

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

## Consultation Paper

### Introduction

1. On 12 December 2007, Dr Dai Lloyd AM, the Plaid Cymru Regional Member for South West Wales, was successful in the third ballot to be held in the National Assembly for Wales for the right to seek leave of the National Assembly to introduce a Member proposed Assembly Measure.
2. Dr Lloyd's successful proposal was to place a duty on local authorities to consider the impact that selling off playing fields would have on local communities, in terms of health, well-being and social inclusion, before proceeding with a disposal.
3. On the 6 February 2008 the National Assembly agreed, without opposition, that Dr Lloyd could introduce his proposed Measure. 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. Paragraphs 27 to 33 below, together with Explanatory Notes to the proposed Measure, at Annex 1, set out the details of the provisions within the proposed Measure.
4. This consultation document invites you to comment on the draft proposed Measure before it is introduced into the National Assembly in July 2008 for scrutiny. Consultation responses will therefore inform the preparation of the final proposed Measure before its introduction.
5. Some specific questions are outlined in Annex 2 of this paper but you are invited to comment on any of the proposals in the proposed Measure.

### Legislative Background

6. The constitutional context to this proposal is set out in the *Government of Wales Act 2006*. It provides the mechanism for enhancing the powers of the National Assembly for Wales and allows it to make Assembly Measures where it has the power (referred to as its 'legislative competence') to do so.
7. The National Assembly's Standing Orders provide for proposed Assembly Measures to be introduced by backbench Assembly Members.

8. The legislative competence for this proposed Measure can be found in Matter 12.5 (b) of Schedule 5 to the *Government of Wales Act 2006*:-

*Matter 12.5*

*(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.*

## Background

### *Obesity and Physical Activity in Wales*

9. The National Public Health Service for Wales (NPHS), in its *Health Needs Assessment Report 2006*, states 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.
10. Findings from the *Welsh Health Survey 2005/06* suggest that, based on their Body Mass Index, 56 per cent of people aged 16 in Wales or over are overweight or obese and 19 per cent are obese<sup>1</sup>.
11. 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	15.1	4.4	1.7
15 years old	16.6	14.4	5.6	3.0

*Source: International Study on Health Behaviour in School Aged Children 2001/2*

12. Results from the *Welsh Health Survey 2005/6* show 29 per cent 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

<sup>1</sup> [Welsh Assembly Government, Welsh Health Survey 2005/06, 2007 \(table 4.9\)](#)

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.

13. 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.
14. Each Local Health Board and Local Authority in Wales must formulate and implement a strategy for the health and well-being of the population in the area, and to have regard to the strategy in exercising their functions. The strategy should address, among 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.
15. Among the *One Wales* commitments of the third Welsh Assembly Government is the pledge *Encouraging Sport and Physical Activity*, with the purpose of improving health. Previously the Welsh Assembly Government published its strategies for sport and physical activity, *Climbing Higher*, and *Climbing Higher: the Next Steps*. It is not only in the area of sports policy that the Government has initiatives, exercise and healthy eating are also being encouraged through public health and education initiatives. For example, *Action on Food and Fitness for Children and Young People* is encouraging more physical activity by children and young people.
16. The Welsh Assembly Government's health gain targets to reduce the deaths from cancer and coronary heart disease include specific targets for physical activity. These are:
  - To increase the rate of moderate intensity physical activity of 30 minutes, at least five times per week for adults by at least one percentage point per annum for the next twenty years.
  - All children of primary school age will participate in sport and physical activity for at least 60 minutes, five times a week.
  - At least 90 per cent of boys and girls of secondary school age will participate in sport and physical activity for 60 minutes, five times a week.

17. Playing fields are an accessible facility where physical activities can take place, whether as organised sport or walking and play. Encouraging physical activity from an early age could be crucial in preventing the onset of obesity in later life. They also contribute to the general well-being and environment of the locality. Fields in Trust estimate that around 17 playing fields around Wales are currently at risk of being sold off.

### **Current Policy**

18. *The Town and Country Planning Act 1990* defines open space as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground
19. Local authorities are generally free to dispose of land held by them in a manner they see fit. However, under section 123 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 Community Councils.
20. 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 (TAN) 16, *Sport and Recreation*.<sup>2</sup> The latter 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.

21. Planning applications affecting playing fields may be “called in” by the Welsh Assembly Government for a decision but only if the application raises matters of more than local importance. If not, the application is dealt with by the local planning authority only.

22. 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.

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<sup>2</sup> Tan 16 is currently being revised by the Welsh Assembly Government.

