

Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Dr Dai Lloyd AM and is laid before the National Assembly for Wales.

Declaration on Legislative Competence

In my view the provisions of the *Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure*, introduced by me on 18 July 2008, would be within the legislative competence of the National Assembly for Wales.

Dr Dai Lloyd AM
Member in charge of the proposed Measure

18 July 2008

Contents

Part 1: Background and Purpose of the Proposed Measure

1. Introduction
2. Legislative Background
3. Purpose and Policy Objectives
4. The Current Policy and Legislative Context
5. Consultation
6. Power to make Subordinate Legislation
7. Territorial Application

Part 2: Regulatory Impact Assessment

8. Options
9. Estimate of costs

Part 3: Explanatory Notes

Annex 1: List of Respondents to the Consultation

Annex 2: Summary of Consultation Responses

Part 1: Background and Purpose of the Proposed Measure

1. Introduction

- 1.1 On 12 December 2007, Dr Dai Lloyd AM, the Plaid Cymru Regional Assembly Member for South West Wales, was successful in the third legislation ballot giving Members the right to seek leave of the Assembly to introduce a Member proposed Measure.
- 1.2 The primary purpose of the proposed Measure is to place a duty on local authorities to consider the impact that selling off local authority owned playing fields would have on local communities, in terms of health, well-being and social inclusion, before proceeding with the sale / disposal. As such, the proposed Measure will impose a duty on local authorities (including National Parks and community councils) to prepare and consult on impact statements when they propose to dispose of playing fields.
- 1.3 On the 6 February 2008, the Assembly agreed, without opposition, that the proposed Measure could be introduced for consideration by the Assembly.
- 1.4 This Explanatory Memorandum has been prepared and laid in accordance with Standing Order 23.18. It sets out the background to the provisions in the Member proposed Measure, *Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure* and explains the scope of the proposed Measure.

2. Legislative Background

- 2.1 The constitutional context to this proposal is set out in the *Government of Wales Act 2006*. The Act provides a mechanism for enhancing the legislative powers of the National Assembly for Wales, allowing it to make Measures where it has the 'legislative competence' (i.e. the power) to do so.
- 2.2 The Assembly's Standing Orders provide for proposed Measures to be introduced by backbench Assembly Members, as well as the Welsh Assembly Government or Assembly committees, where the Assembly has existing legislative competence in a policy area.
- 2.3 The legislative competence for this proposed Measure is provided for in Matter 12.5 (b) of Schedule 5 to the *Government of Wales Act 2006* -

Matter 12.5

Provision for and in connection with -

(...)

(b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions.

3. Purpose and Policy Objectives

- 3.1 At present, the legislative provisions relating to the disposal of playing fields are such that, effectively, any disposal can proceed without a full assessment of the impact of that disposal on the health and well-being of the local community.¹
- 3.2 The main purpose of the proposed Measure is to address this situation by providing an additional safeguard in the form of a duty on local authorities to assess the impact of the disposal of a playing field on the local community and to consult with certain specified people.
- 3.3 The underlying aim of the proposed Measure is to ensure that full consideration is given to the impact of the sale of playing fields on the health and well-being of local communities.
- 3.4 Section 3 of the proposed Measure requires local authorities to produce an 'impact statement' that identifies:
- the nature of the proposed disposal;
 - the level of demand, including any foreseeable future demand, for the use of playing fields in the locality; and
 - the impact of the proposed disposal: on the overall provision of playing fields in the locality; the health and well-being of the local residents and the local health, social care and well-being strategy prepared under the *National Health Service Reform and Health Care Professions Act 2002*;
- The impact statement must be available for inspection for a continuous period of not less than 6 weeks and notices must be placed in the local press.
- 3.5 Section 4 of the proposed Measure provides that local authorities must send a copy of the impact statement to:
- certain statutory consultees, who are listed in the Schedule to the proposed Measure;
 - such other persons or bodies representing people likely to make use of the playing field in question; and
 - the occupiers of every household in the relevant ward(s) (electoral division).
- 3.6 Local authorities must then consider any representations made in relation to the proposed disposal (section 5).

¹ The relevant legislative provisions are contained in the *Town and Country Planning (General Development Procedure) Order 1995*, SI 1995 / 419 and the *Local Government Act 1972*.

3.7 The statutory consultees listed in the Schedule are:

- Fields in Trust Cymru;
- The Open Spaces Society;
- Play Wales;
- The Sports Council for Wales;
- Any sports club, association or other body who make regular use of the playing field;
- Any local authority (other than the authority proposing to dispose of the playing field) whose area includes any part of the locality;
- Any Local Health Board whose area includes any part of the locality;
- Any Communities First Partnership whose area of operation includes any part of the locality;
- The Commissioner for Older People in Wales;
- Barnardo's
- The British Heart Foundation
- Disability Wales;
- Disability Sport Wales; and
- The Children's Commissioner for Wales;
- Any Local Youth Forum established in the locality;
- Any School Council of a school in the locality;
- The Youth Offending Team for every local authority area which includes any part of the locality.

3.8 Section 6 of the proposed Measure sets out the actions the local authority must take if it intends to proceed with the disposal, or if it decides not to. These are:

- where the decision is taken to proceed with the disposal, the local authority must prepare a 'decision statement', summarising any representations that were received; the decision statement must be sent to every person or body who was required to be consulted by section 4 and made available for inspection;
- where the decision is taken not to proceed, notice of this must be published in a newspaper circulating in the locality.

3.9 Section 7 of the proposed Measure enables the Welsh Ministers to issue a direction (to be known as a "stop direction") for the local authority to suspend the disposal of a playing field, if they have received representations that claim that the local authority has not complied with the requirements of Sections 3 to 6 of the proposed Measure.

3.10 This stop direction is to be withdrawn if it appears to the Welsh Ministers

that the local authority has substantially complied with the proposed Measure. However, if it appears to the Welsh Ministers that the local authority has not complied with the requirements of the proposed Measure, the stop direction is withdrawn and a new direction (known as a “remedial direction”) is issued that requires the local authority to take such steps that would ensure substantial compliance with the proposed Measure.

