Expert Group on the Leveson Report in Scotland

To consider the findings and recommendations made in the Part 1 of the Report of the Leveson Inquiry in respect of Press Regulation and to offer advice and recommendations as to the most appropriate means of achieving statutory underpinning in Scotland.

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The views expressed in this report are those of the Expert Group and do not necessarily represent those of the Scottish Government or the Scottish Ministers.

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EXECUTIVE SUMMARY

1. We have proceeded on the fundamental principle affirmed in the Leveson Report, namely that the terms and conditions of press regulation[1] should not be prescribed by statute. Any bodies forming part of a new regulatory system must be independent of the Legislature and of Government as well as independent of the media.

2. As invited to do by our Terms of Reference, we have suggested that, consistently with that principle, 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 Body complies at all times with the Leveson principles and essential recommendations.

3. We accept, but build upon, the Leveson conclusion that the Regulatory Body must have guaranteed jurisdiction over "all significant news publishers". The principal difference between what we advise and what others have proposed is that the jurisdiction of the Regulatory Body must extend by law to <u>all</u> publishers of news-related material. No publisher of news-related material should be able to opt out of that jurisdiction. In that respect the jurisdiction of the new regime would be universal, as is that inherent in existing statutes that apply to the press, such as the Contempt of Court Act 1981, the Protection of Harassment Act 1997, the Regulation of Investigatory Powers Act 2000, and the Bribery Act 2010.

4. Funding for the system should be settled by agreement between the industry and the Board of the Regulatory Body, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry[2]. The allocation of charges between different publishers would be a matter to be determined by the Regulatory Body, subject to the approval of the Recognition Body.

5. We draw attention to the fact that all important institutions in a democracy, including public institutions such as the Judiciary and the Police, and even more pertinently for present purposes, social institutions such as charities, Churches and Trades Unions, are subject to the Rule of Law and to the particular statutory jurisdictions and restrictions enacted by the elected Legislature for each of them; yet they preserve their independence and freedom from political interference in the carrying out of their functions. We also note that, in some democracies, including Iceland, Denmark and Ireland, subjecting the press to the limited jurisdiction of an independent, non-government regulator is compulsory or is secured by the prospect of direct legislation as the alternative.

[1] "The press" would traditionally encompass the printed press only. A description of what is meant by "the press" for the purposes of our recommendations is given in paras. 38 and 39 of the main report. We use the concept of "news-related material", as discussed in those paras. interchangeably.
[2] This is a direct quotation from the Leveson Executive Summary: Recommendation 6.

6. We have concluded that there would be no great difficulty in drafting legislation that would achieve these objectives without compromising the fundamental freedom of the press; and have suggested using as a model for 'statutory underpinning' the draft Press Standards Bill prepared by DCMS.

7. We have little confidence that the voluntary 'opt in or opt out' model proposed by Leveson would work–whatever incentives were devised to encourage publishers to opt in. But if, contrary to our view, it was decided that publishers were to be allowed to opt in or out of the regulatory system it would be necessary to provide, by legislation, mechanisms similar to those suggested by Leveson. We should be reluctant to advise that substantial consequential changes be made in haste to Scots Law on, for example, aggravated damages, without consulting the Scottish Law Commission and others.

8. We recognise that there are differences between the legal systems in Scotland and elsewhere in the United Kingdom but conclude that these would not, in themselves, require the creation of different regulatory frameworks in different parts of the UK. It is commonplace for statutory law to apply UK-wide but with modifications to take account of differences in legal systems. We believe that the making of such modifications in this field would be an essentially technical matter properly left to Parliamentary Counsel. This advice relates particularly to the statutes (e.g. the Data Protection Act, a reserved law) in respect of which Leveson makes detailed recommendations (Recommendation 48 onwards).

9. If the London negotiations fail to produce the necessary statutory underpinning for a Leveson-compliant Regulatory Body with universal jurisdiction, then Scottish Ministers may consider introducing legislation separately to ensure that those resident in Scotland can be adequately protected from abuse of the kind that the Inquiry identified and examined. We believe that it would be possible for the Scottish Parliament to achieve that object by legislating for the regulation of news–related material circulating in Scotland by any means including electronic publishing.

10. Scottish legislation could provide for a separate Scottish Recognition Body. We do not consider that there is anything in such a proposal that would prevent the formation of a single UK-wide Regulatory Body if that was considered appropriate.

11. Our short timetable did not permit us to explore in detail <u>all</u> the possible consequences of an unsatisfactory conclusion to the London negotiations. If the London negotiations fail to produce an acceptable solution, we should be prepared, if invited, to consider that in a supplementary report and to offer advice. We refer briefly to the new suggestions of the Royal Charter in paragraph 4 of the main report.

12. As required by our Terms of Reference, we proceeded on the basis of the findings of the Leveson Report and the evidence presented at the Inquiry. Representations were made to the Group by interested parties but we elected not to rehear evidence provided to Leveson or to seek any new evidence on the basis that our remit from Government was specifically to advise on possible implementation of the Leveson findings. The members of the Group were fully aware of the impact on victims of misconduct on the part of the printed press and took this into consideration during our deliberations.

Acknowledgements

13. We were well served by the officials who were allocated to assist the Expert Group. They prepared briefing notes (see Appendix 5), responded to requests for information, and provided drafting and editing support. We owe them a debt of gratitude for their thoroughness, diligence and tolerance.

INTRODUCTION

1. **Our appointment.** On 13 December 2012 we were appointed by the Scottish Government to consider the recommendations of the Leveson Report as they relate to Scotland. Our Terms of Reference are set out in Appendix 1. In essence, we were invited to proceed on the basis of the findings, principles and recommendations of Part 1 of the Leveson Report[3] and to report in three months. The Leveson Inquiry was UK-wide in its scope. It was set up, and its Terms of Reference[4] were finalised, with the support of the Devolved Governments of the UK in Scotland, Northern Ireland and Wales.[5] Accordingly, without seeking to duplicate or challenge the Leveson thinking, the members of this Group were particularly asked to take account of how the Leveson proposals and the developments that follow the publication of that Report might impact upon Scotland; how they might fall to be modified to take account of the Scottish context; and to advise on statutory underpinning. Our recommendations are to be essentially supplementary to those in Leveson. Both Leveson's and our Terms of Reference refer to "the press": what this covers is discussed in paragraphs 38 and 39.

2. **Our approach.** At the outset, we draw attention to our three months timetable. Given acceptance of the Leveson principles and the limited time available, we decided not to hear further evidence but to rely on the comprehensive Leveson report and our own expertise. In those instances where a recommendation by Leveson refers solely to reserved or English legislation the Group has no comment to make[6].

