



**Cynulliad Cenedlaethol Cymru**  
**The National Assembly for Wales**

**Pwyllgor Deddfwriaeth Rhif 1**  
**Legislation Committee No. 1**

**Dydd Iau, 22 Ionawr 2009**  
**Thursday, 22 January 2009**

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Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales)  
Measure—Stage 1, Evidence Session 1

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

These proceedings are reported in the language in which they were spoken in the committee. In addition, an English translation of Welsh speeches is included. This is a draft version of the record. The final version will be published within five working days.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Lorraine Barrett	Llafur (yn dirprwyo ar ran Ann Jones) Labour (deputising for Ann Jones)
Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Rosemary Butler	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Chris Franks	Plaid Cymru (yn dirprwyo ar ran Janet Ryder) The Party of Wales (deputising for Janet Ryder)
Ann Jones	Llafur Labour
Huw Lewis	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

**Eraill yn bresennol**  
**Others in attendance**

David Lloyd	Plaid Cymru The Party of Wales
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**Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol**  
**Assembly Parliamentary Service officials in attendance**

Keith Bush	Prif Gyngorydd Cyfreithiol a Chyfarwyddwr Gwasanaethau Cyfreithiol Chief Legal Adviser and Director of Legal Services
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Sue Morgan	Cyngorydd Cyfreithiol y Pwyllgor Legal Adviser to the Committee
Liz Wilkinson	Clerc Clerk
Graham Winter	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

*Dechreuodd y cyfarfod am 12.59 p.m.*

*The meeting began at 12.59 p.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Rosemary Butler:** Welcome to the first full meeting of Legislation Committee No. 1, or *numero uno*, as Eleanor likes to call it. We have some substitutions this afternoon. Chris Franks is substituting for Janet Ryder, and Lorraine Barrett is substituting for Ann Jones. Ann is on other Assembly business, at the moment, but she might join us later. Thank you very much for substituting. I welcome Dai Lloyd. Perhaps you could introduce your team to us, Dai.

[2] **David Lloyd:** My team comprises Keith Bush, esteemed legal adviser, and a range of other advisers to my left, namely Joanest, Alys and Gareth. They have all been working assiduously since my Plenary debate on 6 February 2008 on my Proposed Playing Fields

(Community Involvement in Disposal Decisions) Measure. Not a minute has been wasted in preparing this Measure for this day.

[3] **Rosemary Butler:** I was impressed, not just with the quantity but with the quality of your team.

[4] I remind people that the meeting will be conducted bilingually. You may speak in Welsh or English as you choose. Instantaneous translation is available via the headphones. If you are hard of hearing, the headphones can also be used to amplify the sound. I also remind everyone to switch off all pagers and mobile phones; please do not just leave them in silent mode, as they do interfere with the electronic system. I remind speakers that we do not have to touch the microphones, as they work automatically.

1 p.m.

**Mesur Arfaethedig Caeau Chwarae (Ymgysylltiad Cymunedau â  
Phenderfyniadau Gwaredu) (Cymru)—Cyfnod 1, Sesiwn Dystiolaeth 1  
Proposed Playing Fields (Community Involvement in Disposal Decisions)  
(Wales) Measure—Stage 1, Evidence Session 1**

[5] **Rosemary Butler:** We are here today to take evidence from Dai Lloyd, who has proposed this Measure. We have a long list of questions for you this afternoon, Dai—I believe that there are 44 questions.

[6] I will ask the first few questions. Why do you think that there is a need for this proposed Measure, given the protection that is already afforded to playing fields throughout Wales in the planning system?

[7] **David Lloyd:** This Measure produces novel legislation, in a way, in that this covers the time before the planning system kicks in. The idea is that this is pre-sale consultation with members of the local community, interested health bodies, health clubs and sporting societies before any decision has been agreed by the local authority; it is consultation with local residents, pre-sale and prior to any decision being made as regards disposal or otherwise. Therefore, before any planning system kicks in, as I alluded to in the Plenary debate, this is an additional safeguard to try to protect our council-owned playing fields. I was staggered to discover that there is no statutory protection for playing fields in legislation. Historic buildings, historic gardens and trees are protected, but playing fields are not protected. This is an additional hurdle to try to rectify that omission. This is a novel Measure of pre-sale consultation.

