

National Assembly for Wales
Legislation Committee No. 1:

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

Stage 1 Committee Report
April 2009



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Legislation Committee No. 1

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

Committee Membership

Rosemary Butler (Chair)	Labour
Mohammad Asghar (from 11.02.09)	Plaid Cymru
Eleanor Burnham	Welsh Liberal Democrats
Ann Jones	Labour
Huw Lewis (from 14.01.09)	Labour
Nick Ramsay	Welsh Conservative Party
Jeff Cuthbert (26.11.08 – 14.01.09)	Labour
Janet Ryder (26.11.08 – 11.02.09)	Plaid Cymru

SUMMARY OF RECOMMENDATIONS

General principles and the need for legislation

We accept that playing fields can be an important community resource and acknowledge their potential positive contribution to the wider health and well-being agenda. We note the strong feeling among the majority of those giving evidence that playing fields should be protected and preserved. A number of those who responded to the Committee's consultation are currently campaigning against the loss of a playing field within their own community.

We note that 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 local communities and to ensure their involvement in disposal decisions. We believe it is important that local authorities seek and take account of the views of local people when making decisions that affect them, including those relating to the disposal of playing fields. In view of this, and the evidence received, **we fully support the aim of the proposed Measure**. However, we remain unconvinced that the proposed Measure is necessary to achieve the stated aim, or indeed that it is the most appropriate way forward in view of the limited scale of the problem. Furthermore, we believe that there may be more straightforward means of achieving the aim without recourse to legislation. To this end, **we are unable to support the general principles of the proposed Measure**. Further detail about how we came to this conclusion is set out in the paragraphs below.

Whilst it was not our intention to consider in detail the extent of the problem of loss of playing fields, in light of the evidence received and in order to help determine whether a legislative solution was required, we felt it was important to explore this issue. The evidence received by the Committee indicates there has been a net gain in playing fields and sports pitches across Wales in recent years. While not understating the importance of any given disposal at a local level, this is a significant factor in considering the need for legislation. In view of this, we feel that the proposed Measure does not represent a proportionate response given the limited scale of the problem at a national level.

We note that the main justification for the proposed Measure put forward by the Member in charge is the inadequacy of the existing legislative provisions relating to the disposal of playing fields. Central to his argument is the assertion that the proposed Measure solely relates to disposal of playing fields and, as such, any protection afforded to playing fields through the land use planning system should be disregarded for the purpose of deciding whether further legislation is needed. In contrast, we received strong evidence to suggest that the disposal and planning processes are intrinsically linked. In particular, we note that national planning policy is such that there is a presumption against the development of playing fields except where it can be demonstrated that there is a surplus or alternative provision is to be made. This translates through to a local level via local planning authority development plans, which themselves provide a framework within which

planning applications are decided. Local authorities are under a general obligation to seek the best consideration for land and, although disposals can proceed without having had some involvement of the planning system, we have received evidence to suggest that it is unlikely in many cases.

We welcome the recent publication of the final TAN 16, which is particularly timely in view of the Committee's consideration of the proposed Measure. We note that some of those giving evidence believed that the anticipated revisions to TAN 16 would provide an additional safeguard against the loss of playing fields, albeit to varying degrees. We accept that the key revisions included in the final TAN 16 are not entirely synonymous with those contained in the draft revised TAN 16, in particular that local authorities are not required to undertake OSAs. However, we note that 13 authorities have already produced OSAs and that there is a general expectation that the remainder will do so in due course. On this basis, we agree that the final TAN 16 provides further protection for playing fields.

We accept that, taken in isolation from the wider planning aspect, the existing legislative provisions relating to the disposal of playing fields could be considered ineffective. However, we consider it unreasonable to separate the protection afforded to playing fields through provisions specifically related to disposal from those emanating from the more holistic planning systems. Indeed, we believe that the existing legislative provisions combined with the land use planning system, including the recently published TAN 16, provide adequate safeguards to protect playing fields. Notwithstanding this, there is arguably room for further improvement, particularly in relation to consultation arrangements. However, we do not feel that the proposed Measure is warranted simply to achieve this aim.

Furthermore, we have received evidence to suggest that there appears to be simpler ways of achieving the main aim of the proposed Measure without recourse to new legislation. While we have not considered these at length or in any detail, **we recommend that the Welsh Government, in conjunction with the Member in charge and the WLGA, give consideration to reviewing existing consultation arrangements within the disposal and planning systems with a view to identifying areas for improvement.**

Mohammad Asghar AM agrees with the aim of the proposed Measure and believes there is an identified need for it. On this basis, he fully supports the general principles of the proposed Measure.

The scope of the proposed Measure

We note the evidence received to suggest that the scope of the proposed Measure should be extended. However, we accept that the intention of the Member in charge in bringing forward the proposed Measure was specifically to provide an additional safeguard against the loss of playing fields through disposal. We acknowledge that the Assembly does not currently have the legislative competence to legislate in relation to planning matters, including 'change of use of land'. In addition, we accept that it would not be permissible

for the definition of “playing field” to be amended to extend to other open spaces as the scope of the proposed Measure, as agreed by the Assembly, is confined only to playing fields.

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

We share the concern raised in evidence that the exemptions may not deliver the precise objectives of the proposed Measure. While the premise that the exempted groups have an underlying community interest is fair this, in itself, may not provide sufficient protection against the loss of playing fields since there is no absolute assurance that the land would continue to be used as such following disposal. On this basis, and given the strength of the evidence received, **we recommend that the Member in charge give consideration to limiting the exemptions by including further qualifying conditions such as a restrictive covenant.**

Section 2 – Principal definitions

(i) “Dispose”

We are content with the definition of “dispose” provided for in Section 2(a).

(ii) “Local authority”

We share the concerns raised in evidence that community and town councils will be subject to the requirements provided for in sections 3 to 6 of the proposed Measure. Whilst we accept it is improbable that community and town councils will seek to dispose of playing fields within their ownership, we cannot dismiss the possibility. However, we have doubts about the practical application of some of the provisions within the proposed Measure, but more importantly, we have serious concerns about the financial implications for community and town councils of meeting the requirements. Indeed, we believe that, for many community and town councils, particularly smaller community councils, the cost will be prohibitive. Essentially, if the costs of meeting the requirements is such that a community or town council is prevented from ever being able to dispose of a playing field, then this amounts to the loss of its democratic mandate.

We do not think it is acceptable for community and town councils to be wholly excluded from the proposed Measure; however neither do we believe that it is reasonable to subject them to the same level of requirement as the local planning authorities, given their limited capacity and budgets. **We acknowledge the complexities involved in addressing these concerns, but believe it is critical that the Member in charge does so if the proposed Measure progresses further, and we so recommend.**

(iii) “Playing field” and “playing pitch”

The evidence we received largely indicates that the definitions of “playing field” and “playing pitch” are sufficiently clear and reflect the intention of the Member in charge in relation to the type of areas that would be covered by the proposed Measure. We note that the definition of “playing pitch” is an amalgamation of those contained in existing legislation but that it has been refined for the purpose of the proposed Measure. Whilst we accept the assertion that this definition includes a wide range of sports, we remain concerned that providing an exhaustive list may lead to the inadvertent exclusion of lesser known or less popular sporting activities. In order to help safeguard against this, and to provide the flexibility to take account of changing trends, **we recommend that a provision for Welsh Ministers to amend the definitions of “playing field” and “playing pitch” should be included on the face of the proposed Measure.**

Section 3 – Impact statements

Given the aim of the proposed Measure, we recognise and accept the need to include provision to ensure an assessment of the local impact of the loss of a playing field, as a basis for consultation. Indeed, without it the proposed Measure would arguably lack meaning.

We acknowledge the concerns raised in evidence about the requirement on local authorities to prepare impact statements provided for in section 3(1). While not wishing to underplay these concerns, some are seemingly based, at least in part, on a misapprehension about the type of information and level of detail needed. It is clearly the intention of the Member in charge that the section 3(1)(c) requirement can be met in the most part by using information extracted from a local planning authority’s OSA and Health, Social Care and Well-being Strategy.

Following the publication of the final TAN 16 it is clear that local planning authorities should be or already are collecting evidence of both the local need and the local provision of open space, including playing fields as part of the OSA. Since 2003 there has also been a requirement on local authorities to undertake a health, well-being and social care needs assessment as part of the preparation of the Health, Social Care and Well-being Strategy. We note that the impact statement is mainly intended to bring together relevant information from these assessments to enable more meaningful consultation which, in turn, will enhance the decision making process.

On the strength of the evidence received from the Member in charge and, mindful of the aim of the proposed Measure, we are content with the requirement on local authorities to prepare an impact statement for each proposed disposal. We heard evidence that it would be very difficult for a local authority to assess the impact of the disposal of a single playing field on the health of the local population. Whilst we accept that this may be the case, we still consider that the majority of the information necessary for the preparation

of an impact statement should be readily available. In view of this, we are broadly content with the specific requirements set out in section 3(1)(c).

The evidence received by the Committee indicates there is concern about the financial implication for local authorities of preparing impact statements. These are explored in more detail in Chapter 5 of the report.

Section 4 – Consultation

It is apparent from the evidence received that there is scope to improve local authorities' current consultation arrangements in relation to disposal of playing fields. Whilst we accept that a level of consultation is inherent in the land use planning system and other strategic planning mechanisms, this does not detract from the importance of effective consultation on individual proposed disposals. Nevertheless, we have serious reservations about the consultation requirements provided for in section 4(1) of the proposed Measure. In particular, we are concerned that the requirements are excessive, overly-prescriptive and disproportionate, particularly in comparison to the level of consultation that applies to other issues of community interest. We believe there is an important distinction to be made between extensive and effective consultation, and remain unconvinced that the approach provided for in the proposed Measure will necessarily achieve the latter.

Notwithstanding the above, we are content with the principle of including in the proposed Measure a list of relevant statutory bodies that must be consulted. However, we were not persuaded of the rationale behind the other groups and organisations included, in particular third sector and non-statutory organisations. **To this end, we recommend that the Member in charge give consideration to rationalising the list of statutory consultees further.**

Whilst we fully understand the sentiment behind the section 4(1)(c) requirement to directly consult householders, it appears to be excessive, onerous, and potentially more costly than originally anticipated. It would be remiss to underestimate the practical and financial implications for local authorities of meeting the consultation requirements as currently drafted. Indeed, there may have been an element of oversimplification in evidence from the Member in charge about how this requirement will be met in practical terms. Whilst we welcome the decision by the Member in charge to bring forward an amendment to provide for a summary of an impact statement to be sent to householders, this is inconsequential in relation to our underlying concerns.

Our view remains that effective consultation with the local community is important but that it could best be achieved through alternative means. To this end, **we recommend that the Member in charge gives further consideration to section 4(1) in its entirety with a view to providing for more reasonable and proportionate methods of consultation.** In doing so, he should be mindful of the need to ensure local authorities have a degree of

flexibility to allow them to respond as they see fit depending on the significance of the proposed disposal.

Section 5 – Consideration of representations

We note the broad support for the section 5 requirements, and we are therefore content with the provision, as drafted.

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

It is entirely reasonable to expect a local authority to formally set out its disposal decision and how it intends to proceed. On this basis, and in view of the broad support in evidence, we are content with the requirement on local authorities to prepare a decision statement. Similarly, we believe it is important for local authorities to have effective mechanisms in place to make known their decision. To this end we are content with the section 6(2) provision, with the exception of the requirement to send a copy of the decision statement to all those consulted under section 4(1). Indeed, we believe this requirement is excessive, disproportionate and could leave local authorities open to criticism for ineffective use of financial resources. We agree with the Minister for Social Justice and Local Government's suggestion that a more proportionate approach would be to send a copy of the decision statement only to those who submitted substantive representations as part of the formal consultation. In view of this, **we recommend that the Member in charge consider bringing forward an amendment to this affect if the proposed Measure progresses to Stage 2.**

Section 7 – Directions by Welsh Ministers

We note the concerns raised in evidence in relation to the powers of Welsh Ministers to issue 'stop' and 'remedial' directions provided for in section 7. These powers could only be exercised in cases where local authorities have failed to comply with the procedures set out in the proposed Measure. Whilst we accept that other avenues of redress currently exist, these may be time consuming and, in the case of judicial review, potentially costly. We therefore consider that the section 7 provision provides a necessary and immediate additional safeguard, which will help ensure compliance.

