



MemeryCrystal

The Football Governance Bill [HL] and the Independent Football Regulator

A Brave New World?

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Introduction

Last year we published an [opinion article](#) on the previous Conservative government's *White Paper, A Sustainable Future - Reforming Club Football Governance*. The White Paper largely adopted and sought to build on the recommendations of the independent report in November 2021, *Fan-Led Review of Football Governance: securing the game's future*, led by Dame Tracey Crouch DBE MP; the most important recommendation being the creation of the IFR.

This was then followed by a targeted consultation by the Conservative government with relevant stakeholders.

On 19 March 2024, the Conservative government introduced the [Bill to Parliament](#). However, on 22 May 2024, the passing of the Bill into legislation was delayed, after the then Prime Minister Rishi Sunak, called for a general election on 4 July 2024 and the dissolution of Parliament.

The two leading parties in the UK general election, the Conservatives and Labour, pledged in the respective manifesto, their commitment to introducing the Bill and establishing an independent football regulator.

On 5 July 2024, following the results of the UK general election, Labour were announced as the new UK government. Plans to reimpose the Bill were confirmed during King Charles III's speech to The Houses of Parliament on 17th July 2024. Stakeholders proceeded to debate whether the Bill would be progressed by Labour in the form drafted by the Conservative government, or whether Labour would make amendments to the Bill.

On 24 October 2024, it was revealed that Labour had made such revisions, following a first reading of the [amended Bill](#) in The House of Lords. A second reading followed shortly after, in which the Lords tabled over 350 amendments to the Bill,¹ raising concerns of further delay to the passing of the Bill, but on the other hand, demonstrating The House of Lords' intention to forensically examine and further strengthen the Bill. The committee stage of the Bill is scheduled to start in November 2024, continuing in early December 2024.

This opinion whitepaper has now been updated to capture Labour's amendments to the Bill, as presented to The House of Lords in October 2024.

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¹ <https://bills.parliament.uk/bills/3832/stages/19262/amendments?page=18>

Heralding the Bill



“The Premier League recognises that key elements of the Bill can help make the English game stronger... However, we remain concerned about the regulatory framework... and the Regulator’s unprecedented and untested powers to intervene in the distribution of the Premier League’s revenues”



“The EFL welcomes the new Football Governance Bill... We have always been clear throughout this process that our intention is not to harm or hinder the strength of the Premier League”

In the accompanying press release from the newly formed Labour government, which announced the introduction of a “strengthened” Bill, the Culture Secretary, Lisa Nandy, said

“English football is one of our greatest exports and a source of national pride which this Government wants to see thrive for generations to come. But for too long, financial instability has meant loyal fans and whole communities have risked losing their cherished clubs as a result of mismanagement and reckless spending. This Bill seeks to properly redress the balance, putting fans back at the heart of the game, taking on rogue owners and crucially helping to put clubs up and down the country on a sound financial footing.”

Sports Minister Stephanie Peacock, was also quoted in the same press release, giving her support to the Bill:

- *“Football would be nothing without its fans, and this strengthened Bill will deliver an Independent Regulator that puts them firmly back at the centre of the game.”*
- *“From protecting club heritage such as shirt colours and badges that mean so much to so many of us, to requiring clubs to consult fans on changes to ticket prices, the Regulator will help make the game the best it can be.”*
- *“Working side by side with the football authorities, the Regulator will protect clubs and make sure they’re kept at the heart of their communities, where they belong.”*

A high-level overview of the Bill

Purpose of the Bill

Like the profit and sustainability rules and the salary cost management protocols, at the heart of the Bill is the protection and promotion of *"the sustainability of English football"*. Under the Bill, English football is stated to be sustainable if it: *"(a) continues to serve the interests of fans and regulated clubs, and (b) continues to contribute to the economic or social well-being of the local communities with which regulated clubs are associated."*

What is not yet clear is how the Bill, the profit and sustainability rules and the salary cost management protocols will work in tandem. As it currently stands, it looks as though there may be a complicated, and potentially conflicting, relationship between the sets of regulations, unless amendments are included, or the rules lay out exactly how they are intended to co-exist.

While the Bill's definition of sustainability within English football seeks to reinforce the unique importance of clubs to fans and local communities, we think it is curious that it does not also specifically address the importance of financial prudence (or, to use the chosen buzzword in the Bill, soundness) or specify the period against which sustainability is to be judged. Arguably, this framing of *"sustainability"* will do little to temper one of the prevailing views (and oft-cited ills) in football: excessive spending in the pursuit of short-term on-field success. Perhaps, this simply reflects the fact that the majority of clubs in the football pyramid outside of the Premier League are consistently loss-making and somewhat indebted, and, despite this, they continue to operate in a sustainable manner, even if contrary to ordinary business commercial sense.

To put the losses into context, Deloitte reported in its [Annual Review of Football Finance 2024](#), that despite the revenues of EFL Championship clubs, exceeding wages costs in 2022/23 for the first time since 2016/2017, such clubs generated deficits of £16m, thus remaining heavily loss making and reliant on significant owner funding, in the hope of obtaining promotion to the Premier League.

London-based sports consultancy firm, Lane Clark & Peacock also observed in its *2024 Annual Report on Financial Sustainability* that overall losses across the English football men's pyramid reached £1.2bn in the 2022-2023 season.

