The Leveson Report: implementation

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Lord Justice Leveson published his long-awaited report into the "culture, practices and ethics of the press" on 29 November 2012. In response, the Prime Minister indicated that, while he accepted the bulk of the report's recommendations, he did not accept the need for statutory underpinning of a press regulator. The Labour Party and Liberal Democrats called for legislative reform, and the parties engaged in cross-party discussions on the issue.

In February 2013 the Conservatives published proposals for a draft Royal Charter which could be introduced without statute. The previous week, during passage of the *Defamation Bill*, the Lords passed Opposition amendments designed to give statutory force to Leveson's proposals on arbitration; these were reversed when the Bill returned to the Commons.

Matters came to a head in March 2013. Faced with a threat to other bills in the Government's programme, the Prime Minister withdrew from the cross-party talks. Intense activity over one weekend resulted in a compromise acceptable to all three main parties. A new draft Royal Charter was agreed, to be protected by "a relatively small legislative change". This "embedding" measure has now been enacted (via the *Enterprise and Regulatory Reform Act 2013*), as have clauses that would impose the risk of exemplary damages on any newspaper declining to subscribe to the new regulator (the *Crime and Courts Act 2013*).

The compromise allows for one or more independent self-regulatory bodies for the press to be established. Any such body would be recognised and overseen by a "Recognition Panel". The Panel will be established under Royal Charter and the Charter will be protected by statute from amendment. Reaction to the settlement has been mixed. Major newspaper publishers responded by presenting an alternative Royal Charter of their own, which was considered by the Privy Council ahead of the Government's own proposal.

On 8 October 2013 the Culture Secretary announced that the press's own charter had not been recommended for approval by the Privy Council. The final cross-party charter therefore went forward to the next meeting of the Privy Council on 30 October, where it received the royal seal. In the meantime the press has published proposals for a new self-regulatory body, the Independent Press Standards Organisation, which has the support of the "tabloid" but not all of the "broadsheet" press. IPSO is not expected to seek recognition under the Charter.

Contents

1 The Inquiry

Following the discovery of widespread "phone-hacking" by journalists at *The News of the World* and other British newspapers, the Prime Minister, David Cameron, established an inquiry under the chairmanship of Lord Justice Leveson.[1] Under its Terms of Reference (which are available online), the Inquiry is to investigate the role of the press and police in the scandal as well as wider issues concerning the culture, practices and ethics of the press.

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1 HC Deb 13 July 2011 c311

The Inquiry is in two parts. The first part, now concluded, examined the culture, practices and ethics of the media. In his work Lord Justice Leveson was assisted by a panel of six independent assessors with expertise in key issues being considered by the Inquiry. The first part of the Inquiry's work was divided into four "modules":

- Module 1: The relationship between the press and the public and looks at phone-hacking and other potentially illegal behaviour. Formal evidence hearings began on 14 November 2012 and concluded on 9 February 2012.[2]
- Module 2: The relationships between the press and police and the extent to which that has operated in the public interest. Evidence hearings began on 27 February 2012.
- Module 3: The relationship between press and politicians. Evidence hearings began on 10 May 2012 and finished on 26 June.
- Module 4: Recommendations for a more effective policy and regulation that supports the integrity and freedom of the press while encouraging the highest ethical standards. Evidence hearings ran from 9 to 24 July 2012.

Part 2 of the Inquiry is scheduled to take place after all criminal proceedings relating to phone hacking and bribery have been concluded. Its remit will be as follows:

> To inquire into the extent of unlawful or improper conduct within News International, other newspaper organisations and, as appropriate, other organisations within the media, and by those responsible for holding personal data.
>
> To inquire into the way in which any relevant police force investigated allegations or evidence of unlawful conduct by persons within or connected with News International, the review by the Metropolitan Police of their initial investigation, and the conduct of the prosecuting authorities.
>
> To inquire into the extent to which the police received corrupt payments or other inducements, or were otherwise complicit in such misconduct or in suppressing its proper investigation, and how this was allowed to happen.
>
> To inquire into the extent of corporate governance and management failures at News International and other newspaper organisations, and the role, if any, of politicians, public servants and others in relation to any failure to investigate wrongdoing at News International
>
> In the light of these inquiries, to consider the implications for the relationships between newspaper organisations and the police, prosecuting authorities, and relevant regulatory bodies – and to recommend what actions, if any, should be taken.

2 Publication

The Leveson Report covering part 1 of the Inquiry was published on 29 November 2012. It comprises four substantial volumes and an Executive Summary.[3] Volume IV contains a "Summary of recommendations".[4]

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[2] There were generally two evidence sessions per day, morning and afternoon. Evidence-givers also supplied written "Witness Statements", to which reference is sometimes made. All this material is available on the Inquiry website at www.levesoninquiry.org.uk

Lord Justice Leveson has said that since there are numerous people on bail awaiting decisions as to prosecution, he is "quite unable to say when it might be possible even to consider Part 2, let alone to decide how much more needs to be known about the subject matter which forms its basis".[5]

The published Report made the following key points:[6]

Regulation

An independent regulatory body for the press should be established.

It should take an active role in promoting high standards, including having the power to investigate serious breaches and sanction newspapers.

The new body should be backed by legislation designed to assess whether it is doing its job properly.

The legislation would enshrine, for the first time, a legal duty on the government to protect the freedom of the press.

An arbitration system should be created through which people who say they have been victims of the press can seek redress without having to go through the courts.

Newspapers that refuse to join the new body could face direct regulation by media watchdog Ofcom.

The body should be independent of current journalists, the government and commercial concerns, and not include any serving editors, government members or MPs.

The body should consider encouraging the press to be as transparent as possible in relation to sources for its stories, if the information is in the public domain.

A whistle-blowing hotline should be established for journalists who feel under pressure to do unethical things.

Police

No evidence of widespread police corruption.

Former Met Police Assistant Commissioner John Yates's relationship with media publisher News International, where he had friends working at the News of the World, including the deputy editor, was criticised.

Politicians

Politicians of all parties had developed "too close a relationship with the press in a way which has not been in the public interest".

The relationship between politicians and press over the last three decades has damaged the perception of public affairs.

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3 Leveson Inquiry, *An inquiry into the culture, practices and ethics of the press*, HC 780 [report, 4 vols] and HC 779 [executive summary] 2012-13

4 HC 780-IV pp1801-17

5 Letter to the Prime Minister prefacing HC 780-I

6 This summary is taken from the "At a glance" section of the BBC News website

But former Culture Secretary Jeremy Hunt and PM David Cameron were cleared of being too close to the Murdoch media empire.

Public

When chasing stories, journalists have caused "real hardship and, on occasion, wreaked havoc with the lives of innocent people". This happened to both famous people and members of the public. Press behaviour, at times, "can only be described as outrageous".

At the *News of the World*, quite apart from phone hacking, there was a failure of systems of management and compliance. There was a general lack of respect for individual privacy and dignity at the paper.

3 Immediate response in Parliament

In his statement to the Commons following publication, the Prime Minister expressed support for Leveson's recommendations. However, he was not persuaded by the need for statutory underpinning:

> [O]n the grounds of necessity, I am not convinced at this stage that statute is necessary to achieve Lord Justice Leveson's objectives. I believe that there may be alternative options for putting in place incentives, providing reassurance to the public and ensuring that the Leveson principles of regulation are put in place. Those options should be explored.[7]

The Opposition Leader, Ed Miliband, called on the Government to support all of Leveson's recommendations, including the need for legislation:

> We endorse the proposal that the criteria any new regulatory body must meet should be set out in statute. Without that, there cannot be the change we need. Lord Justice Leveson is 100 percent clear on that in his report.[8]

In a departure from usual Coalition policy, the Deputy Prime Minister and Liberal Democrat leader, Nick Clegg, made a separate statement. Noting that a number of British newspapers which publish in Ireland were already subject to the Irish Press Council (a regulator with statutory underpinning), he expressed his support for Leveson's key proposal:

> [Lord Justice Leveson] has found that changing the law is the only way to guarantee a system of self-regulation that seeks to cover all of the press. He explains why his proposed system of sticks and carrots has to be recognised in statute in order to be properly implemented by the courts. What is more, changing the law is the only way to give us all the assurance that the new regulator is not just independent for a few months or years, but is independent for good.[9]

The House of Lords Library has published a useful summary of immediate reactions from party leaders, media commentators and interested parties.[10]

4 Data protection

The Leveson Report also made recommendations for the reform of data protection legislation in proposals directed at the Ministry of Justice and the Information Commissioner's Office

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7 HC Deb 29 November 2012 c449
8 HC Deb 29 November 2012 c451
9 HC Deb 29 November 2012 c471
10 *Leveson Report: reaction*, HL Library Note LLN 2012/041, 30 November 2012

(ICO). Of these the most controversial concern the "journalism exemption". Under section 32 of the *Data Protection Act 1998*, journalists are afforded an exemption from the provisions of the Act if "publication would be in the public interest". Among Leveson's recommendations were the following:

