



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

8th Report of Session 2024–25

**Football Governance
Bill [HL]**

**House of Lords
(Hereditary Peers) Bill**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 29 July 2024, and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord Carlile of Berriew](#)

[Baroness Chakrabarti](#)

[Lord Cunningham of Felling](#)

[Baroness Finlay of Llandaff](#)

[Lord Goodman of Wycombe](#)

[Baroness Humphreys](#)

[The Earl of Lindsay](#)

[Lord McLoughlin](#) (Chair)

[Lord Rooker](#)

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Eighth Report

FOOTBALL GOVERNANCE BILL [HL]

1. The Football Governance Bill was introduced in the House of Lords on 24 October. The Bill establishes an Independent Football Regulator (“IFR”), provides for the licensing of football¹ clubs, and makes provision about the distribution of revenue received by organisers of football competitions. The Department for Culture, Media and Sport has published a delegated powers memorandum (“the Memorandum”).²

2. We draw the attention of the House to two delegated powers in the Bill.

Clause 2: power to define “specified competitions”

3. The fundamental purpose of the Bill is to “protect and promote the sustainability of English football” (clause 1(1)). One must go through a series of definitions only to find that the Bill does not, after all, provide the definition of English football. Ultimately, the meaning of “English football” depends on regulations to be made in due course by the Secretary of State - albeit by the affirmative procedure.

4. Clause 2(1) works as follows.

- “English football” means “all regulated clubs and specified competitions, taken together”.
- A regulated club means a club that operates a relevant team.³
- A relevant team means a team that is entered into, is a member of, or participates in a specified competition.
- A specified competition means a competition specified in regulations made by the Secretary of State.⁴

5. Accordingly, the meaning of English football is deliberately left unclear on the face of the Bill. The answer will emerge only after the Bill is enacted, when the Secretary of State makes regulations to fill in the definitional gap left in the meaning of “specified competition” in clause 2. As a result, the remit of the new regulator is, presently, unclear.

6. The Government is not taking this approach because the policy is undecided. On the contrary, paragraph 19 of the Memorandum states the Government’s policy clearly:

“The policy intent has always been that [the clubs in scope of the IFR’s remit] **should currently be the top five leagues of the men’s English football pyramid only**”. [emphasis added]

1 Association, rather than rugby, football: see the definition of “football” in clause 2(1).

2 Memorandum on the Football Governance Bill [HL] from the Department for Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee (24 October 2024): <https://bills.parliament.uk/publications/56547/documents/5220>

3 Whether or not the club is a “licensed” club, i.e., a club holding an operating licence from the IFR.

4 Clause 2(3) and (4) states that the teams in a specified competition must be exclusively or predominantly English teams; and a team is an English team if the ground at which it customarily plays its home matches is in England.

7. The Memorandum explains that “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 or type (typically professional clubs)”.
8. Paragraphs 21 and 22 of the Memorandum give four reasons why the Bill does not state explicitly that its coverage is the top five leagues of the men’s professional game.
9. The first reason is that regulations will allow the scope of the IFR’s operations to be amended in future. For instance, the women’s game or lower leagues in the men’s game could be brought within scope or the IFR’s remit might be narrowed.
10. But the possibility of extending or narrowing the IFR’s remit in future is not an argument for leaving the IFR’s remit unclear in the Bill. It would aid clarity and transparency if the Government specified in the Bill the top five leagues of the men’s professional game, given that this is the Government’s policy. It would have been possible to take a power to amend the IFR’s remit in secondary legislation, adopting a technique used elsewhere in the Bill in other contexts.⁵ As it is, the remit of the IFR is ultimately a matter to be decided in regulations made by statutory instrument.
11. The Government’s second reason is “not to preclude competition or innovation”. When the old First Division became the Premier League in 1992, the Government argue that this brought significant benefits to the game. The Government further argue that future innovation might not be possible if the leagues are named and fixed in primary legislation. Likewise, providing the five leagues with a form of statutory monopoly risks undermining healthy competition in the organisation and commercial exploitation of football competitions.
12. We are not convinced.
 - The argument that something should not be fixed in primary legislation because it might need changing in future would be an argument against having any primary legislation.
 - The current system of leagues works well. If it were enshrined in primary legislation, it could still work well and, if it ceased to do so, the primary legislation could be amended. Primary legislation is constantly being amended to keep it fit for purpose.
 - The Government’s plan is to enshrine the top five leagues of the men’s game in legislation, merely secondary (rather than primary) legislation. This is still a form of legislative monopoly given that primary and secondary legislation are both the law of the land.⁶ It is not clear why a monopoly granted by secondary legislation would be less significant than one granted by primary legislation. In any event, healthy competition in football is no more likely to be jeopardised by the IFR’s

5 See clause 22(5), clause 86(6), clause 92(3), Schedule 1, para. 16, Schedule 2, para. 22(3), Schedule 9, para. 15. Each of these involves a limited form of Henry VIII power: limited in the sense that it allows Ministers to amend particular clauses in the Bill once enacted, as opposed to being able to amend any Act of Parliament.

6 Even if secondary legislation is amenable to judicial review in ways that primary legislation is not.

remit being stated in primary legislation than it is by being stated in secondary legislation.

13. The Government's third reason is that, if the IFR's remit were specified 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". But it is unclear why this "escape" route is any less likely if (as is planned) the leagues in scope are to be fixed in secondary legislation.
14. The Government's fourth reason is that delegated powers are easier to amend than primary legislation. This is true, and we recognise the need for Government to delegate some legislative powers. But equally the Bill's scope and purpose should appear clearly in the Bill. Clause 1(1) states the purpose of this Bill as being to protect and promote the sustainability of English football. Yet the meaning of "English football" (and therefore the remit of the IFR) is incomplete and requires filling out in regulations made by the Secretary of State.
15. **We recommend that the power of the Secretary of State in clause 2 to define "specified competitions" should be removed from the Bill. Government policy is clear – that the top five leagues of the men's professional game should be regulated. This policy should appear in primary legislation, not be relegated to secondary legislation.**

Clause 91: regulations

16. Clause 91 elaborates on the power of the Secretary of State to make regulations. We draw the House's attention to the fact that clause 91(3)(a)(iii) of the Bill cross-refers to a non-existent provision (section 56(2)(a)(ii)). The Government have tabled a correcting amendment.

HOUSE OF LORDS (HEREDITARY PEERS) BILL

17. This Bill contains no delegations of legislative power.

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For business taken at the meeting on 20 November 2024, Members declared no interests.

Attendance

The meeting was attended by:

Baroness Bakewell of Hardington Mandeville, Lord Carlile of Berriew, Baroness Chakrabarti, Baroness Finlay of Llandaff, Lord Goodman, Baroness Humphreys, Earl of Lindsay and Lord Rooker (Deputy Chair).