

# FOOTBALL GOVERNANCE BILL

## Memorandum from the Department for Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee

### A. INTRODUCTION

1. This memorandum has been prepared by the Department for Culture, Media and Sport (“DCMS”) for the Delegated Powers and Regulatory Reform Committee (“the DPRRC”) to assist with its scrutiny of the Football Governance Bill (“the Bill”). The Bill was introduced to the House of Lords on 24 October 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.
2. The government has carefully considered the powers in the Bill and considers that they are proportionate, necessary and justified. It is the government’s view that it has struck the right balance 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.

### B. PURPOSE AND EFFECT OF THE BILL

3. The Football Governance Bill is a response to a number of key events in our national game which have highlighted systemic issues in the English football pyramid and raised concerns about its current self-regulatory structures.
4. The first was the loss of historic clubs such as Bury FC and Macclesfield Town. The second was the attempt to set up a European Super League in April 2021. The third is a number of issues with other clubs in recent years where fans have had to fight to protect their club’s identity, heritage and even its very existence, highlighting the need to ensure the financial sustainability of individual clubs and the football pyramid as a whole. These are under threat, often due to the perverse incentives of the game which incentivise excessive risk taking in pursuit of the greater financial reward that comes with promotion, and unsuitable owners responsible for financial mismanagement of their clubs.
5. The independent [Fan-Led Review of Football Governance](#) (“the Review”) was commissioned in April 2021 with the purpose of exploring how the governance, ownership and financial sustainability of clubs in English football could be improved. Having received over 20,000 responses to its survey and 60 individual submissions of evidence, it published its 10 strategic recommendations in November 2021.
6. The findings had cross-party support and the previous government accepted or supported all recommendations in principle in its response to the Review. This

included establishing an independent regulator for English football.

7. This was reiterated in a subsequent White Paper, [A Sustainable Future - Reforming Club Football Governance](#), published in February 2023, which received broad cross-party support. It laid out a proposal for an independent regulator of English football to prevent widespread financial failures in English football and the social and economic damage they cause to communities and fans.
8. A targeted consultation of the White Paper proposals ran throughout spring and summer 2023. This included a series of panel discussions with key stakeholders including the Premier League, the English Football League (EFL), the Football Association (FA), the National League and the Football Supporters' Association (FSA). In addition, written comments were invited from: all 116 football clubs in the top 5 tiers of English football; the relevant leagues and existing footballing bodies; fan groups; legal experts; industry experts; leading academics; and civil society organisations.
9. Engagement continued with key stakeholders including leagues and supporter groups after the 2024 General Election. The policy position was further refined in this period.
10. The purpose of the Football Governance Bill is to establish a new statutory Independent Football Regulator ("the IFR") and its regulatory regime. It will have the primary aim of ensuring the long-term financial sustainability and resilience of football clubs. The IFR has specific objectives focused on club financial soundness, systemic financial resilience, and safeguarding the heritage of English football.
11. Detailed provisions of the Bill include:
  - a. **The Independent Football Regulator** - will be set up in statute to regulate English football, with regulations setting out which leagues will be captured. The intention is that this will be the top five tiers of English men's football. The IFR will have a clearly defined remit focused on protecting and promoting the financial sustainability and resilience of English football and safeguarding heritage. When regulating, it will have a duty to guard against impacts on sporting competition, and adverse impacts on investment and the competitiveness of clubs.
  - b. **Licensing** - clubs in scope will need a licence to operate. Clubs will first apply for a provisional licence and the IFR will need some routine information, such as a business plan and a statement of its owners and directors, to be able to grant this. All clubs will have to comply with the mandatory licence conditions and freestanding duties, which are basic requirements that most clubs should be able to comply with readily. Once a

club receives a licence, the IFR may attach discretionary licence conditions if necessary to ensure the club meets the required standards across three threshold requirements: financial resources, non-financial resources, and fan engagement. A full licence will be granted once the IFR is satisfied that a club meets all these requirements.

- c. **Financial regulation** - clubs will need a financial plan to show how they will be run, and contingency plans for getting back to a sustainable position if the club finds itself in peril. For clubs that are financially stretched or are ambitious, the IFR should ensure this risk does not jeopardise their long-term resilience. This means owners may need to stand behind their investments, either through equity, writing down debt, a guarantee or putting cash in the business. For well run clubs, having sensible, resilient finances will be how they operate regardless.
- d. **Fan engagement and heritage** - there will be a minimum standard of fan engagement whereby clubs will be required to consult their fans on matters which affect them. Clubs will be required to obtain fan approval to changes to the badge and home shirt colours, and to seek the FA's approval for any name changes. Clubs will not be able to relocate from their stadium unless it both makes financial sense and does not compromise the heritage of the club (e.g. relocating away from the fanbase). They will be required to consult their fans prior to any relocation as well as on other specified relevant matters, such as match-day issues and ticket prices. Regulated clubs will also be required to take reasonable steps to keep their fans updated during insolvency proceedings.
- e. **Owners' and directors' tests (ODT)** - the IFR will oversee strengthened tests for owners and directors, so those who own and run clubs are suitable. Prospective owners will need a business plan and sufficient funding to show how they will run the club when they buy it. The IFR will work with relevant agencies to check owners' wealth, to make sure they have the money needed and it is not coming from illicit sources. It will have checks on fitness for both owners and directors (looking at issues like regulatory compliance, being struck off as a director, or a history of company insolvencies). Owners and directors will not be able to take up a position at a club until they have been approved by the IFR. Ultimately, existing owners found to be unsuitable can be forced to divest if they do not do so willingly.
- f. **Financial distributions** - the sale of the Premier League's broadcast rights are far more lucrative than other leagues and the Premier League redistributes approximately 16% of that money down the pyramid, which is vital for the viability of lower league clubs. Football leagues have been trying to renegotiate this agreement since 2019 but there is currently no prospect of

a new deal emerging. The Bill provides a mediation mechanism followed by a binding final offer adjudication mechanism that may be utilised if this impasse continues. Leagues can apply to the IFR to trigger this process if certain conditions are met. If mediation is unsuccessful, the IFR will set up an Expert Panel which will decide between the leagues' final, best offers. Enforcement mechanisms will ensure this agreement is implemented.

- g. **Corporate governance** - the IFR will work with industry and experts to design a football club corporate governance code specifically for football clubs. Clubs will need to explain how they are applying the principles of the code, as well as produce and publish a plan on the action they are taking with regard to Equality, Diversity and Inclusion within the club.
- h. **Prohibited competitions** - clubs will not be able to compete in competitions that have been prohibited by the IFR.
- i. **Enforcement and appeals** - the IFR will have powers to monitor whether clubs are compliant with the regime, to investigate when it suspects they are not and to sanction clubs and individuals for non-compliance, for example through financial penalties. For most of the IFR's decisions, there will be a statutory right for parties with sufficient interest to appeal to the Competition Appeal Tribunal (CAT).

### **C. SUMMARY OF DELEGATED POWERS**

- 12. The Bill contains a total of 42 delegated powers. A table is provided in Annex A summarising what powers the Bill confers on whom, for what purpose, and the parliamentary procedure DCMS proposes should be attached to the exercise of the powers. The Bill confers delegated powers on the Secretary of State and the new IFR. In deciding whether matters should be specified on the face of the Bill or dealt with in delegated legislation, the government has carefully considered the need:
  - a. To avoid too much administrative detail on the face of the Bill;
  - b. To allow the legislation to respond to changing circumstances, so that requirements can be adjusted without the need for further primary legislation - for example adding women's football to the scope in the future;
  - c. To allow detailed administrative arrangements to be set up and kept up to date within basic structures and principles that are set out in primary legislation, subject to Parliament's right to challenge inappropriate use of powers;

- d. To ensure the appropriate level of operational independence for the IFR to avoid the risk of politicisation and ensure compliance with UEFA and FIFA rules that the Football Association (FA) must be able to manage its affairs independently and without undue influence from third parties;
  - e. To allow robust parliamentary scrutiny and oversight to ensure any delegated power is used appropriately and proportionately.
13. In deciding what procedure is appropriate for the exercise of the powers in the Bill, the government has carefully considered in particular:
- a. Whether the provisions amend primary legislation; and
  - b. The significance of the amendments.
14. The powers outlined in this document will result in regulation that can evolve and adapt to ensure English football is financially sustainable in the long-term. This is complex legislation involving introducing a regulatory regime into a previously self-regulated industry. It is crucial that the IFR therefore has the ability to use its discretion as it learns more about the industry. The use of procedural safeguards in relation to certain key delegated powers will ensure that Parliament maintains its vital statutory role in determining the legislative framework governing the IFR's ability to act. The safeguards built into the legislative framework itself include rules, industry consultation, and appeals.
15. The DPRRC have set out that the establishment of a large new regime that is being refined constantly before it goes into Parliament and expected to be further refined when it is in Parliament, as the Football Regulator will be, is an example where Henry VIII powers are appropriate.
16. 10 of the powers in the Bill are these Henry VIII powers. These are marked in the clause by clause analysis and in the table in Annex A. All of the Henry VIII powers in the Bill are subject to the affirmative procedure when amending primary legislation to ensure Parliament has the opportunity to scrutinise their exercise.

#### **D. CLAUSE BY CLAUSE ANALYSIS OF DELEGATED POWERS IN THE BILL**

17. The delegated powers in the Bill are:

##### Part 1 - Purpose, overview and key definitions

- a) Clause 2 ('Key definitions')
- b) Clause 4 ('Meanings of "officer" and "senior manager" etc')

##### Part 2 - The Independent Football Regulator

- a) Clause 14 ('Annual report')

### Part 3 - Operating licences

- a) Clause 15 ('Operating licences')
- b) Clause 16 ('Application for provisional operating licence')
- c) Clause 16 ('Application for provisional operating licence')
- d) Clause 17 ('Grant of provisional operating licence')
- e) Clause 18 ('Grant of full operating licence')
- f) Clause 22 ('Scope of powers to attach or vary discretionary licence conditions')

### Part 4 - Owners and officers of regulated clubs: suitability etc

- a) Clause 28 and Clause 29 ('Determination of suitability required for new owners and officers')
- b) Clause 32 ('Determinations under sections 28 and 29: time limits')
- c) Clause 37 ('Matters relevant to determinations')
- d) Clause 42 ('Orders and directions effecting alternative officer arrangements')
- e) Clause 44 ('Orders under section 43: procedure, costs and liabilities')

### Part 5 - Duties on clubs and competition organisers etc

- a) Clause 45 ('Duty not to operate a team in relation to a prohibited competition')
- b) Clause 53 and Clause 54 ('Duty to pay a levy', and 'Section 53: consultation and publication')

### Part 6 - Distribution of revenue

- a) Clause 56 ('Part 6: overview and interpretation')
- b) Clause 64 ('Review of distribution orders, payment of costs, etc')

### Part 7 - Investigatory powers etc

- a) Clause 66 ('Reports on clubs by expert reporters')
- b) Clause 66 ('Reports on clubs by expert reporters')

### Part 9 - Reviews and appeals

- a) Clause 82 ('Request for internal review')
- b) Clause 83 ('Internal reviews')

#### Part 10 - General

- a) Clause 86 ('Disclosure of information by the IFR')
- b) Clause 87 ('Disclosure of information to the IFR etc')
- c) Clause 90 ('Rules')
- d) Clause 91 ('Regulations')
- e) Clause 92 ('Minor definitions etc')
- f) Clause 92 ('Minor definitions etc')
- g) Clause 96 ('Payments into the Consolidated Fund')
- h) Clause 97 ('Minor and consequential amendments')
- i) Clause 99 ('Commencement')

#### Schedule 1 - Meaning of "owner"

- a) Schedule 1, paragraph 15(1) and (9) ('Guidance on meaning of significant influence or control')
- b) Schedule 1, paragraph 16(1) ('Power to amend thresholds etc')

#### Schedule 2 - The Independent Football Regulator

- a) Schedule 2, paragraph 17(1) ('Delegated by the Board etc')
- b) Schedule 2, paragraph 22(3) ('Minimum number of members of the Expert Panel')
- c) Schedule 2, paragraph 27(5)(b) ('Expert Panel: Chief Executive Officer directions')
- d) Schedule 2, paragraph 32(2) ('Accounts and audit')

#### Schedule 3 - Transfer schemes

- a) Schedule 3 ('Transfer schemes')

#### Schedule 5 - Mandatory licence conditions

- a) Schedule 5, paragraph 6(2) ('Corporate governance report')
- b) Schedule 5, paragraph 7(1) ('Corporate governance code of practice')

## Schedule 9 - Sanctions

- a) Schedule 9, paragraph 12(1) ('Rules relating to revenue and remuneration')
- b) Schedule 9, paragraph 15 ('Power to amend figures')

## **PART 1 - OVERVIEW AND KEY DEFINITIONS**

### **Clause 2 (Key definitions): Power for the Secretary of State to define "specified competitions"**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

18. This clause defines key terms relevant to the entire Bill. In particular, this clause defines the population of football clubs, and leagues or competitions, that are in scope of regulation. The power conferred on the Secretary of State is to specify the competitions that comprise 'English football'. Clubs that operate a team that is a member of any of these competitions are then classed as 'regulated clubs' (i.e. require an operating licence).

#### Justification for taking the power

19. This clause defines the population of clubs in scope of regulation, by reference to the competitions that are in scope. The policy intent has always been that this should currently be the top five leagues of the men's English football pyramid only. This is because the rationale for regulatory intervention is based on market failures in the professional men's game, and problems or harm that most typically and markedly arise in clubs of a certain size and type (typically professional clubs).
20. The top five leagues is not a perfect proxy for the professional game, since some semi-professional clubs play within these leagues, and some professional clubs play outside of these leagues. Promotion and relegation also means the clubs within the top five leagues vary from year to year. However, this boundary is the closest and most proportionate way to capture the intended class of clubs. Extending to additional leagues would capture a significantly larger number of smaller clubs. While these clubs sometimes face some similar issues, the burden of regulation (on both the clubs and on the IFR ) would be disproportionate to the expected benefits. This boundary is therefore the most appropriate option that does not leave some clubs in the same league subject to



regulation and others not.

