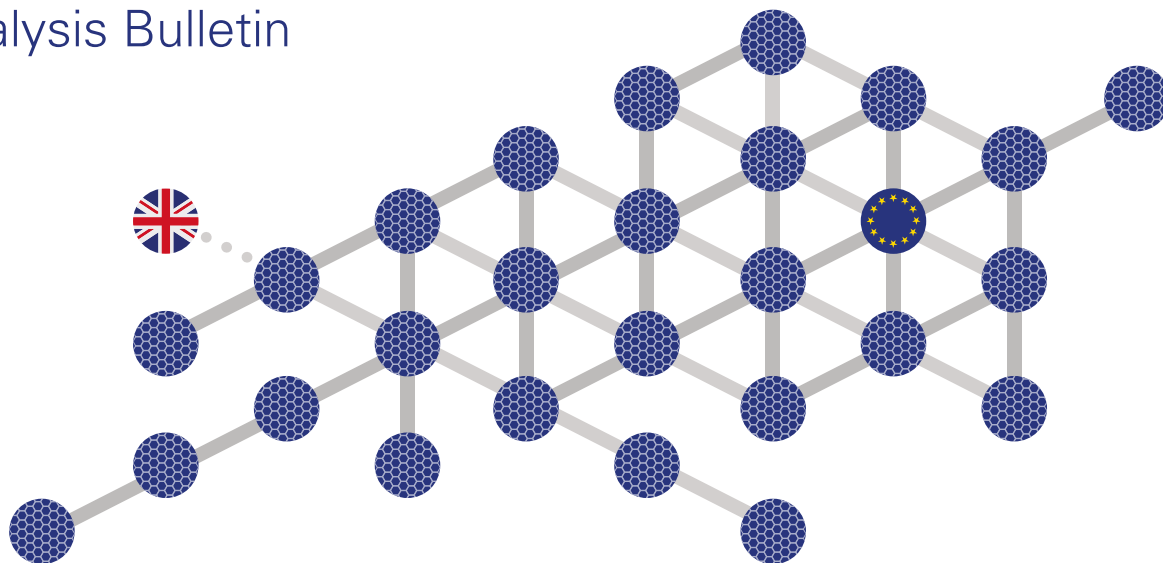


Brexit Analysis Bulletin

Sports



Professional and recreational sport embraces a vast number of businesses and governing bodies within the UK. Sport holds an enormous social and cultural value for citizens and has a significant effect on the economy: but little has been said about it in the context of Brexit. The confirmed decision to leave the EU is likely to impact on sports in a range of ways, many of which will depend on the relationship that the UK negotiates with its nearest neighbours. Accordingly, the exact details of how Brexit will play out in the sporting domain are not entirely predictable, particularly given the current uncertainty as to when the EU will be notified under Article 50 of the Lisbon treaty and what the UK's negotiating position will be. This note however focuses on a number of key issues including freedom of movement and the listed events regime as well as the potential impact of a withdrawal on the collective selling of rights.

Background

Economic activity relating to sports consumption or participation contributes £20.3bn in total direct Gross Value Added (GVA) to the UK economy according to Sport England. Of this, EY estimates that the Premier League and the 20 Premier League clubs, contributed £2.2bn directly in GVA in 2013/14. If indirect and induced contributions are taken into account, the Premier League and the 20 PL clubs contributed £3.36bn to UK GDP in the same year. In addition to the direct benefits of sport, noted above, Sport England also estimated that sports' volunteering alone had an economic value of £2.7bn a year. In 2012, Deloitte calculated that there were 75m separate attendances at professional sports events in the UK and that there were approximately 151,000 different sports clubs in the UK. Sport, therefore, is a valuable contributor to both the social and economic framework of the UK.

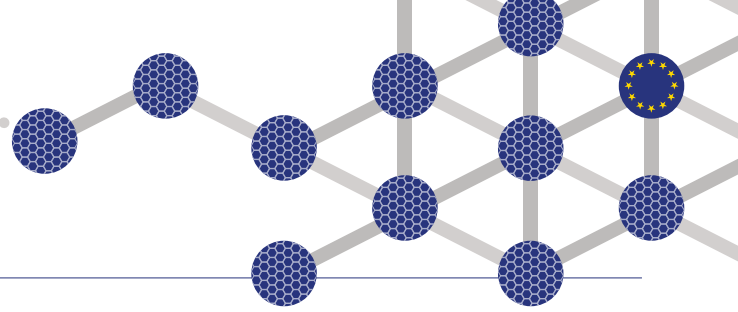
What impact a loss of free movement?

A key issue now that a decision to leave has been made is what kind of deal will be negotiated with regards to future trade once the UK's intention to leave is notified.