Financial implications

The evidence received indicates there is concern about the financial implications for local authorities of meeting the requirements of the proposed Measure. Whilst we did not consider this issue in any detail we have made some general observations. Firstly, whilst we acknowledge the effort made by the Member in charge to provide a full and accurate estimate of cost we are concerned about the lack of evidence upon which the final cost estimate is based. On the basis of evidence received, we believe that the cost of consulting is likely to be higher than the original estimate. In addition, notwithstanding our view that there is a general expectation for local

authorities to produce OSAs, we note that there will be additional cost implications for those who have not yet undertaken or do not plan to undertake an OSA should they wish to dispose of a playing field. Finally, we have serious concerns about the financial implications of meeting the requirements of the proposed Measure for community and town councils, particularly smaller town councils. In view of the above, **we recommend that further consideration is given to the financial implications of the proposed Measure before it is implemented.**

Other Assembly Committee reports

(i) Finance Committee report

We share some of the concerns raised by the Finance Committee and note its report.

(ii) Subordinate Legislation Committee report

We note the Subordinate Legislation Committee report and concur with its recommendation that the power in section 4(2) for Welsh Ministers to amend the Schedule should be subject to negative resolution procedure.

1. Introduction

1. In December 2007, Dai Lloyd AM was successful in a ballot held by the National Assembly for Wales ('the Assembly') for the right to seek leave to introduce a Member proposed Measure, in accordance with Standing Order 23.99¹. In February 2008, the Assembly subsequently agreed that Dai Lloyd AM's proposed Measure on community involvement in local authority decisions whether to dispose of playing fields could be introduced for consideration by the Assembly². On 18 July 2008, Dai Lloyd AM laid before the Assembly the proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure³ and accompanying Explanatory Memorandum⁴.

2. At its meeting on 2 December 2008, the Business Committee agreed to refer the proposed Measure to Legislation Committee No.1 ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21⁵. It also agreed that the Committee must report on the proposed Measure no later than 13 weeks from the date of its first meeting.

Terms of scrutiny

3. At our first meeting on 9 December 2008, we agreed the following framework within which to scrutinise the general principles of the proposed Measure -

To consider:

- (i) the need for a Measure in relation to community involvement in decisions by local authorities whether to dispose of playing fields;
- (ii) the key provisions set out in the proposed Measure and whether they achieve their purpose;
- (iii) the practical and financial implications of implementing the key provisions; and
- (iv) whether the proposed Measure achieves its overall purpose and aim.

Committee's approach

4. We issued a general 'call for evidence' and invited key stakeholders primarily from within the fields of local government, and sport and recreation,

¹ RoP, 12 December 2007.

² RoP, 6 February 2008.

³ Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure, <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=93814&ds=7/2008>

⁴ Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure, Explanatory Memorandum, MPM-05-EM-S1, <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=93815&ds=7/2008>

⁵ National Assembly for Wales, Business Committee, BC(3)-32-08, Committee Minutes, 2 December 2008.

to submit written evidence to inform our work. A list of consultation responses is attached at Annex 1.

5. We took oral evidence from a number of witnesses, a list of which is attached at Annex 2.

6. The following report and recommendations represent the conclusions we have reached on the evidence received during the course of our work. We would like to thank all those who contributed to the report.

2. Background

(i) Legislative background

7. The legislative competence for the proposed Measure is contained in Matter 12.5(b) of Schedule 5 to the Government of Wales Act 2006⁶ –

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.

8. The Explanatory Memorandum accompanying the proposed Measure states:

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.⁷

9. It goes on to explain that the ‘main purpose’ of the proposed Measure is to address the shortcomings of the existing provisions:

...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 specific people.⁸

10. It further states:

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.⁹

⁶ The *Government of Wales Act 2006*, c.32.

⁷ Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure, Explanatory Memorandum, MPM-05-EM-S1, paragraph 3.1.

⁸ *Ibid*, paragraph 3.2.

⁹ *Ibid*, paragraph 3.3.

(ii) Existing legislation in relation to the protection of playing fields

11. Local authorities in Wales are free to dispose of land held by them as they see fit. When disposing of land they are under a general obligation to seek the best consideration. However if the land in question is open space (including playing fields), then they must advertise their intention to dispose of this land for two successive weeks in a local newspaper and then give consideration to any objections (Sections 123 and 127 of the **Local Government Act 1972**).

12. The **Education (School Premises) Regulations 1999** require that minimum areas of "team game playing fields" must be provided for schools with pupils who have attained the age of 8 years.

13. If the land being disposed of is to be developed or used for another purpose then planning permission would also usually be required. The local planning authority would usually decide upon such an application, although it could be "called-in" by the Welsh Assembly Government ('the Welsh government'), if it raises matters of more than local importance. In addition, the land use planning system in Wales places certain restrictions on the development or change of use of open space land, including playing fields. **The Town and Country Planning (General Development Procedure) Order 1995** requires local 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. This threshold is to be reduced to 0.2 hectares.

14. In disposing of open space, including playing fields, local authorities should also take account of national planning policy and guidance issued by the Welsh government. They should have regard to Chapter 11 of **Planning Policy Wales** and **Technical Advice Note 16 ('TAN 16'), Sport and Recreation**. These state that a local authority should protect all playing fields unless it can be demonstrated that there is a surplus or alternative provision is to be made.

(iii) Technical Advice Note 16 ('TAN 16'), Sport and Recreation

15. On 3 February 2009, the Welsh Government published the final version of *Technical Advice Note 16 (TAN 16) "Sport, Recreation and Open Space"*¹⁰. This follows consultation on a draft revised TAN 16 in July 2006 and a further consultation on "the protection afforded to formal and informal areas of recreational open space" in March 2007.

16. The final version of TAN 16 **advises** local planning authorities to undertake Open Space Assessments (OSA), but **does not make this a requirement**. This is contrary to the March 2007 consultation where the Government proposed to make the preparation of an OSA a "policy requirement".

17. TAN 16 also states that where an OSA is not available the preparation of a Local Development Plan (LDP) should not be delayed, but should be based on "other information which is to hand and in which they [the local planning authorities] have confidence".

18. The OSA should take account of all forms of formal and informal recreational open space (including playing fields) and should include an **assessment of local need**, and an **audit of local supply**. Consequently, the Open Space Assessment should identify any local deficiencies or local excesses of provision.

19. The TAN sets out the stages that the local authority should go through in order to produce an OSA. The evidence collected for the OSA on need and supply should enable locally generated standards for the provision of open space to be set, which are likely to differ between different areas (urban and rural for example). Using these standards surpluses and deficiencies in quantities of open space, and facilities for sport and recreation can be identified and options to deal with these developed through the LDP process.

20. It is expected that the local authority will consult with stakeholders as part of the process.

21. The assessment should take account of existing policies and strategies. However, unlike the proposed Measure, the draft TAN does not explicitly require the assessment to take account of the health and well-being of local residents (and children and of young persons in particular).

22. The Welsh Local Government Association (WLGA) subsequently wrote to the Committee (18.02.09) confirming that **13 of the 25 local planning authorities** had already prepared an OSA and 2 more were in the process. However these documents will have been prepared before the final version of TAN 16 was published and therefore do not necessarily contain all of the information and analysis that the Welsh government has now advised should

¹⁰ Welsh Assembly Government, [Technical Advice Note 16: Sport, Recreation and Open Space](#), February 2009 [on 10 February 2009]

be included. In particular they do not all include an assessment of the local need for open space.

3. General principles and the need for legislation

23. We would like to make clear that the role of the Committee was not to assess the merits or otherwise of playing fields, or indeed, to decide whether all playing fields should be protected against disposal. In scrutinising the general principles of the proposed Measure, we sought to identify whether there was a definite and identified need for the legislation before us. We also considered the provisions contained within the proposed Measure to ascertain whether they were appropriate, workable and would meet the required aim.

24. There was broad support in both oral and written evidence for the underlying aim of the proposed Measure, i.e. to ensure that full consideration is given to the impact of the disposal of a playing field on the local community and to consult specified people before a disposal decision is made. Indeed, the majority of those who gave evidence felt that there was a need for further legislation to protect playing fields in Wales.

25. Specific reasons given in support of the proposed Measure were as follows:

- playing fields are a valuable community resource, which help promote community cohesion and social inclusion;
- the need to encourage physical activity through sport and recreation (including informal play), which will help to improve the health and well-being of the population in general, and children in particular;
- the need to ensure that adequate, accessible provision is available to enable individuals to participate in physical exercise, in particular to help address the lack of play facilities and opportunities to play, which are reportedly a concern for parents and children;
- the need to strengthen existing, inadequate arrangements, in particular by ensuring a more thorough examination of the value of the playing field to the local community and the impact of its loss on the community; and
- the need to ensure community involvement in disposal decisions through meaningful consultation.

26. While supportive of the 'underlying purpose' of the proposed Measure, the Minister for Social Justice and Local Government expressed serious reservations in both oral and written evidence about its 'proportionality'¹¹. He stated:

...the Assembly Government remains unconvinced that the Measure, as currently presented, represents the most appropriate way forward.¹²

¹¹ Written evidence, PF8.

¹² Ibid.

27. Indeed, he later implied that the objectives of the proposed Measure may be achieved by strengthening existing legislative provisions related to disposal or through the planning regime.

28. Those representing local government strongly opposed the proposed Measure for the following reasons:

- there is no evidence to suggest that loss of playing fields is a problem in Wales. Indeed, there has been a net gain in playing fields over the past five years and any disposals have resulted in a positive gain for the community due to replacement leisure provision;
- adequate protection is afforded to playing fields through the existing land use planning regime;
- disposal decisions are made in the context of local authorities' wider strategic goals having taking into account the overall leisure and recreation provision in the locality;
- it could undermine local authorities' planning policy and Local Development Plan; and
- it would place additional bureaucratic and financial burdens on local authorities.

29. In deciding whether there was a need for the proposed Measure, the Committee took account of a number of key issues, which are outlined in detail below.

(i) Is the loss of playing fields a problem that needs to be addressed?

Evidence from stakeholders

30. In evidence to the Committee, the WLGA argued strongly that the loss of playing fields was not a problem in Wales¹³. It stated that it was unaware of any example where the loss of a playing field has had a detrimental effect on a local community. On the contrary, the WLGA asserted that where playing fields had been disposed of there had been a positive gain for the community as a result of replacement leisure provision¹⁴.

31. Research undertaken by the WLGA to inform its response to the Committee's consultation on the proposed Measure showed there has been a net gain of playing fields or sports pitches across local authorities in Wales at a ratio of 2:1 in the past five years¹⁵. Similarly, on the basis of data provided by the Sports Council for Wales, the WLGA reported a net gain at a ratio of almost 3:1¹⁶.

¹³ RoP, paragraphs 10, 22, and 92, 12 February 2009, Legislation Committee No.1.

¹⁴ Ibid, paragraph 92.

¹⁵ Written evidence, PF4.

¹⁶ Written evidence, PF4.

32. While the Sports Council for Wales agreed that the loss of playing fields was not an issue at a strategic level, it felt that this did not detract from the detrimental effect that the loss of a specific playing field can have on a local community¹⁷. This view was shared by Fields in Trust who stated:

...regardless of the national situation, each case must be judged individually because the loss of a playing field can have a devastating impact locally¹⁸.

Evidence from the Member in charge

33. In his Explanatory Memorandum, Dai Lloyd AM stated:

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 playing. Encouraging this physical activity from an early age could be a crucial factor in preventing the onset of obesity in later life¹⁹.

34. He reiterated the above point in evidence to the Committee and reported:

The fact is that 24 playing fields in Wales are under threat today, and we have lost 13 in the last few years...²⁰

35. Dai Lloyd AM did not specifically address the question of whether the loss of playing fields was a problem across Wales but stated:

I do not agree fundamentally with the premise that the proposed Measure is not required – I strongly believe that it is required. This is all about involving the local community in a meaningful decision, informing them of a potential decision and getting community involvement before a final decision has been taken, either way, on the possible disposal of a playing field.²¹

(ii) Do existing arrangements afford enough protection against the loss of playing fields?

Evidence from stakeholders

36. One of the main arguments put forward by those who opposed the proposed Measure, most notably the WLGA, is that the existing safeguards to protect playing fields, in particular those provided through the land use planning system, are adequate. Indeed, the WLGA stated:

¹⁷ RoP, paragraph 92, 29 January 2009, Legislation Committee No.1.

¹⁸ Written evidence, PF6.

¹⁹ Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure, Explanatory Memorandum, MPM-05-EM-S1. paragraph 4.1.

²⁰ RoP, paragraph 22, 22 January 2009, Legislation Committee No.1.

²¹ RoP, paragraph 4, 5 March 2009, Legislation Committee No.1.

The Measure is not required given the protection and engagement afforded by the planning regime in Wales.²²

And

It is difficult to argue the case for this Measure, when a range of current Welsh Assembly Government proposals and the devolved planning regime already clearly govern activity in this area.

