

Regulation of English men’s professional football

Lead department	Department for Culture, Media and Sport
Summary of proposal	The proposal would establish an independent regulator with statutory powers. These powers include regulation of finance, corporate governance, ownership, club heritage and fan engagement, and backstop powers over revenue distribution.
Submission type	Impact assessment (IA) – 2 November
Legislation type	Primary legislation
Implementation date	TBC
Policy stage	Final
RPC reference	RPC-DCMS-5250(2)
Opinion type	Formal
Date of issue	28 November 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA provides a satisfactory indicative assessment of the direct impacts on business at primary legislation stage. The assessment of impacts on small and micro businesses is sufficient. The IA follows Treasury Green Book good practice on options identification and short-listing. The cost benefit analysis overall is satisfactory. There are some areas for improvement in this and in the assessment of wider impacts and the monitoring and evaluation plan.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying provision (IN)	Qualifying provision (IN) – to be confirmed at secondary legislation and/or regulator assessment stages
Equivalent annual net direct cost to business (EANDCB)	Not quantified at this stage	Validation at secondary legislation and/or regulator assessment stages
Business impact target (BIT) score	Not quantified at this stage	See above
Business net present value	Not quantified at this stage	
Overall net present value	Not quantified at this stage	

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The IA provides indicative quantification of direct business impacts, in line with RPC requirements for primary legislation stage IAs. The IA describes how impacts will depend on secondary legislation and regulator codes of practice. The RPC would expect to see these assessments for validation of direct business impacts, subject to better regulation framework requirements.
Small and micro business assessment (SaMBA)	Green	The IA provides a good discussion of business size and considers proportionality of impact and mitigation. Only one organisation, the National League, meets the definition of a small business; nearly all would be classified as medium-sized businesses. The IA satisfactorily addresses potential exemption of these businesses.
Rationale and options	Satisfactory	The IA provides a detailed description of the problem under consideration and rationale for intervention, although there are areas for improvement. The Department has usefully added international comparisons and case study information since consultation. The IA follows the Green Book process of long and short-listing of options.
Cost-benefit analysis	Satisfactory	The IA's evidence and data has usefully been strengthened and updated since consultation stage. The IA would be improved by providing further detail on compliance costs and greater discussion of uncertainty around cost and benefit estimates.
Wider impacts	Satisfactory	The IA discusses distributional and equality impacts and has added a good discussion of regional impacts since consultation. The IA includes a useful section on trade and investment but would benefit from discussing further any potential impacts on competition and innovation.
Monitoring and evaluation plan	Satisfactory	The IA has significantly added to its monitoring and evaluation plan since consultation, most notably by including some information on possible metrics. The Department states that it will be expanding and finalising its plan. This should include potentially adding further detail and precision to these metrics and providing further information on the data that will be collected.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

Summary of proposal

The English football pyramid is largely self-regulated through league organisations. The IA reports that a series of footballing crises resulted in the government commissioning an independent Fan-Led Review of Football Governance (FLR) in April 2021. The Government concurred with the findings of the FLR and agreed that government intervention was required to protect the financial stability of clubs, the systemic stability of the English football pyramid and the cultural heritage of England's historic footballing institutions. The Government consulted on proposals in a White Paper '*A Sustainable Future - Reforming Club Football Governance*' (February 2023) and published a consultation response in September 2023.

The Government proposes to establish an independent regulator with statutory powers. This includes regulation of finance, corporate governance, ownership, club heritage and fan engagement, and backstop powers over revenue distribution. The regulator will operate a licensing system where clubs will need a licence to operate as professional football clubs. The IA states that legislation will establish four 'threshold conditions' of the licence and the regulator will set the detailed requirements under each. The organisations in scope of the proposed regulation are football clubs in the top five divisions of the men's English football pyramid: the Premier League, the English Football League and the National League (116 clubs in total).

The IA explains that, at this stage, the specific requirements on clubs have yet to be determined. The regulator will set out in guidance and licence conditions the specific requirements on individual clubs. The IA estimates illustrative costs and benefits to indicate the potential scale of impacts of the whole policy. The IA notes that relevant secondary legislation and the regulator codes of practice will be subject to consultation with stakeholders and that further IAs will also be produced, where appropriate. The IA estimates an indicative ten-year NPV of around £523 million. Costs are estimated at around £133 million, consisting of operational costs of the regulator (£98 million), compliance costs (£34 million) and familiarisation costs (£1 million). The cost of the regulator will initially be Exchequer-funded and then covered by an industry levy, the latter being out of scope as a regulatory cost and therefore not included in the EANDCB. The indicative EANDCB figure of around £4 million therefore consists of the compliance and familiarisation costs (mainly incurred by football clubs). Benefits are estimated at around £656 million, using willingness to pay research to value the benefit to fans and communities of clubs being run more in line with their interests.