Against this backdrop, we note the following quote from an [article in the FT](#), in relation to Reading F.C., which serves to reinforce the above:



"The recent travails of Reading FC, founded in 1871, have been held up as a case study as to why regulation is needed, after an ambitious owner overspent and undelivered, leaving the club with unpaid bills, points deductions, relegation and the threat of collapse."

Many Reading fans argue that the current state of affairs simply encourages gambling on the part of football owners.

Oversight of clubs

As is noted in the *Explanatory Note, as amended by Labour in October 2024*, accompanying the Bill, "English football" is intended to refer to the elite level of the men's game: it is intended that the IFR will have oversight over 116 clubs competing in the top five English Leagues (the Premier League, the Championship, League One, League Two and the National League).

Clubs below the National League (including grassroots clubs) and women's clubs will not fall within the purview of the IFR. However, the Bill affords the Secretary of State the power to change this. We query whether, in time, there will be regulatory creep to any lower leagues or to the Women's Super League, noting that when amendments to the original Bill were being debated in The House of Commons, it was proposed (but withdrawn after no discussion was taken on it) "that a state of the game report [discussed further below] must, notwithstanding whether any women's football competitions have been specified, consider the state of women's football in England."



Objectives of the IFR

The objectives of the IFR are to:



protect and promote the financial soundness of clubs



protect and promote the financial resilience of English football



safeguard the heritage of English football

Objectives (i) and (ii) do not, however, mean that the IFR is obliged to prevent, at any cost, any club from entering into administration or being liquidated: the IFR is not obliged to guarantee zero failures. To our minds, this is not surprising and is not inconsistent with the expectations set for other regulators (e.g., the UK Financial Conduct Authority or the Care Quality Commission). The aim is to encourage sustainability in the English football ecosystem.

It remains unclear, however, whether the Labour government expects the IFR to have any responsibility for policing financial fair play, whether on its own or in tandem with the Premier League or, as applicable, the EFL. There is no express reference to financial fair play rules, profit and sustainability rules or salary cost management protocols in either the Bill or Labour's amended Explanatory Note. But it is noted that, as part of any discretionary licence conditions (see below), there may be a degree of overlap as conditions may be imposed by the IFR on a club in relation to debt management, liquidity requirements and/or overall cost reduction. Maybe this is deliberate at this stage and is something that will only become clearer once the draft rules of the IFR are published.

Objective (iii) is a clear nod towards fan engagement and duties upon clubs in respect of such matters were enhanced in Labour's revisions to the Bill (as further discussed below).

In assessing what the objectives *are*, we should also consider what they *are not*. In their revisions, Labour did not take the opportunity to include an additional duty of the IFR to ensure fair distribution of revenue. Undoubtedly, this would have been met with opposition from certain stakeholders, but not including such a duty could result in a flawed system from the outset by allowing the IFR to overlook instances of bias in revenue distribution.

In exercising its functions, the IFR must do so in a way which does not impact the sporting competitiveness of clubs or adversely affect financial investment in English football. In both iterations of the Bill, the Conservatives and Labour, view these as important outcomes in football, in addition to sustainability, which is not the responsibility of the IFR. In other words, with regards to the former, the IFR will not have responsibility for what happens on the pitch or related footballing matters. With regards to the latter, this seems to be about maintaining the independence and apolitical nature of the IFR. However, it has already been suggested by Steven Flynn, a senior junior barrister and Head of the 2 Temple Gardens' Sports Group, that this:

"General duty appears to be an area ripe for challenge by clubs and investors. I can foresee situations where clubs and potential investors argue that restrictive policies and procedures adversely impact the attractiveness of English football to foreign or institutional investors. Challenges to IFR published guidance on the grounds that they offend this general duty is almost inevitable"

(see paragraph 17 of Steven's review, a [Summary and initial observations on the Football Governance Bill](#)).

Moreover, the IFR will also be subject to specified regulatory principles; this is in stark contrast to the status quo for the leagues. These include requirements that it should: proactively and constructively engage with clubs (including owners and officers) and leagues; act consistently and transparently; and recognise the responsibilities of clubs' owners and officers.

State of the game report

The IFR must produce the first "state of the game report" from within 18 months of the IFR being up and running. This report is intended to provide a holistic assessment of the financial health, effectiveness of regulation, market structure and economic issues in the industry, and whether any feature of the industry is jeopardising, or risks jeopardising, the IFR's ability to advance its objectives. This type of report – and the level of transparency potentially being afforded – is a very welcome step and should provide a more accessible means for stakeholders (including investors) to consider and engage with the football industry. Understanding material risks in the game is of fundamental importance to its long-term sustainability.

The publication of this report shortly after the IFR's formation highlights its early commitment to conducting a market study of English football and establishing a key evidence base.

The early release of the report has also been welcomed by the EFL, where its chair said in a statement that:



"It is pleasing that the State of the Game report, which will provide the objective and independent basis for the new Regulator's work, will be delivered within 18 months. We look forward, in collaboration with our Clubs, to making a significant contribution to this important piece of work."

Once the first state of game report is published, the IFR will be required to publish subsequent reports every five years. The justification for such timings is to encourage the IFR to take a longer-term outlook, which will help to reduce industry costs, and better align with timelines for existing industry processes (for example, commercial agreements). If deemed appropriate, the IFR has the discretion to publish subsequent reports sooner than five years.