4. The Current Policy and Legislative Context

The importance of playing fields

- 4.1 Playing fields provide an accessible facility for all age groups within a community to engage in physical activity, whether as organised sporting events, or simply by walking or play. Encouraging this physical activity from an early age could be a crucial factor in preventing the onset of obesity in later life.
- 4.2 Playing fields also contribute positively to the general well-being of the community and the local environment.
- 4.3 The National Public Health Service for Wales (NPHS), in its *Health Needs Assessment Report 2006*, stated that physical activity not only contributes to well-being but is also essential for good health. People who have a physically active lifestyle have approximately 50 per cent less risk of developing coronary heart disease (CHD), stroke and type-2 diabetes compared to those who have a sedentary lifestyle, and can reduce their risk of premature death by about 20-30 per cent. Regular physical activity is also associated with reduced risk of obesity, osteoporosis and colon cancer and with improved mental health and increased functional capacity in older adults.
- 4.4 Findings from the *Welsh Health Survey 2005/06* suggest that, based on their Body Mass Index, 56 per cent of people aged 16 or over in Wales are overweight or obese and 19 per cent are obese².
- 4.5 The *International Study on Health Behaviour in School Aged Children* is a cross-national research study conducted in collaboration with the World Health Organisation regional office for Europe. The findings for Wales, derived from children's self-reported height and weight, are given in Table 1 below.

Table 1: Percentage of 13 and 15 year olds who are pre obese and obese

Age	Boys		Girls	
	Pre-obese	Obese	Pre-obese	Obese
13 years old	17.8	4.4	15.1	1.7
15 years old	16.6	5.6	14.4	3.0

Source: World Health Organisation, *Cross National Study on Health Behaviour in School Aged Children 2001/2002*

² [Welsh Assembly Government, Welsh Health Survey 2005/06, 2007 \(table 4.9\)](#).

- 4.6 Results from the *Welsh Health Survey 2005/6* show 29 per cent of adults achieving the recommended minimum of moderate physical activity of 30 minutes, five times a week. This breaks down as 36 per cent for men and 23 per cent for women. The *Health Needs Assessment Report 2006* further states:

The historically high prevalence of many of these chronic diseases in Wales, particularly in those areas of worst socio-economic deprivation, coupled with high levels of sedentary behaviour, have brought the physical activity agenda to the forefront of both the public health and political agendas in recent years. The evident downward trends in activity levels are one of the principal reasons for the conversely upward trends in obesity. With physical activity being one half of the energy balance equation, it follows that this must continue to be an important focus for national action.³

- 4.7 Fields in Trust estimate that around 17 playing fields around Wales are currently at risk of being sold off.⁴
- 4.8 Playing fields provide a local and accessible amenity for a range of physical activities from walking to the playing of team games. If it is imperative that the Welsh public increases its levels of physical activity then it is crucial that proper consideration is given to disposing of amenities that provide opportunities for such activities to take place.
- 4.9 This proposed Measure therefore recognises that playing fields are an important resource that allow and encourage physical activities to take place, and as a consequence make a positive contribution to maintaining and also improving the health and well-being of local communities. As such, the proposed Measure will ensure that any proposals to dispose of playing fields are subject to an assessment of the impact the disposal would have in terms of the health and well-being of local communities, and also subject to consultation with local communities.

Policies and strategies

- 4.10 The Welsh Assembly Government has a range of strategies and initiatives that are aimed at encouraging healthy eating and physical activity in order to reduce obesity and encourage healthy living and well-being.
- 4.11 In particular, each Local Health Board and local authority in Wales must, under the requirements of the *National Health Service Reform and Health Care Professions Act 2002*, formulate and implement a strategy for the health and well-being of the population (the health, social care and well-

³ Health Needs Assessment 2006

⁴ Information provided to Dr Dai Lloyd AM by Fields in Trust Cymru, February 2008.

being strategy) in the area, and have regard to that strategy in exercising their functions⁵. The strategy should address, amongst other things:

- the state of health and well-being of the local population;
- the health and well-being needs of the local population;
- the existing provision of health and well-being services to the local population;
- gaps or deficiencies in the provision of health and well-being services to the local population;
- risks to the health and well-being of the local population;
- factors affecting the health and well-being of the local population including social, economic and environmental factors.

4.12 One of the *One Wales* commitments of the third Welsh Assembly Government is the pledge *Encouraging Sport and Physical Activity*⁶, which has the purpose of improving health. Previously, the Welsh Assembly Government published its strategies for sport and physical activity, *Climbing Higher (2005)*⁷, and *Climbing Higher - the Next Steps (2006)*⁸.

4.13 Guidance issued by the Welsh Local Government Association to local authorities in October 2007 underlined the importance of open space for the well-being of communities and individuals:

“The provision of public open space and facilities for sport and recreation underpins people’s quality of life. It is important to an individual’s health and well-being, and to the promotion of sustainable communities....

Public open space plays an important role in enabling informal and formal leisure, recreation and exercise, ranging from a casual walk to an organised football match. Different sizes and locations of space are needed according to the function that they perform.”⁹

Legislative provisions

4.14 Development affecting playing fields is currently controlled through the land use planning system and in particular the *Town and Country Planning*

⁵ *The Health, Social Care and Well-being Strategies (Wales) Regulations 2003*, SI UK/154 (W.24) specify what matters should be covered in the strategies

⁶ *One Wales Document*, 2007.

⁷ Welsh Assembly Government, *Climbing Higher*

⁸ Welsh Assembly Government, *Climbing Higher: The Next Steps*

⁹ WLGA, *Shaping the Way We Work, Live and Play: Practical guidance on delivering sustainable development through the planning system*, October 2007.

(*General Development Procedure*) Order 1995 and the disposal of open space (including playing fields) by the *Local Government Act 1972*.

- 4.15 The *Town and Country Planning (General Development Procedure) Order 1995*¹⁰ currently requires planning authorities to consult the Sports Council for Wales on planning applications affecting a “playing field”, and defines these as marked sports pitches, including surface run off areas, of more than 0.4 hectares in size. Following the consultation exercise *Changes to the Development Control System* (July 2006)¹¹ and a subsequent consultation in March 2007¹², the Welsh Assembly Government intends to amend the requirement to consult the Sports Council for Wales on planning applications affecting playing fields and open space by reducing the threshold for consideration from 0.4 to 0.2 hectares and by broadening the definition of playing fields.
- 4.16 Local authorities are generally free to dispose of land held by them in any manner they see fit. However, under sections 123 and 127 of the *Local Government Act 1972*, local authorities may not dispose of open space unless they first publish a notice of their intention to do so for two successive weeks in a local newspaper and give consideration to any objections. Similar restrictions apply to town and community councils.
- 4.17 The requirements placed on local authorities and community councils by sections 123 and 127 respectively of the *Local Government Act 1972* in respect of the disposal of open space will no longer apply in respect of land to which the proposed Measure applies. However, the relevant requirements in respect of planning permission would continue to apply.

