



Department  
for Culture,  
Media & Sport

Baroness Twycross  
Minister for Gambling  
1st Floor  
100 Parliament Street  
London SW1A 2BQ

E: [enquiries@dcms.gov.uk](mailto:enquiries@dcms.gov.uk)

[www.gov.uk/dcms](http://www.gov.uk/dcms)

27 November 2024

To: All Peers

INT2024/09352/DC

My Lords,

During the Second Reading of the Football Governance Bill in the House of Lords on 13 November I committed to write to noble Lords to respond to the points raised in the debate.

**Case for intervention**

Throughout the debate, several Noble Lords questioned the need for statutory regulation in English football at all, citing the commercial success of the Premier League as evidence that the free market has been functioning well enough.

I agree that the growth in the popularity, viewership, and revenue of English football is an achievement to be celebrated, and is in part thanks to the commercial prowess of the Premier League. However, commercial growth is not the only measure of how well a market is functioning, and English football consists of far more than just the Premier League. While revenues have soared, there are fundamental weaknesses across the pyramid which have been exposed. Premier League clubs have lost over £4 billion since the Premier League was launched in 1992. This figure grows considerably if English Football League and National League clubs are included. Indeed, Championship clubs alone lost over £3 billion between 2013 and 2023.

The Noble Lord, Lord Moynihan, referenced there having been “only seven liquidations since 1945”. For the fans and communities who bore the brunt of those failures, that is seven too many. There have also been over 60 instances of professional clubs entering administration since 1992 - these near misses carry their own uncertainty and pain, not to mention significant financial costs to the tax payer.

There are clear financial problems across all levels of the professional game. The two independent expert reports I have enclosed, which I referenced during my opening speech and have placed copies of in the House of Lords Library, highlight that this picture is worsening not improving. This trend is inherently unsustainable and cannot continue.



So, while the market has seen growth, there are also clear market failures which need to be addressed. These two things are not mutually exclusive. The market failures are those of externalities and market power. Rogue owners of football clubs undermine and undervalue the social value of those clubs to their fans and communities. Unlike Woolworths, as the Noble Lord, Lord Jackson of Peterborough likened football clubs to, there is no substitute for those fans and communities if their club were to collapse. This means clubs frequently take excessive risks, gambling the long-term future of the club in pursuit of short-term sporting success. It is also why some owners have been guilty of abusing that loyalty, by not respecting the interests of fans or the heritage of the club, in the knowledge that fans will continue to support the club all the same. For example, attempts to change club badges and shirt colours, to join closed-shop breakaway competitions, taking personal loans out against club assets and even to strip clubs of their fixed assets.

It is not only the Government that recognises these failures. Indeed, the industry has itself attempted to address them through self-regulation. Unfortunately, history has repeatedly shown that the football authorities do not have the appropriate incentives or governance structures to effectively remedy these issues.

Ultimately, the commercial success of football does not disguise these market failures, nor does it excuse harm befalling the citizens and communities of this country. Just as regulators such as the Financial Conduct Authority and Competition and Markets Authority protect consumers from harm irrespective of the profitability of the industries they regulate, the Independent Football Regulator will protect football fans and the local communities football clubs serve from harm.

### **Proportionality and promoting success**

Several Noble Lords raised the importance of protecting the success of English football, while striving to improve sustainability. This government is pro-business and pro-football, and wants to see football continue to thrive. That is why we have designed a proportionate regulatory system, with intervention targeted only where necessary.

Requirements on clubs will not be 'one size fits all'. Rather, they will reflect a club's unique circumstances, meaning they might vary based on factors like league, club size, and a club's financial health or riskiness. This will allow regulation to be proportionate and targeted. This means, where clubs are already well run, the Regulator will not need to layer on additional requirements and burden. This is also why 'sunsetting' the Regulator is not necessary. If standards in the industry improve, as a result of reformed competition organisers' rules or otherwise, the Regulator will naturally need to intervene less.

Ultimately, the Regulator will encourage clubs and owners to take a longer-term perspective and listen to their fans' voices. Providing they do so prudently, it will not prevent them from investing to chase their aspirations.

