



BREXIT AND ITS IMPACT ON THE SPORTS INDUSTRY

BACKGROUND

On 29 March 2017 Theresa May triggered Article 50 of the Lisbon Treaty¹. But this was not without a fight, on 24 January the Supreme Court ruled against the Secretary of State in *R (Miller) v Secretary of State for Exiting the European Union*², making it necessary for the Government to put the question of invoking Article 50 to a vote in Parliament. That vote was won on 13 March 2017 allowing ministers to start the two year formal Brexit process. The UK and the EU therefore have until 29 March 2019 to negotiate the terms of the UK's withdrawal, unless this is extended by mutual agreement.

So what does this all mean for the sport industry that is heavily influenced by the UK's membership of the EU. The impact is yet unknown as it is dependent on the outcome of the withdrawal negotiations. However, what has been made clear by the Government is that the right to freedom of movement as we know it will end. In this section we will cover:

- The pre-Brexit position
- The post-Brexit future
- Life in the lead up to Brexit

PART A – THE PRE-BREXIT POSITION

Current right to freedom of movement

Athletes who are from the EU or who are family members of EU nationals currently enjoy free movement rights enshrined in the Treaty on the Functioning of the European Union (TFEU)³. This includes the ability to travel, reside and work freely in any member state without being discriminated against in favour of a state's own citizens. These rights also extend to Norway, Liechtenstein and Iceland, who are signatories to the Agreement on the European Economic Area (EEA), and to Switzerland. Under the *Kolpak Ruling*⁴, nationals of countries with an associate EU trade agreement, who are lawfully working within an EU country, are also able to enjoy the same rights as EU players in the UK.

What is important to remember is that until the UK exits from the EU, there is no change to that freedom of movement and EU law will continue to apply.

In her speech to the Commons on triggering Article 50 the Prime Minister sought to assure EU nationals already living in the UK: "We seek to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states *as early as we can*"⁵ (emphasis added).

However, linking EU nationals' right to remain with the withdrawal negotiations created uncertainty both for the EU nationals and businesses that rely on them. This was especially so given that the Government had already announced

¹ <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>

² *R (Miller) v The Secretary of State for Exiting the European Union* [2016] EWHC 2768 [Admin]

³ [The Treaty on the Functioning of the European Union](#)

⁴ [Kolpak Ruling](#) - countries include those within the African, Caribbean and Pacific (ACP) group of states, such as South Africa, Jamaica and Zimbabwe.

⁵ [Prime Minister's Commons statement on triggering Article 50](#)



in its 2017 white paper⁶ that post-Brexit, the Free Movement Directive would no longer apply and the migration of EU nationals would become subject to UK law.

During this period of uncertainty we saw a steep increase of 64% in the number of applications by EU nationals for residency documents confirming their status, an increase of 150% in British citizenship applications from EU nationals⁷ and a fall in net migration of EU citizens by 75,000⁸.

This uncertainty has led to much commentary and debate on the future of sport: will athletes still be able to move freely or will they have to fall under the rules for non-EEA nationals? Will the Koplak Ruling disappear? Will the Bosman ruling⁹ cease to apply? The answers to these questions are not yet available but this does not mean that those impacted in the industry should not be lobbying to make sure that the impact on sport is known.

So a year on, what has been achieved?

Agreement on EU citizens' rights – arrival pre-31 December 2020

On 8 December 2017, nine months after triggering Article 50, the UK and the EU finally agreed in principle the terms of phase 1 of the negotiations, alleviating some of the uncertainty on the rights of EU Citizens in the UK¹⁰.

That agreement set the exit date as 29 March 2019 and specified that EU nationals and their family members who are in the UK before that date will be able to stay after Brexit, enjoying the same rights they enjoy now.

Then on 19 March 2018, a revised draft withdrawal agreement was published highlighting the progress made in the negotiations¹¹. That agreement provided much needed certainty by effectively extending current EU free movement rights to those who arrive before the end of the two year transition period, ie before 31 December 2020.

What this means for EU athletes is that they will be able to travel to, reside and work in the UK freely during this period. They will also be able to continue benefiting from these rights and qualify for 'settled status' on completing five years in the UK if they can show that they resided here before 31 December 2020.

The UK has already indicated that EU nationals and their family members will be required to apply for a status document confirming this right to reside. At the time of writing, the deadline for submission of such an application is still not clear. However, the withdrawal agreement specifies that the deadline shall not be less than six months from the end of the transition period¹² and that the application will be on a voluntary basis during.