Planning guidance

- 4.18 In disposing of playing fields, local authorities must take account of planning guidance. They should have regard to Chapter 11 of *Planning Policy Wales* and *Technical Advice Note 16* (‘TAN 16’), *Sport and Recreation*.¹³
- 4.19 TAN 16 states:

“Open space has a positive community value for recreation. Local authorities should consider the use made of the sites they own. They may not dispose of open space or appropriate it to another purpose, unless they first publish notice of their intention to do so for two successive weeks in a local newspaper and consider any objections.”¹⁴

¹⁰ *Town and Country Planning (General Development Procedure) Order 1995*

¹¹ Welsh Assembly Government, *Changes to the Development Control System*, Consultation Paper, July 2006.

¹² Welsh Assembly Government, Consultation On Proposals to Provide Additional Protection for Recreational Open Space – Annex A, March 2007 <http://new.wales.gov.uk/consultations/closed/plancloscons/1344065/?lang=en>.

¹³ TAN 16 is currently being revised by the Welsh Assembly Government.

¹⁴ TAN 16, paragraph 6

4.20 TAN 16 further states:

“Playing fields are of special significance for their recreational and amenity value and, in towns and cities, for their contribution to the urban environment. When not required for their original purpose, they may meet the growing need for recreational land in the wider community. Given their recreational and amenity value the possible disposal of school playing fields should be investigated to establish that the sites will not be required in the longer term for school or community use.

The provision of facilities with synthetic or other surfaces capable of intensive use may help meet the demand for sports facilities. However, they are not a straight substitute for grass pitches. While they can take pressure off other pitches and sports halls, they seldom justify the release of grass pitches for other uses. Consideration should also be given to the precise sports function of artificial surfaces. Priority will often need to be given to intensive forms such as multi-sports provision which combines indoor and outdoor facilities.”¹⁵

4.21 In July 2006, the Welsh Assembly Government released the draft revised TAN 16, “Sport, Recreation and Open Space”¹⁶, for public consultation.

4.22 The draft revised TAN was prepared in light of the Welsh Assembly Government's commitments to health and well-being, increased participation in physical activity and opportunities for all, as set out in *Wales: A Better Country (2003)* and *Climbing Higher (2005)*.

4.23 The draft revised TAN recommended that planning authorities undertake an Open Space Assessment, which should be used to inform the development, assessment and monitoring of development plan policies. The Open Space Assessment should take account of all forms of formal and informal recreational open space and should include an assessment of local need, and an audit of local supply. Consequently, the Open Space Assessment should identify local deficiencies in provision, and also local excess of provision. The Welsh Assembly Government states that an Open Space Assessment would also inform development control decisions for applications affecting formal and informal recreational open space.

“By taking into consideration local excess or shortfalls of recreational facilities, planning authorities would be able to reach better informed decisions, reflecting public demand and use of recreational land uses that are subject to applications for development. The evidence provided by an Open Space Assessment would

¹⁵ TAN 16, paragraphs 10 and 11

¹⁶ Welsh Assembly Government, *Revision of Technical Advice Note 16 “Sport, Recreation and Open Space” - consultation draft*, July 2006
<http://new.wales.gov.uk/consultations/closed/plancloscons/1207864/?lang=en>

enable planning authorities to provide evidence to support planning decisions affecting these sites.”¹⁷

- 4.24 The draft revised TAN sets out the stages that the local authority should go through in order to produce an Open Space Assessment. This includes identifying surpluses and deficiencies in quantities of open space, sport and recreation. It is also expected that the local authority will consult with stakeholders as part of the process.
- 4.25 The Welsh Assembly Government subsequently consulted in March 2007¹⁸ on introducing a policy requirement for local planning authorities to undertake an Open Space Assessment (preparation of such assessments was advisory only in the draft revised *TAN 16 Sport Recreation and Open Space* consulted on in 2006).
- 4.26 The outcome of this consultation has not yet been announced by the Welsh Assembly Government and the replacement TAN 16 has not yet been issued.
- 4.27 The proposed Measure would place a duty on local authorities additional to that required under planning policy guidance, including the proposed revisions to TAN 16.

¹⁷ Welsh Assembly Government, Consultation On Proposals to Provide Additional Protection For Recreational Open Space – Annex A, March 2007 <http://new.wales.gov.uk/consultations/closed/plan/closcons/1344065/?lang=en>.

¹⁸ *ibid*

5. Consultation

- 5.1 The proposed Measure was issued for consultation in May 2008, for a four week period. 17 responses were received. A list of respondents can be seen in **Annex 1**. Of these, eleven were broadly in favour of the proposed Measure and six (all from local government) were opposed, arguing that the forthcoming revised TAN 16 will provide adequate and appropriate safeguards.
- 5.2 A summary of responses to the consultation questions is provided at **Annex 2**.
- 5.3 The proposed Measure has been amended in light of the consultation exercise and the principal changes are as follows:

Section 1

- Section 1 has been amended to include what is now section 1(2). The effect is to exclude from the requirements of the proposed Measure any disposal of a playing field by one local authority to another or by a local authority to a registered charity or to a sporting or recreational body or association. The purpose is to exempt from the procedure those disposals where the land will continue to be within the ownership of a body broadly representing the community's interest or itself involved in sporting or recreational activities. This exemption would not, of course, affect the requirement of such a body to obtain planning permission for any subsequent change of use.
- The new section 1(4) is intended to avoid a local authority being prejudiced by a groundless complaint to the Welsh Ministers about the procedure followed by the authority. Such a complaint gives rise to a "stop direction" under section 7. Since an authority only has 12 months to complete the disposal, beginning with the date on which it gives notice to the public of the proposal, a period during which the Welsh Ministers are investigating such a complaint could encroach severely on the time available to complete the transaction and could even prevent it from proceeding altogether. The new subsection therefore extends the 12 months by the time during which the complaint is being investigated, *provided* the outcome is that the complaint is not upheld.

