

## FOOTBALL GOVERNANCE BILL: HOUSE OF COMMONS COMMITTEE STAGE

# FSA BRIEFING PAPER

## The optimum outcome

This document sets out an FSA view on the key areas identified in previous dialogue with DCMS, specifically covering:

- [supporter engagement by the Regulator \(area #1\)](#)
- [supporter engagement by clubs \(area #2\)](#)
- [relocation of home games \(area #3\)](#)
- [relevant Revenue Distribution \(area #4\)](#)
- [corporate governance code & Independent Non-Executive Directors \(INEDS\) \(area #5\)](#)

## Area #1: Supporter Engagement by the Regulator

The FSA welcomes the amendments made to Clause 8 of the Bill during its passage through the House of Lords. This clause sets out IFR's regulatory principles and adding players and fans to the list of statutory consultees set out at Clause 8(b) represents a big step forward.

We would welcome advice from DCMS about legal protocol, and specifically whether the addition of the extra wording regarding players and fans at Clause 8(b) needs to be supplemented with specific references elsewhere.

If such stipulations are necessary, we would welcome the following additional amendments to make the Bill fully consistent throughout:

### Clause 10 - State of the Game Report

We are concerned that the generic reference at Clause 10(5)(c)(iii) is not specific enough. Those concerns would be allayed if this provision were extended to say (for example):

*"Such other persons as the IFR considers appropriate, including those stipulated at Clause 8(b)."*

#### Clause 12 - Guidance published by the IFR

Again, we are concerned that Clause 12(6) may not be specific enough, and that policy objectives would be better achieved if it were to say something like:

*“The IFR must publish such persons as the IFR considers appropriate, including those identified at Clause 8(b), before publishing....”*

#### Clause 13 - Guidance issued by the Secretary of State

We are aware that a different set of considerations apply to guidance issued by Ministers, as opposed to that issued by the IFR itself.

Nevertheless, given that one of the stated policy objectives of the Bill is to ensure that England is the best place to be a football fan, it seems slightly anomalous that the requirements upon the Secretary of State to consult do not extend to the intended prime beneficiary.

Specifically, we think that Clause 13(5) would benefit from a wider description of statutory consultees, to align it with those identified under clause 8(b). The following wording would give us comfort:

*“The Secretary of State must consult the IFR, persons identified under Clause 8(b), and other such persons.... ”*

#### Clause 90 - Rules

As with Clause 13, we are not certain that Clause 90(5) is as widely drafted as we would like it to be. We would suggest that Clause 90(5)(b) could be reworded to say:

*“.... such other persons as the IFR considers appropriate, including those specified under Clause 8(b)”.*

#### Schedule 5 - Mandatory Licence Conditions

At 7(4) (Code of Practice), we think that the requirement would be appropriately strengthened if 7(4)b) said:

*“.... such other persons as appear to the IFR to be representative of persons likely to be affected by the Code, including those identified under Clause 8(b).”*

## Area #2: Supporter Engagement by clubs

As set out in previous correspondence, we are particularly keen to ensure that the fan engagement regime established under the Bill should be:

- robust
- appropriate at all regulated clubs according to their circumstances
- based on democratic principles and
- regulated on the basis of conduct, and outcomes achieved, rather than “on paper”

We accept that much of the detail of how this will look in practice would not be appropriate for inclusion on the face of the Bill itself, and indeed the Bill leaves a lot of detail to be developed by the IFR.

Nonetheless, we believe the Bill would be strengthened by the inclusion of a modicum of greater detail and clarity, by means of the following amendments.

### In Schedule 4:

#### Amend Clause 4(1)(b) to read:

*“the club has structures and processes for effective engagement with its fans and takes the views of its fans into account in making decisions about the relevant matters.”*

#### Add as a new Clause 4(1)(c):

*“the club’s establishment and continued delivery of such fan engagement must be independently assessed ahead of it being awarded a full operating licence and in the event of the breach of relevant licence conditions or provisions of this Act.”*

We are also looking for stipulation on the face of the Bill that fan representatives at club level must be democratically appointed, independently of control by the club.

In particular we are pressing for an explicit requirement that any Supporters’ Trust, registered as a Community Benefit Society with the Financial Conduct Authority must be represented within any fan engagement process.

To this end, we propose the following amendments:

In Schedule 5:

Add as new 9(2): *“Persons selected as representing the views of the club’s fans should be appointed through a process that is democratic and independent of club control.”*

Add as new 9(3): *“Where the club’s fans have established a Supporters’ Trust legally registered as a Community Benefit Society with the Financial Conduct Authority, that Supporters’ Trust should have appropriate representation in the club’s consultation processes.”*

## Area #3: Relocation of Games

Much of the recent coverage of this issue suggests that there is a growing desire, at club level in both the EPL and the EFL, to be able to move games overseas to take account of the commercial opportunities that this might provide. A key aim of the Fan Led Review and the subsequent FGB is to ensure fans are central in determining the strategic path at both national and club level. The threat of games being played abroad is a current concern at the forefront of many fans minds. Travel for fans is already problematic due to TV schedule changes, variable kick off times and the lack of available public transport. Supporting your team should not be made more difficult, domestic competition matches **must be** played within England & Wales.