The Regulator will also have a statutory duty, when exercising its functions, to have regard to the desirability of avoiding effects on sporting competitiveness, and adverse effects on investment and the competitiveness of regulated clubs. This is a novel duty for a regulator, but one that reflects our commitment to protecting the features of English football that have made it a success. Rather than deter investment, I believe a stable regulatory environment that reduces the risk of clubs failing and guarantees the solidarity of finances throughout the pyramid will ensure English football continues to attract prudent investors with a long-term outlook.

## **Competitions in scope of regulation**

Several Noble Lords discussed the scope of the Regulator and whether the women's game should be regulated, as well as lower leagues within the men's football pyramid.

The independent review of women's football, 'Raising the bar - reframing the opportunity in women's football', led by Karen Carney and published in July 2023 recommended that the women's game should be given the opportunity to self-regulate. The Government agrees with this. The women's game is at its own exciting stage, and faces its own unique opportunities and challenges. There is far less evidence of the aforementioned market failures that exist within the men's game, which justify government intervention. However, while we are not proposing statutory regulation at this stage, the women's game has a unique opportunity to take learnings from the successes and mistakes of the men's game.

Similarly, we do not believe extending the scope beyond the top five tiers of the men's pyramid would be appropriate at this stage, as the burdens on smaller clubs would be disproportionate to the expected benefits of regulation.

Of course, if this picture changes in the future for any reason, the competitions in scope of regulation can be amended through secondary legislation. This could only be done after a formal review by the Secretary of State, with the appropriate consultation, and under the affirmative parliamentary procedure.

## **Issues in scope of regulation**

Similarly on scope, several Noble Lords suggested that the Regulator should also consider issues of environmental sustainability and the welfare of players exiting the game.

The Regulator will have a tightly defined scope focusing on the financial sustainability of clubs, the systemic resilience of the football pyramid, and club heritage. While they are clearly important, issues such as environmental sustainability or player welfare do not directly impact this narrow remit, and so are not provided for in the Bill. Football has the will and the capacity to address these areas, without government intervention.

On environmental sustainability, progress is starting to be made. Premier League clubs recently agreed a new minimum standard of action on environmental issues across the clubs and the league. This further demonstrates that football has the capacity to take action on environmental sustainability, without government intervention. Let me be clear - football should be doing more to drive collective action and can set the tone as our national sport by reducing its carbon footprint and supporting the grassroots game to adapt to the impacts of climate change, such as increased flooding. The government is committed to working with the football authorities on this, outside of the Regulator.

Regarding player welfare, support mechanisms for players, particularly in academies, have significantly improved since the introduction of the Elite Player Performance Plan, and this should be commended. However, gaps in independent youth support provisions remain. We recognise that the welfare of players exiting the game needs to be better protected - particularly at a young age - as a matter of urgency. We urge the football leagues and the FA to work together to develop a consistent programme of support which allows all academy players to access an offering of independent support and advice as and when required. The government will continue to discuss this with leagues, FA and PFA to drive action.

## **Financial distributions ‘backstop’ mechanism and parachute payments**

Several Noble Lords raised concerns regarding the backstop process, and the removal of the exemption for parachute payments. I understand the hesitancy regarding intervention in the redistribution of broadcast revenue, and believe the government should only intervene in areas where there has been a clear market failure with significant potential impact, which the market cannot resolve itself.

In the case of football, distribution agreements are vital for the sustainability of the pyramid, and a new distribution deal has not been agreed since 2019. Whilst the government still encourages the leagues to reach an independent solution, it is imperative for the health of the industry that an agreement is reached as soon as possible. This Bill allows the Regulator to ensure an agreement is reached where the industry cannot.

To help address concerns, I would like to take this opportunity to clarify the backstop process. The backstop mechanism is designed to facilitate an effective financial distribution agreement and is best understood as a three step process consisting of application, mediation and final proposal stages.