3. **Subsequent Developments.** At the time of our appointment a scheme for a Regulatory Body devised by national editors following discussion with Westminster was expected by December 2012. (We understand that editors of Scottish publication were not invited to take part in the London discussions; nor were the members of this Group.) No scheme has emerged, but four pieces of draft legislation to implement Leveson in full or in part have been published:

Press Freedom and Trust Bill[7]- Labour Party proposals
Independent Press Council Bill[8] - proposed by Lord Lester
Media Freedom and Regulatory Standards Bill – drafted by Hacked Off[9]
Draft of a DCMS Press Standards Bill[10]

[3] An Inquiry into the culture, practices and ethics of the press – REPORT: The Right Honourable Lord Justice Leveson, HC 780-I-IV http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp. For brevity, the Report and its contents are referred to herein as 'Leveson', as is Lord Justice Leveson himself.
[4] See Appendix 2.
[5] Volume I, Part A, Chapter 4, para. 1.1.
[6] See Briefing Note on reserved and devolved matters in relation to the subject matter of the Leveson Inquiry http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing1.
[7] http://www.guardian.co.uk/media/interactive/2012/dec/10/press-freedom-and-trust-bill-draft .
[8] http://services.parliament.uk/bills/2012-13/independentpresscouncil.html .
[9] http://hackinginquiry.org/wp-content/uploads/2013/01/The-draft-Leveson-Bill-with-notes.pdf.
[10] http://hackinginquiry.org/wp-content/uploads/2013/01/APPENDIX-2-%E2%80%93-Government-draft-of-a-bill.pdf.

In addition, the Defamation Bill was amended in the House of Lords to incorporate some provisions based on Leveson[11]. Leveson related amendments are also proposed to the Enterprise And Regulatory Reform Bill[12] and reportedly will be laid in respect of the Crime and Courts Bill. The final fate of these amendments is not yet known. The failure to date of the London discussions to produce an agreed regulatory scheme, including in particular a Self-Regulatory body to replace the Press Complaints Commission, has had important consequences for us as it was clear that no Leveson-compliant agreement between those involved in the London discussions was likely to emerge within the three month period allowed to us.

4. **Royal Charter.** On 12 February 2013 the DCMS published a document entitled "Draft Operative Provisions of a Royal Charter". Its purpose is to provide an alternative legal buttress to support the new regulation system, in place of statutory underpinning as proposed by Leveson. This method of proceeding was not mentioned at the Leveson Inquiry. Accordingly its merits were not discussed there. Our Terms of Reference invite us to consider the Leveson findings, accepting "the need for **statutory underpinning** of a newly created genuinely independent and effective system of Self-Regulation". A Royal Charter does not provide 'statutory underpinning'. A statute is debated and may be amended or even rejected by the Legislature. By contrast, a Royal Charter of the kind proposed is not made and cannot be altered by the Legislature. It follows that we have no mandate to assess either the Royal Charter proposal in general or the detailed proposals contained in the DCMS draft. To be in a position to offer an expert opinion on this particular DCMS draft Royal Charter it would be necessary for us to take evidence and hear submissions on its merits as an alternative legal backup for the new system. Plainly that could not be done by the date by which we are asked to provide our advice. We therefore do not offer any advice in relation to the draft Royal Charter published by DCMS. It is, however, appropriate to note that Westminster legislation on devolved matters, including the regulation of the press, is subject to the Legislative Consent Motion procedure, whereby the consent of the Scottish Parliament is sought: that consent is not sought for a Royal Charter with UK-wide effect.

5. **Terms of Reference.** It is important to note that our Terms of Reference confine us to dealing with Part 1 of the Terms of Reference of Lord Justice Leveson's Inquiry[13]. Part 1 draws attention to a wide spectrum of past and present contacts and relationships between the press and others in public life, notably press owners and politicians, and politicians and the Police, and to the failure of existing and past regulatory schemes to avert the kind of improper and sometimes illegal conduct that Leveson documented. The recommendations that Part 1 makes relate to ways of introducing effective policies and a regulatory regime that will encourage and promote the highest ethical and professional standards, without challenging the independence of the press. The 'statutory underpinning' recommendations made by Leveson relate to publications by the press and not to relationships between the press and the Police and politicians[14].

[11] HL Bill 84 2012-13 (as amended on Report).
[12] Revised Fourth Marshalled List of Amendments to be moved on Report as at 8 March 2013.
[13] The Leveson Terms of Reference are set out in full in Appendix 2.
[14] Leveson Executive Summary recommendations 82-84.

6. **Media misconduct.** Part 1, 1(d) of the Leveson Terms of Reference refers to "media misconduct". This was the basis upon which the Government asked Leveson to take evidence about the wrongs perpetrated by the printed press by engaging in improper intrusions into the lives and affairs of members of the public, some well-known, some not. These victims of misconduct included some Scots or persons based in Scotland. Part 2 broadened the scope of the Leveson Inquiry into matters that had already become, or might become, the subject of criminal investigation or civil proceedings; and Leveson restricted both the investigation and the findings to avoid the risk of influencing impending or possible future legal proceedings. This Expert Group has no remit to investigate the subject matter of Part 2. The findings and recommendations with which we are concerned are contained in Chapter 7 of Leveson[15].

7. **Regulation of the press.** It is of the utmost importance to emphasise at the outset that Leveson made it unmistakably clear that he was not recommending that statute should prescribe the terms and conditions of press regulation[16]. We proceed upon that basis. The Leveson recommendations were for a non-statutory "independent self-regulatory body…with the dual roles of promoting high standards of journalism and protecting the rights of individuals"[17]. Leveson stresses:

> "…the ideal outcome from my perspective is a satisfactory self organised but independent regulatory body, established by the industry, that is able to secure the voluntary support and membership of the entire industry"[18].
>
> The function of that Regulatory Body was described thus: to "set standards, both through a code and in relation to governance and compliance"[19].

8. **Ensuring independence.** Leveson proposed means to ensure that that Regulatory Body would be independent both of the media and of the political power. He took account of the history of the failure of repeated attempts in the UK to persuade the printed press to create and operate a system that effectively required them to observe ethical and journalistic standards that complied with the Rule of Law and respected the democratic rights of others. The lesson drawn from this history was not that regulation should be statutory; it was to bring the press to realise that members of the public had important democratic rights that had to be respected; and there had to be a system that worked. There had to be a new, non-statutory institution approved by the press, if possible, but operationally independent of the media and of politicians. It had to be "able to command the support of the public"[20]. That requirement led Leveson to conclude that there would have to be a long-stop mechanism to allow the public to be satisfied that the new system worked as

[15] Volume IV, Part K, Chapter 7; recommendations summarised in Part L, pages 1803 - 1817. See also Summary of Recommendations pages 32 – 46 of the Leveson Executive Summary published alongside Vols. I – IV of the main Report. That Summary is herein referred to as 'the Leveson Executive Summary': it is often referred to for convenience as it is an excellent précis of the Report.
[16] Leveson Executive Summary, para. 57.
[17] We shall refer to it as 'the Regulatory Body'.
[18] Volume IV, Part K, Chapter 7, para. 6.1.
[19] Leveson Executive Summary, para. 57.
[20] Volume IV, Part K, Chapter 7, para. 6.1.

