

**EXPLANATORY MEMORANDUM TO THE DRAFT PLAYING FIELDS  
(COMMUNITY INVOLVEMENT IN DISPOSAL DECISIONS) (WALES)  
REGULATIONS 2015**

This Explanatory Memorandum has been prepared by the Welsh Government Local Government Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 2015. I am satisfied the benefits outweigh any costs.

Leighton Andrews AM  
Minister for Public Services  
22 June 2015

## **1. Description**

1.1 These Regulations place a duty on a County Council, County Borough Council, Community Council and Town Council and a National Park Authority in Wales (referred to collectively in this Memorandum as “Local Authorities”) to assess the impact of the proposed disposal of a playing field and to consult widely before reaching a decision on whether to proceed.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 None.

## **3. Legislative background**

3.1 The powers enabling this Instrument to be made are contained in section 1 of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010 (“the 2010 Measure”). Under Section 4 of the 2010 Measure, the Instrument is subject to annulment in pursuance of a resolution of the National Assembly for Wales, i.e. the negative resolution procedure.

## **4. Purpose and intended effect of the legislation**

4.1 The 2010 Measure was introduced by the then Assembly Member Dr Dai Lloyd. The stated primary purpose of the Measure was to place a duty on Local Authorities to consider the impact of selling off a Local Authority-owned playing field on the local community, in terms of health, well-being and social inclusion, before proceeding with the disposal. The Measure was amended significantly during Stage 2 scrutiny by the National Assembly for Wales Legislation Committee No. 1.

4.2 In its approved form, the Measure provides a power for the Welsh Ministers to make provision, by regulations, for the involvement of communities in decisions by Local Authorities about disposals by them of land consisting or forming part of a playing field. This power enables the Welsh Ministers to prescribe the types of disposal covered by the regulations and the procedures relating to the publicity and consultation which are to be followed by an Authority before taking a decision to dispose of a playing field.

### The Importance of Playing Fields

4.3 Playing fields provide an accessible facility for all age groups within a community to engage in physical activity, whether as organised sporting events, or simply by walking or play. Regular physical activity can have a beneficial effect in tackling a range of health issues, such as coronary heart disease, strokes, Type 2 diabetes and obesity. Playing fields also contribute positively to the general well-being of the community and the local environment.

4.4 The 2010 Measure recognises playing fields are an important resource which allow and encourage physical activities to take place, and as a consequence make a positive contribution to maintaining and improving the health and well-being of communities.

4.5 The Regulations will ensure any proposal to dispose of a Local Authority-owned playing field is subject to an assessment of the impact disposal would have in terms of the health and well-being of local communities, and also be subject to meaningful consultation with local communities, users and relevant national bodies.

#### Groups Affected by the Regulations

4.6 Those likely to be affected by the requirements of the Regulations:

- **The public and adjacent landowners or occupiers** who will be able to contribute their views through a more rigorous consultation process than at present.
- **Local user groups** who represent the interests of persons who make use of a playing field.
- **National bodies** with an interest in playing fields and open space provision who will be specifically consulted about a proposed disposal.
- **Local Authorities** who will be required to comply with the Regulations before taking a final decision to dispose of a playing field.

#### Objectives

4.7 The main objectives of the Regulations are to:

- Ensure a decision on whether or not to dispose of a playing field is informed by the views of the community, including the public at large, adjacent land owners/occupier, playing field users and national bodies with a direct interest in playing field provision.
- Require a Local Authority to publish certain information, including the impact of the proposed disposal of a playing field on the health and well-being of the community, by reference to a number of key strategies, plans and assessments for the area in which the playing field is located.
- Following consultation, ensure the reasons for the Authority's decision are recorded and published.

#### Effect of the Regulations

##### *Definition of Playing Field*

4.8 The Regulations define a 'playing field' as the whole of an open space which encompasses at least one 'playing pitch'.

4.9 A 'playing pitch' is defined by the Regulations as a delineated area which, together with any run-off area, is of:

- i 0.2 hectares or more and which is used for sport including, but not limited to, association football, American football, rugby, cricket, hockey, lacrosse, rounders, baseball, softball, Australian football, Gaelic football, shinty, hurling, polo, cycle polo, athletics, or golf; or
- ii 0.1 hectares or more and which is used for playing bowls; or
- iii 0.04 hectares or more and which is used for playing basketball, netball or tennis.