Most of the current commentary suggests that some restrictions on the freedom of movement are inevitable. If negotiations result in a deal under which free movement between the countries of the European Union and non-European Union members is restricted, then all UK professional sports people who are required to travel to other countries within the European Union will be impacted. Golfers on the European tour may need to apply for individual visas or work permits to allow them to compete in certain countries.

Given the huge number of athletes and teams across a wide range of sports who travel to compete in tournaments and events, this change will affect not only individual athletes but organisers and promoters of events as well. Individual athletes may wish to consider whether they are eligible to obtain EU citizenship in remaining EU countries through parents or grandparents and may wish to do this even prior to Article 50 being invoked by the UK Government to avoid being caught up in a flood of last minute applications.

Within the UK, the loss of free movement is a worry for professional sporting leagues who are concerned about



their ability to recruit the best players. Since the 1995 *Bosman* case and the creation of the Premier League there has been a growing migration of EU and EEA players into the UK to play in the Championship and the Premier Leagues. This migration relies on the freedom of movement provisions within the EU treaty. Rugby Union clubs have also benefited from the freedom of movement provisions to allow them to bring in predominantly French and Italian players, though this has occurred to a more limited extent than their football counterparts.

Not all parties have been happy about the alleged impacts of freedom of movement, particularly in respect of football. In May 2014 the FA Chairman's England Commission report (the "Report") expressed the view that freedom of movement had been a one way street with very few UK players taking up the opportunity to play in European leagues. At the time the Report stated that "whilst 43% of the Spanish squad and 37% of the French national squad have appeared in the Premier League, only one current senior England international plays outside of Britain." The Report argued that at the time the England national selectors were disadvantaged when compared with their German or Spanish counterparts because the number of EU foreign players in the Premier League and Championship was crowding out English players and therefore giving the English selectors a more limited pool to draw upon.

Were freedom of movement to be lost or restricted, what rules would apply to EU and EEA players in football and rugby?

In respect of football, would they mirror the recently tightened rules that the FA introduced along with the Home Office to govern the eligibility of players from non - EU/EEA countries? The current rules governing non - EU/EEA players provide that in order to be eligible to play in the UK, players from a nation that is ranked in the top 10 in the FIFA rankings must have played in 30% of their nation's international games in the two years prior to their application for a work permit. Players from countries ranked 11-20 in the rankings need to have participated in 45% of their countries' games over the preceding two years. Finally for nations ranked 21-30, players must have participated in 60% of those countries' international games and the bar is set at 75% of games for countries ranked 31-50 in the FIFA rankings.

The Rugby Football Union has also been recognised by the UK Border Agencies as the body responsible for issuing endorsements for foreign players (i.e. players who are not EU/EEA or Association Agreement countries). Currently the RFU's requirements for granting a player an endorsement differ as between first and second tier rugby nations and others.

Players from first or second tier rugby nations must have started at least one full international match (15 a side) during the 15 months prior to their application. Players from nations outside the first or second tier must have started in an international match in the last 15 months and over the course of their career must have played in a minimum of ten full internationals.

Analysis by the BBC of English Premier League and Championship and Scottish Premiership squads has revealed that a total of 332 football players would not meet the current FA foreign criteria if they were to be imposed on EU/EEA and Association Agreement players. If this were the case it could have a dramatic impact on the makeup of individual squads (dependent on whether existing players had been in the UK long enough to apply for permanent residency). Whilst some might see this as a benefit for UK players, many football club officials see this potential outcome as a disaster: not only in terms of the quality of the football played but in economic terms as well. Prior to the referendum the Premier League clubs announced their desire to remain in the European Union.

Whether the existing foreign player rules would be imposed on EU/EEA players or whether new rules would be negotiated is, at this stage, unclear and therefore the impact on UK rugby union and football post the two year negotiation period once the EU is notified of the UK's decision to leave, remains unknown. It will depend largely on the final form of the UK's relationship with its EU neighbours and/or the clout of individual sports in negotiating special work permit arrangements.

It is possible however that English football could lose ground to other European leagues, such as the Serie A or the Bundesliga, which will remain unrestricted in their ability to target EU players. Whilst the rules remain as they are currently, it will be interesting to see whether likely restrictions on freedom of movement in the future affects the activities of Premier League clubs in the current transfer window, given that players are generally signed for longer periods than the two-year time-frame set aside for negotiation. We think it is unlikely that the clubs will change their targets, but the leave decision may affect the willingness of European players to relocate to the UK given the uncertainty around their immigration status post the negotiation period. This is particularly the case given that the prime minister has refused to guarantee the status of EU nationals within the UK.