23. The *Town and Country Planning (General Development Procedure) Order 1995* currently requires planning authorities to notify the Sports Council for Wales (SCW) of 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), 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.
24. The 1995 Order also requires planning authorities to consult the Sports Council for Wales of planning applications affecting land
- (i) allocated as a “playing field” in a development plan or a document amending a plan, or
  - (ii) used as a “playing field” within the last five years.
25. In respect of school playing fields, the standards to which the premises of schools maintained by the local authority must conform has been set out in the *Education (School Premises) Regulations 1999*. These require that minimum areas of "team game playing fields" must be provided for schools with pupils who have attained the age of 8 years.
26. Section 77 of the *School Standards and Framework Act 1998* prevents local authorities and governing bodies in England from disposing, or changing the use, of school playing fields, without the prior consent of the Secretary of State. However, **this requirement does not apply in Wales**, although foundation schools and voluntary aided schools in Wales must obtain the Minister for Children, Education, Lifelong Learning and Skills’ consent before disposing of playing fields.

### **The Purpose of the Proposed Measure**

27. The *Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure*, will require Local Authorities to consult with the local community before disposing of playing fields. The overall aim is to ensure that proper consideration is given to a proposed disposal and its impact on the health and well-being of the local community, before it proceeds.
28. Section 2 of the proposed Measure provides definitions of “dispose”, “local authority”, “playing field” and “playing pitch”. In particular, the definitions of “playing field” and “playing pitch” are defined in terms of area and certain sporting activities.
29. Section 3 of the proposed Measure requires Local Authorities to produce an impact statement that identifies the nature of the proposed disposal and describes its impact on the overall provision of playing fields in the locality; the health and well-being of the local residents and the local Health and Well-being Strategy. The impact statement must be available for inspection for a four week period and notices must be placed in the local press.

30. Section 4 of the proposed Measure provides that Local Authorities must take reasonable steps to draw the impact statement to the attention of the statutory consultees listed in the schedule to the proposed Measure and any other groups that may make use of the fields. They must then consider any representations made (section 5).
31. 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 that makes regular use of the playing field; local health boards; Age Concern, Barnados, the British Heart Foundation; the Children's Commissioner for Wales, local youth forums and school councils; local branches of Merched y Wawr and the Women's Institute.
32. Section 6 of the proposed Measure sets out what actions the Local Authority must take if it decides to proceed or not to proceed with a disposal. In the case of proceeding with a disposal, the local authority must prepare a decision statement summarising any representations received and make it available for inspection and publish it on its website.
33. Section 7 of the proposed Measure enables the Welsh Ministers to issue a direction (referred to as a "stop direction") for the Local Authority to suspend the disposal of a playing field if it has received representations that claim that the Local Authority has not complied with the requirements of sections 3 to 6 of the proposed Measure. This stop direction is withdrawn if it appears to the Welsh Ministers that the Local Authority has substantially complied with the Measure. However, it appears that the Local Authority has not complied with the requirements of the Measure, the stop direction is also withdrawn and a new direction (referred to as a "remedial direction") is issued that requires the Local Authority to take such steps that would ensure substantial compliance with the Measure.

## **Costs**

34. The costs resulting from this proposed Measure would be incurred mainly by Local Authorities in preparing and publicising the impact statement and publicising its decision subsequent to the consultation.

## **Options**

35. The proposed Measure is not the only option when considering how to ensure that local facilities are available for people to take part in outdoor physical activity.
36. The first option is to do nothing. As matters currently stand, consultation would apply under the *Town and Country Planning (General Development Procedure) Order 1995* (see paragraphs 23 and 24 above) and in respect of disposal, the

position would continue to be as set out in the *Local Government Act 1972* (see paragraph 19 above). This would effectively allow for the disposal of playing fields to proceed without a full assessment being made of the impact on the health and well-being of the local community.

37. 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* and Technical Advice Note (TAN) 16. The latter, which has been revised and is due for re-issue shortly, provides advice on topics encountered by planning authorities relating to sport, recreation and open space. This requires local authorities to give consideration to factors relating to the disposal of playing fields but does not require a full impact assessment.
38. However, the third option, as set out in the proposed Measure would require the Local Authority to prepare an assessment of the impact of the disposal on the health and well-being of the community; builds in a longer consultation process and identifies statutory consultees. This would provide for a more robust scrutiny of the options when the disposal of playing fields is under consideration.

### **Summary**

39. The Measure provides a new additional safeguard to the situation that currently exists. It would place a duty on the Local Authority to assess the impact of the disposal of a playing field on the local community and to consult with those people who use the playing fields most frequently. Its underlying aim is to ensure that full consideration is given to the health and well-being of local communities by ensuring that facilities are available for physical activity.

## 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. Unless the disposal takes place within 12 months of the day on which the notice is first published, the local authority is taken as not having complied with the aforementioned conditions (subsection (2)).