4.10 The definition draws on, but is deliberately broader than, that in Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the 2012 Development Management Procedure Order"), for the purpose of requiring a Local Planning Authority to consult the Sports Council for Wales prior to granting planning permission for a development affecting a playing field.

*Definition of 'proposed decision to dispose'*

4.11 A Local Authority must comply with the requirements contained in regulations 5 to 10 in relation to propose a decision to dispose of a playing field or any part of a playing field. A 'proposed decision to dispose' is defined as where a Local Authority is considering making a decision to enter into an agreement to dispose, or in the absence of such an agreement, is considering making a decision to dispose. The requirements, therefore, apply prior to the Local Authority making any decision to dispose of the land. This is to ensure that a Local Authority has fully engaged with the community and considered their views before committing to disposing of a playing field. In respect of certain proposed decisions to dispose, there could be a land transaction which involved a number of stages. A Local Authority is required to comply with the requirements contained in the Regulations at the outset. There is no requirement to comply with the Regulations for every stage, for example prior to completion. However, where during such a prolonged transaction the nature of the disposal had materially changed, then a Local Authority may need to consider the need to carry out the requirements contained in the Regulations.

*Restriction on Disposal*

4.12 A Local Authority may not make a decision to dispose of a playing field, or any part of a playing field, where the playing field has been used at any time in the five preceding years unless it has first complied with the requirements of the Regulations, i.e. it has published information on the impact of the proposed disposal, consulted widely and considered representations received.

4.13 The Regulations are primarily concerned with the disposal of a playing field which would cease to be a public amenity. Consequently, the Regulations do not apply to a proposed decision to dispose if:

- i. The proposed disposal is the grant of an interest in the playing field that does not have an adverse impact on the use of the playing field as a sports or recreational facility by the public;
- ii. The playing field is to be retained as a sports or recreational facility for use by the public, whether or not such use is subject to a payment, and proposed disposal is to be made to:
  - a. a Local Authority; or
  - b. a body whose aims or objectives include the promotion of sporting or recreational activities.

4.14 In addition, the requirements contained in the Regulations do not apply to the disposal of a school playing field which has formed part of a school organisation proposal about which:

- a) a County or County Borough Council has consulted on a proposed decision to dispose of the playing field under section 48(2) of the School Standards and Organisation (Wales) Act 2013(2013 Act); or
- b) The Welsh Ministers have consulted on a proposed decision to dispose of the playing field under section 72(1) of the Act.

4.15 The proposed decision to dispose of a school playing field which is not subject to consultation as part of proposals under the 2013 Act would be subject to the requirements contained in the Regulations.

4.16 The requirements contained in the Regulations do not apply in relation to a proposed decision to dispose for which notice has already been given in accordance with the requirements of section 123(2A) of the 1972 Act at the time the Regulations come into force, provided the Authority enters into an agreement to dispose, or completes the disposal, within a period of 12 months from the date on which notice is first given under that section.

4.17 However, if the Local Authority has not completed the disposal, or entered into an agreement to dispose of the land within 12 months of publishing the notice, the requirements contained in the Regulations would apply.

4.18 A proposed decision to dispose which is not subject to the requirements contained in the Regulations would, however, continue to be subject to the consultation requirements for the disposal of open space land in section 123(2A) of the Local Government Act 1972 (“the 1972 Act”). Section 123(2A) requires an Authority to give notice of its intention to dispose of any land consisting, or forming part, of an open space in two consecutive weeks in a local newspaper and to consider any objections received.

### *Impact Assessment*

4.19 When consulting on a proposed decision to dispose as required by the Regulations, an Authority must publish information about the effect the proposed disposal would have on a number of key strategies, plans and assessments for the area, i.e.:

- a) The Local Development Plan prepared under section 62 of the Planning and Compulsory Purchase Act 2004;
- b) The Play Sufficiency Assessment prepared under section 11 of the Children and Families (Wales) Measure 2010;
- c) The Community Strategy prepared under section 39 of the Local Government (Wales) Measure 2009;
- d) The Health and Well-being Strategy prepared under section 40 of the National Health Service (Wales) Act 2006;
- e) Such other strategies, plans or assessments as the Authority considers appropriate.

