

## Insights

# THE FOOTBALL GOVERNANCE ACT – WHAT YOU NEED TO KNOW

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## SUMMARY

The Football Governance Act was passed into law on 21 July 2025. This follows a long period of debate amongst legislators, regulators, clubs, fans and other market stakeholders about the future of English football, in particular in relation to financial sustainability, corporate governance and transparency. The Act reflects an admirable legislative attempt to give effect to those principles, but the extent to which they can operate together in practice remains to be seen. The dispute resolution mechanisms available under the Act also raise interesting questions about the limits of the Independent Football Regulator's powers, as well as the interplay between its decision-making functions and the courts' oversight of the public law and antitrust issues arising from the Act's new regulatory regime.

## THE PURPOSE OF THE FOOTBALL GOVERNANCE ACT

The purpose of the Football Governance Act is to "*protect and promote the sustainability of English football*". The Act seeks to do so in a variety of ways, most of which are aimed at having a centralised, independent system of accountability and governance. We analyse the main changes introduced by the Football Governance Act below:

### THE INDEPENDENT FOOTBALL REGULATOR<sup>[1]</sup>

The Football Governance Act establishes the Independent Football Regulator (the "IFR"), whose objective is to protect and promote "*the financial soundness of regulated clubs*" and the "*financial resilience of English football*", and to safeguard the heritage of English football. Although the IFR operates independently, it is required to comply with express regulatory principles set out in the Act and to have regard to guidance published by the Secretary of State. As such, the Act envisages that the independent IFR will operate within the confines of the regulatory principles imposed by the legislation, and with due consideration to government guidance.

## THE LICENSING REGIME<sup>[2]</sup>

One of the key functions of the IFR is to oversee the new licensing regime introduced by the Football Governance Act. The Act requires that, in order to operate a football team, all clubs must either have a provisional or a full licence. In order to obtain a licence, clubs must comply with the mandatory conditions specified in the Act, which require clubs to submit financial plans, corporate governance statements and proof that they have carried out the required fan consultations. In other words, the Act makes the grant of licences conditional upon clubs being able to satisfy the IFR that they have the required financial hygiene, corporate governance structure, and fan consultation mechanisms in place. The IFR also has discretion to impose discretionary licence conditions (in addition to mandatory ones) if it is satisfied that it is necessary to do so. In terms of what is “necessary” in this context, the Act makes it clear that the IFR can only impose discretionary conditions when it believes they are essential to ensure that the club meets certain threshold requirements concerning financial and non-financial resources and fan engagement. This means that, if the IFR believes that compliance with the mandatory conditions does not ensure that the club would be able to meet certain standards of financial stability, good governance and fan involvement, it can impose additional requirements pertaining to those areas.

## SUITABILITY REQUIREMENTS<sup>[3]</sup>

The IFR also has powers to make determinations about whether persons are suitable to be owners or officers of football clubs. The IFR will conduct a two-fold assessment. **First**, the IFR will check if the individual in question meets individual fitness criteria, namely whether they have the requisite “honesty and integrity”, are “financially sound” and, in the case of officers, whether they have the requisite competence. **Second**, in order to become an owner of a club, the individual would also have to satisfy the IFR that they have suitable sources of wealth (which are not connected to serious criminal conduct) and must provide the IFR with a proposal about how the club would be operated, the estimated costs of that operation and details about how those costs are to be funded. These requirements mirror the licensing mandatory conditions, in the sense that they reflect the same principles of financial accountability and transparency. Whereas prospective owners and officers must make an application to prove they meet the above conditions, incumbent owners and officers are not required to make an application, and therefore are not subject to a *de novo* assessment – however, the IFR still has the powers to conduct checks to ensure that incumbent owners and officers meet financial suitability criteria.

## CLUB DUTIES<sup>[4]</sup>

The Football Governance Act imposes various obligations on clubs, compliance with which is another requirement to the club obtaining an operating licence. These duties fall under three categories. **First**, clubs have an overarching duty to ensure that their team does not operate/participate in prohibited competitions, which are broadly defined as competitions which

are not open, fair and/or merit-based, or competitions which would harm the heritage of English football. **Second**, clubs also have a duty to seek approval from the IFR before making certain decisions. For example, clubs cannot dispose of or create a security interest over their home ground or appoint an administrator without IFR approval. **Third**, in certain areas clubs' decision-making autonomy is now subject to fan approval. One of these areas concerns material changes to a club's emblem, crest or home-colours, which the club is prohibited from making unless the club has taken reasonable steps to establish that the changes are supported by a majority of the club's fans in England and Wales.

## INVESTIGATION<sup>[5]</sup>

The Football Governance Act confers wide investigation and enforcement powers on the IFR. The IFR has powers to request information from clubs and to conduct investigations where it has reasonable grounds to suspect that a person has committed a relevant infringement (which include failures to comply with licence conditions, club duties, and rules made by the IFR). Interestingly, the Act expressly incorporates principles reflected in English civil procedure and litigation practice. For example, the Act imposes an obligation on a person who knows that the IFR is conducting an investigation to preserve documents, which reflects the document preservation duties that parties have at the outset of civil litigation. Similarly, the Act specifically states that no part of the IFR's investigation powers require a person to disclose to the IFR privileged communications. Again, this incorporates the fundamental civil procedure principle that communications between lawyers and their clients in litigation are protected by privilege and do not need to be disclosed.

