



Brexit and the FA's work permit criteria

As a supplement to [our article on the potential impact of Brexit on European football](#), we wanted to devote particular attention to the Football Association's work permit criteria and the points-based system it uses when making its determination whether to issue the Governing Body Endorsement (GBE) to secure a work permit from the Home Office.

As we discussed in our first article, the right of citizens of EU member states to move freely around the European Union for employment purposes is one of the four fundamental freedoms guaranteed by the EU. Both the Home Office (the UK governmental department responsible for issuing work visas) and the FA must comply with the free movement protections guaranteed by the EU. As a result, every footballer with citizenship in one of the EU member states may work in the EU without needing a work permit.

However, every non-European Union footballer does need to successfully apply for a GBE with the FA before the Home Office will consider issuing a work permit.

Tensions between the FA and the Premier League

In order to understand the football work permit regulations in England, it is necessary to first understand the natural conflicts between the FA and the Premier League on this issue. One of the main concerns of the FA is England's success at the international level, and therefore, it has a vested interest in ensuring that young English players have the opportunity to develop and thrive in the Premier League.

This is in direct competition with Premier League clubs' focus on building the strongest possible squad, regardless of nationality, and a very delicate balance is struck with the current regulatory system

This tension was illustrated recently when the FA proposed reducing the maximum number of non-home grown players permitted in a club's first team squad of twenty-five by four, from seventeen to just thirteen players. This would almost certainly be viewed as restrictive by Premier League clubs, and the authors believe that these clubs would be highly unlikely to agree to the FA's proposed amendments.

Football League clubs would also be affected, but considerably less so, as they rely much less heavily on foreign players when building their squads. Excluding Ireland, the authors have found that nearly 40% of Premier League players are citizens of other EU member states, while the same can be said for less than 1% of Football League players.

The percentage of English players in the Premier League has dwindled from 79 per cent during the 1992/93 season to 33 per cent at the start of the 2015/16 season. The FA has stated that it wants to see the percentage rise to 45 per cent by 2022. The FA will need to balance its desire to provide more opportunities for English players with the need for Premier League clubs (and to a lesser extent, Football League clubs) to access a large global talent pool, but the FA will continue to take steps to meet its goal of 45 per cent.

Up until now, the FA has made efforts to reverse this trend through tightening restrictions on work permits for non-EU footballers. Should the UK leave the EU, the FA's desire to encourage the development and promotion of homegrown English players may consequently come at the expense of EU footballers as well.

Below, we set out the current work permit regulations and discuss how they could be altered should the UK leave the EU.

Current work permit regulations

After securing approval from the Home Office in March 2015, the FA introduced new work permit regulations for non-EU footballers, which came into force that May.

In order to receive a work permit, a non-EU footballer must secure a Governing Body Endorsement (GBE) from the FA.

In order to automatically qualify for a GBE, a non-EU footballer must have participated in a minimum percentage of senior competitive international matches for his national team in the two years preceding the date of his application (for players aged twenty-one or younger, the reference period is reduced to one year). The required percentages are determined by that country's FIFA world ranking as follows:

- **FIFA Ranking 1-10:** 30% and above
- **FIFA Ranking 11-20:** 45% and above
- **FIFA Ranking 21-30:** 60% and above
- **FIFA Ranking 31-50:** 75% and above

The chart below details the FIFA world ranking and what the corresponding minimum international participation percentage requirement for each of the EU member states would be under the current GBE criteria if EU footballers were obliged to comply with the same criteria as non-EU footballers currently face. We also note the number of current Premier League players who could be affected by such a change.

