

**Assessment of Impacts: Repeal of
Section 40 of the Crime and Courts Act
2013**

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1.0 Summary

1. The government consulted on commencement of Section 40 of the Crime and Courts Act 2013 (s.40) (and commencement of part 2 of the Leveson Inquiry) in 2016.¹ The response recognised the media landscape has changed significantly since the Crime and Courts Act 2013 passed, and commencement of s.40 could be considered at odds with steps the government is taking to support press sustainability.

2. Section 40 of the Crime and Courts Act 2013 (s.40) was passed in order to provide a legislative incentive for news publishers to join a regulator approved by the Press Recognition Panel (PRP). In addition:
 - a. There has been a raising of standards across industry and commencement of s.40 is no longer required to improve regulation of publishers.
 - b. Publishers are now facing new and critical challenges that threaten their livelihood and sustainability since the Crime and Courts Act 2013 was passed.
 - c. It is likely that commencement of s.40 could make publishers that are not regulated by a PRP (Press Recognition Panel)-approved regulator vulnerable to potential legal costs. This would be at odds with the steps that the government is taking to protect press sustainability.

3. The government therefore no longer considers s.40 necessary or proportionate. The 2017 and 2019 Conservative manifestos committed to repeal s.40 to support free speech.

4. There are no direct costs or benefits associated with this intervention. The removal of s.40 removes the risk that some publishers could be made vulnerable to potential legal costs, regardless of the legitimacy of any claims made against them. S.40 was not commenced, and so until now there have been no costs to UK businesses associated with this measure. Therefore, the removal of s.40 will provide no further costs or benefits to UK businesses - it will be a continuation of business as usual.

5. As a result, a formal impact assessment is not needed for Better Regulation purposes, as confirmed by the Better Regulation Executive. However, DCMS has produced a light-touch assessment which sets out the policy rationale for this intervention. This has been done for completeness, with the primary aim of aiding parliamentary scrutiny and ensuring that impact assessments are completed for all elements of the Media Bill package. This assessment has been signed-off by DCMS and the RPC.

¹ [Section 40 of the Crime and Courts Act 2013; Consultation on the Leveson Inquiry and its implementation, 2016.](#)

2.0 Policy Rationale

Policy background

6. Following the Leveson Inquiry, the Press Recognition Panel (PRP) was established under a Royal Charter to provide oversight of press regulators.
7. Section 40 of the Crime and Courts Act 2013 (s.40) was passed in order to provide a legislative incentive for news publishers to join a regulator approved by the PRP.
8. S.40 could require news publishers to pay costs in the event of a legal claim brought against them if they are not a member of a PRP-approved regulator, regardless of the outcome. It protects news publishers signed up to a PRP-approved regulator from costs.
9. While the PRP was created in 2014 the government did not opt to commence s.40 at that time. Two new press regulators were established in 2014 (the Independent Press Standards Organisation - IPSO) and 2015 (the Independent Monitor of the Press - IMPRESS). Of these, only IMPRESS, which represents primarily smaller, independent publications, sought PRP recognition. The majority of established news publishers have not joined a PRP recognised regulator, choosing to be regulated by IPSO or to regulate themselves.

Problem under consideration

10. The government consulted on commencement of Section 40 of the Crime and Courts Act 2013 (s.40) (and commencement of part 2 of the Leveson Inquiry) in 2016. The government's response, published in 2018, recognised that the media landscape has changed significantly since the Crime and Courts Act 2013 passed. Publishers are now facing new and critical challenges that threaten their livelihood and sustainability. If enacted, s.40 could make publishers that are not regulated by a PRP-approved regulator vulnerable to potential legal costs regardless of the legitimacy of claims made against them, and potentially harmful financial consequences, at a time when financial pressure is increasing. Commencement of s.40 could therefore be considered at odds with steps the government is taking to support press sustainability.
11. The consultation response also recognised that when s.40 came into legislation, it was envisaged that news publishers would become members of PRP-approved regulators. However, the vast majority of publishers have not joined a PRP-backed regulator. There now exists a strengthened, independent, self-regulatory system for the press. The government recognises there has been a raising of standards across industry and commencement of s.40 is no longer necessary to improve regulation of publishers.
12. In light of these changes, the government no longer considers s.40 necessary or proportionate. The 2017 and 2019 Conservative manifestos committed to repeal s.40 to support free speech, recognising its potential to impact freedom of the press. This legislation would act on a government manifesto commitment and remove the possibility

that news publishers that do not belong to a PRP-approved regulator could be required to pay the costs of legal claims. Its removal will recognise the government's commitment to sustainability of the press and the improvements to the independent system of regulation that have taken place since the Leveson Inquiry. It will give the sector confidence by removing the risk of s.40 ever being enacted.