> The exemption in section 32 of the Data Protection Act 1998 should be amended so as to make it available only where:
>
> (a) the processing of data is necessary for publication, rather than simply being in fact undertaken with a view to publication;
>
> (b) the data controller reasonably believes that the relevant publication would be or is in the public interest, with no special weighting of the balance between the public interest in freedom of expression and in privacy; and
>
> (c) objectively, that the likely interference with privacy resulting from the processing of the data is outweighed by the public interest in publication.
>
> The exemption in section 32 of the Data Protection Act 1998 should be narrowed in scope, so that it no longer allows, by itself, for exemption from:
>
> (a) the requirement of the first data protection principle to process personal data fairly (except in relation to the provision of information to the data subject under paragraph 2(1)(a) of Part II Schedule 1 to the 1998 Act) and in accordance with statute law;
>
> (b) the second data protection principle (personal data to be obtained only for specific purposes and not processed incompatibly with those purposes);
>
> (c) the fourth data protection principle (personal data to be accurate and kept up to date);
>
> (d) the sixth data protection principle (personal data to be processed in accordance with the rights of individuals under the Act);
>
> (e) the eighth data protection principle (restrictions on exporting personal data); and(f) the right of subject access.
>
> The recommendation on the removal of the right of subject access from the scope of section 32 is subject to any necessary clarification that the law relating to the protection of journalists' sources is not affected by the Act. (...)[11]

The Information Commissioner responded to the report on 7 January, commenting that:

> Taken as a whole package, Lord Justice Leveson's recommendations on reforming the DPA would, if implemented, move the ICO closer to becoming a mainstream statutory regulator of the press. The significance of the proposed changes should not be underestimated. It is clearly for the Government and Parliament to consider what role the ICO should ultimately play in regulating the press.[12]

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11 Leveson Inquiry, *An inquiry into the culture, practices and ethics of the press: executive summary*, HC 779 2012-13, p39

12 ICO, *The Information Commissioner's response to the Leveson Report on the Culture, Practices and Ethics of the Press*, January 2013, p9

5 Later developments – December 2012 to March 2013

5.1 Labour's draft Bill

On 10 December the Labour Party published a draft Bill to implement Leveson's recommendations of independent self regulation of the press guaranteed by law. The '*Press Freedom and Trust Bill*' comprises six clauses and a Schedule. Speaking in the Lords, Baroness Jones described the aims of the draft Bill:

> Our Bill enshrines the right of a free press and ensures that politicians cannot meddle in content. On the contrary, it ensures that Parliament's role is two steps removed from the independent regulator. It would ensure the free, irreverent, investigative press that is central to our democracy. It was, after all, the outstanding journalism of Nick Davies of the *Guardian* that brought the scandal of phone hacking to our attention in the first place.
>
> Crucially, our proposals would ensure that there is a legal guarantee that the regulator will be effective and independent. This would be achieved by a recognition panel, composed of the Lord Chief Justice and other senior judges, tasked with verifying that an independent press standards trust-to which, substantially, the national press must subscribe-is undertaking the tasks to which it is committed. It also builds in major incentives for the press to join the standards trust through offering less liability to exemplary damages and court costs for trust members. (...)[13]

5.2 Hacked Off Bill

Hacked Off, a pressure group that campaigns on behalf of the victims of press intrusion, published a draft Bill of its own and invited the public to comment on it. The '*Media Freedom and Regulatory Standards Bill*' is available on the campaign website. According to the preamble, the Bill's purpose is to "protect the freedom and independence of the media and to provide for the process and effect of recognition of voluntary media regulators".

5.3 Lord Lester's Bill

Lord Lester of Herne Hill published a separate draft Bill, the *Independent Press Council Bill [HL]*.[14] According to the preamble, the Bill's purpose would be to:

> Provide the framework for the appointment and functions of a Press Council to act independently and in the public interest to promote and protect freedom of expression, including freedom of the press, in communicating information and opinions to the public, to encourage and maintain professional standards and practices, and to provide redress for victims of professional misconduct; and for connected purposes.

5.4 The press's own proposals

The newspaper industry itself had meanwhile been in discussion about a new regulatory framework which does not require statutory underpinning. In their initial response, national newspaper editors reportedly accepted many of Leveson's recommendations. However, they indicated opposition to recommendations that proposed a role for Ofcom or some other statutory body in auditing the work of the regulator, preferring to wait and see what non-

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13 HL Deb 11 January 2013 c362

14 "Anthony Lester: my vision of a Leveson law", *Guardian*, 10 December 2012

statutory proposals the Government would bring forward.[15] Subsequently, Lord Hunt of Wirral, chairman of the Press Complaints Commission, said that representatives of all the major titles had endorsed a draft contract, subject to final details being agreed, under which they would agree to join a new regulator with powers to investigate malpractice and impose fines of up to £1m. He said that he hoped the new body could start business on 1 July. Reports suggested that the industry might agree to establish the new regulator without the arbitration service proposed by Leveson to resolve libel and privacy claims.[16] Their proposals involved "a charitable trust to rubber stamp a new press watchdog".[17]

5.5 The original royal charter proposal

In December 2012, Oliver Letwin, the Cabinet Office minister, proposed that a royal charter be used to establish formally the new independent press watchdog[18] -- the same mechanism that was used to set up the BBC and the Bank of England. The Privy Council Office has the following explanation of royal charters on its website:

> Royal Charters, granted by the sovereign on the advice of the Privy Council, have a history dating back to the 13th century. Their original purpose was to create public or private corporations (including towns and cities), and to define their privileges and purpose. Nowadays, though Charters are still occasionally granted to cities, new Charters are normally reserved for bodies that work in the public interest (such as professional institutions and charities) and which can demonstrate pre-eminence, stability and permanence in their particular field.
>
> Many older universities in England, Wales and Northern Ireland are also Chartered bodies.[19]

The website states the following on chartered bodies:

> There are in excess of 900 Chartered Bodies. A Royal Charter is a way of incorporating a body, that is turning it from a collection of individuals into a single legal entity. A body incorporated by Royal Charter has all the powers of a natural person, including the power to sue and be sued in its own right. Royal Charters were at one time the only means of incorporating a body, but there are now other means (becoming a registered company, for example), so the grant of new Charters is comparatively rare. New grants of Royal Charters are these days reserved for eminent professional bodies or charities which have a solid record of achievement and are financially sound. In the case of professional bodies they should represent a field of activity which is unique and not covered by other professional bodies.
>
> At least 75% of the corporate members should be qualified to first degree level standard. Finally, both in the case of charities and professional bodies, incorporation by Charter should be in the public interest.
>
> This last consideration is important, since once incorporated by Royal Charter a body surrenders significant aspects of the control of its internal affairs to the Privy Council.

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15 "Newspaper editors sign up to Leveson recommendations", *Guardian*, 5 December 2012. It is a matter of dispute how many of the recommendations were accepted by editors. Newspaper reports, such as that in the *Guardian*, suggested "40 out of 47" but analysis conducted by the Media Standards Trust suggests a much lower figure (see Media Standards Trust blog, "An analysis of the Delaunay deal", 7 December 2012).

16 "Newspapers ready to press on with new regulator", *Times*, 15 January 2013

17 "Editors resist press regulation proposals", *Financial Times*, 11 January 2013

18 "Great and the good lined up for new press regulator under Royal Charter", *Daily Telegraph*, 13 December 2012; "Leveson Report: PM proposes third way to regulate the press", *Daily Telegraph*, 7 December 2012

19 Privy Council Office, *Royal Charters*

> Amendments to Charters can be made only with the agreement of The Queen in Council, and amendments to the body's by-laws require the approval of the Council (though not normally of Her Majesty). This effectively means a significant degree of Government regulation of the affairs of the body, and the Privy Council will therefore wish to be satisfied that such regulation accords with public policy.[20]

The Conservatives' proposals for a Royal Charter were formally published on 12 February 2013. Although they appeared on the website of the Department for Culture, Media and Sport (DCMS), they did not represent Coalition policy: publication was "outside of the normal arrangements for collective agreement, and does not reflect an agreed position between the Conservative and Liberal Democrat parties."[21] The purpose of the draft provisions, if granted by the Queen, would be to create the new "Recognition Panel" responsible for recognising a press regulator (or regulators). This Panel would gain its powers by royal charter. The members of the Panel would be appointed by a Board according to criteria set out in the Charter. The Panel's functions would be to

- determine applications for recognition from Regulators;
- review whether a Regulator once granted recognition should continue to be recognised; and
- withdraw recognition from a Regulator where the Recognition Panel was satisfied that the Regulator ceased to be entitled to recognition.[22]

The draft Charter sets out the minimum standards expected of a new press complaints body which the Panel would have to ensure they complied with. This would include the power to levy fines against newspapers, to carry out investigations into newspaper practices, to require corrections or "other remedial action", and to set up a legally binding arbitration service as an alternative to defamation actions. The arbitration system envisaged was similar to that proposed by Lord Justice Leveson to resolve complaints without resort to the courts. However, it did not follow Leveson's recommendation that such a system should be "free" for complainants to use, preferring the term "inexpensive":

> 22. The Board [of the Regulator] should provide an arbitral process in relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair and quick, inquisitorial and inexpensive for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage.[23]

The Charter could be amended only with the written consent of the leaders of the three largest political parties and after winning approval of two-thirds of members of both Houses of Parliament.[24]

An Information Note published with the draft Charter explained that a number of processes would need to be completed before a state-sponsored Royal Charter could be granted:

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20 Privy Council Office, *Chartered bodies*
21 DCMS News, *Lord Justice Leveson Report – regulatory system for the press*
22 DCMS, *Draft operative provisions for a Royal Charter*, 12 February 2013, article 4
23 Ibid, schedule 3
24 Ibid, article 9.2

- Government must approve the presentation of the Charter via its Home Affairs Committee
- The Privy Council must then meet and recommend to Her Majesty that the Charter is granted
- It is then 'sealed' by the Crown Office and will take effect from the date specified in the Charter itself
- It is also desirable for the Government to have conducted a public consultation before a State sponsored Charter is recommended to the Queen.