### Section 2: Principal definitions

3. This section contains the four 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),
- “playing field”, and “playing pitch” – which are defined in terms of area and certain sporting activities.

### Section 3: Duty on local authorities to prepare an Impact Statement

4. Subsection (1) places a duty on a local authority to prepare an Impact Statement identifying the nature of the proposed disposal 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 4 (1) of the Local Government Act 2000 (strategies for promoting well-being).

5. 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)).

6. Subsections (5) – (10) cover the arrangements that a local authority must make to publicise the impact statement.

7. In particular, subsection (8) requires a local authority to publish a notice that must:



- identify the proposed disposal;
- identify the “deposit period”; (the period during which the impact statement is available for inspection at local authority offices (subsection (5)(a) and subsection (7)).
- state where and when the impact statement may be inspected during the deposit period;
- notify 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 do so.

8. Subsection (8) also provides that the notice must be published for at least two consecutive weeks in one or more newspapers circulating the locality.

9. The deposit period must last for a minimum four weeks (subsection (5)(a)); subsection (9) provides that it may not end less than five weeks after the day on which the notice is first published.

10. 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: Duty on local authorities to consult**

11. Subsection (1) places a duty on local authorities to consult each of the bodies listed in the Schedule to the proposed Measure, and to consult other bodies that appear to the local authority to represent the interests of persons likely to make use of the playing field.

12. Subsection (2) enables the Welsh Ministers to amend the Schedule from time to time.

#### **Section 5: Duty and discretion on local authorities to consider representations**

13. 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: Duty of publication on local authorities**

14. 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.

15. 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. Publication requirements relating to the decision notice apply.

16. 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 proposed disposal).

17. 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**

18. 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.

19. 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 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 Measure.

20. An authority to which the Welsh Ministers issue a remedial direction must comply with that direction.

### **Section 8: Amendment to the Local Government Act 1972 (c. 70)**

21. 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 apply.

22. Section 127 of the 1972 Act is similarly amended in relation to the sale of land by community councils. Where land held in trust for enjoyment by the public is disposed in accordance with the provisions of the Measure, the land will be freed from that trust.

### **Section 9: Orders and regulations**

23. 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 two exceptions.

24. Firstly, where it proposes 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).

25. Secondly, there would be no procedure in relation to commencement orders.

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

26. 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**

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

**Section 12: Short title and commencement**

28. This section introduces the title by which the Measure will generally be known. It also provides for the coming into force of the Measure. This section comes into force on the date on which the Measure is approved by Her Majesty at a meeting of the Privy Council. The remaining provisions of the Measure would come into force in accordance with a Commencement Order (or Orders) made by the Welsh Ministers.

## Questions

1. The *Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure*, requires Local Authorities to consult with the local community before disposing of playing fields. The overall aim is to ensure that proper consideration is given to a proposed disposal and its impact on the health and well-being of the local community, before it proceeds. **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.**
2. Section 2 of the proposed Measure provides definitions of “dispose”, “local authority”, “playing field” and “playing pitch”. In particular, the definitions of “playing field” and “playing pitch” are defined in terms of area and certain sporting activities. **Do you agree with the principal definitions used in section 2 of the Proposed Measure? If not, please explain why and provide any alternative suggestions.**
3. Section 3 of the proposed Measure requires Local Authorities to produce an impact statement that identifies the nature of the proposed disposal and describes its impact on the overall provision of playing fields in the locality; the health and well-being of the local residents and the local Health and Well-being Strategy. The impact statement must be available for inspection for a four week period and notices must be placed in the local press. **Do you agree with the proposed contents of the impact statements? Please provide an explanation for your views.**
4. Under the consultation provisions set out in section 4, Local Authorities must take reasonable steps to draw the impact statement to the attention of the statutory consultees listed in the proposed Measure and any other groups that may make use of the fields. They must then consider any representations made (section 5). **Are the provisions regarding consultation appropriate? Please explain your viewpoint.**
5. Statutory consultees are listed in the Schedule to the proposed Measure. **Are the consultees listed in the Schedule appropriate? Should less specific consultees be identified? If so, how should consultees be identified?**
6. Section 6 sets out the action that Local Authority must take once it has decided to proceed the proposed disposal. **Where the authority has decided to proceed with a disposal of Playing Fields after a consultation, do you think the requirements placed on a Local Authority are satisfactory? Please explain your view.**
7. Section 7 allows Welsh Ministers to issue a direction suspending a disposal following representations in order to determine whether the process in the Measure has been complied with. If it has not they may issue a direction requiring the Local Authority to comply. **Please outline your views on the powers of Welsh Ministers to issue directions to Local Authorities.**
8. **Will the proposals result in your organisation incurring financial costs? If so, what will they be (please quantify)?**