intended; in turn that led to the conclusion that some form of statutory underpinning of the new system would be needed, but that it should be at a real and distant remove from the regulatory regime. Thus, as Leveson states in his Executive Summary at paragraph 73:

> "Despite what will be said about these recommendations by those who oppose them, this is not, and cannot be characterised as, statutory regulation of the press. What is proposed here is independent regulation of the press, **with a statutory verification process** to ensure that the required levels of independence and effectiveness are met by the system in order for publishers to take advantage of the benefits arising as a result of membership[21]." [emphasis added]

9. **The value of a free and independent press**. Leveson emphasised the value to democracy in this country of a free and independent press. Most publications did not engage in the practices that caused the Government to set up the Leveson Inquiry. However, as Leveson found, there were failures by elements of the printed press to respect the rights of members of the public. We have to proceed on the basis of what Leveson found. However, we wish to make it absolutely clear that we share the Leveson view that a free, independent press is a vitally important feature of democracy. Equally, in a democratic society, the rights of a newspaper proprietor to further his or her own political or commercial agenda are not necessarily to be allowed to take precedence over the rights of citizens and the Rule of Law.

10. **The meaning of 'free and independent press'**. It is vital to remember that 'the press' is not a single homogenous entity. The freedom of the proprietor is quite different from the freedom of the editor or a journalist. The owner can sack the editor without explanation. Journalists likewise can suddenly find that their services are no longer required. No editor could expect to remain in post if he or she pursued an editorial line and made news selection choices that ran wholly counter to those of the proprietors. Neither the editor, nor indeed the paper itself, is 'independent' of the proprietor. The editor's freedom can be restricted by the proprietor's political, economic and social philosophies. Thus the perspectives and rights of journalists should not be forgotten or dismissed.

11. **Protecting journalists.** We note the importance of Leveson's recommendations 46 and 47. They are headlined "Protecting journalists" and read:

> **"46.** A regulatory body should establish a whistleblowing hotline for those who feel that they are being asked to do things which are contrary to the code.
>
> **47.** The industry generally and a regulatory body in particular should consider requiring its members to include in the employment or service contracts with journalist a clause to the effect that no disciplinary action would be taken against a journalist as a result of a refusal to act in a

[21] These words relate to the proposal by Leveson that publishers should be encouraged, but not compelled, to take part in the creation, operation and financing of the new Regulatory Body. The question of opting in and opting out is considered at paras. 29 to 45.

manner which is contrary to the code of practice."[22]

12. **Conflicting interests within 'the press'.** This is a clear demonstration that the interests of publishers do not always coincide with those of journalists but are sometimes in conflict. The publisher's distinct interest is also evident from the fact that it is the publisher, not the journalist, who has to pay any fine—up to £1 million—imposed by the Regulatory Body.[23] These circumstances have to be kept in the forefront of the minds of those who are thinking of allowing publishers the right to opt out.

[22] Leveson Executive Summary, page 38.

[23] It is not perhaps surprising that the National Union of Journalist proposed "a statutory jurisdiction over all publications of a certain size and their associated websites". Volume IV, Part K, Chapter 4, para. 4.12.

THE LEVESON PRINCIPLES

13. **Independence of the Regulator.** The Leveson 'main principles' that our Terms of Reference require us to accept include—above all—that which Leveson affirms, namely that regulation of the press, and the Regulatory Body made responsible for that regulation, should be independent of the political power and of the media.

14. **Independence of the Recognition Body.** The next relevant principle in Leveson is that a new, distinctive body, underpinned by statute but just as independent as the Regulatory Body, is to act on behalf of the public to ensure that any regulatory model that is proposed fits the criteria that Leveson recommended. This second body, the Recognition Body, is not to be a government body. Carefully thought-out mechanisms are proposed by Leveson to ensure that its independence from government is guaranteed. Neither its membership nor its functioning are to be subject to government influence. It is to have no regulatory function in relation to the press: its sole function is to ensure that the Regulatory Body is and remains Leveson-compliant. That is essentially a technical and objective operation. It must be designed so that there is no room for 'back-door' influence by government, media or any other party: in that sense it must be as independent of political and government influence as is the Judiciary in this country.

15. **System to cover all significant news publishers.** A third principle, to which we attach the utmost importance, is that no system of regulation, however well designed, can be considered "effective" unless it "covers all significant news publishers"[24]. There are problems that flow from the imprecision of the term "significant" and these are considered further in paragraphs 38 onwards. We also consider that the *means* suggested by Leveson for ensuring that all are subject to the jurisdiction of the Regulatory Body are inadequate, not least when considered in the distinctive Scottish context. We return to this important issue when we deal with 'opt in and opt out' (paragraphs 29 to 45).

[24] Volume IV, Part K, Chapter 7, para. 3.14.

OUR RESPONSIBILITIES

16. **Role of statutory underpinning.** It is not necessary for us to enter into a debate about the principle of 'statutory underpinning': in this particular we take our lead from Leveson. Our remit is to examine how best to formulate means of achieving 'statutory underpinning' and to provide those with the decision-making responsibilities in Scotland the kind of expert advice that Lord Justice Leveson did not feel that he should offer.[25] That clearly obliges us to consider the role that 'statutory underpinning' would play. It would make little sense for us to offer advice about how best to devise an effective underpinning scheme without our having a clear idea precisely what it is that is to be underpinned—alongside the fundamental principle of the freedom of the press—and how that underpinning is to be achieved. Leveson makes it clear that what is to be underpinned is the independent, Leveson-compliant system set up to check that any Regulatory Body will be, and will remain, effective to fulfil the Leveson purposes. What needs to be created by statute therefore is the independent Recognition Body. The statute must specify its functions and provide means to ensure its independence, all as outlined by Leveson. That is the basis of our thinking and of our proposals on statutory underpinning[26].

17. **Drafting an underpinning statute.** In response to Leveson's recognition of the possible need for 'statutory underpinning' of the new Regulatory Body, both Hacked Off and DCMS produced drafts of Bills designed to establish by statute a recognition authority[27]. There were suggestions before the DCMS draft appeared that it would be difficult to prepare legislation to give effect to Leveson's intentions. In fact, what the DCMS draft and the Hacked Off Bill clearly demonstrate is that there is little difficulty in devising and framing the necessary legislation. That is principally because Leveson makes it abundantly clear what needs to be done.

18. **The Recognition Body.** Thus there had to be created an independent Recognition Body charged with checking that the Regulatory Body—devised and proposed by the industry itself—complied with the Leveson blueprint for the Regulatory Body[28].The DCMS draft gave that blueprint the name "*the approval requirements*". It followed that what was needed was an underpinning statute to create a Recognition Body and to mandate it to use "*the approval requirements*" as a check list for assessing whether or not any proposed (or applicant) Regulatory Body was Leveson-compliant. That is exactly what Clause 3 of the DCMS draft does. We have no view on the composition of the Recognition Body other that that is should be strictly independent in the ways set out in paragraph 14 above.