To accompany the draft Charter, the Conservatives published proposals to impose the risk of exemplary damages of up to £1 million on any newspaper that declined to subscribe to the new regulator. A defendant who was a member of an approved regulator would be excluded from liability for exemplary damages. Unlike the original draft Charter (which obviated the need for statute), these proposals took the form of draft clauses.[25]

The Conservatives' argument in favour of a charter was that, were the press to be regulated by law, it would allow MPs to tinker with or amend legislation, potentially damaging free speech and eroding a free press.[26]

The media quoted a spokesman for the Deputy Prime Minister, Nick Clegg, as saying that the proposals were a "welcome start". But the Liberal Democrats' media spokesman, John Leech, reportedly said the plans for the charter "won't do the job... We are a million miles away from an agreement."[27]

In a letter to Oliver Letwin, Harriet Harman, shadow Culture Secretary, argued that the draft Charter "failed the test" of implementing Leveson:

> Firstly, there is nothing to stop the Privy Council, which consists of ministers, from amending the Charter at any time and thereby changing the terms of the recognition and regulatory framework.
>
> Secondly, Leveson recommended that, in the event that the recognition body was not Ofcom, the appointment process for the recognition body should be independent of the press. The process set out in the draft Royal Charter fails in that respect because of the four people to carry out the appointment process, one is to represent the interests of the press...

She urged that the Charter be accompanied by a statute to prevent it from being amended by ministers through the Privy Council.[28]

Hacked Off, the campaigning group, reportedly rejected the proposals as "a surrender to press pressure".[29] The newspaper industry itself has given the charter idea a cautious welcome, a *Times* leader, for example, arguing that "the press should support it, for fear of something worse".[30]

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25 DCMS, *Draft clauses on exemplary damages and costs*: draft Bill and explanatory note
26 "MPs hopeful of a 'halfway' deal on press regulation", *Independent*, 12 February 2013
27 "Tory press reforms fail to convince", *Guardian*, 12 February 2013
28 Labour Party, Serious concerns on draft Royal Charter – Harman, 12 February 2013
29 "Tories reveal 'toughest ever' plan to regulate the press", *Times*, 13 February 2013
30 "The fine print" [leader], *Times*, 13 February 2013

On 13 February the Culture Secretary, Maria Miller, answered an Urgent Question in the House of Commons on the royal charter proposal.[31]

On 18 March a revised Charter proposal, now to be supported by what the Prime Minister called a "relatively small legislative change", was agreed by all three main political parties as the basis for moving forward (see below, section 6).

5.6 Cross-party discussions

Following publication of Lord Justice Leveson's report, there were cross-party discussions on how to implement his proposals. The detail of discussions was not known, but press reports suggested a clear divide between the Labour Party, which was pressing for a Bill to set up an organisation to supervise a press regulatory body, and the Government's preferred option of a regulatory body underpinned by royal charter. In January 2013, Harriet Harman, shadow Culture Secretary, called on ministers to publish their (revised) royal charter proposals and accompanying draft clauses without delay.[32] However, when asked by *The Times* whether Labour ruled out accepting a royal charter, Ms Harman said:

> "We are still in discussions. When you are still in discussions you don't want to rule anything out… Our preferred route is statute. We are totally opposed to the status quo."[33]

Press reports also suggested some flexibility in the Liberal Democrats' position. The *Financial Times* quoted one "senior Liberal Democrat" as saying:

> "Our starting point was legislation but Letwin's idea is better than nothing at all, but we have got to first see how it goes down. (...) Cameron has really crossed [the] Rubicon in even considering a royal charter."[34]

In her letter to Oliver Letwin, Harriet Harman called for the talks to be concluded by 21 February.[35]

5.7 The *Defamation Bill 2012-13*

The *Defamation Bill 2012-13* was introduced into the Commons on 10 May 2012 and has now completed its parliamentary progress.[36] There were no provisions in the Bill as originally drafted to cover regulation of the press. At Report stage in the Lords, several peers, frustrated by the apparent lack of progress from Government and industry in responding to Leveson's proposals, tabled amendments designed to implement key proposals in his report.[37]

An amendment moved by Lord Puttnam inserted into the Bill a new clause requiring the Lord Chief Justice to establish a "Defamation Recognition Commission". The Commission would have the task of certifying the newspapers' own self-regulating body (to be known as an "Independent Regulatory Board"). The Board, in turn, would provide a "Specialist Arbitration Service". When awarding costs and damages in cases of defamation and related civil legal

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31 HC Deb 13 February 2013 cc859-70
32 "Labour wants vote on Leveson report proposals within two weeks", *Guardian*, 23 January 2013
33 "Labour halts Commons vote on Leveson", *Times*, 24 January 2013
34 "Letwin to publish press regulation plan", *Financial Times*, 22 January 2013
35 Labour Party, Serious concerns on draft Royal Charter – Harman, 12 February 2013
36 On the bill see HC Library Research Paper RP12/30, 28 May 2012, and HC Library Committee Stage Report RP 12/49, 3 September 2012
37 HL Deb 5 February 2013 cc140-74

claims, the courts would then take into account whether either party, claimant or defendant, had made use of the recognised arbitration service. A court awarding exemplary damages where a defendant is guilty of a "flagrant breach" would be able to impose a higher penalty if the defendant had refused to use or join the arbitration service.[38] (The detail of the constitution and operation of the Arbitration Service and Recognition Commission is given in separate Schedules, moved successfully as amendments by Baroness Smith of Basildon.[39])

Lord Puttnam argued that his amendment offered "the opportunity to break the logjam that would appear to have afflicted both the talks between the newspapers and the Government and the talks between the three main political parties themselves". His aim was to address concerns that access to justice in such cases is currently denied to "anyone other than the wealthy, the powerful and the influential".[40]

Responding for the Government, the Minister Lord McNally said that, while he understood the intention of Lord Puttnam's amendment, the Prime Minister and Deputy Prime Minister were in agreement that "a cross-party approach was the best way to ensure that a consensus could be reached on these contentious issues". He went on to report progress on the cross-party talks and announced that a draft royal charter proposal would be published in the week beginning 11 February 2013.[41] Despite his plea that Lord Puttnam withdraw his amendment and await the outcome of cross-party talks, the House divided and the Government was defeated by 272 votes to 141.[42]

The *Defamation Bill* returned to the Lords on 25 February for third reading.[43] At this point Lord Fowler moved an amendment to the new clause that had been inserted into the Bill by Lord Puttnam and others at the previous stage. In his report, Lord Justice Leveson had suggested that an independent self-regulatory body should consider

> offering a purely voluntary pre-publication advice service to editors who want support on how the public interest might be interpreted in a specific case before a decision is reached on publication without notice to the subject of the story.[44]

Lord Puttnam's amendment, as already passed, had gone beyond Leveson in requiring the courts to take account of pre-publication advice to the defendant (if sought) from the new regulator in deciding whether to award exemplary damages. Lord Fowler's amendment removed those lines from the new clause. For the Government, Lord McNally said that, while the Government opposed the Puttnam clause as a whole, they would not oppose the Fowler amendment, since it "makes an unacceptable position marginally better". The Fowler amendment was agreed to without a division.

However, it was always doubtful whether the Government would allow the new clause to stand, even in its amended form, given the Prime Minister's known scepticism about any form of statutory "underpinning".[45] At the end of the third reading debate, Lord McNally explained what would happen next:

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38 HL Deb 5 February 2013 c140
39 HL Deb 5 February 2013 cc252-3
40 HL Deb 5 February 2013 c143
41 HL Deb 5 February 2013 cc168-9
42 HL Deb 5 February 2013 c171
43 HL Deb 25 February 2013 cc848-51
44 Leveson Inquiry, *An inquiry into the culture, practices and ethics of the press*, HC 779 [executive summary] 2012-13, para 62 (p15)
45 "Defamation Bill put at risk by Lords vote", *Times*, 7 February 2013

> The amended Bill will (...) go to the Commons for consideration and will come back at ping pong for what I suspect will be a lively debate. However, by then the tripartite talks might have succeeded - I sincerely hope they will have - and my Defamation Bill, which I think unamended is perfectly formed, could then be passed by this House.[46]

This view was echoed by the Leader of the House, Andrew Lansley, in Business Questions on 28 February. Asked by the shadow Leader, Angela Eagle, when the Bill would return to the Commons, he called for patience while the Royal Charter proposal was considered in cross-party discussions and repeated that the Puttnam amendment was "unacceptable". He went on:

> On that basis, I hope that an agreement will be reached that will enable us to proceed with the Bill without that amendment and to deal with Leveson properly.[47]

On 16 April the *Defamation Bill* returned to the Commons for consideration of Lords amendments. The Minister, Helen Grant, explained that the Puttnam amendments had now been overtaken by events (i.e. the resolution of all-party talks and agreement on a draft royal charter – see next section). The Commons agreed to the removal of these amendments.[48]

On 23 April the Lords agreed, without a vote, to a motion accepting the removal by the Commons of the Puttnam amendments.[49] The *Defamation Bill* was thus able to proceed on its way to Royal Assent, which was granted on 25 April.[50]

