

EXPLANATORY NOTE ON AMENDMENTS TO THE FINAL DRAFT ROYAL CHARTER ON SELF-REGULATION OF THE PRESS

1. On 18 March 2013, a draft Royal Charter on the independent self-regulation of the press was published following the cross-party agreement reached on the recommendations on self-regulation of the press set out in the Leveson Report on the Inquiry into the Culture, Practices and Ethics of the Press.
2. On 8 October 2013, Maria Miller, the Secretary of State for Culture, Media and Sport, gave an oral statement to the House in which she reported that the Committee of the Privy Council given responsibility for considering a Petition from the Press for a Royal Charter was unable to recommend that this Petition be granted¹. She also informed the House that the Committee, having considered the Press' Charter, had formed views on two substantive areas - access to arbitration and the standards code - which merited fresh consideration. In light of this, all three parties had agreed to work together to agree improvements to the recognition criteria and produce a final draft of the cross party Charter to place in the Libraries of both Houses on 11 October 2013. This would allow Parliamentarians, the public and the press to see the final draft that the three parties intend to put forward to be granted.
3. This note provides an explanation of the amendments in the final draft Charter published in accordance with that commitment. The amendments include those made: as a result of the three parties working together; following discussions with the Scottish Government about the technical changes necessary to ensure the draft Charter applies in Scotland; consultation with the Commissioner for Public Appointments, who carries specific responsibilities under the Charter; and, finally, following a thorough technical review to check that the draft delivers the cross-party agreement as intended.

Appointments

4. Schedule 1 sets out the provisions on the appointment of the Appointments Committee and thereafter the appointment of the Chair and members of the Board of the Recognition Panel. In particular, it sets out the functions of the Commissioner for Public Appointments.
5. Following discussions with the Office of the Commissioner for Public Appointments (OCPA) we have agreed that the most appropriate way to confer these additional functions on the Commissioner is under the Public Appointments Order in Council 2013. We have also agreed the following changes:

¹ Subsequently, on 9 October 2013, The Queen approved an Order in Council approving a Committee report advising against the grant of a Charter to The Press Standards Board of Finance Limited.

- a) To align the wording with the Commissioner's Code of Practice which states that merit (along with fairness and openness) is one of the three basic principles in relation to appointments².
 - b) To make clear that the Appointments Committee is independent and not part of the Recognition Panel and to clarify the relationship between the Commissioner and the Board of the Recognition Panel, once the work of the Appointments Committee is completed for the initial appointments³.
 - c) To make clear that the Chair of the Board of the Recognition Panel (and not the Appointments Committee) is responsible for determining the number of initial Members of the Board⁴.
 - d) To allow the Commissioner to determine the number of members of the Appointments Committee, enabling him to appoint the Chair of the Board of the Recognition Panel to the Appointments Committee for the purposes of appointing the other initial Members of the Board⁵.
 - e) To make clear that OCPA can support the Appointments Committee in their work appointing the Chair and the Board of the Recognition Panel⁶.
 - f) To enable a broad range of people to be eligible for membership of the Board of the Recognition Panel (including people with experience of working in the voluntary sector)⁷.
 - g) To make clear the criteria for appointment to the Board of the Recognition Panel where requirements may refer to different experience sets⁸.
6. Article 2.1 (terms of charter) has been inserted to bring into effect the provisions dealing with appointments on the day after the date the Charter is sealed. This is necessary to give the Commissioner and the Appointments Committee the powers to carry out their respective appointments functions as soon as the Charter has been sealed. There are two consequential amendments to ensure that the date the Charter becomes effective for all other purposes remains the date set out in Article 2.2 (the date the Chair and the initial Board members of the Recognition Panel is appointed)⁹.

² Paragraphs 1.2, 4.2 and 7.1.

³ Paragraph 1.3. and 7.1

⁴ Paragraph 1.4.

⁵ Paragraph 2.1(b).

⁶ Paragraph 2.1(c).

⁷ Paragraph 3.2(a).

⁸ Paragraph 3.2(b).

⁹ Article 12.5 and paragraph 2(f) of Schedule 4.

Technical

7. Following a thorough technical and legal review of the draft Charter a number of amendments have been made which are technical in the sense that they clarify the Charter without making any substantive change to the underlying agreement:
 - a) Recitals: to reflect the correct Crown Office terminology.
 - b) Functions (Articles 4.1, 4.2 and 8.1(a)): the reference to 'general functions' implied that there may be specific functions so the word 'general' is omitted to clarify.
 - c) Powers (Article 8.1): the previous wording implied that the Recognition Panel could only act through the Board and not delegate functions as allowed for by Article 6 (governance).
 - d) Money (Article 11.1): Managing Public Money does not have 'terms' but sets out principles for dealing with resources.
 - e) Money (Article 11.5): to replace the previous placeholder text with the indexation formula for the Consumer Prices Index.
 - f) Indemnities (Article 15.1): the previous wording did not operate to place a positive obligation on the Recognition Panel in relation to indemnities.
 - g) Devolved Ministers (Schedule 1, paragraphs 2.3 and 3.3 and Schedule 3, paragraph 5(e)): correct terminology to refer to Ministers of the devolved administrations. See also the definitions inserted in Schedule 4.
 - h) Recognition (Schedule 2, paragraph 10(a)): to correct a typographical error arising from the change in terminology from exceptional to ad hoc reviews.
 - i) Recognition (Schedule 2, paragraph 10(b)): to ensure consistency with the rest of the Charter which refers to the "date upon which this Charter becomes effective", rather than the "commencement of this Charter", which no longer works as there are two sequential commencement dates in Article 2.
 - j) Interpretation (Schedule 4): to align the definition of 'relevant publisher' with the definition in section 41 of the Crimes and Courts Act 2013 (which has received Royal Assent since the publication of the draft Charter on 18 March).

