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The Brexit Effect on Football



What does Brexit mean for Premier League and EFL clubs, their players and their employees?

It is without question that the political and socio-economic forces of Brexit will reshape the landscape of football in England. The UK has now formally left the European Union (EU) and the transition period has come to an end.

From 1 January 2021, free movement for all EU nationals (apart from nationals of the Republic of Ireland who are subject to different rules), including professional sports people, came to an end. EU nationals are now subject to the same visa requirements as their non-EU counterparts.

We hope that this article helps highlight some of the key issues facing football clubs, their players and their non-playing staff employees in light of these changes. In this document, we will consider:

- Immigration implications post 31 December 2020, in particular the importance of Settled Status and Pre-Settled Status;
- “Work Permits”, Certificates of Sponsorship and Governing Body Endorsement; and
- The Impact of Brexit on youth recruitment and development.

Immigration implications after the transition period

EU nationals already present in the UK before 31 December 2020:

As a result of the UK's membership of the EU, many EU nationals made the UK their home. In recognition of this, the Government put in place legal protections in the wake of Brexit such that those EU nationals (including players and non-playing staff (as well as coaches, scouts, club executives, sporting and football directors, sports scientists, doctors and other club operational personnel) who were residing in the UK prior to 31 December 2020, would be able to continue to live and work in the UK so long as they apply for (and successfully obtain) Settled Status, under the EU Settlement Scheme (the Scheme).

It is of paramount importance that clubs are aware of the fact that the **deadline for applications under the Scheme is 30 June 2021**.

When applying under the Scheme, any individual who can establish 5 years' continuous residence (which usually means establishing at least 6 months' residence in the UK in any 12-month period in the UK over a total five year period prior to the cut-off date of 31 December 2020) will be granted **Settled Status**. Anyone who cannot meet this requirement, but is nevertheless eligible under the Scheme, will be awarded **Pre-Settled Status**.

Those players and non-playing staff who obtain Settled Status will establish their rights to continue living and working in the UK indefinitely, so long as they are not absent from the UK for a five year period. Additionally, those with Settled Status may also apply for British Citizenship 1 year after they have received Settled Status (assuming the relevant criteria in place at the time is met).

On the other hand, Pre-Settled Status gives EU nationals a continued right to live and work in the UK whilst it remains valid. Nevertheless, this visa status is slightly more precarious, as it lapses after 2 years' absence from the UK.

Nonetheless, matters become more complicated for those individuals who want to go from Pre-Settled Status to Settled Status at the end of their Pre-Settled Status visa.

Those individuals will need to keep a close eye on the overarching continuous residence requirements (i.e. by ensuring no more than 6 months' of absence in any 12 month period during a 5 year period) before they apply for Settled Status. Practically, this might prove more challenging especially where lengthy international loan deals are involved.

Clubs need to be acutely aware of the fact that Settled Status and Pre-Settled Status are **not optional applications**; it is a mandatory requirement to obtain this visa status in line with the deadline stipulated above. Failure to do so will potentially result in individuals being in the UK illegally and clubs employing them unlawfully (leaving a club wide open to the potential of fines and other criminal sanctions, as well as the prospect of still having to honour contractual obligations to the individual, not to mention the potential reputational damage). Those individuals without the required visa status could also face deportation.

should now be actively communicating to their players and non-playing staff about the Scheme. Clubs should be mindful, however, that giving immigration advice is a regulated activity and so they need to be careful not to advise players and non-playing staff unless they hold appropriate qualifications to do so; failing to comply with this requirement is potentially a criminal offence.

Equally, clubs ought to give thought to the fact that EU players with Pre-Settled or Settled Status will no doubt have more options available to them in terms of transfers (permanent or otherwise) and, as a result, clubs could even demand a higher transfer value for them.

EU nationals arriving after 1 January 2021

The UK's new immigration regime now applies equally to EU and non-EU nationals alike.



Work Permits/Certificates of Sponsorship and Governing Body Endorsement

Free movement has been a crucial aspect of the modern game across Europe. For the last 40 years, EU players have been at liberty to come and play football in the UK, using their rights of freedom of movement, whereas non-EU players, wanting to play in the UK, have typically required a Tier 2/Tier 5 visa or “work permit”.

However, the impact of Brexit will mean that EU players and non-EU players must be treated the same with respect to immigration. Since 1 January 2021, EU players require a work permit in order to be employed and play football in the UK. The most significant impact of Brexit therefore is the bearing that it will have on player transfers and movement.

Post-Brexit, in order to obtain a work permit for any non-UK national players or coaching staff, clubs will first need to obtain a sponsor licence under T2 Sportsperson or Creative or Sporting Worker (sporting sector). This involves obtaining approval from the Home Office and a Governing Body Endorsement (GBE) from The FA. Once obtained, a Sponsor Licence essentially provides eligibility to football clubs to assign Certificates of Sponsorship to players (this is the employer side of the work permit requirements).

Non-EU national players and non-playing staff then have to secure their own GBE before they are able to submit a visa application. Their visa will only be granted if they meet both the GBE and visa eligibility requirements.

