

Sports Immigration – Brexit’s Latest Political Football

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What would the impact be on UK sports, and in particular football, if the UK were to exit the EU?

In the *Bosman* ruling in 1995 the **European Court of Justice** declared that, in accordance with the *Treaty of Rome*’s rules regarding the principle of freedom of movement for workers, EU sportspeople can ply their trade in any other EU Member State without any restriction on the grounds of nationality. As such, an EU national has the same rights to play here as any UK national player.

If it left the EU, the UK would no longer necessarily be bound by those principles of free movement. On the face of it, EU sportspeople would then be subject to the same criteria-based tests as ‘foreign’ (i.e. non-EU national) players before they could join a British team.

These tests are set out by each UK sport’s governing body (for example, the Football Association, the Rugby Football Union or the English Cricket Board – they are not homogenous across different sports). The criteria will have been agreed and established as a result of discussions between the governing body and the Home Office, which must be satisfied that the applicant is of sufficient calibre to benefit the sport. Here we will look at football but the same principles will apply to pretty much everything from cricket to darts and curling to swimming.

All non-EU sportspeople must secure pertinent immigration permission before taking the field for a British club. To be granted that permission by the Home Office, UK clubs must first secure a Governing Body Endorsement, and if issued assign either (i) Tier 2 (sportsperson) or (ii) Tier 5 (temporary worker) certificates of sponsorship to the player and then apply for leave to enter or remain in the UK.

(i) The Tier 2 (sportsperson) category is for elite players and coaches who are internationally established at the highest level and whose employment will make a significant contribution to the development of their sport at the highest level in the UK, and who will base themselves in the UK. There is a minimum standard of English required. They can be granted a stay of up to five years.

(ii) The Tier 5 (temporary worker)—creative and sporting category—is also for players who are internationally established at the highest level in their sport, and will make a significant contribution to the development of their sport in the UK. However, they do not need to satisfy any English language criterion. They can be granted a stay of up to 12 months, after which a fresh application must be

made.

In May 2015, the FA introduced more stringent immigration requirements for non-UK footballers to ensure that only the best non-EU footballers are granted permission to play in England. Now players must have played for a country in the Top 50 when world rankings are averaged over the two previous years. Previously, it only had to be in the Top 70.

Pre-May, players had to have appeared in at least 75% of their country's international matches over the past two years. Now it is in at least 30% of matches in the last two years (12 months if the player is aged 21 or under) if their country is ranked in the top 10, 45% if ranked between 11th and 20th, 60% between 21st and 30th, and 75% if between 31st and 50th.

There are currently about 160 players from the EU in the Premier League and it has been claimed that two-thirds of them would not satisfy the new, stricter criteria determining which non-EU players should be granted a visa.

So is that it? An end to the journeyman EU player lugging his kitbag across the Channel for a spell in Europe's most lucrative league before heading off to the US or China? Maybe this would create more space and impetus for the development of local talent, which would have to be a good thing. Maybe, on the other hand, it would just undermine the quality and competitiveness of UK teams in Europe (assuming we were still welcome in the Champion's League and Europa Cup competitions, which is probable but not a given), and limit the revenues coming into English football from European broadcast and merchandising rights.

These are mere details in the overall impact of a Brexit on the economy or migration or security or trade. But would you want to be the Government accused by the whole nation of filleting its favourite sport? It has to be assumed that even now there is a basement in Whitehall where measures to prevent this are under fevered consideration. So what could the Government do?

From a purely practical perspective, any move away from a points-based system (as currently in place) would be difficult to imagine. Realistically, it is unlikely that the Government would be able to justify making wholesale, radical changes to its immigration policies solely to benefit sportspeople, though as this would all hit in the run-up to the next General Election I bet someone is thinking about it anyway.

A possible compromise might be to remain under the framework of a points-based system, but to relax the requirements for Tier 5 certificates of sponsorship. This would have the effect that more sportspeople would be allowed into the country on a short-term basis, but they would then have to prove that they sufficiently benefit the domestic leagues and/or the sport in the UK before being granted an extension. This of course would create a significant increase in administration for the Home Office and for UK clubs, but both might think it a worthwhile investment. It could however be a deterrent for players weighing offers from clubs in other jurisdictions too.

In the previous paragraphs we have looked at the impact of a Brexit on EU sportspeople wanting to work in the UK. That is to some extent in our own hands. However, arguably the bigger impact would be on UK sportspeople wishing to work in the EU. By our leaving the EU, they would no longer be able to make use of the principles of free movement for workers either.

Just as the UK's sporting governing bodies currently set the criteria that non-EU sportspeople must satisfy to play for UK sports teams, UK footballers would have to satisfy those set out by the

governing body in question when wanting to move to a club in the EU. These regulations will be sport-specific and country-specific and may be no less strict than the UK's. It would become a much more challenging prospect for any UK player -other than the most elite internationals – to move to an EU club.

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