6 Towards a Royal Charter

6.1 The events of 18 March and the legislative consequences

As all-party talks continued in March, events came to a head. On 15 March the Conservatives published a revised draft charter. On the same day, Labour and the Liberal Democrats published an alternative charter. In the face of suggestions that the Government might be prepared to drop the *Defamation Bill* rather than allow it proceed with the Puttnam amendments, the Labour Party, with the support of some Liberal Democrats, indicated that they were prepared to see Leveson-compliant amendments added to other Government bills. The bills in question were the *Enterprise and Regulatory Reform Bill* and the *Crime and Courts Bill*.[51] The Prime Minister, reportedly frustrated at continuing threats to the Government's legislative programme, then declared that he was pulling out of cross-party talks and would put the plan for a Royal Charter to the Commons in a vote on 18 March. Labour and the Liberal Democrats responded that any form of charter would have to have statutory underpinning to be acceptable to them. The outcome of the parliamentary vote looked uncertain.[52]

On the weekend before the contentious vote, cross-party talks resumed. A revised version of the Royal Charter was agreed early in the morning of 18 March and published later that day.[53] The Prime Minister now accepted that what he called a "relatively small legislative change" would be necessary to protect the Charter against amendment by ministers through

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46 HL Deb 25 February 2013 cc851
47 HC Deb 28 February 2013 c477
48 HC Deb 16 April 2013 cc266-7, 287
49 HL Deb 23 April 2013 cc1362-5
50 HL Deb 25 April 2013 c1546
51 "Labour threatens to introduce law to license newspapers", *Times*, 9 March 2013
52 "D-Day looms on press regulation", *Financial Times*, 13 March 2013
53 Department for Culture, Media and Sport, *Draft Royal Charter on the self-regulation of the press*, 18 March 2013

the Privy Council. He insisted, however, that the new clause, which refers to all new royal charters and does not specifically mention press regulation, was not a press law. He told the Commons: "The legislation is to protect the royal charter; it is not legislation to recognise the royal charter."[54] The new clause reinforces, in statutory form, a provision contained within the Charter itself, namely that the Charter cannot be changed without the support of a two-thirds majority in both Houses of Parliament. It achieves this by stipulating that

> Where a body is established by Royal Charter after 1 March 2013 with functions relating to the carrying on of an industry, no recommendation may be made to Her Majesty in Council to amend the body's Charter or dissolve the body unless any requirements included in the Charter on the date it is granted for Parliament to approve the amendment or dissolution have been met.

On 18 March the Prime Minister was granted an emergency debate (under Standing Order 24) in order to lay the new compromise solution before the Commons.[55] Amendments entrenching the Charter in law were tabled to the *Enterprise and Regulatory Reform Bill* in the Lords.[56] Following the emergency debate, the Commons resumed consideration of the *Crime and Courts Bill [HL]*, to which new clauses on exemplary damages had now been added by the Government.[57]

On 16 April the Commons agreed to the Lords amendment embedding future royal charters in statute. Jacob Rees-Mogg attempted to raise a point of order objecting that such a "major constitutional issue" should be put to a vote but was overruled by the Deputy Speaker.[58]

In the intervening days the status of bloggers under the new arrangements had been questioned (see below section 8). On 22 April the Commons agreed, without a vote, to a new tighter definition of blogs.[59] On the following day this definition, as inserted by the Commons, was accepted by the Lords.[60] (The Department for Culture, Media and Sport helpfully published a document pulling together all the Government amendments to the *Crime and Courts Bill [HL]* that related to Leveson and press regulation.[61])

On 25 April the *Enterprise and Regulatory Reform Act* and the *Crime and Courts Act* received Royal Assent.[62]

6.2 The revised Charter

Under the Charter as agreed by the three political parties the press would be regulated through two new bodies. A "Recognition Panel", established under royal charter, will approve and oversee a new independent press regulator to replace the Press Complaints Commission. The press will write its own code of conduct but the regulator will decide whether the code has been breached. The press had argued that appointments to the

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54 HC Deb 18 March 2013 c633
55 HC Deb 18 March 2013 cc630-80
56 HL Deb 18 March 2013 cc438-57 (Report stage); HL Deb 20 March 2013 cc632-4, 662 (third reading)
57 HC Deb 18 March 2013 cc697-736
58 *Enterprise and Regulatory Reform Bill*: HC Deb 16 April 2013 c264
59 *Crime and Courts Bill [HL]*: HC Deb 22 April 2013 cc686-92
60 *Crime and Courts Bill [HL]*: HL Deb 23 April 2013 cc1387-95
61 DCMS policy paper, *Leveson and press self-regulation: amendments to the Crime and Courts Bill*, 23 April 2013
62 HL Deb 25 April 2013 c1546

regulatory body should be unanimously supported by the regulator's own appointment panel, but this potential for an industry veto is not included in the Charter.[63]

The new regulator will be able to initiate investigations where it suspects breaches of the code and, in the event of a breach, to direct newspapers to correct and apologise, if appropriate specifying the "nature, extent and placement of corrections and apologies".

The regulator will be required to have an "adequate and speedy" internal mechanism for handling complaints. It is expected that a complainant would not go to the regulator itself until that internal complaints route had been exhausted.

A new arbitration system will allow claims to be settled without reaching the courts: this system should be "free for complainants to use" (an alteration to the Conservatives' original Charter proposal, which stated that the system should be "inexpensive" for complainants.)

The regulator's Board should have the power to impose sanctions of up to 1% of the publication's turnover (with a maximum of £1 million) on any subscriber found to be responsible for "serious or systemic breaches of the standards code or governance requirements of the body".

The Recognition Panel would be supported for the first three years of its existence from the Exchequer. After that it will recover its operating costs by charging fees to regulators. Funding for the regulatory body itself would be "settled in agreement between the industry and the Board [of the regulator]".

Schedule 3 of the Charter document lists the "recognition criteria" which a regulatory body must meet in order to qualify for recognition. Schedule 2 sets out the "scheme of recognition" to determine whether recognition is granted or withdrawn by the Panel.

Under the agreement, the Charter proposals will be put before the Privy Council at its next meeting on 8 May for approval and then go the Queen for the final seal. According to media reports, the process to set up a recognising body would then begin automatically and would take between six and eight months. The system allows for multiple regulatory bodies, so it is possible that more than one body might seek recognition, or that an alternative self-regulator might be set up by (parts of) the press which would not seek recognition under the Charter.[64]

6.3 Reaction to the revised Charter

Reaction has been mixed. The whole system is voluntary and certain publications have already stated that they will not take part, for example *Private Eye* and *The Spectator*.[65] Some large newspaper publishers (the Daily Mail Group, News International and the Daily Telegraph Group) immediately demurred and threatened to set up their own regulator.[66] The foreign press has expressed surprise at developments in the UK.[67] The Organisation for Security and Cooperation in Europe has described the deal as a potential "threat to press freedom"[68] and lawyers have warned of possible challenges under Article 10 of the European

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63 "Politicians agree on regulator for newspapers", *Financial Times*, 19 March 2013

64 "Press regulation approval to go ahead under multiple proposals", *Guardian*, 20 March 2013

65 Fraser Nelson, "Why we won't sign", *The Spectator*, 23 March 2013, pp14-15

66 "Newspaper groups threaten to boycott new press regulator", *Guardian*, 18 March 2013

67 "World media condemns attack on press freedom", *Times*, 22 March 2013; "British press laws are 'just crazy', say shocked Americans", *Daily Telegraph*, 19 March 2013

68 "David Cameron's Leveson deal is 'threat to press freedom', says human rights watchdog", *Daily Telegraph*, 19 March 2013. In similar vein, the reaction of Index on Censorship: "Leveson deal marks a 'sad day for press freedom', says Index on Censorship", *Daily Telegraph*, 19 March 2013

Convention on Human Rights, which guarantees freedom of the press.[69] Local newspapers are also concerned that they will be inundated with expensive compensation claims from "ambulance chasers".[70]

However, other British newspapers reserved their position, and at least one, *The Independent*, declared the compromise "a deal worth backing".[71] The agreement has received a "cautious welcome" from victims of press intrusion. For example, Professor John Tulloch, a survivor of the London "7/7" bombings whose phone was hacked, welcomed the deal "in the spirit of compromise". The author Joan Smith, another victim, denied that the royal charter would endanger freedom of speech or allow politicians to interfere with newsgathering.[72] Speaking at a press conference in Westminster, Professor Brian Cathcart, executive director of the Hacked Off campaign, repeated his group's belief that a royal charter was always a "second best option" for reform, but nonetheless praised the cross-party consensus, saying:

> "The Royal Charter that they have accepted will introduce a new system that will protect the freedom of the press and at the same time protect the public from the kinds of abuses that made the Leveson Inquiry necessary.
>
> "All parties are now clearly behind Leveson's recommendations for an independent self-regulator that will deal fairly with complaints and will ensure that corrections are given due prominence.
>
> "It will be able to mount effective investigations and where appropriate impose meaningful sanctions."[73]

6.4 The newspaper industry's alternative Charter

On 25 April it was announced that a significant sector of the newspaper industry had rejected the cross-party charter proposal.[74] A statement released by the Newspaper Society said that the industry would present its own proposal for a royal charter to the Privy Council. According to the statement, this new document, which is available online, "is closely based on the draft Royal Charter published on 12 February" (i.e. the version described above at section 5.5). The newspapers' proposals differ from the cross-party charter of 18 March in that they

- Remove Parliament's power to block or approve future changes to regulation. Instead the regulator, trade bodies and a newly-created "recognition panel" would have to agree to changes
- Would see the chair and members of the panel selected by an appointments committee chaired by a retired Supreme Court judge, and include one representative of the industry's interests, one member representing the public interest and one public appointments assessor nominated by the Commissioner for Public Appointments for England and Wales

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69 "Press 'law' unravels amid legal warnings", *Times*, 20 March 2013; David Pannick QC, "An ill-thought out, late-night provision on the cost of free speech", *Times*, 11 April 2013

70 "Press regulation: local newspapers fear rush of compensation claims", *Guardian*, 19 March 2013

71 "Editorial: A Leveson deal worth backing", *Independent*, 19 March 2013

72 "Phone hacking victims give press regulation deal cautious welcome", *Guardian*, 18 March 2013

73 "Victims of press intrusion and Hacked Off welcome Royal Charter underpinned by legislation to regulate the press", *Press Gazette*, 18 March 2013

74 Newspaper Society press notice, *Newspapers and magazine publishers apply for royal charter on press regulation to implement Leveson recommendations*, 25 April 2013. Publishers supporting the new draft include News International, Associated Newspapers, Trinity Mirror, the Telegraph Group and Express Newspapers.

