The defendant was the alleged contemnor in 55 (67%) instances reported, and the allegations overwhelmingly involved obscenities, abuse, shouting or otherwise disruptive behaviour, with 72 (88%) cases featuring allegations of this nature.

22. Respondents were asked to outline how they had dealt with the alleged contempt (the number of responses exceeds the number of contempts because more than one course of action could be taken in relation to each contempt).

Table 5: responses to contempt in the face of the magistrates' courts[5]

Response	Frequency
Immediate hearing	10
Remanded in custody	20
Hearing after adjournment	12
Allowed the alleged contemnor legal advice	30
Ordered a police investigation	1
Referred the case to another judge	3
Not applicable	0
Other	36
Total	112

[3] Casetrack is an online database of judgments and reported cases. We searched Casetrack for Court of Appeal cases mentioning "contempt in the face" – only relevant results included. Checked on 1 Oct 2012 – any 2012 cases reported after then will not have been included.

[4] The method used does not allow us to quantify a definitive number of contempts, because some judges responded that they dealt with "more than 5" contempts. This equates to a minimum of 82 contempts overall.

[5] Survey responses.

23. Responses given as "other" are examined more fully below**.**

Table 6: "other" responses to contempt in the face of the magistrates' courts[6]

Other response	**Frequency**
Apology	7
Removed from/left court	12
Warning	3
Police investigation	2
Court rose	4
Contempt ignored	4
Cannot recall	1
Miscellaneous	3
TOTAL	36

24. Respondents to our survey indicated that, in 17 of the 82 reported alleged contempts, the contempt was proved (in the other cases some other outcome occurred – for example, the court took no further action, or the contemnor apologised). Of those 17 cases, 12 had resulted in a custodial sentence, and 2 resulted in a fine.

Table 7: custodial sentences for contempt in the magistrates' courts[7]

Sentence	**Frequency**
7 days imprisonment	3
14 days imprisonment	4
21 days imprisonment	1
28 days imprisonment	3
30 days imprisonment	1
Total	**12**

Main groups affected by the proposed reforms

26. The main affected groups are:

(1) defendants;

(2) the public (including witnesses, jurors and friends and families of defendants and victims);

(3) Her Majesty's Prison Service;

(4) Her Majesty's Courts and Tribunals Service;

(5) the Crown Prosecution Service;

(6) the Legal Services Commission

(7) the judiciary;

(8) court custody officials.

[6] Survey responses.
[7] Survey responses.

Description of options

Option 0: Do nothing (base case)

25. This option would retain the existing law and procedures on contempt in the face of the court. The key features and problems with the current law were outlined in Table 1 above.

Option 1: Reform proposals

26. Option 1 is a package of reforms, made up of a number of separate reform proposals. Each proposal relates to one of the different areas of law outlined above. Our preferred outcome is that all our proposals are adopted. However, readers should note that, as the policy proposals do not overlap, each proposal could stand alone, and the different policy proposals could be implemented independently of one another.

27. Policy 1A and policy 1B are alternative proposals. We prefer policy 1A.

Policy 1A: Create a new statutory power for both the Crown Court and the magistrates' courts to deal with contempt in the face of the court

28. This proposal would introduce a new statutory power for both the Crown Court and the magistrates' courts to deal with contempt in the face of the court. It would replace the Crown Court's existing common law power and the magistrates' courts' powers under section 12 of the 1981 Act. This proposal would have the advantage of bringing about a large degree of consistency across magistrates' courts and the Crown Court. It would also have the advantage of avoiding the problems currently associated with section 12 of the 1981 Act, which include uncertainty over the mental element required to commit the offence and the exclusion of "threats".

29. We are not at this stage engaged in drafting, but we provisionally propose a statutory power to deal with intentional threats or insults to people in the court or its immediate precincts and misconduct in the court or its immediate precincts committed with the intention that proceedings will or might be disrupted.