Listed Events Regime

The Broadcasting Act 1996 makes provision for the Secretary of State to designate a key sporting or other event as a "listed event". Listed events consist of List A where full live coverage is protected including events



such as the Olympic Games, the FIFA World Cup, the European Football Championships Finals Tournament, the Rugby World Cup Finals and Wimbledon; and List B where secondary coverage is protected and which includes the Commonwealth Games, The Ryder Cup and The Open amongst other events. The right to broadcast List A events in full or the highlights of List B events must be offered to a qualifying broadcaster; that is a broadcaster whose service is free to at least 95% of the UK population.

The listed events regime, although enshrined in UK legislation, flows directly from the EU AudioVisual Media Services Directive (AVMSD) and there is the possibility that sports rights owners in the UK could now lobby heavily either for a complete withdrawal or amendment of the legislation. The types of arguments that could be made can be seen in the response of the Sports Rights Owners Coalition (SROC) to the recent EU consultation on the AVMSD. The SROC argued that a regime for listing events was no longer necessary given that pay TV penetration was over 60% in at least 20 EU states and was over 90% in 9 EU countries. They argued that the requirement for a listed events regime was no longer justified.

Now, following the UK's vote to leave the EU, the UK will be free to make its own choices as to whether to retain such a regime. Any abandonment of such a regime or even a substantial amendment of it is likely to have a positive impact on the value of the broadcast rights of events currently on the list within the UK. At the same time however, such a move is likely to attract public dissatisfaction, given the recent negative reaction of the public to Formula 1 moving their live coverage exclusively to Sky.

There is also a question as to whether current EU jurisdictions will take the opportunity to make particular UK events List A in their own countries which would diminish broadcasting rights values in those countries. To take an extreme example, if France and Italy chose to argue under their regimes that the English Premier League was a key sporting event, and should be listed either on list A or B, that would not only seriously diminish the international value of those rights but would also impact on the UK value. Even if such a scenario might be considered unlikely, the reality is that the UK government will now lack the influence to argue against such a move.

In addition the Broadcasting Act also provides for Ofcom to give consent before a broadcaster transmits coverage of events to other EEA states where that event has been listed in that state. Even if states were not to go further and list new events, how the interaction between different countries designated lists will be dealt with now is unclear.

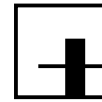
Conclusion

For many UK citizens sport is a fundamental part of their social identity and their cultural life. It is also a huge contributor to the UK economy. How the issues we have outlined above and many others will be dealt with now the UK has voted to leave the EU, are therefore extremely important.

Currently the quality of many of the sporting events enjoyed by the UK is based largely on the fact that broadcasting and sponsorship revenues allow clubs or events within the UK to field the best players and deliver exciting levels of entertainment both live and through high quality broadcasts. If the decision to leave and the deal that will be negotiated impacts on the ability to generate broadcast and sponsorship revenues or the ability to attract the best players and athletes to compete in the UK, then the quality of competition is likely to dissipate and with that the support of both consumers, sponsors and broadcasters.

How the UK interacts with its nearest neighbours now it has voted to leave the EU, therefore will not only impact sports broadcasters and rights owners but sports clubs and those who follow sport at both the professional and the amateur level.

We expect that in the aftermath of this momentous decision to leave we will see not only individual athletes choosing to obtain EU citizenship through parents or grandparents but that we may also see companies seeking to establish themselves in the EU. For example transferring their broadcast rights or other rights to those newly established entities in order to be able to take advantage of continuing access to the single market not only during the Article 50 process but post any deal that might be negotiated.



SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS JOINING THE DOTS OF THE EU REFERENDUM

What next?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes.

For further information in the first instance, please contact:



Gordon Moir
Partner
T +44 (0)20 7429 4988
M +44 (0)741 426 7467
E gordon.moir@shepwedd.com



Annemaree McDonough
Consultant
T +44 (0)20 7429 4923
E annemaree.mcdonough@shepwedd.com

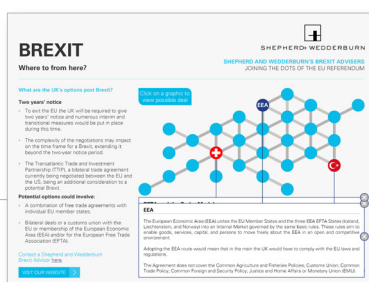


Paul Carlyle
Partner
T +44 (0)131 473 5782
M +44 (0)77 538 71600
E paul.carlyle@shepwedd.com



Bookmark our Brexit Advisers page for a comprehensive collection of Brexit updates and guidance

Click here to view our 'Where to from here' Brexit infographic.



Click here to read our 'What now' Brexit bulletin.

