

**FOOTBALL GOVERNANCE BILL
EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM
ON INTRODUCTION TO THE HOUSE OF COMMONS / HOUSE OF LORDS**

March 2024

- A. Summary of the Bill**
- B. European Convention on Human Rights**
 - a. Statement under the Human Rights Act 1998**
 - b. Key ECHR issues**
 - i. Article 6: Right to a fair trial**
 - ii. Article 7: Right not to be punished except in accordance with the law**
 - iii. Article 8: Right to respect for private and family life**
 - iv. Article 1, Protocol 1: Right to peaceful enjoyment of possessions**

1. This Memorandum has been prepared by the Department for Culture, Media and Sport (“the Department”) and addresses issues arising under the European Convention on Human Rights (“ECHR”) in relation to the Football Governance Bill (“the Bill”).
2. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Rt Hon Lucy Frazer KC MP, the Secretary of State for Culture, Media and Sport would propose to make a statement that in her view the provisions in the Bill, as introduced, are compatible with the Convention rights.

A. SUMMARY OF THE BILL

Purpose of the Bill

1. The Football Governance Bill consists of ten parts, which are detailed below.
2. The purpose of the Bill is:
 - a. to protect and promote the sustainability of English football through the introduction of a regulatory regime, which will be enforced by the establishment of a new independent football regulator (IFR) for English football;
 - b. to make provision of a levy to be paid by regulated clubs to the IFR for its operating costs and costs in relation to its establishment;
 - c. to make provisions for the issuing of provisional or full licences for football clubs that will permit them to operate;
 - d. to make provisions relating to the establishment of tests to determine the suitability of owners and officers at football clubs and to provide enforcement powers in respect of owners and officers who fail tests including powers for divestment of ownership;
 - e. to provide for a resolution mechanism for the distribution of revenue between specified competition organisers;
 - f. to provide powers for information sharing between the IFR and public and/or private organisations;
 - g. to make provision for an investigation and enforcement regime with a suite of powers to effectively deal with a range of matters, including breaches of licence conditions or directions issued by the IFR or failure to pay the requisite levy; and
 - h. to provide for an appeals process in relation to decisions made by the IFR with appeals being heard at the Competition Appeal Tribunal (the Tribunal).

Summary of Bill provisions:

Part 1 - Purpose, Overview and Key Definitions

3. Part 1 provides an overview and sets out the purpose of the Bill, which is to protect and promote the sustainability of English football. It sets out that English football will be sustainable if it serves and continues to serve the interests of fans of regulated

clubs, and contributes to the well-being of local communities with which regulated clubs are associated (clause 1).

4. English football is defined to mean all regulated clubs and all competitions specified in regulations by the Secretary of State taken together (clause 2) A regulated club means a club that operates a team in relation to a specified competition (whether or not it is a licensed club) (clause 2).

Part 2 – The Independent Football Regulator

5. Part 2 makes provision for the IFR. It sets the IFR up as a body corporate (clause 5). Please note that the current intention is for the new IFR regime to apply to the top five tiers of men's football only (which will be achieved through the regulations made by the Secretary of State listing specified competitions). Part 2 also provides for the IFR's objectives, being the club financial soundness objective, the systemic financial resilience objective and the heritage objective (clause 6). Further, it places general duties on the IFR including that it must have regard, in exercising its functions, to the desirability of avoiding effects on sporting competitiveness, avoiding adverse effects on competitiveness of clubs and avoiding adverse effects on financial investment in English football (clause 7). Also, the Part sets out the regulatory principles for the IFR in (clause 8) which include the principle of acting proportionately in the imposition of requirements or restrictions, and the desirability of acting consistently between clubs.
6. Part 2 also makes provision for reports, statements and guidance with those provisions grouped together for the purposes of the Bill as a whole. Clause 10 refers to the "State of the Game" report which is to be prepared and published by the IFR on the state of English football. The report must address certain specified matters. There is also provision in (clause 11) for the Secretary of State to publish a "football governance statement" setting out government policy in relation to the governance of football and the statement must be laid in Parliament. There is also provision for guidance published by both the IFR (clause 12) and the Secretary of State (clause 13). Finally, there is a provision for the IFR to submit an annual report to the Secretary of State (clause 14).

Part 3 - Operating Licences

7. This part provides that the IFR may grant a provisional or full operating licence, with the provisional licence being used to permit the club to function on a provisional basis before the grant of a full licence (clause 15). The provisional licence must specify the period for which it has effect, which may be no more than three years (although there is an option to extend beyond this period), and both types of licence must specify conditions imposed by the IFR (clause 15). The Bill provides in (clause 19) for cessation of an operating licence if a club ceases to play in a specified competition.
8. A club may apply for a provisional licence in line with rules made by the IFR, and the application must contain various information, including a personnel statement and a strategic business plan (clause 16). The content of these documents is described in the Bill.

9. The IFR must grant a provisional licence if it is satisfied that the club will operate a relevant team, will comply with the duties on clubs and the mandatory licence conditions (clause 17).
10. Where a club holds a provisional licence the IFR must, before the end of the period for which the provisional licence has effect, decide whether to grant the club a full operating licence (clause 18). The full licence must be granted if the IFR is satisfied that the club meets the threshold requirements, will continue to comply with the matters specified in relation to provisional licences, and has not determined that any of the club's owners and officers are unsuitable (clause 18).
11. When the full operating licence comes into force, the provisional licence will cease to have effect (clause 18). It is open to the IFR to extend or revoke the provisional licence if the full licence cannot be granted.
12. As noted above, the IFR may attach discretionary licence conditions to an operating licence (clause 21) if certain conditions are met, and such conditions may be varied or removed as necessary. There are statutory limits to the specific matters that discretionary licence conditions may address where they relate to the financial and non-financial resources threshold requirements and the financial resilience objective (clause 22).
13. Commitments by specified competition organisers may, in certain circumstances, be accepted by the IFR in lieu of the attachment of discretionary licence conditions (clause 24).
14. Mandatory licence conditions must be attached to each operating licence (clause 20).

Part 4 - Owners and Officers of Regulated Clubs: Suitability Etc

15. Part 4 of the Bill empowers the IFR to determine the suitability of (incumbent and prospective new) owners and individual officers¹ of regulated clubs, and to take action to ensure the removal of owners and officers it determines to be unsuitable.
16. Any prospective new owner or individual officer must apply to the IFR before becoming an owner or officer of a regulated club. The IFR will determine the applicant's suitability for the particular club and role in question (clauses 28, 29).
17. If a new owner or officer fails to apply to the IFR before joining a regulated club, or does not await the outcome of the IFR's determination before joining, the IFR may require the owner or officer to make a new application or may declare them to be not suitable (clause 30).
18. All prospective new owners must include with their application information about how they propose to operate the club and fund that operation (clause 28).
19. To determine the suitability of a prospective new individual owner, the IFR will consider whether the individual possesses the requisite honesty and integrity and is financially sound (the "individual ownership fitness criteria"). It will also consider

¹ Although legal persons can be club officers, Part 4 only provides for suitability determinations in respect of officers who are natural persons (i.e. individuals).

whether the individual has the requisite financial resources, and whether it has grounds to suspect that the individual has any source of wealth which is connected to serious criminal conduct (clauses 28 and 26).

