

**Draft**

**The Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 201[ ]**

Statutory Guidance to County and County Borough Councils,  
Community and Town Councils and National Park Authorities in Wales

**Draft v 22.01.14**

# **The Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 201[ ]: Statutory Guidance**

## **Contents**

1. Introduction

### **Part 1 – Policy Context**

2. Purpose
3. The Importance of Playing Fields

### **Part 2 – The Regulations**

4. Content
5. Commencement and Transitional Arrangements
6. Interpretation
7. Restrictions on Disposal of Playing Fields by Local Authorities in Wales
8. Impact Assessment
9. Notice and Consultation Arrangements
10. Consideration of Representations
11. Decision Following Consultation
12. Electronic Communication
13. Application of Guidance
14. Enquiries



## 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.

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

1.3 This document provides statutory guidance to which local authorities must have regard when exercising functions under the Regulations. It is not a substitute for the Regulations themselves, which should be read alongside the guidance in this document.

1.4 In the Regulations and this document, a reference to a ‘local authority’ or ‘authority’ is a reference to a County or County Borough Council, a Community and Town Council and a National Park Authority in Wales, unless the context indicates otherwise.

## PART 1: Policy Context

### 2. Purpose

2.1 The 2010 Measure was introduced into the National Assembly for Wales by the then Assembly Member Dr Dai Lloyd. The Measure was amended significantly during its scrutiny by the National Assembly, before being passed in 2010. The Measure received Royal Approval on 15 December 2010.

2.2 The primary purpose of the Measure and associated 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 located; and
- ii. Strengthen arrangements for consulting the community, playing field users and relevant national bodies before a local authority takes a final decision to proceed with a proposed disposal.

### 3. The Importance of Playing Fields

3.1 Sport and recreation contribute to our quality of life. The Welsh Government supports the development of sport and recreation and the wide range of leisure pursuits which encourage physical activity. These activities are important for the health and well-being of children and adults and for the social and economic life of Wales.

3.2 **‘Climbing Higher’**<sup>1</sup>, first launched in 2005, sets out the Welsh Government’s long term strategy for an active, healthy and inclusive Wales where sport and physical activity are used to enhance the quality of life nationally and in local communities. 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. It has a positive impact in reducing the incidence of injuries associated with ageing and helping people to lead independent lives. Physical activity is also associated with a number of positive mental health benefits and with a reduced risk of clinical depression, improvement in mood and reduction in anxiety.

3.3 In 2006, the Welsh Government published the **Play Policy Implementation Plan**<sup>2</sup>. This reaffirmed the Welsh Government’s commitment to play and how it relates and contributes towards other UK and Welsh Government policies and strategies.

---

<sup>1</sup> <http://wales.gov.uk/topics/cultureandsport/sportandactiver recreation/climbing/?lang=en>

<sup>2</sup> <http://wales.gov.uk/topics/educationandskills/publications/guidance/playpolicy?lang=en>

3.4 The **Children and Families (Wales) Measure 2010** introduced a new duty on local authorities in Wales (i.e. a County and County Borough Council) in respect of play opportunities for children. In the first instance, the Welsh Ministers have commenced those provisions of the Measure which require local authorities to assess the sufficiency of play opportunities in their area. In future, commencement of the second part of the new duty will require local authorities to secure sufficient play opportunities, so far as reasonably practicable, and to publish up to date information about play opportunities for children in their area.

3.5 Statutory guidance<sup>3</sup> issued by the Welsh Ministers in 2012 states that local authorities '*...should recognise the importance of playing fields as areas of community use for organised sporting activities and for play and informal recreational use*'.

3.6 The **Programme for Government**<sup>4</sup>, launched in 2012, restated the Welsh Government's commitments to:

- i. Work with Sport Wales and others to promote physical activity for people of all ages; and
- ii. Ensure that all children and young people are able to access a range of sporting opportunities as part of the formal curriculum, after school and in the community.