EANDCB

The IA explains why it is not possible to provide an EANDCB figure for validation at this primary legislation stage. However, in providing indicative quantification of business impacts the IA meets the requirements set out in RPC guidance.³ The IA

³ <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>
As indicated in the IA, the approach is in line with 'scenario 2' in this guidance.

notes that relevant future secondary legislation and regulator codes of practice will be subject to consultation with stakeholders and that further IAs will also be conducted, where appropriate. The RPC would expect to see these assessments, subject to better regulation framework requirements. Although the EANDCB figure is presently below the *de minimis* threshold, the RPC agrees with the Department's classification of the proposal as a qualifying regulatory provision at this stage, pending these further assessments. The RPC notes that annual business compliance costs in steady-state are just above the *de minimis* threshold.

The IA explains that, after initial Exchequer funding, the regulator's operational costs will be funded by an industry levy. The IA correctly notes that this cost would be treated as equivalent to a tax and, therefore, is excluded from the EANDCB figure. The operational costs of the regulator are estimated at around twice the compliance costs reflected in the EANDCB and the IA would benefit from providing greater transparency of the overall annual cost to business of the proposal.

The IA has usefully significantly expanded its discussion of the counterfactual since the consultation stage IA, including adding further evidence.

The IA's appraisal appears to cover a ten-year period starting in 2023, when it is assumed that familiarisation costs and initial regulator costs are incurred. It would appear that a later start date to the appraisal period would be appropriate; the IA should also certainly include additional familiarisation costs at a later stage, when requirements set out in secondary legislation and regulator codes of practice are determined. The IA document should clearly state and justify the appraisal period used.

SaMBA

The IA meets the framework requirements for assessment of impacts on small and micro businesses. The IA provides a good presentation of data, showing that the only small organisation in scope is the National League body. The IA provides a discussion of proportionality of impact and mitigation. The SaMBA has usefully been strengthened to consider the impacts on small businesses in the vicinity of stadiums which rely on matchday football. Apart from a minority of Premier League clubs, all of the other organisations affected would be classified as medium-sized businesses. The IA satisfactorily addresses why these could not be exempt.

Rationale and options

The IA provides a detailed description of the problem under consideration and rationale for intervention, including the useful addition of case study information since the consultation stage IA. The IA has also usefully greatly expanded its discussion of international comparisons, including covering sports other than football. This could be enhanced further by discussion of other major American sports. The discussion could also be improved by more consistent reference to why the arrangements in these sports would not be suitable for English men's professional football. This could then be used to better support the conclusion at paragraph 94 of

the IA. Finally, the IA would benefit from discussing any lessons learned from other countries.

The market failure discussion would benefit from a sharper focus on football governance; it is not clear that the proposal is targeted at some problems identified, such as the market power of football clubs in local areas. The IA describes negative impacts on local businesses of a football club closure. This argument could apply to other business closures; the IA would benefit from discussing further the particular impacts of a football club closure on a local area. The discussions around financial instability and disparities in revenue and their link to market failure could be strengthened, including further consideration of the scale and duration of TV contracts.

On options, the IA discusses why government intervention is required, which helps explain why non-regulatory options would be unable to achieve the policy objectives. However, the IA would benefit from discussing this more directly as an option and why it was discarded. The IA usefully follows the Green Book approach of long-listing and short-listing of options. This appears to use the critical success factors set out in the Green Book but the IA would benefit from including more information on this process, perhaps as an annex or at least more clearly referencing to where such material was included in the consultation stage IA. At consultation stage, the preferred option was to set up an independent statutory regulator within an existing organisation; the IA would benefit from discussing further the basis for now preferring a regulator in a new organisation.

Cost-benefit analysis

Evidence, data and methodology

Costs

The Department appears to have used the consultation to improve its information on likely compliance and familiarisation costs to the clubs and leagues in scope of the proposal. The evidence is now more up-to-date; the IA no longer uses a 2006 report to assess compliance costs.