20. To determine the suitability of a prospective new registered society owner, the IFR will consider whether the registered society has the requisite financial resources (clause 28).²
21. To determine the suitability of a prospective new individual officer, the IFR will consider whether the individual possesses the requisite honesty, integrity and competence, and is financially sound (the “officer fitness criteria”) (clause 29), (clause 26).
22. Incumbent owners and officers are not automatically tested by the IFR. However, the IFR may also determine the ongoing suitability of incumbent individual³ owners and officers under certain circumstances. Incumbent owners and officers are those who were already in place at a regulated club before the commencement of the relevant provisions of the Bill, those who were already in place before their club entered a regulated league (if the club’s entry happened after commencement), and those who joined a regulated club after commencement and were found suitable at the point of joining (clauses 34 and 35).
23. For the IFR to make a determination about an incumbent owner, the IFR must either have grounds for concern about whether the owner meets the individual ownership fitness criteria, or it must have grounds to suspect that the owner has a source of wealth which is connected to serious criminal conduct (clause 34). To make a determination about an incumbent officer, the IFR must have grounds for concern about whether the officer meets the officer fitness criteria (clause 35). The IFR’s determination will consider only those issues about which it has grounds for concern or suspicion.
24. Where the IFR proposes to make a determination in respect of an incumbent owner or officer, it must first notify the individual and club concerned (clauses 34 and 35).
25. If, after considering the relevant criteria, the IFR is minded to determine that an incumbent or prospective new owner or officer is not suitable, it will notify them and the club concerned and invite representations (clauses 31 and 36).
26. Where the IFR ultimately determines that an owner or officer is not suitable for their role at a particular club, it must take steps to ensure their removal as an owner or officer of the club. That may involve giving a “removal direction” requiring them to cease being an owner or officer (clauses 39 and 40), and it may involve further enforcement steps to protect the club concerned, up to and including making an

² The owners of a club are defined by Schedule 1 to the Bill, and may be individuals or “registered societies” – co-operative or community benefit societies registered under the Co-operative and Community Benefit Societies Act 2014. Registered societies can be a vehicle for collective fan ownership of football clubs. They are regulated by the FCA and are subject to requirements under the 2014 Act, including that they are bona fide co-operatives or run for the benefit of the community. Registered society owners are therefore subject to less onerous suitability tests than individual owners.

³ Incumbent registered society owners are not subject to ongoing suitability determinations.

order to provide for the forced divestment of an unsuitable owner (clauses 43 and 44) and (clauses 41 and 42).

27. If the IFR has determined an owner or officer not suitable for their role at a particular club, it may also make an order disqualifying them from future owner or officer roles at any regulated club (clause 38).
28. This Part also gives the IFR duties related to notifying affected owners, officers and clubs, and publishing its suitability determinations and enforcement directions (clauses 31 and 36). It also gives prospective and incumbent owners and officers and regulated clubs duties to notify the IFR of relevant changes or prospective changes in circumstances (clauses 27 and 33).

Part 5 - Duties on Clubs and Competition Organisers Etc

29. Part 5 places certain requirements on regulated clubs and formerly regulated clubs, including a duty not to operate a team that plays in a competition which has been prohibited by the IFR within its rules (clause 45).
30. This Part includes a power for the IFR to require licensed clubs to pay levies, which must be calculated for each club in accordance with levy rules set by the IFR (clause 52). The IFR's levy rules must make provision as to how the IFR's total costs to be charged over a single chargeable period are to be divided up between licenced clubs, taking into account clubs' financial resources and the league which a club is part of. Before making its levy rules the IFR is under a requirement to consult with HMT, the Secretary of State, all regulated clubs and such other persons the IFR considers appropriate (clause 53).
31. This Part also imposes a duty on licensed clubs to prepare, keep up to date, submit to the IFR for approval, and (once approved) publish a "personnel statement" listing its owners and officers and giving specified additional details. The Bill provides in (clause 24) for specified competition organisers to offer to take action in lieu of a proposed financial discretionary licence condition (or variation). Commitments may be accepted where, by their nature, they mean that the discretionary licence condition that is proposed would be unnecessary. As part of the process that allows specified competition organisers to offer commitments in lieu of the IFR attaching discretionary licence conditions, this part also places some notification and consultation requirements on specified competition organisers (clause 54). These include (amongst others) a requirement to notify the IFR before a sanction, penalty, or other requirement is imposed on a club that breaches or is suspected to have breached any of the specified competition organiser's rules (where relevant to the exercise of any of the IFR's functions) and a requirement to consult with the IFR before making material changes to such rules. The relevant consultation must include reasons why the change to rules is being proposed, and where it is proposed to add or vary a competition rule, a draft of that additional or varied rule.

Part 6 - Distribution of Revenue

32. Part 6 of the Bill creates a back-stop power for the IFR to determine arrangements between two specified competition organisers relating to the distribution of revenue.

Relevant revenue is primarily broadcasting revenue, with provision for the Secretary of State to nominate other types of revenue via statutory instrument (clause 55).

33. A specified competition organiser may make a reference to the IFR to trigger the resolution process if certain conditions are met. The technical conditions, one of which must be met in order to apply to trigger the process, are set out in (clause 56).
34. The IFR then decides whether the resolution process should be triggered, but may only trigger the process if it has reasonable grounds to suspect that if the resolution process is not triggered, its ability to advance at least one of its objectives will be jeopardised (clause 58).
35. The resolution process consists of a mediation stage and a final proposal stage. The mediation provision sets out events that would trigger the end of the mediation stage, and provides that in the case of an IFR appointment, the mediator must have the required skills and experience (clause 59). The final proposal stage is carried out by a committee of the Expert Panel established by the IFR 's CEO (clause 60). The IFR selects one of the parties' proposals, applying the principles set out in (clause 61)(2), and makes a distribution order to implement its decision (clause 61).

Part 7 - Investigatory Powers etc.