It should be noted here that, under the previous iteration of the Bill, the IFR would have been required to publish a report every three years. Whilst having a longer-term outlook may, on the face of it, make sense, it would be unfortunate if this turned out to be too long a period, with the result being that issues do not get identified and dealt with in time.

Prior to the release of the final version of the report, the IFR must also consult with the Football Association ("**FA**"), the specified competition organisers, and any other persons which the IFR considers appropriate. The necessity to consult with the FA is considered a welcome step towards restoring its authority and prominence in the regulation of English football.

In connection with the periodic release of the report, we note that, as part of the conclusion of Mobolaji Alabi and Andrew Urquhart, *The financial impact of financial fair play regulation: Evidence from the English Premier League* (published in the *International Review of Financial Analysis*), "football clubs are now more interconnected through debt owed to each other due to instalment payments". Presently, there is inadequate transparency of information in the public domain to assess the level of risk to the footballing pyramid (in part, owing to asymmetrical financial reporting requirements of clubs, with many reporting under the small companies regime). But this is where we would expect the state of the game report to come into its own, by considering these sorts of themes and, presumably, making recommendations which the IFR can then act on. Finally, the IFR will need to be properly resourced to undertake the review required to produce this type of report, especially given the requirement of the IFR to publish the first report within 18 months.

Licensing of clubs

Clubs will be required to obtain a licence from the IFR to enable it to field a team. Initially, this will be on a provisional basis for up to three years, although this can be extended. During this period, the IFR will assess whether the club should be granted a full operating licence.

An application for a provisional licence must be accompanied by a personnel statement (which identifies, among other things, the owners and officers, the ultimate owner and the specified senior management functions performed by senior managers), a strategic business plan (which includes information about the operation of the club, the estimated costs of that operation, how the costs will be funded and the source of such funding) and such other information as is specified by the IFR.

It remains to be seen whether the IFR will seek to stress test the strategic business plans of clubs - we consider that a stress test would be beneficial - as part of the application process for a provisional licence and/or during the period in which it subsists, prior to granting a full operational licence.

Certain mandatory licence conditions will apply. In addition, a club will be subject to certain duties imposed upon it by the Bill (see below).

The IFR must grant a full operating licence if the applicable test is satisfied (which includes meeting the threshold requirements).

The threshold requirements concern a club's:



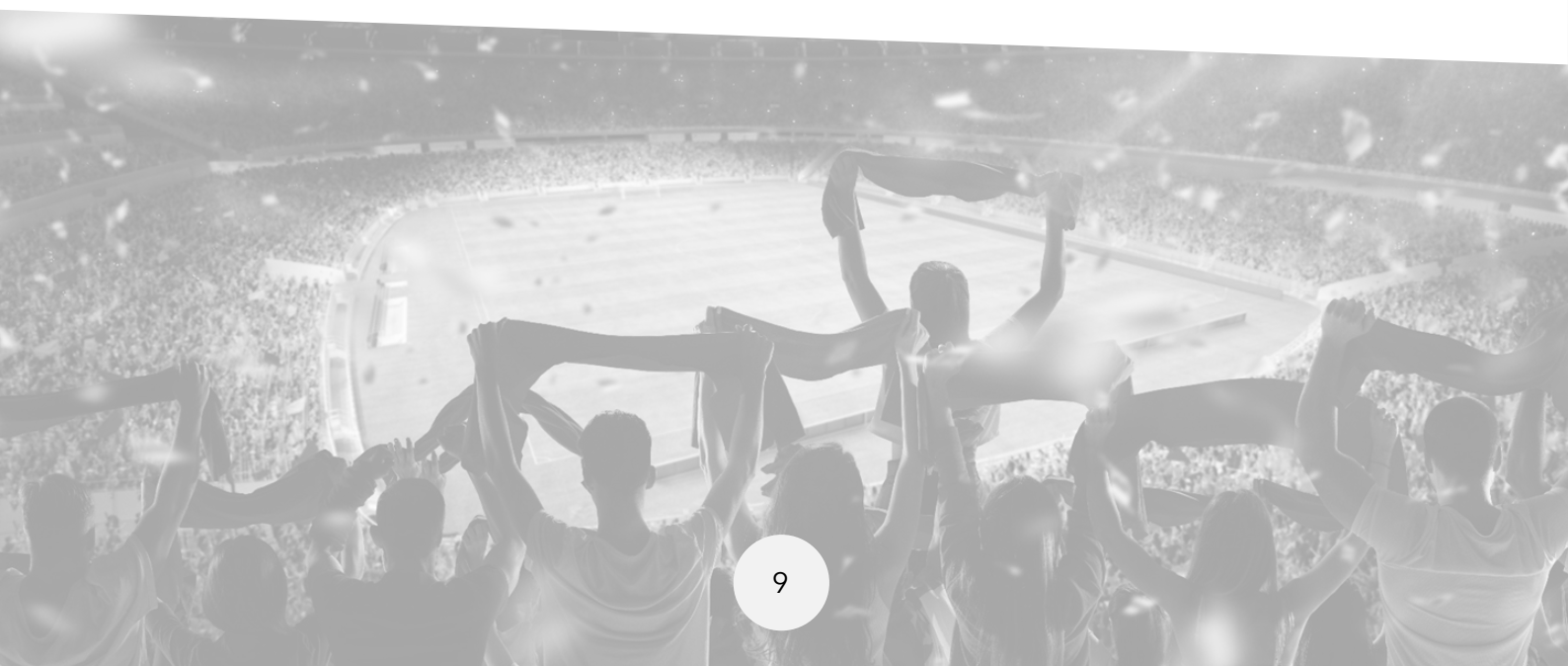
financial resources



non-financial resources



fan engagement



The financial resources threshold will be met if a club’s financial resources are appropriate in relation to activities the club carries on. The IFR may consider the corporate structure of a club, its latest financial plan, its strategic business plan and the league within which it competes.