There does not seem to be any compelling evidence to justify this measure or to explain why the existing powers are inadequate...²³

37. The WLGA also argued that it was unlikely that a disposal would proceed without some involvement in the planning system. It explained that when disposing of land, the *Local Government Act 1972* put a local authority under a general obligation to seek the best consideration for that land, which means if a change of use is proposed then the land is likely to be worth more if it has been granted planning permission for the alternative use.²⁴

38. In evidence to the Committee, both the Minister for Social Justice and Local Government, and the Minister for Environment, Sustainability and Housing outlined the existing safeguards aimed at protecting playing fields. These include Part VII of the *Local Government Act 1972*, 'Planning Policy Wales', Technical Advice Note 16 *Sport and Recreation* (TAN 16), the *Town and Country Planning (General Development Procedure) Order 1995* and the *Education (School Premises) Regulations 1999*²⁵.

39. The Minister for Social Justice and Local Government asserted that, while a 'useful distinction' could be made between the regimes that governed planning and disposal decisions, the issues were not as 'hermetically sealed' as had been suggested by Dai Lloyd AM²⁶. In comparison, the Minister for Environment, Sustainability and Housing emphasised that the planning system:

...is not concerned with local authority acquisition and disposal procedures, nor with the management of land used for sport and recreation purposes. The available planning mechanisms are peripheral to the thrust of the Proposed Measure²⁷.

40. While the Minister for Social Justice and Local Government reported that he was 'satisfied' that the current arrangements were 'adequate', he accepted that they could be improved upon. However, he strongly emphasised the need for 'proportionality'²⁸.

²² Written evidence, PF4.

²³ Ibid.

²⁴ Ibid.

²⁵ Written evidence, PF8 and PF22.

²⁶ RoP, paragraph 16, 5 February 2009, Legislation Committee No.1.

²⁷ Written evidence, PF22.

²⁸ RoP, paragraph 23, 5 February 2009, Legislation Committee No.1.

41. Notwithstanding its support for the proposed Measure, the Sports Council for Wales was cognisant that its main objectives ‘may be achieved by strengthening the existing planning process and observing recommendations set out in the Draft Technical Advice Note (TAN) 16’²⁹. However, it went on to point out that, while these may seek to address the loss of playing fields at a strategic level, the proposed Measure focuses on the impact of disposal on ‘a particular locality or group’³⁰.

42. Similarly, whilst Fields in Trust Cymru (FIT Cymru) accepted that the planning process provides a ‘certain degree of protection for playing fields’, it asserted that the proposed Measure, in particular the impact statement, ‘will go much deeper and provide more detail when assessing proposals’³¹.

Evidence from the Member in charge

43. In giving evidence, Dai Lloyd AM strongly refuted the suggestion that adequate protection against the loss of playing fields was afforded through the planning regime and that the proposed Measure was therefore unnecessary. He argued that his proposal was specifically concerned with involving the community before disposal decisions had been made and, as such, was separate and distinct from any protection afforded to playing fields through the planning system³². Notwithstanding this, Dai Lloyd AM later accepted that it was unlikely that a disposal would proceed without some involvement in the planning system³³.

44. Dai Lloyd AM reported that, while statutory protection exists for historic buildings and gardens, and trees, there is currently no equivalent statutory protection for playing fields. He stated that at present, the legislative provisions relating to the disposal of playing fields were such that, effectively, any disposal could proceed without a full assessment of its impact on the health and well-being of the local community and without any meaningful consultation. The proposed Measure built on the current provisions and essentially addressed what he believed were its shortcomings³⁴.

(iii) Are there more straightforward, alternative means that could be used to improve protection of playing fields?

Evidence from stakeholders

45. Notwithstanding its fundamental objections to the proposed Measure, the WLGA suggested that a more straightforward means of strengthening arrangements aimed at protecting playing fields would be for Welsh Ministers to exercise existing powers under the *Town and Country Planning (General Development Procedure) Order 1995* to issue an equivalent direction similar

²⁹ Written evidence, PF3.

³⁰ RoP, paragraph 14, 29 January 2009, Legislation Committee No.1.

³¹ Ibid, paragraph 116.

³² RoP, paragraphs 7 - 18, 22 January 2009, Legislation Committee No.1.

³³ RoP, paragraph 13, 5 March 2009, Legislation Committee No.1.

³⁴ RoP, paragraphs 7 - 18, 22 January 2009, Legislation Committee No.1.

to the Direction (Circular 09/98 TCP (Playing Fields) (England) Directions 1998), which applies only to England³⁵.

46. The Direction requires local planning authorities in England to consult Sport England on proposals for development which affect playing fields. Any objections raised by Sport England must be considered by the local planning authority. Before the planning authority proposed to grant planning permission, against the advice of Sport England, it must also consult the Secretary of State who may then call-in the application for determination.

47. Although the Sports Council for Wales is a statutory consultee in the same way that Sport England is for England, if a local planning authority in Wales proposed to grant planning permission for development of any playing field, against the advice of the Sports Council for Wales, there is currently no requirement on the authority to consult the Welsh Minister.

48. In evidence to the Committee, the Minister for Social Justice and Local Government implied that a more appropriate and simpler means of meeting many of the objectives of the proposed Measure would be by amending sections 123 and 127 of the Local Government Act³⁶.

Evidence from Member in charge

49. Dai Lloyd AM dismissed the WLGA's suggestion on the basis that the Direction relates specifically to planning and not to disposal³⁷.

50. In commenting on the Minister for Social Justice and Local Government's suggestion, he acknowledged that strengthening sections 123 and 127 of the Local Government Act 1972 would go some way in achieving the aims of the proposed Measure. However, the proposed Measure provided a 'more complex' and 'effective method of ensuring that the views of the community are taken into account'³⁸.

Our view

51. We accept that playing fields can be an important community resource and acknowledge their potential positive contribution to the wider health and well-being agenda. We note the strong feeling among the majority of those giving evidence that playing fields should be protected and preserved. A number of those who responded to the Committee's consultation are currently campaigning against the loss of a playing field within their own community.

52. We note that 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 local communities and to ensure their involvement in disposal decisions. We believe it is important that local authorities seek and take account of the views

³⁵ RoP, paragraph 141, 12 February 2009, Legislation Committee No.1.

³⁶ RoP, paragraphs 88 – 92, 5 February 2009, Legislation Committee No.1.

³⁷ RoP, paragraph 23, 5 March 2009, Legislation Committee No.1.

³⁸ Ibid, paragraph 21.

of local people when making decisions that affect them, including those relating to the disposal of playing fields. In view of this, and the evidence received, **we fully support the aim of the proposed Measure.** However, we remain unconvinced that the proposed Measure is necessary to achieve the stated aim, or indeed that it is the most appropriate way forward in view of the limited scale of the problem. Furthermore, we believe that there may be more straightforward means of achieving the aim without recourse to legislation. To this end, **we are unable to support the general principles of the proposed Measure.** Further detail about how we came to this conclusion is set out in the paragraphs below.

53. Whilst it was not our intention to consider in detail the extent of the problem of loss of playing fields, in light of the evidence received and in order to help determine whether a legislative solution was required, we felt it was important to explore this issue. The evidence received by the Committee indicates there has been a net gain in playing fields and sports pitches across Wales in recent years. While not understating the importance of any given disposal at a local level, this is a significant factor in considering the need for legislation. In view of this, we feel that the proposed Measure does not represent a proportionate response given the limited scale of the problem at a national level.

54. We note that the main justification for the proposed Measure put forward by the Member in charge is the inadequacy of the existing legislative provisions relating to the disposal of playing fields. Central to his argument is the assertion that the proposed Measure solely relates to disposal of playing fields and, as such, any protection afforded to playing fields through the land use planning system should be disregarded for the purpose of deciding whether further legislation is needed. In contrast, we received strong evidence to suggest that the disposal and planning processes are intrinsically linked. In particular, we note that national planning policy is such that there is a presumption against the development of playing fields except where it can be demonstrated that there is a surplus or alternative provision is to be made. This translates through to a local level via local planning authority development plans, which themselves provide a framework within which planning applications are decided. Local authorities are under a general obligation to seek the best consideration for land and, although disposals can proceed without having had some involvement of the planning system, we have received evidence to suggest that it is unlikely in many cases.

55. We welcome the recent publication of the final TAN 16, which is particularly timely in view of the Committee's consideration of the proposed Measure. We note that some of those giving evidence believed that the anticipated revisions to TAN 16 would provide an additional safeguard against the loss of playing fields, albeit to varying degrees. We accept that the key revisions included in the final TAN 16 are not entirely synonymous with those contained in the draft revised TAN 16, in particular that local authorities are not required to undertake OSAs. However, we note that 13 authorities have already produced OSAs and that there is a general expectation that the

remainder will do so in due course. On this basis, we agree that the final TAN 16 provides further protection for playing fields.

56. We accept that, taken in isolation from the wider planning aspect, the existing legislative provisions relating to the disposal of playing fields could be considered ineffective. However, we consider it unreasonable to separate the protection afforded to playing fields through provisions specifically related to disposal from those emanating from the more holistic planning systems. Indeed, we believe that the existing legislative provisions combined with the land use planning system, including the recently published TAN 16, provide adequate safeguards to protect playing fields. Notwithstanding this, there is arguably room for further improvement, particularly in relation to consultation arrangements. However, we do not feel that the proposed Measure is warranted simply to achieve this aim.

57. Furthermore, we have received evidence to suggest that there appears to be simpler ways of achieving the main aim of the proposed Measure without recourse to new legislation. While we have not considered these at length or in any detail, **we recommend that the Welsh Government, in conjunction with the Member in charge and the WLGA, give consideration to reviewing existing consultation arrangements within the disposal and planning systems with a view to identifying areas for improvement.**

58. Mohammad Asghar AM agrees with the aim of the proposed Measure and believes there is an identified need for it. On this basis, he fully supports the general principles of the proposed Measure.

59. As previously mentioned, during the course of our work we considered in some detail the specific provisions contained in the proposed Measure. In view of this, and in the event that the Assembly agrees the general principles of the proposed Measure, we feel it is important to highlight a number of key issues we believe should be addressed through the amendment process to ensure that the legislation is fit for purpose.

4. The scope of the proposed Measure

60. Several of those giving evidence raised issues relating to the scope of the proposed Measure. Some suggested that consideration should be given to broadening the scope to include 'change of use' of land and/or 'appropriation'. Others felt that the scope should extend beyond 'playing fields' to include all other public playing spaces, or wider still, to areas of all open space used by local communities.

(i) 'Change of use' and 'appropriation'

Evidence from stakeholders

61. Clarification was sought from One Voice Wales about why the proposed Measure was restricted to 'disposal' of playing fields and did not extend to 'change of use'. It pointed out that the loss of a playing field could also occur through 'change of use'³⁹. However, it was not clear whether One Voice Wales was in favour of an extension of the scope of the proposed Measure.

62. Rumney Recreation & Eastern Leisure Action Group specifically recommended that the scope of the proposed Measure should be significantly broader and include 'appropriation, change of use and development'⁴⁰.

Evidence from Member in charge

63. In evidence to the Committee, Dai Lloyd AM confirmed that the proposed Measure is specifically concerned with the disposal of playing fields by local authorities and that it did not apply to proposals for the 'change of use' of a playing field. He explained that applications for change of use were planning considerations, and as such would be dealt with under the relevant planning legislation⁴¹.

64. In addition, Dai Lloyd AM explained that the legislative competence for the proposed Measure was provided for in Matter 12.5(b) of Schedule 5 of the Government of Wales Act 2006. While he did not specifically state that the Assembly does not currently have the legislative competence to legislate in relation to planning permission, it would seem implicit in his response⁴².

(ii) Other public playing spaces and open spaces more generally

Evidence from stakeholders

65. A number of those giving evidence felt that the scope of the proposed Measure did not go far enough in relation to the type of land it was seeking to protect from disposal and the purpose for which it was used. It was felt that the scope of the proposed Measure should be extended to varying degrees.

³⁹ RoP, paragraph 121, 25 February 2009, Legislation Committee No.1.

⁴⁰ Written evidence, PF16.

⁴¹ RoP, paragraphs 14 – 18, 22 January 2009, Legislation Committee No.1.

⁴² Ibid.

66. The Open Space Society suggested that all areas of open space used by local communities, 'irrespective of their size and the sporting activities for which they are used' should be included in the proposed Measure⁴³.