3.7 Playing fields are an important resource which allow and encourage physical activities to take place and, as a consequence, they make a positive contribution to maintaining and improving the health and well-being of our citizens.

3.8 **Planning Policy Wales**<sup>5</sup> indicates that all playing fields, whether owned by public, private or voluntary organisations, should be protected from development except where:

- Facilities can best be retained and enhanced through the redevelopment of a small part of the site;
- Alternative provision of equivalent community benefit is made available; or
- There is an excess of such provision in the area.

3.9 The 2010 Measure and Regulations 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.

---

<sup>3</sup> 'Creating a Play Friendly Wales – Statutory Guidance to Local Authorities on assessing for sufficient play opportunities for children in their areas (2012)'

<http://wales.gov.uk/topics/childrenyoungpeople/publications/play/?lang=en>

<sup>4</sup> <http://wales.gov.uk/about/programmeforgov/?lang=en>

<sup>5</sup> <http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>





## **PART 2: The Regulations**

### **4. Content**

4.1 The Regulations have 8 main parts, covering:

- Interpretation
- Restriction on disposal of a playing field by local authorities in Wales
- Impact assessment
- Notice and consultation arrangements
- Consideration of representations
- Decision
- Electronic communications
- Transitional arrangements
- Guidance

### **5. Commencement and Transitional Arrangements**

5.1 The Regulations come into force on [*date to be inserted*].

5.2 The Regulations do not apply to a proposed disposal of a playing field where the following conditions are satisfied:

- i. On the date that the Regulations come into force, notice of a proposed disposal has been given in compliance with section 123(2A) of the Local Government Act 1972 (“the 1972 Act”); and
- ii. The proposed disposal is completed within a period of 12 months from the day on which notice is first given under section 123(2A).

Section 123(2A) of the 1972 Act requires a local authority, 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 received.

### **6. Interpretation**

6.1 Regulation 2 contains the following definitions of terms:

“*dispose*”                      To grant any estate or interest in land or to enter into an agreement to do so.

“*playing field*”                The whole of a site which encompasses at least one playing pitch.

*“playing pitch”*

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.

6.2 It should be noted that the definition of playing pitch is not limited to land set aside for the sports prescribed on the face of the regulations. Local authorities should apply a broad interpretation in considering whether land set aside for a particular sport or recreational activity is covered by the Regulations. If there is any doubt, the presumption should be in favour of the land falling within the definition of a playing pitch.

## **7. Restrictions on Disposal of Playing Fields by Local Authorities in Wales**

7.1 Regulation 3(1) provides a local authority may not 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 years before the issue of a notice under Regulation 5, unless it has first complied with the requirements of Regulations 4 to 7. Regulations 4 to 7 prescribe matters relating to the publication of information about the impact of a proposed disposal, arrangements for consultation with the community and action prior to and following a final decision on whether the disposal should proceed, taking account of any representations received.

7.2 The Regulations are primarily concerned with the disposal of a playing field which would cease to be a public amenity. There may be circumstances in which a local authority proposes to relinquish ownership of a playing field, or to grant an interest in the land, but it is to remain available for public use as a sport or recreational facility. Consequently, Regulations 3(2)-(4) provide that the Regulations do 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 such use is subject to a payment.

7.3 In relation to i) above, the expressions “grant of an interest” and “adverse impact” have their ordinary meanings. For example, the “grant of an interest” includes the grant of easements, rights and legal charges over land. Whilst the grant of an interest does not change the ownership of the land, it is possible it could affect the use of the land. An “adverse impact” will result from the grant of an interest which has, or may have, an unfavourable or harmful impact on the ability of playing field users to participate in the sporting or recreational activities for which the playing field has been used within the previous 5 years.

7.4 In the case of ii) above, it should be noted it is not a requirement for the playing field to be retained for the same sport or recreational activity for which it is set aside, or had been set aside in the previous five years, prior to disposal.

7.4 A disposal which is not subject to the Regulations by virtue of falling within the terms of Regulations 3(2)-(4), is nonetheless subject to the notice requirements of section 123(2A) of the 1972 Act (see paragraph 5.2 above).