36. Part 7 of the Bill sets out the IFR's information gathering and investigatory powers. The IFR has a power to give a person an information notice requiring that person to give specified information to the IFR where the IFR considers that the information is necessary for the exercise of the IFR's functions (clause 64). The IFR may also appoint a person (referred to as an "expert reporter") to prepare and provide a report to the IFR on any matter that is necessary for the exercise of the IFR's functions in relation to a regulated club (clause 65). The IFR also has a power under (clause 67) to conduct an investigation where it has reasonable grounds for suspecting that a person has committed a "relevant infringement" (as defined in clause 66, with reference to Schedule 7). Schedule 8 sets out the powers available to the IFR where it decides to conduct an investigation; these include a power to ask questions and a power to enter business premises under a warrant. Various notices in relation to investigations must be published by the IFR under (clause 73).
37. The IFR has a power to accept a commitment from a person subject to an investigation in lieu of an investigation in certain circumstances (clause 69).

Part 8 - Enforcement

38. Part 8 sets out the IFR's enforcement powers. The sanctions which the IFR may impose are detailed in clause 74 and Schedule 9.
39. The offences relating to the destruction of information or provision of false or misleading information are set out in (clause 77).
40. This Part also sets out the procedural safeguards in relation to the imposition of sanctions. The IFR is required to issue a warning notice and provide a period for making representations before issuing a final decision notice (clauses 75 and 76). The IFR may also give urgent directions in circumstances where a relevant

infringement jeopardises or immediately risks jeopardising the IFR's ability to advance one or more of its objectives (clause 78).

41. As with investigation notices, the IFR must publish certain enforcement notices under (clause 79).

Part 9 - Reviews and Appeals

42. Part 9 sets out the statutory review mechanisms in relation to reviewable decisions made by the IFR. Schedule 10 lists the decisions which are "reviewable decisions".
43. Where the IFR makes a reviewable decision, a concerned person (that is, a person who appears to the IFR to be directly affected by the decision) may request an internal review of the decision. An internal review may conclude that the decision is upheld, varied or cancelled.
44. In addition, a person may appeal to the Tribunal. Where an internal review has been requested, an appeal to the Tribunal may not be made until the internal review has been concluded.
45. The standard of review which must be applied by the Tribunal is set out in (clause 84). The majority of decisions of the IFR are to be reviewed by the Tribunal by applying judicial review principles. A small number of decisions are to be reviewed by the Tribunal on the merits.
46. An appeal lies to the Court of Appeal on any point of law arising from a decision of the Tribunal.

Part 10 - General

47. Part 10 covers general matters including defined terms, provisions for rules made by the IFR, provision in relation to regulations and extent and commencement, and provision for payment of relevant receipts and costs associated with the IFR's establishment into the Consolidated Fund. It also contains provision whereby in certain circumstances officers of a club or body corporate can be proceeded against and punished for offences under the Bill which are committed by a club or a body corporate (clause 93).
48. This Part also makes provision about the disclosure of information by and to the IFR (clauses 85, 86,87 and 88). The IFR has a power to disclose information held in connection with its functions to certain public bodies for the purpose of facilitating the exercise of the functions of those public bodies, as well as to private persons, for a purpose connected with the exercise of the IFR's functions under the Act (for example, the Football Association). The public and private persons to whom the IFR may disclose information are listed in (clause 85). The disclosure of information by the IFR must comply with the requirements in the data protection legislation, as well as being subject to other strict safeguards (for example, the IFR must seek prior consent to the disclosure of information received from the NCA and HMRC from the bodies) - see (clause 85) and (clause 87). In addition, there are restrictions on the onward disclosure of information disclosed by the IFR to persons specified in (clause 85). The onward disclosure of information is an offence, except where the onward

disclosure is required by other legislation or is disclosed under a court order (clause 85).

B. EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Statement under section 19 of the Human Rights Act 1998

49. The Secretary of State for Culture, Media and Sport as lead Minister, proposes to make a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the draft Bill are compatible with the Convention rights.

Article 6 – right to a fair trial

Overview

50. Article 6(1) ECHR provides that: “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

51. The IFR’s officials and even other persons appointed by the IFR (such as ‘expert panel members’) will not constitute an “independent and impartial tribunal” for the purposes of Article 6. However, this can be “cured” on appeal so as to render the overall process compliant with the right to a fair trial. The standards required to achieve “fairness” will depend in particular on whether the circumstances involve the determination of a criminal charge or a civil right.

Civil rights and obligations

52. Broadly, we consider the civil rights at issue to be the right of owners, officers and senior managers to carry on their business in relation to football clubs as they see fit, without undue state interference. The right to carry on a business involves freedom of contract, the free exercise of property rights and the right to protect confidentiality and trade secrets. We consider that provisions aimed at regulating the conduct of these owners and senior managers will constitute interference with these rights and engage Article 6.

53. The provisions in Part 4 – empowering the IFR to determine the suitability of the owners and officers of clubs and to take steps to remove them if unsuitable – can constitute an interference with civil rights. These provisions may result in divestment of owners’ interests or the termination of employment (or contracts) as officers⁴. The redistribution of revenue provisions set out in Part 6 could also constitute an interference with civil rights, as they result in the IFR deciding how private revenues should be allocated.

54. Relevant decisions taken by the IFR or a committee of the Expert Panel exercising its functions will be able to be appealed to the Tribunal, whether this is a full merits review for the more significant and impactful decisions taken or standard judicial

⁴ See *Wilson v UK 26 EHRR CD 195* relating to the director disqualification determined to be a civil right and obligation.

review grounds. (Clause 84) of the Bill sets out which decisions are reviewable on either a full merits basis or on the judicial review standard by the Tribunal.

Criminal charges

55. The ECHR concept of a criminal charge is broader than just those charges which are tried in domestic criminal courts. In considering whether a decision of the IFR about a breach of relevant infringements by a club should be categorised as a “criminal charge” a court should have regard to the following criteria:

- a. the legal classification of the measure in question in national law,
- b. the nature of the measure, and
- c. the severity of the “penalty”.⁵

These criteria are alternative and not cumulative – although it is possible to consider the three criteria cumulatively if separate analysis does not result in a clear conclusion.⁶

56. In practice, a decision is likely to constitute the determination of a criminal charge where the decision-maker imposes a non-trivial penalty, or if the decision may be directly relied upon as justifying the subsequent imposition of a non-trivial penalty in respect of that conduct. As an example, a decision to fine an operating entity or a senior manager a non-trivial amount of money for breaching any of the duties or conditions imposed by the IFR, as a punitive measure in response to conduct, may be likely to be held by the courts to be a criminal charge under Article 6.

57. A decision is unlikely to constitute the determination of a criminal charge where the decision cannot lead *directly* to the imposition of a penalty, but may lead to other obligations being imposed, breach of which may be punished with a penalty. An example is the giving of an urgent direction by the IFR, to take action to bring a relevant infringement to an end.

