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Llywodraeth Cymru
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Consultation Document

Draft Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 2014 and Related Statutory Guidance

Date of issue: **28 February 2014**

Action required: Responses by **30 May 2014**

Overview

We are consulting on draft Regulations to be made under the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010. The Regulations make provision for consultation by local authorities (i.e. County and County Borough Councils, Community and Town Councils and National Park Authorities in Wales) prior to a decision to dispose of a playing field.

We are also consulting on related draft statutory guidance to local authorities and the 'Explanatory Memorandum and Regulatory Impact Appraisal' to accompany the Regulations.

How to respond

Please submit your comments using the online response form or e-mail them to:

EthicsandRegulation@wales.gsi.gov.uk

You may also send your comments to the postal contact address below.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

Consultation website address:

<http://wales.gov.uk/consultations/localgovernment/draft-regulations-and-statutory-guidance-for-playing-fields/?lang=en>

Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010

<http://www.legislation.gov.uk/mwa/2010/6/contents>

Contact details

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government.

This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

1. Introduction

1.1 Section 1 of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010 (“the 2010 Measure” or “Measure”) provides a power for the Welsh Ministers to make provision, by regulations, for the involvement of communities in decisions by local authorities about the proposed disposal of land consisting or forming part of a playing field. For this purpose, a local authority is a County or County Borough Council, a Community or Town Council and a National Park Authority in Wales.

1.2 The Welsh Ministers propose to make the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 201[] (“the Regulations”) in exercise of those powers.

1.3 Regulations under Section 1 of the Measure may require a local authority, when exercising functions under the Regulations, to have regard to guidance given from time to time by the Welsh Ministers. The Welsh Ministers propose to issue the guidance accompanying this consultation to support implementation of the Regulations.

2. The Current Situation

2.1 Section 123(2A) of the Local Government Act 1972 (“the 1972 Act”) requires a principal council, before disposing of any land consisting or forming part of an open space, to give notice of its intention to do so in two consecutive weeks in a newspaper circulating in the area in which the land is situated and to consider any objections. Community and Town Councils and National Park Authorities are regarded as principal councils for this purpose.

2.2 Section 123(2AA) of the 1972 Act provides that Subsection (2A) does not apply to a disposal which is subject to provisions in regulations made under Section 1 of the 2010 Measure.

2.3 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. Encouraging this physical activity from an early age could be a crucial factor in preventing the onset of obesity in later life. Playing fields also contribute positively to the general well-being of the community and the local environment.

2.4 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.

2.5 The primary purpose of the 2010 Measure and proposed Regulations is to:

- i. Require a local authority to publish information on 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 situated; and

- ii. Strengthen arrangements for consultation with the community, playing field users and relevant national bodies before a local authority takes a final decision to proceed with a disposal.

3. Intended Effect of the Proposed Regulations

3.1 The Regulations will apply to the proposed disposal of a playing field as defined in the regulations.

Definition of Playing Field

3.2 The Regulations define a 'playing field' as the whole of a site which encompasses at least one 'playing pitch'.

3.3 A 'playing pitch' is defined by the Regulations as meaning 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.

3.4 This definition draws on, but is deliberately broader than, that in Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. Whilst it includes the specific sporting activities listed, it is not limited only to those activities. Consequently, the proposed disposal of a playing field which contains a delineated area of 0.2 hectares or more for any other sporting activity would be subject to the Regulations.

Q.1 Do you agree with the proposed definition of land which is to be subject to the regulations?

Restriction on Disposal

3.5 Before taking a final decision to dispose of a playing field, or any part of a playing field, which has been used as such at any time within the previous five years, a local authority must first publish information about the impact of the proposed disposal, consult certain persons and bodies (including playing field user groups) and take account of any representations received.

3.6 This does not apply to a proposed disposal if:

- i. The disposal is the grant of an interest in the playing field which does not have an adverse impact on its use as a sports or recreational facility by the public; or
- ii. The disposal is made to:
 - a. another local authority; or
 - b. a body or association whose aims or objectives include the promotion of sporting or recreational activities;

and the other local authority, body or association retains the playing field as a sports or recreational facility for use by the public, whether or not this is subject to a charge.

3.7 A proposed disposal which is not subject to the Regulations continues to be subject to the consultation requirements for the disposal of open space land in Section 123(2A) of the 1972 Act (see paragraph 2.1).