- Remove a ban on former editors sitting on the panel
- Give newspaper and magazine readers a say on the industry's proposals
- Make it more difficult to bring group complaints
- Change the power of the regulator to "direct" the nature, extent and placement of corrections and apologies, saying it should "require", not "direct".[75]

There is another difference in the role of arbitration. The cross-party version says that the regulator "should" provide an arbitrator that is "free" for complainants to use. The industry's version says that it "may" provide an arbitrator that is "inexpensive" for complainants.

Harriet Harman reportedly responded that the Privy Council should press ahead with implementing the draft Charter agreed in March. John Whittingdale, chairman of the Culture, Media and Sport Committee, said the new charter is "an attractive proposition [which] may even be preferable to what was originally proposed". Hacked Off described it as "the latest proof that most of the industry has learnt no lessons from the Leveson experience".[76] The Prime Minister's spokesman said that it was "the right thing to do" to look at the industry's proposals.[77]

On 30 April the Press Standards Board of Finance Ltd (Pressbof) submitted its petition for a Royal Charter to the Privy Council Office. The Privy Council website explains that "as with all Charter petitions, the relevant Government department, in this case the Department for Culture, Media and Sport (DCMS), will be considering this Charter, drawing in views from other Government departments as required." Prior to this the industry charter was open for public comment (comments to be directed to DCMS no later than 24 May 2013). Almost 20,000 public responses were received during this "period of openness", according to a parliamentary answer, but as the Department is still considering the charter, "it would not be appropriate to publish further detail on responses received at this time".[78]

In May some of the most prominent victims of press misconduct including JK Rowling, Gerry and Kate McCann, and Sheryl Gascoigne wrote a joint letter to the Culture Secretary urging her to reject the press's alternative charter. They argued that, unlike the draft approved by Parliament, this draft lacked democratic legitimacy; it was, they said, unacceptable for "those responsible for the damage to our lives and the lives of others [to] seek to shrug off responsibility and once again write their own rulebook".[79] They wrote to her again, in similar terms, in early July when it looked as if further delay was in prospect.[80]

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75 This summary is drawn from: "Leveson Report: newspapers reject press regulation plans", *BBC News*, 25 April 2013. See also "Newspapers' alternative regulation plans: the key differences", *Guardian*, 25 April 2013

76 "Newspapers offer rival version of charter for press regulation", *Times*, 26 April 2013, p4

77 "Press trio snubs regulation plan", *Financial Times*, 26 April 2013, p4. For further reaction see "David Cameron's dilemma over rival press regulation plan", *Guardian*, 26 April 2013

78 HC Deb 1 July 2013 c457W. The letter from the Committee of the Privy Council published on 8 October (see below) did provide more detail, revealing that that the responses "were dominated by campaigns instigated by the Newspaper Society and Hacked Off". Some 19,000 responses (generated largely by the Hacked Off campaign) did not support the press's own charter. The Newspaper Society campaign generated 136 responses, of which 74 were editors or group editors of local and regional newspapers.

79 "Phone-hacking victims reject newspapers' charter proposal", *Guardian*, 24 May 2013

80 Hacked Off, "Victims of press abuse urge Maria Miller to resist press pressure and send Parliament's charter to Privy Council for approval", 3 July 2013

6.5 Interlude: summer 2013

Exchanges in the Lords on 1 July clarified the procedural delay over the summer:

> **Lord Stevenson of Balmacara:** My Lords, the Minister will be aware that there is a meeting of the Privy Council on 10 July. On 18 March, as has just been said, Parliament agreed to send the royal charter to the Privy Council in time for the May meeting. Could the Minister confirm that Parliament's Leveson-compliant royal charter will be submitted to the Privy Council for approval on 10 July?
>
> **Lord Wallace of Saltaire:** My Lords, my briefing says that it is not appropriate for the Privy Council to consider more than one royal charter at a time on the same issue. The noble Lord may consider that the Press Standards Board of Finance has therefore been extremely clever in what it has done and may draw his conclusions from that—and that accounts for some of the delay. [...]
>
> **Lord Low of Dalston:** My Lords, what is the procedure for determining the precedence as between the two royal charters which are going before the Privy Council?
>
> **Lord Wallace of Saltaire:** My Lords, the Press Standards Board of Finance submitted its petition to the Privy Council before the Government had presented their own royal charter. My understanding is that that therefore gives it precedence over the Government's royal charter, but that the consideration of the draft royal charter nominated by the Press Standards Board of Finance should shortly be finished, and at that point we will consider how we move further.[81]

David Cameron reiterated these points in Prime Minister's Questions on 3 July, confirming that the legal advice he had received was that the rival charters had to be considered in order of submission.[82] Since, after its meeting on 10 July, the Privy Council was not due to meet again until the autumn, it was assumed that the Council's consideration of the Government-approved Charter would be deferred until then.[83]

In evidence given to the Commons Culture, Media and Sport Committee, which was inquiring into "regulation of the press", there were suggestions that an "honest broker" might be sought to break the current impasse. Lord Grade, former chairman of the BBC and ITV, was suggested.[84] However, the Government said in July that it had "no plans" to reopen the cross-party discussions on the Leveson-compliant Charter which were concluded on 18 March.[85]

6.6 The final Charter

The next significant developments came when Parliament returned after the conference recess in October. The Culture Secretary made a statement to the House to give an update on progress in reforming press regulation.[86] Ms Miller confirmed[87] that the committee of the Privy Council which had been considering the press's own draft charter had recommended that it should not be granted, on the grounds that it failed to comply with "some important

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81 HL Deb 1 July 2013 cc976-7

82 HC Deb 3 July 2013 c920

83 "The press's rival regulatory charter has 'shortcomings', says PM", *BBC News*, 3 July 2013

84 "Former TV boss Michael Grade suggested as mediator to break deadlock on press regulation", *Independent*, 18 June 2013

85 HC Deb 2 July 2013 c613W

86 HC Deb 8 October 2013 cc46-57

87 The news had already been pre-empted on the BBC's *Newsnight* programme the previous evening ("Politicians 'reject' press plan for regulation", *BBC News*, 8 October 2013)

Leveson principles and with government policy". Simultaneously the Government published a letter from the joint chairs of the Committee (the Culture Secretary and the Chief Secretary to the Treasury) explaining in detail the reasons for rejection. The Committee's misgivings were concentrated in two areas, independence and arbitration:

> Whilst there is much to be said for industry engagement in a system of industry self-regulation, the Committee was unable to satisfy itself that industry both funding and playing a significant role in appointments to the Recognition Panel are factors which could be consistent with Government policy. (...)
>
> The Committee welcomes that the PressBoF Charter includes the option for arbitration but is concerned that it does not make it a condition of recognition that a self-regulator must provide an arbitration service for complainants. This was an essential element of the Leveson Report. Without an arbitration service, the incentives introduced by legislation – through the Crime and Courts Act 2013 - would not be properly activated, as Parliament intended. (...)

In her statement the Culture Secretary said that, while the press charter was not acceptable to the Government as it stands, it suggested how the cross-party might be further refined:

> Having considered the press charter, the committee has identified two substantive areas—access to arbitration and the editors code—where we could improve the 18 March draft.
>
> The right hon. and learned Member for Camberwell and Peckham (Ms Harman) and I—indeed, all three parties—agree that those areas could benefit from further consideration. As such, all three parties will work together in the coming days and produce a final draft of the cross-party charter to place in the Libraries of both Houses on Friday. That will allow Parliamentarians, the public, the press and whoever else to see the version we intend to seal. If any specific change cannot be agreed by all three parties, we will revert to the 18 March charter debated by Parliament.[88]

Ms Miller announced that the re-revised version of the cross-party charter would be on the agenda at a specially convened meeting of the Privy Council on 30 October ready to be sealed. In her response to the ministerial statement, the shadow Culture Secretary, Harriet Harman, urged that there be no further delay, and Ms Miller affirmed that the timetable would be adhered to. In supplementaries, Members raised the status of Scotland and Northern Ireland under the proposals. Replying to Sammy Wilson, Ms Miller said:

> I welcome his interest as regards the involvement of Northern Ireland. He is right that currently the charter would be in place for Scotland. However, we have not had interest from Northern Ireland in becoming involved. If he would like to effect that interest, I would very much welcome it.[89]

It was reported that large parts of the press industry were likely to reject even a revised cross-party charter:

> The main newspaper groups, including Daily Mail owner Associated Newspapers, Sun proprietor News UK and the Mirror, see no room for negotiation and have indicated they are unlikely to support a body that would seek recognition from the government's royal charter.[90]

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88 HC Deb 8 October 2013 cc46-7

89 HC Deb 8 October 2013 c52

90 "MPs to revise press regulation charter in effort to win industry support", *Guardian*, 9 October 2013

The re-revised version of the draft royal charter was published on the afternoon of 11 October and deposited[91] in the Libraries of both Houses, together with an Explanatory Note on the changes agreed since the 18 March draft.