21. The reasons for a regulation-making power here are threefold, and stem from not wishing to fix the leagues/competitions in scope in primary legislation:
  - a. Possibility of amending scope in the future (e.g. to women's football) - [The Future of Women's Football Review](#) recommended that women's football be given a chance to self-regulate, but noted that the market does share some similar problems with the men's game. Given this, the policy intent is that the IFR should not regulate women's clubs from the outset to give the industry the opportunity to grow commercially and learn lessons from the men's game. However, primary legislation should provide the opportunity for the IFR's scope to be more readily extended in this way in the future. Similarly, a case for extending regulation further down the men's football pyramid, or to reduce the scope of the IFR, might also arise in the future.
  - b. Not precluding competition or innovation - In 1992, the old First Division became the Premier League; this was an innovation that has brought significant benefits to English football. A similar innovation might not be possible if the leagues are named and fixed in primary legislation. Equally, these leagues are private companies operating in the market for 'the organisation and commercial exploitation of football competitions', and so providing them with a form of monopoly in statute risks undermining healthy competition in this market.
  - c. Preventing circumvention - If the leagues in scope were fixed in primary legislation, clubs could theoretically remove themselves from the existing football pyramid structure entirely to 'escape' the IFR's scope and the statutory requirement for an operating licence.
22. This delegated power therefore aims to provide the ability for the scope of regulation to react to changes in the market more quickly and easily than through new primary legislation.
23. The clause places two safeguards on the use of this delegated power. Firstly, the Secretary of State may only specify English competitions (competitions where teams that participate in it are exclusively or predominantly English teams). Secondly, before any future uses of the power (i.e. not for the first regulations made under the power, but for any and all subsequent regulations), the Secretary of State must conduct an assessment as to whether and how it is appropriate to exercise the power. This amounts to a formal review requirement, for which the Secretary of State must consult the IFR, the FA and any other persons the Secretary of State considers appropriate. A report of the outcome of this assessment must be published and laid before Parliament, which will

help facilitate parliamentary scrutiny of any regulations that are consequently made.

#### Justification for the procedure

24. The exercise of this power has the potential to alter the scope of the IFR's regime and so to impose regulation on new entities, or release entities from regulation. The affirmative procedure ensures that there is sufficient parliamentary scrutiny over this potentially significant change now and in the future.

#### **Clause 4 (Meanings of "officer" and "senior manager" etc): Power for the IFR to define "specified" as regards senior management functions**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

#### Context and purpose

25. This clause defines a "senior manager" as a person who carries out "senior management functions" specified, or of a description specified, by the IFR in rules. The Bill defines a "senior management function" as a function requiring i) the person performing it to be responsible for taking decisions, or participating in the taking of decisions, about how one or more aspects of a club's affairs should be carried on; and ii) that those aspects of the club's affairs are such that the way in which they are managed could give rise to serious consequences for the club.
26. Any individual carrying out senior management functions is automatically classed as an officer if they were not already an officer by virtue of the other definitions in subsections (1) - (2) of this clause.
27. Elsewhere, the Bill requires clubs to, when applying for a provisional operating licence, notify the IFR of their senior managers as part of a "personnel statement". This statement must include the job title of, or a description of the role performed by, each of the club's officers, as well as the specified senior management functions performed by each of the club's officers who is a senior manager. Clubs must keep this personnel statement up to date for as long as they are licensed.
28. This forms the basis for the IFR's ability to hold a club's senior managers responsible for non-compliance. As per the relevant infringements in Schedule 7 and the IFR's enforcement powers in Schedule 9, the IFR is able to impose sanctions on a senior manager if it considers the senior manager is connected

to a club's infringement. This achieves an important policy aim of being able to target enforcement action at the individuals actually making decisions, to ensure their incentives are properly aligned with those of the club and its fans (and the IFR), and to achieve a stronger deterrent effect where necessary.

#### Justification for taking the power

29. The clause confers a power on the IFR to define the specified senior management functions. This is a matter of technical detail pertaining to the specifics of the IFR's regime and the operations of clubs. This needs to be informed by a deeper understanding of the market and of clubs than the government or Parliament has currently.
30. The IFR specifies such senior management functions as it considers relevant to its regime, and to how clubs operate and are managed. It is likely that these functions need to vary depending on the type/class of club (e.g. by size or sophistication). The IFR also needs to be able to adjust the specified senior management functions in the future in light of practical experience of implementing its regime, or in response to developments in how clubs are managed.

#### Justification for the procedure

31. A parliamentary procedure is considered unnecessary here since this power relates to the operational procedure and technical implementation of the IFR's enforcement of its regime. Parliament will have agreed that the IFR should also take enforcement action against individuals at a club in a targeted way, and this power allows the IFR to implement that. The Bill provides suitable constraints around this, through the definitions of senior manager and senior management function in this clause.

## **PART 2 - INDEPENDENT FOOTBALL REGULATOR**

### **Clause 14 (Annual report): Power for the Secretary of State to direct the information that the IFR must include in its annual report**

*Power conferred on:* The Secretary of State

*Power exercised by:* Directions

*Parliamentary procedure:* None

#### Context and purpose

32. Clause 14 requires the IFR to submit a report on the exercise of its functions for that year to the Secretary of State, as soon as reasonably practicable after the end of each financial year.

33. Subsection (2)(b) specifies that the Secretary of State may direct the IFR to include additional information.
34. The IFR must arrange for a copy of the annual report to be laid before Parliament by the Secretary of State.

#### Justification for taking the power

35. The power to direct enables the Secretary of State to ensure the IFR produces its annual report consistently each year to allow Parliament to have adequate oversight over the performance of the IFR.
36. Giving the Secretary of State this direction making power allows them some limited flexibility to ask the IFR to include additional material within the annual report. The power cannot be exercised in a way that undermines independence on operational issues but could be informed as we learn more about the impact of the IFR's operations and the evolution of the industry, over time.

#### Justification for the procedure

37. A parliamentary procedure is considered unnecessary here since the Secretary of State would be best placed to direct additional information to be included in the annual report. This is due to their unique insight into the functions of the regime and understanding of the industry, to know when more information would be required to shine more light on a particular area of the report. Having to seek approval from Parliament for operational matters is poor use of limited parliamentary time and resources. The IFR must arrange to lay a copy of its annual report before Parliament by the Secretary of State for the purposes of scrutiny.

### **PART 3 - OPERATING LICENCES**

**Clause 15 (Operating licences): Power to make rules specifying the form of, and matters specified in, operating licences**

**Clause 16 (Application for provisional operating licence): Power to make rules specifying the manner, form, and content of an application for a provisional operating licence**

**Clause 16 (Application for provisional operating licence): Power to make rules specifying the date for provisional operating licence application**

**Clause 17 (Grant of provisional operating licence): Power to make rules specifying the date for provisional operating licence decision**

**Clause 18 (Grant of full operating licence): Power to define 'the assessment period' to grant a club a full operating licence**

*Powers conferred on: The IFR*

*Powers exercised by: Rules*

*Parliamentary procedure: None*

### Context and purpose

38. Clause 15 sets out that a regulated club may not operate a team in relation to a specified competition unless it has a provisional or full operating licence from the IFR authorising it to do so. An operating licence must specify certain information listed in the Bill, plus any additional information specified by the IFR in rules. The delegated power is for the IFR to specify in rules the form of an operating licence and any additional information the licence must specify.
39. Clause 16 sets out the process for, and content of, a club's application to the IFR for a provisional operating licence. A provisional operating licence authorises a regulated club to operate an association football team on a provisional basis prior to the issuance of a full operating licence. The clause requires an application to include a strategic business plan covering at least until 'the end of the next full season'. The delegated powers are for the IFR to specify in rules the manner and form in which an application must be made, and the time by which it must be made.
40. Clause 17 sets out the process and timeline for, and basis on which, the IFR assesses an application for, and grants, a provisional operating licence. The delegated power in this clause is for the IFR to specify in rules: the period within which it must make the decision whether to grant the club a provisional operating licence, any circumstances in which it may extend that period, and the period for which that period may be so extended.
41. Clause 18 sets out the process for, timeline for, and basis on which the IFR assesses a club for, and grants, a full operating licence. The IFR must make the decision of whether to grant a full operating licence before the end of 'the assessment period'. The delegated power is for the IFR to specify the 'assessment period' in rules.

### Justification for taking the powers

42. The approach taken in the Bill is to provide a framework of powers and duties, with discretion for the IFR to specify many of the technical and operational details. This approach reflects regulatory best practice, which is to give a regulator flexibility to adapt regulation to the circumstances of different persons, and to changing circumstances overtime. A regulator needs to be able to exercise its expert technical judgement from a position that is more informed than the government or Parliament can be expected to be at the time of

passage of primary legislation. This more informed position comes from its specialist expertise, consultation with the industry and other regulatory experts, and practical experience of implementing and fine-tuning its regime over time.

43. All of this means the IFR is best placed to determine the specifics of how its regime should be implemented once fully operational. This is a new regulator, which is overseeing a dynamic industry within a wider global context. So it is important that the IFR is able to refine what may be required to support it to achieve its strategic purpose and operational objectives, while complying with its statutory duties and regulatory principles.
44. The powers delegated in this Part facilitate this approach, by affording the IFR discretion to determine the operational details of its regime. For example, what information it needs to make decisions, what form and manner of presenting different documentation is most efficient, and what the appropriate timelines are for various key processes.
45. Clause 15 confers power on the IFR to specify the form in which a provisional operating licence and a full operating licence is to be issued, and to specify any additional information to be specified in a operating licence. Clause 16 confers power on the IFR to specify the manner and form in which an application must be made, to specify additional information or documents that an application must contain or be accompanied by (beyond the information specified in clause 16), and to specify additional information that must be contained in a strategic business plan that must accompany an application (beyond the information specified in clause 16).
  - a. The form of an operating licence, and the manner and form of an application, are administrative details for the IFR to determine what is most appropriate for itself and for the industry. These may need to change overtime to keep pace with technological change, or to adapt in light of practical experience of what works best.
  - b. For the contents of an operating licence, an application, and a strategic business plan, the Bill sets some minimum requirements. These are basic elements that it is known when legislation is being passed will always need to be communicated to clubs in their operating licence, or be required from their applications. Beyond this, the IFR needs to be able to specify additional information to facilitate the effective implementation of its regime (although this is constrained to what is included in the Bill). Since the technical details of the IFR's regime are not set out in the Bill, the exact exhaustive requirements for the IFR to implement that regime cannot be known when primary legislation is being passed. For example, the IFR may need to require additional information or documentation from clubs to facilitate its

assessment of a club for a provisional operating licence. This could vary from club to club depending on circumstances.

46. Clause 16 confers power on the IFR to specify the time by which an application must be made. Clause 17 confers a duty on the IFR to specify the period within which it must make a decision on an application for a provisional operating licence and when, and for how long, it can extend that period.
- a. This level of detail is administrative, may need to vary depending on the circumstances of individual clubs or competitions, and will benefit from some prior consultation with the industry before finalising arrangements.
  - b. In particular, the timeline for a club obtaining a operating licence needs to work appropriately in the context of the timings between football seasons. Since the exact deadlines for registration can vary from one competition to the next, and from one season to the next, this cannot be fixed in primary legislation in advance. The IFR needs to set itself a deadline in rules per clause 17 that, in conjunction with the deadline for clubs to apply set in rules per clause 16, avoids disruption to sporting competitions. Similarly, discretion as to how long to extend this deadline in individual cases allows the IFR to balance the need to give clubs extra time with not disrupting sporting competitions, as the circumstances require.
  - c. Attempting to predict and universally prescribe these various timings in the Bill is not practical and would carry a high risk of unintended consequences.
47. Clause 18 confers power on the IFR to define “the assessment period”, before which it must make a decision on whether to grant a full operating licence, in its rules. This is an operational detail that may vary from one club to another depending on the club’s circumstances and when it received its provisional operating licence. The assessment period will also need to reflect the time it will take the IFR to make an assessment, which will depend on factors including the IFR’s existing understanding of a club, the club’s circumstances, and the IFR’s resources. For these reasons, it would not be appropriate to attempt to define this in primary legislation.

#### Justification for the procedure

48. These provisions relate to operational and administrative matters in the context of the timings for issuing, content and form of provisional and full operating licences. As the provisions to be made are administrative rather than legislative in character, no parliamentary procedure is considered necessary.

**Clause 22 (Scope of powers to attach or vary discretionary licence conditions): Power to amend the areas in respect of which the IFR may attach discretionary licence conditions under the financial and non-financial resources threshold and systemic resilience objective**

*Powers conferred on:* The Secretary of State

*Powers exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

Context and purpose

49. Clause 22 sets parameters on the IFR's power to set discretionary licence conditions in relation to the financial resources and the non-financial resources threshold requirements and the systemic financial resilience objective. This serves the purpose of constraining the IFR's discretion and providing clubs with more certainty over the areas that the IFR is able to act in. This subsequently gives government and Parliament confidence that the IFR focuses on the key issues and does not overreach.
50. In relation to the financial resources threshold requirement, the clause permits the IFR to set discretionary licence conditions i) relating to debt management, ii) relating to liquidity requirements, iii) restricting overall expenditure , and iv) restricting funding connected to serious criminal conduct only. In relation to the non-financial resources threshold requirement, the clause permits the IFR to set discretionary licence conditions relating to i) internal controls, ii) risk management, or iii) financial reporting only. In relation to advancing the IFR's systemic financial resilience objective, the clause permits the IFR to set discretionary licence conditions i) relating to debt management, ii) relating to liquidity requirements, and iii) restricting overall expenditure only.
51. The clause confers a regulation-making power on the Secretary of State to amend (to add, vary or remove) the lists of areas that the IFR can set discretionary licence conditions in relation to. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation
52. The Secretary of State may not exercise the power unless they have been requested to do so by the IFR. The IFR must consult such persons as it considers appropriate before making such a request and must justify its request.