The non-financial resources threshold will be met if a club’s non-financial resources are appropriate in relation to activities the club carries on. The IFR may consider the qualifications, experience, training and performance of a club’s individual owners and officers.

With respect to fan engagement - a recurring underlying theme of the Bill, the White Paper and the Fan-led Review - clubs will be expected to have adequate means by which to consult and take into account the views of its fans in relation to relevant matters. “*Relevant matters*” for this purpose means matters relating to:

- The strategic direction and objectives of the club
- The business priorities of the club
- Operational and match-day issues, including ticket pricing
- Heritage (e.g., a club’s home ground, crest, home colours and name)
- Plans relating to additional fan engagement

Furthermore, if a club were to enter into insolvency proceedings, and to the extent the power to make decisions about “*relevant matters*” remains exercisable by the club, it has a standalone duty to keep fans updated, as far as they are able, on developments in the relevant insolvency process.



The White Paper indicated that, although a “*shadow board*” can work well for many clubs, the previous Conservative government, did not consider it appropriate for the IFR to mandate the exact form that fan engagement should take at all 116 clubs; instead, it was suggested that the IFR would provide for flexibility through specific licence conditions (see below) and provide guidance on how this condition can be satisfied. It was suggested that, at a high-level, the Conservative government (and now the Labour government), would expect to see evidence (e.g., a memorandum of understanding, meeting agendas, minutes) that a club has an effective structure in place for senior members at the club to regularly discuss relevant strategic matters of interest to a representative group of fans, and that the IFR would also expect to assess evidence from fan representatives on how the club’s framework works in practice. Whether this is intended to cover all topics traditionally considered to be ‘near and dear’ to fans, such as squad quality and player transfer targets, remains to be seen. However, the duty on clubs to inform its fans on developments concerning insolvency proceedings, is a step in the right direction in showing the range of important topics on which fans could be consulted. Indeed, transparency on proceedings relating to the survival of clubs adored by its fans (and where examples including Bury F.C. have provided a key reason for creating a football regulator) should be of paramount importance.

Further, the inclusion of ticket pricing as a “*relevant matter*” for fan consultation is another important step towards the enfranchisement (or-re-enfranchisement) of fans. There was a 6.7% rise in Premier League ticket prices, with Crystal Palace F.C. the only 2023/2024 Premier League surviving club not to have raised ticket prices.

Given that it forms part of the threshold requirements, potential investors will need to consider fan engagement as part of their due diligence and post-completion plans (e.g., 100-day plans or integration plans). In addition to the rules, it would likely be wise to consider the best practices adopted by other comparable clubs.

If a club consistently fails to take reasonable steps to meet these thresholds, the IFR will have the power to revoke a club’s full operating licence or to decide not to grant a full operating licence at the end of the club’s provisional operating licence period. If a club holding an operating licence ceases to operate a relevant team, its operating licence will cease to have effect.



The following mandatory conditions will apply to each operating licence:

1.

The financial plans condition - requiring clubs to submit a financial plan specifying: (i) information about how the club is, or is to be, funded and the sources of funding; (ii) information about expected revenues and expenses; and (iii) financial risk assessments and plans for managing financial risk.

2.

The corporate governance statement condition - requiring clubs to submit a corporate governance statement explaining: a) how a club is applying the code of practice that the IFR is set to prepare and publish on the corporate governance of clubs; b) what action the club is taking to improve equality, diversity and inclusion ("**EDI**"); and c) for clubs to publish their latest corporate governance statement online as soon as reasonably practicable after submission to the IFR. It remains to be seen quite how extensive or intrusive this is intended to be for clubs. But it is noted that the IFR must consult the FA and any representative of persons likely to be affected by the code, prior to publishing the code or any alterations to it. Interestingly, the IFR will be required to publish a corporate governance report, which is, according to Labour's amended Explanatory Note, to identify, highlight and share best practices in governance at clubs and any general concerns on corporate governance across the industry, and, more generally, to improve transparency and accountability, while simultaneously providing reputational incentives for clubs to improve their corporate governance arrangements. The requirement for clubs to publish their action on EDI, demonstrates the commitment of the Bill to improve visibility on such matters in the game.

3.

The fan consultation condition - requiring clubs to carry out regular consultation with fan representatives (recognised as such by the IFR), which are elected by the club's fans to represent their views or are persons otherwise appearing to the IFR to represent the views of the club's fans. This sets a new standard for fan engagement in decision-making. The IFR can compel clubs to democratically select the fan representations that the club engages with, but the IFR must consider: a) the club's corporate governance arrangements; b) the size and composition of the club's fanbase; and c) the club's financial and non-financial resources. Affording the IFR with such power, avoids situations where a club unilaterally chooses specific individuals, without consulting the wider fanbase. Labour's amended Explanatory Note also states that the representative group can include pre-existing groups such as Supporters' Trusts.