67. Both FIT Cymru and Play Wales felt that the scope should be extended to all land used for sport, play and recreation, and emphasised the significance of 'informal' recreational activities⁴⁴. However, they acknowledged the difficulty in providing a workable definition in legal terms. Notwithstanding this, Play Wales went on to emphasise 'the importance of multi-functional open spaces, particularly playing fields, in terms of children's play'⁴⁵.

68. Similarly, North Wales Play Association felt that 'a much wider and more inclusive reference to playing space' was needed, although it too acknowledged that 'the vast bulk of which is not so definitive'. It expressed disappointment that the proposed Measure 'misses an opportunity to embrace all other public and equally important playing space and in particular children's play space'. Indeed, it went on to raise concern that the exclusion of other playing space could leave it more vulnerable to disposal⁴⁶. This point was also made by the Children's Commissioner for Wales who emphasised the importance of play areas and parks, which may not include a delineated sports pitch, but that provided valuable play areas for children and young people⁴⁷.

69. Pembrokeshire Local Health Board felt that consideration should be given to extending the scope of the proposed Measure 'to cover any publicly owned exercise facility'⁴⁸.

Evidence from the Member in charge

70. In evidence to the Committee, Dai Lloyd AM confirmed that the proposed Measure was limited only to playing fields. While he acknowledged the importance of 'open space' to the health and well-being of the community, he explained that providing an appropriate legal definition would have proved difficult⁴⁹.

71. In his Explanatory Memorandum, Dai Lloyd AM explained that the proposed Measure did not extend to land used for 'informal recreation', including 'play' more generally since it 'would go beyond the proposal approved by the Assembly'⁵⁰.

⁴³ Written evidence, PF9.

⁴⁴ Written evidence, PF6 and PF24.

⁴⁵ Written evidence, PF24.

⁴⁶ Written evidence, PF14.

⁴⁷ Written evidence, PF19.

⁴⁸ Written evidence, PF7.

⁴⁹ RoP, paragraph 25, 5 March 2009, Legislation Committee No.1.

⁵⁰ Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure, Explanatory Memorandum, MPM-05-EM-S1. paragraph 5.3.

Our view

72. We note the evidence received to suggest that the scope of the proposed Measure should be extended. However, we accept that the intention of the Member in charge in bringing forward the proposed Measure was specifically to provide an additional safeguard against the loss of playing fields through disposal. We acknowledge that the Assembly does not currently have the legislative competence to legislate in relation to planning matters, including 'change of use of land'. In addition, we accept that it would not be permissible for the definition of "playing field" to be amended to extend to other open spaces as the scope of the proposed Measure, as agreed by the Assembly, is confined only to playing fields.

5. Comments on individual sections of the proposed Measure

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

Evidence from stakeholders

73. Only a minority of those giving evidence commented on the exemptions provided for in section 1(2). Both the Open Space Society⁵¹ and the Minister for Social Justice and Local Government raised concern that, as currently drafted, section 1(2) may not deliver the ‘precise objectives’ of the proposed Measure since there was no guarantee that the playing field, once disposed of, would continue to be used as such⁵². In particular, there was concern that the exemption provided for in section 1(2)(b) applied in relation to all ‘registered charities’ regardless of whether their aims were synonymous with those of the proposed Measure. On this point, FIT Cymru suggested that a qualifying condition (similar to that provided for in section 1(2) (c)) should apply to ‘registered charities’ to ensure that the objective of the charity conformed to that of the proposed Measure⁵³.

74. In contrast, the WLGA were concerned about limiting the exemptions further⁵⁴.

75. The Minister for Social Justice and Local Government accepted that providing a qualifying condition may give some assurance that the playing field would be kept for the same, or at least a broadly similar purpose, but that it was not an absolute guarantee. Indeed, he implied that a more effective way forward would be to include a restrictive covenant as a condition of a disposal as a means of ensuring that for the initial and subsequent transactions was used only for sporting and/or recreational purposes⁵⁵. This view was shared by the Open Space Society, who further suggested that this should apply to local authorities under section 1(2)(a)⁵⁶.

Evidence from the Member in charge

76. When initially questioned about the purpose of the exemptions, Dai Lloyd AM explained:

The defining interest of the exemptions is to exempt any body...that has an abiding and continuing community interest, in other words, any body that has the community interest at heart, and if it is a sporting body, it will have an abiding sporting community interest at heart. So, the exemptions apply to ensure that the playing field continues as a playing field, without being onerous in a bureaucratic sense.⁵⁷

⁵¹ Written evidence, PF9.

⁵² RoP, paragraph 35, 5 February 2009, Legislation Committee No.1.

⁵³ RoP, paragraph 126, 29 January 2009, Legislation Committee No.1.

⁵⁴ RoP, paragraph 108, 12 February 2009, Legislation Committee No.1.

⁵⁵ RoP, paragraph 35 – 41, 5 February 2009, Legislation Committee No.1.

⁵⁶ Written evidence, PF9.

⁵⁷ RoP, paragraph 40, 22 January 2009, Legislation Committee No.1.

77. Subsequently, Dai Lloyd AM implied that he would give consideration to amending section 1(2)(b) to limit the exemption only to registered charities whose aims include the promotion of sporting or recreational activities. In addition, Keith Bush, Director of Legal Services, confirmed that including a restrictive covenant would provide an alternative and appropriate means of restricting the exemptions if that was Dai Lloyd AM's intention⁵⁸.

Our view

78. We share the concern raised in evidence that the exemptions may not deliver the precise objectives of the proposed Measure. While the premise that the exempted groups have an underlying community interest is fair this, in itself, may not provide sufficient protection against the loss of playing fields since there is no absolute assurance that the land would continue to be used as such following disposal. On this basis, and given the strength of the evidence received, **we recommend that the Member in charge give consideration to limiting the exemptions by including further qualifying conditions such as a restrictive covenant.**

⁵⁸ RoP, paragraphs 54 – 59, 5 March 2009, Legislation Committee No.1.

Section 2 – Principal definitions

(i) “Dispose”

79. Notwithstanding the specific comments in relation to the scope of the proposed Measure (see paragraphs 60 to 61), those giving evidence were generally content with the definition of “dispose”.

Our view

80. We are content with the definition of “dispose” provided for in Section 2(a).

(ii) “Local authority”

81. Serious concern was raised by the Minister for Social Justice and Local Government that the requirements of the proposed Measure applied ‘equally to community and town councils’⁵⁹.

82. Similarly, while One Voice Wales supported the general principles of the proposed Measure, it felt that the practical and financial implications for community and town councils of meeting the requirements provided for in section 3 to 6 would be prohibitive⁶⁰. It also pointed out that some of the provisions, as currently drafted, did not ‘fit with how the sector operates’⁶¹.

83. Essentially, One Voice Wales argued that community and town councils were most likely to be in the ‘vanguard’ of preserving playing fields. It felt that, as the level of government ‘closest to communities’, community and town councils would have a unique understanding of the impact on the community of the proposed disposal and more effective ways of engaging with residents. In view of this, One Voice Wales strongly believed that community and town councils should be excluded from the requirements of the proposed Measure⁶². However, in the event that exclusion was not an option, it felt that a more measured approach would be to include a ‘general duty’ on community and town councils to consider the impact of disposal and consult, with the specific requirements reserved for county and county borough councils (and National Park Authorities) as planning authorities⁶³.

84. Both FIT Cymru and the Sports Council for Wales expressed sympathy with the concerns raised by One Voice Wales⁶⁴. While the Sports Council for Wales had no objection to the exclusion of community and town councils from the requirements of the proposed Measure, FIT Cymru argued that it would be important for community and town councils to be subject to the legislation given that a number of playing fields came under their ownership. Indeed, FIT

⁵⁹ Written evidence, PF8.

⁶⁰ Written evidence, PF26.

⁶¹ RoP, paragraph 39, 26 February 2009, Legislation Committee No.1.

⁶² Written evidence, PF26.

⁶³ Ibid.

⁶⁴ RoP, paragraphs 49 and 131 – 132, 29 January 2009, Legislation Committee No.1.

Cymru reported that Pembrokeshire and Anglesey County Councils passed ownership of all playing fields to relevant community and town councils⁶⁵. On a similar point, the WLGA raised concern that the exclusion of community and town councils would lead to a 'patchy impact', which would ultimately 'negate the intended impact of the proposed Measure'⁶⁶.

Evidence from the Member in charge

85. In evidence to the Finance Committee, Dai Lloyd AM accepted that community and town councils would have difficulty in meeting the requirements of the proposed Measure. However, he asserted that the need to address the negative health effects of physical inactivity overrides any difficulties that community and town councils would encounter in complying with the requirements⁶⁷.

86. Dai Lloyd AM explained that, while the legislation was aimed primarily at planning authorities, town and community councils would, by virtue of ownership of playing fields, be subject to the requirements of the proposed Measure. Like One Voice Wales, he argued that community and town councils were unlikely to seek to dispose of playing fields. However, in contrast he went on to assert that the cost of the proposed Measure to community and town councils would be balanced by the infrequent occurrence of disposals⁶⁸.

Our view

87. We share the concerns raised in evidence that community and town councils will be subject to the requirements provided for in sections 3 to 6 of the proposed Measure. Whilst we accept it is improbable that community and town councils will seek to dispose of playing fields within their ownership, we cannot dismiss the possibility. However, we have doubts about the practical application of some of the provisions within the proposed Measure, but more importantly, we have serious concerns about the financial implications for community and town councils of meeting the requirements. Indeed, we believe that, for many community and town councils, particularly smaller community councils, the cost will be prohibitive. Essentially, if the costs of meeting the requirements is such that a community or town council is prevented from ever being able to dispose of a playing field, then this amounts to the loss of its democratic mandate.

88. We do not think it is acceptable for community and town councils to be wholly excluded from the proposed Measure; however neither do we believe that it is reasonable to subject them to the same level of requirement as the local planning authorities, given their limited capacity and budgets. **We acknowledge the complexities involved in addressing these concerns,**

⁶⁵ RoP, paragraphs 49 and 131 – 132, 29 January 2009, Legislation Committee No.1.

⁶⁶ RoP, paragraph 116 – 118, 12 February 2009, Legislation Committee No.1.

⁶⁷ RoP, paragraphs 38 – 43, 11 February 2009, Finance Committee.

⁶⁸ RoP, paragraph 43, 5 March 2009, Legislation Committee No.1.

but believe it is critical that the Member in charge does so if the proposed Measure progresses further, and we so recommend.

(iii) “Playing field” and “playing pitch”

89. The majority of those who commented on the definitions of “playing field” and “playing pitch” were content.

90. Both the Minister for Social Justice and Local Government and the Minister for Environment, Sustainability and Housing expressed some reservation about the definition of “playing pitch”, partly because it differed from that provided for in the *Town and Country Planning (General Development Procedure) Order 1995 (GDPO)*⁶⁹. Indeed, the Minister for Social Justice and Local Government further suggested:

The rationale for the definition [of “playing pitch”] would seem to warrant further consideration.⁷⁰

91. While it did not hold any strong views on the definitions provided for in section 2(d) and (e), One Voice Wales highlighted the need for consistency and stated:

...we must avoid confusion between TAN 16 and what is contained in the proposed Measure.⁷¹

92. The Committee sought to clarify how the definition of “playing pitch” provided for in section 2(e) had been constructed; whether it was Dai Lloyd AM’s intention to capture ‘unofficial’ pitches; and whether the list of sporting activities was fully inclusive.

Evidence from the Member in charge

93. In evidence to the Committee, Dai Lloyd AM explained that the definition was largely an amalgamation of the existing definition of “playing pitch” contained in the GDPO and the definition of “outdoor sports facility” in the revised TAN 16. He further explained that the changes had been to the proposed definition in light of the consultation on the draft proposed Measure⁷².

94. In relation to ‘unofficial’ pitches, Dai Lloyd AM stated that the definition captured not only ‘purpose built stadia-type playing fields’ but other, less formal pitches provided there was some sort of marking or delineation and that the area ‘will be recognised locally and traditionally as a playing field as opposed to...open space’⁷³.

⁶⁹ Written evidence, PF8 and PF 22.

⁷⁰ Written evidence, PF8.

⁷¹ RoP, paragraph 44, 26 February 2009, Legislation Committee No.1.

⁷² RoP, paragraphs 65 – 75, 22 January 2009, Legislation Committee No.1.

⁷³ RoP, paragraph 75, 22 January 2009, Legislation Committee No.1.

95. Keith Bush explained that the definition in the proposed Measure differed from the GDPO in that it referred to ‘marked for use’ rather than ‘used for’ for a particular sport, since the GDPO was concerned with potential changes in use rather than disposals⁷⁴.