Section 2

- The definition of "playing pitch" in section 2(e) has been amended to bring it more closely into line with the definition of "outdoor sports facility" in the proposed revision to TAN 16 (as well as the

complementary proposed amendment to the General Development Procedure Order). Athletics and golf have been added to the list of sports. The definition is still however (in line with both those definitions) based on the playing of team games and other organised sports. It does not extend to land used for informal recreation, which would go beyond the proposal approved by the Assembly on 6 February 2008.

Section 3

- Section 3(1)(b) now requires an impact statement to identify the demand for playing fields in the locality.

Section 3(1)(c)(iii) now requires the impact statement to identify the impact on the authority's health, social care and well-being strategy (rather than its community strategy).

- Section 3(5) now provides for a deposit period of six weeks instead of four. (There is a consequential change in the minimum period from the publication of the notice until the end of the deposit period from 5 to 7 weeks – section 3(9)).

Section 4

- Section 4(1) now expressly requires the authority to send a copy of the impact statement to the consultees.
- Section 4(1)(c) now includes in the consultees the occupiers of every household in the ward (electoral division).

Section 6

- Section 6(2)(b) now requires the decision statement also to be sent to every consultee, including, therefore, every household in the electoral division.

Schedule

- The Schedule had been amended in order to delete from the list of consultees Age Concern, Merched y Wawr and the WI and to add the local Communities First Partnership, the Commissioner for Older People, Disability Wales, Disability Sports Wales and the local Youth Offending Team.

6. Power to make Subordinate Legislation

- 6.1 The proposed Measure contains limited powers for Welsh Ministers to implement and set out the detail required to support the principles contained in the proposed Measure.
- 6.2 The proposed Measure also contains provisions that would confer power on Welsh Ministers to make amendments to various Acts of Parliament and statutory instruments consequential on changes required as a result of the regulations. The scope of these powers is limited, by the extent of the Measure making power, to amendments which will be consequential on the introduction of the Measure.

Section 4 – Consultation

- 6.3 Section 4 of the proposed Measure requires the local authority to notify those bodies identified in the Schedule to the proposed Measure of the impact statement prepared under section 3. Section 4(2) enables the Welsh Ministers, by order, to amend the Schedule from time to time. It would be appropriate to use subordinate legislation to amend the Schedule, to avoid the need to bring forward a further proposed Measure to effect these changes.

Section 9 – Orders and regulations

- 6.4 Section 9 provides that any power to make orders or regulations conferred by the proposed Measure is exercisable by statutory instrument and includes power to make provisions generally or in relation to specific cases, to make different provision for different cases, to make incidental, supplementary, saving or transitional provisions as the Welsh Ministers think fit and may be exercised in relation to all those cases to which it extends subject to exceptions in relation to any particular case or cases.
- 6.5 Section 9 also provides that Orders made under section 4(2) and regulations made under section 10 (2)(a) may not be made unless a draft of the instrument has been laid before, and approved by, the Assembly (the affirmative procedure). Regulations made under section 10(2)(b) are subject to annulment in pursuance of a resolution of the Assembly (the negative procedure).

Section 10 – power to make further supplementary and consequential provision etc

- 6.6 Under section 10(1) the Welsh Ministers may at any time make regulations which make such supplementary, incidental, consequential or transitional provision as they consider necessary or expedient for the

- purposes of, or in consequence of, giving full effect to any provision of the proposed Measure.
- 6.7 Section 10(2)(a), provides that regulations made under section 10(1) may make provision amending or repealing any Act of Parliament or Measure made before or during the same Assembly year as this proposed Measure. Under Section 10(2)(b), regulations made under section 10(1) may amend or revoke subordinate legislation.
- 6.8 It would be appropriate to use subordinate legislation to make Regulations under section 10 given that they are concerned with making further supplementary and consequential provision to give full effect to provisions of this proposed Measure.

Section 12 – commencement

- 6.9 Section 12(3) provides that all provisions of the proposed Measure (save sections 9, 10, 11 and 12 which come into force when the proposed Measure is approved by Her Majesty in Council) come into force on such day or days as the Welsh Ministers may, by order, appoint. These orders are not subject to any specific procedure for making subordinate legislation.

7. Territorial Application

- 7.1 This proposed Measure will apply in relation to Wales. It will confer functions on Welsh Ministers and local authorities in Wales.

Part 2: Regulatory Impact Assessment

8. Options

8.1 There is widespread concern about levels of obesity in Wales and the need for people to engage in regular exercise. Key stakeholders have also expressed concern about the sale of playing fields resulting in the loss of areas where people may pursue healthy activities and which contribute to the general wellbeing of the local area.

8.2 As a result of the *Government of Wales Act 2006*, there is an opportunity in Wales to use the new legislative powers of the National Assembly to place a duty on local authorities in Wales to carry out an impact assessment and consult key stakeholders in the locality before proceeding with the disposal of playing fields.

8.3 The current options are:

Option 1: Do nothing

Option 2: Rely on revisions to current planning guidance

Option 3: Introduce a proposed Measure.

Option 1: Do nothing

8.4 The first option is to do nothing. This would mean that consultation and other requirements relating to the disposal or development of playing fields would remain the same as they are currently.¹⁹ This would, in effect, allow for the disposal of playing fields to continue without a full assessment being made of the impact on the health and well-being of the local community.

8.5 It is the view of bodies such as Fields in Trust (FiT)²⁰ and the Open Spaces Society²¹ that the current position does not afford sufficient time for adequate consideration of the implications of disposing of playing fields which may be lost to the local community with detrimental effects on its health and well-being.

¹⁹ As set out in *Town and Country Planning (General Development Procedure) Order 1995* and the *Local Government Act 1972*, and existing planning guidance, namely *Planning Policy Wales* and TAN 16

²⁰ Fields in Trust (Cymru) website http://www.npfa.co.uk/what_we_do/how_we_are_organised/fit_cymru.php.

²¹ Open Spaces Society, Consultation Response on the Proposed Measure, 2008.