### *Notice and Consultation Requirements*

4.20 The Regulations require an Authority which proposes to make a decision to dispose of a playing field to:

- i Give notice on two consecutive weeks in a newspaper circulating in the area of its proposal, providing details of when, where and the period in which its proposals can be viewed, of the right to make representations and the means and deadline for doing so.
- ii Have its proposal available for inspection for a minimum of 6 weeks.
- iii Allow a minimum of 6 weeks for the receipt of representations.
- iv Display a copy of the notice referred to above in at least one place on or near the playing field and, in any event, at each official entrance for not less than 6 weeks.
- v Send a copy of the notice to any owner or occupier of land adjoining the playing field.
- vi Publish a copy of the notice on its website, where it has one.
- vii Send a copy of the notice and details of the proposed disposal to:
  - Any Local Authority whose area includes any part of, or shares a boundary with any part of, the playing field;
  - The Sports Council for Wales;

- The National Playing Fields Association (currently known as Fields in Trust Cymru);
  - Bodies who have an interest in the preservation of open spaces across Wales (such as The Open Spaces Society)
  - Bodies who have an interest in the preservation of children's play opportunities across Wales (such as Play Wales);
  - Persons who appear to represent the interests of persons within the Authority's area, or of an Authority which shares a boundary with any part of the playing field, and who make use of the playing field; and
  - Such other persons as the Authority considers appropriate.
- viii The Local Authority must provide (on payment if required by a Local Authority of a reasonable charge) a copy of the details of the proposed disposal to any other person or body who requests it during the consultation period.

### *Consideration of Representations*

4.21 An Authority must consider all representations received in relation to a proposed disposal during the consultation period. It may also consider any representations received after the end of the consultation period.

### *Decision*

4.22 Having considered any representations received, an Authority must prepare a report summarising the representations received and the reasons for its decision to proceed, or not, with the disposal. A copy of the report must be sent to anyone from whom the Authority received a substantive representation.

4.23 Where an Authority decides to proceed with a disposal, it must give notice on two consecutive weeks in a newspaper circulating in the Authority's area informing the public:

- a) of its decision; and
- b) the place or places and times when the decision report may be inspected.

4.24 The decision report must be available for inspection during normal office hours for at least 6 weeks at the Authority's principal office (if it has one) and, if reasonably practicable, at one or more other places in the area. The notice must be published on the Authority's website and must be displayed in at least one place on or near the playing field and, in any event, at each official entrance, for the same period.

4.25 The Local Authority must provide (on payment if required by a Local Authority of a reasonable charge) a copy of the decision report to any person or body requesting a copy.

4.26 The Authority may not proceed with a proposed disposal until a period of 12 weeks has elapsed from the date on which the decision notice is first published.

## 5. Consultation

5.1 The details of consultation are included in the Regulatory Impact Assessment below.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6. Options

6.1 The following options are considered:

- **Option 1: Do nothing** – do not make the Regulations and rely upon the existing public notice requirements of section 123(2A) of the 1972 Act.

This would do nothing to address perceived concerns about inadequate public engagement in disposal decisions, which gave rise to the Measure. Consultation and other requirements would remain the same as they currently are. It would also mean the Measure has no practical effect, contrary to the intention of the National Assembly.

- **Option 2: Do minimum** – issue non-statutory good practice guidance to Local Authorities, specifically on consultation prior to the disposal of a playing field.

Guidance would go some way to addressing the concerns, but there would be no obligation upon Local Authorities to adhere to it. Again, it would also mean the Measure has no practical effect.

- **Option 3: Implement the Measure** – make the Regulations and issue statutory guidance.

This would enable the ‘Purpose and intended effect of the legislation’ described in Section 4 to be fully addressed.