[8] **Rosemary Butler:** Could you give us some more detail about the difference that you are proposing? I have not really got that.

[9] **David Lloyd:** At present, we have the Local Government Act 1972, which states that, if a local authority proposes to dispose of open space—not just playing fields, but it includes playing fields—all that it has to do is to advertise for a fortnight in the local newspaper; that is it. Evidence suggests that you have to be extremely lucky to pick up on that advertisement in that fortnight; therefore, most people do not actually get to know about it. That is the protection, such as it is, that is afforded to our playing fields at present. In this Measure, I am suggesting an additional hurdle: when a local authority is contemplating sale, before that decision is undertaken, that it communicates its intention via an impact assessment to the householders—the residents—upon whom it would directly impact.

[10] **Rosemary Butler:** You only recommend playing fields, rather than just open space.

[11] **David Lloyd:** This is purely about playing fields. There is a rigid definition of playing fields, which we will, no doubt, touch upon later on. The big picture situation is not to be forgotten, in terms of the larger health agenda and the obesity epidemic—the idea that we have to get people more physically active than they are at present. Inactivity is a major contributor to obesity, as well as the wrong diet, and we have to make it easy and cheap for people to become active, which means making it more difficult to sell off our playing fields.

[12] **Rosemary Butler:** That is fine. Of course, we cannot go into the use of the fields. Lorraine, would you like to ask some questions?

[13] **Lorraine Barrett:** Could you clarify whether your proposed Measure extends to the change of use or appropriation of playing fields by a local authority? You talked about selling off and disposing of land. If the land remains within the ownership of the local authority, but it may want to use it for something else or appropriate it to another body for use as something other than a playing field, such as for building a school or so forth, does your Measure extend to that?

[14] **David Lloyd:** No, as I said, my proposed Measure does not extend to planning considerations. Changing the use of a playing field is a planning consideration, but my Measure is to put in a hurdle before a decision has been made on the use of a playing field by a local authority, and calls for the local community—including sports clubs, health bodies and other statutory consultees, which you can see in annex 1 of the explanatory memorandum—to state its views on the possibility of such a playing field being disposed of. That comes in before the decision has been made and before the planning system kicks in. Change of use is a planning consideration that is not part of this Measure. My Measure comes before that, and just replaces the fortnight's worth of adverts in the local free press, to make a stronger case for consulting with the local residents.

[15] **Lorraine Barrett:** So, your Measure is only talking about that two-week window of opportunity, regardless of what the council wants to do with the playing field? The council could be selling it or building on it, so with either option the residents will be losing their playing field.

[16] **David Lloyd:** My Measure has nothing to do with planning law. This is a Measure for local government, under matter 12.5(b) of Schedule 5 to the Government of Wales Act 2006, which is as follows:

[17] 'the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions'.

[18] Such a function would be the selling off a local playing field, which would certainly affect local residents; in my experience, they are certainly interested in that. My Measure comes under matter 12.5(b), which has nothing to do with planning law. Planning law comes later, if a decision has been made to sell off the playing field. The Measure is about ensuring community consultation in any decision, along with an explanation, which is where the impact assessment comes in, which we will doubtless touch on later, as regards the possibilities for that playing field. This is about informing the local residents in a way that does not currently happen—local residents can wake up one morning to discover a pink laminated planning notice on a tree at the end of the street, which is the first time that they hear that the local playing field is going. This Measure makes it statutory that the authority writes to each householder explaining what is likely to take place. So, this is before planning law kicks in—it is a separate consideration entirely.

[19] **Lorraine Barrett:** I will now go on to technical advice note 16, which is on sport, recreation and open space. You acknowledge the work being undertaken by the Government in relation to that, so can you explain the relationship or interaction between TAN 16 and your proposed Measure?