Option 2: Rely on revisions to current guidance

- 8.6 The second option is for the Welsh Assembly Government to continue to monitor and revise guidance for local authorities in Chapter 11 of *Planning Policy Wales* (PPW) and Technical Advice Note (TAN) 16. The latter, which has been revised and is due for re-issue, provides advice on issues encountered by planning authorities relating to sport, recreation and open space.
- 8.7 Consultation responses received on the draft proposed Measure from local authorities argued that the existing planning regime, in particular the expected publication of a revised TAN 16, is an adequate and appropriate way to safeguard playing fields and has already been subject to widespread consultation.
- 8.8 The revised TAN 16 will aim to further integrate the links between health and well being, sport and recreational activity and sustainable development in Wales through the development of land use planning guidance in accordance with the policies set out in PPW.
- 8.9 This revised TAN 16 is likely to advise that the objectives set out in PPW can only reasonably be achieved by undertaking local assessments of need and an audit of existing provision. These assessments undertaken by local authorities, taken together, form an Open Space Assessment²², which will be a requirement and must be used to inform the preparation, monitoring and review of Local Development Plan (LDP) policies.
- 8.10 The draft revised TAN 16 notes that undertaking assessments will demand collaboration between the local authority's departments, external agencies and the public²³. However, whilst assessments will normally be co-ordinated by a local authority, where they have not been undertaken, surveys prepared on behalf of a planning applicant may be considered, provided they are consistent with the methodology set out in the document and the policy objectives contained in PPW.
- 8.11 Although Open Space Assessments are likely to be a requirement for local areas under the revised TAN 16 and the General Development Procedure Order requires the local authority to consult the Sports Council for Wales on individual planning applications, this proposed Measure will provide additional safeguards by requiring impact statements and widespread consultation to consider the impact on health and well-being for each disposal. The local authority would have to take account of its Open Space Assessment in the preparation of an impact statement for an

²² Open space includes not just land, but also areas of water. A typology of open space is provided at Annex B of the revised TAN16 consultation document.

²³ Section 1.36

individual disposal (i.e. in respect of the requirement under section 3(1)(c)(i) in the proposed Measure).

Option 3: Introduce a proposed Measure

8.12 The third option, involving the introduction of a proposed Measure, would enshrine in legislation a more robust and accountable process when the disposal of playing fields is under consideration.

8.13 The proposed Measure would:

- require the local authority to prepare an assessment of the impact of each disposal on the health and well-being of the community;
- build in a longer consultation process; and
- identify statutory consultees.

8.14 The proposed Measure would in effect provide a new, additional safeguard to the situation that currently exists in respect of disposal of playing fields.

9. Estimate of Costs

Options 1 and 2

- 9.1 As the publication of the revised TAN 16 is expected soon, Option One, the *status quo* is unlikely to remain for any time.
- 9.2 However, should there be a requirement for local authorities to conduct an Open Space Assessment in the revised TAN 16, it will involve a number of stages, namely:
- identifying local needs;
 - auditing local provision;
 - setting the standards of provision;
 - applying the standards of provision;
 - drafting policies for development plan.
- 9.3 Both England²⁴ and Scotland²⁵ have similar provision for assessment and audit in their planning guidance.
- 9.4 Local authorities in England and Scotland identify an open space audit as the most resource intensive element of the preparation of an Open Space Assessment. Some local authorities are able to carry out the work in-house, but those that have employed consultants identify costs in the region of £30-£40,000 for carrying out the audit and preparing a strategy over an 18 month to two year period²⁶, although costs can rise to around £80,000.²⁷

Option 3

- 9.5 If the proposed Measure is successful, most of the costs are likely to fall on local authorities in respect of their duty to prepare and consult on the impact assessment.
- 9.6 As part of the consultation exercise, respondents were asked to estimate the likely financial impact of the proposed Measure. Torfaen Borough Council was the only local authority to provide detailed estimated costings. Denbighshire County Council, the City and County of Swansea Council and the City and County of Cardiff Council said that the costs were difficult to predict at this stage, with the latter two authorities indicating that they were likely to prove “significant”. However, this would be balanced by how frequently proposed disposals of playing fields occurred. Denbighshire

²⁴ DCLG, *Planning Policy Guidance 17: Planning for open space, sport and recreation*, 2002.

²⁵ Scottish Government, *PAN 65: Planning and Open Space*, 2008.

²⁶ For example, West Dunbartonshire Council (March 2008), Swale Borough Council (2005), Borough of Oadby and Wigston (2008), Doncaster Metropolitan Borough Council.

²⁷ For example, West Lanarkshire Council (January 2007).

County Council, with the proviso that the definition of the term "dispose" was tightened up, suggested that this could be as few as two playing fields in five years.

Preparing the Impact Assessment and publishing it in local newspapers (Section 3)

- 9.7 Torfaen County Borough Council estimated that the preparation of an impact assessment would cost in the region of £2,000 in terms of officer time and the cost for working up alternative sports provision would be a further £2,000.
- 9.8 If local authorities are required to carry out an Open Space Assessment under a revised TAN 16, including an audit of provision, it is likely that much of the information necessary to prepare an impact statement will already have been gathered, and the costs incurred, as part of that exercise.
- 9.9 If a separate study is required, Torfaen County Borough Council estimated that a full sport and recreation study to ascertain the overall provision of playing fields in the locality, including the quality and accessibility of such playing fields (section 3(1)(c)(i)) was likely to cost £35,000 for the whole county. Such a study could also ascertain the level of demand, including any foreseeable future demand for the use of playing fields in the locality (this provision, at section (3)(1)(b) was inserted following consultation).
- 9.10 Torfaen County Borough Council estimated that advertising the impact statement in local newspapers (section 3(8)) would cost in the region of £1,250.

Consultation and consideration of representations (Sections 4 and 5)

- 9.11 The proposed Measure requires that all local residents, as well as organisations listed in the Schedule and those representing people likely to make use of the playing field, are sent a copy of the impact statement (section 4(1)).
- 9.12 Torfaen County Borough Council estimated that officer time for carrying out the consultation on the impact assessment would cost £1,500 and reporting on the consultation £1,000. Committee consideration of the Report would cost a further £500.
- 9.13 In addition, costs will be incurred in printing and distributing the impact statement. Assuming in-house printing and a basic 40 page bilingual document, printing costs are estimated at £130 per 1,000 copies. For commercial printing, the costs could be up to £2,000 per 1,000 copies.