### 7. Costs and Benefits

7.1 The sectors most likely to be affected by the proposed Regulations are:

- Local Government (ie County and County Borough Councils, Community and Town Councils and National Park Authorities)
- The Sports Council for Wales



- Some third sector bodies, such as Fields in Trust Cymru, the Open Spaces Society and Play Wales
- The public
- Owners/occupiers of land adjoining a playing field being considered for disposal
- Persons representing playing field users

7.2 The following cost and benefit analysis has been undertaken for each of the sectors identified above. They are grouped together where that is appropriate. The 2014 consultation included a request for data on the likely additional costs that organisations would incur as a result of the proposals. In response, quantified information was received from a single Local Authority and a handful of other organisations. In a number of places, the RIA therefore represents a broad and indicative estimate of costs based on quite limited information. While there are figures available on the number of playing field disposals that occurred in recent years, there is no data available on the number of disposals expected in the future. In the absence of this information, costs are estimated on a per disposal basis. Costs will in any event vary, depending upon the nature and scale of the disposal.

## **Cost Analysis for Option 1 – Do Nothing**

### Local Government

7.3 The minimum statutory obligation upon a Local Authority proposing to dispose of an open space is to give notice in at least one newspaper circulating in the Authority's area. The cost of such notices is likely to vary between newspaper type (e.g. local/regional, priced/ free press) and the size of any given notice. However, a reasonable assumption is thought to be in the range of £500-£1,500. In comparison, information provided by Torfaen County Borough Council in response to consultation on the proposed Measure estimated the cost at £1,250. Denbighshire County Council estimated the cost at £110 for a local newspaper and £1,000 for a regional newspaper. Additionally, authorities will incur associated officer time costs in analysing representations. This could vary considerably depending upon the number of representations, particularly if there is widespread opposition to a disposal, and thus it is difficult to make a meaningful estimate of these costs.

7.4 The above minimum consultation obligation is unlikely to meet current standards of public engagement expected of all public bodies, including Local Authorities, in the design, development and delivery of citizen-centred services for the people of Wales. The Welsh Local Government Association, One Voice Wales and the Welsh Government have endorsed the National Principles for Public Engagement in Wales<sup>1</sup> developed by Participation Cymru. Authorities

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<sup>1</sup> <http://www.participationcymru.org.uk/principles>

embracing such best practice will incur additional costs over and above those attributable to the statutory requirements.

7.5 In its response to consultation on the proposed Measure, Torfaen County Borough Council estimated the cost of officer time in carrying out consultation and reporting the outcome in the region of £2,500.

#### Sports Council for Wales

7.6 There is no specific statutory obligation for an Authority to consult the Sports Council for Wales before disposing of a playing field. However, Article 14 and Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 requires a Local Planning Authority to consult the Sports Council for Wales before granting permission for development which is likely to prejudice land used, previously used (within 5 years), or allocated in a development plan for use as a playing field.

7.7 In response to consultation on the proposed Measure, the Sports Council for Wales estimated, on the basis of applications submitted to it by Planning Authorities over the previous 5 years (42), the cost of time spent by staff in considering development proposals would potentially amount to £2,900 pa.

#### Third Sector Bodies

7.8 There is no current express statutory obligation for an Authority to consult Fields in Trust Cymru, Play Wales or the Open Spaces Society before disposing of a playing field. However, such organisations will incur costs when responding to the public consultation notice.

#### The Public

7.9 Members of the public may make representations in response to the statutory notice given by an Authority of the proposed disposal of a playing field. The cost of doing so might vary considerably. The cost to an individual is likely to be minimal, perhaps ranging from £nil if making representations by email to a couple of pounds if submitting representations by paper (e.g. cost of paper, envelope, postage etc.). On the other hand, where an orchestrated campaign is mounted against a proposal, costs could be more significant.

#### Adjoining Land Owners/Occupiers

7.10 There is no specific statutory obligation for an Authority to consult adjoining land owners/occupiers before disposing of a playing field. However, the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 makes general provision about the publicity and notice to be given by a Local Planning Authority to applications for planning permission. This includes in relation to adjoining land owners and occupiers in appropriate circumstances. Again, where such a person chooses to make representations the costs involved will reflect the means and extent of the response.

## Representatives of Playing Field Users

7.11 There is no express statutory obligation for an Authority to consult such persons or organisations before disposing of a playing field, other than as part of the public notice arrangements under Section 123(2A) of the 1972 Act. Again, such organisations will incur costs when responding to the public consultation notice.