Q.2 Do you agree the proposed exemptions are appropriate?
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Impact Assessment

3.8 Before consulting on a proposed disposal, a local authority must publish information about the effect disposal would have on a number of key strategies, plans and assessments for the area, ie:

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

Q.3 Do you agree the Regulations appropriately prescribe the key strategies etc to which a local authority should have regard when considering the impact of a proposed disposal?
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Notice and Consultation Requirements

3.9 The Regulations require an authority which proposes to dispose of a playing field to:

- i Give notice on two consecutive weeks in a newspaper circulating in the area of its proposal, 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;
 - Fields in Trust Cymru;
 - Play Wales;
 - The Open Spaces Society;
 - Persons or bodies which appear to represent the interests of persons or bodies 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 persons or bodies as the authority considers appropriate.
- viii Subject to the payment of a reasonable charge, provide a copy of the details of the proposed disposal to any other person or body who requests it during the consultation period.

3.10 The accompanying guidance indicates that the Regulations set out the minimum requirements for consultation. Local authorities should have regard to the 'National Principles of Public Engagement in Wales' developed by Participation Cymru and endorsed by the Welsh Government and local government representative bodies.

3.11 Whilst the minimum period for consultation under the regulations is 6 weeks, the guidance indicates authorities will need to consider carefully whether this is adequate in the context of the scale and nature of the proposed disposal.

3.12 Given the range of sports and recreational activities potentially affected, the Welsh Government considers it impractical to address comprehensively in the Regulations or guidance precisely how a local authority should exercise its discretion in determining which persons or bodies should be consulted. The guidance encourages authorities to engage with as wide a range of persons or bodies with a potential interest as is reasonably practicable, so that it benefits from an appreciation of the views of a broad cross-section of the community before taking a final decision.

3.13 The Regulations do not prescribe the precise nature of the information that should be sent to statutory consultees, beyond a copy of the statutory notice. This will enable an authority to tailor the information provided to the scale and nature of the proposed disposal. However, the guidance recognises that, to respond effectively, consultees will require sufficient information to enable them to gain a good understanding of the underlying rationale for the proposed disposals and any intended future use of the site. The guidance anticipates that the impact assessment, or a sufficiently detailed summary, should be included in the information sent to statutory consultees.

Q.4 Do you agree the minimum notice and consultation arrangements in the Regulations, when taken together with the statutory guidance, are appropriate?

Consideration of Representations

3.14 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.

3.15 The guidance makes it clear that an authority should not disregard representations received after the consultation period simply because it is expedient to do so. However, the guidance recognises that there will come a point where the authority's decision-making process has reached the stage where it is impracticable to take account of further late representations. The reason for disregarding any given representation should be recorded and the sender advised.

Decision

3.16 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.

3.17 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.

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.

3.18 Subject to the payment of a reasonable charge, an authority must provide a copy of the decision report to any person or body requesting a copy.

3.19 Where representations are received in the form of a signed petition, it may be impractical for an authority to send a copy of the decision report to each signatory. The guidance, therefore, indicates that the report should be sent to the petition organiser where contact details are known or can be readily established.

Q.5 Do you agree the requirements for communicating an authority's final decision are appropriate?

3.20 An 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. This is intended to provide a reasonable minimum period in which an objector may initiate a legal or other challenge to an authority's decision.

Q.6 Do you agree 12 weeks provides an adequate minimum period in which an objector may initiate a challenge?

4. Transitional Arrangements

4.1 The Regulations do not apply to a proposed disposal where an authority has published a notice of disposal in accordance with Section 123(2A) of the 1972 Act prior to the Regulations coming into force, and the disposal is completed within 12 months of the first publication of the notice.

Q.7 Do you agree the transitional arrangements are appropriate?

5. Guidance

5.1 The accompanying guidance provides both an explanation of the provisions of the Regulations and supplementary statutory guidance on the way in which certain provisions are to be interpreted and / or acted upon.

Q.8 Do you agree the proposed guidance is appropriate?

6. Explanatory Memorandum and Regulatory Impact Assessment

6.1 A draft 'Explanatory Memorandum and Regulatory Impact Assessment' is published alongside the proposed Regulations. Information in the Regulatory Impact Assessment is based primarily upon limited information obtained through consultation by (then Assembly Member) Dr Dai Lloyd prior to his introduction of the draft 2010 Measure into the National Assembly for Wales. The assessment will be revisited in light of any further information provided in response to this consultation.

6.2 Stakeholders are asked to set out estimates of costs for their organisations arising from the provisions of the Regulations. In so doing, you are asked to:

- differentiate between unavoidable and discretionary costs; and
- identify costs which are additional to those which would be incurred under the current provisions governing consultation by local authorities on the disposal of open space land, under section 123(2A) of the 1972 Act.

Q.9 What additional costs will your organisation incur under the provisions of the Regulations?