19. **Participation.** Because Leveson recommended that all "*significant*" news publishers should be incentivised to participate in the new regulation system, there are provisions in the DCMS draft to implement the Leveson suggestions about procedural mechanisms designed to encourage publishers to join the Regulatory

[25] Volume I, Part A, Chapter 4, para. 1.1, "…I have sought to set out my analysis and conclusions in a sufficiently explicit and reasoned way to enable the experts within the devolved jurisdictions to see as readily as possible how they could be made to fit.".
[26] Cf. Leveson Executive Summary paras. 70-74.
[27] Neither draft Bill is extended to Scotland.
[28] Leveson Executive Summary Recommendations 1 to 24 and Part K, Chapter 7, Section 4 of the Report.

Body voluntarily. As we make clear elsewhere[29], we are not in favour of enabling publishers to opt out of regulation. As noted[30], these procedural mechanisms take no account of distinctive Scottish legal procedures and would require substantial modification[31]. It was possible for us to use part of the DCMS draft as a template for a Bill that would give effect to what our Terms of Reference envisage. Our draft Bill has additional provisions to give effect to the proposals that we make elsewhere[32] on the jurisdiction of the Regulatory Body. Our draft Bill is printed in Appendix 3. Any Bill that is to be put before the Legislature needs to be drafted by Parliamentary Counsel in the usual way: so, subject to the advice in the succeeding paragraph, our draft Bill is more of the character of an instruction to Parliamentary Counsel than a ready-made Bill.

20. **The language.** In drafting the Bill, we have followed the style of the DCMS draft in using plain English, as Leveson did. It follows a principle that the then leaders of the Scottish Judiciary[33] asked the UK Legislature to adopt when giving evidence to the Renton Committee on the preparation of legislation.[34] Our view is that, given Leveson makes clear what is required both of the Regulatory Body and of the Recognition Body, any legislation of the kind envisaged, and especially so if it is to apply in Scotland, should use language of the kind recommended by the leading Scots judges.

21. **The limited role of regulation.** In considering the character and extent of the 'statutory underpinning' we were most conscious of the universally held view that the press must not be subjected to regulation that might undermine or even threaten their role as a fearless critic of government and independent investigator and reporter of matters of public significance. No one suggests, for example, that the press should be put under the kind of restrictions that legislation places on public service broadcasters, such as the BBC[35]—notably a legal responsibility to be politically impartial, and, generally, when dealing with matters of public controversy, to be objective and to allow the different and competing viewpoints a fair hearing.

22. **Balancing press freedom and people's rights.** The press has no such responsibility: newspapers must continue to enjoy the freedom to support particular causes, political, social and many others, and are free to select news and make comment in support of the causes they seek to defend or promote. Few in this country suggest that the press should be censored or regulated for impartiality: the public are trusted to make their own judgments on the issues raised. What Leveson makes clear is that the over-riding purpose of making the recommended changes is to reconcile the need for an independent, fearless press, employing effective investigative powers, with the rights of citizens to be protected from the unacceptable practices that some newspapers and their employees and agents engaged in during

[29] See para. 32.
[30] See para. 30.
[31] We should be reluctant, for example, to advise that substantial consequential changes be made in haste to Scots Law on, for example, aggravated damages, without consulting the Scottish Law Commission and others.
[32] See para. 36.
[33] Lord President Emslie & Lord Justice Clerk Wheatley.
[34] Report of the Renton Committee on the Preparation of Legislation (Cmnd. 6053), paras.6.5 & 6.6.
[35] See para. 28 below.

the years investigated by Leveson. The essential rights of the press are to be in harmony with the rights of the public.

23. **Comparison with regulation of other democratic institutions.** In considering where the boundaries are to be drawn between the potentially conflicting interests of the press and the privacy rights of citizens, we thought that some guidance could be obtained by looking at the degree of supervision found in civil society. Obvious examples to consider are the Judiciary, the Police, the Churches, Trades Unions, professional bodies and some NGOs. Some are part of, or closely bound up with, the apparatus of governance: others stand apart from Government and jealously guard their independence. Some, in their present form, were created by statute; others were not.

24. **Legislation regulating other institutions.** No one with a true understanding of democracy could deny the importance of these bodies to the successful functioning of a democratic society. Yet it is abundantly clear that, for centuries, the Legislature has repeatedly legislated to deal with particular matters affecting the proper functioning of these institutions, whether they were created by statute or not. The essential point is that nearly all institutions operating in the public sphere or as part of civic society are subject to regulation and control in the public interest by Regulators appointed under statute[36].

25. **The character of legislative intervention.** From the material referred to, it is clear that the regulation to which other pillars of democracy, including the Judiciary and the broadcast media, are subject to, is considerably more intrusive than what Leveson proposes for the UK press. In addition, what is strikingly different from Leveson is that much of the regulation identified is *direct* regulation by the political power. The contrast with what Leveson proposes for the press is sharp: regulation of the press is to be independent of the political power. Direct regulation of the press is not allowed in the new system.

26. **Universal jurisdiction is the norm.** One other vitally important point about the material referred to is that, once the persons, bodies or institutions to be regulated are identified in legislation, the relevant rules, including the jurisdiction of any regulatory institutions, are applied to them all universally. None can choose to opt in or opt out of the statutory rules and regulations that govern their tenure of office or the exercise of their responsibilities. This is a crucial feature of democracy that has to be taken into account. To add to the existing very large body of statutory regulation of the press some further regulation by an independent non-government body with powers markedly less intrusive than those statutorily created to regulate other pillars of democracy does not appear to us to pose any threat to democracy. In our judgment, 'statutory underpinning' to achieve the Leveson purposes fits perfectly well with the best democratic traditions[37].

[36] See Briefing Note on overview of statutory provisions concerning bodies independent of government http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing4.

[37] Even in the USA, the Freedom of Speech Amendment (No.I) is itself a constitutional enactment and it is regularly applied and interpreted by the Courts as to its purpose and extent: so it is simply wrong to suggest that freedom of speech in that Amendment is somehow beyond democratic control.

27. **Current regulation of the Press.** We have considered the current regulation of the press.

- First and most obvious, the Rule of Law applies universally and makes the press and its practitioners subject to the same law as everyone else, whether that law is statutory in form or derives from the common law.
- Secondly, the main rights contained in the European Convention on Human Rights[38], bear on the functions of the press. It is noteworthy that the European Court of Human Rights upheld *The Sunday Times* appeal against the House of Lords ruling preventing that newspaper from publishing material about the Thalidomide scandal, thus demonstrating that some of the most stoutly defended privileges of the press are created by legislation or case law[39].
- Thirdly, there is already a mass of legislation restricting the reporting by the press, and others, of cases in courts of law (and other tribunals)[40].
- Fourthly, any suggestion that, by enacting underpinning legislation on Leveson lines, the Legislature would somehow be embarking on an unprecedented exercise in political control appears to be based on a failure to grasp the existing reach of the law in relation to press publications. The Leveson system is a comparatively light addition to the legal regulation already applying to the press.