## **Benefit Analysis for Option 1 – Do nothing**

### Local Government

7.12 There would be benefit to a Local Authority in that compliance with the minimum consultation requirements of Section 123(2A) of the 1972 Act would provide it with some sense of the views of the community in relation to a proposed disposal based on any representations received.

### Other Sectors

7.13 There are no obvious significant direct or indirect benefits to the other sectors from retention of the current arrangements.

## **Cost Analysis for Option 2 – Do Minimum**

### Local Government

7.14 Assuming any non-statutory good practice guidance would generally reflect the intended effect of regulations that would otherwise be made under Option 3; the cost to Local Government would be as described under that option below.

7.15 Where an Authority chose not to have regard to the guidance, there would be no additional cost implications over and above those currently incurred under Option 1.

### Other Sectors

7.16 Where an Authority does not have regard to the guidance, there would be no additional cost implications. Costs would be as described under Option 1. Where a Local Authority follows the guidance, the cost to the other sectors would be as described under Option 3.

## **Benefit Analysis for Option 2 – Do Minimum**

### Local Government

7.17 Local Authorities would have guidance on assessing the impact of a proposed disposal on the well-being of the community and on undertaking

effective consultation with communities and other stakeholders, but would not be obliged to adhere to the process described.

### Other sectors

7.18 Where an Authority has regard to the guidance, the benefits would be as described under Option 3.

## **Cost Analysis for Option 3 – Implement the Measure**

### Welsh Government

7.19 There will be some additional administrative costs for the Welsh Government in relation to production of the Statutory Guidance for Local Authorities (in electronic format), informing them of the Regulations, dealing with queries and monitoring compliance with the Regulations, though these will be minimal.

### Local Government

7.20 Costs will fall on Local Authorities in respect of their duty to publish information on the potential impact of a disposal and to undertake consultation as described in the Regulations. However, these need to be balanced against existing obligations on authorities in assessing present and future sport and recreational open space provision in their areas, consulting on the disposal of open space and in consulting the Sports Council for Wales in relation to development proposals affecting playing fields.

7.21 During consultation on the proposed Measure by Dr Lloyd, Torfaen County Borough Council was the only Authority to provide detailed estimated costings. As noted above, Denbighshire County Council provided limited information on the cost of placing a public notice in the press. Other Local Authorities noted the potential of additional costs, but were unable to quantify them.

7.22 Of the Local Authorities that responded to the consultation on the draft Regulations, one estimated the total cost, including officer time responding to objections and legal costs between £3,500 and £5,000 per case. Another foresaw no additional costs.

7.23 The costs to Local Authorities are likely to fall into 3 main categories:

- i. Impact assessment
- ii. Consultation and consideration of representations
- iii. Decision on whether to proceed

These are addressed in turn below.

*i. Assessing the Impact of a Proposed Disposal*

7.24 The Regulations require a Local Authority to publish information on the impact a proposed disposal would have on a number of strategies, plans and assessments (see paragraph 4.13 above).

7.25 The Regulations do not prescribe how such an assessment is to be undertaken, but it is anticipated that in most circumstances this would normally be a desk exercise undertaken in house by the Authority's officers.

7.26 Planning Policy Wales<sup>2</sup> states Development Plans<sup>3</sup> should contain clear policies for the provision, protection and enhancement of tourism, sport, recreation and leisure facilities. They should set standards of provision, so local deficiencies can be identified and met through the planning process, and set out policies to avoid or resolve conflict between different pursuits. Plans should protect from development playing fields and open space which has significant amenity or recreational value to local communities.

7.27 Supplementary guidance in Technical Advice Note 16: Sport, Recreation and Open Space (TAN 16) advises Authorities to consider undertaking an 'Open Space Assessment' to inform the preparation, monitoring and review of Development Plan policies. TAN 16 further notes such an assessment may also be useful for the preparation of corporate Open Space Strategies and Community Strategies in which broader environmental, social and health issues can be addressed.

7.28 Whilst the preparation of an Open Space Assessment is not itself mandatory, in meeting their obligations under Planning Policy Wales, Planning Authorities are likely to have developed a good understanding of the level of playing field provision and foreseeable future needs of their communities within the Development Plan horizon.

