

Group Briefing

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Will there be a 'Sporting Exception' to Brexit?

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

Since its inception in 1957, the European Union (EU) has been based on four key principles: the free movement of goods, persons, services and capital.

The English Premier League has benefitted significantly from the free movement of workers with a huge host of Europe's top names plying their trade in England. The UK Home Office and the English Football Association (FA) have been legally bound to comply with the free movement protections guaranteed by the EU. Irish footballers have played for clubs in the Premier League and Championship for decades.

STRICTER BORDERS

Once Article 50 is invoked by the English parliament specific legislation restricting the inflow of workers from the EU to the UK will likely follow involving a stricter administration of work permits. English and Scottish Clubs may become disadvantaged by restrictions on the movement of EU players to the UK. Equally, such restrictions have the potential to benefit Irish football clubs by increasing their ability to hold on to promising young players.

WORK PERMIT REGULATIONS

The English FA put work-permit regulations in place in 2015 to regulate

the influx of non-EU foreign players into English Clubs. Currently, in order for players from outside the EU to transfer to an English club, they must either meet a minimum number of international appearances for a top-50 country over the previous two years (the higher the ranking, the less number of matches necessary), or a club must appeal by demonstrating that a player is special enough to warrant a visa by paying him annual wages far above the league average (currently around €1.9 million). England intends to leave the EU Single Market and there is a real possibility that EU players will face similar restrictions. Over 330 European players in the first two tiers alone in England and Scotland would fail to meet the British Home Office criteria.

SPORTING EXCEPTION?

The question as to whether there should be a sporting exception to Brexit comes down to the British Home Office. It seems unlikely given the fact that the government would be cautious about creating an industry specific scheme however it the traditional 'Sporting Exception' to the law could come into play in this area. It will certainly be an area to watch.

HOLDING ON TO YOUTH PROSPECTS

Another notable development will be the removal of a loophole that currently allows youth academy players and schoolboys to transfer within the EU before they turn 18. Article 19 (Protection of Minors) of FIFA's Regulations on the Status and Transfer of Players prohibits international transfers of players under the age of eighteen, save for limited exceptions:

- (i) If the players parents move to the country for non-footballing reasons;
- (ii) If the player lives within 100km of the club; or
- (iii) Provided the transfer is within the EU or the European Economic Area (EEA).

If the transfer takes place within the EU or EEA, then the age criteria is reduced to sixteen. UK clubs, no longer in the EEA, will lose the benefit of the exception to Article 19 and will be prevented from signing players from other EU clubs between the ages of sixteen and eighteen.

WAIT AND SEE...

Leaving the EU could have a huge impact on football in England with half, if not more, of English Premier League footballers requiring work-permits to either join clubs or renew existing contracts. With restricted access to youth players, there is potentially an opportunity for Irish football clubs to benefit from holding on to their hot prospects. Premier League clubs don't know what's going to happen. An exception may have to be negotiated with FIFA and the Home Office. Now we wait and see.

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