30. The proposed power would:

(1) make clear where this kind of contempt of court can be committed;

(2) include threats by contemnors (unlike section 12 of the 1981 Act);

(3) make clear what mental element contemnors must have when engaging in the conduct which amounts to the contempt; and

(4) extend the protection of the court to any person having business in the court, which would include an officer of the court (such as a constable or security officer, an interpreter, probation officer), legal advisors, and friends and relations of witnesses and the accused.

Policy 1B: Create a statutory power for the Crown Court to deal with contempt in the face

31. This proposal would create a new power for the Crown Court to deal with contempts in the face of the court, but would leave the powers of the magistrates' courts (as set out in section 12 of the 1981 Act) intact.

32. A failure to reform section 12 of the 1981 Act would leave intact all the current problems with that section (outlined in Table 1 above).

Policy 2: Entitle alleged contemnors to inform a friend or relative of their detention, and to consult a legal representative

33. This new, tailored statutory provision would mean that, where the Crown Court or the magistrates' courts order an alleged contemnors immediate temporary detention, he or she will be entitled (if he or she requests) to have one friend, relative or other person told, as soon as is practicable, that he or she is being detained. It would also entitle an alleged contemnor to consult a legal representative in private at any time.

34. We believe that once detained some minimum rights ought to be afforded to the alleged contemnor. We are proposing that something akin to the rights available to a person who has been arrested and held in custody (to have someone told of the detention and to seek legal advice, under sections 56 and 58 of the Police and Criminal Evidence Act 1984) should apply.

35. Alleged contemnors will probably have been advised by the court, according to rule 62.5(2)(a)(vi) of the Criminal Procedure Rules, that they may seek legal advice. We have been told by a cell supervisor at a London Crown Court that courts routinely provide alleged contemnors with this opportunity. This proposal would put that right on a statutory footing, and ensure consistency across the court system.

Policy 3: A new statutory provision covering the procedural powers of the Crown Court

36. This proposal would put on a statutory footing the existing procedural powers of the Crown Court when dealing with contempt in the face of the court.

37. It would give the Crown Court the following specific statutory powers:

(1) to require an officer of the court or a constable to take an alleged contemnor into custody for the purposes of immediate temporary detention;

(2) following a finding of contempt, to impose a fine and/or a term of imprisonment;

(3) to suspend an order of committal; and

(4) to revoke an order of committal and to order the discharge of a contemnor.

38. The first and second powers already exist in practice (and our proposal would simply put them on a statutory footing). There is uncertainty about whether the Crown Court has the power to suspend an order of committal. The practice relating to the fourth power outlined above (that is, the power of the Crown Court to revoke an order of committal and to discharge the contemnor) is confused. In addition to clarifying the powers of the Crown Court and ensuring consistency across different courts, this policy would ensure that the Crown Court was able to consider a wide range of sentencing options. This would provide flexibility for the courts.

Policy 4: A statutory provision relating to bail for alleged contemnors subject to immediate temporary detention in the Crown Court

39. This proposal provides that if the Crown Court orders an alleged contemnor's immediate temporary detention, then he or she should be brought back to court no later than the end of that court day when the court shall grant bail, conditionally or unconditionally, unless one of the exceptions to the right to bail in the Bail Act 1976 is made out.

40. We regard the right to bail as a very important part of the criminal justice system. This policy would ensure consistent treatment of alleged contemnors in different courts, and would ensure that the law is ECHR compliant. The policy could also lead to financial savings, as fewer alleged contemnors are held in custody.

Policy 5: Give magistrates' courts the power to suspend an order of committal

41. This proposal would give magistrates' courts the power to suspend an order of committal made under section 12 of the 1981 Act. This would allow the magistrates' courts to be flexible in their approach to sentencing, and would help to ensure that the correct sentencing options are available for the whole range of possible contempts.

Cost and benefit analysis

42. This impact assessment identifies both financial and non-financial impacts on individuals and the State. The costs and benefits of each option are compared to the "do nothing" option. Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms of any potential reforms. However, there are important aspects that cannot sensibly be monetised. This is particularly so for the criminal law, which can have a profound impact on both the individual and society. As a result, financial benefits are analysed alongside non-financial benefits (relating to, for example, human rights concerns and public perception of the justice system).