Member State	FIFA Ranking (April 2014 – March 2016)	Premier League players (as of September 2015)	Minimum international participation percentage
Austria	29	4	60%
Belgium	4	18	30%
Bulgaria	70	0	N/A
Croatia	15	3	45%
Cyprus	103	0	N/A
Czech Republic	22	3	60%
Denmark	27	5	60%
Estonia	86	0	N/A
Finland	69	0	N/A
France	14	37	45%
Germany	1	8	30%
Greece	21	2	60%
Hungary	40	1	75%
Ireland	60	24	N/A
Italy	11	6	45%
Latvia	98	0	N/A

Lithuania	100	1	N/A
Luxembourg	127	0	N/A
Malta	143	0	N/A
Netherlands	8	21	30%
Poland	50	3	75%
Portugal	6	5	30%
Romania	16	2	45%
Slovakia	31	1	75%
Slovenia	38	0	75%
Spain	7	33	30%
Sweden	34	5	75%

If a player doesn't automatically qualify, there is an appeals process. The appeals process consists of a review of the player's application conducted on a points-based system by a three-person Exceptions Panel.

At the first instance, if the player scores four points or more, the Exceptions Panel may recommend that a GBE be issued, but isn't obligated to do so.

The criteria is as follows:

- The transfer fee being paid for the player is above the 75th percentile of all Premier League transfers in the previous two transfer windows – **3 points**
- The transfer fee being paid for the player is between the 50th and 75th percentile of all Premier League transfers in the previous two transfer windows – **2 points**
- The wages being paid to the player by the applicant club are above the 75th percentile of the top 30 earners at each Premier League club during the previous transfer window – **3 points**
- The wages being paid to the player by the applicant club are between the 50th and 75th percentile of the top 30 earners at each Premier League club during the previous transfer window – **2 points**
- The player's current club is in a **top league** and the player has played in at least 30 per cent of the available minutes in league matches – **1 point**
- The player's current club has played in the group stages of a *continental competition* within the last 12 months and the player has played in at least 30 per cent of the *available minutes* in league matches – **1 point**

In an effort to help remove any confusion or ambiguity, we set forth the definitions for some of the terms used below:

- The FA defines **top league** as:
 - the six European leagues which provide the most players to the top 20 squads in the FIFA Aggregated World Rankings at the relevant point in time; and,
 - the two Central and South American leagues which provide the most players to the top twenty squads in the FIFA Aggregated World Rankings at the relevant point in time.
- The FA defines **available minutes** as game time in which the player was available for selection. Any time missed through injury or suspension, provided there is written evidence, will not be included in the calculation to determine if the player has met the required 30 per cent threshold. The calculation will be

made over a two-year period if the player is over twenty-one years old, and over a one-year period if the player is twenty-one or younger.

- o The FA defines **continental competitions** as the UEFA Champions League, the UEFA Europa League, and the Copa Libertadores de America.

If the player scores less than four points in the above primary review criteria, the Exceptions Panel will then conduct a secondary review consisting of both objective and subjective criteria.

For those interested in further reading, [the FA publishes the regulations on its website](#).

Potential changes to the regulations following a UK exit

The current work permit regulations were put in place with the knowledge that EU players would continue to move freely into English clubs and were specifically enacted to exclude all but the best non-EU players in order to, theoretically, provide more opportunities for young English players.

Were EU players no longer afforded free movement to work in the UK, it is reasonable to expect that the work permit regulations would be adjusted to reflect this development. However, it is interesting to note the potential future restrictions on recruitment of players by reference to the current work permit system. It is difficult to speculate as to how exactly the FA would alter the regulations, but there are a few areas that seem nearly certain.

For one, it is extremely unlikely that new regulations would be applied retrospectively, and footballers already competing in the UK should be able to keep their work permit until at least their current contracts expire. Additionally, it is unfathomable that truly world class EU players would ever find difficulty securing a GBE from the FA.

Also, the football authorities will be mindful that alterations to the work permit regulations that would make it more restrictive for EU players to join clubs in the UK would benefit the top-tier EU clubs considerably, as there would be less competition for the services of those players.

A consequence of restrictions on the recruitment of players with EU citizenship would also impact detrimentally the recruitment of those EU citizens residing outside of the EU (e.g. South American players with dual nationality), thereby giving EU clubs a distinct advantage over the recruitment of these players.

Therefore, there will be considerable pressure by UK clubs on the Home Office and the FA to make the necessary concessions to allow for such recruitment to be as unfettered as possible.



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