7.29 The Health, Social Care and Well-being Strategy for the area is underpinned by an assessment of unmet health, social care and well-being needs of the community, including information on the physical environment. Also, the Play Sufficiency Assessment will provide a full assessment of the play opportunities in the area, including those arising from playing field provision.

7.30 There should, therefore, be a clear and comprehensive strategic framework within which to assess the impact of any given proposed disposal, which should obviate the need for a further detailed study. In response to consultation on the proposed Measure, Torfaen County Borough Council estimated the cost of officer time in preparing an impact assessment in the region of £2,000.

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<sup>2</sup> Chapter 11 – Tourism, Sport and Recreation

<sup>3</sup> Section 62, Planning and Compulsory Purchase Act 2004

## *ii. Consultation and Consideration of Representations*

7.31 A Local Authority will incur costs under the Regulations when:

- Publishing public notice of a proposed disposal in the press.
- Displaying public notices at the playing field.
- Sending a copy of the notice and details of a proposed disposal to stakeholders (costs may be kept down through the use of email for this purpose, where a person or body has consented to receive documents by email).
- Considering representations received.

7.32 As indicated under Option 1, the assumed cost of giving public notice in the press is in the range of £500-£1,500. Torfaen County Borough Council estimated officer time in consulting on the impact assessment and reporting on the representations received at £2,500, with a further £500 for committee consideration of the report.

7.33 Additional costs, over and above those for Option 1, would be incurred in printing and distributing the impact assessment and information about the proposed disposal. Assuming in-house printing and a basic 40 page bilingual document, printing costs are estimated at £130 per 1,000 copies. For commercial printing, the costs could be up to £2,000 per 1,000 copies. Distribution costs are estimated at £600 per 1,000 copies. The exact cost of printing and distribution would depend upon the actual size of the document, the number of persons and organisations to be consulted<sup>4</sup>.

## *iii. Decision on Whether to Proceed*

7.34 A Local Authority will incur costs under the Regulations when:

- Preparing a decision report summarising the representations received and the reasons for its decision to proceed or not with the disposal.
- Publishing public notice of its decision to proceed with a disposal in the press.
- Sending a copy of the decision report to persons or organisations from whom the Authority received substantive representations.

7.35 Again the assumed cost of publishing public notice in the press is in the range of £500-£1,500. This cost would not be incurred when a decision is taken not to proceed with a disposal, as there is no requirement to give notice of such a decision in the press.

7.36 It is considered the cost of preparing a decision report over and above the cost of considering and reporting on the representations received would be minimal. Torfaen County Borough Council put these costs at around £250. The cost of printing and distribution would again depend upon the size of the

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<sup>4</sup> Estimates taken from Regulatory Impact Assessment on the 2010 Measure.

document and the number of persons and organisations to whom a copy must be sent, but are likely to be less than the costs associated with printing and distribution of the impact assessment.

#### *Overall Cost to Local Authority*

7.37 Based on the figures provided by Local Authorities during consultation on the then proposed Measure and other assumptions made, the cost for a single disposal is estimated in the region of £6,250 to £8,250, plus printing and distribution of the impact assessment and decision report. In comparison with the minimum statutory requirements under Option 1, some £5,250 to £6,250 of this would be additional cost. However, where an Authority already embraces good practice in undertaken consultation, the additional cost is reduced further and is more likely to be in the range of £2,750 to £4,750.

7.38 The above are very broad estimates based primarily on information from a single source. In the case of Community and Town Councils, those elements attributable to staff and committee costs may well be less.

7.39 Whilst the Regulations will have cost implications for a Local Authority proposing to dispose of a playing field, these would need to be taken into account when undertaking a cost-benefit analysis of a proposed disposal. This includes the extent to which costs incurred would be recouped in part, or whole, by income received from the disposal of a playing field, where the decision is taken to proceed.

#### Sports Council for Wales

7.40 As indicated in Option 1, the Sports Council estimated, on the basis of applications for planning permission received over the previous 5 years (42 in number), the time spent by staff in considering development proposals would amount to £2,900 pa if the number of proposed disposals matches the number of planning applications. However, the Regulations apply only to the proposed disposal of Local Authority-owned playing fields. In its response (dated 19 January 2009) to consultation on the proposed Measure, the Welsh Local Government Association stated that authorities had reported that 34 playing fields or sports pitches had been disposed of in the previous 5 years (in comparison to 60 new fields / pitches gained in the same period). The actual cost of responding to consultations on such disposals may therefore be lower.