Justification for taking the powers

53. It is important to place some parameters on the ability of the IFR to set discretionary licence conditions. The list of areas set out in the Bill where the IFR may attach conditions are reflective of the areas the government considers



necessary for intervention to ensure the IFR delivers its objectives. Enabling the IFR to intervene in these areas allows the IFR to deliver a prudential-style financial regulation regime, which the government considers is the most appropriate approach to correspond to football's unique market and issues.

54. However, business models of clubs may change and the nature of problems in the industry may develop over time. So the IFR requires the flexibility to be able to intervene in new or different areas to reflect this. The IFR will also develop a more in-depth understanding of the market than the government or Parliament can be expected to have, through its specialist expertise, consultation, and practical experience of monitoring the market and implementing its regime. The IFR, following these consultations and experience may identify new areas that it needs the ability to set discretionary licence conditions in relation to.
55. The power conferred by this clause enables the list of the areas in which the IFR has the discretion to set conditions to be amended, in a more agile way than would be possible through new primary legislation.

#### Justification for the procedure

56. The exercise of this power would change the scope of the IFR's powers to attach discretionary licence conditions to a club's operating licence in relation to the financial and the non-financial resources threshold requirements. It would do so by adding, varying or removing areas from the list in primary legislation of areas that fall within the IFR's power. The affirmative procedure for this Henry VIII power ensures any proposed changes to the Bill will be fully scrutinised and approved by Parliament prior to being made. This is in keeping with the views published by the DPRRC in recent reports and the government's subsequent response to the DPRRC on a number of recent bills including the Higher Education and Research Act 2017 and the Illegal Migration Act 2023.

### **PART 4 - OWNERS AND OFFICERS OF REGULATED CLUBS: SUITABILITY ETC**

**Clause 28 and clause 29 (Determination of suitability required for new owners and officers): Power to specify the contents, manner, and form of an application for becoming a new owner or officer**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

#### Context and purpose

57. Clause 28 and clause 29 set out that before a person can become a new owner

or an officer of a regulated club, the IFR must determine the suitability of the prospective owner or officer. Clause 28 and clause 29 also set out how the IFR will assess the suitability of new owners and officers alongside clause 37, which prescribes matters relevant to the IFR's determinations under Part 4.

58. The purpose of clauses 28 subsection (2) and 29 subsection (2) is to provide the IFR with a delegated power to specify in its rules the full contents and detail as to what information the IFR will need to assess the suitability of a new owner or officer. Clauses 28 subsection (2)(c) and 29 subsection (2)(b) also confer a power on the IFR to make provision in its rules about the manner and form in which an application is to be made.
59. To note, the delegated powers in clauses 28 subsection (2) and 29 subsection (2) apply for the purposes of clause 30 as well. This is because persons who become owners or officers of regulated clubs without a prior determination, and who are required to provide an application under clause 30 subsection (1)(a) and/or 30 subsection (3)(a) are required to comply with the same application requirements that are laid out in clauses 28 and 29.

#### Justification for taking the power

60. Clauses 28, 29 and 37 already provide Parliament with a comprehensive outline of the criteria the IFR will use to determine whether a person is suitable or not to be an owner or officer of a club. Clause 26 subsections (7) and (8) also outlines when an individual meets the "individual ownership fitness criteria" and the "officer fitness criteria".
61. The primary elements of the IFR's determination of the application are contained in clauses 28, 29 and 37. The matters which the government believes are likely to be most relevant to suitability determinations have been specified in clauses 28, 29 and 37. However, the full application form will most likely be extensive and detailed enough so that the IFR has the necessary information to conduct its determination. For example, the forms that the existing football authorities use for prospective owners and officers of clubs are very long and detailed.
62. Conferring this power on the IFR is appropriate as there will need to be some flexibility regarding the contents of the IFR's suitability assessments, beyond the criteria listed in primary legislation. Failure to acquire all the relevant information in an application could result in the IFR not having an accurate or comprehensive understanding of a prospective owner's plans for a club's financial sustainability and could undermine the exercise of the IFR's functions in relation to that club.
63. As per clause 90, the IFR may make rules for the purposes of the Bill. The IFR

must consult with each specified competition organiser and such other persons as it considers appropriate. When publishing its rules, as well as when it carries out its other functions, it must have regard to its regulatory principles, including acting proportionately, consistently and as transparently as practicable.

64. Conferring this delegated power is justified as the exercising of it will also primarily be operational in nature.

#### Justification for the procedure

65. A parliamentary procedure is considered unnecessary since this power relates to the information the IFR will need to fulfil its operational purpose and where the IFR will be best placed to assess the information required. In doing so, the IFR will also be constrained by its regulatory principles, public law and the requirement to act reasonably and proportionally as well as consulting with the relevant parties.

#### **Clause 32 (Determinations under sections 28 and 29: time limits): Power to specify the IFR's suitability determination time period for new owners and officers**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Negative resolution

#### Context and purpose

66. Clause 32 requires that when a person has made an application to the IFR to be a new owner or officer under clauses 28 or 29, the IFR must make a determination in respect of the person before the end of a time period.
67. The purpose of a statutory period in which the IFR can assess the suitability of prospective owners and officers is to provide certainty to the industry and incentivise new owners and officers to provide information to the IFR in a timely manner. It also requires the IFR to balance pace and comprehensive scrutiny. The purpose of allowing the IFR to extend the deadline for up to a certain period of time is to build some flexibility into the IFR's process for assessing owners and officers to accommodate potentially unforeseen circumstances.
68. The IFR has the ability to extend the time period in which it will make its suitability determination of new owners and officers for a set amount of time, per clause 32 subsection (2). Per clause 32 subsection (3), the time period can only be extended where the IFR considers that it cannot make that determination within it. For example, it needs more information from the owner or director or other parties to make a determination. Should the time period expire, per clause

32 subsection (5) the IFR is to be treated on the expiry of that period as having determined under the section in question that the person is not suitable to be an owner or officer of the club.

#### Justification for taking the power

69. It is justifiable for the IFR to have to balance the pace of decision-making and comprehensive scrutiny regarding its suitability determinations.
70. The principal aspects of policy regarding clause 32 are that the IFR will be subject to a statutory time period when it conducts its suitability determinations on prospective owners and officers, and that the time period ending results in an automatic failure for a new owner or officer. The principal aspects of the policy will be available to be scrutinised by Parliament. It is simply the length of the time period itself which will be left to delegated legislation as this only concerns implementing the policy.
71. As a result of parliamentary scrutiny, the contents of the IFR's suitability tests may likely change, compared to when the Bill is introduced. Therefore, the corresponding level of time the IFR will require to conduct its suitability assessments may likely change, if the content of the tests changes. If the government sets a time window in primary legislation, it may become redundant by the time the Bill receives Royal Assent, hindering the effectiveness of the regime. Once the contents of the IFR's tests are set in statute, the government will be better placed to set the time window in regulations. The delegated power conferred on the Secretary of State to specify, as well as vary, the length of the statutory time period, is therefore justified
72. Professional men's football is a fast-paced and unique sector, where sector-specific timelines exist such as football seasons or transfer windows. There is limited precedent for a regulatory body making important decisions, including determining the suitability of owners and directors of clubs. The government wants to get the length of the time period of the IFR's suitability determination right and have the ability to change it if needed following the IFR's experiences of conducting the tests.

#### Justification for the procedure

73. The regulations under this clause are deemed to be operational or administrative in nature and do not change the primary policy intention relating to the statutory time period. When setting the time period, or the time by which the IFR can extend the time period in regulations, the Secretary of State must also consult with persons they think appropriate. This will enable appropriate input into, and scrutiny of, regulations by those with the greatest insight and who are most likely to be affected by them. Therefore, the negative procedure is

considered appropriate in this instance.

**Clause 37 (Matters relating to determinations): Power to make rules regarding honesty and integrity, and financial soundness when determining the suitability of new owners**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

Context and purpose

74. The Bill enables the IFR to require that existing and future owners and officers at regulated clubs must meet certain standards, including honesty and integrity, and financial soundness. Part 4 of the Bill makes provision for the making of determinations by the IFR in relation to the suitability of owners and officers of clubs.
75. Clause 37 lists criteria the IFR must have regard to when making determinations. It also lists the criteria the IFR must only have regard to when determining whether an individual has the requisite honesty and integrity, has the requisite competence, and is financially sound, for the purposes of Part 4.
76. When determining whether an individual has the requisite honesty and integrity, the only matters which the IFR can take into account are set out in clause 37 subsection (2). When determining whether an individual is financially sound, the only matters which the IFR can have regard to are set out in clause 37 subsection (3).
77. Clause 37 subsection (2)(g) and clause 37 subsection (3)(c) confer power on the IFR to specify, in its rules, additional matters that it can use to determine whether an incumbent or new owner or officer has the requisite honesty and integrity, and is financially sound, beyond the specific matters listed in clauses 37 subsection (2) and 37 subsection (3) respectively.
78. This delegated power is relevant for new owners and officers, as well as incumbents given the delegated power will apply to the IFR's suitability determinations of incumbent owners and officers, as well as new owners and officers. Therefore, the delegated power in clauses 37 subsection (2)(g) and 37 subsection (3)(c) applies to both clauses 28 (determination of suitability required for new owners), 29 (determination of suitability required for new officers), as well as clauses 34 (incumbent owners), and 35 (incumbent officers).
79. It also applies to persons who become owners and officers of clubs without a previous suitability determination under clause 30, if the IFR requires the owner

or officer to provide an application under clauses 30 subsection (1)(a) and/or 30 subsection (3)(a). In these circumstances, the IFR must assess those persons as a new owner or officer (or both if applicable) under clauses 28 or 29, meaning they'll be assessed against the matters listed in clause 37.

#### Justification for taking the power

80. Conferring this power on the IFR is appropriate as there will need to be some flexibility regarding the contents of the IFR's suitability assessments, beyond the criteria listed in primary legislation.
81. This flexibility will be particularly important in ensuring that the IFR will be able to adapt to changes in the future, including, for example, unforeseen developments in the industry.
82. The IFR needs to be able to exercise its expert technical judgement from a position that is more informed than the government or Parliament can be expected to be during the passage of primary legislation. This will be particularly true after the State of the Game Report is issued and the IFR understands the unique industry of professional men's football more comprehensively. This approach affords the IFR the ability to design and implement the technical details of its regime as it considers appropriate, within the framework set by primary legislation.
83. As per clause 90, the IFR may make rules for the purposes of the Bill. The IFR must consult with the relevant leagues before making rules, as well as any other such persons as it considers appropriate.
84. This is in line with clause 12, which states the IFR may prepare and publish guidance about any of its functions under the Bill. The IFR must also consult such persons as it thinks appropriate before publishing the first guidance about any of its functions, or publishing revised guidance about any of its functions unless the revisions are minor.
85. When publishing its rules, as well as when it carries out its other functions, the IFR will be required to have regard to its regulatory principles in clause 8, including acting consistently and as transparently as reasonably practicable. This is an additional safeguard on the IFR's power to establish rules.

#### Justification for the procedure

86. A parliamentary procedure is considered unnecessary since this power relates to the operational procedures of the IFR.
87. In all of its responsibilities, including setting rules, the IFR has to work within its strategic purpose, general duties, operational objectives and regulatory principles.

**Clause 42 (Orders and directions effecting alternative officer arrangements): Power conferred on the IFR to make rules providing for costs relating to interim officers appointed by the the IFR, to be payable by the club to which an officer is appointed**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

Context and purpose

88. Where the IFR determines, or is treated as having determined, that an officer of a club is unsuitable, the IFR can give the person a direction requiring them to take all reasonable steps to cease to be an officer of the club by a specified date and in the interim may prohibit them from carrying out specified activities at the relevant club (see clauses 40 and 41). In doing so, it is possible that the ability of the club to operate effectively or to comply with the conditions of its operating licence, is adversely affected. In these cases, the IFR can direct the club to redistribute specified functions amongst its existing officers or, if necessary, directly appoint a specific person as an interim officer to carry out specified functions for a specified period of time.
89. As part of this, the IFR may make rules providing for the club to which an interim officer is appointed, to pay for costs incurred in connection with the IFR's appointment of a person as an interim officer, and expenses incurred by that interim officer.

Justification for taking the power

90. Conferring this power on the IFR is appropriate as there will need to be some flexibility regarding the rules around how the costs incurred arising from the appointment of a person under clause 42 are to be paid. It would not be appropriate for legislation to set these operational rules out as the most appropriate approach to the payment of costs will vary depending on different club's circumstances, and may change over time.
91. The IFR needs to be able to exercise its expert technical judgement from a position that is more informed than the government or Parliament can be expected to be during the passage of primary legislation, particularly as the IFR will have ongoing operational experience and will understand the unique industry of professional men's football comprehensively. This approach affords the IFR the ability to design and implement the technical details of its regime as it considers appropriate, within the framework set by primary legislation.
92. As per clause 90, the IFR must consult with the relevant leagues before making

rules, and must consult with any other such persons as it considers appropriate. The IFR is also required to publish rules once made, and to notify the Secretary of State.

93. When making rules (as with carrying out its other functions) the IFR will be required to have regard to its regulatory principles (clause 8), including acting consistently and as transparently as reasonably practicable. This is an additional safeguard on the IFR's power to establish rules.

#### Justification for the procedure

94. A parliamentary procedure is considered unnecessary since this power relates to how specific costs incurred by the IFR are to be paid. The IFR will be best placed to determine whether, what proportion, and how (e.g. over what period), costs should be recovered from clubs in relation to the appointment of an interim officer. This may need to vary by the circumstances of the club concerned, or the circumstances under which the interim officer was appointed. As such, it is appropriate to leave this detail to the IFR.
95. In addition, in all of its responsibilities, including setting rules under this clause, the IFR has to work within its general duties, objectives and regulatory principles. For example, its regulatory principle of proportionality. These duties and principles act as a further safeguard on the IFR's discretion to use this rule-making power.
96. Parliamentary involvement in such technical, operational details would also risk suggestions of undue political interference in the governance and regulation of football.

#### **Clause 44 (Orders under section 43: procedure, costs and liabilities): Power conferred on the IFR to make rules providing for the payment of costs relating to ownership removal orders, to be payable by unsuitable owners**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

#### Context and purpose

97. Where the IFR determines, or is treated as having determined, that an owner of a club is unsuitable, the IFR can, where certain conditions are met (see clause 43), make an ownership removal order to secure that that person ceases to be an owner of a club within a specified time. This can, among other things, include the appointment of trustees with the power to undertake certain actions on behalf of the unsuitable owner.