**Application:** The backstop process can only be triggered following an application to the Regulator by one of the relevant leagues. The Regulator can then only trigger the process if certain clear thresholds, outlined on the face of the Bill, are met and the Regulator is concerned that its ability to advance at least one of its objectives would be jeopardised if the process were not triggered. This is to prevent unnecessary or vexatious use of the process by leagues and to ensure it remains a last resort option. Therefore the relevant leagues do not have the power to unilaterally trigger the process.

**Mediation:** The relevant leagues must then enter into a period of mediation supported by an independent mediator. At any point during the mediation, or the backstop process more widely, the leagues remain free to come to an alternative agreement themselves. The ability for leagues to come to an agreement independently is protected in the legislation itself, highlighting that an industry led solution is both preferred and encouraged.

**Final Proposal:** If mediation does not result in an agreement, the final proposal stage is triggered. At this point, the Regulator would convene an expert panel, and invite final proposals from both relevant leagues with accompanying analysis. It is then up to the expert panel to choose the proposal most consistent with the Regulator’s principles, and the Regulator will then enforce an order in keeping with this decision. If neither proposal is consistent, the process ends without a distribution order being issued. This model of arbitration inherently incentivises the leagues to compromise as unreasonable, inconsistent or incomplete proposals will not be chosen.

It would not be appropriate for the Regulator to put forward its own proposal. It is important to ensure that, even when the backstop has been triggered, the Regulator only has a role in facilitating the final proposal process, and that the process is the least interventionist it can be whilst remaining effective. This approach encourages future collaboration, and prevents the leagues from relying too heavily on the Regulator into the future.

With regard to the inclusion of parachute payments, it is only right that if the Regulator identifies a problem with sustainability, it needs all the necessary powers at its disposal to address those problems. The Regulator will only include parachute payments in the backstop process if it considers them to be of systemic risk to the game’s financial sustainability. We have ensured the Bill has safeguards in place to minimise unintended consequences for relegated clubs and they have a smooth financial transition following relegation. Most notably,

if the Regulator does identify parachute payments as a systemic risk, it can require the distributions proposals to set out how the future finances of relegated clubs will be appropriately protected. The measures also specify that parachute payments cannot be reduced within a year of the distribution order coming into effect, to allow impacted clubs to plan accordingly.

I am confident that the backstop process is as robust as possible and that, as designed, it is the most proportionate and appropriate response to football's ongoing financial distributions issue.

### **Leveraged Buyouts**

The Noble Lords Lord Shamash and Lord Harlech queried whether the Regulator would have the ability to stop a leveraged buyout. In addition to providing evidence of sufficient financial resources, prospective owners will have to provide the Regulator with their proposed plan to operate the club, an estimate for the costs of operating the club, how those costs will be funded, and the source of such funding. The Regulator will only approve a takeover if the prospective owner has sufficient financial resources for the particular club, in line with their plans and estimates.

### **Cost of the Regulator**

The Noble Lord, Lord Moynihan of Chelsea, queried whether a formal evaluation of the Regulator's impact has been carried out. An impact assessment has already been conducted and published alongside the Bill, which provides a range of indicative estimated operational costs for the Regulator. It is true that by combining the upper limits of the estimated compliance costs to business (£17.9m-£35.8m) and operational costs of the Regulator (£77.4m-£106.8m) in the impact assessment, you can arrive at the figure of £140 million pounds, which was referenced by the Noble Lords, Lord Jackson of Peterborough and Lord Moynihan. However, to be clear, this is over a 10-year period and is an estimate only. The exact operational costs cannot be known at this stage.

The impact assessment also outlined estimated economic and social benefits of between £612.5 million to £700 million over the same period. The impact assessment goes on to say that this estimate is likely to be conservative with several social benefits being unquantifiable. The Regulator will be a force for economic good, with even the lowest estimates of benefits far outweighing even the highest estimates of costs.