58. As referred to above, depending on the decision taken standard of review to be applied will vary between a full merits appeal and a review on judicial review principles.

Approach to reviews in the Bill

59. The Bill provides for statutory appeals rights in respect of decisions by the IFR which are “reviewable decisions”. (Schedule 10) lists the decisions which are “reviewable decisions”. Where the IFR makes a reviewable decision, a person who is affected by that decision may require the IFR to conduct an internal review of that decision. Following this, a person may then bring an appeal to the Tribunal.

60. In the majority of cases, it is mandatory for an affected person to first request an internal review by the IFR, before bringing an appeal to the Tribunal. However, a

⁵ *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22.

⁶ *Jussila v. Finland [GC]*, no. 73053/01, §§ 30 and 31, ECHR 2006-XIII, and *Zaicevs v. Latvia*, no. 65022/01, § 31, ECHR 2007

person may proceed directly to the Tribunal, in respect of a small number of the most serious and significant decisions.

61. As noted above, the standard of review by the Tribunal is set out in (clause 84). As can be seen in that clause, those decisions which are considered to be the most serious and significant in nature are subject to review on the merits. The decisions which are reviewable on the merits include decisions to revoke or suspend an operating licence and determinations that an incumbent owner or officer of a club is not suitable to hold that role.

Part 3 Operating Licences

62. Provisional operating licences: Pursuant to (clauses 15, 16, 17, 21, 22, 23, 25 and 20) and Schedule 5 paragraphs 2 - 12, the IFR will have powers on application by a club to impose requirements in order for that club to obtain a provisional licence to operate a football club and participate in relevant league, division or competition. These provisions set out requirements for the application as well as providing an opportunity for representations to be submitted before a decision is taken by the IFR. The relevant reviewable decisions in this context are listed in Schedule 10.
63. Full operating licences: Similarly, pursuant to (clauses 15, 18, 21, 22, 23, 25 and 20) and Schedule 5 paragraphs 2 - 12, the IFR will have powers to grant a full operating licence which authorises a regulated club to operate an association football team following on from the provisional stage. The IFR must grant a full operating licence if it is satisfied that the club concerned meets the threshold requirements, and in relation to compliance with other matters including the mandatory licence conditions. In making its decision, the IFR may take into account any matters it considers appropriate including information gathered previously.
64. It will be possible to seek an internal review of the reviewable decisions, as well as to bring an appeal to the Tribunal in respect of those decisions. A decision by the IFR to revoke a provisional operating licence will be reviewable by the Tribunal on the merits. This is in recognition of the fact that a decision to revoke a provisional operating licence would have particularly serious and significant consequences for a club. The rest of the reviewable decisions will be reviewable by the Tribunal on judicial review principles. As noted in the overview section above, we consider this to be compatible with Article 6, as the Tribunal is able to quash such decisions and remit them back to the IFR for reconsideration.

Part 4 - Owners and Officers of Regulated Clubs: Suitability Etc

65. Club Owners: Under Part 4 of the Bill, the IFR will determine whether prospective owners and, under certain conditions, incumbent owners are suitable to own clubs. For incumbent owners this will constitute a determination of their civil rights to own and dispose of private property as they see fit. The interference with this civil right by the application of these provisions can result in the outcome that an owner who the IFR determines to be not suitable is forcibly divested of their interest in the club.
66. Club Officers: The IFR will determine whether prospective and, under certain circumstances, incumbent individuals are suitable to act as officers of clubs. For an

incumbent officer, this will constitute a determination of their civil rights to engage in employment of their choice. The interference with this civil right by the application of these provisions can result in the outcome that an officer (or the club where the officer holds that role) is required to end their employment or terminate the contract under which they act as an officer.

67. In relation to the disqualification of persons from being owners or officers of any regulated clubs, and in relation to the suitability of incumbent owners or officers to continue at particular regulated clubs, the Tribunal will decide appeals on a full merits basis and as such the Tribunal will be able to substitute its judgement for the one that has been appealed.

Part 6 - Distribution of Revenue

68. In Part 6 of the Bill, the provisions provide for a resolution process in certain circumstances relating to the distribution of relevant revenue received by a specified competition organiser. In relation to this Part, the appeal rights will be substantially the same as in relation to other parts of the Bill. The specified competition organisers will be able to appeal IFR decisions to the Tribunal on judicial review grounds. Relevant appealable decisions will include the decision to trigger the resolution process and the final proposal decision. In our view, these provisions in permitting a right of appeal for key decisions, provide a substantive remedy for the specific context of distributions of revenue in accordance with Article 6.

Part 8 - Enforcement

69. (Clause 74) provides that, where the IFR has determined that a person has, without reasonable excuse, failed to comply with an information requirement, or is satisfied beyond reasonable doubt that a person has committed an offence under (clause 77), the IFR may impose financial penalties under paragraph 3 of Schedule 9 (although we noted that the IFR may not impose a financial penalty (or any other sanction) in relation to an offence under (clause 77) if the person has already been found guilty of that offence). The IFR may also impose financial penalties where it has determined that a person has, without reasonable excuse, committed a relevant infringement under paragraph 6 of Schedule 9.
70. Decisions to impose a financial penalty in the circumstances described above are reviewable decisions under Schedule 10 of the Bill, and therefore a right of appeal to the Tribunal arises where the IFR makes decisions to impose a financial penalty on a person in each of those cases. Appeals against such decisions will be determined by the Tribunal on the basis of judicial review principles.
71. The financial penalties are civil penalties as a matter of domestic law. Notwithstanding this, they may engage Article 6 in its criminal element due to the size of the penalties which may be imposed. We assess that the availability of a review of decisions to impose financial penalties by the Tribunal on judicial review principles is compatible with Article 6. This is because the Tribunal will be able to modulate the intensity of its review and adapt its approach to ensure that the requirements of Article 6 are met. Although the Tribunal will not be able to substitute its own penalty

in place of that imposed by the IFR, the Tribunal will be able to quash the penalty and remit the matter back to the IFR for reconsideration.

Article 7 – No punishment without law

Overview

72. Article 7(1) ECHR provides that: *“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”*

73. Article 7(2) further provides that: *“This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”*

74. The following paragraphs explain where Article 7 is engaged and how it is satisfied in relation to the various Parts of the Bill.

Part 8 – Enforcement

75. The following provisions are considered to engage and/or interfere with Article 7 ECHR:

- a. Civil penalties and sanctions under (clause 74) and Schedule 9; and
- b. Criminal offences under (clause 77),(clause 88) and (clause 93).