98. As part of this, the IFR may make rules providing for costs incurred by the IFR in exercising its functions in relation to ownership removal orders, and the costs incurred by trustees appointed under an ownership removal order, to be payable by the unsuitable owner.

#### Justification for taking the power

99. Conferring this power on the IFR is appropriate as there will need to be some flexibility regarding the rules around how these costs are to be paid. It would not be appropriate for legislation to set these rules out as the most appropriate approach may vary depending on circumstance and may change over time.
100. The IFR needs to be able to exercise its expert technical judgement from a position that is more informed than the government or Parliament can be expected to be during the passage of primary legislation, particularly as the IFR will have ongoing operational experience and will understand the unique industry of professional men's football more comprehensively. This approach affords the IFR the ability to design and implement the technical details of its regime as it considers appropriate, within the framework set by primary legislation.
101. As per clause 90, the IFR may make rules for the purposes of the Bill. The IFR must consult with the relevant leagues before making rules, and may consult with any other such persons as it considers appropriate.
102. When publishing its rules, as well as when it carries out its other functions, the IFR will be required to have regard to its regulatory principles (clause 8), including acting consistently and as transparently as reasonably practicable. This is an additional safeguard on the IFR's power to establish rules.

#### Justification for the procedure

103. A parliamentary procedure is considered unnecessary since this power relates to how specific costs incurred by the IFR are to be paid. The IFR will be best placed to determine whether, what proportion, and how (e.g. over what period), costs should be recovered from unsuitable owners. This may need to vary by the circumstances of the club and owner concerned, or the circumstances under which the owner was removed. As such, it is appropriate to leave this detail to the IFR.
104. In addition, in all of its responsibilities, including setting rules under this clause, the IFR has to work within its general duties, objectives and regulatory principles. For example, its regulatory principle of proportionality. These duties and principles act as a further safeguard on the IFR's discretion to use this rule-making power.

105. Parliamentary involvement in such technical, operational details would also risk suggestions of undue political interference in the governance and regulation of football.

## **PART 5 - DUTIES ON CLUBS AND COMPETITION ORGANISERS ETC**

### **Clause 45 (Duty not to operate a team in relation to a prohibited competition): Power to specify in rules that a competition is prohibited**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

#### Context and purpose

106. The duty related to prohibited competitions prevents regulated and previously regulated clubs from operating teams in competitions specified by the IFR in rules. When specifying competitions as prohibited, the IFR must have regard to whether the competition: is merit-based and operates on the basis of fair and open competition, jeopardises the sustainability of competitions that are not prohibited or the clubs in those competitions, or threatens the heritage of English football. The IFR may also specify in its rules any other factors that it must have regard to when specifying a competition as prohibited.

107. Before specifying a competition as prohibited, the IFR must take reasonable steps to determine whether fans in England and Wales of regulated clubs would support the competition being prohibited. The IFR must also consult the relevant competition organiser, the FA, and other persons it considers appropriate before specifying a competition as prohibited.

108. The intention is to give the IFR the ability to prevent clubs in the English football pyramid from participating in competitions of a nature that the IFR considers might threaten its ability to deliver on its operational objectives.

#### Justification for taking the power

109. The power confers discretion on the IFR to set additional factors it must have regard to when deciding whether to prohibit a competition, and to prohibit competitions, in rules. The Bill sets out some factors for the IFR to consider which provide an objective, transparent, and proportionate framework for the IFR to follow and a strong steer as to the priorities of the government. However, the Bill ultimately provides the IFR with the ability to set additional and/or more specific factors. This enables the IFR to make its own determination as to what exactly it requires of competitions in order to meet its operational objectives, and on what basis it might prohibit competitions. This is informed by a more

in-depth understanding of the industry than the government or Parliament has at the point of passage of the primary legislation, and it may change overtime as the football industry (both domestically and internationally) develops. In particular, the IFR needs to be cognisant of competition law implications, and developments with respect to the international governing body of football (FIFA), and be able to react accordingly.

#### Justification for the procedure

110. A parliamentary procedure is considered unnecessary since this power relates to the technical implementation of the IFR's regime. The IFR is best placed to make regulatory determinations of a technical nature, given its expertise and better-informed position. Decisions related to whether and on what basis new competitions should be permitted or prohibited should also be free from political influence, in line with the important principle that the IFR should exercise its functions independently. This is particularly important in the context of football, where undue political interference may lead to sanctions by FIFA and/or UEFA that punish clubs in the English football pyramid and the England national team.

#### **Clause 53 and clause 54 (Duty to pay a levy and section 53: consultation and publication): Power for the IFR to make rules regarding the charging of a levy and the consultation and publication required**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

#### Context and purpose

111. This clause gives the IFR the power to charge clubs regular levy payments by making "levy rules". The levy rules must ensure that, in any chargeable year (a rolling period of 12 months beginning on a day to be determined by the IFR), the total amount payable complies with the restrictions specified in the Bill clause 53(3). This is so the levy does not raise more than is needed to cover in aggregate the IFR's ongoing regulatory activity and (as applicable) additional money for new activities or regulatory changes, appropriate financial reserves, covering any overspend or underspend from the previous chargeable period and its set up costs.
112. The IFR must set out in its levy rules the methodology underpinning its levy calculations, alongside provision as to the administration and payment of the levy clause 53(7). Each "licensed club" clause 2(1) is required to pay an amount by way of levy, aside from where conditions specified in levy rules are met (in order to cater for exceptional circumstances such as a club being in financial

distress). The levy rules will explain how the aggregate amount payable by way of levies, is to be divided between the clubs which hold an operating licence during a chargeable period. In calculating how rules may provide as to how much levy is payable by a single club, the Bill requires the IFR to have regard to the financial resources of each licensed club, and to the league or competition of which that club is a member.

#### Justification for taking the power

113. The IFR will be funded by a levy. The government believes regulated clubs should bear the cost of regulation. It is common for regulated industries to cover the costs of the regulatory activities and oversight required in their industry. By making football clubs more sustainable in the long-term, and in so doing creating a more attractive investment environment, the IFR is benefitting the industry. Since the industry would benefit from regulation, it is logical that it should cover the cost. The sustainability of football clubs is also in the wider public interest, given their importance to local communities nationwide. Additionally, football is a wealthy industry and the likely cost of regulation represents just a tiny fraction of its aggregate annual revenue.
114. To ensure that the principles of proportionality, affordability, consistency, accountability and transparency are observed in the development of the levy, the Bill requires that before making any levy rules, the IFR must consult the Secretary of State, His Majesty's Treasury (HMT), all regulated clubs, and such other persons (which may include fans or league bodies) as the IFR considers appropriate. The IFR must include a draft of the proposed levy rules in any consultation, so relevant stakeholders can see the overall scheme being proposed and have an opportunity to comment. This consultation requirement does not apply to amendments or replacements to levy rules if the IFR considers the changes to be minor.
115. A policy aim running throughout the regime is the desire to construct an operationally independent and agile regime which can respond to new challenges. Giving the IFR discretion to set funding levels helps to protect its independence from government and adapt to future developments in industry financing.
116. The IFR is best placed to apply its understanding of licensed clubs to design an affordable, proportionate and deliverable levy methodology. The requirement for the IFR to consult on its methodology of calculating charges provides assurance that the views of key stakeholders to which the levy is relevant can be factored into the methodology. This will help ensure the model is comprehensive, fair and proportionate and provides industry with an opportunity to engage with the process and inform the levy's design. This approach is common across other regulator levy models.

117. Although the IFR will determine its levy methodology, the IFR will have to lay its accounts before Parliament and have its Annual Funding Requirement reviewed and approved by HMT and DCMS. This will ensure that the amount being levied by the IFR is subject to significant scrutiny.

Justification for the procedure

118. The Bill constrains the IFR in the following ways:

- a. The IFR cannot determine the scope of who may be required to pay the levy. The Bill limits liability for payment of the levy to "licensed clubs" only, which in turn means that the scope of levy rules is limited by a term defined in primary legislation as per clause 2.
- b. When preparing the levy rules, the IFR is required to adhere to the five requirements in clause 53(3). Each of these provisions identifies a relevant financial element and uses these collectively as a ceiling for the purposes of calculating the aggregate amount of levy payable.
- c. The effect of clause 53(7) is that the levy rules are required to be wholly transparent as to the methodology for calculating individual levies. Moreover, the key issue of why one club might pay more or less levy in comparison to another is developed in clause 53(9), to make clear that the calculation of individual levies must take into account (from a proportionality and affordability perspective) the financial resources of each the licensed club, and the league or competition of which that club is a member, in addition to any further relevant factors.
- d. There is a requirement to consult with government (the Secretary of State and HMT) and stakeholders (all regulated clubs), and for that consultation to include a draft of the levy rules. The IFR is also required to publish levy rules once made, and to notify the Secretary of State under clause 90(7). This consultation requirement does not apply to amendments or replacements to levy rules if the IFR considers the changes to be minor.
- e. Clause 54(4) for additional transparency requires the IFR to publish a range of financial data, including the individual levy payments payable by all licensed clubs, with an appropriate explanation of how these payments have been calculated, before the start of each chargeable year. This is in addition to its preparation of annual accounts, which must be audited and laid before Parliament along with its annual report as per clause 14 and paragraph 32 of Schedule 2.

119. The government believes these constraints are sufficient and that it would be

disproportionate to provide any further parliamentary scrutiny than that already proposed in relation to the levy rules. This is because the requirements set out in the Bill should ensure that Parliament and football stakeholders are provided with regular information as to how the levy is calculated, and shared between licensed clubs. These requirements also ensure ongoing transparency and accountability to Parliament as regards the IFR's costs.

## **PART 6 - DISTRIBUTION OF REVENUE**

### **Clause 56 (Part 6: overview and interpretation): Power for the Secretary of State to define 'relevant revenue'**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### **Context and purpose**

120. This Part of the Bill ('Distribution of Revenue') relates to the resolution process around the distribution of relevant revenue between the relevant parties (i.e. the 'specified competition organisers', which includes the Premier League, the EFL and the National League) and their constituent clubs. In this context, the relevant revenue is broadcast revenue,<sup>1</sup> as this is the predominant source of income for the specified competition organisers. This clause enables the Secretary of State to specify other types of revenue as 'relevant revenue' if, at some point in the future, those other types of revenue become the relevant parties' predominant source of income.
121. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

#### **Justification for taking the power**

122. This Part of the Bill refers to the resolution process around the distribution of broadcast revenue because this is the relevant parties' predominant source of income. Currently, the structure of the football industry means that the leagues derive the majority of their revenue from the sale of the rights to broadcast football matches. The resolution process is designed to help ensure that the relevant parties can reach an appropriate agreement on the distribution of broadcast revenues.
123. However, it is possible that broadcast revenues will not be the relevant parties'

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<sup>1</sup> Defined as the revenue received as a result of the sale or acquisition of the rights to exploit the broadcasting of association football matches.

predominant source of income in the future. For instance, the structure of the football industry may shift and leagues may derive the majority of their revenue from the sale of other goods, services or rights. This power allows the Secretary of State to designate other sources of revenue as within scope in order to future-proof the policy. In particular, if the broadcast revenues are replaced by another revenue stream, then the definition of relevant revenues needs to change to ensure the resolution process continues to achieve the policy aim of ensuring the relevant parties can reach an appropriate agreement on the distribution of revenues.

124. It is not possible to know, at this stage, what each of the relevant parties' predominant source of future income are going to be. Preempting possible future changes to income streams would mean significantly broadening the scope of the dispute resolution mechanism but this could have unforeseen implications for the commercial interests of the football industry. As such, it is necessary to delegate this power to the Secretary of State to be able to make changes in the future, at the right time, if required.

#### Justification for the procedure

125. Any changes to the definition of relevant revenue would not change the nature of the IFR's targeted powers to intervene in the distribution of revenues as a last resort, it would just ensure that the IFR's targeted powers to intervene were applied to the appropriate revenue streams. In addition, the Bill places safeguards on the Secretary of State's ability to use this power: the Secretary of State must consult the IFR; the FA; and the specified competition organiser before making regulations under this power; and, may not make regulations under this power unless there has been a material change in circumstances affecting relevant revenue.
126. That said, as this is a Henry VIII power, the affirmative resolution procedure is considered appropriate. This will ensure that Parliament has the opportunity to scrutinise any changes. This is in keeping with the views published by the DPRRC in recent reports and the government's subsequent response to the DPRRC on a number of recent bills including the Higher Education and Research Act 2017 and the Illegal Migration Act 2023.

#### **Clause 64 (Part 6: Review of distribution orders, payments of costs, etc): Power for the IFR to make rules specifying the payment of costs incurred under Part 6 (Distribution of Revenue)**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

### Context and purpose

127. Part 6 of the Bill (Distribution of Revenue) sets out the resolution process around the distribution of revenue, which can be initiated by the IFR at the request of a specified competition organiser. Under this process, the relevant specified competition organisers are required to take part in a mediation around the distribution of relevant revenue between them, and where no agreement is reached, the IFR (by Expert Committee) can make an order as to the distribution of revenue between them.
128. As part of this, the IFR may make rules relating to how, and by whom, costs incurred under this section (e.g. the appointment of a mediator and the time of the Expert Committee) are to be paid.

### Justification for taking the power

129. Conferring this power on the IFR is appropriate as there will need to be some flexibility regarding the rules around how the costs incurred under the resolution process are to be paid. It would not be appropriate for legislation to set these rules out as the most appropriate approach may vary depending on circumstance and may change over time.
130. The IFR needs to be able to exercise its expert technical judgement from a position that is more informed than the government or Parliament can be expected to be during the passage of primary legislation, particularly as the IFR will have ongoing operational experience and will understand the unique industry of professional men's football more comprehensively. This approach affords the IFR the ability to design and implement the technical details of its regime as it considers appropriate, within the framework set by primary legislation.
131. As per clause 90, the IFR may make rules for the purposes of the Bill. The IFR must consult with the relevant leagues, and any other persons it considers appropriate, before making rules (unless those rules are minor).
132. When publishing its rules, as well as when it carries out its other functions, the IFR will be required to have regard to its regulatory principles (clause 8), including acting consistently and as transparently as reasonably practicable. This is an additional safeguard on the IFR's power to establish rules.