Prior to the Privy Council meeting scheduled for 30 October, senior representatives of the newspaper industry went to the High Court to seek an injunction to stop the Privy Council hearing, claiming that the industry's own version of a press charter had been rejected without due process. The High Court denied the injunction. The press representatives then took their case to the Court of Appeal, but Lord Dyson, Master of the Rolls, sitting with two other Court of Appeal judges, refused the final application for an injunction.[92] The Privy Council meeting therefore went ahead as planned on 30 October and the Queen set her seal to the new Charter.[93]

The Charter as sealed on 30 October incorporates a number of late amendments agreed since the version published on 11 October. Most significantly, article 9 now makes clear that politicians cannot amend the Charter without the unanimous agreement of the Board of the Recognition Panel. This is in addition to the requirement that an amendment may only be made if approved by both Houses of Parliament (and where relevant the Scottish Parliament) with at least a two-thirds majority in both Houses (or, where relevant the Scottish Parliament). The Charter as sealed is available online, together with an Explanatory Note on the amendments made since 11 October.

Hacked Off welcomed the outcome, commenting:

> "News publishers now have a great opportunity to join a scheme that will not only give the public better protection from press abuses, but will also uphold freedom of expression, protect investigative journalism and benefit papers financially…"[94]

Bob Satchwell, executive director of the Society of Editors, said:

> "This is disappointing and it is a pity the Queen has been brought into controversy. Royal Charters are usually granted to those who ask for one - not forced upon an industry or group that doesn't want it..."[95]

7 New regulators

7.1 IPSO

Meanwhile, on 8 July 2013 the newspaper and magazine industry took their first steps towards setting up a new self-regulatory body for the press to replace the Press Complaints Commission. Draft constitutional documents were published setting out the structure and rules of a new "Independent Press Standards Organisation" (IPSO). The documents, drawn up by the Industry Implementation Group chaired by Paul Vickers, Group Legal Director of Trinity Mirror, comprise new regulations, a self-regulation contract, press regulator articles

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91 DEP2013-1628 (Commons)

92 According to press reports, the industry is to appeal against the refusal to grant a judicial review ("MP calls for compromise in press regulation stand-off", *Times*, 1 November 2013)

93 "Queen sets seal on cross-party politicians' charter for press regulation", *Independent*, 30 October 2013

94 Hacked Off press release, *Hacked Off: Happy that Leveson recommendations can finally be implemented*, 30 October 2013

95 Society of Editors news, *SoE director responds to High Court ruling on Royal Charter*, 30 October 2013

and financial sanctions guidance and are available online.[96] The accompanying press notice draws attention to the following features of the new proposed regulator:

> A majority of independent members at every level, and no industry veto on appointments (Articles of Association 22,26,27).
>
> The power to impose £1m fines for serious or systemic wrong-doing (Regulations 64, 65; Financial Sanctions Guidance 2).
>
> Upfront corrections and adjudications – whether editors like it or not.(Regulations 18-22).
>
> A standards and compliance arm with investigative powers to call editors to account. (Regulations 45-68).
>
> An Arbitration Service to offer a speedy and inexpensive alternative to the libel courts, subject to the successful conclusion of a pilot scheme (Scheme Membership Agreement 5.4).
>
> A whistleblowers' hotline (Articles of Association 8.1.8, Scheme Membership Agreement 3.6).
>
> A warning service to alert the press, and other media such as broadcasters, when members of the public make it clear that they do not wish to be the subject of media attention.

IPSO has since been formally established by five documents:

> the "Scheme Membership Agreement" (SMA), which is the legal contract underpinning the new regulator;
>
> the Regulations which outline IPSO's remit and function, and form part of the SMA;
>
> the Articles of Association of IPSO, which deal with its constitution, independence and governance;
>
> the Articles of Association of the Regulatory Funding Company (RFC) which will be responsible for funding IPSO and convening the Code Committee; and
>
> the Financial Sanctions Guidance, which sets out the guidelines within which fines can be levied.[97]

The establishment of such a body is not dependent on the approval of a royal charter. If the press feels that it cannot accept the terms of the Royal Charter as finally agreed, IPSO will not seek certification under the charter (thereby forfeiting the legal benefits that would flow from charter accreditation). IPSO has so far won support from the *Times*, *Sun*, *Daily Mail*, *Daily Telegraph*, *Daily Mirror* and *Daily Express*. The *Guardian*, *Financial Times* and *Independent* have not signed up.[98] It is unclear whether these three titles will eventually join the other titles. The *Guardian* has previously raised concerns that the plans were "insufficiently independent". A spokeswoman for the paper was quoted as saying:

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96 Newspaper Society press release, *Independent Press Standards Organisation*, 8 July 2013 [includes links to the documents]

97 IPSO, *A brief guide to the documentation*, November 2013

98 "Press still plans self-regulation despite ministers' rejection, says Times editor", *Guardian*, 9 October 2013; "Guardian rejects press watchdog as 'own goal' threatening independence", *Guardian*, 6 August 2013

> "The Guardian has not ruled out joining IPSO in the future, but - along with one or two other national papers - has concerns about some aspects of the proposed regulator, which we continue to discuss."[99]

The reaction from the wider public has been mixed. Initial analysis by the Media Standards Trust (MST) concluded that "although the proposed regulator has differences from the existing system, the IPSO plans fall far short of Lord Justice Leveson's recommendations."[100] The MST's conclusions were amplified in a more detailed study in November 2013.[101]

Speaking to the Society of Editors conference in November 2013, Lord Hunt, current chairman of the Press Complaints Commission (PCC), suggested that the debate over the cross-party plan underpinned by a Royal Charter had been a distraction. "The charter may well never be invoked," he said. "The important thing is to get the body set up and get everyone signed up."[102] And indeed, speaking on the Andrew Marr Show on BBC a few days earlier, the Culture Secretary, Maria Miller, appeared willing to give IPSO the opportunity to work on its own. Asked whether the Royal Charter could therefore be redundant, Ms Miller agreed that it could, subject to the new regulator being set up properly.[103]

According to IPSO, by December 2013 "publishers representing more than 90% of the national press and the vast majority of the regional press, along with major magazine publishers" had signed up to the new organisation. It is expected that the PCC will be wound up and its functioned decanted into IPSO no later than 1 May 2014.[104] An Appointment Panel has been established and its first role will be to select a Chair of the Board of IPSO.[105] This post was publicly advertised in February. In newspaper advertisements, IPSO has claimed that it will be "the toughest [regulator] in the Western world" and "will deliver all of the key elements that Lord Justice Leveson called for in his report".[106] In an evidence session with the Culture, Media and Sport Committee in January 2014, Lord Hunt, Chairman of the PCC, explained that IPSO has been established as a community interest company, meaning that it will be subject to independent external scrutiny through the Regulator of Community Interest Companies.[107]

7.2 Impress

The Royal Charter as agreed provides for the creation of a Recognition Panel for any new press regulator. Under the Charter there could be more than one such body recognised. Equally, the press could continue to regulate itself, without reference to what fierce critics in the press call a "politicians' charter", with the possible consequence that no regulatory body

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99 "Guardian yet to back new regulator", *Evening Standard*, 5 December 2013. The *FT* is also reserving its position, or it was in December 2013: "Financial Times not on the verge of signing up for Ipso", Greenslade Blog, *Guardian* website, 16 December 2013.

100 Media Standards Trust news, *MST analysis of IPSO*, 18 July 2013

101 Media Standards Trust, *The Independent Press Standards Organisation (IPSO): an assessment*, November 2013. The MST's aim was to compare IPSO with Leveson's recommendations, rather than with the Charter. However, consistent with the Government's stated intention to implement Leveson in full, the recognition criteria adopted in the Charter follow the wording of Leveson, in many cases verbatim.