The exact cost will be dependent on the number of households that are required to be consulted. In terms of distribution costs, for 1,000 copies, these are estimated at £700 for first class post and £600 for second class post

Decisions about whether to proceed (Section 6)

- 9.14 Sections 6(1) and 6(2), require notices to be published in one or more newspapers locally. Section 6(2) also requires decision statements to be sent to all of the consultees listed in section 4(1).
- 9.15 Local newspapers charge rates for publishing public notices by square cm. These can vary depending on the coverage of the publication. All editions of the North Wales *Daily Post* cost £21.90 per cm and the *South Wales Echo* £23.38. However, a paper with more limited geographical coverage such as the *Holyhead and Anglesey Mail* might charge as little as £5.95 per cm.
- 9.16 Denbighshire County Council estimated that a typical notice for a proposal affecting a school or a highways closure costs £110 for each insertion in a local newspaper or £1,000 in the *Daily Post*.
- 9.17 Torfaen Borough Council estimated that advertising the decision statement in the local press would cost £1,250.
- 9.18 Torfaen County Borough Council estimated that the preparation of a decision statement would cost around £250.
- 9.19 In addition, costs will also be incurred in printing and distributing a decision statement. These costs will be dependent on the number of households / organisations required to be consulted under section 4(1), but will be significantly less than the costs associated with printing and distributing the impact statement.

Overall costs

- 9.20 Based on the figures provided by Torfaen Borough Council, the likely costs for a single disposal are estimated in the region of £10,000 plus printing and distribution costs associated with the preparation of impact statements and any decision statement.
- 9.21 It is considered that the preparation of a sport and recreation study (see paragraph 9.9) to inform the preparation of an impact statement will be covered by the preparation of an Open Space Assessment under a revised TAN 16. As such the costs will be incurred as part of the preparation of an Open Space Assessment. Where an Open Space

Assessment is not undertaken, the cost of the sport and recreation study is estimated at £35,000. If such a study is required, costs of a future disposal may not be as high, if the study remains relevant.

- 9.22 These costings are broad estimates from a single source. Torfaen Borough Council is a relatively small authority in terms of population and the third smallest in Wales in terms of area. It is therefore not possible to assume that costs relating to provision of plans for the whole authority will be typical for all authorities in Wales, and costs for larger authorities are likely to be higher.
- 9.23 The proposed Measure will have a cost implication for local authorities. It is considered that these costs should be considered against the longer term benefits associated with better health, such as contributing towards the prevention of obesity; reducing the risk of developing coronary heart disease, osteoporosis, colon cancer and by the potential reduction in associated healthcare costs.
- 9.24 As noted by Denbighshire County Council in their consultation response, the proposed Measure could affect as few as two playing fields every five years. Consequently, the financial implications are likely to represent a minor proportion of the authorities' total annual budget.

Cost to statutory consultees

- 9.25 With regard to costs to statutory consultees, Fields in Trust Cymru estimated that reviewing and commenting on proposed playing field proposals was likely to cost around £5,300 per annum. The Sports Council for Wales estimated that, on the basis of applications received over the last five year, the time spent by staff in considering proposals would amount to £2,900 on current salary levels.

Part 3: Explanatory Notes

Section 1 – Restriction on disposal of playing fields by local authorities in Wales

1. Subsection (1) imposes a number of conditions on local authorities which they must comply with before they are able to proceed with the disposal of a playing field. The conditions which must be complied with include:
 - the preparation of an impact statement and advertisement requirements in connection with the impact statement (section 3);
 - a consultation exercise (section 4);
 - the consideration of the representations a local authority may receive following the consultation exercise (section 5); and
 - the publication of a notice setting out whether or not, in light of the representations received, the authority has decided to proceed with the disposal (section 6).
2. These requirements do not apply when the proposed disposal is to a local authority, a registered charity or a body or association whose aims include the promotion of sporting or recreational activities (subsection (2)).
3. Unless the disposal takes place within 12 months of the day on which the notice under section 3 is first published, the local authority is taken as not having complied with the aforementioned conditions (subsection (3)). Where a stop direction is given by the Welsh Ministers under section 7(1) and that notice is subsequently withdrawn under section 7(3), no account is to be taken of the period when the stop direction was in force in calculating the period of 12 months (subsection (4)).

Section 2 – Principal definitions

4. This section contains the principal definitions within the Measure, namely:
 - “dispose” – any disposal other than the grant of a tenancy for less than seven years,
 - “local authority” – a county or county borough council, National Park authority or community council (including a community council designated as a town council),
 - “modified disposal” – a proposed disposal which has been modified to reduce the impact of the disposal on the overall provision of playing fields in the locality, the health and well-being of residents of the locality generally and of children and young persons in particular or any strategy prepared under section 24(1) of the *National Health Service Reform and Health Care Professions Act 2002*. (c. 17).

- “playing field”, and “playing pitch” – which are defined in terms of area and certain sporting activities including areas marked of set aside for the playing of sport at any time during the period of five years ending on the date on which the impact notice is first published.

Section 3 – Impact Statement

5. Subsection (1) places a duty on a local authority to prepare an Impact Statement identifying the nature of the proposed disposal, the level of demand, including any foreseeable demand, for the use of playing fields in the locality, and describing its impact on:-
 - the overall provision of playing fields in the locality (defined in subsection (3) as being the area or areas from which those likely to make use of the playing field if it continued to be available for use would be drawn)
 - the health and well-being of residents of the locality; and
 - any strategy which the Authority is required to prepare under section 24(1) of the *National Health Service Reform and Health Care Professions Act 2002* (Health, Social Care and Well-being Strategies).
6. The impact statement may also take into account any alternative provision of playing fields which the authority proposes to secure at or before the time of the proposed disposal (subsection (4));
7. Subsections (5) – (10) cover the arrangements that a local authority must make to publicise the impact statement.
8. In particular, subsection (8) requires a local authority to publish a notice which:
 - identifies the proposed disposal;
 - identifies the “deposit period” (the period during which the impact statement is available for inspection at local authority offices - see subsection (7));
 - states where and when the impact statement may be inspected during the deposit period;
 - notifies the public of their right, during the “consultation period”, to make representations to the authority in relation to the proposed disposal and the means by which they may do so.
9. Subsection (8) also provides that the notice must be published for at least two consecutive weeks in one or more newspapers circulating in the locality.