## **8. Impact Assessment**

8.1 Regulation 4(1) provides that when consulting on the proposed disposal of a playing field (or part thereof), a local authority must publish information about the effect a proposed disposal would have on the following strategies, plans and assessments for the area:

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

8.2 Currently, the Community Strategy, Health and Well-being Strategy and Play Sufficiency Assessment form part of the non-statutory ‘Single Integrated

Plan<sup>6</sup> for the principal authority area. The Single Integrated Plan is the mechanism through which action on local priorities is planned and delivered and outcomes monitored and evaluated, based on an assessment of local needs. Action to develop, monitor and scrutinise the Single Integrated Plan is co-ordinated by the Local Service Board, bringing together leaders of local government, the NHS, the police, third sector and the Welsh Government.

8.3 At the time of drafting this guidance, the Welsh Government is proposing to introduce a Future Generations Bill. It is anticipated the Bill will put the Single Integrated Plan on a statutory footing. The Regulations and this guidance will be amended, as appropriate, in due course to reflect this change.

8.4 The Regulations do not prescribe the extent and nature of the assessment an authority needs to undertake in order to be able to publish information on the impact of a proposed disposal. The assessment should be proportionate to the nature and scale of the proposed disposal. It is anticipated that in most circumstances the assessment would normally be a desk exercise undertaken in-house by the authority's officers.

8.5 Planning Policy Wales<sup>7</sup> states Development Plans 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 spaces which have significant amenity or recreational value to local communities.

8.6 Supplementary guidance in 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.

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

8.8 The Health, Social Care and Well-being Strategy for the area is underpinned by an assessment of the unmet health, social care and well-being needs of the community, including information on the physical environment.

8.9 The Play Sufficiency Assessment will provide a full assessment of the play opportunities in the principal authority's area, including those arising from playing field provision.

---

<sup>6</sup> 'Shared Purpose – Shared Delivery, Guidance on integrating Partnerships and Plans'

<sup>7</sup> Chapter 11 – Tourism, Sport and Recreation

8.10 Consequently, a clear and comprehensive strategic policy framework should already exist within which to assess the specific impact any given disposal would have on the health and well-being of the community. In most cases, this should obviate the need for a further detailed study.

## 9. Notice and Consultation Arrangements

9.1 Regulation 5 requires a local authority which proposes to dispose of a playing field to:

- i. Publish, on two consecutive weeks in at least one newspaper circulating in the authority's area, a notice:
  - a) Stating that the local authority is proposing to dispose of a playing field;
  - b) Informing the public of the place, or places, and times at which details of the proposed disposal may be inspected and the period in which it would be possible to do so. The minimum period is 6 weeks after the date the notice is first published in a newspaper; and
  - c) Informing the public of their right to make representations, the means by which they must do so and the date by which representations must be received.
- ii. Make the details of the proposed disposal available for inspection during normal office hours at the authority's principal office (if it has one) and, if reasonably practicable, at one or more other places in its area.
- iii. Allow a minimum of 6 weeks after the date on which notice is first published for the receipt of representations.
- iv. No later than the day on which the notice is first published:
  - a) Display a copy in at least one place on or near the playing field to which the disposal relates and, in any event, at each official entrance to the playing field, for not less than 6 weeks;
  - b) Place a copy on its website (where it has one) for not less than 6 weeks; and
  - c) Send a copy of the notice to any owner or occupier of land adjoining the playing field.
- v. No later than the day on which the notice is first published, send a copy of the notice **and** details of the proposed disposal to:
  - a) Persons or bodies specified in Schedule 1 to the Regulations, i.e.:

- i Any local authority whose area includes any part of, or shares a boundary with any part of, the playing field to which the disposal relates;
    - ii The Sports Council for Wales;
    - iii Fields in Trust Cymru;
    - iv Play Wales; and
    - v The Open Spaces Society;
  - b) Persons or bodies which appear to the local authority to represent the interests of persons or bodies who are in the authority's area, or in the area an authority which shares a boundary with any part of the playing field, and who make use of the playing field; and
  - c) Such other persons or bodies as the authority considers appropriate.
- vi. 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.