[20] **David Lloyd:** There is no interaction, as I have just explained, because TAN 16 is part of planning law. I am obviously aware of the existence of TAN 16 and, with the brilliant expert legal advice—which has been brilliant in the drafting of the details of this Measure—that I have had, we were obviously cognisant of regulations in terms of planning. In terms of the definition of a playing field, we relied on the town and country planning regulations, and we were aware of the possible amendments to that, which come under TAN 16, as regards refining the definition of a playing field. So, being aware of those two bits of planning regulations is how we have arrived at the definition of a playing field, which is stated later on in this Measure. However, there is no relationship with my Measure, because TAN 16 is on planning.

[21] **Lorraine Barrett:** Sticking with TAN 16, the Welsh Local Government Association, in response to the consultation on your Measure, stated that the revisions to TAN 16 will provide adequate and appropriate safeguards in relation to the disposal of playing fields. I wonder what your view is on that. Could your Measure be seen as premature in light of the TAN 16 amendments?

1.10 p.m.

[22] **David Lloyd:** I do not agree. I am aware of the consultation response to the draft of my Measure, and there was a split: everyone outside local authorities was deliriously overjoyed with the proposals, and everyone with anything to do with a local authority, or the WLGA, felt that the Measure was unnecessary, and that the work was already being done. The fact is that 24 playing fields in Wales are under threat today, and we have lost 13 in the last few years. Local authorities may feel that current work is protecting playing fields, but sadly, people's experience seems to suggest otherwise. All that I am suggesting is that we should have an extra hurdle in informing the public at a time when they can influence the final decision. Do you want to add anything, Keith?

[23] **Mr Bush:** I would merely underline the fact that there are separate regulatory regimes relating to planning and the disposal of open space, which will obviously include playing fields, and this Measure is solely concerned with the disposal aspect. It neither undermines nor adds to whatever changes may take place in relation to the planning regime. One can understand that you can have a situation where a local authority might itself seek planning permission for a change of use prior to disposing of the land. We can see that there are issues to do with changes of use that are quite distinct from the question of whether the asset should continue to be available to the community through the ownership of the local authority. From a legal point of view, there are two ways of controlling the use and ownership of playing fields, and Dai Lloyd's Measure addresses one of them, but not the other.

[24] **Lorraine Barrett:** You mentioned the WLGA, and you will be aware that it feels that your proposed Measure is significantly bureaucratic and would place a huge burden on local authorities in terms of time and resources. I wonder if you could comment on that. Have you made an assessment of the financial implications of your proposed Measure for local authorities?

[25] **David Lloyd:** In terms of the bureaucracy, I do not agree with the WLGA. The whole crux of the issue is community involvement in decision making. Much Government policy, and much WLGA policy, is dedicated to putting citizens at the heart of decision making. Here is a golden opportunity to do just that, involving citizens before the fundamental decision to

dispose of a playing field is taken. I am talking about community involvement in such issues. The community might think that it is a great idea to dispose of a playing field—I am not pre-judging the issue—I am just giving local residents in the electoral ward where a playing field is located the chance to express an opinion.

[26] Yes, that means sending a letter outlining the impact of any proposed sale to each householder in the electoral ward that is involved with the playing field. In defence of my Measure, I do not think that that is monstrously bureaucratic, frankly. Local authorities already communicate with residents in all wards episodically—not just the one or two wards that I am thinking of, depending upon the location of the playing field. A mechanism is already in place regarding the electoral register, around which they also have to communicate annually with burghers in terms of writing a letter. So, my suggestion is not novel in terms of the mechanics required to undertake it, and it is just focused on that one particular ward that needs to know about the possibility of selling off the playing field.