76. Civil penalties and sanctions: To the extent that the civil penalties sanctions set out in Schedule 9 are found to be criminal under Article 6, they will need to be considered to be criminal for the purposes of Article 7 as well. The application of these provisions in the Bill is prospective only.

77. Criminal offences: The offences detailed in clause 77, clause 88, and clause 93 in the Bill will all be prospective. The offences and the maximum punishments for each offence are modelled on existing criminal offences (and punishments) as set out in other regulatory regimes.

78. Civil penalties and sanctions: The provisions are considered to be compatible with Article 7 because the possibility of a financial penalty and the penalty amount are foreseeable. As mentioned above, there is no element of retrospectivity in relation to these powers. If a person has not complied with a relevant requirement imposed by the IFR or an information request, without reasonable excuse, that person will have been aware that non-compliance could lead to the imposition of a penalty up to the relevant statutory maximum. The penalties are also subject to the safeguards as described in (clause 75), (clause 76) and Schedule 9, as well as set out in the IFR’s rules and guidance, which will set out various matters including how penalties will be calculated.

79. Criminal offences: The provisions are considered to be compatible with Article 7 because they are prospective only and what constitutes a criminal offence is clearly set out in the legislation along with the maximum penalties.

Article 8 – right to respect for private and family life

Overview

80. Article 8(1) ECHR provides that: *“Everyone has the right to respect for his private and family life, his home and his correspondence.”*
81. Article 8(2) further provides that: *“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*
82. The following paragraphs explain where Article 8 is engaged and how it is satisfied in relation to the various Parts of the Bill. Article 8 is a qualified right and interference with that right may be justified.

Part 7 – Investigatory Powers Etc

83. The following provisions are considered to engage and/or interfere with the right to respect for private and family life under Article 8 ECHR:
- a. IFR’s power to require information (clause 64);
 - b. IFR’s power to appoint an expert reporter (clause 65);
 - c. IFR’s power to ask questions (clause 67) and Schedule 8; and
 - d. IFR’s power to enter business premises under a warrant (clause 67) and Schedule 8.
 - e. IFR’s power to disclose information held in connection with its functions (clause 85)
84. IFR’s power to require information: The IFR may give a person an information notice requiring that person to provide specified information to the IFR where the IFR considers that the information is necessary for the purpose of the exercise of the IFR’s functions under the Act. Such information may include personal information or confidential material.
85. IFR’s power to appoint an expert reporter: The IFR may also appoint an expert reporter to prepare and provide a report to the IFR on matters necessary for the purpose of the exercise of the IFR’s functions in relation to regulated clubs.
86. IFR’s power to ask questions: The IFR has a power to give a person an interview notice requiring the person to answer questions that relate to any matter relevant to an investigation by the IFR under (clause 67) and paragraph 2 of Schedule 8. Such

interviews may require a person to provide personal data and confidential material. Such information in professional or commercial activities of persons, is subject to protection as an element of private life under Article 8.

87. IFR's power to enter business premises under a warrant: The IFR has a power under (clause 67) and paragraph 3 of Schedule 8 to enter business premises pursuant to a warrant issued by the court or the Tribunal. A warrant under this paragraph authorises a named officer of the IFR to, among other things, enter the premises specified in the warrant, search for information, take information appearing to be relevant, take copies of such information and so on.
88. IFR's power to disclose information held in connection with its functions: The IFR has a power to disclose information held in connection with its functions under (clause 85) but only in certain circumstances and to specified bodies (public or private bodies as listed in (clause 85)). However, information can only be provided to public bodies for the purposes of facilitating the exercise of that body's functions and to private bodies for purposes connected with the IFR's functions. There are further restrictions and safeguards around the use of the information and further disclosure (which attaches a criminal offence). In addition, there are further explicit limitations in relation to prejudicing the prevention or detection of crime etc. and data protection (clause 87).
89. In relation to personal data and confidential material being available to the IFR as a result of the exercise of the IFR's power to require information, power to appoint an expert reporter, or power to ask questions, we consider the proposal is in accordance with the law, necessary in pursuit of a legitimate interest and proportionate, and therefore any potential interference with Article 8 will be justified.
90. The requirement for lawfulness is and will continue to be satisfied. (Clause 64) provides that the IFR may only require information where the IFR considers that information is necessary for the purpose of the exercise of the IFR's functions under the Act. As for (clause 65), the IFR may only appoint an expert reporter to report on matters necessary for the exercise of the IFR's functions in relation to a regulated club. The IFR is only able to exercise its power to ask questions in paragraph 2 of Schedule 8 in relation to matters which are relevant to an investigation. As such, circumstances in which questions may be asked and the purposes for which they may be asked are limited and clearly connected to what is relevant for the IFR's investigation, thus ensuring that no arbitrary use of this power can be made by the IFR. Additionally, the IFR must provide a written notice to interviewees beforehand stating the subject matter and purpose of investigation, the place and time at which the person is required to answer the questions, and the implications of not complying. Therefore, the domestic law is clear and foreseeable, and has sufficient safeguards to protect individuals from arbitrary interference.
91. We consider that the proportionality criteria are also satisfied. An interference with the Article 8 right can be said to be sufficiently justified by the objective of enhancing effective investigations of football governance related matters, and the proposed power to ask questions is rationally connected to this objective. Further, as noted

above, there are sufficient safeguards in place which would prevent the disproportionate use of the power, including the requirement to provide written notice.

92. In relation to the IFR's power to disclose information as set out above, these are subject to comprehensive limitations and safeguards which guard against the misuse or inappropriate disclosure of the information. The parties to which disclosure can be made are also limited by statute and there are requirements in relevant areas including information that may relate to criminal conduct and data protection. We think that these limitations and safeguards are appropriate, comprehensive and to some extent standard protections against the infringement of Article 8 rights.
93. In relation to the IFR's power to enter business premises under a warrant, the power can only be available where the IFR can show that it has reasonable grounds for suspecting that there is information that relates to any matter relevant to the IFR's investigation on, or accessible from, the business premises. Additionally, the IFR requires a warrant to enter the business premises; the court or Tribunal may issue a warrant, but has no obligation to do so, and it will be for the relevant authority to determine whether it considers the application is a reasonable and proportionate one before deciding whether to issue the warrant requested. In our view, the Bill provisions provide for sufficient clarity in respect of the circumstances in which the power may be made available to meet the requirement of lawfulness.
94. The regime as a whole will seek to balance the rights of persons to maintain confidentiality against the policy objective of ensuring that the IFR has effective tools to investigate breaches. Each exercise of the powers will need to be capable of justification in its own right, with impacts on privacy rights assessed on a case by case basis, subject to scrutiny by the courts where relevant and consideration by the investigating officers. It is therefore considered that the applicable test for proportionality can be said to be made out and the measure compatible with ECHR obligations.