## ENFORCEMENT<sup>[6]</sup>

Depending on the outcome of the IFR's investigations, the IFR may take enforcement steps. The IFR may impose sanctions, the type of which depends on the nature of the offence. Broadly:

1. If a person fails to cooperate with the IFR and refuses to provide information, the IFR may issue a censure statement, or impose financial penalties. In terms of quantum, the IFR has discretion to impose whatever amount it considers appropriate, but that discretion is subject to certain threshold limits, which vary depending on whether the person is a club, organiser, owner or officer.
2. If a person commits what the act defines as a "relevant infringement", the IFR has additional enforcement powers: the IFR may also sanction the relevant person by applying for injunctive relief to restrain certain continuing infringements and/or by suspending a club's licence to operate.

## REVIEWS AND APPEALS<sup>[7]</sup>

Most of IFR's decisions qualify as "reviewable decisions" under the Football Governance Act, such that they can be challenged by the affected person. The Act provides for a waterfall procedure whereby the challenge a person may bring can go through various stages:

1. **First**, the person can request that the decision is reviewed internally by either the Board or a committee of the Expert Panel (depending on the nature of the decision). Notably, the IFR can decline to carry out a review. Grounds for refusal mirror certain public law grounds such as lacking standing to challenge the decision. However, in addition to those, the IFR is given a very wide discretion to make a value judgement – for example, the IFR can refuse to carry out an internal review if the review request is "vexatious" or if "there is no reasonable prospect of a review resulting in the decision being varied or cancelled". The term "vexatious" has been interpreted in caselaw at length, mostly in contexts in which the Court has discretion to grant equitable relief, which the Court is less likely to do if the applicant shows vexatious behaviour. However, it is unclear whether the IFR's discretion in this context will be subject to the same interpretation of the term "vexatious". Equally, Courts have grappled with the concept of what qualifies as "reasonable prospect" for a request or application to succeed, but again it is not clear if the IFR will apply the same considerations. In the case of the IFR refusing to conduct an internal review, the Act specifies that the original IFR decision will be "deemed" upheld.
2. **Second**, a person can also appeal to the Competition Appeal Tribunal (the "CAT") to challenge certain reviewable decisions, or the outcome of any first instance internal review. Persons can (i) challenge before the CAT, as a first instance tribunal, certain reviewable decisions, which cover most decisions which affect clubs (including decisions to revoke licences, and determination of an owner/officer's suitability; but note the decision to impose a financial penalty is not reviewable by the CAT in the first instance, and must be subject to internal review first); (ii) appeal internal review decisions; or (iii) appeal "deemed decisions" (i.e. those which the IFR refused internal review for). Some notable features of the Act in this respect include:
  - If the CAT decision raises a point of law, the person also has the right to apply to either the CAT or the Court of Appeal for permission to bring an appeal on that point of law before the Court of Appeal.
  - The Act stipulates the CAT's standard of review. For decisions challenged before the CAT for the first time (point (i) above) and for appeals of internal reviews conducted (point (ii) above), the CAT has to determine the challenge "on the merits, by reference to the grounds of appeal set out in the notice of appeal". However, for "deemed decisions", being those for which the outcome was deemed because the IFR refused internal review, the CAT has to apply "the same principles as would be applied by the High Court in determining proceedings on judicial review". This will raise interesting challenges about the CAT's competence, especially in relation to applying judicial review principles to deemed decisions. It will also be interesting to see the extent to which these types of decisions reach the Court of Appeal under the

mechanism provided for under the Act which allows for questions of law to potentially be escalated to higher Courts.

## KEY TAKEAWAYS

The Football Governance Act brings about huge changes in relation to how English football will be governed going forward, but questions remain open. In terms of overarching themes, it is laudable that the Act intends to promote both financial/governance best practice as well as fan engagement, but there is a possibility that there are areas in which those principles could conflict, for example where club decisions which would be in the club's (and the sport's) best financial interest are blocked by lack of approval from the fan base.

The scope of the Football Governance Act will also give rise to interesting challenges being brought both internally within the IFR regulatory framework and before Courts. The dispute resolution mechanism provided for by the Act will result in disputes raising both antitrust and judicial review questions, and it will be a matter for the Courts to grapple with those in the context of what is shaping up to be the increasingly regulated sector of English football.

How these questions will be answered remains to be seen.

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[1] Part 2

[2] Part 3; Schedules 4-5

[3] Part 4

[4] Part 5

[5] Part 7

[6] Part 8; Schedule 9

[7] Part 9; Schedule 10

## RELATED CAPABILITIES

- Sports, Media & Entertainment
- Business & Commercial Disputes
- Antitrust & Competition

## MEET THE TEAM



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