The Government promises that the process will be streamlined, quick and user-friendly. However, the publication of the white paper on immigration detailing this process and answering as yet many questions has been delayed until late autumn¹³ and concerns have already been raised over the Government's ability to deliver this new system by 29 March 2019, much less process applications from over three million EU nationals and their family members within the two year period.

⁶ [The United Kingdom's exit from and new partnership with the European Union White Paper February 2017](#)

⁷ [National Statistics How many people continue their stay in the UK? 22 February 2018](#)

⁸ [Statistical bulletin: Migration Statistics Quarterly Report: February 2018](#)

⁹ [The Bosman ruling](#) meant that players could move to a new club at the end of their contract without their old club receiving a fee. Players can now agree a pre-contract with another club for a free transfer if the players' contract with their existing club has six months or less remaining. The Bosman ruling also prohibited domestic football leagues in EU member states, and also UEFA, from imposing quotas on foreign players to the extent that they discriminated against nationals of EU states.

¹⁰ [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU dated 8 December 2017](#)

¹¹ [Draft Withdrawal Agreement](#)

¹² [Draft Withdrawal Agreement – Article 17 1.\(b\)](#)

¹³ [House of Commons Hansard Immigration White Paper - 5 February 2018](#)



“The lack of detail and uncertainty for EEA nationals with just months to go before the process to confirm their status is supposed to start and only a year to go before Brexit is not only difficult and stressful for those affected, it also raises serious questions about UKVI’s level of preparedness and ability to deliver a new system. If key questions are not swiftly resolved and delivery plans drawn up, we do not believe that UKVI will be capable of delivering significant changes to the system either at the border or on registration by March 2019.”¹⁴

Now that an extension of EU citizens’ rights has been agreed until the end of the transition period, the Government has bought itself more time to put a new immigration system in place for post 31 December 2020.

PART B – THE POST-BREXIT FUTURE

With a year to go, what does the future hold?

The answer is yet unknown as any new immigration system will be inextricably linked to the withdrawal negotiations. However, the agreement reached on 19 March 2018 means that any new immigration system will now take effect from 31 December 2020 rather than 29 March 2019, so individuals and businesses have more time to prepare for post-Brexit.

Post-transition period – future immigration system

There are two main systems being discussed which are polar opposites:

- maintaining freedom of movement but for those who have a job offer; or
- the current system applicable to non-EEA nationals.

Of course nothing is yet known and the Government has commissioned the Migration Advisory Committee (MAC) in July 2017 to advise on the economic and social impacts of the UK’s exit from the EU. That consultation closed in October 2017 and the MAC is due to publish an interim report towards the end of March 2018 and its findings in September 2018, just six months before we are due to leave the EU¹⁵.

It has also been reported that the government has approached the FA and the Premier League in July 2017 asking them to supply a comprehensive analysis on the loss of freedom of movement on the game¹⁶. However, the details have not as yet been disclosed.

Most recently and on 31 January 2018 the EU Home Affairs Sub-Committee launched its own inquiry into the impact of Brexit on sport¹⁷. Representatives from the Sport and Recreation Alliance, the Professional Players Federation and the Rugby Football Union provided evidence to the sub-committee on 21 February 2018¹⁸ raising the following points:

- The Government should not focus purely on professional sportspeople and movement of professional players but to also think about staff and those that enable the sport to happen, including the hosting of major sport events as these are heavily reliant on EU workers.
- A system of free movement with job offer or even under current immigration rules may be possible for elite players/coaches but not necessarily for those who support the industry. So the impact is likely to be felt by the sports teams, national governing bodies, international federations, and major events and their ability to function.

¹⁴ [Home Affairs Committee’s 3rd Report Home Office delivery of Brexit: immigration](#)

¹⁵ [MAC call for evidence on EEA-workers in the UK labour market](#)

¹⁶ [Mail Online article dated 9 December 2017](#)

¹⁷ [The EU Home Affairs Sub-Committee launches a new inquiry into the movement of people in the fields of sport and culture after Brexit dated 31 January 2018](#)

¹⁸ [The EU Home Affairs Sub-Committee takes evidence from professional sports bodies on the movement of people in the field of sport post-Brexit.](#)

NB: When reviewing the transcript, please note that neither members nor witnesses have had the opportunity to correct the record.