### Consultation

9.2 The Regulations set out the minimum requirements for consultation expected of a local authority proposing to dispose of a playing field. The 'National Principles of Public Engagement in Wales', developed by Participation Cymru, are an overarching set of principles aimed at organisations across the public service in Wales. They aim to offer a consistent approach and good standards for public engagement in Wales. The Principles are endorsed by the Welsh Local Government Association, One Voice Wales and the Welsh Government. Local authorities should have regard to the principles when consulting on the proposed disposal of a playing field. The Principles are available on Participation Cymru's website: <http://www.participationcymru.org.uk/principles>

### Period of Consultation

9.3 The Regulations prescribe a minimum period of consultation of 6 weeks. However, the local authority will need to consider carefully whether this minimum period of consultation is adequate, in the context of the scale and nature of the proposed disposal.

9.4 Whilst 6 weeks may be adequate for small-scale and largely uncontroversial disposals, a longer period of consultation is likely to be required for more significant or potentially controversial disposals. This may also be so when consultation goes beyond the minimum requirements of the Regulations and involves a broad range of engagement methods, such as public meetings and meetings with user representatives and other bodies. A longer period of consultation may also be appropriate during recognised holiday periods.

### Persons / Bodies to be Consulted

9.5 The Regulations prescribe as a minimum the persons and bodies to be consulted on the proposed disposal of a playing field. These include a number of national organisations which it appears to the Welsh Government have a direct interest in the availability of sport and recreational open space in Wales.

9.6 In addition to these national bodies, the local authority must consult such other persons or bodies which appear to it to represent the interests of persons or bodies who are in the authority's area, or in the area of an authority which shares a boundary with any part of the playing field, and who make use of the playing field. This means, for example, that an authority would need to consult representatives of local sports teams which play sport on the playing field, but would not be required to consult representatives of teams which travel from outside the immediate or neighbouring area (where there is a shared boundary). However, in keeping with an authority's wider discretion to consult such other persons or bodies as it considers appropriate, there may be circumstances in which it would be helpful or appropriate to consult representatives of users originating from beyond the immediate or neighbouring authority area.

9.7 Given the range of sports and recreational activities potentially affected, it is not possible to address comprehensively in guidance precisely how a local authority should exercise its discretion in determining which persons or bodies should be consulted. However, the Welsh Government encourages authorities to exercise their discretion broadly so as to engage with a wide range of persons or bodies with a potential interest. In this way, the authority will benefit from an appreciation of the views of a broad cross-section of the community, before taking a final decision on a potential disposal.

### Information to be provided to Consultees

9.8 The Regulations do not prescribe the precise nature of the information to be sent to consultees, beyond the statutory notice. This will enable an authority to tailor the information provided to the scale and nature of the proposed disposal.

9.9 If consultees are to respond effectively, they will require sufficient information to enable them to gain a good understanding of the underlying rationale for the proposed disposal and the intended future use of the site. It is likely much, if not all, of the required information will be contained in the impact assessment prepared by an authority under the Regulations. The Welsh Government suggests that the impact assessment, or in the case of a weighty document, a sufficiently detailed summary, should be included in the information sent to those persons or bodies whom an authority is required to consult.

9.10 There is no requirement to send information to those persons or bodies to whom an authority is required only to give formal notice that the proposals are available for public inspection. Such persons or bodies are entitled to a copy of the proposals on request, subject to the payment of a reasonable charge. It is not, however, compulsory for an authority to make such a charge and careful consideration should be given to whether it is appropriate to do so.