Article 1 of Protocol 1 - Right to peaceful enjoyment of property

Overview

95. Article 1 of Protocol 1 ("A1P1") provides as follows: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."*
96. It further provides: *"(2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*
97. The concept of "possessions" in A1P1 is autonomous and has been interpreted broadly by the courts. It covers existing possessions and assets, as well as encompassing immoveable and moveable property and other proprietary interests.
98. A1P1 is a qualified right. Interference may be justified where it is:

99. **Provided for by law:** Any interference must be in accordance with the law and also subject to the rule of law, including the principle of foreseeability. The relevant legal provisions must have a sufficient degree of clarity, precision and predictability so that affected parties can inform themselves of risks and consequences.

100. **In the public or general interest:** The text of A1P1 uses “public interest” in relation to deprivation of property, and “general interest” in relation to controls on property. However, there is no discernible difference between the two. The essential question is whether there is a legitimate public aim. The ECtHR generally affords states a wide margin of appreciation when considering this part of the test, especially in relation to economic policies.

101. **Proportionate:** When considering proportionality, it must be demonstrated that:

102. The following paragraphs consider, in relation to each Part of the Bill, the provisions that may engage and/or interfere with A1P1 and the reasons why they are justified.

- a. the public interest is sufficiently important to justify the limitation of a fundamental right;
- b. there is a rational connection between the restriction and the legitimate aim that is being sought to be achieved;
- c. there is not a less intrusive measure that could be used to achieve the policy objective in question;
- d. the measure strikes a fair balance between the rights of the individual (including companies) and those of the wider public interest.

103. The following paragraphs consider, in relation to each Part of the Bill, the provisions that may engage and/or interfere with A1P1 and the reasons why they are justified.

Part 6 - Distribution of Revenue

104. Part 6 of the Bill provides a statutory mechanism for the redistribution of revenue between two specified competition organisers. In practice these are likely to be PL and English Football League (EFL). As provided for in (clause 55) Part 6 enables a dispute between two such parties relating to the distribution of “relevant revenue” to be resolved by a statutory resolution process, if not resolved by agreement. Relevant revenue means primarily broadcasting revenue but could also include other types of revenue specified in regulations made by the Secretary of State. The process is a two-stage process, being mediation and a final proposal stage which is more formal. A relevant condition is required to be met before the dispute resolution process can be triggered (discussed further below), and the IFR must also have reasonable grounds to suspect that, if the resolution process is not triggered, its ability to advance at least one of its operational objectives would be jeopardised.

105. The relevant provisions constitute an interference with A1P1 rights because revenue derived from broadcasting and / or other sources is clearly a property / possessory interest (to the extent that it is in possession of one of the parties) and therefore

covered by this article. However as noted above, this is a qualified right, and the interference here is justified in a number of different ways.

106. Firstly, the interference will always be **provided for by law** and must be carried out in accordance with the relevant statutory provisions. Due to the process set out in (clause 57), the parties will have foreseeability of the process by which the dispute is to be resolved using the statutory mechanism. The statutory provisions are sufficiently clear and precise that the parties will be able to inform themselves of risks and potential consequences. Whilst the outcome of using the resolution process set out in statute is not foreseeable, the process and requirements are set out with sufficient clarity that parties can understand how the process of mediation and the final proposal stage are likely to unfold. There is, importantly, the opportunity for the respondent in the dispute to make representations, as set out in sub-clause (2) of (clause 57). Additionally, and as discussed further below, the process and requirements for the IFR to trigger the resolution process are set out clearly and precisely in (clause 58).
107. There are also provisions which ensure that the power will only be exercised in the **general public interest**. In this regard, there are some requirements that must be met before the resolution process is triggered - (clause 56) provides that at least one of the conditions laid out in sub-clauses (3) - (6) must be met. The conditions set out here relate to (a) a lack of a current agreement for the distribution of relevant revenue (b) material reduction in the amount of revenue being received by one party (c) material change in circumstances (d) expiry of a specified period after which an agreement has been entered into. These tests are overlaid by the requirements in (clause 58) which must be met in order for the IFR to trigger the resolution process. In addition to ensuring that one of the conditions set out in (clause 56) is met by the reference, the IFR must also have reasonable grounds to suspect that, if the resolution process is not triggered, its ability to advance at least one of its operational objectives would be jeopardised. The objectives are set out in (clause 6) and focus on club financial soundness, systemic financial resilience and heritage. These are all objectives which are in the public interest because they are aimed at ensuring that the legislative purpose of protecting and promoting the sustainability of English football (as set out in (clause 1)) is met. The wider policy picture that the legislative purpose and objectives reflect, is that football is one of our national sports and the unique importance of English football clubs to their fans and local communities means that the social costs of clubs failing financially are significant. The objectives are therefore directed towards a legitimate public interest aim and the drafting ensures that the dispute resolution power will only be able to be exercised by the IFR if strict conditions are met including around the potential for current arrangements to jeopardise the objectives as applied by the IFR.
108. Finally, the **proportionality** requirement is met in all respects. The public interest is sufficiently important to justify the limitation of the fundamental right here because without a statutory mechanism for redistribution of relevant revenue, systemic sustainability is likely to be compromised. As there is a high bar for triggering the statutory resolution process, the provisions are drafted with the idea in mind that a football-led solution is a first preference, and it is a power of last resort. The high bar set by the tests in (clause 56) and requirements that the IFR needs to apply in

(clause 58) ensure that this will be the case. There is a rational connection between the restriction and the legitimate aim because applying the resolution process will result in a settlement between the parties that ensures the objectives are not compromised. In terms of less intrusive measures, this has been accounted for by the fact that the bar for triggering the process is so high that it is effectively characterised as a power of last resort, with a football led solution by agreement being the government's clear preference. The measure strikes a fair balance between private and public interests. The requirements in relation to the objectives as considered by the IFR also ensure that the power will not be exercised where there would be no public interest or utility in doing so. Taken together, we believe that these factors ensure that the proportionality requirement is met to the fullest extent possible.

Part 3 - Operating Licences

109.(Clause 21) allows the IFR to attach discretionary licence conditions to the operating licences held by clubs. Discretionary licence conditions are binding on the clubs on whose licence they are attached and are enforceable. In particular, conditions may impose some financial regulation on clubs in a way that may interfere with the club's ability to manage the financial side of the business as it wishes. For this reason, the clause engages Article 1, Protocol 1.

110. The interference is in the **public interest**. Football is one of our national sports and the unique importance of English football clubs to their fans and local communities means that the social costs of clubs failing financially are significant. These interferences are solely for the purpose of improving the financial sustainability of clubs and the stability of English football.