102 "Press regulation royal charter a 'sideshow', say Ipso founders", *Guardian*, 12 November 2013

103 "Royal charter redundant if new press regulator works, says Maria Miller", *Guardian*, 4 November 2013

104 IPSO press release, *Independent Press Standards Organisation to launch by 1 May*, 5 December 2013.

105 IPSO press release, *Independent Press Standards Organisation Appointment Panel*, 8 January 2014

106 Quoted in: Media Standards Trust, *The Independent Press Standards Organisation (IPSO): an assessment*, November 2013, p7

107 Culture, Media and Sport Committee, *Dealing with complaints against the press: oral evidence*, HC 1032 2013-14, 28 January 2014

will come forward to seek recognition under the terms of the Charter.[108] So far, one other contender has entered the lists: the 'Impress Project', launched in December 2013 by charity adviser and former journalist Jonathan Heawood. Impress is a not-for-profit company that aims to develop plans for a Leveson-compliant regulator. This project, which has the support of former *Sunday Times* editor Sir Harold Evans, hopes to attract newspapers, online publishers and magazines that do not want to be part of IPSO. Mr Heawood says that he expects to set up the regulator itself in the first half of 2014 and to seek recognition from the Recognition Panel that is being established in line with the cross-party Charter. Impress says that there are three main differences between this proposed body and IPSO itself: it will be funded through an independent charitable trust; it will arbitrate civil disputes between all parties at an affordable cost; and it will involve the public closely in its work through a consultation panel. Its articles of association will also include a "sunset clause" that will cause it to be dissolved if any future Government altered the royal charter.[109]

Jonathan Heawood appeared before the Culture Committee at its January 2014 session. He confirmed that no national newspapers had so far indicated a willingness to join his proposed regulator, although he was in discussion with several. He was then probed on the motives underlying the Impress Project:

> **Q116 Chair**: You will be aware that the mechanism established by Parliament includes quite severe sanctions on newspapers that do not join a body that is recognised under the Royal Charter. You will also be aware that, in order for those sanctions to come into effect, there needs to be a body that is recognised. How do you respond to the suggestion that IMPRESS is being created not with any great expectation that it will regulate anyone but that it is simply being created in order that those sanctions can be brought into effect?
>
> ***Jonathan Heawood***: The very simple answer is to say that at this point, we, as a small group of people—the board of the IMPRESS project and myself—are not entirely sure that we will apply for recognition. To be clear, the intention is that IMPRESS should be fully recognisable. We have no problem with the principles of the Leveson report as distilled in the Royal Charter. They seem sensible, moderate and effective.
>
> The concern that we do have is about the impact of the incentives on publishers who might for good reasons choose not to be regulated by a recognised regulator. To be precise, we are concerned about what might be called the *Private Eye* problem. What if you have a small, very independent minded publisher that says, "We do not want to be part of anyone's club. We do not want to sign up to any kind of establishment body and our entire raison d'être is to pursue vigorous, investigative journalism that very often lands us in the libel courts," and that publisher says to us, "If you trigger the incentives, we are just going to be an open invitation to anyone we ever touch on to issue writs against us and that will put us out of business." In terms, this is the kind of thing that might be said to us. For that reason, we are consulting and thinking and seeing if there are additional safeguards that we can put into IMPRESS, as a regulator, so if it was recognised, we could mitigate that risk. Or are there even things that we might discuss with you, with the parliamentarians about—and this is an open idea, not a formal lobbying request. Are there modifications that might be necessary to the Crime and Courts Act to clarify that that kind of perverse consequence for legitimate, investigative journalism should not take place?

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[108] Under the Charter, the Board of the Recognition Panel must present an annual report to Parliament stating whether it has granted recognition to, or withdrawn recognition from, a regulator in the course of the year (article 13).

[109] "Sir Harold Evans backs plan for new press regulator to rival Ipso", *Guardian*, 9 December 2013

> **Q117 Chair:** So you are suggesting to us that it is your concern about the sanctions, at the moment, which is causing you to have some doubt about whether or not you seek recognition.
>
> ***Jonathan Heawood***: Precisely.[110]

8 The story continues…

Argument continues on the merits or demerits of the Royal Charter solution. In March 2014 full-page advertisements appeared in three national newspapers announcing a declaration of support, signed by more than 200 "leading figures from the arts and academia", for a system of press regulation underpinned by royal charter. The declaration, and the assembling of names, was organised by Hacked Off.[111] In a contrasting development on the same day, the World Association of Newspapers and News Publishers declared that British newspapers have "well-founded" concerns that the cross-party charter solution could undermine freedom of speech and interfere with newspapers' ability to publish freely.[112]

9 Scotland

Press regulation is a devolved matter. Consequently, the arrangements now arrived at for England and Wales would not have application in Scotland unless the Scottish Parliament passed a motion allowing the Commons to legislate on an issue that is devolved. Major newspapers published in Scotland are currently members of the (UK-wide) Press Complaints Commission. At third reading of the *Enterprise and Regulatory Reform Bill* in the Lords the Government introduced an amendment to restrict the effect of the entrenchment clause to England and Wales. For the Government, Viscount Younger of Leckie explained:

> The body created by the royal charter would be capable of operating throughout the United Kingdom, including Scotland and Northern Ireland, should the devolved Administrations want it to. The Government have been clear that whether it does so is a matter for discussion with the Scottish Government and the Northern Ireland Executive. However, it is important that we observe the boundaries between our respective powers, and it is for this reason that the extent is limited to England and Wales. This is because the measures, were they to have UK-wide extent, would also prevent Scottish Ministers or Northern Ireland Ministers from exercising their royal prerogative to make recommendations to Her Majesty in Council in respect of these devolved matters. It is therefore an issue that should be discussed more fully with the devolved Administrations to allow them the opportunity to comment.[113]

After publication of the Leveson Report, Scottish First Minister Alex Salmond invited Lord McCluskey, a former high court judge and Solicitor-General, to chair an expert group looking into the implications for Scotland. In his report, published on 15 March, Lord McCluskey proposed that:

> statute would provide a basic underpinning to ensure (a) that, in future, news-related material would be regulated, but only to the limited extent proposed by Leveson, by an independent, non-statutory, Regulatory Body of a character to be proposed by the press; and (b) that there would be created a separate independent body (the Recognition Body) with responsibility for ensuring that the independent Regulatory

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[110] Culture, Media and Sport Committee, *Dealing with complaints against the press: oral evidence*, HC 1032 2013-14, 28 January 2014

[111] "Big names back press regulation underpinned by royal charter", *Guardian*, 18 March 2014

[112] "Global news body backs UK papers' fight for freedom", *Times*, 18 March 2014

[113] HL Deb 20 March 2013 c633

> Body complies at all times with the Leveson principles and essential recommendations.[114]

The Scottish regulator could have the power to censure newspapers, magazines and websites, including "gossip" sites, while the expert group said further regulation of social media may also be required. The report's findings were criticised by the other major parties at Holyrood, who described the proposals as "draconian".[115]

Lord McCluskey has defended his proposals, which commentators argue go even further than those in the Leveson Report, but Mr Salmond has said that they do not represent Scottish Government policy.[116] Speaking to BBC Scotland after the agreement was reached at Westminster, the First Minister said:

> "Let's look at the Royal Charter idea, let's look at it with an open mind and see if it meets Scottish circumstance and whether it answers the call of those who have been the victims of press malpractice, within the imperative of having a free and fearless press."[117]

By April opinion among MSPs seemed to have swung towards a UK-wide charter. After a meeting with party leaders at Holyrood on 24 April, Scottish culture secretary, Fiona Hyslop, said:

> "The Scottish government welcomed the consensus previously reached by Westminster on proposals for a royal charter on press regulation and hopes this can be maintained.
>
> "Whilst we recognise the decision of parts of the newspaper industry to propose an alternative charter, and will be watching developments closely, all parties in the Scottish Parliament have agreed to a debate on Tuesday [30/4] on proposals for the Scottish government to support a royal charter subject to it properly reflecting Scots law and devolved responsibilities."[118]

The Scottish Government duly secured cross-party support on 30 April. However, Ms Hyslop suggested that a regulator could be imposed on newspapers if no other solution could be found: "If the press impasse remains and if the recognition panel has no-one to recognise then it will report to both parliaments and stronger statutory measures may then be the only option," she said.[119]

In her statement to the Commons in October, the Culture Secretary explained that redrafting work had taken place over the summer to ensure that the cross-party charter would have application in Scotland if that was the will of the Scottish Parliament:

> We have already improved the drafting of the cross-party charter and we have worked with the Scottish Government to make sure that the press does not have to worry about complying with different frameworks on either side of the border.[120]

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114 Scottish Government, *Expert Group on the Leveson Report in Scotland*, 15 March 2013, Executive summary
115 "Press regulation: call to detail royal charter deal's impact on Scotland", *BBC News Scotland*, 18 March 2013
116 "Press regulation: McCluskey defends new law plan", *Scotsman*, 22 March 2013
117 Quoted in: "Alex Salmond considers Westminster press regulator for Scotland", *Daily Telegraph*, 18 March 2013
118 "Leveson Inquiry: MSPs to vote on UK-wide regulation", *BBC News Scotland*, 25 April 2013
119 "Press faces stricter curbs – minister", *The Scotsman*, 1 May 2013
120 HC Deb 8 October 2013 c46

In the course of a parallel statement made in the Lords,[121] the Government Minister, Lord Gardiner of Kimble, commented that "the cross-party charter will include an ability for the Scottish press to be part of the arrangements".[122]

An online legal commentator has summarised the complexities of extending the charter to the two jurisdictions.[123]

10 Bloggers

There has been controversy about the status of individual bloggers under the proposed Charter.