96. Dai Lloyd AM asserted that the definition of “playing pitch” included a ‘wide breadth of sports’ and was content that it was sufficiently broad to capture less well known and/or less popular sporting and recreational activities⁷⁵. He stated it was his intention to be ‘prescriptive but accurate’ and emphasised the need for a definitive list as opposed to a more general definition, which could be open to interpretation⁷⁶. Notwithstanding this, Dai Lloyd AM accepted that a playing pitch marked for the use of any sporting or recreational activity not included in the list would fall out-with the definition. As such, a local authority would not be subject to the requirements of the proposed Measure when disposing of the playing pitch.

97. Keith Bush advised the Committee that it would be possible to include a provision in the proposed Measure for Welsh Ministers to amend the definition to provide a degree of flexibility and to take account of changing trends and/or the resurgence of certain sporting and recreational activities⁷⁷.

Our view

98. The evidence we received largely indicates that the definitions of “playing field” and “playing pitch” are sufficiently clear and reflect the intention of the Member in charge in relation to the type of areas that would be covered by the proposed Measure. We note that the definition of “playing pitch” is an amalgamation of those contained in existing legislation but that it has been refined for the purpose of the proposed Measure. Whilst we accept the assertion that this definition includes a wide range of sports, we remain concerned that providing an exhaustive list may lead to the inadvertent exclusion of lesser known or less popular sporting activities. In order to help safeguard against this, and to provide the flexibility to take account of changing trends, **we recommend that a provision for Welsh Ministers to amend the definitions of “playing field” and “playing pitch” should be included on the face of the proposed Measure.**

⁷⁴ RoP, paragraph 69, 5 March 2009, Legislation Committee No.1.

⁷⁵ RoP, paragraph 67, 22 January 2009, Legislation Committee No.1.

⁷⁶ RoP, paragraph 80, 5 March 2009, Legislation Committee No.1.

⁷⁷ Ibid, paragraph 90.

Section 3 – Impact statements

99. In view of the evidence received in relation to advice provided to local authorities in the revised Technical Advice Note 16 to undertake Open Space Assessments (OSA), the Committee sought to identify whether there was a need for a separate impact assessment for each proposed disposal.

100. The Committee also considered issues relating to the type of information and level of detail needed for an impact statement and the implications for local authorities of meeting the section 3(1) requirements.

(i) The need for a separate impact statement for each proposed disposal

101. There was general support in evidence for a duty on local authorities to assess the impact of proposed disposals on local communities. Indeed, a number of those giving evidence specifically welcomed the detailed requirements set out in section 3(1). Two of those who gave evidence felt that the assessment did not go far enough in identifying the ‘true value’ of playing fields to the community. In contrast, those representing local government strongly opposed the section 3 requirement and stated that the demand for and supply of open space (including playing fields) were better considered as part of the local development plan process and through OSAs. In addition, they raised concern about the financial implications for local authorities of producing impact statements.

Evidence from stakeholders

102. Those in favour of impact statements highlighted the importance of fully assessing the impact of a proposed disposal on the local community. It was generally felt that the detailed requirements set out in section 3(1) would provide a comprehensive assessment, which would help inform the decision making process. Although North Wales Play Association were ‘wholly supportive’ of impact statements, it suggested that the section 3(1) requirement did not go far enough since account should be taken of:

...the full social effects of potential play deprivation on children and young people, as well as consideration of the economic, social and environmental effects on the local community.⁷⁸

103. FIT Cymru and Play Wales refuted the suggestion that impact statements were unnecessary in view of the revisions to TAN 16, in particular in relation to the preparation of OSAs by local authorities⁷⁹. FIT Cymru acknowledged that the revised TAN 16 would assist in strengthening the current planning process but felt that, in the absence of mandatory OSAs, impact statements were a necessary requirement. It went on to explain that while OSAs would be conducted on an authority wide basis, impact statements would focus on the

⁷⁸ Written evidence, PF14.

⁷⁹ Written evidence, PF6 and PF24.

impact of a disposal on a particular locality⁸⁰.

104. Both FIT Cymru and Play Wales welcomed the specific requirements set out in section 3(1), which they believed provided a level of detail beyond that included in the current disposal and land use planning process. Indeed, FIT Cymru stated:

the proposed Measure takes into account the provision, quality and accessibility of, and demand for, playing fields in the area. That will help to build a clear picture of the local playing fields and of whether they are sufficient to meet demand locally. The planning process does not go into such detail...⁸¹

105. Similarly, both FIT Cymru and Play Wales felt that, crucially, section 3(1)(c)(ii) brought an unique dimension to the assessment process in requiring local authorities to identify the impact of a disposal on the health and well being of local communities⁸². Pembrokeshire Local Health Board also specifically welcomed the requirement to consider the impact of disposal in the wider context of health⁸³.

106. In evidence to the Committee, the Sports Council for Wales expressed some concern about the potential duplication of work for local authorities if the requirement to prepare impact statements was additional to OSAs. (It should be noted that these concerns were based partly on the assumption that OSAs would be mandatory following the publication of the revised TAN 16, which was not the case.) Indeed, the Sports Council for Wales went on to suggest that, the proposed Measure would be particularly important if the revised TAN 16 did not include an obligation on local authorities to produce OSAs⁸⁴.

107. In support of impact statements, the Sports Council for Wales explained that while OSAs would provide a strategic overview of supply and demand and assess the implications of the loss of playing fields across a local authority area as a whole, they would not take account of the impact of the loss at a more local level. On balance, it would seem that the Sports Council for Wales supported the need for a separate impact statement for each proposed disposal.

108. One Voice Wales suggested that the preparation of impact statements by community and town councils was unnecessary because it undermined their ability to assess the needs of communities. However, it accepted that impact statements 'might be seen as necessary at a unitary authority level'⁸⁵.

109. The Minister for Social Justice and Local Government raised concerns about the impact statement provided for in section 3(1). While he believed that a full assessment of the impact of the reduction of provision for sport and recreation on communities was important, he stated:

⁸⁰ Written evidence, PF6.

⁸¹ Ibid.

⁸² Written evidence, PF6 and PF24.

⁸³ Written evidence, PF7.

⁸⁴ Written evidence, PF3.

⁸⁵ RoP, paragraph 50, 26 February 2009, Legislation Committee No.1.

this is best done through existing strategic planning mechanisms, such as the preparation of the community strategy and any open space, sport and recreation strategy which may have been prepared to ensure that an appropriate level of facilities and open spaces is provided or maintained. Requiring local authorities to undertake a separate impact assessment for each disposal would seem to be unnecessary and, potentially, costly duplication.⁸⁶

110. In evidence to the Committee, the Minister for Environment, Sustainability and Housing explained:

While TAN 16 recommends local planning authorities to prepare Open Space Assessments for their areas, these are not mandatory and, as they serve a different purpose, they would not in themselves be an appropriate basis for individual land disposal decisions.⁸⁷

111. The above evidence could be used to support either view in relation to the need, or otherwise, for separate impact statements and the Minister gives no further steer on the issue. However, she does assert that ‘the preparation of Impact Assessments...[is] likely to have significant resource implications for local authorit[ies]...’.

112. The WLGA was strongly opposed to the requirement on local authorities to prepare a separate impact statements for each proposed disposal. Indeed, it argued:

the impact of selling playing fields is already vigorously considered as part of the LDP process and, additionally in the Open Space Assessment process...⁸⁸

And

the more holistic process set out in TAN 16 is more appropriate in assessing and would allow a more rounded consideration of leisure and health needs of communities.⁸⁹

113. Finally, the WLGA refuted the suggestion that the impact statement was a means of bringing all relevant information together to provide a greater understanding of the issues by the local community. It stated:

I do not think that the impact statement will bring all of the issues together; it will focus primarily on the objectives of the proposed Measure, which relate to the loss of a facility. It does not provide the opportunity for a wider balanced discussion...⁹⁰

⁸⁶ Written evidence, PF8.

⁸⁷ Written evidence, PF22.

⁸⁸ Written evidence, PF4.

⁸⁹ Ibid.

⁹⁰ RoP, paragraph 148, 12 February 2009, Legislation Committee No.1.

Evidence from the Member in charge

114. In evidence to the Committee, Dai Lloyd AM explained that the purpose of the impact statement was to bring together relevant information, drawn largely from a local authority's OSA and Health, Social Care and Well-being Strategy, in an accessible format. This would ensure more meaningful consultation, with 'better quality of information' being made available to the local community to enable them to respond appropriately. He believed that the preparation and subsequent publication of impact statements would provide local authorities with an opportunity to explain the rationale behind proposed disposals and 'to be present a more even-handed message'⁹¹.

115. Finally, Dai Lloyd AM asserted that the fact that OSAs were not mandatory (as was envisaged in the draft revised TAN 16) added significant weight to the need for local authorities to prepare an impact statement for each proposed disposal⁹².

(ii) Type of information and level of detail

116. It was apparent from the evidence received that there was confusion about the type of information and the level of detail needed to satisfy the section 3(1) requirement.

117. In evidence to the Committee, the Minister for Social Justice and Local Government stated:

We have some concerns about the impact assessment, because we do not know what it would look like in this particular context. However, virtually every impact assessment that I have ever seen has been a pretty substantial and detailed document and difficult for anyone except those who are very knowledgeable or very committed to work through.⁹³

(a) Level of demand

Evidence from stakeholders

118. As mentioned in paragraph 103, some of those giving evidence specifically welcomed the requirement on local authorities (section 3(1)(b)) to identify the level of demand for the use of playing fields in the locality. Indeed, the North Wales Play Association emphasised the need for local authorities to undertake 'an analytical projection of potential future demand for playing space alongside a forecast of the future population profile within the catchment area'⁹⁴.

⁹¹ RoP, paragraph 89 and 90, 22 January 2009, Legislation Committee No.1.

⁹² RoP, paragraph 110 – 113, 5 March 2009, Legislation Committee No.1.

⁹³ RoP, paragraph 51, 5 February 2009, Legislation Committee No.1.

⁹⁴ Written evidence, PF14.

119. In evidence to the Committee, the Sports Council for Wales agreed that, while assessing demand would involve some challenge, the requirement was 'reasonable' and 'important'. Indeed, it advised that it had previously published guidance of a similar nature⁹⁵.

(b) The impact of the proposed disposal on overall provision of playing fields

Evidence from the stakeholders

120. The WLGA firmly believed that any consideration of the impact of proposed disposals on overall provision of playing fields should be undertaken in a wider context through the local development plan process and the revised TAN 16, i.e. through OSAs⁹⁶.

121. In evidence to the Committee, the Minister for Social Justice and Local Government suggested that, while OSAs would go part way in satisfying the section 3(1)(c)(i) requirement, it was likely that more specific detail would be needed. In view of this, he stated:

..the question must be asked whether the task of gathering that extra information...would make it a proportionate response to the particular challenge that we are trying to address.⁹⁷

Evidence from the Member in charge

122. Dai Lloyd AM argued strongly that the production of the 'impact statement' would be neither onerous nor costly, since the information needed to satisfy the requirements should be readily available. He stated:

All planning authorities know that TAN 16 is imminent and they all know that an open-space assessment is part of that and, therefore, an open-space assessment should already have been prepared. I am not talking about doing the work twice over.⁹⁸

123. However, in giving further evidence following the publication of the final version of TAN 16, he acknowledged that OSAs were not mandatory and, as such, some local authorities may choose not to undertake them⁹⁹. He subsequently accepted that preparing an impact statement in the absence of an OSA would have financial implications for local authorities and that this was not included in the Estimate of costs contained in the Regulatory Impact Assessment¹⁰⁰.

⁹⁵ RoP, paragraph 65, 29 January 2009, Legislation Committee No.1.

⁹⁶ Written evidence, PF3.

⁹⁷ RoP, paragraph 56, 5 February 2009, Legislation Committee No. 1.

⁹⁸ RoP, paragraph 89, 22 January 2009, Legislation Committee No.1.

⁹⁹ RoP, paragraphs 107 – 113, 5 March 2009, Legislation Committee No.1.

¹⁰⁰ RoP, paragraphs 118 – 122, 5 March 2009, Legislation Committee No.1.

(c) The impact of the proposed disposal on the health and well-being of the community

Evidence from stakeholders

124. A number of those giving evidence believed that the requirement on local authorities to assess the impact of the proposed disposal of a playing field on the health and well-being of the community was of fundamental importance.