4.

The annual declaration condition - requiring clubs to submit an annual declaration containing any information relating to: (i) a prospective new owner or officer; (ii) a person that has become an owner or officer without the IFR first making a determination; or (iii) a material change in a club's circumstances which is relevant to the IFR's exercise of its functions.

The IFR can also impose discretionary licence conditions, which are meant to be bespoke to each club, and are to be applied if the IFR is satisfied that compliance with such condition would ensure the club will meet, or contribute towards the club meeting, the threshold requirements. They are, however, cast in a restricted manner. For example, a discretionary licence condition relating to:

- the financial resources condition, may only relate to debt management, relate to liquidity requirements, restrict the club's overall expenditure, or restrict a club's ability to accept or receive funding which the IFR suspects is connected to serious criminal conduct. The IFR must not impose restrictions on a club's expenditure of a particular kind or a particular transaction, with the club assessing what areas they should limit to reduce overall expenditure, in order to satisfy the condition; and
- the non-financial resources condition, may only relate to internal controls, risk management or financial reporting.

Interestingly, the Bill also includes a mechanism to permit a league to give a commitment to take action in lieu of a proposed IFR financial discretionary licence condition.


The new licensing regime will likely mean significant additional obligations and costs for clubs, which could prove problematic for smaller clubs with limited staffing and financial resources, unless additional funding is made available as part of the transition process and/or such obligations are implemented in a proportional manner. There may also be additional burdens and costs for the leagues themselves if their league comprises a mix of provisionally licensed and fully licensed clubs.

Owners and directors

With owners and potential owners coming under ever-increasing scrutiny by all stakeholders, this is an important area which the IFR will have responsibility for. Although it is not entirely clear at present, we think this is intended to entirely replace the existing owners’ and directors’ tests of the Premier League and the EFL. If this is correct, we suspect that the Premier League and EFL will not be too sad to see responsibility for this area pass to the IFR, given the number of issues that they have experienced with troublesome owners in recent times and the related criticisms which they have received from various stakeholders. It should also help to free up some of their resources for footballing matters.


As is currently the case with the existing owners’ and directors’ tests of the Premier League and EFL, the approval of the IFR will be required before any individual can become a new owner or officer of a club. However, unlike the existing regimes, the IFR must publish its determination. This new level of transparency is to be welcomed.

The tests will require:



FOR OWNERS:

- (i) To have the requisite honesty and integrity (aka fitness and propriety)
- (ii) To be financially sound



FOR OFFICERS:

- (i) To have the requisite honesty and integrity
- (ii) To have the requisite competence
- (iii) To be financially sound

Often an owner is an officer as well; in such circumstances, the individual will be required to satisfy both tests. Quite what is meant by an officer having “*requisite competence*” remains to be seen.

The Bill does not prescribe disqualification conditions, unlike the owners’ and directors’ tests of the Premier League and the EFL. Instead, the Bill sets out a number of factors to which the “*IFR must have regard*” in making its determination.

One of which concerns the commission of criminal offences. The Bill significantly broadens the range of criminal offences which may be taken into account when assessing fitness and propriety. It is wider than the current tests employed by the Premier League (even after its revision last year, as to which see our update [here](#)) and the EFL. It includes offences such as organised crime, drug trafficking, people trafficking, slavery, terrorism, firearms offences, prostitution and child sexual exploitation, armed robbery, money laundering, fraud, tax fraud, bribery, counterfeiting, computer hacking, IP infringement (e.g., broadcast piracy) and crimes against the environment. This seems more fitting for a test of this nature.

It is noted that the IFR is not expressly required to have regard to human rights issues. This will likely remain controversial.

The Bill will also likely see a more comprehensive review and assessment by the IFR of a new owner's financial soundness. This will include looking at whether the new owner has the funds to operate the club and whether those funds have been derived from serious criminal conduct: this is likely to involve a comprehensive review of a new owner's business interests and where their wealth came from. In addition, and unlike the existing rules of the Premier League and the EFL, the bankruptcy or insolvency standard is stricter: any new owner must not have been subject to bankruptcy or insolvency proceedings of any kind.

The Bill, perhaps not unsurprisingly, does not build on some of the points of detail referred to in the White Paper (e.g., "*personal guarantees*" from owners, to help owners be more accountable). Nor does it pick up on some points made by others outside of the White Paper (e.g., suggestions that clubs should be prohibited from granting security over their assets in relation to loans to owners or related parties, restricting the world of permissible lenders to those lenders regulated by the Financial Conduct Authority and other similar financial services regulators, prohibiting owners from offering security on or over their shares in the club, and, in an insolvency scenario, subordinating the claims of an owner behind all other creditors).

Importantly - at least so far as deal certainty is concerned and even more so where a club's finances are in a parlous state - there will be statutory time limits prescribed for the determination process by the IFR (similar to other regulators, such as the Financial Conduct Authority, when it is considering a change in control application). Given the process and the general transparency which will be afforded by the new regime under the Bill, it will be interesting to see how many determinations are challenged and appealed.



When it comes to an “owner”, the Bill largely adopts the regime for persons with significant control, albeit that it only refers to a person as an owner if the person is an individual or a registered society. It does not also include a relevant legal entity. It is likely that the IFR will adopt similar guidance to that adopted by the government (whether that be the Conservatives or Labour) for persons with significant control.