43. Where possible we have spoken to stakeholders to inform our view of the likely impact of our proposals and have used this as the basis for our calculations.

44. When calculating any Net Present Values for the impact assessment, a time frame of 10 years is generally used. We assume that the transitional costs and benefits occur in the current year (2012), except where we state otherwise, and ongoing costs and benefits accrue in years 1 to 10. A discount rate of 3.5% is used in all cases in accordance with Treasury guidance.

Option 0: Do nothing (base case)

Costs

45. We explained the problems in the existing law above, in Table 1. These problems lead to unfairness for alleged contemnors, victims of crimes and court staff. The lack of clarity in the law may also mean that excessive costs are being incurred through unnecessary legal argument.

Benefits

46. Doing nothing would avoid the costs of reform.

47. Because the do-nothing option is compared against itself, its Net Present Value is zero.

Option 1: Reform proposals

48. We put forward five stand-alone proposals which were outlined above. This part of the impact assessment considers the costs and benefits of each of them in turn. Before we do this, however, we note that some of the transitional costs are relevant to all or most of the five proposals. These are the training costs for legal services providers and the judiciary.

Costs of the reform common to all proposals

49. For each of these proposal areas it may be necessary to provide judges and legal practitioners with some training on the new legislation.

50. Judges may require appropriate training and guidance about the new legal regime. Information provided by the Judicial College outlines the training requirements for judges. Judges are sent newsletters advising them of updates to law or procedure. Judges also attend a training day every year. If there is a significant new set of laws or procedures, judges may be required to attend special training course specifically on those reforms. Officials at the Judicial College confirmed that any extra training as a result of our proposals would be incorporated into existing programmes and publications and that little or no extra cost would, therefore, arise.

51. With regards to training legal professionals, we would assume that training in this area would not add significant cost or time to the training required by the Solicitors Regulation Authority and the Bar Standards Board in order for barristers and solicitors to maintain their practising certificates, as the reforms we propose do not represent a significant departure from laws and procedures with which legal professionals will already be familiar. Any minimal costs would be borne by the practitioners (or their employers) if they choose to undertake training to assist their work.

52. One overarching theme of our reforms is that they aim to make the law more intelligible and more clearly defined. As a result, there is a possibility that our reforms could lead to more actions against alleged contemnors for contempt in the face of the court, as judges may feel more confident in using the law. However, we think this is unlikely, as the most common types of disruptive behaviour are clearly covered by contempt laws.

Policy 1A: Create a new statutory power for both the Crown Court and the magistrates' courts to deal with contempt in the face of the court

Costs

Transitional costs

53. As with all reforms, there may be a small spike in appeals while practitioners and judges come to terms with the new law.

54. Most appeals from criminal proceedings in the Crown Court are heard by the Criminal Division of the Court of Appeal ("CACD"). There is no current data on the average cost of an appeal to the Court of Appeal. We do have the following data:

(1) The estimated cost of a day's sitting for the CACD was £16,635 in 2009-10. The estimated average cost to the legal aid budget for an appeal to the CACD was £5,000.[8] The cost for a prosecuting authority is not known but could be similar. The total cost would be £26,635 in 2009-10 figures. This equates to around £28,000 in 2011-12 figures. It includes legal aid costs and costs to the CPS. It does not include any private costs to the defendant and thus might be an underestimate.

55. In addition to the extra appeals from the Crown Court, there may be additional appeals from the magistrates' court. Appeals from criminal proceedings in the magistrates' courts usually go to the Crown Court, but a few appeals on a point of law go to the High Court (by way of case stated or by way of judicial review).

56. Material provided by the Ministry of Justice indicates that the cost of a sitting day in the Crown Court is around £2,000, plus legal aid costs of around £4,740 (for an average case).