Focusing on the player side, players are only eligible to obtain a GBE if they meet specific prescribed requirements that demonstrate that they are an elite player who is

internationally established at the highest level, and where their employment will make a significant contribution to the development of football at the highest levels in England.

On 1 December 2020, The FA published its revised GBE requirements for international players which apply with effect from 1 January 2021. Since 1 January 2021, this applies to EU and non-EU national players alike.

Under the new GBE rules, a player’s eligibility is assessed by a range of factors, including international experience as well as the calibre of the league and team that the player has been acquired from.

Players are automatically eligible for a GBE in circumstances where they meet the pre-requisite percentage threshold of international appearances, for those national teams placed in the top 50 of the FIFA World Rankings. How often a player needs to have played depends on the rank of their national team. If the player’s international appearances meet the ‘Auto Pass’ percentage set down by The FA then it will automatically grant a GBE.

In the event that a player is not granted an Auto Pass, The FA will grant a GBE if a player is able to achieve 15 or more points in accordance with criteria they have set down. Points can be scored from six different categories, including the player’s international status, the league that the player is transferring from, minutes played in continental competitions (i.e. UEFA Champions League and UEFA Europa League) and the success of their previous club.



In essence, the more a player has played at a higher level, the greater the points awarded and the higher the prospects of successfully obtaining a GBE from The FA. Separate rules apply in respect of Under 21 players but they broadly follow the same process as senior players (as Under 21 players are also able to gather points across six distinct criteria). However, as is addressed further below, FIFA's restrictions on the international transfer of minors will nevertheless apply.

For the January 2021 Transfer Window only, players who achieve between 10 and 14 points may apply to have their case heard by an Exceptions Panel. A GBE will be granted if it can be demonstrated that 'exceptional circumstances' prevented the player from achieving the required 15 points and that if those circumstances did not apply, the player would have achieved 15 points. It is currently not clear what amounts to 'exceptional circumstances' under the points-based criteria.

After the January 2021 Transfer Window there will be no Exceptions Panel Process; players will either score the necessary points and be awarded a GBE or they will not.

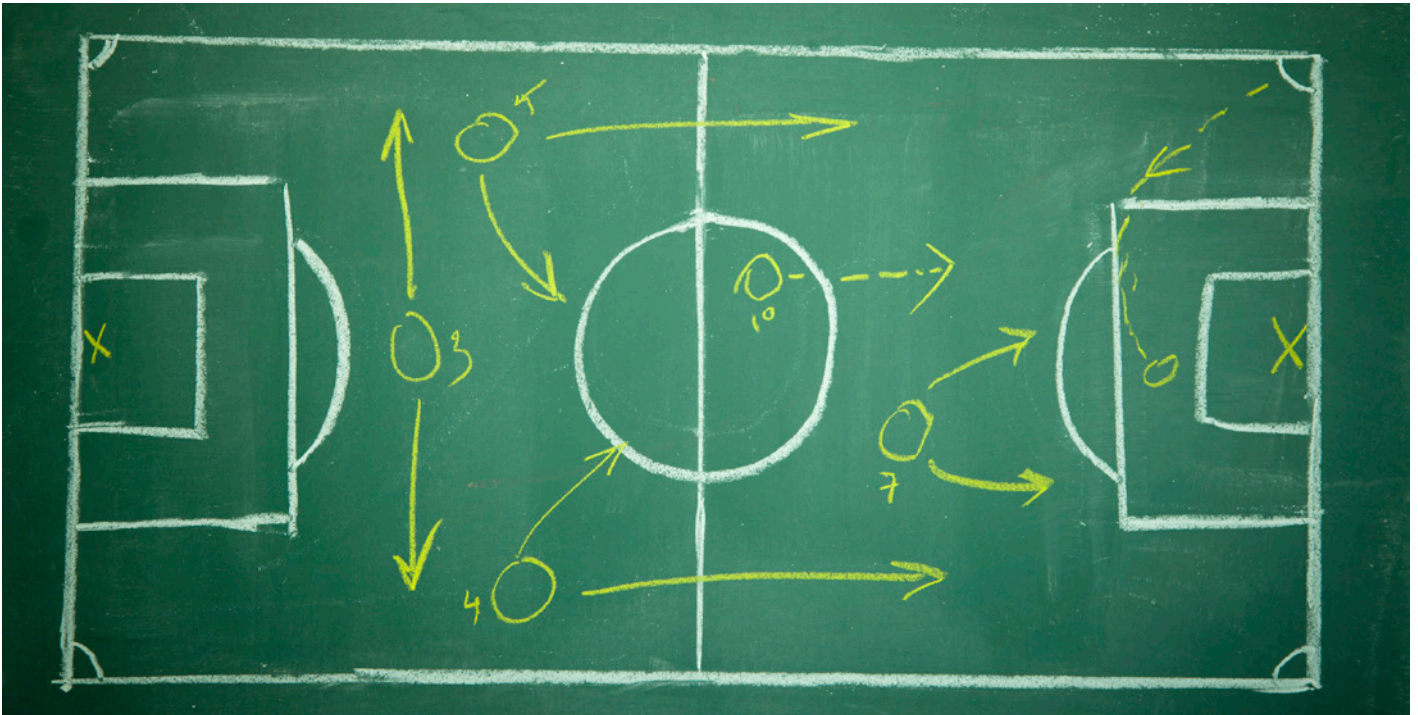
This is a worrying development for clubs as it means they will no longer have the ability to make representations for why certain individuals should be granted GBE where they do not meet the specific requirements.