Rationale for intervention

13. As above, the government's consultation response recognised improvements to the independent system of self-regulation since the publication of the Leveson Inquiry. IPSO has taken a number of steps in line with the recommendations made by Leveson, while publishers' own governance frameworks have undergone reform. Members of IPSO and IMPRESS now have access to low cost arbitration and where arbitration may be unsuitable, victims can seek redress via the court system. As such, following the raising of standards of self-regulation across the industry, the government no longer considers s.40 necessary.
14. Furthermore, recent years have seen increasing threats to the sustainability of the news publishing industry as society's move online has disrupted publishers' business models, posing an existential threat to the future of the industry and the vital public interest journalism it produces. Research shows that the financial sustainability of the sector has been greatly eroded in the past decade, a decline further accelerated by the pandemic.² This has been driven by society's shift online, with the news publishing sector facing significant challenges in transitioning to sustainable digital business models.³ The implementation of s.40 could further exacerbate these issues.
15. The government's response to its consultation confirmed its intention to repeal s.40. The 2017 Conservative Manifesto included a commitment to "*repeal Section 40 of the Crime and Courts Act 2013, which, if enacted, would force media organisations to become members of a flawed regulatory system or risk having to pay the legal costs of both sides in libel and privacy cases, even if they win.*"⁴ However, repeal was not considered possible following the 2017 general election due to parliamentary arithmetic. The 2019 Conservative manifesto also committed to repeal s.40: "*to support free speech, we will repeal section 40 of the Crime and Courts Act 2013, which seeks to coerce the press*".⁵

Policy objective

16. The overall policy objective of this legislation is to remove the possibility that news publishers that do not belong to a PRP-approved regulator could be required to pay the costs of legal claims. This delivers a Conservative party manifesto commitment and removes the risk of s.40 ever being enacted.

² [Overview of recent dynamics in the UK press market, Mediatique 2018](#); [Publishing in the pandemic: print squeeze, digital boost, Enders Analysis 2021](#).

³ [The Cairncross Review, 2019](#)

⁴ The Conservative and Unionist Party Manifesto, 2017.

⁵ The Conservative and Unionist Party Manifesto, 2019.

Options considered

17. *Option 0*: Do nothing - Do not repeal s.40 of the Crime and Courts Act 2013.
 - This would result in leaving in s.40 of the Crime and Courts Act 2013. As set out above, s.40 has never been commenced, and it is expected that even in a do nothing scenario, it will never be commenced.
18. *Option 1: (Preferred)*: Do repeal s.40 of the Crime and Courts Act 2013.
 - This removes the potential for s.40 to ever be commenced in the future.
19. Alternative options, and alternatives to regulation are not applicable here.

3.0 Costs and Benefits

Rationale and evidence to justify the level of analysis used in the IA:

20. S.40 has *not* since been commenced following a decision by the government that it was no longer a necessary measure. As there were no approved regulators in place at the time the legislation was passed, this section did not immediately come into force. It has not since been commenced and as such *does not currently apply*, but it is widely opposed by the sector and the government has accepted that it should be repealed given its potential 'chilling effect' on press freedom.
21. As a result, this measure would repeal a section of legislation that never actually came into force. There are no monetisable costs or benefits to UK businesses as a result of this policy intervention. The counterfactual/do-nothing option itself has no costs or benefits to UK businesses, because s.40 has never been commenced. If it were to be commenced, there could be legal costs to news publishers, but this is not expected to be commenced. When s.40 came into force, it was envisaged that news publishers would become members of a PRP-backed regulator. However the vast majority of publishers have made clear their intention to never join a PRP-approved regulator.
22. As previously stated, there have been improvements to the independent system of self-regulation since the publication of the Leveson Inquiry. Many publishers are now members of IPSO, which has taken a number of steps in line with the recommendations made by Leveson, while publishers' own governance frameworks have undergone reform. Members of IPSO and IMPRESS now have access to low cost arbitration. The press landscape has changed since the Crime and Courts Act 2013 was passed and publishers are now facing new and critical challenges that threaten their livelihood and sustainability. Although it is unlikely that s.40 would be commenced, if it were, publishers could be made vulnerable to potential legal costs, regardless of the legitimacy of claims made against them. It is therefore likely that commencement of s.40 would be at odds with the steps government is taking to protect press sustainability and could pose a significant risk to investigative journalism.
23. **Option 0:** Do nothing - Do not repeal s.40 of the Crime and Courts Act 2013.
24. **Option 1: (Preferred):** Do repeal s.40 of the Crime and Courts Act 2013.

Cost Benefit Analysis

25. There are no costs or benefits associated with this intervention. The removal of s.40 is a Manifesto commitment, which removes the risk that some publishers could be made vulnerable to potential legal costs, regardless of the legitimacy of any claims made against them. S.40 was never commenced, and so up until now there have been no costs to UK businesses associated with this measure, and therefore the removal of s.40 will provide no further costs or benefits to UK businesses. This will simply be a continuation of business as usual.

26. The main benefit of this change is that it removes the unlikely risk of s.40 being commenced at some point in the future, which would be at odds with the government's commitment to press freedom and sustainability. Repealing s.40 also recognises the significant improvements to independent-regulation that have taken place since the Leveson Inquiry and delivers the Conservative 2017 and 2019 manifesto commitment to repeal s.40.

27. Therefore the EANDCB for this measure is £0m.

4.0 Risks and unintended consequences

28. We do not foresee any risks or potential unintended consequences resulting from the removal of s.40.

5.0 Wider impacts

Innovation Test

29. There will be no impacts on innovation resulting from this regulatory change.

Small and Micro Business Assessment

30. There will be no impacts on any UK businesses resulting from this regulatory change, therefore no exemption is appropriate for small and micro businesses.

Trade Impact

31. There will be no impacts on trade resulting from this regulatory change.

Equalities Impact Test

32. There will be no equality impacts resulting from this regulatory change.

Justice Impact Test

33. There will be no impacts on the justice resulting from this regulatory change, due to the fact that s.40 was never commenced.

Competition

34. There will be no impacts on competition resulting from this regulatory change.

6.0 Post implementation review

35. No Post Implementation Review will be needed for this regulatory change.