111. The interference is **set out in the Bill** and subject to **statutory safeguards**. These safeguards prescribe how and for what purpose the IFR may exercise the power and they confer protections on the clubs. These safeguards are:

(a) There are strict parameters within which the IFR may attach discretionary licence conditions that place financial controls on a club. These are set out at (clause 22(2) and (6)), conditions must relate to:

- (i) debt management;
- (ii) liquidity requirements; or
- (iii) overall cost reduction,
- (iv) or restrict the club accepting funding that the IFR considers is connected to serious criminal conduct.

(b) There are only two purposes for which the discretionary licence conditions may be attached. Broadly speaking, they may only be attached to a club's licence for the purpose of:

- (i) ensuring the club achieves or maintains the "threshold requirements" required for a full operating licence (including a financial resources threshold requirement intended to bring financial stability to clubs); or

- (ii) to promote the financial resilience of English football (clause 21(1)).
- (c) The IFR must have regard to its IFR principles when exercising its functions, including acting proportionately (clause 8).
- (d) The IFR is required to notify the club prior to attaching a discretionary licence conditions and have regard to any representations it makes (clause 21).
- (e) The club has the right to an internal review of a decision by the IFR to attach a discretionary licence condition. If the club is unhappy with the outcome of the internal review it may appeal to the Tribunal which will carry out a review of the decision to a judicial review standard. A further right of appeal on a point of law lies to the Court of Appeal.
- (f) The IFR must remove any unnecessary discretionary licence conditions (clause 21).

112. On this basis we consider that (clause 21) is compatible with the A1P1 of the ECHR.

Part 4 - Owners and Officers of Regulated Clubs: Suitability Etc

113. Where the IFR has determined that an owner or officer of a regulated club is not suitable to be an owner or officer of that particular club, the IFR is generally required to give them a removal direction requiring them to take all reasonable steps to cease to be an owner or officer by a specified date (clauses 40 and 39). As an interim measure, before a person ceases to be an owner or officer, the IFR is also empowered to make a direction prohibiting the carrying out and exercise of, specified activities and rights that the owner or officer in question would otherwise be able to carry out or exercise, for example prohibiting the exercise of voting rights (clause 41). Where an owner fails without reasonable excuse to comply with a removal direction or interim measures, or where a new incoming owner becomes an owner without having first been determined to be suitable by the IFR and the IFR then subsequently determines or is to be treated as having determined that such an owner is not suitable, the IFR is able to make an ownership removal order containing such provision as the IFR considers appropriate to secure that the owner ceases to be an owner of the club within a specified period (clause 43). A removal order may, among other things, appoint trustees, who are able to carry out functions on behalf of the unsuitable owner, for example selling the owner's shareholding so that they no longer meet the definition of owner within the Bill. Given that in the majority of cases in order for a person to meet the definition of owner within the Bill under Schedule 1 that person will hold property rights, (clauses 39 and 43) will both allow for the deprivation of property. Interim measures under (clause 41) may also involve interference with the enjoyment of property rights, for example where voting rights attached to shareholdings are prohibited from being exercised. For this reason, (clauses 39, 41 and 43) all engage Article 1, Protocol 1.

114. The provisions are considered compatible with Article 1, Protocol 1 for the following reasons:

115. The deprivation and interference of property rights under (clauses 39, 41 and 43) will always be provided for by law and must be carried out in accordance with the relevant statutory provisions. In order for any of these enforcement powers to be available, a person must first be determined to be unsuitable by the IFR, or treated as being determined to be unsuitable by operation of statutory provision. The matters which are relevant to the IFR's suitability determinations are clearly outlined in the Bill, and the IFR cannot determine that an owner or officer is unsuitable on any other basis. The bases upon which the IFR may make an ownership removal order are then prescribed within (clause 43). These include where an owner without reasonable excuse, fails to comply with a removal direction under clause (clause 39) or an interim direction under (clause 41), or fails to co-operate with or assist or otherwise obstructs an interim officer who has been appointed under (clause 42) for the purposes of allowing a club to continue to operate effectively whilst interim measures are in place. In order to enable the IFR to take swift action to protect a club from a new incoming owner seeking to flout regulatory requirements, the IFR may also make an ownership removal order where a person becomes an owner without having first been determined to be suitable by the IFR (clause 30) (contrary to the requirements in (clause 28) to first apply for and obtain an affirmative suitability determination from the IFR) and the IFR then subsequently determines or is to be treated as having determined that such an owner is not suitable.
116. The deprivation and interference with property rights is in the public interest. As noted elsewhere, football is a sport of national importance, and the unique importance of English football clubs to their fans and local communities means that the social costs of clubs failing financially are significant. Whilst an owner or officer who has been determined by the IFR to be unsuitable to hold their position remains in place at a club, they will continue to pose a risk to their club's financial soundness, stability and resilience. Enabling the IFR to take action to remove unsuitable owners and officers, and to reduce the risk of harm posed by an unsuitable owner or officer prior to their removal, is therefore in the public interest in protecting the financial soundness, stability, and resilience of English football clubs, for the benefit of fans and local communities.
117. Finally, the proportionality requirement is met in all respects. The public interest behind these enforcement measures is sufficiently important to justify the deprivation and interference with property rights, and there is a rational connection between the public interest behind these measures and the effect to be achieved by the measures. Without enforcement mechanisms to remove unsuitable officers and owners, and to prevent unsuitable owners or officers from causing harm to a club before their exit, unsuitable owners and officers would be able to remain in place at clubs with impunity, and continue to pose a risk to a club's financial soundness, stability and resilience. Less intrusive measures would not guarantee that unsuitable owners and officers ceased to be an owner or officers. The measures also strike a fair balance between private and public interests. The following statutory safeguards have been designed in order to allow for the deprivation of property only where necessary, and with a view to ensuring that an owner is fairly compensated for their loss of property rights to the greatest extent possible:

- a. Before the IFR is able to take enforcement action, an owner who has been determined to be unsuitable will have the opportunity to bring an internal review and statutory appeal to the Tribunal in relation to the IFR's decision that they are unsuitable.
- b. Before being able to make a removal order, the IFR will be required to first make a removal direction, allowing an owner to have the opportunity to take action on their own terms, in order to cease being an owner of a club by a specified date. The only exception to this (for the purposes of deterring persons from circumventing the statutory requirement to apply and be assessed as suitable before becoming an owner of a club) is where a person becomes an owner without having first been determined to be suitable by the IFR. Where the IFR then subsequently determines, or is to be treated as having determined that such an owner is not suitable it then has the option (although is not required) to move straight to making a removal order.
- c. Before giving a removal direction the IFR is required to consult with the person to whom the direction relates and the relevant club and league body. This is with a view to ensuring that the time period in which a person is required to take all reasonable steps in which to cease being an owner (or officer) is appropriate and, crucially, long enough to avoid a fire sale scenario that results in a greater loss of value to property rights than necessary. As an additional safeguard, the IFR will be able to extend (and further extend) the initial time period if required, where the subject of a removal direction has a reasonable excuse for failing to comply with a direction within the original date specified (or extended date) and the IFR considers that they would be able to comply by the extended date.
- d. Before making an ownership removal order, clause 44 requires the IFR to publish an advance notice and invite representations. It must have regard to any representations duly made.
- e. Where an ownership removal order is made, appointed trustees must obtain the IFR's approval before making any contractual or other arrangements that would result in an unsuitable owner ceasing to be an owner of the club. The IFR may withhold its approval where it considers that any party to the proposed disposal is acting in bad faith.