The IA reports that clubs have provided information on how far they are undertaking the compliance activities that will be required of them. The IA uses this to assume clubs fall into three categories: 'most' (25 per cent), 'average' (50 per cent) and 'least' (25 per cent) compliant. Costs are then estimated in full-time equivalent staff terms. The IA would benefit significantly from providing more detail on the compliance activities that clubs and leagues will be expected to undertake and from presenting the calculations underpinning the overall indicative compliance cost estimates. This would help inform how comprehensive the estimates are at this stage. The IA would also benefit from separately identifying costs falling on league bodies vs clubs. Finally, the IA would benefit from assessing further the impact of costs across the football pyramid, for example whether professional clubs lower down the league may find the new obligations a greater strain on their resources.

The IA discusses the potential impacts of the proposed new tests for prospective owners and directors of football clubs. The IA would benefit from discussing further how these tests differ from those currently or historically (for example, the ‘fit and proper’ person test) and why these can be expected to be more effective.

The Department has developed its modelling of the regulator’s likely operational costs. This section would benefit from discussing how far this has been informed by costs experienced by other new regulatory bodies and how far it reflects potential complexity if licence conditions are to be set on a club-by-club basis. The IA presents transition costs relating to only familiarisation; the IA should address why an up-front cost of setting up the new regulator is not presented (particularly as such a transition cost was presented in the consultation stage IA, when a regulator within an existing organisation was preferred).

Benefits

The Department commissioned research from *Ipsos* to better understand the value of football clubs to their fans and communities.⁴ This was a contingent valuation study, based on surveying fans and non-fans on the willingness-to-pay for the continued existence of their local club, and separately the welfare gains that would occur if the FLR recommendations were enacted across the English football pyramid. This research was used to arrive at the monetised benefit estimate. The IA would benefit from discussing further the uncertainties inherent in such estimates and how they compare with any other information or research in the UK or overseas.

Risk and uncertainty

The IA discusses risk and uncertainty, with particular mention of optimism bias (OB) adjustments and sensitivity analysis. The IA would benefit from drawing together its assessment of risk and uncertainty into a specific section. The IA would also benefit from further explanation and justification for the specific OB adjustments applied, and from recognising the particular uncertainty regarding its application to the benefit estimate.

The proposal includes ‘backstop powers over revenue distribution’ and, although it is hoped that use of the power will not be necessary, the IA would benefit from describing how this could be used and its potential impacts. Although this is deemed a last resort, the IA could discuss further the likelihood of its use, in view of past difficulties of league bodies reaching voluntary agreements. This could again draw upon greater explanation of why the sector is different from other commercial sectors.

The IA would benefit from explaining the reasons for why overall cost and benefits estimates have changed significantly since consultation, in particular benefits, where the estimates have almost halved despite appearing to be based upon the same study.

⁴ Contingent Valuation of Men's Professional Football Clubs and the Fan-Led Review Recommendations for DCMS, Ipsos, 2022.

Wider impacts

The Department has significantly expanded its discussion of wider impacts since consultation. The IA discusses the distributional and equality impacts and has added a good discussion of regional impacts drawing upon a presentation of the geographic distribution of football club failures. The IA now includes a fuller discussion of potential trade impacts, including a useful section on risks of deterring investment.

The IA would benefit from discussing further any potential impacts on competition and innovation. On competition, the IA would benefit from including a competition assessment of the rules being proposed, in particular on finance, considering the competition impacts in relation to firstly Premier League and European/global clubs and secondly within the Premier League when comparing the top 6 clubs with the rest of the league. This could address any risk that the rules (which will interact with, rather than replace, the rules of the domestic leagues) could result in the erection or re-enforcement of barriers that may tend to favour wealthier clubs.

On innovation, the IA could address whether the regulator's criteria for approving competitions could stifle the creation of new competitions that are deemed more suitable than the European Super League.

The IA would benefit from consideration of the possible impacts on player wages, contract length and squad size. The IA could also consider other UK sports, such as rugby union.

The IA's assessment of the regulator's costs should address the need for the regulator to have experts to deal with what is argued to be a very different and more complex industry to other sectors.

Monitoring and evaluation plan

The IA has significantly added to its monitoring and evaluation plan since consultation, most notably by including some information on possible metrics to assess the achievement of the policy objectives. The Department states that it will be expanding and finalising a monitoring and evaluation plan. This should include potentially adding further detail and precision to these metrics and providing further information on the data that will be collected.

Regulatory Policy Committee

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