Department for Culture, Media & Sport

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Louie French MP and Lincoln Jopp MP
House of Commons
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Dear Louie and Lincoln,

I am writing to follow up on a number of questions raised on 12th and 17th June during the fourth and fifth Committee stage debates of the Football Governance Bill. I hope that this letter answers your questions.

On 12th June you sought clarification regarding the duties on clubs related to the appointment of an administrator (clause 47) and insolvency proceedings (clause 51), as well as on the protection of training grounds.

Administration

I firstly want to reiterate that officials have worked with the Department of Business and Trade, as well as the Insolvency Service, in developing these proposals. We are content that this is consistent with the Insolvency Act 1986.

I want to reassure you that the appointment of the administrator is an entirely separate process to the club entering administration under the Insolvency Act 1986. To your specific question: the club will still be able to enter administration without delay and this Bill does not impinge on the existing law or process.

Additionally, the duty to gain the approval from the Regulator on the appointment of an administrator only applies to clubs when they themselves are appointing the administrator. In many cases, it is the creditors or the courts that initiate the administration, so the Regulator would not be involved in the approval of an administrator.

The Regulator will have no power to influence the administrator in any inappropriate way. Insolvency practitioners are already a fully regulated profession and this legislation does not affect that regulation. Where there are concerns over the activities of an insolvency practitioner acting as administrator there are established procedures by the relevant professional authorising body to process complaints.

The Regulator will be sensitive to this already being a time of crisis for the club. The intent of Clause 51 is simply to provide greater transparency of the overall progress through insolvency. There have been many examples in the past where fans have been shut out and the whole process was made unnecessarily opaque. This clause serves to prevent this and keep loyal fans updated on the status of their club, as far as possible. We are confident clubs should be able to meet this duty without much additional burden, or any need to reveal sensitive information.

Clause 51 requires a club to deliver this duty “so far as reasonably practicable”. This means that the Regulator can consider on a case by case basis what is reasonable and practicable for that club based on the circumstances. This will allow clubs and the Regulator to take into account limiting factors such as costs, confidentiality requirements, and other considerations. There are pre-existing confidentiality requirements, such as the common law duty of confidentiality, that will apply and insolvency practitioners are bound by their industry code of ethics in relation to confidentiality.

Sale of training grounds

You also asked whether the Bill gives the Regulator the power to stop clubs selling their training grounds. Per Clause 22, the Regulator can only impose discretionary licence conditions under the financial resources threshold requirement in a limited number of areas. They can relate only to: liquidity requirements, debt management, overall cost reductions, or to restrict illicit finance.

So the Regulator could not impose a discretionary licence condition to directly block the sale of a training ground. Indeed the Regulator does not have any other powers under the Bill to directly block the sale of training grounds.

The specific powers to block sales are reserved only for the home ground, given its heritage value to a club. Other assets such as training grounds are generally less critical as financial assets than a home ground, and typically have significantly less heritage value to fans.

There are also circumstances where selling the training ground may be an appropriate course of action. For example, the sale or refinancing of assets can sometimes be an acceptable and prudent way of improving the club’s liquidity, if necessary. That is why clubs should be free to exercise commercial discretion over the use of wider club owned assets.

However, the Regulator does still have levers to take action to protect the club's financial sustainability if this scenario ever arises, which could help avert the sale of a training ground if it was not helpful to a club’s sustainability. Such activity, whether a sale or taking out a loan secured on the training ground, would constitute a major transaction for most clubs. It should therefore form part of the financial plans a club needs to submit to the Regulator and keep updated.

By selling its training ground - a valuable financial asset - the club may have weakened its financial position. So, in response to any increased financial risk, the Regulator could require the club to take mitigating action. If this was not sufficient to address risk, the Regulator could place a discretionary licence condition on the club, such as a liquidity requirement.

If this scenario arises because of a bad actor seeking to 'asset strip' the club, then the Regulator's Owners' and Directors' Tests could kick in. For example, if an owner was clearly more interested in selling off the club’s assets than running it as a football club, it could bring their fitness and financial soundness into question. If found unsuitable, the Regulator has powers to remove the individual.

Cost of Distribution orders

On 17th June you sought clarification on a number of areas regarding the cost of Distribution Orders.

Who is liable for the cost of review of distribution orders?

As with all Regulatory functions, the cost of reviewing a distribution order can be funded through the levy on clubs. This creates a reliable and accountable charging mechanism for regulation and means the taxpayer will not be expected to foot the bill.