118. In light of the above factors, we consider that (clauses 39, 41 and 43) are compatible with A1P1 of the ECHR.

119. Assessed to be compatible with ECHR: yes

Part 5 - Duties on Clubs and Competition Organisers

120. (Clause 46) interferes with the ability of a regulated club, or a club regulated in the last 5 years, to dispose of any legal interest it has in the club's home ground. It also interferes with the club's ability to use the ground as security for debt. It does so by requiring the club to obtain the approval of the IFR before proceeding with such a transaction. This means that the IFR may effectively prevent a transaction taking

place by withholding its approval. For this reason, the clause engages Article 1, Protocol 1.

121. The provisions are considered compatible with Article 1, Protocol 1 for the following reasons:

122. The interference as it relates to home grounds of regulated clubs is in the **public interest**. As noted elsewhere, football is one of our national sports and the unique importance of English football clubs to their fans and local communities means that the social costs of clubs failing financially or otherwise undermining their heritage are significant. A club's home ground is typically its most valuable asset and often a fundamental part of the club's heritage. Giving the IFR the role of approving club proposals to dispose of, or mortgage, an interest in the home ground ensures that the impact of a proposal on the club's financial stability is objectively considered and that proposals are not pursued where the club's financial stability would be undermined. The home ground is not only a key asset - it is a fundamental part of the club's heritage and also a key community asset. There is a public interest in safeguarding the ground and preserving it for the benefit of local communities..

123. The interference as it relates to home grounds of formerly regulated clubs is in the **public interest**. Even in the event that a club is no longer regulated, the home ground remains a key community asset, and has the potential to be used for by a 'phoenix club' in the future, allowing football to continue to be customarily played there. The IFR's role in approving proposals for disposal of the home ground ensures that all reasonable steps have been taken to allow the stadium to continue to be used for football, before disposal can be approved. This also provides a safeguard against malicious actors who may see operating a club in a competition which is not a specified competition (or a body which used to be a club) as an opportunity to dispose of the home ground outside of the regulatory framework.

124. The interference is subject to **statutory safeguards** as follows:

(a) The IFR must exercise its functions, in so far as reasonably practicable, in a way that:

- (i) protects and promotes the financial soundness of regulated clubs,
- (ii) protects and promotes the financial resilience of English football, and/or
- (iii) safeguards the heritage of English football (see clause 7(1) and clause 6).

Moreover the IFR must have regard to its regulatory principles when exercising its functions, including acting proportionately and transparently (see clause 7(3) and clause 8).

(b) The IFR may only withhold approval in very limited circumstances set out on the face of the Bill. The IFR may withhold approval only if the IFR cannot be satisfied that :

- (i) where the body is a regulated club, that the proposed activity if approved, would not undermine the financial stability of the club; or
- (ii) where the body is a formerly regulated club, that the formerly regulated club has taken all reasonable steps to ensure that a team (but not necessarily a team belonging to the club) continues to customarily play home matches at the ground. It is expected that reasonable steps would include allowing other teams within the club to continue to play there, and considering reasonable lease options to other clubs.

The IFR must take the decision whether to grant an approval as soon as reasonably practicable after approval is sought (clause 46(8)). The IFR is required to include reasons for the decision (clause 46(9)).

- (c) If the IRF decides not to approve the proposed disposal of the home ground or its use as security (as the case may be), the club has the right to an internal review of that decision. If the club is unhappy with the outcome of the internal review it may appeal to the Tribunal which will carry out a review of the decision by applying judicial review principles. A further right of appeal on a point of law lies to the Court of Appeal.

125. On this basis we consider that clause (clause 46) is compatible with the ECHR.

IFR approval of club's appointment of an administrator:

126. (Clause 47(2)) precludes a club that is a company or a partnership from appointing an administrator under paragraph 22 of Schedule B1 to the Insolvency Act 1986. This provision in effect stops the directors or shareholders of a company that is a club (or the partners in the case of a club that is a partnership) from being able to deal with their company (or partnership) in a way that would otherwise be available to them. For this reason, the clause engages Article 1, Protocol 1.

127. The provisions are considered compatible with Article 1, Protocol 1 for the following reasons:

128. The interference is in the **public interest**. Football is our national sport and the unique importance of English football clubs to their fans and local communities means that the social costs of clubs failing financially are significant. There is a genuine concern that some club owners who are minded to put their club in administration may award the appointment to an insolvency practitioner over whom they feel they have influence in order to secure a particular outcome which is the most beneficial to the owner but does not maximise the club's prospect of surviving.

129. The interference is **set out in the Bill** and subject to **statutory safeguards**. These safeguards set the purposes for which, and the manner in which, the IFR may exercise its approval function and the rights conferred on clubs in relation to that approval. The safeguards are:

(a) The IFR may only exercise its functions in a way that is compatible with the purpose of the Bill. This purpose is to protect and promote the sustainability of English football (clause 1).

(b) The IFR may only exercise its functions in a way that advances one or more of its objectives. These objectives are:-

- (i) the club financial soundness objective,
- (ii) the systemic financial resilience objective, and
- (iii) the heritage objective (clause 6) and (clause 7(1)(b)).

(c) The IFR must have regard to its principles when exercising its functions, including the principle of proportionality (clause (7(3)(a)) and (clause 8).

(d) The club has the right to an internal review of a decision by the IFR to not approve the appointment of an administrator. If the club is unhappy with the outcome of the internal review it may appeal to the Tribunal which will carry out a review of the decision to a judicial review standard. A further right of appeal on a point of law lies to the Court of Appeal.

130. On this basis we consider that (clause 47(2)) is compatible with the A1P1 of the ECHR.

A handwritten signature in black ink that reads "Lucy Frazer". The signature is written in a cursive, flowing style.

Department for Culture, Media and Sport
19th March 2024