57. We have taken £8,000 as a rough figure for a judicial review hearing, including court costs and defence and prosecution costs, but any individual case could vary a great deal from this estimate, and many would be dealt with on the papers and so cost less than this. We have taken the cost of an appeal to the Crown Court from the magistrates' courts as £1,500, assuming a hearing of 1 hour (no jury is empanelled), court costs of around £500, and combined prosecution and defence costs of £1,000.9

[8] The figure of £16,635 was supplied by HMCS Financial Management, 2009-10. The cost to the legal aid budget was also from HMCS.

[9] Impact Assessment for the Law Commission's report on the High Court's Jurisdiction in Relation to Criminal Proceedings (2010)). Those figures were based on information provided by the Royal Courts of Justice, plus unit cost of £608 to the Legal Services Commission – figure provided by the LSC). Time of 1 hour is rounded down from the average time taken for an appeal in the Crown Court stated in Judicial and Court Statistics 2010 page 97.

58. As an illustration of the number of appeals from the magistrates' courts to the Crown Court, the most recent criminal justice statistics show that, in the 12 months ending March 2012, 1,179,300 convictions were handed out in the magistrates' courts.10 The most recent quarterly court statistics indicate that, in the 12 months ending March 2012, the Crown Court received 13,171 appeals from the magistrates' courts.[11] This means that in those 12 months, 1.12% of convictions and sentences in the magistrates' courts were appealed to the Crown Court. This is representative of the pattern for a number of years.

Ongoing costs

59. The new power will cover the same range of cases as the existing offence: the number of cases prosecuted should in principle be the same as at present. The new power will simply clarify where the contempt of court can be committed and what mental element the defendant must have in order to commit the offence. We are proposing that the new power of the magistrates' courts should clearly prohibit threats, as well as insults. There is no data available on the number of threats in the magistrates' courts. The current power in section 12(1)(b) of the 1981 Act allows the courts to deal with those who "misbehave" in court, so the current gap in the law is limited to incidents which take place outside the courtroom. The Court of Appeal has held that a similar provision applying to county courts does include threats. We believe that our proposal is an important step towards clarity in the law and consistency between the different courts.

60. The new power would extend the protection of the court, on a clear statutory basis, to any person having business in the court, including court officers, lawyers and friends and relations of witnesses and the accused. In theory, this could lead to a small increase in the number of proceedings for contempt in the face of the court. However, it is our understanding that this is what already happens in practice – the new power would simply codify and make clear the judges' powers.

Benefits

61. There are possible financial benefits as there is less risk of time being wasted in court on unnecessary legal argument.

[10] See Table Q3a, http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/court-proceedings-0312.xls (last visited 1 Nov 2012).
[11] http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/csq-q2-2012/court-stats-tables-q2-2012.xls?type=Finjan-Download&slot=000001E5&id=000005E4&location=0A64420F (last visited 1 Nov 2012).

62. As explained above, the new power would be broadly similar to the existing practice. It is presumed that there will be savings in relation to time spent in court: the new power will clarify the law and bring about a large degree of consistency across magistrates' courts and the Crown Court (as well as other courts such as county courts, which are not the subject of this impact assessment). As a result, we anticipate that less time will be wasted on unnecessary legal argument as to the scope and nature of the offence, with a consequent reduction in money wasted on court costs and legal fees. Although it is impossible to quantify how much time (and therefore money) will be saved in practice, there is some data available on court costs. The average cost of a sitting day in the magistrates' courts is around £1,300, and in the Crown Court is around £2,000. The average legal aid cost of a general case in the Crown Court is £4,740.[12] The cost to a privately-funded defendant would be higher.

63. There are extensive non-monetised benefits to policy 1. The current powers for dealing with contempt in the face of the Crown Court are ill-defined. In responding to our survey, a number of judges sitting in the Crown Court expressed the opinion that the law as it stands is unclear. Several stated that codification would benefit the judges themselves, and members of the public (including witnesses and jurors), who "are generally not aware that contempt of court is a wide concept and goes beyond verbal outbursts".