The conclusion that we draw is not that Leveson-recommended legislation would somehow introduce a form of censorship incompatible with our traditions but that to legislate on Leveson lines would be consistent with the long-established civil and democratic practice whereby the Legislature intervenes to curb intolerable intrusions upon the established rights of citizens. No one is above the law.

[38] Now incorporated into domestic law by the Human Rights Act 1998 and the Scotland Act 1998.
[39] See section 10 of the Contempt of Court Act 1981 and other examples referred to by Leveson, Volume I, Part B, Chapter 2 para. 6.
[40] See Briefing Note on Reporting Restrictions http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing3.

CONCLUSIONS AS TO FORM OF STATUTORY UNDERPINNING

28. On the basis of these considerations, we conclude that 'statutory underpinning':

(a) should not involve direct regulation or control of the press by the government, the Legislature or by the political power more generally;
(b) should be no more intrusive than is absolutely necessary to be Leveson-compliant; and
(c) should be written in a way that allows the Recognition Body to take account of the Leveson principles when carrying out its functions.

OPTING IN AND OPTING OUT – UNIVERSAL JURISDICTION

29. **Opting out of the system.** We have carefully considered whether or not we should advise proceeding on the Leveson basis of 'voluntary' participation by publishers, given the history of withdrawals from the PCC and the success of the universal regulatory system for broadcasting. It was widely recognised by those who submitted evidence to Leveson that it was "essential" for the new system of voluntary regulation to apply to all significant news publishers. Part of the background to this matter was the fact that the publishers of important parts of the printed press had decided not to accept the jurisdiction of the PCC. The same problem of significant players opting out had arisen in other democratic jurisdictions. Despite that, Leveson envisaged that, as was the case with the PCC, membership of the new independent system of self-regulation should be voluntary, not mandatory, but with the caveat that all "all significant news publishers" had to be members.

30. **Incentives to join system.** A 'carrot and stick' system was suggested by Leveson for encouraging publishers to join: there should be no formal compulsion to join. One important difficulty, already noted, in that approach is that the Leveson 'carrots and sticks' are fashioned from English procedural laws that are significantly different from those that would be appropriate in Scotland (e.g. in relation to exemplary or aggravated damages)[41]. More importantly, even although the PCC was charged with a limited responsibility, some publishers chose not to accept its jurisdiction, and there was nothing that could be done about it[42]. The idea of voluntary participation clearly runs counter to the declared need for all significant news publishers to opt in.

31. **Conflicts of interest**. In this context, we repeat our reference[43] to the existence of a real problem here: we do so because it has not received the attention that it deserves. The interest of *journalists* or *editors* in standards, ethics etc. can be quite different from the interests of *publishers*. What is voluntary for publishers is not voluntary for journalists and editors. It is the publisher, not the journalist or the editor, who chooses to opt in or to opt out. That point is inherent in Leveson's reference to "all significant news publishers".

32. **Our view on opting in and opting out.** We have reached the view that there is no practical alternative to making it compulsory for all news-related publishers[44] to be subject to the new system of regulation. It appears to us that the Leveson approach was predicated on the hope that most—or even all—significant news publishers would join the new system voluntarily. But on that approach, if significant news publishers declined to join there would be no mechanism to compel them to do so. It would be possible for publishers deliberately to decline to join and thus to prevent the creation of a system operated by a Regulatory Body that the Recognition

[41] In relation to legal expenses, the matter is already under review by Sheriff Principal Taylor in his independent review of expenses and the funding of civil litigation in Scotland. See Briefing Note on "Carrots and Sticks" http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing6.
[42] See the comments quoted from Lara Fielden referred to below. https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/Working_Papers/Regulating_the_Press.pdf.
[43] See para. 12 above.
[44] We discuss later what the term "news-related" embraces: see paras. 38 and 39.

Body could certify. That was the context in which, after reviewing the evidence, Leveson said:

> "3.27 So in summary, while there is limited enthusiasm for statutory provision to ensure comprehensive coverage of a regulatory regime, there is widespread recognition that statute may be the only way of delivering this goal."[45]

33. We would also note that one of the traditional reasons for regulating the press on a voluntary basis, namely that, as compared to broadcast media, newspapers require active selection and purchase and so are effectively 'self-censored' by the consumer, no longer applies in a world of instant (and often freely available) electronic access to the whole range of news media. Lara Fielden quotes the PCC's assertion that "The print media is fundamentally different from other media in the way it is transmitted and received and it is, therefore, vitally important for it to have a separate regulating body equipped to deal with the particular issues relevant to it."[46]. She comments:

> "This illustrates two essential differences between print and broadcast media that have been relied on to justify the different regulatory regimes. On the one hand, there is the active selection and purchase of newspapers (by contrast to the traditional view of passive broadcasting consumption), and, on the other, the complete freedom to publish in print (by contrast to the licensing of broadcasting). However, both these assumptions must be revisited".[47]

34. In our view, the argument for treating the printed press differently in this respect from other media is no longer persuasive. Of course as already noted, we accept that no form of regulation of news-related material should attempt to impose an impartiality standard of the kind traditionally imposed on the broadcast media. What is published should not breach the standards prescribed in the Standards Code that Leveson insists must be created to govern the press, but the 'regulation' envisaged under the Leveson system is strictly confined to the limited matters recommended by Leveson and accepted by nearly all commentators.

[45] Volume IV, Part K, Chapter 7.
[46] Lara Fielden, Regulating for Trust in Journalism, Section 4.1, page, 45: https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/Other_publications/Regulating_For_Trust_in_Journalism.pdf.
[47] Lara Fielden, Ibid.

35. **The problems with opt in and opt out.**

- The first problem is that the history of press regulation in the UK and internationally shows that if the system is voluntary some publishers will exercise the right to stay out[48].
- The second problem with the 'opt in and opt out' approach, which underlines the first problem, is that some titles have already indicated that they will not, or are unlikely to, join a voluntary scheme whatever the advantages and disadvantages.
- The third is that there have been significant examples of titles joining such a system but later leaving; and, when some leave, prompting other titles to conclude that they are being placed at a competitive disadvantage.
- The fourth is that it is clear that the carrots proposed by Leveson are not sufficiently enticing[49], nor the sticks sufficiently intimidating, to put any real pressure on publishers to join a scheme that replaces light touch self-regulation—by a body, the PCC, under the control of the press—with regulation by a new body not so controlled and composed wholly or mostly of persons not appointed by the publishers.
- The fifth problem is: what happens if "significant" publishers opt out? The short answer is that the whole system breaks down: the Recognition Body would not be able to certify or to continue to certify that the Regulatory Body was fit for purpose. We would be left with no system at all. The relevant Legislatures would have to consider imposing a regulatory regime by statute. Leveson also considers this and his position is made clear: legislation becomes necessary "if the industry and the Government" fail to "rise to the challenge"[50]. That, however, is a remedy of last resort. It is surely preferable, if possible, to avoid adopting a scheme (opt in and opt out) that makes it more likely.