9.11 The principal office of an authority may not always be the most readily accessible location for members of the community in which a playing field subject to potential disposal is located. Very often, community councils do not have a principal office. Consequently, the Regulations anticipate that an authority's proposals will be available for public inspection at locations in addition to its principal office. Where practicable, an authority's proposals should be made available for inspection in a location or locations reasonably proximate to the area in which the playing field is located. Suitable venues might include a local office of the authority, libraries, leisure centres, community halls or similar community buildings.

## **10. Consideration of Representations**

10.1 Regulation 6 provides a local authority must consider all representations received in relation to a proposed disposal during the consultation period. The Regulations also make it clear the authority may consider any representations received after the end of the consultation period.

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

## **11. Decision Following Consultation**

11.1 Regulation 7 provides a local authority, having considered any representations received, must prepare a report ("the Decision Report") summarising those representations and the reasons for its decision to proceed, or not to proceed, with the disposal.

11.2 The Regulations do not prescribe the detailed content of the Decision Report. However, the report should provide sufficient detail to enable a person or body to gain a fair and reasonable understanding of:

- the nature and extent of the representations received and considered by the authority;
- the nature and extent of any representations received after the consultation period which the authority did not consider and its reasons for not doing so; and
- the rationale for the authority's decision to proceed, or not to proceed, with the disposal.



Decision Not to Proceed

11.3 Where, in light of representations received or other factors, an local authority decides not to proceed with a disposal, as soon as reasonably practicable after making the decision it must send a copy of the Decision Report to any person or body from whom it received a substantive representation which was taken into account in its decision.

Decision to Proceed

11.4 Where an authority decides to proceed with a disposal, as soon as reasonably possible after making the decision, it must:

- i. Publish, on two consecutive weeks in at least one newspaper circulating in the authority's area, a notice informing the public of:
  - a) the authority's decision to dispose of the playing field; and
  - b) Informing the public of the place or places and times at which the Decision Report may be inspected and the period in which it would be possible to do so. The minimum period is 6 weeks after the date the notice is first published in a newspaper;
- ii. Make the Decision Report available for inspection during normal office hours at the authority's principal office (if it has one) and, if reasonably practicable, at one or more other places in its area.
- iii. No later than the day on which the notice is first published:
  - a) Display a copy in at least one place on or near the playing field to which the disposal relates and, in any event, at each official entrance to the playing field, for not less than 6 weeks;
  - b) Place a copy on its website (where it has one) for not less than 6 weeks; and
  - c) Send a copy of the notice and Decision Report to any person or body from who the authority received a substantive representation on the proposed disposal.
- iv. Subject to the payment of a reasonable charge, provide a copy of the Decision Report to any other person or body who requests it.

11.5 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 Welsh Government regards it as sufficient for the Decision Report to be sent to the petition organiser, where contact details are known or can be readily established, rather than to each of the individual named signatories.

11.6 Under Regulation 7(11), an authority may not proceed with a proposed disposal until a period of 12 weeks has elapsed from the day on which the notice is

first published. This is intended to provide a reasonable minimum period in which objectors may initiate a legal challenge to the authority's decision.

## **12. Electronic Communication**

12.1 Regulation 8 makes provision for electronic communication with interested parties. Where a local authority is required to send a document or give notice etc to another person or body having an address for electronic communications, it may do so by way of electronic communication.

12.2 Similarly, a person or body who may make representations to a local authority as provided for under the Regulations, may do so by way of electronic communication to the address provided by the authority.

12.3 An electronic communication received outside the recipient's normal office hours is to be taken as having been received on the next working day. "Working day" does not include a Saturday, Sunday, Bank Holiday or other public holiday.

## **13. Application of Guidance**

13.1 Regulation 10 requires a local authority to have regard to this guidance when considering the potential disposal of a playing field.

## **14. Enquiries**

14.1 Enquiries about this guidance should be directed to:

Ethics and Regulation Team  
Local Government Department  
First Floor, North Wing  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3 NQ

Telephone: 029 2082 3621 / 029 2082 6414  
Email: [ethicsandregulation@wales.gsi.gov.uk](mailto:ethicsandregulation@wales.gsi.gov.uk)