- Participating in tournaments¹⁹ requires crossing borders, the government needs to make sure that there is no hindrance on travel (cost, administration), not just for the tournament but what precedes it, for:
 - the players and sports coaches
 - the workers who support sport as a business which can be enormous
 - the fans who make the tournaments
 - the equipment that is required
- Risk if the system becomes more complex and less fluid and so the UK is seen as a less attractive destination for hosting major events, which in turn can lead to fewer events to pay tickets for and the knock on effect impacting broadcasting revenue.
- That the movement of top quality players is not hindered as this does not impact on development of young players.
- Impact on smaller clubs of the potential loss of access to young European players under the age of 18 as the Article 19 exemption of the FIFA Regulations would no longer apply to the UK. However, this is also seen as an opportunity to develop home grown talent.
- Concern on impact on Rugby and Cricket if Kolpak disappears with Brexit and the two foreign players quota is maintained as Kolpak players will be regarded as falling within that quota.
- Impact on the horseracing industry the second largest sport in revenue and attendances worth 3.5 billion as it already suffers from significant skills shortage (1,000 vacancies) and high level of dependency on EU nationals with 11% of its workers from the EU.
- Ensuring that provision is made for seasonal workers in seasonal sports, sailing and snow sports etc, where reciprocity with the EU will be very important allowing ease of movement.
- Concern that the lack of available data on actual dependency on EU nationals will mean that the impact of a Brexit with no freedom of movement may be much bigger than anticipated.
- Concern regarding lack of detail and certainty on what is to come causing difficulty in planning for the future and therefore making contingency plans.

If the UK Government were to adopt the current immigration system what will that entail?

Current immigration system for non-EEA athletes/coaches

The current immigration system applicable to non-EEA athletes/coaches is a points based one requiring sponsorship under either [Tier 2 Sports person](#) or [Tier 5 Creative and Sporting](#) from a sporting body; sports club; events organiser; or other organiser operating in the sporting sector²⁰ and endorsement from the relevant sport governing body²¹. The criteria is highly selective requiring athletes to be internationally established at the highest level as well as meeting the specific criteria for the particular sport²².

In addition, English clubs will no longer be able to benefit from the EU/EEA exception to FIFA's general rule which prohibits the international transfers of players under the age of 18. The knock on effect of this will be to give European clubs an advantage over Premier League clubs in terms of talent pipeline.

¹⁹ Although the UK will no longer form part of the EU it is not expected that this will have an impact on its ability to participate in major events such as the Euro Championships, UEFA Champions League etc as non-EU countries already take part. However, the European Tour may prove a challenge.

²⁰ [There are currently 342 Tier 2 Sports sponsor licence holders and 1915 for the Tier 5 Creative and Sporting sub-category, data as of 22 February 2018.](#)

²¹ [There are 60 Sports Governing Bodies approved by UKVI and able to endorse under athletes under Tier 2](#)

²² [The lifecycle of an international athlete – Key immigration issues when entering the UK](#)



The latest ONS migration figures for 2017 published in February 2018 showed that there were only 130 visas granted under the Tier 2 sportsperson category across all sports in 2017²³. If EU nationals are to apply for endorsement this could lead to a significant rise in applications, given that over half of the non-British players in the Premier League alone, 208 were from the EU²⁴.

For football, reverting to this system will also mean the loss of a significant number of players - 332 according to research carried out by the BBC²⁵. For rugby and cricket it will be the loss of players from countries who could come under the Kolpak Rule that will be of significance: 72 players were featured in last year's Premiership that were in the UK under the agreement²⁶. However, this is also seen by some commentators as a positive allowing for the development of grassroots sport and homegrown talent which in turn would be of benefit to the performance of national teams²⁷.

CONCLUSION – LIFE IN THE LEAD UP TO BREXIT

According to research by Sport England, sport and sport related activity are a major contributors to the UK economy, generating gross value added £20.3 billion in England alone (1.9% of England's total) and supporting over 400,000 full time equivalent jobs (2.3% of all jobs in England)²⁸.

Given this, it is important for the sector to put forward its concerns on the loss of free movement and outline the immigration system they would like to see in place that will allow the sport to continue thriving. This may also require meeting with the sport governing bodies to discuss the endorsement criteria and any tweaks that may need to be made if the same rules are to apply to EU nationals as they do to non-EEA nationals now.

For those EU athletes/workers in the sports sector, the advice is to check their current circumstances and seek legal advice if concerned as to the implications of Brexit, and consider making an application now for permanent residency/British citizenship. For those looking to move to the UK post-31 December 2020, they should keep abreast of the withdrawal negotiations as they unfold to determine how they are likely to be impacted²⁹.

²³ [ONS Immigration statistics to December 2017](#)

²⁴ [British football braces for life after Brexit – Politico dated 5 October 2017](#)

²⁵ [The House of Lords Briefing Leaving the European Union: The Impact on Professional Sport](#)

²⁶ [What hard Brexit will mean for your favourite team 19 January 2017 by Tim Wigmore](#)

²⁷ See 26

²⁸ See 26 - House of Lords Briefing (page 14)

²⁹ [Government Email alert subscription – Brexit](#)