

# NATIONAL ASSEMBLY FOR WALES

## REPORT OF THE SUBORDINATE LEGISLATION COMMITTEE

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

#### 1. Standing Orders

1.1 The Committee has the following powers under Standing Orders:

- Standing Order 15.6 (ii) stated that the Subordinate Legislation Committee may consider and report on 'the appropriateness of provisions in proposed Assembly Measures .....that grant powers to make subordinate legislation to the Welsh Ministers'.
- Whilst it is not part of the Committee's remit to comment in the merits of the proposal which the proposed Measure is intended to implement, Standing Order 15.6(v) states that the Committee may consider and report on 'any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers'.

1.2 The purpose of this report is to inform the Assembly's Stage 1 debate on the general principles of the proposed Measure and subsequent legislative stages.

#### 2. Consideration

2.2 On the 3<sup>rd</sup> February 2009 the Committee considered the Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure.

2.3 In scrutinising the proposed measure the Committee looked at the legal advisors report, and the evidence from Brian Gibbons AM, Minister for Social Justice and Local Government which stated that the power in section 4(2) for Welsh Ministers to amend the schedule to the Measure should more appropriately be subject to negative resolution procedure. The Committee decided to write to Dr Dai Lloyd to clarify whether there were any reasons why this power should be exercised under the affirmative procedure.

#### 3. Background

3.1 On 12 December 2007, Dr Dai Lloyd AM, was successful in the third ballot to be held for the right to seek leave of the National Assembly for Wales to introduce a Member proposed Assembly Measure. The proposed Measure was laid on 18 July 2008, accompanied by an Explanatory Memorandum and Explanatory Notes. A Stage 1 Committee has been established to consider the general principles of the proposed Measure.

3.2 The policy background to the proposed Measure is summarised in the Explanatory Memorandum as follows –

*“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.”*

#### **4. Key Issues – Subordinate Legislation Powers**

4.1 When compared with other proposed Measures that the Committee has considered, the proposed Measure contains few regulation and order making powers. Details of these powers are outlined below.

4.2 Section 4 requires that an authority proposing to dispose of playing fields must notify certain bodies and persons, including a list of predetermined consultees, of that intention. This list of consultees is included in the Schedule to the proposed Measure. Section 4(2) provides that the Welsh Ministers may, by order, amend the Schedule from time to time. The Explanatory Memorandum explains that *“[i]t 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.”* Orders amending the schedule, made under section 4(2) would be subject to the affirmative procedure i.e. the order may not be made unless a draft of the instrument has been laid before, and approved by, the Assembly.

4.3 The Committee received a report from the Committees legal advisors, and reviewed the evidence from Brian Gibbons AM, Minister for Social Justice and Local Government which stated that the power in section 4(2) for Welsh Ministers to amend the Schedule to the Measure should more appropriately be subject to negative resolution procedure.

4.3 Section 9 provides that any power to make orders or regulations is exercisable by statutory instrument. Section 9 also provides the power to make provisions generally or in relation to specific cases, and, to make different provision for different cases, and, to make such incidental, supplementary, saving or transitional provisions as the Welsh Ministers think fit.

4.4 Section 10(1) provides that the Welsh Ministers may make regulations which they consider necessary or expedient for the purposes of, or in consequence of, giving full effect to any provision of the proposed Measure. Two particular types of regulations are envisaged here; first, under Section 10(2)(a), those that amend or repeal any Act of Parliament or Measure made

before or during the same Assembly year as the proposed Measure. Secondly, under section 10(2)(b), those that amend or revoke subordinate legislation.

4.5 Different procedures pertain to regulations made pursuant to sections 10(2)(a) and (b) respectively. Regulations under section 10(2)(b) are subject to the negative procedure i.e. they are subject to annulment in pursuance of a resolution of the National Assembly. The Explanatory Memorandum states that *“[i]t 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 [the] proposed Measure.”* Whereas regulations made under section 10(2)(a), which amend or revoke primary legislation, will be subject to the affirmative procedure. These powers in section 10 are common in legislation and similar to those in section 51 of the Local Government Measure.

4.6 Three sections (9, 10 and 11) of the proposed Measure will come into force when the Measure is approved by Her Majesty in Council. The remaining provisions 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.

## **5. Recommendation of the Committee**

**Recommendation 1 - The Committee considered that as changes to the Schedule made under section 4(2) are likely to be largely technical/administrative amendments that this power would be more appropriately exercised under the negative procedure.**

**Otherwise the Committee was content with the delegated powers provisions in the proposed Measure**