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To: All Peers

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My Lords,

During Monday's debate on amendments 19 and 21 to the Football Governance Bill, I committed to write to Noble Lords on the points raised regarding the competitions in scope of the Bill and related concerns around hybridity.

Rationale for the approach taken in the Bill

The football industry is unique in that the definition of the market in scope of regulation is not straightforward. Unlike other industries where firms of a particular class can be easily distinguished, the class of clubs we are seeking to regulate can only be defined by reference to the competitions they compete in. This presents challenges as the football pyramid is dynamic, with the membership of competitions changing on an annual basis.

As Noble Lords noted, the Bill gives the Secretary of State the power to specify competitions through a Statutory Instrument. These specified competitions will then define "English Football" for the purposes of the Bill. In turn, English Football will comprise the clubs and competition organisers that are in scope of regulation.

There is sound policy rationale for the approach taken in clause 2. As I outlined in the debate, the rationale was to ensure that these competitions could be amended in a timely manner in the future to ensure the scope of the regime remains relevant.

Critically, this approach to drafting the legislation is an anti-avoidance provision. If parties were simply able to reconstitute, rename or establish new domestic competitions to avoid the Independent Football Regulator's ("the Regulator") regime, this would be defective legislation. This has been a key consideration throughout the development of this Bill and there are other anti-avoidance provisions, such as the duty not to compete in prohibited competitions applying to formerly regulated clubs, as well as currently regulated clubs.

As Noble Lords will know, and the Delegated Powers and Regulatory Reform Committee noted in paragraph 14 of their report, the Government has been clear that it is quicker and easier to amend secondary legislation than to amend primary legislation, in response to the potential risk of avoidance outlined above. This was the very rationale behind the approach taken, to ensure the necessary agility to both futureproof the regime for future innovations in the market, and to protect it against circumvention.



The Noble Lord, Lord Moynihan, referred to the DPRRC's comment that: "The argument that something should not be fixed in primary legislation because it might need changing in future would be an argument against having any primary legislation". The Government absolutely agrees with this view. That is why we have set out most of the key aspects of the Bill, including the definitions, objectives and purpose in primary legislation. However we do feel that there is a particularly strong need for the competitions in scope of regulation to be set out in secondary legislation to ensure we retain the flexibility to respond quickly to changes in domestic competitions for the reasons set out above.

As the Bill sets out, this agility would not be at the expense of the proper procedure and scrutiny. Any changes to the scope in the future would still be based on clear evidence and proper consultation as part of a published Secretary of State assessment, and would be subject to the appropriate parliamentary scrutiny under the affirmative procedure.

Rationale for the intended scope

The initial intended scope of the top five tiers of Men's English football is built on a strong evidence base and extensive consultation with all key stakeholders. Throughout the development of the policy over the past three years, there have been countless opportunities for all affected and interested parties to make representations on this scope. This includes: Dame Tracey Crouch's Fan Led Review; the previous government's response to that Review; the Football Governance White Paper; and the response to the consultation on that White Paper.

Both former and current Ministers, and departmental officials, have regularly engaged, and continue to regularly engage, with affected and interested parties. This will continue to be the case.

The rationale for the intended scope is that the market failures identified typically arise most markedly in, and mostly impact, clubs of a certain size and type. These are typically professional men's clubs, where the financialisation of the game is greater. Smaller and non-professional men's clubs do face some similar issues, but at this time the Government believes that regulating them would be disproportionately burdensome on both them, and on the Regulator, relative to the potential benefits.

We recognise that a boundary of the top five tiers only does not perfectly capture the professional game, since some professional clubs may be relegated into the sixth tier and some semi-professional clubs may be promoted into the fifth tier. However, drawing the line at the top five tiers is considered the most sensible option that does not leave some clubs in the same league subject to regulation and others not.

Hybridity

Noble Lords understandably raised the issue of hybridity on Monday. As I have outlined above, the Government's rationale for the approach to defining the competitions in scope was not to avoid a hybrid bill and circumvent parliamentary scrutiny.

The Noble Lord, Lord Parkinson, made reference to clause 91, subsection (5), suggesting it implied a deliberate attempt by the Government to avoid a hybrid Bill. I would like to reassure Noble Lords that this is a well-precedented provision which has equivalents in numerous other Acts of Parliament. Again, it is crucial to be able to respond quickly to industry changes or attempts to circumvent. Indeed Erskine May states, "It is not uncommon for a statute to contain a provision requiring an instrument to be treated for the purposes of the standing orders as if it

were not a hybrid instrument,” and cites several examples. For a very recent example, see section 8 of Media Act 2024 passed by the previous Government, which amended Section 277 of the Communications Act to include an equivalent provision.

On the issue of hybridity, this would be a matter for the Examiners to decide, not the government. If the House were to vote to accept the Noble Lord, Lord Parkinson’s, or the Noble Lady, Baroness Taylor’s, amendments, there would be a process to determine whether the Bill is hybrid and needs to go through the relevant hybrid procedures. The clerks are available to provide detailed advice on this to members should they require. The provisional view from the House Authorities, which the Noble Lords involved have been informed of, is that accepting either of the amendments would mean that the Bill would become hybrid.

I understand that the procedure for hybrid bills exists for a reason, to ensure the appropriate scrutiny and the opportunity for representations. This is crucial particularly where certain parties may be disproportionately impacted by legislation to advance major infrastructure projects, for example. As set out above, the initial scope of the regime has been extensively consulted on, with ample opportunity for all affected and interested parties to present their views on the Regulator and its regime. That is also one of the reasons why, for example, we are not proposing to include the women’s game or the National League North and South in scope at this time.

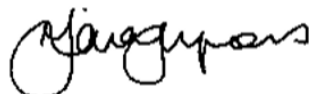
Next Steps

I hope this has provided Noble Lords with some clarity and reassurance as to why the Government has taken the approach it has. I hope in particular that the Noble Lord, Lord Parkinson, is sufficiently reassured that he will withdraw his amendment at the start of today’s debate so that we might progress our important scrutiny beyond just the second clause of the Bill.

We must ensure this Bill delivers the reforms that are urgently needed in the industry and supported by all major parties and by fans.

I am copying this letter to all of those who spoke on this issue during the debate, and will place a copy in the library of both Houses.

With best wishes,



Baroness Twycross
Minister for Gambling