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for Culture,
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Louie French MP
House of Commons
London
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Dear Louie,

I am writing to follow up on the questions you raised during the third day of Committee stage debate on 10th June of the Football Governance Bill. You sought clarification on a number of areas regarding the Owners' and Directors' test and I hope that this letter answers your questions.

Firstly, I would like to reassure you that the test has been designed carefully and in line with the rest of the Bill - it has proportionality at its heart. Alongside this, I would like to reassure you that we expect the Regulator will produce guidance on its Owners' and Directors' test in order to support clubs, owners and officers through the process. Finally, the Government believes the strengthened, statutory test will protect fans from irresponsible owners and keep bad actors out of the game.

You asked a number of technical questions on the detail and application of the tests that we do not think it would be appropriate to put on the face of the Bill. Similarly, I would not want to pre-judge the actions of the Regulator and believe the Regulator's own guidance should help to address questions about the procedural detail of the tests.

I would like to try to address the specific questions I can and hope that they will provide reassurance. I will take your questions one clause at a time.

Clause 30

You asked a number of questions on clause 30 which sets out the powers the Regulator has when an individual becomes an owner or officer without a determination. It will be the responsibility of clubs and the affected owner or officer to disclose to the Regulator if they have taken up a role without a determination. There is also a duty on clubs to ensure the personnel statement they submit to the Regulator is kept up to date. It is not our intention that the Regulator should generally have to probe clubs about their changes in ownership or management. However, if it is concerned that a club has not been open about a change, it does have information gathering powers. It can also open an investigation against a club if necessary.

If the Regulator does become aware a new owner or officer has joined without a determination, it will either issue a notice requiring them to apply for a determination (and then treat them as a new applicant), or it will issue a notice that they are deemed not suitable. The Bill does not set a timeframe in which the Regulator needs to act when it learns someone has taken up a role without a determination. We feel it is important to allow the Regulator discretion on this given the different circumstances that could lead to someone taking up a role without prior notification. But we would expect the Regulator to act promptly, in line with its duties and regulatory principles.



I would like to thank you for raising the important point about the effect the test could have on clubs as it allows me the opportunity to reiterate our position. In drafting the Bill and designing the test, the intention has been to prevent anyone unsuitable taking up a role in clubs at the point of entry. It would be far more detrimental for an unsuitable individual to become an owner without being tested. This could lead to greater harm and operational risks for clubs.

You also raised questions regarding the safeguards in place to ensure media/political pressure is not exerted on the Regulator to deem an owner unsuitable. As we have discussed in depth in Committee, the Regulator will be operationally independent from the Government. That is why this Government decided to remove the reference to the government's foreign and trade policy in clause 37. The test will be consistently applied to all owners and the Regulator's decision will be impartial and evidence-based. The Regulator can only consider the relevant matters listed in the Bill - not any other matters raised as a result of media or political pressure.

Clause 31

Moving to Clause 31, you asked about representations and notice given to clubs and individuals. If the Regulator is minded to refuse a prospective owner or officer, the Regulator must already give a notice in writing to the relevant individual and club. The Regulator must also have regard, in its subsequent notice following a negative determination, to any representations made by the club or the individual. This notice will ensure their representations are considered.

You also asked whether I envisage many applicants seeking legal aid or other advisory support mechanisms when receiving a negative determination and making representations within the timeframe. I would first point out that, on the scale of the wider justice system, we are not dealing with a large number of individuals. We are talking only about new applicants to become owners and officers of just 116 regulated football clubs. Within that already small group, your question was about individuals the Regulator is minded to fail, which we expect and hope will be a small proportion.

Clause 32

You asked about the extension provision in clause 32. The extension provision allows necessary flexibility if the Regulation believes, for whatever reason, it cannot make a determination by the deadline. For example, it could have insufficient evidence to satisfy itself either way about an individual's fitness. Or it could be awaiting documents from other jurisdictions, which may be time-consuming to obtain.

The Regulator will not be using these extensions excessively in order to hold up the process, or to excessively burden a club with further requests for evidence if it is already satisfied that it has the necessary information to take a decision. The power to extend can only be used if the Regulator considers that it cannot make a determination by the deadline.

It is important to ensure that owners and officers are appropriate custodians of their clubs so we do not believe it would be appropriate for the Regulator to be forced to make a decision because it has insufficient time to properly consider an application. Doing so could potentially allow unsuitable owners and officers into the system and risks undermining the future sustainability of clubs.

As I mentioned in the Committee, the determination period, including the maximum amount of extra time will be set by the Secretary of State in secondary legislation. The Regulator will be limited as to how far it can extend the determination period. Having good owners in place in good time will help the Regulator meet its objectives therefore it is in the interest of the Regulator to move as quickly as reasonably possible. In addition to this, consultation with stakeholders, industry and experts will be carried out to ensure the deadline is appropriate.