36. **Jurisdiction.** We suggest that the correct way to consider this issue is to approach it from a different perspective. We should start with the concept of **jurisdiction**, not with the notion of encouraging publishers to participate on a voluntary basis in a scheme to which they are most averse. Once a Leveson-compliant scheme has been designed (one that is able, in all other respects, to be recognised/certified by the Recognition Body) the question for those charged with the responsibility of implementing the Leveson proposals is: *are we satisfied that all relevant publishers are going to be subject to the jurisdiction of the new Regulatory Body now and in the future?* We do not think that the Recognition Body can just assume that all the significant news publishers that have indicated a willingness to sign up for membership will do so and will remain signed up for as long as the scheme is in operation. It is virtually impossible for the Recognition Body to be satisfied that "all significant news publishers" will voluntarily accept the jurisdiction of the Regulatory Body, and continue to do so whatever happens in the future—for example if there is serious discontent in some quarters at the rulings of or the sanctions imposed by the Regulatory Body. The Recognition Body would also have to decide whether or not any publisher who decides not to join up, or who decides to leave, is "significant". If the answer to that question is that the publisher opting out is

[48] Leveson, quoting Fielden, noted that in Germany, one major German publisher (Bauer Media Group) has opted out of the German voluntary system, Volume IV, Part K, para. 2.2.6, page 1722.
[49] It is difficult to believe that Private Eye would have been tempted by the proposed kitemark to join a regulatory scheme.
[50] Volume IV, Part K, Chapter 7, paras 3.27 to 3.35.

indeed "significant" then the Recognition Body will have to withdraw recognition from the Regulatory Body; and the whole scheme of regulation will cease to function. These issues should be approached with full appreciation of the fact that it is the press themselves who are being made responsible for proposing the form and character of the Regulatory Body giving effect to the Leveson proposals on governance, standards and sanctions.

37. **Jurisdiction over all significant news publishers.** The solution to this problem is to ensure, by provisions contained in the underpinning statute, that the jurisdiction of the Regulatory Body automatically extends to all publishers who should be within that jurisdiction. That instantly brings us to the matter of definition: how do we *define* which publishers ought to be subject to the new jurisdiction? That is the matter to which we now turn.

38. **Defining "significant news publishers".** Defining to whom a jurisdiction in a statute is to apply is a common problem. It has been addressed in this context many times. A recent example is contained in the draft DCMS 'Royal Charter' document referred to earlier. It defines "relevant publisher" as meaning **(a)** a person (other than a broadcaster) who publishes in the United Kingdom: a newspaper or magazine containing news-related material, or **(b)** a website containing news-related material (whether or not related to a newspaper or magazine)". "Broadcaster" is then defined. Other definitions make clear what is meant by "publishing in the United Kingdom" and "news-related material". What is clear from the definitions contained in that DCMS document and other recent proposals is that, in principle, all and any news-related publisher may be considered significant for present purposes, since all and any may be capable of causing the very harm which Leveson is committed to addressing. We agree with that position.

39. Other definitions of the publishers or publications to be covered may be found in the legislation of other countries[51]. In some cases the definition extends to social media. The definition chosen in effect determines the jurisdiction of the Regulatory Body. Obviously the news-related printed press must be within the definition. So in principle must news-related on-line material. We draw the attention of the Legislature to the particular case of the use of social media (Twitter et al) in relation to publicising/circulating news-related publications and the possible need for further regulation in this regard. For example, they are within the reach of the Contempt of Court Act 1981. Section 2 of that Act includes: "The strict liability rule applies only in relation to publications, and for this purpose 'publication' includes any speech, writing, [programme included in a cable programme service] or other communication in whatever form, which is addressed to the public at large or any section of the public". The method adopted in that Act is to identify the 'mischief' which is to be prevented or regulated and to allow sanctions against any "publication" that does what is prohibited. Leveson[52] makes the same point, that all media are bound by the law, including the Protection from Harassment Act 1997, the Regulation of Investigatory Powers Act 2000 and the Bribery Act 2010 etc.

[51] See Briefing Note on defining "the press" in the age of social media http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing5.
[52] Volume IV, Part K, Chapter 6, para. 2.6.

40. **One Code for all.** We do not see how it can be undemocratic to compel news-related publishers to accept the jurisdiction of a Leveson-compliant scheme that they have helped to devise—having done so in the knowledge that they are going to be subject to its jurisdiction. The scheme cannot be Leveson-compliant "if it (the Regulatory Body) does not cover"—i.e. have jurisdiction over—"all significant news publishers". The way to achieve that is to require all news-related material (as defined) to be subject to the same Standards Code: to repeat, it is a question of jurisdiction, not of voluntary membership of a club.

41. **Comparison with other democratic institutions.** As we have shown earlier[53], nearly all other pillars of democracy are subject to a substantial degree of legislative regulation without the loss of that independence that is vital. They cannot opt in or out of the jurisdictions created by the Legislature to regulate their activities in the interests of democracy. It is difficult in a democratic society in which news-related publishers enjoy extremely wide freedoms to justify exempting them from regulation, in a very limited field, by a body that meets the Leveson specification, not least in the light of the recent failings of the printed press when under a loose, voluntary system of self-regulation.

42. **Recommendation.** In summary therefore, we recommend that it is for the Legislature to specify the criteria for determining which news-related publications are to be subject to the jurisdiction of the new independent system of regulation by a Regulatory Body proposed by news-related publishers to prevent serious abuses of the kind that that Leveson has identified. It is for the Legislature to ensure that all those who might, in future, perpetrate such abuses are subject to the jurisdiction of the independent Regulatory Body.

43. **Funding.** While we agree with Leveson that it would be for the industry and the Regulatory Body to agree the basis of funding, there is no sensible escape from the conclusion that all who publish news-related material should be subject to the same regulatory jurisdiction. That does not necessarily mean that all who publish for example on-line news blogs must subscribe to the running costs of the regulatory system. Leveson considers funding in depth[54].

44. **Scotland.** In this discussion, we have not drawn attention to any particularly Scottish dimension. However, we are well aware that Scotland can and does make different provision for matters that have hitherto been regulated on a UK-wide basis. If, as we suggest, the correct role for Legislatures on the issue of participation is to establish the criteria which will determine the publications to be subject to the jurisdiction of the new Regulatory Body it follows that it is open to the Scottish Parliament to legislate that *all* publications distributed in Scotland, by whatever means, shall be subject to the jurisdiction of the new Regulatory Body even if, in other legal jurisdictions, the UK Parliament chooses to allow some news-related publications to opt out.

[53] paras. 23–26.
[54] Vol IV, Part K, Chapter 4, Section 14.

45. We do not consider that there is anything in our proposals that would prevent the formation of a single UK-wide Regulatory Body even if there was a distinct Scottish Recognition Body.

WHAT IF NO AGREED REGULATORY BODY IS CREATED?