64. In addition, policy 1 would go some way to bringing the law in line with the ECHR. Article 7 of the Convention requires that laws be clear, known and accessible. Codification of the Crown Court's powers, including clarification of the scope and mental element of the offence, would ensure that individuals were able to know and understand the boundaries of the offence. Option 1 would also reduce any attendant risk relating to a claim to the ECHR under article 7.13

65. The non-monetised benefits for the Crown Court will be extended to the magistrates' courts. In response to our survey, a number of judges sitting in magistrates' courts expressed their frustration with the confusion in the current law and practice. A clarification in statute of the magistrates' courts powers to deal with contempt in the face of the court may go some way to dealing with this.

66. In addition to the benefits outlined above, this policy would have the benefit of closing the gap in the current power of the magistrates' courts to deal with this form of contempt in section 12(1)(a). The new power would make it clear that threats by alleged contemnors were covered by the offence of contempt in the face of the court.

Assumptions and risks

67. We are assuming that the new power would not be significantly broader than the Crown Court's existing power. In particular, we are assuming that the extension of the power to protect any person having business in the court will not lead to a significant increase in the number of proceedings for contempt in the face of the court.

[12] These figures were provided by the Ministry of Justice. The figures are for 2010/2011, as updated figures for 2012 are not yet available.
[13] Article 7 states that "[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed".

68. The same assumptions and risks also apply to proceedings in the magistrates' courts. We are assuming that (with the exception of the addition of "threats" to the scope of the offence), the new power would not result in a significant increase in the number of cases, and that any increase in appeals would be small.

69. We are assuming that the new power will result only in a small (or even negligible) number of appeals. There is a risk that this is an underestimation, and that there would in fact be more appeals.

70. There is a low risk that these assumptions are incorrect, and that the new power turns out to be significantly broader than the existing power.

Policy 1B: A statutory power for the Crown Court to deal with contempt

Costs

71. The costs incurred in relation to the Crown Court are the same as for policy 1A under option 1.

Transitional costs

72. We expect a small spike in appeals while the new law is tested. In the case of option 2, only appeals from the Crown Court apply.

Ongoing costs

73. The new power will cover the same range of cases as the existing offence: the number of cases prosecuted should in principle be the same as at present. The new power will simply clarify where the contempt of court can be committed and what mental element the defendant must have in order to commit the offence.

74. This option would not deal with the problems identified in relation to the magistrates' courts. In particular, it would leave intact the word "insults" in section 12(1)(a), which has been held not to include "threats". We consider this to be a gap in the current law.

Benefits

75. Policy 1B would entail the same benefits as policy 1A, but only for the Crown Court.

Policy 2: Entitle alleged contemnors to inform a friend or relative of their detention, and to consult a legal representative

Costs

76. As this proposal simply codifies existing practice, any additional costs are expected to be minimal.

Benefits

77. The new provision would bring clarity to the procedural rules relating to immediate temporary detention.

78. Article 6 of the ECHR, which guarantees the right to a fair trial, may require legal representation, possibly publicly funded. Appeals against findings of contempt have succeeded on the grounds that the judge did not give the contemnor the opportunity to have legal advice or representation or to prepare his or her defence: for example, *Haslam*.[14]

79. The proposed provision would avoid any uncertainty over an alleged contemnor's right to take legal advice. It would also reduce the risk of any claims by alleged contemnors under article 6 (and the costs associated with such claims), on the ground that they were denied access to legal advice, or under article 5 (on the grounds that the denial of legal advice led to an increased time spent in custody).

Assumptions and risks

80. We are assuming that it is standard practice for alleged contemnors to be offered access to legal advice and the opportunity to have a friend or family member informed of their detention. This assumption is informed by discussions with cell supervisors at Wood Green Crown Court, at Blackfriars Crown Court and at Southend Magistrates' Court. If our proposal turns out to be a departure from standard practice for some courts, there will be an increase in the cost to the legal aid budget.

81. We are also assuming that the above is standard practice even in relation to alleged contemnors who had been unrepresented defendants. If this is not the case, and these contemnors are not routinely being provided with access to a lawyer, our proposal could result in increased legal aid costs. In this case, however, the additional expenditure in terms of legal aid may be offset, at least in part, against any money which would be saved as a result of the lawyers' involvement speeding up the court process.