#### Third Sector Bodies

7.41 In contrast to the estimate provided by the Sports Council, Fields in Trust Cymru estimated reviewing and commenting on proposed playing field disposals was likely to cost around £5,300 per annum, based on half a day a week. It is unclear what assumptions are made in terms of the number of potential disposal consultations each year.

7.42 Fields in Trust Cymru / Sports Wales, in response to the consultation on the draft Regulations, estimated they would separately incur costs of approximately £1,000 to £1,500 pa responding to consultations.

7.43 In response to the consultation on the draft Regulations, Play Wales indicated it would be able to respond as a consultee body within its current structure and using existing resources. The Open Spaces Society thought there would be additional costs, but it was difficult to estimate costs without knowing how many disposals would be caught by the process.

#### The Public

7.44 As with existing consultation arrangements under Option 1, costs are likely to be minimal unless there is an orchestrated campaign against a particular proposal. Those organising such a campaign would need to address funding issues, although reliance is likely to be placed upon the goodwill of volunteers and fundraising within the community. Information provided by the Rumney Recreation and Eastern Leisure Action Group (a voluntary resident action group), in response to consultation on the proposed Measure, indicated that the group had spent in the region of £12,000 - £18,000. In their response to the consultation on the draft Regulations, the group estimated it had cost in the region of £25,000. This was, however, a prolonged and contentious campaign by, and on behalf of, residents from four communities within Cardiff against the proposed development of a significant local recreational amenity and leisure centre. This points to these figures being an upper estimate in a range of costs. In any case, the additional costs to the public are likely to be minimal since any objections would likely be raised in the 'Do Nothing' scenario.

#### Adjoining Land Owners / Occupiers

7.45 As with Option 1, the cost of responding to consultation would depend upon the means and extent of the response made. Again costs could be quite minimal – a few pounds – or more significant.

#### Representatives of Playing Field Users

7.46 It is unlikely the cost to any single organisation of responding to consultation would be significant. This would depend upon the nature and extent of any representations made and in some instances may be offset to some degree by being compiled by volunteers within the organisations. In response to the consultation on the draft Regulations, Llandrillo Bowling Club indicated there would be limited additional costs, though should the services of a solicitor be required costs could be in the region of £500.

### **Benefit Analysis for Option 3 – Implement the Measure**

#### The Public

7.47 The benefits of physical activity are well documented. People who do regular activity have a lower risk of many chronic diseases, such as heart disease, type 2 diabetes, stroke and some cancers. Research shows that physical activity can also boost self-esteem, mood, sleep quality and energy, as well as reducing the risk of stress, depression, dementia and Alzheimer's disease. Playing fields are an important resource which allow and encourage



physical activities to take place. Option 3 will ensure any proposal to dispose of a Local Authority owned playing field is subject to an assessment of the impact disposal would have on the health and well-being of the local community. The proposal will also be subject to meaningful consultation with the community, playing field users and relevant national bodies before a final decision is taken.

### Local Government

7.48 Option 3 would ensure a Local Authority develops a full understanding of the potential impact of a disposal on the health and well-being of citizens in the area, on the community strategy, the Play Sufficiency Assessment for the area and the Local Development Plan and any supporting Open Space Strategy.

7.49 The more extensive approach to consultation than at present would ensure an Authority engages with a wide range of stakeholders and, through doing so, gains a fuller appreciation of the views of playing field users, the community at large and those national stakeholder organisations specified in the Regulations.

### Other Sectors

7.50 Option 3 would ensure all relevant interested parties are able to contribute their views and have them taken into account prior to a decision by a Local Authority to dispose of a playing field. The Local Authority's reasons for deciding to proceed, or not, with a disposal would be open and transparent.

7.51 Under the Regulations, a disposal may not proceed until 12 weeks have elapsed following publication of a Local Authority's decision to proceed. This will provide objectors with a reasonable period in which to initiate legal action if it is considered a Local Authority's decision is in some way flawed.