However, there is also an alternative mechanism for covering these costs. The Regulator can make rules about the payment of costs incurred by it or any other person by virtue of Part 6 of the Bill (ie the backstop). This would, for example, allow the Regulator to pass on appropriate costs directly to the specified competition organisers the distribution order applies to. That could include the Regulator's costs of keeping an order under review. This in turn allows the Regulator to reduce the burden on clubs in leagues not directly involved in a distribution order.

Is there a cap on expenses that can be passed onto clubs?

The Government has already made clear that the Regulator must be an efficient organisation, providing value for money, and proportionately designed to deliver regulation to a tightly defined scope. This is made clear in the regulatory principles which set out that the Regulator should use its resources in the most efficient way. It would be inappropriate to place a cap on the cost of reviews as they could reduce the ability of the Regulator to function effectively. Without knowing the extent of the work involved and its cost, any cap would risk being either unrealistically restrictive or so high as to be effectively meaningless.

Additionally, the Regulator will be expected to act in accordance with Managing Public Money guidance which outlines how public bodies should act including how levies and other charging mechanisms should be operated.

What criteria will determine how costs are apportioned between parties?

If the levy is used to fund the review of a distribution order, the same statutory requirements such as to have regard to "the financial resources of each licensed club" and "the specified competition in relation to which a relevant team is operated by each licensed club" will apply.

If the rules mechanism is used, then the criteria will ultimately be a decision for the Regulator. There are no set criteria in the Bill, to allow the Regulator the flexibility to apportion costs in the way it considers appropriate and proportionate. The Regulator's discretion will be constrained by general public law requirements such as reasonableness, as well as the specific safeguards in the Bill including the requirement that the Regulator consult on its rules and the obligation for the Regulator to have regard to its regulatory principles. As illustrative examples, the Regulator could take into account the conduct of the parties during the backstop process, or their compliance with a distribution order, when apportioning costs.

Will the Regulator be independently audited on its cost management in conducting such reviews to help minimise costs on clubs going forwards?

The Regulator's annual accounts will be audited annually by both an independent auditor and the National Audit Office. The cost of reviewing distribution orders could be included in these annual accounts. Additionally, these accounts, as well as the Regulator's annual report, will be laid before parliament to ensure the Regulator is offering value for money.

Additional questions

On 17th June, you also sought clarification on a range of issues: Government Amendment 72, Clause 96, and Clause 98.

You asked why we made Government Amendment 72, which removes the decision to 'exercise the power to ask questions' from the list of reviewable decisions in Schedule 10. As we discussed, Schedule 10 lists the decisions made by the Independent Football Regulator (IFR) that are reviewable via the statutory route in the Bill. Directly affected parties may request that the IFR carry out an internal review of these decisions and there is a statutory route of appeal to the Competition Appeal Tribunal (CAT).

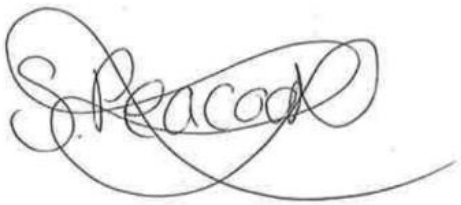
We chose to remove the decision by the IFR to ask questions as part of an investigation from this list, as we do not think a statutory right of appeal is necessary or appropriate for this minor, procedural decision. This amendment will reduce unnecessary opportunities to challenge interim procedural steps of an investigation, and so hamper and frustrate the IFR. This change will not limit access to justice. Affected parties will still be able to challenge the final outcome of any investigation, which *is* a reviewable decision.

On Clause 96 (Review of Act), you asked about the opportunity for parliamentary scrutiny on impacts of the IFR following the review. Since the Government introduced this legislation, we believe it should be the Government that reviews whether it has achieved what it intended. However, we of course welcome parliamentary scrutiny as well. The intention is that this review will facilitate that scrutiny; for example, by a relevant committee of Parliament. That is exactly why the clause requires the review to be laid before Parliament. But it is not for this Bill, or the Government, to direct Parliament to undertake that scrutiny.

On Clause 98 and Schedule 12 (Minor and consequential amendments), you asked whether the amendment to the Freedom of Information Act 2000 would make the IFR subject to the requirements of that legislation. I can confirm that it would make the IFR subject to freedom of information requests.

I hope that this reassures you on the issues you have raised. I have placed a copy of this letter in the Libraries of both Houses.

Yours sincerely,



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