### Justification for the procedure

133. In all of its responsibilities, including setting rules under this clause, the IFR has to work within its general duties, objectives and regulatory principles. For example, its regulatory principle of proportionality. These duties and principles act as a further safeguard on the IFR's discretion to use this rule-making power.



134. A parliamentary procedure is considered unnecessary since this power relates to the operational procedures of the IFR. In particular, it relates to how costs are to be paid. The IFR will be best placed to make this determination, which may need to vary depending on the circumstances.
135. Parliamentary involvement in such technical, operational details would also risk suggestions of undue political interference in the governance and regulation of football.

## **PART 7 - INVESTIGATORY POWERS ETC**

### **Clause 66 (Reports on clubs by expert reporters): Power for the IFR to delegate its information gathering powers to an expert reporter**

*Power conferred on:* An expert reporter

*Power exercised by:* Notice

*Parliamentary procedure:* None

#### **Context and purpose**

136. This power enables the IFR to delegate its information gathering powers to an expert reporter. Subsection (1) enables the IFR to appoint a person (referred to as an “expert reporter”) to prepare and provide it with a report on any matter, where the IFR considers that a report on the matter is necessary for exercising its functions in relation to a regulated club. Subsections (4) to (6) replicate the information gathering powers that the IFR has in clause 65 - but instead of the IFR exercising those powers, they are delegated to the expert reporter, for the purpose of preparing and providing the IFR with a report. The powers enable the expert reporter to request specified information that is necessary for the preparation of its report. The person from whom the information has been sought may also be required to take copies and extracts from information; to obtain or generate information; collect and retain information not otherwise retained; and to enquire why any relevant information was not submitted.

#### **Justification for taking the power**

137. The IFR is likely to appoint an expert reporter to provide a report where it considers that a greater quantity or detail of information is required from a club and any associated persons, where information might need to be gathered first hand or on a more continuous basis over a period of time, and/or where the IFR would benefit from the expert reporter’s abilities to synthesise and interpret that information. The delegated power will facilitate this, by ensuring that the expert reporter is able to take full control of the production of their specific report, and has the necessary authority to obtain the relevant information from the person(s) concerned in a time and cost efficient manner.

### Justification for the procedure

138. A parliamentary procedure is not considered necessary for this power, since it is a natural part of implementing one of the IFR's functions. The power for the expert reporter to request information is supplemental to its purpose of providing the IFR with a report. It is appropriate for the IFR to determine when a report from an expert reporter is necessary, since this is a technical aspect of delivering its regulatory regime. The IFR is an operationally independent body and should need no recourse to the Secretary of State or Parliament in carrying out these operational functions.

### **Clause 66 (Reports on clubs by expert reporters): Power for the IFR to make rules for the payment of expenses incurred in relation to the appointment of an expert reporter**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

### Context and purpose

139. This clause empowers the IFR to appoint an expert reporter to prepare and provide the IFR with a report into any matter relevant to a regulated club or the exercise of the IFR's functions in relation to that club. It is expected this will typically be done to enable the IFR to gather detailed, first-hand information that the IFR itself has been unable to obtain or considers it will be unable to obtain through other means, and to benefit from the expertise of the expert reporter. For example, it may be used as an investigatory tool where the IFR suspects an infringement may have taken place, has reason to doubt the reliability of a club's reporting, or has concerns about the financial health or internal operations of a club.
140. The delegated power permits the IFR to make rules requiring the club concerned to pay any expenses incurred by the IFR in relation to the appointment of the expert reporter, or expenses incurred by the expert reporter in the preparation of their report.

### Justification for taking the power

141. The power will ensure the IFR and/or expert reporter can be reimbursed for the additional costs arising from the expert reporter's appointment and work. The exercise of the power to appoint an expert reporter is expected to be uncommon and clearly club-specific. As such, it should be possible for the IFR to recoup the discrete costs of this non-regular regulatory activity from the club concerned, where appropriate, rather than rely on its annual funding

requirement (funded through the levy).

142. The ability to set rules with regard to the recovery of expenses from a club gives the IFR the necessary discretion as to whether or not to recover costs and in what circumstances. For example, for a club with lower financial means that is in financial distress through little/no fault of its own, the IFR may consider it appropriate not to recover the costs or all of the costs from the club concerned, or to delay cost recovery until the club is on firmer financial footing. This power enables the IFR to act as it sees fit in any given circumstance, given the wide range of clubs that fall under its regulatory remit.

#### Justification for the procedure

143. As above, the IFR will be best placed to determine whether, what proportion, and how (e.g. over what period), costs should be recovered from clubs in relation to the appointment of an expert reporter. This may need to vary by the circumstances of the club concerned, or the circumstances under which the expert reporter was appointed. As such, it is most appropriate to leave this detail to the IFR.
144. Parliamentary involvement in such technical, operational details would also risk suggestions of undue political interference in the governance and regulation of football.

### **PART 9 - REVIEWS**

#### **Clause 82 (Request for internal review): Power for an applicable reviewer to suspend the effect of the decision under review**

*Power conferred on:* An applicable reviewer in relation to a reviewable decision

*Power exercised by:* Directions

*Parliamentary procedure:* None

#### Context and purpose

145. Clause 82 permits a concerned person (defined in clause 81 as a person who appears to the IFR to be directly affected by a decision) to request an internal review when the IFR makes a reviewable decision. The reviewable decisions are listed in Schedule 10, along with which person is the 'applicable reviewer' for each decision. The applicable reviewer is either a committee of the IFR's Expert Panel, or the Board, depending on the reviewable decision in question. An internal review does not suspend the effect of the decision, except if a direction to the contrary is given by the applicable reviewer. Hence, the power delegated is to the applicable reviewer to make a direction to the contrary. But the applicable reviewer may not give a direction to the contrary in relation to a

small subset of decisions, including: i) when a discretionary licence condition is attached/amended under the urgent procedure, ii) an urgent direction, iii) directing an unsuitable owner/officer to cease their involvement at the club, iv) specifying a competition as prohibited, and v) the suspension or revocation of an operating licence in response to the third aggravating condition (which is that an infringement jeopardises the IFR's ability to advance one or more of its operational objectives). We note that clause 84 confers a similar power on the Competition Appeal Tribunal to give a direction suspending the effect of a decision, in respect of appeals brought before it.

#### Justification for taking the power

146. This clause delegates power to a reviewer (either a committee of the Expert Panel or the Board) to determine whether the effect of the decision under internal review should be suspended pending the outcome of the review. However, this discretion does not apply to the decisions specified in this clause, which are all of an urgent nature and so suspension pending review is not considered appropriate in any circumstance.
147. In general, decisions that need to take immediate effect in order to deliver the intended effect should not be suspended pending internal review. For example, an urgent direction will only be imposed to address an immediate risk, and so suspending the effect of the direction would undermine the power's intended function. It may be more appropriate to suspend decisions that are less urgent and may have irreversible impacts on a person, while awaiting the outcome of a review. This is common for the appeals of certain decisions by public bodies. For example, issuing a censure statement may result in reputational damage to a person that is difficult to reverse following a successful review. The always-urgent nature of some decisions is known now and so these decisions are explicitly made non-suspensive in primary legislation. However, for many decisions, it is not possible to know the exact context in which they are made and so whether suspension is appropriate or not.
148. Decisions of this kind are inherently dependent on the circumstances of the individual case and thus operational in nature. Delegating this power to the relevant reviewer in the IFR is therefore appropriate as it provides it the opportunity to act swiftly and decisively if necessary.

#### Justification for the procedure

149. The applicable reviewer is best placed to make this determination based on its informed knowledge of the circumstances at hand, and its expert technical judgement. These directions by the applicable reviewer will likely also need to be made at a speed and frequency that is not conducive to parliamentary oversight. For these reasons, it is appropriate to delegate this power to the

applicable reviewer and to have no parliamentary procedure overseeing it.

**Clause 83 (Internal reviews): Power for the IFR to make rules providing for the payment of costs incurred by the IFR in relation to an internal review**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

Context and purpose

150. Clause 83 permits a concerned person (defined in clause 81 as a person who appears to the IFR to be directly affected by a decision) to request an internal review when the IFR makes a reviewable decision. Where the IFR accepts the request, the review will be carried out by either a committee of the IFR's Expert Panel, or the Board, depending on the reviewable decision in question.
151. The delegated power permits the IFR to make rules requiring a concerned person who requested an internal review to pay any costs incurred by the IFR in relation to carrying out the internal review. The IFR may only recover costs where the outcome of the internal review was to uphold the original decision and where that decision has become final (i.e. there has been no appeal or further appeal, or any appeal or further appeal has been dismissed, withdrawn or abandoned). The rules made under this power must require the IFR to have regard to the financial resources of the concerned person in question.

Justification for taking the power

152. The ability of the IFR to recover costs directly from the person requesting an internal review if the review is not 'successful' (i.e. where the reviewer has decided to uphold the original decision), will allow the IFR to be reimbursed for the additional costs arising from unsuccessful challenges of its decisions in certain circumstances.
153. While many unsuccessful reviews will have been brought in good faith where the person believes they genuinely have a case to challenge the decision, this power should help deter concerned persons (e.g. clubs) from challenging regulatory decisions even where they have limited expectation of the decision being varied or cancelled. In other words, it should disincentivise frivolous and/or speculative requests for internal review, which could otherwise overburden and impede the IFR. This will also limit the extent to which the entire regulated population of clubs must, through the levy, carry the cost burden of unsuccessful challenges brought by certain persons.
154. The ability to set rules here gives the IFR the necessary discretion as to

whether or not to recover costs, and the amount of costs to recover, from the concerned person and in what circumstances. For example, if the IFR has concerns about the person's financial circumstances it may consider it appropriate not to recover the costs or all of the costs from the person. Indeed subsection (10) of the clause requires the IFR to take into account the financial resources of the concerned person in question.

155. Therefore, this delegated power enables the IFR to act proportionately, and to not unduly deter genuine challenges of its decisions or limit access to recourse, while still deterring excessive internal review requests.

#### Justification for the procedure

156. The IFR will be best placed to determine whether, what proportion, and how (e.g. over what period) costs should be recovered from concerned persons in relation to unsuccessful internal reviews. This may need to vary by the circumstances of the person concerned, or the circumstances under which the review was requested. As such, it is most appropriate to leave this detail to the IFR.

### **PART 10 - GENERAL**

#### **Clause 86 (Disclosure of information by the IFR): Power for the Secretary of State to amend the list of persons to whom the IFR can disclose information**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

157. This clause confers a power on the IFR to disclose information to both public and private persons listed in subsection (2) and subsection (3), respectively. Information may be disclosed to the public persons in subsection (2) for the purpose of facilitating the exercise of that person's functions, and to the private persons in subsection (3) for a purpose connected with the exercise of the IFR's functions. Subsection (6) confers a power on the Secretary of State to amend the list of persons in subsections (2) and (3) by adding, removing or varying any reference to a person.
158. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation.
159. The power enables the IFR to disclose information to specified persons. The policy intention is that two-way information sharing between bodies responsible for similar or adjacent regulation, and/or with oversight of similar persons, will

help all parties to deliver on their objectives. It is expected that enabling the IFR to disclose information to various persons might encourage those persons to reciprocate by sharing the information they hold with the IFR (and, where necessary, this is provided for in the Bill).

#### Justification for taking the power

160. A power to amend the lists of persons is needed as the information sharing requirements of the IFR may develop and change over time as the IFR's work progresses. Such flexibility is needed to ensure that the persons with whom the IFR can share information remain current and relevant as time passes, to ensure the efficiency and efficacy of the IFR's work.
161. The power enables the Secretary of State to amend, by secondary legislation, the list of persons to whom the IFR may disclose information held in connection with its functions. As the market develops, new issues arise, and the IFR gains experience of implementing its regime, it may determine that there is a need to disclose information held in connection with its functions to other public or private bodies which are not listed. The power enables the lists to be amended as necessary to ensure that the IFR is able to disclose information to the relevant bodies, and that any public or private bodies with whom the IFR no longer needs to share information are removed accordingly.

#### Justification for the procedure

162. As this Henry VIII power allows for the amendment of primary legislation, the affirmative resolution procedure is considered appropriate. This will ensure that Parliament has the opportunity to scrutinise any changes. This is in keeping with the views published by the DPRRC in recent reports and the government's subsequent response to the DPRRC on a number of recent bills including the Higher Education and Research Act 2017 and the Illegal Migration Act 2023.

#### **Clause 87 (Disclosure of information to the IFR): Power for the Secretary of State to enable disclosure of information to the IFR by other public authorities**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

163. This power enables the Secretary of State to make regulations conferring functions on a public authority relating to the disclosure of information to the IFR, for the purpose of facilitating the IFR's functions. In conferring these functions, the Secretary of State can amend, repeal and revoke provision made

by or under primary legislation for the purpose of enabling other public authorities to share information with the IFR or preventing other public authorities from sharing information with the IFR. This power will ensure that the public authorities which may need to disclose information to the IFR in the future are able to do so (if they do not already have the ability to do so by virtue of existing legislation).

164. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

#### Justification for taking the power

165. The power is needed to future-proof the ability of appropriate public authorities to share relevant information with the IFR so that it can effectively deliver its functions. The power enables the Secretary of State to make the necessary amendments, revocations or repeals to the relevant primary legislation of public authorities in cases where the IFR no longer requires information from them or to enable a public authority to share information with the IFR in cases where they are not already empowered to do so through existing legislation. This ensures that the appropriate public authorities are able to disclose information to the IFR where necessary.

166. Those public bodies that the IFR determines at a later date that it would benefit from receiving information from, may not be able to share information if their governing legislation does not permit it. To ensure that the IFR has access to the information it needs to discharge its functions, it is crucial that this power is available to enable such legislative amendments to be made.