46. **The Regulatory Body.** Our Terms of Reference are predicated on the assumption that the London-based discussions will produce a Regulatory Body that is fit for purpose. On that assumption, our task in relation to possible action by Scottish Ministers was to make recommendations about statutory underpinning of the regulatory system that was supposed to emerge from those discussions. That it is clearly something that we can do even without foreknowledge of the precise details of the Regulatory Body that is intended to emerge from the London discussions; for we can proceed on the assumption mentioned, namely that the new Regulatory Body would be Leveson-compliant. The result is that if a satisfactory proposal for a Regulatory Body emerges from current discussions in London but Scottish Ministers accept our recommendation that it needs extension–notably in relation to having jurisdiction over all news-related publishers–and if their view is that it should be underpinned by statute, then it would be relatively simple to draft legislation that would achieve these objects.

47. **What if no agreed Regulatory Body?** Unless the whole Leveson proposals are to be abandoned, we believe that, if the London-based discussions fail to create a system that includes a Regulatory Body with the correct jurisdiction, then Legislatures would have to devise and set up a Regulatory Body or Bodies themselves. We have addressed the issue of a more general failure of the press to bring forward adequate proposals: we have done so by attempting to draft a Clause (Clause 7) specifically dealing with this situation. It should be noted that, in some respects, this draft is rather tentative because at this stage there is no final decision about whether to adopt a Leveson 'opt in and opt out' system or to provide for a jurisdiction over all news-related publishers (as defined). However, we do not depart from our recommendation that the jurisdiction to be created by statute should be universal, making all news-related publishers subject to the jurisdiction of the Regulatory Body. All that we seek to show with this draft Clause is that, if all else fails, it is perfectly possible to legislate for a system that does exactly what Leveson advised was needed. As with any other drafting, we acknowledge that the precise wording of such a provision would be a matter for Parliamentary Counsel. The downside of that legislation is that it could be criticised as involving direct regulation by the political power, thus seeming to rob the system of its independent character. That situation, however, would be the result of the failure of the industry and others involved in the London discussions to agree on a Leveson-compliant system. As Leveson says, in Volume IV, Chapter 7, Paragraph 5.33:

> "…it would be …wrong if I did not make it clear that, if some or all of the industry are not willing to participate in effective independent regulation, my own concluded view is to reject the notion that they should escape regulation altogether. I cannot, and will not, recommend another last chance saloon for the press."

APPENDIX 1

EXPERT GROUP TERMS OF REFERENCE

The terms of reference of the Expert Group are as follows:

To consider the findings and recommendations made in the Part 1 of the Report of the Leveson Inquiry in respect of Press Regulation, and, accepting the main principles on which those recommendations are made, including in particular the need for statutory underpinning of a newly created, genuinely independent and effective system of Self-Regulation, to offer advice and recommendations as to the most appropriate means of achieving such statutory underpinning in Scotland, in the context of —

- the Scottish legal system;
- any other existing provisions in law that relate to publication by the Press in the UK;
- any developments in Press Regulation elsewhere in the United Kingdom arising out of the Leveson Inquiry;
- experience in regulation of the press outside of the United Kingdom, that might inform consideration of the recommendations made and the mechanisms suggested in the Part 1 Report of the Leveson Inquiry;

and to provide such advice and recommendations to the Scottish Government within 3 months.

APPENDIX 2

LEVESON INQUIRY TERMS OF REFERENCE

Part 1

1. To inquire into the culture, practices, and ethics of the press, including:

a. contacts and the relationships between national newspapers and politicians, and the conduct of each;

b. contacts and the relationship between the press and the police, and the conduct of each;

c. the extent to which the current policy and regulatory framework has failed including in relation to data protection; and

d. the extent to which there was a failure to act on previous warnings about media misconduct.

2. To make recommendations:

a. for a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence, including from Government, while encouraging the highest ethical and professional standards;

b. for how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities, including Parliament, Government, the prosecuting authorities and the police;

c. the future conduct of relations between politicians and the press; and

d. the future conduct of relations between the police and the press.

Part 2

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

APPENDIX 3

DRAFT OF A BILL TO IMPLEMENT THE GROUP'S RECOMMENDATIONS

Draft Press Standards (Scotland) Bill

An Act of the Scottish Parliament to make provision about the importance of the right of the press to freedom of expression; to make provision for the recognition of an independent body to regulate the press; and for connected purposes.

Freedom of the press

1 Duty of the Scottish Ministers

(1) The Scottish Ministers must, when exercising their functions, have regard to the importance of the right of the press to freedom of expression.

(2) In complying with the duty under subsection (1), Ministers must have regard in particular to the extent of the right to freedom of expression, and to the permissible restrictions and other limitations, mentioned in Article 10(1) and (2) of the Human Rights Convention and to any other rights mentioned in the Convention.

(3) The duty under subsection (1) does not apply to the exercise of any function relating to law enforcement.

(4) A failure to comply with the duty under subsection (1) does not give rise to a cause of action at private law.

(5) In this section, "the Human Rights Convention" has the same meaning as "the Convention" has in the Human Rights Act 1998.

Recognition of regulator

2 The Recognition Commissioner

(1) The Scottish Ministers must appoint an individual as the Recognition Commissioner.

(2) The Scottish Ministers must put in place a process to ensure that the appointment is made in a fair, open and transparent way; and the process must be overseen by the Public Appointments Commissioner for Scotland.

(3) The schedule makes further provision about the Recognition Commissioner.

3 Recognition of body as the approved regulator

(1) The Recognition Commissioner may recognise a body as the approved regulator under this Act if—

(a) the body makes an application for recognition, and

(b) the Commissioner is satisfied that the body meets the approval requirements.

(2) In this Act, "the approval requirements" means—

(a) the requirements set out in recommendations 1 to 22 in the Summary of Recommendations of the Leveson Report, and

(b) the other requirements for recognition set out in Section 4 of Chapter 7 of Part K of that Report in so far as that Section relates to the recommendations mentioned in paragraph (a).

(3) The Recognition Commissioner, in determining an application by a body for recognition as the approved regulator, may take into account recommendations 34 and 36 to 47 in the Summary of Recommendations of the Leveson Report.

(4) An application for recognition as the approved regulator must be accompanied by a fee of such amount as the Recognition Commissioner sets; and the Commissioner may set different fees for different cases or circumstances.

(5) The Recognition Commissioner—

(a) may on request give advice to a body that is proposing to make an application for recognition as the approved regulator, and

(b) may charge a fee of such amount as the Commissioner sets for giving advice under paragraph (a).

(6) In this Act, "the Leveson Report" means the Report on An Inquiry into the Culture, Practices and Ethics of the Press, ordered by the House of Commons to be printed on 29 November 2012 (HC 779).

4 Jurisdiction of the approved regulator

The body recognised under section 3 as the approved regulator is to exercise its functions in relation to all relevant publishers.

5 Review of recognition

(1) The Recognition Commissioner must review the recognition of a body as the approved regulator under this Act as soon as practicable after—

(a) the end of the period of two years beginning with the day of the recognition,

(b) the end of the period of three years after that period, and

(c) the end of each subsequent period of three years.