125. Notwithstanding their support for section 3(1)(c)(ii), the Sports Council for Wales raised concern about how local authorities would meet the requirement in practice. It stated:

...to assess the health and wellbeing of the removal of a facility on that particular community would be almost impossible, because you would have to be able to control so many factors. You can make some assumptions, but to be able to come up with some sort of categorical assessment would be almost impossible.¹⁰¹

126. In opposing the requirement to prepare impact statements, the WLGA raised the same concern and explained that, beyond a 'generic statement', an assessment of the impact of the loss of a playing field on health and well-being would be 'very difficult'. It stated:

We are not aware of any specific indicators that you could use that would clearly demonstrate that the loss of a playing field would have a specific impact on the health and well-being of residents. You cannot specifically link the loss of a playing field to what has happened to someone's health and well-being. It would be almost impossible to measure.¹⁰²

127. The WLGA went on to question whether a 'generic statement' would be enough to satisfy the section 3(1)(c)(ii) requirements¹⁰³.

128. In evidence to the Committee, the Minister for Social Justice and Local Government suggested that Health, Social Care and Well-being Strategies would assist in informing the impact statement to 'varying degrees'. He stated:

...it is obviously useful contextual information, but perhaps it is not tight enough for a particular locality.¹⁰⁴

Evidence from the Member in charge

129. In evidence to the Committee, Dai Lloyd AM maintained that the assessment of the impact of the loss of a playing field in the health and well-

¹⁰¹ RoP, paragraph 69, 29 January 2009, Legislation Committee No.1.

¹⁰² RoP, paragraph 168, 12 February 2009, Legislation Committee No.1.

¹⁰³ RoP, paragraph 159, 12 February 2009, Legislation Committee No.1.

¹⁰⁴ RoP, paragraph 82, 5 February 2009, Legislation Committee No.1.

being of a local community could be done by using information readily available in a local authorities' Health, Social Care and Well-being Strategy¹⁰⁵. He was satisfied that the Strategies provided the level of detail required for the purpose of the impact statement since they were 'meant to be robust, accurate and include up-to-date information' at ward level¹⁰⁶.

Our view

130. Given the aim of the proposed Measure, we recognise and accept the need to include provision to ensure an assessment of the local impact of the loss of a playing field, as a basis for consultation. Indeed, without it the proposed Measure would arguably lack meaning.

131. We acknowledge the concerns raised in evidence about the requirement on local authorities to prepare impact statements provided for in section 3(1). While not wishing to underplay these concerns, some are seemingly based, at least in part, on a misapprehension about the type of information and level of detail needed. It is clearly the intention of the Member in charge that the section 3(1)(c) requirement can be met in the most part by using information extracted from a local planning authority's OSA and Health, Social Care and Well-being Strategy.

132. Following the publication of the final TAN 16 it is clear that local planning authorities should be or already are collecting evidence of both the local need and the local provision of open space, including playing fields as part of the OSA. Since 2003 there has also been a requirement on local authorities to undertake a health, well-being and social care needs assessment as part of the preparation of the Health, Social Care and Well-being Strategy. We note that the impact statement is mainly intended to bring together relevant information from these assessments to enable more meaningful consultation which, in turn, will enhance the decision making process.

133. On the strength of the evidence received from the Member in charge and, mindful of the aim of the proposed Measure, we are content with the requirement on local authorities to prepare an impact statement for each proposed disposal. We heard evidence that it would be very difficult for a local authority to assess the impact of the disposal of a single playing field on the health of the local population. Whilst we accept that this may be the case, we still consider that the majority of the information necessary for the preparation of an impact statement should be readily available. In view of this, we are broadly content with the specific requirements set out in section 3(1)(c).

134. The evidence received by the Committee indicates there is concern about the financial implication for local authorities of preparing impact statements. These are explored in more detail in Chapter 5 of the report.

¹⁰⁵ RoP, paragraphs 103 – 105, 22 January 2009, Legislation Committee No.1.

¹⁰⁶ RoP, paragraph 128, 5 March 2009, Legislation Committee No.1.

Section 4 – Consultation

135. There were varying levels of support for the requirements to consult provided for in section 4. Some of those giving evidence welcomed the requirements, which they felt would ensure ‘widespread’ and ‘thorough’ consultation with the local community. Others seemed to accept there was scope to strengthen existing consultation arrangements in relation to proposed disposals. However, a number felt that the section 4 requirements were ‘excessive’, ‘overly prescriptive’ and would have serious financial implications for local authorities. Those representing local authorities strongly opposed the consultation requirements.

136. A number of those giving evidence suggested that effective consultation could be achieved through less onerous and potentially costly means. This could be done either by strengthening existing arrangements or, in the event that the proposed Measure progressed further, by providing flexibility for local authorities to consult in a reasonable manner depending on the proposed disposal.

Evidence from stakeholders

137. Those that wholly supported the requirements did so for the following reasons:

- they were a definite improvement on the existing requirements to consult provided for in the *Local Government Act 1972* and the planning process;
- the method and scale of consultation provided for was warranted given the importance of playing fields to local communities and the benefits derived from them;
- the direct method of consulting would provide an effective means of raising awareness locally and engaging the community in the decision making process;
- they would help negate the need for redress to be sought, which can be a lengthy and costly process; and
- it was important to enable children and young people to actively participate and influence decisions that impact on them.

138. In evidence to the Committee, the Minister for Social Justice and Local Government expressed serious reservations about the section 4 provision and questioned its ‘proportionality and practicality’¹⁰⁷. He felt strongly that consideration should be given to providing for more ‘reasonable and proportionate’ consultation. He went on to suggest that, in the event that local authorities were required to consult more extensively it would be important to provide them with sufficient flexibility and discretion to do so as they see fit¹⁰⁸.

139. The Minister for Environment, Sustainability and Housing pointed out that local authorities consult communities when preparing Community

¹⁰⁷ RoP, paragraph 104, 5 February 2009, Legislation Committee No.1.

¹⁰⁸ RoP, paragraph 97, 5 February 2009, Legislation Committee No.1.

Strategies and any other strategic planning documents, as well as during the land development plan process and when planning applications are being considered. However, she acknowledged that these were 'not directly related to decisions to sell specific areas of land.' She also emphasised there would be 'significant resource implications' for local authorities in meeting the section 4 requirements¹⁰⁹.

140. Similar views as outlined above were expressed by the WLGA who strongly opposed the consultation requirements¹¹⁰. In particular, it felt that the changes to the land development control system consultation, which were brought about as a result of the revised TAN 16, was a 'sufficiently robust process for consulting on the development of or disposal of all playing fields'¹¹¹. Furthermore, all of those representing local government felt that the section 4 requirements would lead to an additional burden on local authorities in terms of both time and resources.

141. One Voice Wales outlined what it believed were some of the practical difficulties community and town councils would encounter in meeting the consultation requirements¹¹². Essentially it felt that community and town councils by nature had an understanding of local issues and had well-established means of seeking the views of individual communities.

Evidence from the Member in charge

142. In evidence to the Committee, Dai Lloyd AM asserted that the current requirements for informing communities of a proposed disposal (i.e. a notice for two successive weeks in a local newspaper) failed to provide 'proper, meaningful consultation'¹¹³.

143. He asserted that the proposed Measure demonstrated a commitment to a citizen centred approach to decision making and stated:

The whole crux of the issue is community involvement in decision making. Much Government policy and much WLGA policy, is dedicated to putting citizens at the heart of decision making. Here is a golden opportunity to do just that, involving citizens before the fundamental decision to dispose of a playing field is taken.¹¹⁴

144. In considering section 4 the Committee focussed specifically on the appropriateness of a list of statutory consultees (provided for in the Schedule to the proposed Measure) and the requirement to consult householders (section 4(1)(c)).

¹⁰⁹ Written evidence, PF22.

¹¹⁰ Written evidence, PF3.

¹¹¹ Ibid.

¹¹² Written evidence PF26.

¹¹³ RoP, paragraphs 127 and 128, 22 January 2009, Legislation Committee No.1; and RoP, paragraph 5, 5 March 2009, Legislation Committee No.1.

¹¹⁴ RoP, paragraph 25, 22 January 20089, Legislation Committee No.1.

(i) List of statutory consultees

Evidence from stakeholders

145. Those who supported the proposed Measure were generally content with the schedule. Notwithstanding this, a number of suggestions were made regarding additions to the list, such as including a greater number of organisations who represented, or provided advocacy services for children and young people; and tenants and/or residents associations in the communities adjacent to the playing fields.

146. Whilst not opposed to the schedule, the Minister for Social Justice and Local Government raised concern about the inclusion of third sector and non-statutory organisations¹¹⁵. Indeed, he believed that:

...the schedule should prescribe only relevant statutory bodies. It would be for local authorities to identify other appropriate organisations, in exercise of the requirement in section 4(1)(b) of the Measure to consult “other persons” that appear to the authority to represent the interests of persons likely to use the playing field. This might be supplemented by the inclusion of a power for the Welsh Ministers to issue guidance covering other organisations that it would be appropriate for authorities to consult.¹¹⁶

147. Similarly, the Minister for Environment, Sustainability and Housing stated:

The Measure should list statutory consultees, as provided for in secondary legislation in relation to the preparation of local development plans and certain categories of planning applications.¹¹⁷

148. And, perhaps more importantly:

It would be for each local authority to consider whether to consult other people.¹¹⁸

149. The WLGA reiterated that extensive consultation with relevant interested parties takes place as part of the local development plan process¹¹⁹.

150. Concern was raised by those representing local government, and Ely Garden Villagers that some of those included in the schedule would be predisposed to oppose disposal¹²⁰. The WLGA stated the list:

¹¹⁵ Written evidence, PF8.

¹¹⁶ Ibid.

¹¹⁷ Written evidence, PF22.

¹¹⁸ Ibid.

¹¹⁹ Written evidence, PF4.

¹²⁰ Written evidence, PF5.

...consists of groups with a considerable vested interest in the issue of playing fields, without knowledge or understanding of the 'bigger picture' locally...¹²¹

151. In evidence to the Committee, FIT Cymru strongly refuted the above suggestion¹²².

Evidence from the Member in charge

152. In explaining the rationale behind the schedule, Dai Lloyd AM stated:

...the list of consultees was an attempt to encompass the local issues and the strategic regional and national issues.¹²³

153. He went on to advise that the schedule had been amended to reflect the responses of the consultation on the draft proposed Measure¹²⁴. However, no further explanation was given in relation to the reasoning behind the schedule, or more specifically, why some organisations and/or groups had been included above others.

(ii) Consultation with householders

Evidence from stakeholders

154. The views from those giving evidence about the requirement to consult householders (provided for in section 4(1)(c)) were fairly polarised. Some felt that this requirement was fundamental to ensure community involvement in disposal decisions. Others suggested it was overly bureaucratic, excessive and unnecessary.

155. In evidence to the Committee, the Minister for Social Justice and Local Government raised particular concern about this requirement, which was, in his view:

...excessive and potentially costly given the large numbers involved, particularly in urban areas.¹²⁵

156. He suggested what he believed was a more acceptable alternative, namely:

A requirement to notify households within a reasonable distance of the consultation and provide a copy [of the impact statement] on request would be sufficient.¹²⁶

¹²¹ Written evidence, PF4.

¹²² RoP, paragraph 169, 29 January 2009, Legislation Committee No.1.

¹²³ RoP, paragraph 157, 22 January 2009, Legislation Committee No.1.

¹²⁴ RoP, paragraph 153, 22 January 2009, Legislation Committee No.1.

¹²⁵ Written evidence, PF8.

¹²⁶ Ibid.

157. Similar concerns to those outlined above were raised by the Sports Council for Wales who reported that an application affecting a playing field in Cardiff could involve directly consulting over 11,000 householders from one local government electoral division alone¹²⁷. Indeed, it felt that the section 4(1)(c) requirement was ‘probably unreasonable’ and suggested that ‘other means’ of consulting householders should be explored¹²⁸.

158. The WLGA strongly opposed the requirement to consult householders on the grounds that it was:

...more time-consuming and exhaustive [a] process than that currently set out for any other existing planning consultation process, including those for substantial developments.¹²⁹

159. It went on to state:

If local authorities are to consult with the community, there are much more cost-efficient ways of doing so without writing out to every potentially affected household.¹³⁰

160. The WLGA strongly refuted the suggestion that the practical and financial implications of consulting to the extent provided for in section 4(1)(c) would be minimal since local authorities have well-established methods of communicating with householders, which could easily incorporate consultations on proposed disposals. In supplementary evidence to the Committee, the WLGA stated that the cost of preparing for consultation is £16,000 per playing field.¹³¹

Evidence from the Member in charge

161. Throughout his evidence, Dai Lloyd AM maintained that the existing arrangements for notifying the local community of disposal decisions were inadequate. He emphasised that the ‘main crux’ of the proposed Measure was consultation with householders and reiterated:

I fundamentally believe in proper citizen-focused engagement and consultation before any decision is made, and this [requirement] provides a way of doing that.¹³²

162. Dai Lloyd AM argued that the requirement would be neither ‘monstrously bureaucratic’ nor costly since local authorities already had mechanisms in place for communicating directly with householders¹³³. He dismissed the cost estimates provided by the WLGA on the grounds that they were non-comparable since they were based on school closures¹³⁴.