While the persons with significant control regime is increasingly well understood (not least because the government (whether that be the Conservatives or Labour) has adopted it in other areas, including the regime for registration of overseas entities owning UK real estate), it still has several flaws.

For example:

- in respect of indirect owners, the rules focus on indirect holders of shares or interests having a “majority stake”. However, a person can, at least mathematically, still hold an indirect stake of more than 25% without holding a majority stake in an intermediate company; and
- some buyers of clubs – and other companies more generally – are owned and funded by a consortium of investors or backed by a private equity sponsor. In such cases, it is not uncommon for there to be no registerable person with significant control for the purposes of companies law and, by extension under the Bill, no (individual) owner of a club. It is unclear why a body corporate would not then be capable of constituting an owner. The absence of an owner would then seem to negate the effect of a number of provisions in the legislation – for example, the IFR could not seek to remove a body corporate owner, no matter how unfit or improper it is. Surely, this should be remedied as part of the legislative process.

The “ultimate owner” is said to be the (individual) owner having the highest degree of influence or control over the activities of the club.

Each of the club and a prospective owner has the duty to notify the IFR if there is a reasonable prospect of that person becoming an owner of that club. Presumably, the earliest point of time at which this could occur is when a heads of terms or letter of intent has been signed by the prospective owner, the seller and/or the club.

Interestingly, existing owners and officers will not automatically be reassessed under the new regime. Instead, the IFR only has the power to determine the suitability of an existing individual owner or officer where it is in possession of information which provides the IFR with grounds for concern about the individual’s suitability. It is unclear to us why there needs to be a two-tiered system, one for existing owners and one for new owners. Is the case for easy administration stronger than the case for having fit and proper owners at the outset?

Where the IFR determines that an owner or officer is unsuitable, the IFR will have the power to protect clubs from harm the unsuitable owner or officer might cause, including the power to issue removal directions, ownership removal orders, disqualification orders, and other directions and orders (e.g., to impose alternative officer arrangements).

Duties on clubs

Some of the more notable duties that will be imposed on clubs:

1. To not join a prohibited competition (i.e., a breakaway league).
2. To notify and obtain the approval of the IFR if they propose to dispose of any freehold or leasehold interest in their home ground, use any interest in their home ground as security in respect of a loan, or relocate the club. This will be of particular interest to owners and new owners, as often the real estate angle for a club is an important factor for the investment made or to be made; indeed, in some cases, the real estate may be more valuable than the club (e.g., real estate in London and its surrounding counties) and/or it may be more beneficial to construct a new home ground than to try and redevelop a dilapidated stadium. In this regard, it is noted that the IFR must grant approval if it is satisfied that the carrying on of the activity: a) would not undermine the financial sustainability of the club; b) the arrangements would not cause significant harm to the heritage of the club; c) the club has taken reasonable steps to determine the views of its fans about the effect of the arrangement of the *"relevant matters"* (as set out above); and d) the club has had regard to those views in considering whether to enter into the arrangements. Whilst this is an acknowledgement towards fans engagement, quite which factors the IFR will consider in making such a decision, or how this duty works where the home ground is not owned by the club itself, remains to be seen, as is whether this duty may have an unintended consequence for investment in football more generally (even if this duty is well-intended). Nevertheless, clubs have already shown willingness to embrace the duties placed upon them in respect of the management of their home ground. The independent supporters trust of Charlton Athletic F.C. commented that: *"Change to protect our clubs and recognise the importance of clubs as community assets is long overdue."*
3. To notify the IFR if it considers that there is a reasonable prospect of an administrator being appointed. No administrator may be appointed by a club without the approval of the IFR. And you can begin to understand why this position is being taken when some clubs seem to fail without much warning (e.g., Wigan in 2020). Approval is not required where an administrator is appointed by a creditor or the court. Query how this duty is meant to interact with well-established insolvency law and the statutory duties of directors; this seems like an issue a court will inevitably have to resolve, unless it is made clearer as part of the legislative process for this Bill.

4. To not make any material changes to the crest or home colours, “*unless the club has taken reasonable steps to establish that the changes are supported by a majority of the club’s fans in England and Wales*”. Query whether for bigger clubs there will an expectation to also consult with some or all of its global fanbase.

5. Not to change the name of the club, unless approved by the FA.

6. To notify the IFR where the club considers that there has been, or may have been, a material change in circumstances affecting the club that is relevant to the exercise of the IFR’s functions.

Distribution of revenue

This concerns “*relevant revenue*” received by a specified competition as a result from the sale or acquisition of broadcasting rights. It may also apply to other sources of revenue specified by the Secretary of State, to help future proof this for other new material income streams and provide the IFR the ability to safeguard the future of the game.

Against the backdrop of failure by the Premier League and the EFL to agree a new deal, the backstop powers of the IFR in the Bill (also known as the “*resolution process*”) will likely be subject to greater scrutiny as the Bill passes through The House of Lords, and later The House of Commons.

Parachute payments, otherwise known in the Bill as “*relegation revenue*” are not excluded from consideration of the backstop, with the IFR given the remit to include parachute payments, through the backstop mechanism, when assessing financing across the game. However, there is no guarantee that some or all of the parachute payments would form part of any distribution order (see below).

