



FROM THE BEAUTIFUL GAME TO THE REGULATED GAME: PROPOSED REFORM TO ENGLISH CLUB FOOTBALL

The global sports industry is larger than the global film and music industries combined. Football constitutes 40% of the global sports industry and the English Premier League (EPL) is the largest club football league in the world, by both viewership and revenue.

Recent controversies in the English game sparked a fan-led review of football governance in November 2021, which concluded that significant changes were needed to protect its heritage and financial sustainability. The outcome of this review led to the Government White Paper: ['A sustainable future – reforming club football governance'](#) (White Paper) which most significantly proposed the unprecedented establishment of an independent regulator (Regulator). Following the White Paper's publication, plans for the Regulator were further outlined in the King's Speech in November 2023 where the 'Football Governance Bill' (Bill) was announced. This article evaluates the key regulatory changes proposed by the Bill and the wider impacts of these reforms on the sport.

AN INDEPENDENT REGULATOR: THE CHANGES

Whilst moving away from traditional self-governance, both the White Paper and the Bill (once published), envisage the Regulator as a last line of defence, only using its statutory powers when English football fails in 'getting its own house in order', particularly in respect of club sustainability; systemic sustainability; and cultural heritage.

- **Club sustainability**

The Regulator would require clubs to demonstrate sound financial practice, appropriate buffers against financial shocks and that core club assets (e.g. stadiums) are protected. A corporate governance code will also be implemented and enforced by the Regulator, to ensure that those individuals controlling clubs act in accordance with values of integrity, transparency, accountability and the willingness to engage with stakeholders. Potential new owners will be required to present robust

business plans to ensure financial sustainability and will be subject to enhanced due diligence on the source of their wealth. Updated and consolidated owners' and directors' tests to assess their fitness and propriety are also proposed.

- **Systemic sustainability**

The proposed reforms suggest that the existing governing bodies in English football will work together to rework current financial arrangements and ensure a greater flow of funds down the football pyramid, with the Regulator only acting as a facilitator. However, the Regulator will be empowered to intervene where an equitable agreement is not reached.

- **Protecting cultural heritage**

The Regulator will ensure a minimum level of fan engagement and enforce new Football Association (FA) heritage rules, giving fans an effective veto on changes to a club's name and home shirt colours. Clubs will also need to obtain the Regulator's approval and demonstrate fan consultation before any sale or relocation of a club's stadium.

LEGAL IMPLICATIONS OF THE REGULATOR

Legal Independence

The status of the legal independence of the Regulator means that it cannot be altered or discontinued by a majority vote of clubs or industry associations. Previous intervention options suggested by the FA and EPL were for non-statutory, industry-led reform. Although the Regulator is to be a statutory body, formally the Government would only issue non-binding guidance to the Regulator alongside legislation to support, not dictate, how the Regulator will achieve its objectives.

Legal Powers

The Regulator's powers would include: (i) licensing and rule-making; monitoring and supervision; (ii) investigation and information gathering; (iii) direction and approval; and (iv) sanctions.

For example:

- **Owners' and Directors' Tests:** the Regulator would be granted the power to administer owners' and directors' tests, with the Government setting parameters for the Regulator to operate within when designing such tests (avoiding the prescribing of test criteria in primary legislation). The Regulator would also have the power to re-test owners or directors at its discretion, for example, following a change in an owner's or director's personal circumstances.
- **Power of Last Resort:** the Regulator would have a targeted, statutory power of last resort to intervene in financial distributions (e.g. in respect of broadcast revenues) to deliver a solution. One proposed option would be a binding final offer arbitration from the Regulator, whereby the Regulator would assess the merits of each party's proposal against predetermined criteria to impose a binding solution.

Licensing System

The Regulator would also create a licensing system. The proposed criteria for this licence (known as 'threshold conditions') span the Regulator's aims, such as adequate financial and non-financial resources, and consideration of fan interests on key club decisions. The system permits clubs to only compete in

competitions that the Regulator approves, thereby protecting domestic competitions and the sustainability of the football pyramid. The Regulator would work with respective leagues to oversee licensed clubs, aiding with the implementation of threshold conditions and potential interventions in club operations.

Legal challenges

As a procedural safeguard, parties would be able to appeal the Regulator's decisions to a court or tribunal, to ensure consistency with public law principles. Alternatively, the Government is also considering an internal review function for the Regulator, allowing contested decisions to be re-evaluated by different, independent reviewers.

POWERS OF ENFORCEMENT

The Government intends regulation to include powers and sanctions that generate genuine consequences for non-compliance, rather than long-term legal proceedings that prolong harm. The Regulator would operate a five-step escalating model of enforcement, using progressively stronger powers including greater involvement in club operations if certain thresholds for its intervention are met.

The Regulator would look to primarily target controlling individuals - to avoid undue impact on clubs, fans and players - indicating a departure from the current club-focused penalty system.

The Regulator would be afforded the following sanctions to enforce the licensing system: (i) reputational sanctions (i.e. naming and shaming) on both clubs and controlling individuals; (ii) financial penalties on both clubs and controlling individuals; (iii) suspension or disqualification of controlling individuals from football involvement; and (iv) suspension of clubs via withdrawal of licences.

In all cases, sanctions will be proportionate to the offence and the club in question (for example, financial penalties would not be appropriate for a lower-league club already in financial distress).

It is envisaged that sporting sanctions should be reserved for the EPL / English Football League (EFL), or for the FA to apply in response to a breach of their own rules.

FUTURE OUTLOOK

The Government aims to establish the Regulator as soon as Parliamentary time allows, yet the Regulator will need to be operationally prepared and adequately resourced from its inception. The Government is therefore considering a non-statutory shadow regulator to conduct the preparatory work of the Regulator in advance of legislation coming into force.

As outlined in the King's Speech, the Bill is part of the Government's agenda for the upcoming Parliamentary session, however no clarity was provided on the implementation of a shadow regulator in the interim, despite growing concern and reported deadlock over EPL / EFL revenue redistribution.

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