#### Justification for the procedure

167. As this power enables the Secretary of State to amend primary legislation through secondary legislation, it is appropriate that the affirmative procedure is applied here to ensure that Parliament has the opportunity to scrutinise any changes. This is in keeping with the views published by the DPRRC in recent reports and the government's subsequent response to the DPRRC on a number of recent bills including the Higher Education and Research Act 2017 and the Illegal Migration Act 2023.

### **Clause 90 (Rules): Power for the IFR to make rules**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

#### Context and purpose



168. This clause delegates power to the IFR to make rules containing provisions that supplement, or that gives effect to, any provision made by the Bill (save the provisions in Schedule 4 which set out the threshold requirements). Rules made under the Bill may make incidental, supplemental, consequential, transitional, or saving provisions, and may make different provisions for different purposes (including in relation to different clubs or different persons). Rules may also confer a discretion on a person - this amounts to a delegated power for the IFR to confer a discretion on any person to make sub-delegated rules.

#### Justification for taking the power

169. This is a common power delegated to statutory regulators. Precedents include: Section 137A of the Financial Services and Markets Act 2000.

170. The approach taken in the Bill is to provide a framework of powers and duties, with discretion for, or in some places duties on, the IFR to determine and specify some of the technical and operational details. This approach reflects regulatory best practice, which is to give a regulator flexibility to adapt regulation to the circumstances of different persons, and to changing circumstances overtime. This is particularly the case for the IFR, which is a new regulator overseeing a dynamic industry within a wider global context. As such, it needs to be able to exercise its expert technical judgement from a position that is more informed than the government or Parliament can be expected to be at the time of passage of primary legislation. This more informed position comes from its specialist expertise, consultation with the industry and other regulatory experts, and practical experience of implementing and fine-tuning its regime over time.

171. All of this means the IFR is best placed to determine the specifics of how its regime should be implemented once fully operational, to support it to achieve its operational objectives, while complying with its statutory duties and regulatory principles.

172. The power delegated by this clause facilitates this approach, by affording the IFR the ability to design and implement the technical and operational details of its regime as it considers appropriate, within the framework set by the Bill. For example, to facilitate the smooth running of its system of licensing, monitoring and supervision, the IFR may need to set supplementary administrative requirements on clubs that are enforceable - this general rule-making power would enable that.

173. The exclusion of Schedule 4 will prevent the IFR from making rules that clubs must follow to meet their threshold requirements. This should instead be done on a club by club basis through attaching discretionary licence conditions on a club's licence.

174. This clause also implicitly delegates power to the IFR to make sub-delegated rules. The justification for this is two-fold: i) to facilitate ambulatory references, and ii) to enable the IFR discretion in how it applies some rules on a case-by-case basis.

- a. The IFR should be empowered to make ambulatory references to external documents in its rules. For example, to i) require that clubs follow specific aspects of industry guidance or rules that may change from time to time, or ii) define a period or process by reference to an existing period or process in the industry that may change from time to time. This may be useful in any general rule that the IFR may make that supplements, or that gives effect to, any provision made by this Act (per clause 90). It is also likely to be useful for some specific rules the IFR is required to make under provisions of the Bill - such as to define the period within which it must make a decision on a provisional licence (in clause 17) by reference to a date in the football calendar, which is stipulated by the relevant competition organiser and may vary from season to season. In such instances, ambulatory references would be simpler and less burdensome than the IFR regularly updating rules.
- b. The IFR should be able to afford itself discretion to vary its application of rules depending on the circumstances. This would amount to a sub-delegation within its rules. While rules should provide up-front clarity and consistency to the regulated industry, there are instances where room for the IFR to exercise discretion in how rules are applied will be helpful or even necessary. This may be useful in any general rule that the IFR may make that supplements, or that gives effect to, any provision made by this Act (per clause 90). Specific rules already in the Bill for which this delegated power is expected to be useful include:
  - i. Where rules relate to cost recovery (e.g. clause 42, clause 44, clause 64, clause 66), the IFR may wish to delegate discretion not to recover costs as it considers appropriate.
  - ii. Where rules specify the information required from a person or document (e.g. clause 15, clause 16), the IFR may wish to delegate discretion to require specific additional information from specific persons.
  - iii. Where rules relate to the circumstances in which the IFR may extend a provisional licence (clause 17), the IFR may wish to delegate discretion to extend in unforeseen circumstances not otherwise specified in the rules.
  - iv. In revenue rules (Schedule 9, paragraph 12), the IFR may wish

to delegate discretion to take an alternative approach to determining revenue/remuneration in rare events that the standard approach specified in rules is not appropriate. For example, to consider alternative sources of income or to make adjustments if the standard approach to calculation yields an amount considered too low to carry a credible deterrent effect.

#### Justification for the procedure

175. The IFR is required to consult the industry and such other persons it considers appropriate before making new rules, or amendments to rules (unless amendments are minor). It is also required to publish any rules it makes, and keep its rules under review to ensure they remain appropriate. Given these procedural requirements, and the fact that this power relates to facilitating an operationally independent, expert, and informed regulator to implement and operate its detailed technical regime, a parliamentary power is considered unnecessary. This rationale extends to any decision by the IFR to sub-delegate within these rules. The IFR will be bound by public law principles, and its duties and regulatory principles, so will not sub-delegate inappropriately.
176. Parliamentary involvement in such technical, operational details would also risk suggestions of undue political interference in the governance and regulation of football.

#### **Clause 91 (Regulations): Power for the Secretary of State to make regulations**

*Power conferred on:* All powers conferred on the Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* The procedure to be followed is established in each of the powers to which this provision relates

#### Context and purpose

177. This clause provides that regulations made under any provision of the Bill may include consequential, supplementary, incidental, transitional or saving provision, as well as different provisions for different purposes. Regulations may also confer a discretion on a person - this amounts to a power for the Secretary of State to make sub-delegated regulations.

#### Justification for taking the power

178. The effect of clause 91 clarifies that the changes that can be made using the powers in the Bill are limited only to those that are needed for the effective implementation of the Bill. It is essential that regulations can deal with the matters listed.

179. Similarly to the power in clause 90 for the IFR to make sub-delegated rules, the power in this clause for the Secretary of State to make sub-delegated regulations will i) facilitate ambulatory references, and ii) enable the IFR to be afforded discretion to determine the details of some regulations.

- a. To maintain a coherent overall regulatory landscape, the IFR's regime will need to interact and co-exist with the many existing rules and guidance in the football industry (both nationally and internationally). As such, it is likely to be beneficial for regulations to be able to make ambulatory reference to these existing rules and guidance. This may help to align regulatory rules or processes, maximise coherence and minimise burdens without the need to regularly amend regulations. One example is the definition of a 'football season' in clause 92, where a future change in the industry might require regulations to amend this definition by reference to industry specific dates, processes, or rules which might vary from time to time.
- b. Some regulations will be technical in nature and so would benefit from the IFR's more informed and expert input. In these instances, it is appropriate that the Secretary of State can afford the IFR discretion to specify some details within regulations or in how it applies certain regulations. For example, the IFR is likely to be best placed to determine the additional revenue to be included within 'relevant revenue' in clause 56, since it will have a greater understanding of the market, revenue flows and trends.

#### Justification for the procedure

180. No specific procedure is specified in clause 91 as it is a supporting power. Rather, the procedure to be followed is established in each of the powers to which this provision relates.

#### **Clause 92 (Minor definitions): Power for the Secretary of State to amend the definition of "serious criminal conduct"**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

181. The source of wealth assessment is a part of the IFR's suitability assessment for owners of clubs, alongside the fitness test and the requirements to submit a strategic business plan and have sufficient resources to buy and run the club. The purpose of the source of wealth assessment is to prevent illicit finance from

flowing through clubs, as financial sustainability and resilience of football clubs is incompatible with the presence of illicit finance in the football pyramid. The IFR assesses an owner's sources of wealth for connections to serious criminality, to mitigate against serious harm to the financial sustainability of the pyramid. Serious criminality is defined by reference to the serious offences listed in Part 1 of Schedule 1 to the Serious Crime Act 2007. The purpose of the power in subsection (3)(b) is to allow the Secretary of State to add, amend or exclude an offence the IFR must be assessing for, when determining whether an owner's source of wealth is connected to serious criminal conduct.

182. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

#### Justification for taking the power

183. The government is committed to tackling illicit finance in football for the benefit of the financial sustainability of the game. Given illicit financial flows and serious organised crime are always mutating and adapting, it is appropriate that the IFR is able to take account of new and novel offences in years to come.

184. The power in subsection (3)(b) ensures the IFR is able to assess an owner's sources of wealth for connections to other offences that are not listed in Part 1 of Schedule 1 to the Serious Crime Act 2007, should it be identified that the proceeds of crimes other than the predicate offences listed in that Act are flowing into the English football pyramid in a way that threatens its financial sustainability.

185. As an additional procedural safeguard, the Secretary of State must consult with such persons as they think appropriate when amending the definition of serious criminal conduct. This would likely include the IFR, the Ministry of Justice (as the Department responsible for the Serious Crime Act 2007) and the National Crime Agency.

#### Justification for the procedure

186. The affirmative procedure is considered appropriate because regulations made under the power in subsection (3) would require the IFR to assess connections between owners and an amended definition of serious criminal conduct as part of the IFR's suitability assessment. As such, given this power may impact whether an owner may pass or fail the IFR's source of wealth assessment, a higher degree of parliamentary scrutiny is considered appropriate.

### **Clause 92 (Minor definitions): Power for the Secretary of State to amend the definition of "season"**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

187. “Season” is defined in clause 92 as the period beginning with the date in a particular year on which the first match of a specified competition is played, and ending with the date in the following year on which the final match of a specified competition is played. The is designed to ensure that there are clear boundaries between when teams are actively competing (i.e. playing matches) in specified competitions. Seasons are an established concept within the football industry but are typically defined by each competition organiser in relation to their own competition. They are an important measure of time in the industry, particularly since clubs move from the jurisdiction of one competition to another (through promotion and relegation) in the time between seasons. The concept of a season is relevant to various provisions throughout the Bill, including when a licence revocation can take effect, the period a strategic business plan must cover, and the length of distribution arrangements in force. For licence revocation, for example, it is important that this takes effect between seasons to avoid disrupting sporting competitions mid-season. The delegated power in subsection (3)(a) is for the Secretary of State to amend the definition of season.

#### Justification for taking the power

188. In order to future proof any changes to the footballing calendar, the Secretary of State has the power to amend the definition of “season”. For example, it is unlikely but possible that a specified competition in the future might be organised in a unique way (e.g. not spanning across two calendar years) for which the current definition would not function properly.

#### Justification for the procedure

189. For the definition of season, where the power is exercised to amend or repeal primary legislation, it is considered that the affirmative procedure is appropriate as it provides the appropriate level of parliamentary scrutiny. This is in keeping with the views published by the DPRRC in recent reports and the government’s subsequent response to the DPRRC on a number of recent bills including the Higher Education and Research Act 2017 and the Illegal Migration Act 2023.

**Clause 96 (Payments into the consolidated fund): Power for Secretary of State to give a direction to the IFR in connection with its duty to pay relevant receipts into the Consolidated Fund after deducting litigation costs**

*Power conferred on:* The IFR

*Power exercised by:* Directions

*Parliamentary procedure: None*

Context and purpose

190. This power ensures the IFR returns funds paid in respect of its initial costs and the Secretary of State's establishment costs to the Consolidated Fund. It also ensures that all financial penalties (penalty receipts) (including interest) must be paid by the IFR to the Secretary of State (who in turn must pay sums into the Consolidated Fund) excluding any amount as may be directed by the Secretary of State, in respect of costs incurred by the IFR for the purposes of litigation.
191. Secretary of State directions may direct the timing of the deduction of litigation costs, and payment of sums to the Secretary of State.
192. Secretary of State directions may require the IFR to provide the Secretary of State at specified times with specified information relating to the IFR's litigation costs.

Justification for taking the power

193. In the first instance, all litigation costs should be covered by the IFR's litigation budget, and it is expected that the IFR will forecast reasonable legal costs with contingency through the levy setting process.
194. The power is necessary to allow the Secretary of State to allow the IFR to potentially also use penalty receipts to cover litigation costs.
195. Alternative funding sources, such as the use of penalty receipts may be needed to address unforecasted scenarios such as the IFR losing a legal case and having to cover the costs of the opposing party (where it may not be appropriate for the core funding derived from the levy to cover the costs), or an increase of cases brought in a single financial year.
196. In these potential scenarios, there would be precedent for the IFR to cover its litigation costs by using penalty receipts as shown by the approach taken by the Financial Conduct Authority (FSMA 2000) in respect of enforcement costs.
197. The Secretary of State, the IFR and HMT will be required to define the scope of litigation costs and agree a netting off agreement to allow the IFR to use fine income and interest payable on fine income to cover legal costs that are in excess of the IFR's litigation budget.
198. This will be subject to a capped amount per financial year and monitored by DCMS to ensure that there is not a disproportionate increase in enforcement for the purpose of revenue raising.

Justification for the procedure

199. These provisions relate to operational and administrative matters and are not legislative in character. For this reason, and because this is a technical detail related to the practical implementation of the IFR's enforcement regime, no parliamentary procedure is considered necessary.

**Clause 97 (Minor and consequential amendments): Power for the Secretary of State to make consequential provision**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Negative resolution (if it does not amend primary legislation), otherwise draft affirmative resolution

Context and purpose

200. Clause 97, subsection (2) confers a power on the Secretary of State to make regulations that make consequential provision for the purposes of the Bill. By clause 97, subsection (3), these regulations may amend, repeal or revoke primary and secondary legislation. This power is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

Justification for taking the power

201. Some consequential amendments have already been identified in Schedule 12 of the Bill and the government will endeavour to identify any additional consequential amendments to primary legislation. However, it is possible that others have been missed. The government considers it appropriate to enable true consequential amendments to be made by regulations in order to ensure that the changes effected by the Bill can be effectively delivered, mitigating the risk of undermining the operation of the new IFR and regulatory system if a provision were missed. The government deems this to be particularly important in this case as the establishment of a brand new regulator in a challenging, dynamic commercial environment that has not previously been subject to significant regulation increases the likelihood of it needing to return to the proposed regulatory settlement in the future.