Policy 3: A new statutory provision covering the procedural powers of the Crown Court

Costs

82. As this proposal simply codifies the existing practice and powers of the Crown Court, we do not anticipate any additional ongoing costs.

Benefits

83. In putting the existing powers and procedures of the Crown Court on a statutory footing, this proposal would contribute to the clarity and accessibility of the law. It would ensure that judges and legal representatives had a clear and useful understanding of the Crown Court's powers.

84. The proposal would also ensure that officers of the court and police constables were aware of their powers and duties in relation to the practice of immediate temporary detention. It would avoid the risk of any inadvertent breaches of court rules (as well as the associated risk of breaches of alleged contemnors' rights, including under the ECHR).

[14] [2003] EWCA Crim 3444 at [22].

Assumptions and risks

85. This proposal assumes that the statutory powers proposed are an accurate reflection of the current practice in the Crown Court when faced with a contempt in the face of the court. If this assumption is incorrect, the training costs for judges and court officials may be marginally higher.

Policy 4: A statutory provision relating to bail for alleged contemnors subject to immediate temporary detention in the Crown Court

Costs

86. Although in many cases the alleged contemnor will be granted or denied bail by the end of the same court day, there is currently no statutory provision which requires this. As a result, our proposal may result in more bail hearings and increased court time.

87. There is no information available on the cost of bail hearings. The cost to HMCTS of a day in the Crown Court is around £2,000 and the average legal aid cost of a trial in a general case in the Crown Court is £4,740 (information provided by the Ministry of Justice). The cost of a bail hearing will be a small percentage of this cost, as bail hearings are dealt with relatively quickly.

88. There is no data available on how many individuals are detained under the immediate temporary detention procedure for contempt in the face of the court in the Crown Court. As a result, it is not possible to quantify the cost of any additional bail hearings.

Benefits

89. The starting point in any discussion of bail matters must be that the alleged contemnor is entitled to liberty, and that there is always a right at common law to apply for bail. Although the right to bail has been assumed by the courts, there is no statutory provision requiring the Crown Court, in cases of contempt in the face of the court, to consider bail. Our view is that the right to liberty may only be denied in accordance with the Bail Act 1976. This proposal would put that right on a statutory basis. This would make the law certain, for judges, legal representatives and defendants.

90. Although there are costs associated with holding additional bail hearings, it should also be noted that some (if not all) of this cost would be offset by the money saved which would otherwise have been spent keeping an alleged contemnor (now granted bail) in custody. Again, there is no data with which to quantify this saving.

91. This proposal would also help to ensure compliance with article 5 of the ECHR, which states that no-one may be arbitrarily deprived of his or her liberty, and that anyone deprived of their liberty must be brought promptly before a judge or other competent official, who may release them. This could potentially lead to financial, as well as non-financial benefits.

(1) The non-financial benefits are that the law would be (and would be seen to be) compliant with the ECHR. This in turn would help to minimise the risk that the law could be brought into disrepute through perceived unfairness or harshness.

(2) Under section 8 of the Human Rights Act 1998, an act of a public authority (including a court) which is found to be incompatible with the Convention, may in certain circumstances entitle the victim to an award of damages. An individual may also take a claim for a breach of his or her Convention rights directly to the European Court of Human Rights, which, pursuant to article 41 of the Convention, can afford just satisfaction to the injured party. Similar principles govern the award of damages by each court (section 8 of the 1998 Act specifically cites article 41 of the ECHR). There are no cases directly on point, and those cases which have been handed down indicate that any award of damages for a few days of unlawful detention would be extremely unlikely. In *Caballero v UK* ((2000) 30 EHRR 643 (App No 32819/96)), a claimant who had been denied bail and kept in pre-trial detention for 9 months was awarded just £1,000. Nevertheless, the proposal would all but eliminate the risk of any litigation on this point, along with the risk of legal costs that such litigation would entail.