The Regulator's operational costs will eventually be funded through a levy on licensed clubs, once the licensing system is in action. Until this point, it will be funded by the government, with this initial funding eventually recouped through the levy so there will ultimately be minimal net cost to the taxpayer. There are comprehensive safeguards in the Bill that ensure a proportionate approach to the levy, including extensive consultation, reporting, and audit requirements. When determining how the levy is to be divided amongst clubs, there is also a statutory requirement for the Regulator to take into account a club's financial resources, and the league it plays in. No club, big or small, should be asked to pay more than what is fair and affordable. The Regulator will carefully consider the impact costs would have on clubs and will likely distribute the levy in the way that Premier League clubs shoulder the majority of the cost, reducing the financial burden on smaller clubs.

## **Accountability to Parliament**

The Noble Lords, Lord Harlech and Baroness Taylor of Bolton, rightly raised the importance of holding the Regulator to account; a sentiment echoed by the Noble Lord, Lord Hampton, who queried whether the Government will be able to inspect the Regulator.

As the sponsor of the Regulator, the Department for Culture, Media and Sport (DCMS) will hold the Regulator to account through a “framework document” that outlines expectations of governance, responsibilities and accountability. This is in addition to specific accountability measures for the levy, such as the approval of the Regulator’s annual funding requirement by DCMS and HM Treasury. The Government believes these and other provisions across the Bill, such as the requirement for the Regulator to publish an annual report which is laid before Parliament, strike a fine balance between accountability and independence. It is of course also the case that Parliament’s select committees can conduct inquiries into any aspect of the work of the Regulator once it is established and take evidence on such matters.

The Noble Lords, Lord Taylor of Warwick, Lord Goodman, and Lord Hayward raised the possibility of including a ‘sunset clause’, whereby the Regulator would cease operation if, following a statutory review by Parliament, it believed it was not achieving its objectives, or was having a detrimental impact on English football. This would create a perverse incentive for regulated clubs and competition organisers, to deliberately act in bad faith from the outset, therefore causing the Regulator to potentially fail in its objectives and be scrapped when the sunset clause is triggered. It would also create an incentive for the Regulator to be interventionist, reducing its light touch approach. Knowing it would be judged on whether it was meeting its objectives within a fixed period the Regulator could feel compelled to pursue more severe short-term solutions to achieve results when less interventionist long-term alternatives are available.

The Government believes that the current measures of accountability highlighted above such as the DCMS role as sponsor and the requirement for annual accounts to be laid before Parliament already ensure sufficient scrutiny. The Government believes that given the risks associated with a “sunset clause” it would not be an effective way to ensure accountability.

## **Delegated Powers**

I understand the concerns raised around the delegated powers in the Bill by several Noble Lords. However, I believe the delegated powers in this Bill are necessary, proportionate and justified and I welcome the scrutiny of each over the coming weeks. In particular, I welcome the engagement of the Delegated Powers and Regulatory Reform Committee who have already alerted us to the misidentification of the delegated power in clause 56 as a Henry VIII power.

The Bill therefore contains 42 delegated powers and nine, not ten, Henry VIII powers. It confers delegated powers on both Ministers [19] and the new regulator [23].

Throughout the development of the Bill, including under the previous Government, there has been a deliberate approach to ensure as limited interference as possible from Ministers once the Regulator is established to avoid any possibility for political interference in football. The Government has carefully considered the powers in the Bill and believe the right balance has been struck between the need for parliamentary scrutiny and the need to be able to react quickly to make what are often technical amendments by secondary legislation.

The majority of the Henry VIII powers are based on existing precedent and all have been tightly constrained where possible using procedural and legislative safeguards. We deem them necessary to ensure that, where the context changes, amendments to the legislation can be swift. We have provided as much detail as possible in the Bill, to give greater clarity to industry and ensure Parliament can scrutinise the detail of the regime. However, it is important the Regulator has the discretion and independence to determine its own processes and consult industry as part of this.


### **Next Steps**

I would welcome your support as we take this important legislation forward and will be working across the House to ensure we deliver on much needed regulation for the game.

If you have any questions you would like to discuss, then I or my officials would be very happy to meet you.

I am copying this letter to all of those who spoke at Second Reading and will place a copy in the library of both Houses. I have also placed a summary of the regulatory regime in the library of both Houses.

With best wishes,



Baroness Twycross  
**Minister for Gambling**