Justification for the procedure

202. If regulations under this clause amend or revoke secondary legislation, they are subject to the negative procedure (as laid out in clause 91, subsection (4)). It is considered that a negative procedure is appropriate given that the nature of any amendments will be consequential upon, and therefore only those which arise naturally from, provisions in the Bill.

203. Where the power is exercised to amend or repeal primary legislation, it is



considered that the affirmative procedure is appropriate as it provides the appropriate level of parliamentary scrutiny. This is in keeping with the views published by the DPRRC in recent reports and the government's subsequent response to the DPRRC on a number of recent bills including the Higher Education and Research Act 2017 and the Illegal Migration Act 2023.

**Clause 99 (Commencement): Power for the Secretary of State to bring provisions of the Bill into force by commencement regulations**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* None

Context and purpose

204. This clause provides a power for provision which is not brought into force on the face of the Bill to be brought into force by regulations made by the Secretary of State.

205. Subsection (5) provides that such regulations may make different provision for different purposes.

Justification for taking the power

206. The precise timing for commencement of provisions is delegated to a Minister in order to deal with the vicissitudes of implementation.

207. In order to give effect to a smooth adoption of the new legislation, the power to make transitional or saving provision in connection with the coming into force of a provision of the Bill has been included.

Justification for the procedure

208. As is common with commencement regulations bringing into force an enactment and making no substantive provision, it is considered that in respect of these regulations no parliamentary procedure is indicated.

**SCHEDULE 1 - MEANING OF "OWNER"**

**Schedule 1, paragraph 15 (meaning of "owner"): Power for the Secretary of State to issue guidance on the meaning of significant influence or control**

Power conferred on: The Secretary of State

Power exercised by: Guidance

Parliamentary procedure: Quasi-negative resolution

### Context and purpose

209. Schedule 1 defines owners of clubs for the purposes of the Bill. Those persons defined as owners of clubs are subject to requirements in the Bill, including the IFR's suitability requirements for owners. Determining which persons are owners of clubs is critical to the effectiveness of the IFR's regime as owners have a significant direct or indirect impact over a club's finances.
210. Paragraph 2 of Schedule 1 outlines the conditions for being an owner of a club. Condition 1 is that the person has the right to exercise, or actually exercises, significant influence or control over the activities of the club (in whole or in part).
211. Paragraph 15 places a duty on the Secretary of State to issue guidance on the meaning of significant influence or control for the purposes of this Schedule. The IFR must also have regard to this guidance when interpreting references to significant influence or control in this Schedule.

### Justification for taking the power

212. Condition 1 of being an owner is critical to Schedule 1 as it captures persons who may not automatically be captured by conditions 2-5, but who otherwise have significant influence or control over the activities of the club.
213. Ownership structures of professional football clubs have become more and more complex in recent years, with trusts, publicly listed companies and overseas entities such as sovereign wealth funds or private equity funds, all buying clubs in recent years. In the future, it is likely that ownership structures become more and more complex as the quantity of finance in the game continues to grow. Given this increasing complexity, Condition 1 will likely be used to define owners of clubs more often in years to come.
214. Given the importance of Condition 1 to the regime, it is right that industry stakeholders, and more importantly those persons who may be captured under Condition 1, can be sure on the meaning of significant influence or control over the activities of the club. The importance of this is reflected in the Secretary of State being required to issue this guidance, subject to parliamentary oversight. This will a) provide more clarity and certainty to industry, b) ensure the IFR applies Condition 1 consistently and effectively, and c) having applied the guidance consistently and effectively, and in line with Schedule 1, this guidance will protect the IFR from appeal liability as the Bill states the IFR must have regard to this guidance when interpreting references to significant influence or control for the purposes of Schedule 1.
215. There is precedent for taking this power. Schedule 1A of the Companies Act 2006 required the Secretary of State to issue statutory guidance about the meaning of the term "significant influence or control" for the purposes of the Bill.

### Justification for the procedure

216. The quasi-negative resolution procedure is considered appropriate for this power because the guidance needs to be in place before the IFR can start defining owners, which is critical to the regulatory regime. Should the guidance not be in place before clubs start applying for their provisional operating licences, which requires clubs to submit a personnel statement detailing who their owners are, the IFR cannot refer to it when determining which persons are captured by condition 1 in Part 1 of Schedule 1. There is an increased risk with an affirmative procedure that Parliament would still be scrutinising the guidance at the point the IFR would be expected to define owners, including under the condition relating to significant influence or control.

### **Schedule 1, Part 3, paragraph 16 (meaning of “owner”): Power for the Secretary of State to amend thresholds in Schedule 1**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Affirmative resolution

### Context and purpose

217. The identification of a club owner for the purposes of the Bill is determined by applying the criteria in Schedule 1.

218. Effectively determining which persons are the owner(s) of a club is critical to the effectiveness of the IFR’s regime of ensuring clubs’ financial sustainability. This is because it is vital that those who have significant control over a club or a significant financial interest in the club are subject to regulatory requirements, ensuring that they are suitable to be an owner of a football club.

219. Part 3 of this Schedule (paragraph 16) permits the Secretary of State to amend Schedule 1 for the limited purposes specified in that provision. As such, this is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

### Justification for taking the power

220. The power is necessary to allow for amendment, if needed in the future, to take account of different means and structures of control that are not currently covered in Schedule 1 but which later become apparent are being used by persons to exercise control over clubs while circumventing regulation.

221. Ownership structures of professional football clubs have become more and more complex in recent years, with trusts, publicly listed companies and

overseas entities such as sovereign wealth funds or private equity funds, all buying clubs in recent years. In the future, it is likely that ownership structures become more and more complex as the quantity of finance in the game continues to grow. This delegated power provides flexibility regarding the definition of an owner, ensuring the effectiveness of the regime into the future.

222. Though this is a Henry VIII, Parliament will scrutinise Schedule 1 as part of the passage of the primary legislation, providing Parliament the opportunity to scrutinise a wide and comprehensive definition of an owner. Given Parliament will scrutinise Schedule 1 and the delegated power only provides the Secretary of State the power to amend Schedule 1 for a permitted purpose, which in turn will be scrutinised by Parliament, the government believes this delegated power is justified.

#### Justification for the procedure

223. As this power allows Schedule 1 of the Bill to be amended, it is right that any proposal to broaden its scope is subject to the affirmative procedure to allow appropriate parliamentary scrutiny.

224. This approach matches that taken in relation to comparable concerns with control in paragraph 26(3) of Schedule 1A to the Companies Act 2006 and paragraph 15 of Schedule 13 of the National Security Act 2023.

## **SCHEDULE 2 - THE INDEPENDENT FOOTBALL REGULATOR**

### **Schedule 2, paragraph 17(1) (“The Independent Football Regulator”): Power for the IFR to delegate some of its functions to listed persons**

*Power conferred on:* The IFR

*Power exercised by:* Determination by the IFR

*Parliamentary procedure:* None

#### Context and purpose

225. Paragraph 17(1) gives power to the IFR’s Board to delegate any of its functions (other than those functions listed in paragraph 19 of the Schedule) to those listed in that paragraph. This provision enables the IFR to use their discretion to determine the extent and terms of the function which needs to be exercised, and who best to exercise that function.

226. The IFR’s functions can be delegated by the Board to: a member of the IFR’s Board, a member of the IFR’s staff, a committee of the Board, or the Expert Panel.

#### Justification for taking the power

227. This delegation of power is necessary for the IFR to be able to carry out its day-to-day operations effectively and efficiently. Clearly, although the Board is responsible for all aspects of the IFR's functions, it cannot practically exercise all those functions by itself. This power enables the Board to delegate to other persons within the IFR (including to the operationally independent Expert Panel), or to committees it has constituted. This will allow the IFR to ensure functions are carried out and decisions are taken by those with the appropriate expertise and seniority, and to manage its resources as it considers appropriate.

#### Justification for the procedure

228. Parliamentary procedure is considered unnecessary for this power. It is appropriate for the IFR to have autonomous control over such operational matters. Not only would it be impractical, disproportionate and overly burdensome for Parliament to scrutinise the day-to-day operations of the IFR, but it would also undermine the IFR's operational independence.

#### **Schedule 2, paragraph 22(3) ("The Independent Football Regulator"): Power for the Secretary of State to change the statutory minimum number of members of the Expert Panel**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

229. This power allows for the Secretary of State to change the statutory minimum number of members of the Expert Panel. It is necessary to have this flexibility in order to future-proof the IFR and to be able to adapt to evolving circumstances.

230. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

#### Justification for taking the power

231. Having a minimum number of Expert Panel members set in statute is essential to ensure there are always a sufficient number of members available to exercise the Panel's functions when required. For example, the minimum number is set at six as a committee of the panel must consist of three members to take a decision. For example, an enforcement decision. If an internal review of that decision is requested, then three *new* members will need to form a committee to carry out the review. A statutory minimum ensures the IFR is always equipped to carry out the functions required of it by the Bill and/or the IFR's Board.

232. While the current minimum number of panel members ensures the IFR will be able to function effectively, it is appropriate to have the power to amend this once the IFR is established and this has been tested. The approach allows for a more agile response to any changes, for example, if the number of enforcement or appeal decisions which need to be taken by the Expert Panel outweigh the number of available panel members, this could cause delays to the IFR's day-to-day operation and could affect the effective functioning of the clubs being regulated.

Justification for the procedure

233. As this Henry VIII power allows for the Secretary of State to amend the primary legislation which establishes the minimum number of members on the Expert Panel, it is considered that it should be subject to the affirmative procedure. This will allow appropriate parliamentary scrutiny.

**Schedule 2, paragraph 27(5)(b) (“The Independent Football Regulator”):  
Power for the IFR to replace members of the Expert Panel and Expert Committee**

*Power conferred on:* The IFR

*Power exercised by:* Directions

*Parliamentary procedure:* None

Context and purpose

234. An Expert Panel will be appointed by the Chief Executive Officer (CEO) of the IFR. The CEO will constitute committees from the Expert Panel for the purpose of issuing decision notices (clause 77) and carrying out internal reviews (clause 83) for certain decisions.

235. Paragraph 27(5b) gives the power to the IFR in relation to the function of the Expert Panel in the circumstances where a member of the committee, for any reason, ceases to be a member of that committee. In this circumstance, the CEO can replace that member of the Expert Panel and the committee can continue to function without affecting the work already started by the committee, this is unless the CEO directs otherwise.

Justification for taking the power

236. This power of direction is necessary to ensure the committee and its decisions are not compromised by the loss, resignation or removal of an Expert Panel member. Where the committee and its decisions might be compromised, the CEO might use the power to direct the process to start again or a new committee to be formed. These types of decisions being taken by the Expert

Panel include enforcement of licence conditions and can include imposing a financial penalty on a club.

#### Justification for the procedure

237. Parliamentary procedure is considered unnecessary for this power. It is appropriate for the IFR to be empowered to give directions as it sees fit regarding operational matters. Not only would it be disproportionate and overly burdensome for Parliament to scrutinise the day-to-day operations of the IFR, but it would also undermine the IFR's operational independence.

#### **Schedule 2, paragraph 32(2) (“The Independent Football Regulator”): Power for the Secretary of State to direct the IFR as to the form and content of its annual statement of accounts**

*Power conferred on:* The Secretary of State

*Power exercised by:* Directions

*Parliamentary procedure:* Lay before Parliament

#### Context and purpose

238. Paragraph 32(1) of Schedule 2 requires the IFR to prepare a statement of accounts in respect of each financial year. Paragraph 32(2) allows the Secretary of State to direct the IFR as to the form and content of each statement of accounts, as well as the methods and principles to be adopted in preparing it. The Secretary of State can also direct the IFR to include additional information for Parliament.

#### Justification for taking the power

239. The power to direct enables the Secretary of State to ensure the IFR produces its statements of account in a consistent form which can easily be compared with previous statements. The IFR is also able to ensure that the content satisfies the changing requirements for accounting for public money.

#### Justification for the procedure

240. The Secretary of State must lay copies of the IFR's annual accounts (as well as the Comptroller and Auditor General's report and certified statement) before Parliament in the usual way for the purposes of scrutiny.

#### **SCHEDULE 3 - TRANSFER SCHEMES:**

**Schedule 3 (“Transfer Schemes”): Power for the Secretary of State to create one or more transfer schemes in relation to the transfer of property, rights and liabilities from DCMS to the IFR**

*Power conferred on:* The Secretary of State

*Power exercised by:* Scheme

*Parliamentary procedure:* None

#### Context and purpose

241. The IFR will be set up in shadow form within DCMS prior to the passing of the Bill. This will enable the IFR to hit the ground running once it is legally established and more quickly achieve the expected benefits from the passing of the Bill.
242. Upon the creation of the IFR, it will be necessary for property, rights and liabilities held by the 'shadow regulator' within DCMS to be transferred to the former.

#### Justification for taking the power

243. The most appropriate vehicle for effecting these transfers will be a statutory transfer scheme, as is commonly used in similar situations involving transfers of assets following transfers of functions between public bodies. The details of such transfers, along with any associated rights and liabilities to be transferred, will be determined at that time.

#### Justification for the procedure

244. The transfer schemes are likely to include more technical detail than is normally included on the face of a bill. As the schemes would be concerned with administrative and operational detail and involve transfers from a government department to a specially created statutory body, a detailed parliamentary consideration of the schemes would be unnecessary and an inappropriate use of scarce parliamentary time.

### **SCHEDULE 5 - MANDATORY LICENCE CONDITIONS:**

#### **Schedule 5 Part 1, paragraph 6(2) to 6(4) ("Mandatory licence conditions"): Power for the IFR to prepare and publish a corporate governance report**

*Power conferred on:* The IFR

*Power exercised by:* Published report

*Parliamentary procedure:* None

#### Context and purpose

245. Paragraph 6 confers a duty on the IFR to prepare and publish a corporate governance report. The report will be based on the corporate governance



statements of regulated clubs, and will summarise: the extent to which regulated clubs are applying the IFR's corporate governance code, the action they are taking with regards to equality, diversity and inclusion, the main issues in clubs' corporate governance, and recommendations for ways that clubs could improve corporate governance. The objective of such a report would be to increase transparency around regulated clubs' corporate governance arrangements (thereby providing reputational incentives for clubs to improve corporate governance), and to identify and share best practice.