The backstop will only be triggered by the Premier League or, more likely, the EFL if at least one of the following conditions are met:



there is no distribution agreement between the leagues



there has been a material reduction in the relevant revenues received by one of the leagues



there has been a material change in circumstances in the relevant revenue



there is a distribution agreement between the leagues which has been in force for at least five years and no distribution order has effect in respect of one of the leagues relating to the season

The process can then be commenced by the IFR but only if it concludes that it has reasonable grounds to suspect that its ability to advance at least one of its objectives (e.g., to promote financial sustainability) would be jeopardised if the backstop were not triggered. Arguably, this is a high procedural hurdle, even if in keeping with the desire of the Labour government for a solution to be found by the leagues. We can envisage this being the potential subject of a dispute by the Premier League at some stage.

Once triggered, the Premier League and EFL will be moved to a mediation process. If, however, agreement cannot be reached, then the Premier League and EFL must submit their final proposals to an "*Expert Panel*", which will then have to choose which proposal is to be implemented (note that this is not an arbitration process), based on which one is more consistent with the following principles: a) advancing the IFR's objectives; b) not placing an undue burden on the commercial interests of either league; and c) not, if a distribution order were made in accordance with the final proposal, reducing the amount of "*relegation revenue*" being distributed to a club within a year of the distribution order coming into effect (in other words, some semblance of transition being pre-baked in for parachute payments).

Although the Expert Panel does have some discretion, it will still have to consider very different interests of the leagues, not least given the size and success of the Premier League in comparison to the rest of the footballing pyramid. We wonder whether it would be more equitable for the Expert Panel to be able to decide the course of action, as opposed to simply having to choose the best of the two cases put to it. The IFR can terminate the distributions process, if it concludes that none of the proposals it has received are consistent with its sustainability and resilience objectives. In these circumstances, one of the leagues would have to apply to re-trigger the processing - putting the matter back to square one.

The IFR will police distribution orders made by the Expert Panel. In exceptional cases, it can even revoke a distribution order. However, it cannot revoke or interfere with a distribution agreement itself.

Finally, it is noted here that the Bill does not impose any rules on how new deal (windfall) proceeds should be spent (or not spent) by clubs lower down the footballing pyramid. Query whether this may be addressed by the rules of the IFR.

Other aspects of the Bill

A great many details have yet to be determined. Much will be set out in the rules and guidance of the IFR. The IFR is generally required to undertake a consultation prior to making or publishing its rules and guidance.

The Bill affords various investigatory powers to the IFR. The IFR will also have the power to issue warning notices and urgent directions. These seem largely in keeping with other regulators.

The Bill also provides a system of reviews and appeals, which is far more transparent than the existing arbitration mechanism built into the rules of the Premier League and the EFL.

Finally, it is noted that the Bill criminalises certain types of non-compliance (e.g., a club, without reasonable excuse failing to comply with an information notice or request for information) and gives the IFR the ability to fine clubs and owners up to 10% of turnover of the club for non-compliance, similar to offences and fines available to other regulators (e.g., the Competition and Markets Authority). The IFR will, therefore, have some teeth when it comes to enforcement (also see above with regards to unsuitable owners and officers).



Next steps for the Bill

Following the Bill's two readings in The House of Lords, it will now make its way to the committee stage and a report stage. The Bill will then proceed through the procedural hurdles of The House of Commons.

Whilst the Bill is yet to be approved by both chambers, the sheer number of amendments proposed by The House of Lords to Labour's amended Bill suggests that the Bill is unlikely to receive Royal Assent anytime soon (even if some optimistic stakeholders are whispering Easter 2025).

Some notable amendments proposed by The House of Lords are from Lord Bassam, who sought to widen the scope of the IFR's powers in several areas of the Bill. For instance, the IFR's powers would provide "*reasonable and proportionate assistance*" including "*financial support, training and support staff*" to: a) regulated clubs seeking a provisional club licence; b) clubs with a provisional club licence seeking a full club licence; and c) unregulated clubs which are reasonably likely to become regulated clubs in the next football season.

Lord Bassam also proposed an amendment to Part 6 of the Bill, enabling the IFR to trigger the process to resolve the distribution of revenue, if "*the IFR is not satisfied that the distribution which is the subject of that agreement complies with the principles in section 61(2).*" In addition to those noted above, Lord Bassam is suggesting a few further additional principles, including: a) closing the financial gaps between divisions; b) incentivising clubs to run well; and c) addressing issues identified by the relevant state of the game report.

Furthermore, a report by The House of Lords' Delegated Powers and Regulatory Reform Committee highlighted further areas of debate. For example, the report noted that in respect of the definition of "English Football": "*The Bill's scope and purpose should appear clearly in the Bill. Clause 1(1) states the purpose of this Bill as being to protect and promote the sustainability of English football. Yet the meaning of "English football" (and therefore the remit of the IFR) is incomplete and requires filling out in regulations made by the Secretary of State. We recommend that the power of the Secretary of State in clause 2 to define "specified competitions" should be removed from the Bill. Government policy is clear - that the top five leagues of the men's professional game should be regulated. This policy should appear in primary legislation, not be relegated to secondary legislation.*"²

The amendments proposed by individual members of The House of Lords and its committee not only highlight the key areas of the Bill which are still to be agreed, but demonstrate The House of Lords' willingness to scrutinise it more thoroughly, compared to The House of Commons in previous readings.