Establishment date

8. Article 2.2 provides that the Charter (except for the appointments provisions – see paragraph 4 above) takes effect from the date that the Chair of the Board

and the Initial Members (i.e. at least 4 people) of the Recognition Panel are all appointed. So, if there are several appointment dates, it will be the last in time that triggers commencement, from the day afterwards. This is also the date the Recognition Panel is established. The Charter requires the Appointments Committee to identify a Chair after the sealing of the Charter. The Chair will then be able to work with the Appointments Committee on the identification of the other Initial Members of the Board and to start work on the tasks necessary to prepare the Panel for operation on the day it is established i.e. the date the Chair and the Initial Members are formally appointed.

Fee cap

9. Three years after the Recognition Panel is established it will be able to determine a fee to self-regulatory bodies to meet the costs of carrying out applications for recognition and cyclical reviews. As previously agreed, the Exchequer will meet the costs of the Panel for its first three years of operation. Article 11.4 has been amended to insert the maximum amount the Panel can charge to independent self-regulators for both recognition and cyclical reviews.

Scotland

10. The independent self-regulation of the press is a devolved matter in relation to Scotland. On 30 April 2013 the Scottish Parliament voted to agree to Scottish participation in the draft Royal Charter published on 18 March subject to its amendment to reflect properly Scotland's devolved responsibilities, Scots law and Scottish circumstances. The resulting discussions held with the Scottish Government have produced the following amendments to the Royal Charter:

- a) Charter amendment (Article 9): where any change to the Charter would be in the competence of the Scottish Parliament it must be approved by them (in the same way as the change would have to be approved by both Houses of Parliament – by a 2/3 majority). The Scottish Government has agreed to bring forward Scottish legislation equivalent to section 96 of the Enterprise and Regulatory Reform Act 2013 to ensure that no recommendation can be made by Scottish Ministers to the Privy Council to amend the Charter unless the requirement (set out in the Charter as a result of this amendment) that the Scottish Parliament has approved the amendment has been met.
- b) Charter dissolution (Article 10): similarly, Article 10 is amended to require the approval of the Scottish Parliament before the Charter and the Recognition Panel are dissolved. Article 10(3) provides for the situation where only one Parliament approves dissolution and ensures the Charter is amended (rather than dissolved) to implement the decision of each Parliament. That is, to allow the Charter to remain in effect in relation to the relevant part of the United Kingdom.

- c) Money (Article 11.10): if amendments to the Charter result in the Recognition Panel incurring costs solely relating to exercising its functions in relation to Scotland, Scottish Ministers become responsible for funding such costs (except where they are recoverable from fees).
- d) The above changes require the insertion of references to the Scottish Parliament in a number of places in the Charter¹⁰.
- e) Appointments (Schedule 1, paragraph 3.2(b)(v)): this amendment ensures that at least one member of the Recognition Panel has an understanding of the environments throughout Great Britain relevant to the work of the self-regulator.
- f) Appointments (Schedule 3, paragraph 5): this amends the recognition criteria on the appointment of members of the Board of the self-regulator to ensure that members have experience of the press industry throughout Great Britain.
- g) Scots law (Schedule 3, paragraphs 12A and 22): to amend the recognition criteria relating to legal proceedings and arbitration to reflect the correct equivalent in Scots law. In particular, the term 'expenses' is used in Scotland for what are 'costs' in England and Wales so both terms have been included.

Standards Code (Schedule 3, paragraph 7)

11. Recognising that there is a need for the standards code to be drafted by practitioners drawn from the industry and that the code must ultimately be the responsibility of the Board, an amendment has been made to recognition criterion 7, drawing upon recommendation 7 of the Leveson Report. This provides that the standards code must be the responsibility of the Board of the independent self-regulator but that it can be advised by a Code Committee. The Code Committee could write the standards code. It would be a matter for the regulator, when applying for recognition, to propose how the Code Committee is constituted with independent members and serving editors representing the press.

Arbitration (Schedule 3, paragraph 22)

12. A footnote has been added to recognition criterion 22 to make clear that the principle that arbitration should be free does not prevent the Recognition Panel approving a small administration fee to be used for the purpose of defraying the cost of the initial assessment of an application but not for meeting the costs of determining an application.

¹⁰ Article 13, paragraph 10 of Schedule 2 and paragraph 5 of Schedule 4. [add new one A 11]

13. The amount of the fee must be approved by the Recognition Panel. That fee would be refundable by virtue of criterion 22(f) in the event that the claimant is successful. In establishing the arbitration scheme, the Regulator will need to determine matters such as whether there should be remission of fees for complainants of limited means having regard to fairness, effectiveness and sustainability..
14. Paragraphs 6(a) and 7(b) of Schedule 2 have been amended to make clear that any cyclical review of the arbitral process by the Recognition Panel will include a review of any small administration fee; and to provide the Panel with the power to direct any fee be changed following that review.
15. Paragraph 7(c) of Schedule 2 has also been amended to provide the Recognition Panel with the power to allow, in certain circumstances, recognition to continue to apply to a regulator if subscribers publishing only on a regional or local basis did not participate in its arbitration scheme. The Recognition Panel may only allow this following a review, and on concluding for itself that the arbitration system was causing serious financial harm to subscribers publishing only on a regional or local basis.
16. If the Recognition Panel were to allow, following a review, the non-participation of subscribers who publish only on a local or regional basis from an arbitration scheme within a regulator, this would ultimately impact on the application of the costs provisions in the Crime & Courts Act 2013 to those subscribers deciding not to participate. The Courts would retain the power to determine that costs should follow the event in the normal way and the incentives would not operate in these circumstances.

11 October 2013