10. The deposit period must last for a minimum six weeks (subsection (5)(a)); subsection (9) provides that it may not end less than seven weeks after they day on which the notice is first published.
11. Subsection (10) defines the “consultation period” as the period which begins on the same day as the deposit period and which ends two weeks after the end of the deposit period.

Section 4 – Consultation

12. Subsection (1) places a duty on local authorities to send a copy of the impact statement to each of the bodies listed in the Schedule to the proposed Measure, and to other bodies that appear to the local authority to represent the interests of persons likely to make use of the playing field. Occupiers of every household, in respect of which there is an entry on the register of electors for each local government electoral division which includes any part of the playing field or which have a common boundary with any part of the playing field, are also to receive a copy of the impact statement.
13. Subsection (2) enables the Welsh Ministers to amend the Schedule from time to time.

Section 5 –Consideration of representations

14. Subsection (1) imposes a duty on local authorities to consider any representations in relation to the proposed disposal which it receives during the consultation period, while subsection (2) gives the local authority discretion to consider any such representations which it receives after the end of the consultation period.

Section 6 – Decision as to whether to proceed with the proposed disposal

15. Section 6 places a local authority under a duty to publish notice, in a newspaper circulating in the locality, of its decision as to whether or not to proceed with the disposal.
16. Where a local authority decides to proceed with the disposal, under subsections (2) to (5), the local authority is under a duty to prepare and make available for inspection, a “decision statement” and to publish a notice stating that the decision statement may be inspected, where it may be inspected and to make the decision statement available for inspection for a continuous period of not more than four weeks. In addition, a copy of the decision statement must be sent to those persons to whom a copy of the impact statement was sent

17. The decision statement must summarise the representations considered by the authority under section 5 and must also set out the authority's reasons for proceeding with the disposal (or modified disposal).
18. Subsection (6) provides that the authority may not dispose of the playing field until the period for inspection of the decision notice has expired.

Section 7 – Directions by the Welsh Ministers

19. Subsections (1) and (2) provide that where the Welsh Ministers receive representations that a local authority intends to proceed with a disposal and that the authority has failed to comply with the requirements of the proposed Measure, the Welsh Ministers may issue a direction to the local authority, (referred to as a “stop direction”) not to proceed with the disposal and the local authority must comply with the direction.
20. Under subsections (3) – (5), if following the issuing of a stop direction it appears to the Welsh Ministers, having considered the representations received, that the authority has failed to comply with the requirements of the proposed Measure, they must withdraw the stop direction and issue a further direction (referred to as “remedial direction”). This is a direction to the authority to take such steps to ensure substantial compliance by the authority with the requirements of the proposed Measure.
21. An authority to which the Welsh Ministers issue a remedial direction must comply with that direction (subsection (8)).

Section 8 – Amendment to the Local Government Act 1972 (c. 70)

22. The Local Government Act 1972 is amended such that any disposal by a county council, county borough council or National Park of land to which the proposed Measure applies will no longer be subject to the requirements of section 123(2A) of the *Local Government Act 1972 (c.70)* in that the publication requirements placed upon these authorities will no longer be applied. (subsection (1))
23. Section 127 of the 1972 Act is similarly amended in relation to the sale of land by community councils (subsection (2)).
24. Where land held in trust for enjoyment by the public is disposed in accordance with the provisions of the proposed Measure, the land will be freed from that trust.

Section 9 – Orders and regulations

25. This section provides that where power is conferred on the Welsh Ministers to make subordinate legislation it is to be exercised by way of statutory instrument. Any statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the Assembly, (negative procedure) with the following exceptions.
26. Where Welsh Ministers propose to amend the Schedule to the Measure, an Act of Parliament or an Assembly Measure, a draft of the instrument must be laid before and approved by resolution of the Assembly (affirmative procedure).
27. There is no procedure in relation to commencement orders.

Section 10 – Power to make further supplementary and consequential provision etc.

28. This is a standard provision to permit Welsh Ministers to make supplementary and consequential provisions to enable the Measure to be fully effective.

Section 11 – Interpretation

29. This section defines a number of terms used in the proposed Measure, but contains no substantive provisions.

Section 12 – Short title and commencement

30. This section introduces the title by which the Measure will generally be known. It also provides for the coming into force of the proposed Measure. Sections 9, 10, 11 and 12 come into force on the date on which the proposed Measure is approved by Her Majesty in Council. The remaining provisions of the proposed Measure would come into force in accordance with a Commencement Order (or Orders) made by the Welsh Ministers.

Schedule

31. The Schedule lists those persons to whom a copy of the impact statement and decision must be sent.

Annex 1: List of Respondents to the Consultation

Welsh Association of Chief Police Officers

Open Spaces Society

Rumney Recreation and Eastern Leisure Action Group

Councillor Lisa Mytton, Vaynor Community Forum

Fields in Trust

One Voice Wales

Denbighshire County Council

Flintshire County Council

City and County of Swansea Council

Women's Institute

Welsh Cricket Association

Welsh Local Government Association

Sports Council for Wales

Torfaen County Borough Council

Ceredigion County Council

City and County of Cardiff Council

Ely Garden Villagers

Annex 2: Summary of Consultation Responses

(1) Do you agree with the principle of the proposed Measure? Please give reasons for your view and what impact you consider that the proposals will have.

Most local government respondents were opposed to the proposed Measure. Denbighshire County Council argued that the proposed Measure would impose “additional bureaucracy and cost on councils and the Welsh Assembly Government” and that it “undermines the local leadership and accountability of councils”. The City and County of Swansea Council felt that the proposal would add “a further unnecessary step in the process that would be both time consuming and expensive to operate.” The Welsh Local Government Association (WLGA), while agreeing with the principles of the proposed Measure, concluded that “current planning policies, practices and processes sufficiently address the Measure’s key objectives, with decisions made on a strong evidence base”. Ceredigion expressed some concerns about references to the disposal of private land in the proposed Measure. One Voice Wales, the representative body for town and community councils, supported the objectives of the proposed Measure but had “significant reservations about the practical implementation” at the level of town and community councils.