(2) The Recognition Commissioner may review the recognition of a body as the approved regulator under this Act at any other time if the Commissioner thinks that there are exceptional circumstances which make it appropriate to do so.

(3) But the Recognition Commissioner may not carry out a review under subsection (2) unless the Commissioner has given the approved regulator at least three months' notice in writing of the proposal to do so; and the notice must specify the Commissioner's reasons for the proposal to do so.

(4) The Recognition Commissioner must prepare and publish a report of a review under this section.

(5) A review under this section of a recognition under this Act is a review only of the extent to which the body in question is meeting the approval requirements.

6 Withdrawal of recognition

(1) The Recognition Commissioner may withdraw recognition as the approved regulator from a body at that body's request.

(2) The Recognition Commissioner may withdraw recognition as the approved regulator from a body if, on a review of the recognition under section 5, the Commissioner is satisfied—

(a) that the body is not meeting the approval requirements, or

(b) that the Commissioner has insufficient information to determine whether or to what extent the body is meeting those requirements.

(3) But the Recognition Commissioner may not withdraw recognition under subsection (2)(a) unless the Commissioner has given the approved regulator at least three months' notice in writing of the proposal to do so.

(4) The Recognition Commissioner may cancel a notice under subsection (3) before the expiry of the period of three months referred to there.

7 Duty of the Scottish Ministers if no approved regulator

(1) This section applies where—

(a) six months after the coming into force of section 3, no body is recognised as the approved regulator, or

(b) within three months of the recognition of the approved regulator being withdrawn under section 6, no body has been recognised in that body's place as the approved regulator under section 3.

(2) The Recognition Commissioner must, within one month of the end of the period mentioned in subsection (1)(a) or (b), send a report to the Scottish Ministers drawing their attention to the fact that the system of regulation is not effective.

(3) Within three months of receiving a report under subsection (2) the Scottish Ministers must constitute a body to fulfil the functions of approved regulator and submit that body for recognition by the Recognition Commissioner as the approved regulator under section 3.

(4) The Recognition Commissioner is to treat that body exactly the same as any body applying for recognition under section 3; and that body, if recognised by the Recognition Commissioner, will act for all purposes as if it were the approved regulator under that section.

General provisions

8 Interpretation

(1) In this Act, "relevant publisher" means a person (other than a broadcaster) who publishes in Scotland—

(a) a newspaper, magazine or periodical containing news-related material, or

(b) by electronic means (including a website), news-related material (whether or not related to a newspaper, magazine or periodical).

(2) For the purposes of subsection (1)—

"broadcaster" means—

(a) the holder of a licence under the Broadcasting Act 1990 or 1996,

(b) the British Broadcasting Corporation,

(c) Sianel Pedwar Cymru,

"news-related material" means—

(a) news or information about current affairs,

(b) comment about matters relating to the news or current affairs,

(c) gossip about celebrities, other public figures or other persons in the news.

(3) "Gossip", for the purposes of this Act, includes assertions of fact about the private or family life of any persons mentioned in subsection (2)(c) if the information published is calumnious, defamatory or scandalous.

(4) A person publishes "in Scotland" if—

(a) the publication takes place in Scotland, or

(b) the publication is targeted primarily at an audience in Scotland.

(5) In interpreting this Act, the Recognition Commissioner, and any court of law exercising jurisdiction in a matter which is the subject of any part of this Act, are to have regard to the Leveson Report.

9 Commencement

(1) This section and section 10 come into force on the day of Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

10 Short title

This short title of this Act is the Press Standards (Scotland) Act 2013.

SCHEDULE

(introduced by section 2)

THE RECOGNITION COMMISSIONER

[To be modelled on the DCMS Bill]

APPENDIX 4

RENTON COMMITTEE ON THE PREPARATION OF LEGISLATION

The Renton Committee's 1975 Report on the Preparation of Legislation[55] reignited interest in how UK legislation can best be drafted. The Committee's principal term of reference was to review the form in which public Bills are drafted with a view to achieving greater simplicity and clarity in statute law.

Lord President Elmslie and Lord Justice Clerk Wheatley's evidence to Renton was summarised in this way:

"Most of the problems encountered by the Courts flow directly from the tendency of Parliament to ignore the virtue of enacting broad general rules in which the principal and over-riding intention can be readily seen, and to try to legislate in detail for particular aspects of the mischief which presumably the statute is intended to curb. It is an eternal truth that one can seldom foresee every combination of circumstances which may arise…so far as Scots judges are concerned, the strength of their common law system is their reliance upon broad statements of principle, and there is no reason to suppose that similar broad statements of principle in statute law would not, in their hands, be applied to the facts of any given case to achieve the will of Parliament….".

[55] Report of the Renton Committee on the Preparation of Legislation (Cmnd. 6053).

APPENDIX 5

BRIEFING NOTES

The following Briefing Notes have been prepared by the Leveson Group Secretariat and are available on the Leveson Group Secretariat Scottish Government webpage http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing.

Reserved and Devolved matters in relation to the subject matter of the Leveson Inquiry
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing1

List - Statutory Reporting Restrictions and Privileges etc.
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing2

Statutory Reporting Restrictions and Privileges etc.
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing3

Overview of Statutory Provisions concerning bodies independent of Government
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing4

Defining “the press” in the age of social media
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing5

“Carrots and Sticks”
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing6

Leveson Report extracts on press regulation elsewhere
http://www.scotland.gov.uk/About/Review/Leveson/Leveson-Briefing/Briefing7

GLOSSARY AND ABBREVIATIONS

DCMS	Department of Culture, Media and Sport; the UK Government Department whose responsibilities include the arts, broadcasting, creative industries, museums and galleries, sport, tourism and lotteries. Its remit is partially reserved (covering the whole of the UK) and devolved (covering England only) https://www.gov.uk/government/organisations/department-for-culture-media-sport.
'Hacked Off'	Campaign Group for the victims of press misconduct http://hackinginquiry.org/.
Leveson	The Right Honourable Lord Justice Leveson, commissioned to undertake an inquiry in the culture, practice and ethics of the press. The Report and its contents are referred here as "Leveson" as is Lord Justice Leveson himself.
NGOs	Non Governmental Organisations
PCC	Press Complaints Commission. The independent self-regulatory body which currently deals with complaints about the editorial content of newspapers and magazines (and their websites). http://www.pcc.org.uk/contact/index.html
Recognition Body	Body proposed by Leveson to recognise and certify that a potential Regulatory Body satisfies the requirements of a regulatory body
Regulatory Body	Independent body proposed by Leveson to promote high standards of journalism and protect both public interest and the rights of individuals; membership should be open to all publishers
Royal Charter	A Royal Charter is a formal document issued by a Monarch constituting or granting a right or power to a body corporate. A Royal Charter cannot be altered by the Legislature; but it may be altered without reference to the Legislature. See http://privycouncil.independent.gov.uk/royal-charters/.

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