Expect some continued strong lobbying by stakeholders with vested interests (e.g., the Premier League, who is warning against the dangers of rushing the Bill through the various chambers and the general risks concerning regulation of football with what its Chief Executive, Richard Masters, describes as a "*strict banking-style regulation*", contrary to its position earlier on this year that there

² <https://bills.parliament.uk/publications/56996/documents/5379>

is little point lobbying, and indeed its request that the government intervenes following the proposed European Super League). The Premier League has, however, acknowledged that following Labour's amendments to the Bill: *"key elements of the Bill can help make the English game stronger, including the principles of strengthened fan engagement, protecting club heritage, preventing breakaway leagues and encouraging responsible ownership."*

Once it does become law, there will be a period of transition. The IFR will need time to establish itself and its rules and to deliver on its wide-ranging powers and duties. The Premier League and the EFL will also need time to recalibrate their rules, accordingly, owing to the new statutory remit of the IFR. Perhaps it may even be appropriate for a memorandum of understanding (or similar) to be entered into by the IFR, the Premier League and the EFL, to reaffirm the supremacy of the IFR in certain areas, to reinforce the supremacy of the rules of the Premier League and the EFL as it concerns footballing matters, to deal with overlapping areas (e.g., accounts and information sharing by clubs, and financial fair play submissions), and to set out a high-level framework for cooperating with one another. Moreover, there will be a period of transition for clubs and their relevant stakeholders.

Our final thoughts

The government's approach (first introduced by the Conservative government and continued by the Labour government) in seeking to bring in the IFR is certainly radical in the context of global sports governance. That said, this is more of an evolution than a revolution. It is seen as a necessary solution to a unique industry where the gulf between rich and poor clubs is only getting wider and the consequences of a club failing are more disastrous than a normal corporate failure.

Ironically, it was the greed of the "big" clubs which triggered this evolution (and, as noted above, requested by the Premier League). Fans were rightly aghast at the prospect of a European Super League that very few stakeholders in the UK were pushing for (other than the owners of the clubs involved). No doubt the clubs on the continent that promoted the European Super League will be secretly hoping the Bill and the IFR have an adverse impact on UK football, which is one of our great successes, and much to the envy of the world. This is something the Premier League is acutely aware of and is why, in recent times, it has been trying hard to rehabilitate its governance image and warn against the potential *"unintended consequences"* of the Bill and the IFR.

Overall, we think there is much to be commended about the Bill and the IFR. It has sought to address many of the recommendations deriving from the Fan-led Review (itself a considered piece of work). Labour's amendments to the Bill introduced a few changes to the original Bill, including removing the IFR's requirement to consider government foreign policy when approving club takeovers - which strengthens the IFR's full independence. Moreover, the revised Bill now includes parachute payments within the IFR's backstop powers for financial distribution and enhancements have been made to improve fan engagement. The revised Bill, does not, however, resolve the matter of two potentially competing and conflicting financial regulation regimes - one operated by the leagues and the other operated by the IFR; it remains an utter mystery to us as to why no one has engaged with this subject.

There remain some areas where it could benefit from further consideration (e.g., who is an “owner”, see above).

In addition, there may be a few new areas which could still be usefully addressed by the Bill, including new provisions to try and encourage (or force?) the FA and the leagues to be more consultative and cooperative when making decisions relating to footballing matters. The decision earlier this year to scrap FA Cup replays is a case in point. There, the EFL was not properly consulted or notified in advance. However, this is a footballing matter: this would not fall within the remit of the IFR. Therefore, something else could and should be done to address these sorts of issues. Perhaps something appropriate could yet be added to the Bill.

It should also be welcomed by the wider investment community. Only recently, at the *FT Business of Football Summit*, it was observed by several investors that financial sustainability, achieved by way of tighter regulation, encourages the long-term capital required to fund and sustain club.

It is anticipated that the IFR is projected to receive an estimated initial budget of £10m, which will be funded by a levy on 116 clubs, with the ‘top’ Premier League clubs paying the largest proportion. Labour’s amended Explanatory Note states that the budget will be funded having regard to *“the differing financial resources of each licensed club, which may include, but is not limited to club revenue, expenditure and a club’s owner’s financial circumstances.”* However, the amount of contribution required from each club is unclear. A further unknown is whether the budget will be sufficient to allow the IFR to effectively carry out its functions. Already some are doubting whether £10m is anywhere near enough. To put the level of funding into context, the Financial Conduct Authority will receive an indicative budget of £755m for 2024/2025. While the two regulators are not comparable in terms of size (e.g., the FCA has more than 4,000 employees) and function and scope (e.g., the FCA regulates around 50,000 firms), the Government must take care to ensure that the IFR is properly funded, the budget continually reviewed and the IFR body equipped with relevant experts to deal with the football industry.

How we can help you

Memery Crystal has deep transactional experience in football. We also advise on transactions involving other sports (including cricket and rugby). We can help you if you are interested in:

- learning about the Bill or preparing for its enactment
- buying or investing in, or selling, a football club
- financing a football club
- real estate matters (e.g., in respect of a stadium or training ground)
- commercial contracts (e.g., sponsorship agreements and kit manufacturer agreements)
- gambling matters
- employment matters (e.g., players, managers, coaching staff, directors and non-playing staff)

Should you have any questions, please contact one or more of the authors below, or your usual Memery Crystal contact.



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