Bodies expressing support for the proposed Measure included local action groups such as the Rumney Recreation and Eastern Leisure Action Group (RREEL) and the Ely Garden Villagers Group. Fields in Trust (FiT) felt that the proposed Measure “will ensure a more thorough examination of the playing field’s value to the local community and its impact if lost” and the Open Spaces Society that “unless there is a more robust requirement placed on Local Authorities, open space will continue to be disposed of to the detriment of local communities.” The Sports Council for Wales, supported the principles of the proposed Measure and suggested that there may be an overlap between the requirement for an Impact Assessment in the proposed Measure and the requirement to prepare an Open Space Assessment anticipated in the revised TAN16.

(2) Do you agree with the principal definitions of terms used in section 2 of the proposed Measure? If not, please explain why and provide any alternative suggestions.

Most responses were content with the definitions in Section 2. However, some responses made the point that it was important that there was consistency between definitions in the proposed Measure and those in the revised TAN16.

A number of responses, including the Sports Council for Wales, wished to see further clarification of the term “playing pitch”. Flintshire County Council argued that the minimum size to be applied to a playing pitch should be 0.4 of a hectare. Both Fields in Trust and the Sports Council for Wales wished athletics to be specifically included in the proposed Measure.

RREEL was of the opinion that language in the proposed Measure needed strengthening, for example, “disposing of playing fields” should become “appropriation, change of use, development or disposal”. Denbighshire County Council felt that the definition of “dispose” was too wide and would “capture long leases or transfer of title to community councils or other community or sporting organisations, including charitable trusts, even where there is no intention to change the use of the playing field.” Flintshire County Council expressed similar concerns about the term “dispose”.

(3) Do you agree with the proposed contents of the impact statements? Please provide an explanation for your views.

Most bodies that supported the principle of the proposed Measure supported Impact Statements. However, RREEL was of the opinion that the nature of the Impact Statement did not go wide enough and that the scope should be widened. FiT and the Sports Council for Wales thought that some reference to “demand” for playing space should be included.

Most local authority respondents thought that the Impact Assessments were unnecessary. Moreover, some also highlighted the difficulty of how the health and well-being of the community would be assessed. The City and County of Swansea Council stated that “it is not clear who would be in a position to make this technical assessment and in particular how the impact of the loss of playing fields could be weighed against the many other factors that bear on health and well being. The result is likely to contain a high level of subjectivity”. This view was shared by the Sports Council for Wales which stated that “it is not clear what sorts of measures should be referred to; whether the information available, and how health and well being would be affected the disposal of a playing field”. The City and County of Cardiff Council also noted the lack of any “methodology” for measuring the impact.

(4) Are the provisions regarding consultation appropriate? Please explain your viewpoint.

The Open Spaces Society was concerned that local authorities were still only required “to consider” any representations and called for “a more robust process”. The Sports Council for Wales wanted clarification of the

“reasonable steps” to be taken to bring the statement to the attention of bodies. RREEL wanted the wording to be changed to “demonstrable steps” and wanted an inspection period of six months. The National Federation of Women’s Institutes-Cymru (NFWI-Cymru) believed that the “deposit period” should be extended to not less than eight weeks and that the “consultation period” be extended to two weeks after that.

RREEL and Denbighshire County Council were very critical of the proposal to place notification of a decision to dispose of land in the local press. The former considered two weeks to be inadequate; the latter considered such provisions to be “Victorian in nature” and suggested that Councils should be required to publicise the proposed disposal by one or more means, including the website or a simple press statement by the council which would not incur the costs of an advertisement.

(5) Are the consultees listed in the Schedule appropriate? Should less specific consultees be identified? If so, how should consultees be identified?

Many responses were content with the consultees identified but thought the list could be extended to include other bodies such as Disability Sports Wales and the Commissioner for Older People.

However, some bodies expressed strong reservations about this provision. The City and County of Swansea Council said that “as a matter of principle, special interest groups...should not be statutory consultees” and “the organisations listed would clearly have a predisposition to oppose disposal.” Denbighshire County Council highlighted the danger that “over time, more and more bodies will be added”. RREEL thought that there was insufficient reference to “local people”.

(6) Where the authority has decided to proceed with a disposal of playing fields after a consultation, do you think the requirements placed on the local authority are satisfactory? Please explain your view.

RREEL argued that should a local authority decide to proceed with a disposal it must be backed up with evidence from consultees. FiT and the Open Spaces Society were both supportive of these provisions and welcomed the “Decision Statements”. However, the Open Spaces Society said that it was unclear whether there was formal process to challenge a decision.

Denbighshire County Council said that these provisions did not appear to be “consistent with normal arrangements for local accountability” and begged the question of why the proposed Measure “doubts councils’

compliance with what would be statutory requirements”. The danger was that councils would be subject to “double jeopardy” and be subjected to further delay.

(7) Please outline your views on the powers of Welsh Ministers to issue directions to local authorities?

FiT, the Open Spaces Society, NFWI-Cymru, One Voice Wales and the Sports Council for Wales all support the powers for Welsh Ministers but the Open Spaces Society also believed that Welsh Ministers should have an “overriding power”.

The WLGA believed that these provisions could “generate onerous demand for their [*i.e. Welsh Ministers*] involvement and response” without the benefit of specific local knowledge. One local authority, the City and County of Swansea Council, thought these proposals were “sound in principle” but protections would be required in regard to timing; an appeals process following a Ministerial decision and the right of a local authority to recoup costs if its decision is upheld to prevent vexatious challenges.

(8) Will the proposals result in your organisation incurring financial costs? If so, what will they be (please quantify)?

Most local authority responses argued that the proposals would impose significant costs. The City and County of Cardiff Council argued that it “cannot be accurately quantified at this stage”. Costs would arise directly in “preparing underlying benchmark data from which the impact of any proposals could be measured”. The enhanced consultation process would also generate costs.

Denbighshire County Council argued that costs would depend on how many disposals took place. There had been only a couple of disposals of playing fields for development in the last five years.

The WLGA and some local authorities made the further point that the proposed Measure fails to acknowledge that “unused playing fields can represent a significant asset which if realised can help deliver real community benefit and wider strategic goals such as affordable housing and/or investment in local schools.”

FiT estimated that reviewing and commenting on proposed playing field proposals was likely to cost around £5,300 per annum. The Sports Council estimated that, on the basis of applications received over the last five year, the time spent by staff is considering proposals would amount to £2,900.