¹²⁷ Written evidence, PF3.

¹²⁸ Ibid.

¹²⁹ Written evidence, PF4.

¹³⁰ Ibid.

¹³¹ Written evidence, PF4A.

¹³² RoP, paragraph 103, 22 January 2009, Legislation Committee No.1.

¹³³ RoP, paragraph 120, 22 January 2009, Legislation Committee No.1.

¹³⁴ RoP, paragraph 148, 5 March 2009, Legislation Committee No.1.

163. In addition, in giving evidence, Dai Lloyd AM explained that, if the proposed Measure proceeds to Stage 2, he would bring forward the necessary amendment to require local authorities to send a summary of the impact statement to those persons referred to in section 4(1)(a) – (c)¹³⁵, including householders. He reaffirmed this in his letter to the Committee dated 12 February 2009¹³⁶.

Our view

164. It is apparent from the evidence received that there is scope to improve local authorities' current consultation arrangements in relation to disposal of playing fields. Whilst we accept that a level of consultation is inherent in the land use planning system and other strategic planning mechanisms, this does not detract from the importance of effective consultation on individual proposed disposals. Nevertheless, we have serious reservations about the consultation requirements provided for in section 4(1) of the proposed Measure. In particular, we are concerned that the requirements are excessive, overly-prescriptive and disproportionate, particularly in comparison to the level of consultation that applies to other issues of community interest. We believe there is an important distinction to be made between extensive and effective consultation, and remain unconvinced that the approach provided for in the proposed Measure will necessarily achieve the latter.

165. Notwithstanding the above, we are content with the principle of including in the proposed Measure a list of relevant statutory bodies that must be consulted. However, we were not persuaded of the rationale behind the other groups and organisations included, in particular third sector and non-statutory organisations. **To this end, we recommend that the Member in charge give consideration to rationalising the list of statutory consultees further.**

166. Whilst we fully understand the sentiment behind the section 4(1)(c) requirement to directly consult householders, it appears to be excessive, onerous, and potentially more costly than originally anticipated. It would be remiss to underestimate the practical and financial implications for local authorities of meeting the consultation requirements as currently drafted. Indeed, there may have been an element of oversimplification in evidence from the Member in charge about how this requirement will be met in practical terms. Whilst we welcome the decision by the Member in charge to bring forward an amendment to provide for a summary of an impact statement to be sent to householders, this is inconsequential in relation to our underlying concerns.

167. Our view remains that effective consultation with the local community is important but that it could best be achieved through alternative means. **To this end, we recommend that the Member in charge gives further consideration to section 4(1) in its entirety with a view to providing for more reasonable and proportionate methods of consultation.** In doing so,

¹³⁵ RoP, paragraph 107, 22 January 2009, Legislation Committee No.1.

¹³⁶ Letter from Dai Lloyd AM to Rosemary Butler AM, Legislation Committee No 1 Chair, dated 12 February 2009.

he should be mindful of the need to ensure local authorities have a degree of flexibility to allow them to respond as they see fit depending on the significance of the proposed disposal.

Section 5 – Consideration of Representations

168. Those who commented on section 5 were broadly content with the requirement.

Evidence from stakeholders

169. The Minister for Social Justice and Local Government explained that there were ‘no prescribed requirements’ for the way in which, or the extent to which, a local authority currently considers objections under sections 123 and 127 of the *Local Government Act 1972*. This was confirmed by the Minister’s official who further explained that the way in which local authorities manage the requirement internally was a matter for them ‘in the context of a particular disposal, for example, according to the scale of the response to it’¹³⁷.

170. It was generally accepted by those giving evidence that existing arrangements in place for local authorities to consider objections were well-established. Furthermore, it was assumed that these arrangements would remain in place under the provisions of the proposed Measure.

171. One Voice Wales were content that community and town councils would be able adequately to meet the section 5 requirement through existing mechanisms, e.g. holding a public and/or council meeting¹³⁸.

Evidence from the Member in charge

172. In giving evidence, Dai Lloyd AM asserted that local authorities would need suitable arrangements in place to cope with an increase in representations received as a result of the proposed Measure. He implied that this would be an extension of existing arrangements¹³⁹.

173. When questioned about how authorities should consider any representations received, Dai Lloyd AM explained:

The requirement is fairly straightforward and I would expect local authorities to abide by that, but I would also give them the flexibility to abide by it in whatever way they deem best.¹⁴⁰

Our view

174. We note the broad support for the section 5 requirements, and we are therefore content with the provision, as drafted.

¹³⁷ RoP, paragraph 118, 5 February 2009, Legislation Committee No.1.

¹³⁸ RoP, paragraphs 93 – 95, 26 February 2009, Legislation Committee No.1.

¹³⁹ RoP, paragraph 166, 22 January 2009, Legislation Committee No.1.

¹⁴⁰ RoP, paragraph 172, 22 January 2009, Legislation Committee No.1.

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

Evidence from stakeholders

175. There were varying levels of support in evidence for the requirement on local authorities to make known its proposal decision. Some of those giving evidence believed it was important that, having consulted the local community, local authorities should be obliged to inform them of their subsequent decision. It was also suggested that the requirement would help improve transparency and ‘ensure there has been proper consideration to the relevant issues’.

176. The Sports Council for Wales supported the requirement to prepare a ‘decision statement’ However, it expressed reservations about the requirement set out in section 6(2)(b) to send a decision statement to all those consulted under section 4(1). Instead, it suggested that a more appropriate requirement would be to send a copy only to the original statutory consultees and those who made comments on a proposed disposal¹⁴¹.

177. Similarly, the Minister for Social Justice and Local Government stated:

The Assembly Government agrees that it is appropriate for authorities to publish a report (or decision statement) setting out the consultation responses received and how it intends to proceed.¹⁴²

178. Notwithstanding this, the Minister felt that the section 6(2)(b) requirement was ‘excessive’, and believed that the arrangements in sections 6(2)(c)-(e), i.e. to publish notice of when and where the decision statement could be inspected, would be sufficient. Again, he emphasised the need for ‘proportionality’ and, by way of compromise, suggested the following alternative:

...the Measure might provide that a copy of [of the decision statement] must be sent to any person that submitted substantive written representations (rather than simply signing a petition) as part of the formal consultation...¹⁴³

179. One Voice Wales raised serious concerns about the ability of community and town councils to meet the section 6 requirements in both practical and financial terms¹⁴⁴.

180. In opposing the section 6 requirements, the WLGA argued that the arrangements were ‘overly bureaucratic’ and ‘appear to add little value’ given that the information would already be readily available, e.g. on the local authority’s website or through press coverage¹⁴⁵. It was content that existing

¹⁴¹ Written evidence, PF3; and RoP, paragraphs 98 – 102, 29 January 2009, Legislation Committee No.1.

¹⁴² Written evidence, PF8.

¹⁴³ Ibid.

¹⁴⁴ RoP, paragraph 103, 26 February 2009, Legislation Committee No.1.

¹⁴⁵ Written evidence, PF4.

arrangements for making known a disposal decision were sufficient. In addition, it stated:

There is a lack of clear rationale as to why this methodology should be applied to this issue in particular when it is not applied to all aspects that affect local communities.¹⁴⁶

Evidence from the Member in charge

181. In affirming his commitment to the section 6(2)(b) requirement, Dai Lloyd AM asserted that fundamentally, the decision to dispose of a playing field was of such significance that the local community has a right to be informed¹⁴⁷. He refuted the suggestion that the requirement was ‘excessive and disproportionate’.

Our view

182. It is entirely reasonable to expect a local authority to formally set out its disposal decision and how it intends to proceed. On this basis, and in view of the broad support in evidence, we are content with the requirement on local authorities to prepare a decision statement. Similarly, we believe it is important for local authorities to have effective mechanisms in place to make known their decision. To this end we are content with the section 6(2) provision, with the exception of the requirement to send a copy of the decision statement to all those consulted under section 4(1). Indeed, we believe this requirement is excessive, disproportionate and could leave local authorities open to criticism for ineffective use of financial resources. We agree with the Minister for Social Justice and Local Government’s suggestion that a more proportionate approach would be to send a copy of the decision statement only to those who submitted substantive representations as part of the formal consultation. In view of this, **we recommend that the Member in charge consider bringing forward an amendment to this affect if the proposed Measure progresses to Stage 2.**

¹⁴⁶ Written evidence, PF4.

¹⁴⁷ RoP, paragraph 183, 22 January 2009, Legislation Committee No.1.

Section 7 – Directions by Welsh Ministers

Evidence from stakeholders

183. The majority of those who commented on section 7 were in support of powers of direction for Welsh Ministers. Some specifically felt that the powers would help ensure that local authorities complied with the requirements of the proposed Measure. This was particularly important given reports received that, on occasion, local authorities had failed to comply with the consultation requirements provided for in the *Town and Country Planning (General Development Procedure) Order 1995*.

184. A number of those who supported section 7 believed that it should be strengthened to provide an ‘overriding power’ to Welsh Ministers to prevent disposal in certain circumstances, e.g. where the decision to dispose ‘contravenes public opinion and that of the local community’.

185. The Minister for Social Justice and Local Government was opposed to the section 7 provision and stated:

It is neither appropriate nor necessary for Welsh Ministers to have powers to intervene in disposal decisions. Local authorities, as independent statutory bodies, are responsible for ensuring compliance with the requirements of legislation.¹⁴⁸

And

It would not be appropriate for Ministers to put themselves in the place of the authority determining whether or not a disposal should proceed. There is a danger that a power to make directions would create unrealistic expectations amongst objectors to a disposal as to the role of Ministers.¹⁴⁹

186. Similarly, the Minister for Environment, Sustainability and Housing stated:

As in the planning system, local authorities should retain responsibility with complying with legislative requirements.¹⁵⁰

187. Both Ministers highlighted existing avenues of redress, namely the Public Service Ombudsman for Wales and judicial review.

188. Those representing local government opposed section 7. It was felt that the powers were ‘unnecessary’, particularly in view of the wide ranging ‘call-in’ powers of Welsh Ministers in relation to planning applications.

¹⁴⁸ Written evidence, PF8.

¹⁴⁹ Ibid.

¹⁵⁰ Written evidence, PF22.

189. In addition, the WLGA felt strongly that the powers were ‘inappropriate’ and stated:

Local authorities must be provided with the necessary flexibility to assess the most appropriate actions when developing sites, otherwise local leadership and the accountability of councils is seriously undermined.¹⁵¹

Evidence from the Member in charge

190. In giving evidence to the Committee, Dai Lloyd AM explained that the powers of Welsh Ministers provided for in section 7 apply only in relation to the procedural requirements of the proposed Measure. He asserted:

The involvement of Ministers would be purely to adjudicate whether the process was carried out lawfully or not. That is the only involvement. Ministers would not get involved in decisions or in overturning decisions.¹⁵²

191. In addition, Keith Bush clarified that the intention of section 7, was:

...to provide a means of redress for someone who feels that the process has not been followed properly, but without giving Welsh Ministers the right to intervene in the merits of the decision.¹⁵³

192. While Dai Lloyd AM accepted that providing Welsh Ministers with powers of direction may create unrealistic expectations about their role in disposal decisions, he felt that this was more favourable than having no means of redress other than judicial review.

Our view

193. We note the concerns raised in evidence in relation to the powers of Welsh Ministers to issue ‘stop’ and ‘remedial’ directions provided for in section 7. These powers could only be exercised in cases where local authorities have failed to comply with the procedures set out in the proposed Measure. Whilst we accept that other avenues of redress currently exist, these may be time consuming and, in the case of judicial review, potentially costly. We therefore consider that the section 7 provision provides a necessary and immediate additional safeguard, which will help ensure compliance.

¹⁵¹ Written evidence, PF4.

¹⁵² RoP, paragraph 200, 22 January 2009, Legislation Committee No.1.

¹⁵³ RoP, paragraph 162, 5 March 2009, Legislation Committee No.1.

6. Financial implications

194. A number of those giving evidence, including the WLGA, both Ministers, One Voice Wales and the Sports Council for Wales raised concern about the financial implications for local authorities of complying with the requirements of the proposed Measure. Of particular concern was the cost of consulting with households and of preparing impact statements.