The FA operates further GBE criteria apply for managers, assistant managers and directors of football. The aim of all of these is to ensure that GBE is only issued to those who are of the highest calibre and are able to make a significant contribution to the development of the game at the highest level i.e. clubs competing in the Premier League and the EFL.

Are there any other options?

For those players who do not meet the GBE criteria for a work permit, and where there are no family based routes available that would give individuals the ability to live and work in the UK (such as an ancestry visa or spousal visa), clubs may be inclined to consider using the "visitor" route. Although some sporting activities are permitted under this route, the visitor route is unlikely to present a solution to the potential problems. The biggest issue is that, an individual is not permitted to enter as a visitor where they are being employed as a professional sports person by a team based in the UK. Clearly this will apply to all Premier League and EFL players, which will mean that they are ineligible to use the visitor route.





Youth Recruitment and Development

Brexit will have a particular impact on the ability of English clubs to recruit youth players from Europe, especially those between the ages of 16 and 18 years old.

Article 19 of the RSTP prohibits the international transfer of players below the age of 18. These Regulations were developed against a backdrop of reports concerning child trafficking in football. There are certain exceptions, which include where:

“The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18.”

As the UK has now formally left the EU, the exception under Article 19 will no longer apply to English clubs and, ultimately, the international transfer of minors will be prohibited. As a result, English clubs will be placed at a competitive disadvantage when compared with their European rival clubs, in terms of the recruitment of young and emerging European talent.

Technically speaking, the UK's departure from the EU could have included a prohibition on transfers of youth players between English, Scottish, Welsh and Northern Irish clubs. However, on 4

December 2020, the FIFA Council approved an amendment to Article 19 acknowledging the fact that it recognises that the UK is one state made up of four separate FIFA member associations. As such, the transfer of minors between UK member associations (England, Scotland, Wales and Northern Ireland) will still be permissible, provided certain minimum obligations are met (these minimum obligations are identical to those that apply to a transfer of a minor aged between 16 and 18 within the territory of the EU or EEA).

Importantly the Republic of Ireland is not included in this concession. As such UK clubs will not be able to sign players from the Republic of Ireland under the age of 18 after 31 December 2020.

There have been rumours that Article 19 might be amended more generally to allow players of any nationality to move internationally between the ages of 16 and 18 where they have some sort of family link to the country they are being transferred to, but at the minute it is unclear if or when such changes might be implemented.

While this will significantly limit the scope of clubs' youth recruitment policies, The FA has identified Brexit as a chance to create more opportunities for British

talent in the Premier League and EFL. Ultimately, The FA believes that increased English participation in the English professional leagues will improve the English national team.

In light of these significant immigration changes, it is anticipated that many European markets will prove more difficult for some clubs, especially those looking for a bargain in the form of an uncapped payer with a European passport. These changes also mean that clubs will need to calculate a player's eligibility points prior to arranging an international transfer.

Brexit is an entirely different prospect at different ends of the Premier League and EFL spectrums and immigration changes will automatically reduce the availability of young talent across Europe. Inevitably, this means that clubs will need to adapt recruitment strategies. There will no doubt continue to be an incentive to train, develop and provide a pathway for youth players into the first team squad and with Brexit likely to make the path to employing non-UK players more restrictive, perhaps clubs will look to academy graduates as an easier, more financially viable and practical option than that of navigating nuanced and complex employment restrictions.

Conclusion

Brexit means that clubs now have to navigate through potentially uncertain and possibly volatile terrain. The international dimension of the Premier League is arguably one of its greatest assets; it has become a global repository of talent.

However, as the days, weeks, months and years unfold, the full impact of Brexit on football will no doubt become clear. We are looking at a new political and footballing landscape from 1 January 2021, one which presents challenges and opportunities in equal measure.



Takeaway Points:

- Clubs must understand the new rules to make sure they are compliant with the new legal requirements.
- If they aren't already doing so, clubs should be communicating with their employees (players and non-playing staff) about the EU Settlement Scheme. Eligible individuals must understand the need to make applications under the Scheme in advance of the deadline of 30 June 2021.
- Clubs should urgently assess the impact of The FA's revised GBE criteria for players and non-playing staff and start to plan for how this impacts their recruitment plans for the rest of the 2020/2021 season (and beyond).
- Clubs' recruitment and academy departments must assess the impact of these changes on their youth recruitment and development strategies, whilst keeping a close eye on any developments concerning the home-grown rule.

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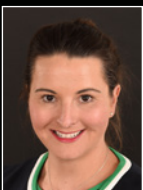
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