## **8. Analysis of Other Effects and Impacts**

### Equality of Opportunity

8.1 The Regulations have equal benefit across all sectors of society.

### The Welsh Language

8.2 The Regulations have no direct impact on the Welsh language. A Local Authority undertaking consultation would need to have regard to the requirements of its Welsh language scheme when doing so (until replaced by Welsh language standards introduced by the Welsh Language Commissioner over time). Indirectly, the retention of playing fields and other recreational open space may contribute to the attractiveness of an area as a place to live. In Welsh speaking communities, this may assist in encouraging Welsh speakers to remain in their communities.

## Sustainable Development

8.3 The Regulations have no direct impact on sustainable development. There is an indirect benefit given sport and recreational facilities contribute to the quality of life for citizens nationally and in local communities. Assessing the impact of a proposed disposal against the local strategies, plans and assessments specified in the Regulations will ensure the decision of an Authority is taken in the context of the aims and objectives of those strategies etc. For example, a decision to dispose of a playing field would need to be consistent with a Local Planning Authority's Development Plan policies for protecting playing fields (whether owned by public, private or voluntary organisations) in its area from development.

## Rights of the Child

8.4 The Regulations will not have a significant impact on the lives of children and young people in Wales. However, the regulations will allow them to have greater information about proposals by Local Authorities to dispose of playing fields. This will support articles 12 and 13 which give children the right to have accurate and accessible information and the right to have a say and have their voice heard. The regulations may also have a positive impact on children's play opportunities, supporting article 31, which highlights that every child has the right to relax, play and take part in a wide range of cultural and artistic activities.

## **9. Summary**

9.1 Given the analysis undertaken on the above options, it is considered **Option 3** - to implement the Measure - should be adopted. This option is preferred in order to:

- Enable implementation of the Measure approved by the National Assembly.
- Ensure a Local Authority proposing to make a decision to dispose of a playing field makes an assessment of the wider impact of such a disposal, before taking a final decision to do so.
- Strengthen arrangements for prior consultation with communities, playing field users, national stakeholder organisations and adjacent Local Authorities and land owners / occupiers.
- Provide for transparency over the reasons for a Local Authority's decision following consultation to proceed, or not, with a disposal.
- Provide a reasonable period for objectors to a disposal to initiate legal action prior to a disposal proceeding, where it is considered a Local Authority's decision is in some way flawed.

## **10. Consultation**

10.1 The then proposed Measure was issued by Dr Lloyd for consultation in May 2008 for a four week period. A report on the outcome of consultation is appended to the Explanatory Memorandum laid before the National Assembly on 18 July 2008 and updated by him on 29 September 2010<sup>5</sup>.

10.2 The Welsh Government consulted relevant stakeholders on the draft Regulations for a period of 12 weeks between 28 February and 30 May 2014. The draft Regulations were also published on the consultation pages of the Welsh Government website. A summary of the responses is attached at Annex A.

10.3 As a result of the consultation, the Regulations have been amended to avoid Local Authorities being required to undertake two separate consultation exercises when disposing of school playing fields. The School Organisation Code was issued by Welsh Ministers in July 2013 as required by the School Standards and Organisation (Wales) Act 2013. The Code sets out requirements in relation to the consultation process to be followed before school organisation proposals are published. As amended, the Regulations do not apply to a proposed disposal if:

- i. A County or County Borough Council has consulted on the disposal under section 48(2) of the School Standards and Organisation (Wales) Act 2013; or
- ii. The disposal has been the subject of consultation under section 72(1) of the 2013 Act.

## **11. Competition Assessment**

11.1 A competition filter test has been applied to the draft Regulations. The result of the test suggests there is unlikely to be any detrimental or beneficial effects on competition. The Regulations make provision for the impact assessment of a proposed disposal of a playing field and for strengthened consultation with stakeholders by a Local Authority, prior to a final decision to proceed or otherwise with a disposal. There is no obligation on any party, business or organisation to respond to the consultation.

## **12. Post implementation review**

12. The Welsh Government will monitor the impact of the Regulations through feedback from Local Authorities and other stakeholders.

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<sup>5</sup> <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly/bus-leg-measures/bus-legislation-meas-pf.htm>