I do not want to pre-judge the decisions of the Regulator as to how the number of extensions and time taken for determinations will be monitored. However, I can provide reassurance that the Regulator will be held to account for its decisions through the appeals mechanism and its internal governance. In addition to this, the five year statutory review will be an opportunity to assess the impact and implementation of these provisions.

Clause 33

Clause 33 sets out the duties to notify the Regulator of a change in circumstances relating to incumbent owners or officers. I would like to reiterate the importance of proportionality in everything the Regulator does. As I have said previously, the Regulator will produce guidance on the tests and this may include when it expects to be notified about a material change in circumstances of incumbent owners or officers.

Your question regarding whether clubs will be expected to disclose internal HR issues or ongoing internal investigations, even if there is no conclusion yet, will be best answered by the Regulator. However, I would like to highlight that the Bill clearly sets out that the Regulator's determination will be based on an individual's fitness, specifically their honesty and integrity, financial soundness and competence. Its determination will also be based on their source of wealth. If an individual does have any ongoing HR issues or investigations, the Regulator could have regard to them and decide if they are relevant to their suitability. Where a decision has yet to be made on any such internal investigation, it will be at the Regulator's discretion as to whether it is factored into its decision and how much weight it is given.

You asked whether clubs are required to report on allegations or media speculation. The Regulator will be required to make consistent, evidence-based determinations. If there is credible information surrounding a club or individual, the Regulator may ask them to provide evidence but again this will only be in relation to the Bill's tests of suitability as an owner or officer.

You also asked whether the Regulator will take a "strict liability" approach to this obligation. As you know, the Regulator's regime has been designed to encourage an advocacy-first approach. It will be for the Regulator to determine how it takes into account whether a failure to notify has occurred in good faith. But I would like to highlight that the Regulator's powers (under clause 75 and and Schedule 9) to impose sanctions for a failure to notify are only available if the failure was "without reasonable excuse".

We expect the Regulator to produce guidance on how it will account for differences in club size, structure and resourcing when judging what is 'reasonably practical'.

You asked how this clause interacts with the legal privilege. Of course we recognise the importance of protecting legal professional privilege, and the regulatory regime is designed with that in mind. Individuals and clubs will not be obliged to disclose communications subject to legal professional privilege under this clause, and indeed the Regulator's wider information-gathering powers under Part 7 of the Bill are limited by clause 73 to protect legal professional privilege.

Regarding your questions about the appeals mechanisms in place, I can reassure you that the standard appeals process would apply to any enforcement action the Regulator took for a breach of clause 33 obligations.

Clause 34 and 35

Clauses 34 and 35 detail the test for incumbent owners and officers. As you will know there is no statutory time limit for the Regulator to make determinations on incumbent owners and officers and we have very good reasons for this. You asked about incumbent owners and officers being concerned the determination may hang over their heads. We do not believe this would be the case. The Regulator will act as promptly as it reasonably and practically can when testing incumbents. It will aim to provide certainty to the industry, while also ensuring each case is carefully considered. It would not be in the best interests of the Regulator to slow down the process, and would not align with its duties and principles.

However, we are still certain that it would not be appropriate to have a statutory deadline for testing incumbents.

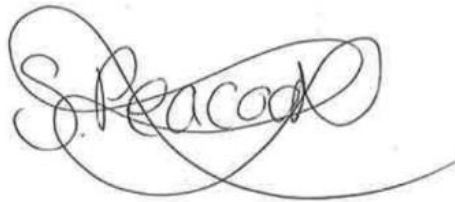
If the deadline was met and resulted in automatic failure, the consequences of finding an incumbent owner or officer unsuitable are very significant. If an incumbent is found to be unsuitable, they will be required to relinquish ownership. Forcing a (potentially longstanding) owner to divest their stake in a club is one of the most significant decisions the Regulator can take. It is appropriate to allow the Regulator more flexibility to make slower decisions in such cases. Conversely, we would not want to add a deadline with an automatic pass at the end. That could run the risk of leaving bad actors in positions of power just because their case was complex or administratively burdensome. If an unsuitable owner or officer is causing harm to a club, the Regulator must have the power to take prompt and decisive action. But it is vital that every determination the Regulator makes is robust, impartial, and evidence based, especially against incumbents. It needs discretion so it can balance these requirements.

Clause 36

You asked about a requirement for the regulator to disclose the reasons to the person and club so that they can fully engage. When the Regulator is minded to fail an incumbent owner or officer, under clause 36, the Regulator is already obligated to provide a notice which explains why they are minded to make the negative finding and to invite representations. This will already allow the affected individual and club to engage with the decision.

I hope that this reassures you on the issues you have raised. I have placed a copy of this letter in the Library of the House.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Peacock', with a large, looping flourish extending from the end.

Stephanie Peacock MP
Minister for Sport, Media, Civil Society and Youth