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What will a Royal Charter mean for regulation of the press?

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IP & IT analysis: Will the agreement between the three main parties to create a Royal Charter adhere to the Leveson principles and what are the implications for the Defamation Bill? John Gould, regulation and public law specialist at Russell-Cooke, comments on the issues.

Original news

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An independent regulator of the press could be established by Royal Charter, following the publication of Lord Justice Leveson's Report on 29 November 2012 and cross-party talks on implementing a self-regulatory system. The draft Royal Charter sets out the terms of the incorporation of the new body, to be known as the Recognition Panel. This is part of regulatory measures aimed at protecting future victims of press intrusion, while maintaining a free press.

What is the recent history of the Royal Charter?

The Royal Charter was proposed several months ago by the government as a way of implementing the recommendations of the Leveson Inquiry. This approach was initially opposed by the other main parties who argued for a full legal framework as Lord Justice Leveson proposed. Cross party talks were held on the government's proposal but these stalled as agreement could not be reached.

What are the 'sticking points'?

Much of the debate has focused on the extent of statutory underpinning for a new self-regulatory structure and the extent to which it will be able to compel publishers to comply with sanctions.

Participation by publishers in the new structure will not be compulsory but a proposed amendment to the Crime and Courts Bill provides that publishers who do not participate may be liable to pay exemplary damages in civil proceedings. The proposed amendments also provide a costs incentive for publishers. Where civil proceedings are brought against them the court must not order costs against participants providing that the issues raised in the claim could have been resolved by the use of the arbitration scheme of a regulator recognised by the Recognition Panel.

Conversely, costs must be awarded against a non-participating publisher where the claim was capable of resolution through an arbitration scheme. Membership of the Board of the Recognition Panel will be independent--politicians and those involved with the press will be ineligible for membership.

What has been agreed?

The proposed Royal Charter establishes a body called the 'Recognition Panel' for the purpose of recognising regulators. 'Regulator' is defined as 'an independent body formed by or on behalf of relevant publishers for the purpose of conducting regulatory activities in relation to their publications'.

How will entrenching the Royal Charter happen?

The new body will be established by Royal Charter following cross-party agreement. It is expected that provision will be made in legislation preventing changes to Royal Charters granted after 1 March 2013 without Parliamentary approval, unless the requirements for such approval set out in the particular Charter are met.

The government argues this falls short of 'statutory underpinning' since no legislation will mention regulation of the press specifically. The Charter itself will require Parliament to approve changes by a two thirds majority in each House.

What are the key features of the Royal Charter?

The Royal Charter sets out criteria which the Recognition Panel must apply in recognising regulators. These include that the regulator should establish a standards code and deal with complaints about breaches of that code. It is proposed that a regulator should have the following powers in relation to a breach of the code:

- o to direct appropriate remedial action and the publication of corrections and apologies
- o to impose sanctions of up to 1% of the publication's turnover with a maximum of £1,000,000

It is also proposed that a Regulator should provide an arbitration process for civil legal claims.

How closely does it adhere to Leveson principles?

What has been agreed falls short of the approach recommended in the Leveson Report which recommended 'legislation that underpins the independent self-organised regulatory system and facilitates its recognition in legal processes'. He proposed that this legislation should 'identify the legitimate requirements to be met by an independent regulator organised by the press' and

place an 'explicit duty on the government to uphold and protect the freedom of the press'.

How will new rules relate to the internet and to bloggers in particular?

The scope of the new self-regulatory arrangements remains unclear. The draft Royal Charter defines 'relevant publisher' as a person who publishes in the UK a newspaper or magazine containing news-related material or a website containing news-related material. 'News-related material' is defined as news or information about current affairs; opinion about matters relating to the news or current affairs; or gossip about celebrities, public figures or people in the news.

There remains uncertainty about whether the definition will apply to bloggers. This may depend on the extent to which they engage in 'news-gathering'.

What are the implications for the Defamation Bill?

A recent amendment to the Defamation Bill sought the establishment of a Defamation Recognition Commission. The Commission was to have similar powers to the Recognition Panel, namely the ability to certify bodies as Independent Regulatory Boards. It was proposed that in civil matters the court would be empowered to take into account when awarding costs and damages whether either party in a dispute had chosen not to use the recognised arbitration service of an Independent Regulatory Board.

In light of the proposed amendments to the Crime and Courts Bill it is unclear whether this amendment (to be considered on 16 April 2013), will move forwards.

Interviewed by Nicola Laver.

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