The draft Royal Charter which was agreed by all parties on 18 March contains this definition:

> "relevant publisher" means a person (other than a broadcaster) who publishes in the United Kingdom:
>
> i. a newspaper or magazine containing news-related material, or
>
> ii. a website containing news-related material (whether or not related to a newspaper or magazine)...[124]

Although membership of the proposed new regulatory body will be voluntary, the incentive for publishers to join is that, if they remain outside the body, they could be exposed to "exemplary damages" as the result of a successful libel action taken against them. The measures to implement "exemplary damages" were originally added as Government amendments to the *Crime and Courts Bill [HL]* on 18 March.[125] The press, and bloggers themselves, were quick to pick up on the fact that the definition in the Charter itself was so broadly drawn that it appeared to capture a wide variety of online activity. For example, Kirsty Hughes, chief executive of Index on Censorship, was quoted as saying that "thousands of websites" could fall under the definition of "relevant publisher". She went on:

> "Bloggers could find themselves subject to exemplary damages, due to the fact that they were not part of a regulator that was not intended for them in the first place."[126]

In proceedings on the Bill, the Government introduced a new amendment, clause 29, and new schedule (5) designed to clear up this ambiguity. The Culture Secretary, Maria Miller, explained:

> In new clause 29 we set out a definition of "relevant publisher" that captures national newspapers and their online editions, local and regional newspapers and their online editions, and online-only edited press-like content providers, as well as gossip and lifestyle magazines. Exemplary damages and costs are designed to catch larger news publishers—those at the centre of the circumstances giving rise to Leveson. As highlighted by my hon. Friend the Member for Colchester (Sir Bob Russell), who is no longer in his place, many of those are not necessarily the smaller publications.
>
> The new provisions will act as the key incentive for joining the new press regulator. However, our new clause is also designed to protect people who are not intended to be

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121 HL Deb 8 October 2013 cc53-62
122 c62
123 Stuart Tennant, "Scottish media regulation", *Inforrm Blog*, 3 October 2013
124 Schedule 4, para 1
125 HC Deb 18 March 2013 cc697-736
126 "Press regulation deal sparks fears of high libel fines for bloggers", *Guardian*, 19 March 2013

> covered by the new regulator. Three interlocking tests will apply in that regard. They ask whether the publication is publishing news-related material in the course of a business, whether its material is written by a range of authors and whether that material is subject to editorial control. This provision aims to protect small-scale bloggers and the like. Together with new schedule 5, it will ensure that the publishers of special interest, hobby and trade titles such as the *Angling Times* and the wine magazine *Decanter* are not caught in the regime. Student and not-for-profit community newspapers such as the one mentioned by my hon. Friend the Member for North East Somerset (Jacob Rees-Mogg) will not be caught, and scientific journals, periodicals and book publishers will also be left outside the definition and therefore not exposed to the exemplary damages and costs regime.[127]

In response to several interventions from Members, Ms Miller reiterated her point about individual bloggers:

> New clause 29 describes in great detail who will be caught by the definition of "relevant publisher". The publisher would have to meet the three tests of whether the publication is publishing news-related material in the course of a business, whether their material is written by a range of authors—this would exclude a one-man band or a single blogger—and whether that material is subject to editorial control. This is specifically designed to protect small-scale bloggers. Lone bloggers clearly do not meet those criteria.[128]

The new clause and the schedule (which specifies exclusions form the definition of "relevant publisher") were added to the Bill without division.[129]

The press continued to report "confusion and alarm among the blogging community" in the face of an emerging "media maze".[130] New cross-party talks reportedly took place in the days following with a view to agreeing an amendment that would put the status of individual bloggers beyond doubt.[131] When the *Crime and Courts Bill [HL]* returned to the Lords for consideration of Commons amendments, a variety of further amendments had been tabled. Lord Lucas (Conservative) proposed an amendment to exclude bloggers or other "small or medium-sized enterprises". Lord Stevenson (Labour) put forward a separate amendment to exclude one-man operations and non-profit sites. These were not moved. However, the Government had responded with a new amendment of its own (131BA on the Order Paper). This amendment, which was agreed by the Lords, added to the list of exclusions in Schedule 5 the following category: "a person who publishes a small-scale blog".[132] For the Government, Lord McNally, while urging peers to accept the Government amendment for the interim, admitted that the definitions were less than water-tight and promised to revisit the issue after the Easter recess:

> I recognise that people have been seeking clarification on how the legislation could apply to small-scale bloggers, and how the interlocking tests work. This is reflected in some of the amendments before us, and includes the suggestion that there may be a case for making an express exemption in respect of small-scale blogs in the new schedule inserted by Commons Amendment 131. To allow a period of reflection in advance of the next round of ping-pong in another place after the Easter Recess, the Government have tabled manuscript Amendment 131BA in recognition of the concerns

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127 HC Deb 18 March 2013 cc703-4
128 HC Deb 18 March 2013 c704
129 HC Deb 18 March 2013 cc734-6
130 "Websites lead growing backlash over Leveson deal", *Independent*, 19 March 2013
131 "Bloggers set to escape press controls", *Financial Times*, 25 March 2013, p2
132 HL Deb 25 March 2013 c903

> over Amendment 131. As part of this, my right honourable friend the Secretary of State for Culture, Media and Sport has agreed that her officials will collate and engage with any issues that are raised before submitting a view on how the test will operate and whether there is a need for a further amendment. I hope it is clear to noble Lords that when this is next considered by the other place, the Government may come forward with an alternative amendment, or invite the other place not to agree this amendment. However, for now, I invite the House to make this change.[133]

In speaking to the amendment, Lord McNally also listed a number of other online activities which the Government does not intend to fall within the definition of "relevant publisher". These include news aggregation services (e.g. Yahoo!), social networking sites (e.g. Facebook), blog hosts (e.g. WordPress and Tumblr) and individual journalists. He said:

> ...the public have different expectations about different kinds of media, and in taking a regulatory approach we should take seriously those public expectations. Clearly, the online version of the national press, its regional counterpart or an online yet press-like news site, carry very different public expectations when compared with a small-scale blog-or, for that matter, a tweet. Our definition of "relevant publisher" seeks to make this differentiation. It does so by employing an interlocking series of tests, all of which must be met before the threshold of the definition is reached. They are, first, whether the publication publishes news-related material; secondly, whether it is written by different authors; thirdly, whether it is to any extent subject to editorial control; and, fourthly, whether it is published in the course of a business. The definition is therefore intended to protect small-scale bloggers while capturing the more sophisticated, press-like online material that Leveson described. (...)
>
> The definition of "relevant publisher" is aimed at organisations that employ or otherwise commission journalistic content, and, even then, only to the extent that these organisations operate in line with the four interlocking tests that I outlined.[134]

The *Crime and Courts Bill [HL]* returned to the Commons after the recess for consideration of Lords amendments. At this point the Government introduced new amendments intended to tighten further the exemption for small-scale blogs. The Culture Secretary explained:

> Amendment (a) will add to the list of exemptions micro-businesses where they are a blog or where their publications are merely incidental to their other business. For organisations that publish news-related material incidentally to their main activity, that exemption will cover both online and traditional print. We use a definition of a micro-business commonly used by the Department for Business, Innovation and Skills, which captures any business with fewer than 10 employees and a turnover of less than £2 million. The amendment will ensure that a micro-business that is either a small-scale blog or a website whose publication of news-related material is only incidental to its wider business is not included. That should place many blogs and other small web publishers squarely outside the incentives framework.
>
> Amendment (b) will allow those not captured to get the benefit of the costs incentives if they choose to join the recognised regulator, even though they are not a relevant publisher. That means that those exempted by virtue of the fact that they are a micro-business can choose to gain the benefits of the costs clauses by joining the regulator, providing an incentive for them to join if they so wish and a choice to small

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133 HL Deb 25 March 2013 cc850-1
134 HL Deb 25 March 2013 c850

> organisations, perhaps before they grow in size and inevitably become a relevant publisher. That is an important addition that will help support that part of the market.[135]

These amendments were accepted by the Commons without a vote and made in lieu of the earlier Lords amendment.[136] The tighter definition introduced into the Commons was accepted by the Lords on 23 April.[137] The measure is now law.[138]

The Department for Culture, Media and Sport has published a guide for those who are still uncertain where they stand.[139] It summarises the position as it will be once the Charter is approved and a new regulator established:

> The publishers that we - and Lord Justice Leveson - want to encourage to join a self-regulator are those who publish news-related material (broadly news, current affairs and gossip). These are described in the legislation as 'relevant publishers' who will be covered by a series of incentives to encourage them to sign-up to a recognised press self-regulator. To qualify as a relevant publisher, four tests must be met. They are:
>
> - publishing 'news-related' material;
> - in the course of a business;
> - which is written by different authors and;
> - is subject to editorial control.
>
> But various types of publisher are exempt even if they meet the four tests. They are:
>
> - Broadcasters
> - Special interest titles
> - Scientific or academic journals
> - Public bodies or charities publishing news in connection with their functions
> - Company news publications
> - Book publishers
> - Micro businesses that are a multi-author blog or publishing news incidentally to their main business

Of related interest:

- Commons Library Standard Note 6357, *Press regulation: the debate*, 20 June 2012 [background and developments up to summer 2012]
- Lords Library Note LLN 2012/041, *Leveson Report: reaction*, 30 November 2012 [immediate responses following publication from politicians, media commentators and interested parties]

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135 HC Deb 22 April 2013 c688
136 HC Deb 22 April 2013 c692
137 HL Deb 23 April 2013 c1395
138 The *Crime and Courts Act 2013* received Royal Assent on 25 March: HL Deb 25 April 2013 c1546
139 DCMS policy paper, *Independent self-regulation of the press: who does it apply to?*, 23 April 2013