Our views and concerns:-

- that Ministers should give the IFR a clear policy steer on how this issue is viewed, especially by fans
- that any new provision in the Bill should not be narrowly framed; “any games” is far better than “home games”, for example; and
- that the temptation for competition organisers to tinker with competition formats to significantly change their nature by allowing for fixtures to be played at neutral venues should be removed
- Fans should not have to travel abroad to see their team play a competitive domestic competition match
- Competition integrity is at risk due to the loss of a home game against a particular opposition

Introduction of a new Clause worded very directly on the issue as tabled by Lord Wood in the Lords

235: Leave out Clause 48 and insert the following new Clause—

“48 Duty on competition organiser not to arrange matches away from home grounds

(1) A specified competition organiser must notify the IFR where the organiser considers that there is a reasonable prospect of the organiser entering into arrangements whereby a match between two teams operated by regulated clubs might be played at a ground that is not the home ground of either team.

(2) A notification under subsection (1) must be given as soon as reasonably practicable after the organiser considers the duty under that subsection to have arisen.

(3) The organiser must obtain the approval of the IFR before it enters into the arrangements mentioned in subsection (1).

(4) The IFR must grant approval for the organiser entering into those arrangements if the IFR is satisfied that the arrangements—(a) would not harm the financial sustainability of the competition or of English football, (b) would not cause significant harm to the heritage of the competition or of English football, and (c) have the approval of UK-based supporters including those of the clubs involved.

(5) The IFR may not grant approval in any other circumstances.

(6) The IFR must, as soon as reasonably practicable after the organiser has sought approval, decide whether to grant approval under subsection (4).

(7) The IFR must notify the organiser of its decision to grant, or not to grant, that approval and give reasons for its decision. (8) In this section “home ground”, in relation to a regulated club, has the meaning given by section 46(10)(a).”

## Area #4: Relevant Revenue Distribution

In previous discussions we have shared with you concerns about the wording of Clause 56 (overview and interpretation), and the extent to which it could be undermined by:

- the evolution of new ways in which revenue is secured, especially if they involve direct dealing between broadcasters and regulated clubs - bypassing competition organisers altogether; and
- direct action by regulated clubs designed to significantly reduce the quantum of “relevant revenue”, thus significantly frustrating the intent of legislation and the ability of iFR to achieve its statutory objectives.

There are very strong parallels between the concerns we have here and those we have previously expressed about the dangers of excluding parachute payments from the quantum of relevant revenue. The Government has recognised the dangers here, and acted to mitigate them; we feel a similar approach is required to Clause 56 and its implications for all the remaining Clauses in Part 6 of the Bill.

We recognise there is a partial safety net already built into Clause 56, in that it provides, at 56(2)(b), for the Secretary of State to make Regulations in circumstances in which the source or description of relevant revenue changes, or (at 56(4)), where there is a material change in circumstance.

However, that safety net is also heavily constrained by the stipulation that it only applies to revenue received by competition organisers.

Two possible approaches to this problem could include:

- changing the definition of “relevant revenue” to include that received by regulated clubs in respect of domestic competition only; or
- creating a specific duty upon competition organisers (at Part 5 of the Bill) , putting the onus on them to agree with regulated clubs and broadcasters that any future deals on relevant revenue distribution arrangements must be demonstrably consistent with the IFR objectives as set out in Clause 6.

The aim here is to allow flexibility in distribution of relevant revenue that:

- removes the incentive for any regulated clubs to break away from collective broadcast deals, and
- also allows competition organisers to ensure that distribution arrangements take account of the big differences in earning power that result from some clubs participating in European competition and / or enjoying global brand recognition.



## Area #5: Corporate Governance / Independent Non-Executive Directors (INEDS)

Schedule 5 of the Bill makes provision for operating licences for clubs to require them to comply with mandatory conditions relating to their corporate governance, including producing an annual declaration detailing their compliance with a corporate governance code to be produced by the IFR.

We have a general concern that at present, clubs are either not making adequate use of INEDS, or where they exist INEDS are often too closely allied with the views and interests of owners, rather than being truly independent.

This is an area where clubs need to take a proportionate approach, but it would be helpful if the Corporate Governance Code makes it clear that IFR will specifically keep the effectiveness of internal governance under regular review at all regulated clubs. We think the Bill could be strengthened in one or more of the following ways:

Schedule 5, 7(2) should include a reference to INEDS and the circumstances in which clubs will be expected to utilise them (including as part of a corporate governance statement condition). Two possible ways of doing so would be either to add:

*7 (2) (g) The appointment and role of Independent Non-Executive Directors on the club's board of directors. AND/OR 7 (2) (g) The manner in which the club's decision-making processes are subject to scrutiny which is independent of the club's owner and senior managers.*

Alternatively, 7(3) could be extended thus: *3 (c) may require regulated clubs to appoint to its board of directors independent non-executive directors.*

**We are of course happy to discuss this paper and its contents in more detail.**

The Football Supporters' Association (FSA) is the national, democratic, representative body for football supporters in England and Wales. We have a series of briefing papers on the Football Governance Bill available [here](#).

Any queries can be submitted to: [governance@thefsa.org.uk](mailto:governance@thefsa.org.uk)