Assumptions and risks

92. This proposal assumes that training costs relating to the proposed statutory changes are likely to be minimal.

93. Although there is no data on the number of individuals who are detained under the immediate temporary detention procedure (and, therefore, no indication of how many individuals may apply for bail), we have assumed that any additional bail hearings are likely to be short and, as a result, inexpensive.

Policy 5: give magistrates' courts the power to suspend an order of committal

Costs

94. It is conceivable that some sections of the media or the public may view suspended sentences for contemnors as unduly lenient. The risk of this occurring is minimal, however, as the proposal simply gives magistrates the power to suspend a sentence – the power to make an order of committal will still be available in the most serious cases.

Benefits

95. This proposal would give judges in the magistrates' courts greater flexibility when sentencing individuals for contempt in the face of the court. In existing cases where suspended sentences are available (that is, for offences other than contempt), magistrates' courts can suspend a sentence of between 14 days and 6 months, for up to two years. This means that the offender does not go to prison immediately, but is given the chance to stay out of trouble and to comply with up to 12 requirements set by the court. These requirements include doing unpaid work, being subject to a curfew, and being subject to a supervision requirement.

96. The power to suspend orders of committal would also reduce expenditure on prison costs. The cost of keeping someone in prison varies depending on a range of factors. Information provided by the Ministry of Justice indicates that prison unit costs are £30,000 per year.15 The respondents to our survey of judges in the magistrates' courts were asked what sentence they imposed on convicted contemnors. Of the 17 instances where a sentence was imposed, 12 involved a custodial sentence.

97. Using the figures given above, and the information contained in Table 7, this works out at £17,425 spent on custody, in the last 12 months, from a survey of 52 judges.

98. To illustrate how often the option of a suspended sentence (for contempt in the face) may be used, Ministry of Justice data indicates that in 2011-2012, 1,179,335 offenders were sentenced in the magistrates' courts. Of these, 25,982 were given suspended sentences.[16] This indicates that 2.2% of offenders were given suspended sentences.

Assumptions and risks

99. There is a risk that the trend for suspended sentences would not apply to contempt in the face of the court, and that we have, therefore, over or under-estimated the impact of our proposals. Note, however, that the estimated number of offences is relatively small, and that the impact of any error here will, therefore, have a low impact.

[15] This information is from the NOMS management accounts addendum published in 2011.
[16] See Table Q5.2, http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/sentencing-tables-0312.xls, (last visited 1 Nov 2012).

Summary of costs for each individual proposal

Policy	Transitional costs	Ongoing costs	Benefits
Policy 1A – Reform of the powers of the Crown Court and the magistrates' courts	Possible additional appeals while the law is settled. Minimal training costs.	None identified.	Clarity (less time wasted on legal argument). Consistency between courts. ECHR compliance. Closure of gaps in the powers of the magistrates' courts. Increased confidence for judges and court officials in the courts' abilities to deal with contemnors, with increased public confidence in the effectiveness of the court system.
Policy 1B – Reform of the powers of the Crown Court	Possible additional appeals while the law is settled. Minimal training costs.	Failure to reform the power of the magistrates' courts (and their inability to deal with "threats").	Clarity (less time wasted on legal argument). Some consistency between courts. ECHR compliance. Increased confidence for judges and court officials in the courts' abilities to deal with contemnors, with increased public confidence in the effectiveness of the court system.
Policy 2 – The right to legal assistance	Minimal (training costs).	Minimal.	Consistent treatment of contemnors. ECHR compliance.
Policy 3 – Reform of the Crown Court's procedural powers	Minimal (training costs).	None identified.	Clarity for judges and officers of the court (including ushers and police constables).
Policy 4 – The right to bail	Minimal (training costs).	Possible costs incurred through additional bail hearings. Expected to be minimal, and possibly offset by reduced costs of keeping alleged contemnors in custody.	Certainty and clarity in the law, and consistent treatment of contemnors. ECHR compliance. Possible money saved through reduced custody costs.
Policy 5 – Sanctions in the magistrates' courts	Minimal (training costs).	None identified.	Costs saved through reduced number of contemnors sent to prison.