Evidence from stakeholders

195. The WLGA believed the preparation of impact statements would result in a 'significant additional cost', partly as a result of the use of 'external consultants to ensure independence and impartiality'¹⁵⁴. This view was shared by One Voice Wales who specifically raised concern about the ability and subsequent cost of community and town councils assessing the impact of a proposed disposal beyond their council area¹⁵⁵.

196. In commenting on the cost of meeting the consultation requirements, the WLGA strongly refuted the suggestion that the financial implications of consulting to the extent provided for in the proposed Measure are minimal. It estimated that the cost of meeting the consultation requirements were between £16,000 and £64,000¹⁵⁶.

197. One Voice Wales stated that the average precept for community councils in 2008-09 was £36,000, with approximately 50 per cent of community councils receiving £10,000. In view of this the cost was prohibitive¹⁵⁷.

Evidence from the Member in charge

198. In evidence to this Committee and the Finance Committee, Dai Lloyd AM stated that the annual cost of the proposed Measure would be no more than £100,000, spread across a small number of authorities and went on to suggest that it could indeed be nil¹⁵⁸.

199. He argued strongly that the production of the 'impact statement' would not be costly since the information needed to satisfy the requirements would be extracted from local authorities' Health, Social Care and Well-being Strategies and OSAs. However, in giving further evidence following the publication of the final version of TAN 16, he acknowledged that preparing an impact statement in the absence of an OSA would have financial implications for local authorities and that this was not included in the estimate of costs contained in the Regulatory Impact Assessment¹⁵⁹. The approximate cost for a local authority of undertaking an OSA is between £35,000 and £50,000

¹⁵⁴ Written evidence, PF4.

¹⁵⁵ Written evidence, PF26.

¹⁵⁶ Written evidence, PF4A.

¹⁵⁷ RoP, paragraphs 27 and 70, 26 February 2009, Legislation Committee No.1.

¹⁵⁸ RoP, paragraphs 19 – 25, 11 February 2009, Finance Committee.

¹⁵⁹ RoP, paragraphs 118 – 122, 5 March 2009, Legislation Committee No.1.

based on figures provided by Torfaen County Borough Council and the WLGA.

200. In addition, Dai Lloyd AM suggested that the requirement to consult households would not be costly since local authorities already have well-established mechanisms to consult directly with the local electorate¹⁶⁰. He dismissed the cost estimates provided by the WLGA as non-comparable¹⁶¹.

Our view

201. The evidence received indicates there is concern about the financial implications for local authorities of meeting the requirements of the proposed Measure. Whilst we did not consider this issue in any detail we have made some general observations. Firstly, whilst we acknowledge the effort made by the Member in charge to provide a full and accurate estimate of cost we are concerned about the lack of evidence upon which the final cost estimate is based. On the basis of evidence received, we believe that the cost of consulting is likely to be higher than the original estimate. In addition, notwithstanding our view that there is a general expectation for local authorities to produce OSAs, we note that there will be additional cost implications for those who have not yet undertaken or do not plan to undertake an OSA should they wish to dispose of a playing field. Finally, we have serious concerns about the financial implications of meeting the requirements of the proposed Measure for community and town councils, particularly smaller town councils. In view of the above, **we recommend that further consideration is given to the financial implications of the proposed Measure before it is implemented.**

¹⁶⁰ RoP, paragraph 120, 22 January 2009, Legislation Committee No.1.

¹⁶¹ RoP, paragraph 148, 5 March 2009, Legislation Committee No.1

7. Other Assembly Committee reports

(i) Finance Committee report

202. The Finance Committee considered the proposed Measure on 11 February 2009 and subsequently laid its report on 12 March 2009.

Our view

203. We share some of the concerns raised by the Finance Committee and note its report.

(ii) Subordinate Legislation Committee report

204. The Subordinate Legislation Committee considered the proposed Measure on 3 February 2009 and subsequently laid its report on 10 March 2009.

Our view

205. We note the Subordinate Legislation Committee report and concur with its recommendation that the power in section 4(2) for Welsh Ministers to amend the Schedule should be subject to negative resolution procedure.

**Legislation Committee No. 1
Proposed Playing Fields (Community Involvement in Disposal
Decisions) (Wales) Measure**

Consultation responses

Responses	Organisation
PF1	Ceredigion County Council
PF2	Parks Forum Wales
PF3	Sports Council for Wales
PF4	Welsh Local Government Association
PF4A	Welsh Local Government Association - Supplementary Written Evidence
PF5	Ely Garden Villagers
PF6	Fields in Trust (Cymru)
PF7	Pembrokeshire Local Health Board
PF8	Dr Brian Gibbons AM, Minister for Local Government and Social Justice
PF9	Open Spaces Society
PF10	Bridgend County Borough Council
PF11	Lampeter Town Council (Robert Phillips)
PF12	Lampeter Town Council (M. E. Thomas, Clerk)
PF13	Association of School and College Leaders Cymru
PF14	North Wales Play Association
PF15	Cllr Lisa Mytton, Merthyr Tydfil County Borough Council (Personal Response)
PF16	Rumney Recreational and Eastern Leisure Action Group (RREEL)
PF17	Wales Audit Office
PF18	Blaenau Gwent County Borough Council
PF19	Children's Commissioner for Wales
PF20	Barnardo's Cymru
PF21	Carmarthenshire County Council
PF22	Jane Davidson AM, Minister for Environment, Sustainability and Housing
PF23	Wales Council for Voluntary Action
PF24	Play Wales
PF25	Community Housing Cymru
PF26	One Voice Wales
PF27	Dr Gill Richardson, Public Health Director, Caerphilly

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus-legislation-meas-pf/nafw_lc1_pf_written_responses.htm

Schedule of Oral Evidence

Date	Witnesses
22 January 2009	Member in Charge of the Proposed Measure <ul style="list-style-type: none"> • Dai Lloyd AM • Keith Bush, Director of Legal Services
29 January 2009	Sports Council for Wales <ul style="list-style-type: none"> • Dr Huw Jones, Chief Executive • Rebecca Mattingley, Senior Research and Evaluation Officer Fields in Trust (Cymru) <ul style="list-style-type: none"> • Rhodri Edwards, Manager
5 February 2009	The Minister for Local Government and Social Justice <ul style="list-style-type: none"> • Dr Brian Gibbons AM • Steve Phipps, Local Government Policy Division • Jeff Spear, Planning Division
12 February 2009	Welsh Local Government Association <ul style="list-style-type: none"> • Chris Llewelyn, Director of Lifelong Learning, Leisure and Communications • Heledd Bebb, Policy Officer • Peter Gomer, Assistant Director - Communities and Leisure, Caerphilly County Borough Council • Eifion Bowen, Secretary, Planning Officers' Society for Wales
26 February 2009	One Voice Wales <ul style="list-style-type: none"> • Simon White, Chief Executive
5 March 2009	Member in Charge of the Proposed Measure <ul style="list-style-type: none"> • Dai Lloyd AM • Keith Bush, Director of Legal Services

Transcripts of oral evidence sessions can be found at:

<http://217.140.43.189/bus-home/bus-committees/bus-committees-third1/bus-committees-third-lc1-agendas.htm>

Letter from Dai Lloyd AM to Rosemary Butler AM, Chair of Legislation Committee No. 1, dated 12 February 2009

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

1. Having had an opportunity to study the draft transcript of the meeting of Legislative Committee No. 1 held on 22 January 2009, there are matters which I would like to further clarify.
2. Nick Ramsey AM, at paragraph 52 of the draft transcript, asked whether local authorities would continue to be subject to the requirements of section 123 (which applies to disposals by principal councils) and section 127 (disposals by community councils) of the Local Government Act 1972 in cases where the proposed disposal was to a person mentioned in section 1(2) of the proposed Measure.
3. The intention of the Measure is as set out in the answers given by myself and Mr Keith Bush at paragraphs 53 and 54, namely that those provisions would still continue to apply if either:
 - a) the disposal was of open space but it did not fall within the definition of “playing field” in the proposed Measure; or
 - b) the disposal was a disposal of a playing field but to a person listed in section 1(2).
4. The provision intended to give effect to these intentions is section 8 of the proposed Measure. This amends sections 123 and 127 of the Local Government Act 1972, in order to exclude from the provisions of those sections those disposals of open space which would, instead, be covered by the procedure laid down by the Measure.
5. Having been prompted by the questions raised by the Committee to look again at the drafting of section 8, I think that there is some ambiguity which ought to be removed in the interests of ensuring that the intended outcome is achieved. This would involve:
 - a) amending section 8(1)(b) so that the new subsection (2AA), to be inserted in section 123 of the 1972 Act, reads as follows:

“(2AA) Subsection (2A) does not apply to a disposal to which restrictions imposed by section 1(1) of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 200- apply.”
 - b) amending section 8(2) to add a further amendment to section 127 of the 1972 Act, amending section 127(3) so as to read:

“(3) Subsections (2A), (2AA) and (2B) of section 123 above shall apply in relation to the disposal of land under this section as they apply in relation to the disposal of land under that section, with the substitution of a reference to a parish or community council or the parish trustees of a parish for the reference to a principal in the said subsection (2A).”

6. The effect of the first of these amendments would be to place it beyond doubt that the restrictions imposed by section 123(2A) of the 1972 Act only cease to apply if a disposal is caught by the new restrictions imposed by the Measure and do not cease to apply if the disposal is exempted from those restrictions by section 1(2) of the Measure. Similarly, the second amendment would make it clear that the position would be exactly the same in relation to disposals by community councils.

7. If the general principle of the proposed Measure is approved and it proceeds to Stage 2, I will bring forward amendments which will have the effect set out above.

8. With regard to the impact statement, the current position is summarised in Mr Bush’s comments quoted below (paragraph 107 of the draft transcript refers):

“**Mr Bush:** I remind everyone that, as it stands, the proposed Measure would require a copy of the full impact statement to be sent to every household in the ward, although, on reflection, I think that Dai Lloyd would be prepared to accept—and he has clearly been thinking ahead on this—an executive summary or whatever to go out to individual householders, with the facility for them to require a full version, if needed.”

9. Again, if the proposed Measure proceeds to Stage 2, I am prepared to bring forward an amendment (or amendments) to section 4(1) of the proposed Measure to provide that local authorities would be required to send a summary only of the impact statement (with the facility to require the full statement), as opposed to the full statement as currently required, to those persons referred to in section 4(1)(a) – (c).

Dai Lloyd AM
Member in Charge of proposed Measure

Letter from Dai Lloyd AM to Angela Burns AM, Chair of Finance Committee dated 3 March 2009

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

1. Following my appearance before your committee on 11 February, I am writing to clarify some of my comments in relation to the financial implications of my proposed Measure, in particular having regard to paragraph 23 of the transcript and how I arrived at the figure of £88,000 to which I referred.

2. I would also like to reiterate that given that only one authority provided costings and the variable frequency of disposal of playing fields, it is difficult to estimate what the total cost would be to local authorities across Wales in a single year.

3. Nevertheless, based on figures provided by Torfaen County Borough Council, the likely costs for a single disposal are estimated in the region of £10,000. If this were to occur in each of the 22 local authorities, within a year at the assumed cost of £10,000 per disposal, it would amount to a total of £220,000 across Wales. If the “norm” is two disposals every five years (based on the views of Denbighshire County Council), then a rough estimate of the annual cost for all local authorities across Wales could be in the region of £88,000.

4. However, I should point out this figure does not include:

- (a) the cost a sport and recreation study to inform the preparation of an impact statement which is considered in the region of £35,000 per authority (according to an estimate provided by Torfaen County Borough Council). The exact cost would vary depending on the nature of the disposal. It would also be dependent on work and impacts statements previously undertaken and whether or not an Open Space Assessment had been undertaken in line with TAN 16; where this work has been carried out the cost of the impact statement could be expected to be lower.
- (b) printing and distribution costs associated with summary impact statements (see paragraph 5 below) and any decision statement. The overall cost for an authority could vary as it could depend on such factors as the extent of the disposal consultation.

5. You will also wish to be aware that, if the proposed Measure proceeds to Stage 2, I have recently indicated in a letter to Legislation Committee No.1, that I am prepared to bring forward an amendment (or amendments) to section 4(1) of the proposed Measure to provide that local authorities would be required to send a summary only of the impact statement (with the facility to require the full statement), as opposed to the full statement as currently required by the proposed Measure, to those persons referred to in sections 4(1)(a) – (c). The effect of this

change would be to lower the printing and distribution costs arising from these provisions (paragraph 9.13 of my Explanatory Memorandum refers).

Dai Lloyd AM
Member in Charge of proposed Measure