#### Justification for taking the power

246. The publication of the corporate governance report plays an important role in encouraging better and more effective corporate governance arrangements at football clubs. Given corporate governance arrangements at football clubs will change and require ongoing monitoring, and the fact that it is a regular publication, the IFR is best placed to undertake and publish this report.

#### Justification for the procedure

247. A parliamentary procedure is considered unnecessary since this power relates to the operational procedures of the IFR. More specifically, the report is part of the wider regulatory approach to corporate governance and is designed to provide periodic updates on key trends, issues and best practice in clubs' corporate governance arrangements.

248. Additional parliamentary scrutiny would be unnecessary and possibly disproportionate, given that the IFR's preparation of such a code is already constrained by its general duties (clause 7), its operational objectives (clause 6) and its regulatory principles (clause 8). This means that the IFR, for example, must have regard to the desirability of minimising any adverse effects on the competitiveness of regulated clubs and financial investment in clubs, and of acting proportionately.

### **Schedule 5, paragraph 7 (“Mandatory licence conditions”): Power for the IFR to publish code of practice on corporate governance**

*Power conferred on:* The IFR

*Power exercised by:* Statutory code of practice

*Parliamentary procedure:* None

#### Context and purpose

249. This provision gives the IFR the power to publish a Football Club Corporate Governance Code of practice on corporate governance, and the power to keep the code under review and publish alterations or a replacement code. The Bill

then requires that each operating licence is subject to a mandatory condition which requires the club periodically to submit a corporate governance statement to the IFR, setting out how they apply the code (paragraphs 4 and 5 of Schedule 5).

#### Justification for taking the power

250. The Review identified a number of concerns regarding corporate governance at football clubs that contributed to the financial failure of clubs. It recommended that the IFR establish a code of practice as a guidance for clubs to follow best practices in this area.
251. Being central to the delivery of the new licensing regime, the IFR is best placed to use its position in the football industry to engage with stakeholders to design an appropriate code that reflects football's specific circumstances. The requirement in the Bill for the IFR to consult with the FA and those it believes are representative of persons likely to be affected by the code (for example the leagues, clubs, the FSA, etc.) ensures that a suitably wide range of relevant views are taken into account in the design of the code. It will also allow for the industry to contribute to the design of the code and reflect the unique nature of the football industry in how the code will work in practice. This consultation requirement does not apply to amendments or replacements to the IFR's Football Club Corporate Governance Code if the IFR considers changes to be minor.
252. Additionally, a policy aim running throughout the regime is the desire to construct an operationally independent and agile regime which can respond effectively to changing circumstances over time. Giving the IFR the ability to consult on, prepare and publish the code, and subsequent iterations, helps to protect its operational independence from government and ensures that government does not interfere with the due process for consultation with industry.

#### Justification for the procedure

253. A parliamentary procedure is considered unnecessary for this power. The government believes that the specific requirement on the IFR to consult with representatives of those affected by the code, in combination with the amenability of decisions made by the IFR to challenge via judicial review, provide sufficient scrutiny on the design of the code.
254. In addition, the IFR's preparation of such a code is already constrained by its general duties (clause 7), its operational objectives (clause 6) and its regulatory principles (clause 8). This means that the IFR, for example, must have regard to the desirability of minimising any adverse effects on the competitiveness of

regulated clubs and financial investment in clubs, and of acting proportionately.

## **SCHEDULE 9 - SANCTIONS**

**Schedule 9, paragraph 12(1) (“Sanctions”): Power for the IFR to make provisions determining the revenue or remuneration of a club, formerly regulated club, competition organiser, or officer for the purposes of calculating financial penalties**

*Power conferred on:* The IFR

*Power exercised by:* Rules

*Parliamentary procedure:* None

### Context and purpose

255. This power enables the IFR to make provision for determining the revenue of a club, formerly regulated club, or competition organiser and the value of remuneration provided to an officer, for the purposes of calculating the maximum financial penalties applicable to a club, formerly regulated club, competition organiser, owner, senior manager, or other officer. This would be done through ‘revenue rules’ which may, among other things, make provision about amounts which are, or are not, to be included in a club, formerly regulated club, or competition organiser’s revenue or in an officer’s remuneration; and make provision about the date or dates by reference to which the revenue or remuneration is to be determined. The IFR must consult the Secretary of State before making, amending or replacing revenue rules. This consultation requirement does not apply to amendments or replacements to revenue rules if the IFR considers the changes to be minor.

### Justification for taking the power

256. The financial penalties that the IFR can impose need to act as a credible deterrent to non-compliance with its regime. To achieve this, the financial penalties should be tied to the financial benefits a person receives in relation to the regulated activity. For this reason, the Bill sets out that the maximum financial penalty applicable to a club, formerly regulated club, or owner (including where they are a senior manager) is 10% of the club’s revenue, to a competition organiser is 10% of the organiser’s revenue, and to an officer (including where they are a senior manager) is 10% of the officer’s remuneration.

257. The power delegated to the IFR here is to define exactly what constitutes ‘revenue’ and ‘remuneration’. It is appropriate to leave this to the IFR to determine, since these are not always straightforward. For example, the revenue of a club or competition organiser may be dispersed through a complex

corporate structure or disaggregated between different business areas. Equally, the way an officer is remunerated might vary and not be through a typical salary.

258. The IFR needs the ability to react to these possible variations, and ensure its definitions of revenue and remuneration appropriately capture them all. This will require a greater understanding of clubs, their finances, and their owners and officers than Parliament can be expected to have at the time of passage of primary legislation. The definitions may also need to change in the future to react to changes in the market, the way clubs and competitions are run, and crucially to protect against circumvention where persons attempt to artificially 'reduce' their revenue or remuneration.

#### Justification for the procedure

259. The IFR will be required to consult the Secretary of State before making, amending or replacing revenue rules (unless amendments are minor). This will introduce an appropriate level of scrutiny to the IFR's exercise of this power. For this reason, and because this is a technical detail related to the practical implementation of the IFR's enforcement regime, a parliamentary process is not considered necessary.

#### **Schedule 9, paragraph 15 ("Sanctions"): Power for the Secretary of State to amend figures relating to numerical maximum financial penalties**

*Power conferred on:* The Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary procedure:* Draft affirmative resolution

#### Context and purpose

260. In paragraphs 3 and 6 of Schedule 9 there are some instances where the maximum financial penalties are rendered in absolute numbers rather than by reference to a percentage rate of a relevant figure (e.g. of revenue). In paragraph 3(9) and paragraph 6(10), these represent the maximum fixed amount and daily rate financial penalties, where the person in question is not a club, formerly regulated club, competition organiser, owner, or officer. Absolute pound sterling maximums were used here because the standard approach taken in the Bill of calculating the maximum by reference to revenue or remuneration would not be appropriate. In paragraph 3(6) and (8), and paragraph 6(7) and (9), these are alternatives where using revenue or remuneration might, in some instances, not yield a maximum penalty high enough to carry the desired deterrent effect. For example, where the revenue of a body that is a formerly regulated club has been artificially reduced, or an officer is not remunerated in a conventional way.

261. The delegated power allows the Secretary of State to change the absolute pound sterling amount of the maximum penalty in these subparagraphs. This is a Henry VIII power, to the extent that regulations are used to amend primary legislation.

Justification for taking the power

262. The absolute numbers in primary legislation are informed by existing statutory precedent in other regulatory contexts. However, until the IFR's regulatory system is operational, it is difficult for the government and Parliament to appraise whether these amounts will prove to be proportionate or effective deterrents. What is appropriate for one regulator and industry, may not be appropriate in the specific context of the IFR's regime and the football industry.

263. Therefore, the maximum financial penalties may need to be updated as time passes so that financial penalties can remain effective deterrents. At a minimum, these absolute numbers will need to be updated periodically to reflect inflation. The delegated power is needed for this reason.

Justification for the procedure

264. As this Henry VIII power allows for the amendment of primary legislation which establishes the extent of a punitive sanction on private persons, it is considered that it should be subject to the affirmative procedure. This will allow appropriate parliamentary scrutiny.

**Department for Culture, Media, and Sport**

**Date 24/10/2024**

## Annex A: Summary of Delegated Powers

Clause/Schedule	Power conferred on and purpose	Henry VIII?	Parliamentary procedure
<b>PART 1 - PURPOSE, OVERVIEW AND KEY DEFINITIONS</b>			
Clause 2	Secretary of State to define "specified competitions"	No	Affirmative
Clause 4	The IFR to define "specified senior management functions"	No	None
<b>PART 2 - INDEPENDENT FOOTBALL REGULATOR</b>			
Clause 14	Secretary of State to direct the information that the IFR must include in the annual report	No	None
<b>PART 3 - OPERATING LICENCES</b>			
Clause 15	The IFR to make rules determining the form of, and matters specified in, operating licences	No	None

Clause 16	The IFR to make rules on the manner, form and content of an application for a provisional operating licence	No	None
Clause 16	The IFR to make rules specifying the date for provisional operating licence application	No	None
Clause 17	The IFR to make rules specifying the date for provisional operating licence decision	No	None
Clause 18	The IFR to make rules defining 'the assessment period' within which it must grant a club a full operating licence	No	None
Clause 22	The Secretary of State to amend the areas in respect of which the IFR may attach discretionary licence conditions under the financial and non-financial resources	Yes	Affirmative

	thresholds and the systemic resilience objective.		
<b>PART 4 - OWNERS AND OFFICERS OF REGULATED CLUBS: SUITABILITY ETC</b>			
Clause 28 and Clause 29	IFR to make rules specifying the contents, manner, and form of an application for becoming a new owner or officer	No	None
Clause 32	The Secretary of State to specify the IFR's suitability determination time period for new owners and officers	No	Negative
Clause 37	The IFR to make rules regarding honesty and integrity, and financial soundness when determining the suitability of new owners	No	None
Clause 42	The IFR to make rules providing for costs relating to interim officers appointed by the IFR, to be payable by the club to which an officer is appointed	No	None



Clause 44	The IFR to make rules about the providing for the payment of costs relating to ownership removal orders, to be payable by unsuitable owners	No	None
<b>PART 5 - DUTIES ON CLUBS AND COMPETITION ORGANISERS ETC</b>			
Clause 45	The IFR to specify in rules that a competition is prohibited	No	None
Clause 53 and Clause 54	The IFR to make rules regarding the charging of a levy and the consultation and publication required	No	None
<b>PART 6 - DISTRIBUTION OF REVENUE</b>			
Clause 56	The Secretary of State to define 'relevant revenue'	Yes	Affirmative
Clause 64	The IFR to make rules specifying the payment of costs incurred under Part 6	No	None
<b>PART 7 - INVESTIGATORY POWERS ETC</b>			
Clause 66	The IFR to delegate information gathering powers to an expert reporter	No	None
Clause 66	The IFR to make rules for the	No	None

	payment of expenses incurred in relation to the appointment of an expert reporter		
<b>PART 9 - REVIEWS AND APPEALS</b>			
Clause 82	An applicable reviewer to give a direction suspending the effect of a reviewable decision pending the outcome of an internal review	No	None
Clause 83	The IFR to make rules providing for the payment of costs incurred by the IFR in relation to an internal review	No	None
<b>PART 10 - GENERAL</b>			
Clause 86	The Secretary of State to amend the list of persons to whom the IFR can disclose information	Yes	Affirmative
Clause 87	The Secretary of State to enable disclosure of information to the IFR by other public authorities	Yes	Affirmative

Clause 90	The IFR to make rules	No	None
Clause 91	The Secretary of State to make regulations	No	The procedure to be followed is established in each of the powers to which this provision relates
Clause 92	The Secretary of State to amend the definition of "serious criminal conduct"	Yes	Affirmative
Clause 92	The Secretary of State to amend the definition of "season"	Yes	Affirmative
Clause 96	The Secretary of State to give a direction to the IFR in connection with its duty to pay relevant receipts into the Consolidated Fund after deducting litigation costs	No	None
Clause 97	The Secretary of State to make consequential provision	Yes	Draft affirmative when amending primary legislation. Negative in all other cases.

Clause 99	The Secretary of State to bring provisions of the Bill into force by commencement regulations	No	None
<b>SCHEDULE 1 - MEANING OF "OWNER"</b>			
Paragraph 15(1) and (9)	The Secretary of State to issue guidance on the meaning of significant influence or control for the purposes of this Schedule	No	Quasi-negative resolution
Paragraph 16	The Secretary of State to amend the thresholds in Schedule 1	Yes	Affirmative
<b>SCHEDULE 2 - THE INDEPENDENT FOOTBALL REGULATOR</b>			
Paragraph 17(1)	The IFR to delegate some of its functions to listed persons	No	None
Paragraph 22(3)	The Secretary of State to change the statutory minimum number of members of the Expert Panel	Yes	Affirmative

Paragraph 27(5)(b)	The IFR to replace members of the Expert Panel and Expert Committee	No	None
Paragraph 32(2)	The Secretary of State to direct the IFR as to the form and contents of its annual statements of accounts	No	None
<b>SCHEDULE 3 - TRANSFER SCHEMES</b>			
Paragraph 1	The Secretary of State to create one or more transfer schemes in relation to the transfer of property, rights and liabilities from DCMS to the IFR	No	None
<b>SCHEDULE 5 - MANDATORY LICENCE CONDITIONS</b>			
Paragraph 6(2)	The IFR to set out to prepare and publish a corporate governance report	No	None
Paragraph 7(1)	The IFR to publish a code of practice on corporate governance	No	None

<b>SCHEDULE 9 - SANCTIONS</b>			
Paragraph 12(1)	The IFR to make provision for determining the revenue of a club, formerly regulated club, competition organiser, or officer for the purposes of calculating financial penalties	No	None
Paragraph 15	The Secretary of State to amend figures relating to numerical maximum financial penalties	Yes	Affirmative