[27] With regard to the other part of the bureaucracy cost situation, a local authority is not going to be thinking about selling this land off on a whim. It should have written up an open-space assessment as part of TAN 16, which will appear one of these days. An open-space assessment equates to the impact assessment I am talking about. Therefore, there is no new work here, other than sending a letter to each householder, which I would hardly say is an onerous exercise, because local authorities send letters to all the householders in their council areas from time to time, just to ensure that they can collect council tax or that people are registered on the electoral roll and so on. Therefore, I would deny that is in any way overly bureaucratic.

[28] With regard to the financial implications, we have looked specifically at those as part of the consultation on my original draft of the proposed Measure. We asked local authorities specifically what the financial implications would be, and most local authorities could not tell us. Some seemed to think that they would be huge, but could not put a figure on it. However, to be fair, some authorities, such as Denbighshire County Council, said in a measured response that there are not that many playing fields under threat. As I said, there are 24 playing fields under threat and there are 22 local authorities, so some basic mathematics will tell you that that is not too many playing fields per authority. Therefore, sending letters out to every householder in a ward is not going to be a weekly event. It is something that might happen once every five or 10 years, and, it is to be hoped, after this proposed Measure, it will not happen at all. Therefore, the financial implications would not be that great either.

[29] If you are talking about the financial implications on statutory consultees, we have a couple of figures from them. Fields in Trust reckons that it would cost something like £5,300 to respond in an appropriate fashion, in terms of officer time and so on. I think that the Sports Council for Wales quoted a figure along the lines of £2,900 or thereabouts. Therefore, we have some costs, and, as part of the consultation exercise on my original draft of the proposed Measure, we tried to firm those costs up, but, as I have outlined, most of the figures are not that firm. However, I do not think that the finances represent a hurdle, because most of the work in terms of assessments should be done already, in view of the impending TAN 16, and sending letters to householders in one ward, when compared with sending letters to householders in the whole county borough, is not financially onerous.

[30] **Rosemary Butler:** Sticking with the costing for a minute, you said that it might be about £5,000, and that it could be about £2,000. However, there is the issue of who should be written to and how many people that would involve. Are you talking about the whole of an electoral division?

[31] **David Lloyd:** The ward, yes.

[32] **Rosemary Butler:** Fine, so you are talking about the whole of the ward. This was not in the original proposal, was it? This was put in after the consultation, was it not?

[33] **David Lloyd:** After the debate, my original draft went out to consultation. We have been changing and ameliorating it in view of the consultation responses. I am not an insensitive creature, and I did not think that I had all of the answers. Therefore, the proposed Measure has been ameliorated somewhat in light of the consultation responses. We have tried to tighten it up with regard to who would represent a relevant householder. It is usually the electoral ward, so we have drilled down to that level. Obviously, it would vary if it was a huge playing field; the other list of consultees comprises various sporting clubs and health bodies, so they would be involved too if we were talking about a playing field that was playing a strategic regional role, but they would be involved as statutory consultees.

[34] **Rosemary Butler:** So you are saying that, for a playing field, everyone in the electoral division would have to be notified, but that for a planning decision only the local neighbours must be notified. In which case, you are placing a burden—whether large or small—with regard to playing fields as opposed to planning applications.

[35] **David Lloyd:** This is why I was trying to explain the big picture at the start. We are facing an obesity epidemic. We used to call the type of diabetes that appeared only in elderly people as maturity-onset diabetes; we have had to change the name, because it now appears in children as a result of obesity. There is an overriding concern that we have already lost too many playing fields in Wales. The issue is of such importance that all residents in the immediate neighbourhood, which would mean the local ward, absolutely deserve to be involved in decisions about whether or not to dispose of their playing field.

1.20 p.m.

[36] **Rosemary Butler:** Lorraine, are you satisfied with that?

[37] **Lorraine Barrett:** Yes. I have finished my questions.

[38] **Rosemary Butler:** Nick Ramsay is next.

[39] **Nick Ramsay:** I would like to ask you a few questions about section 1 of the proposed Measure, which relates to the restriction on the disposal of playing fields by local authorities. Section 1(2) provides that the requirements of the proposed Measure do not apply when the proposed disposal is granted to a local authority, a registered charity or a body or association whose aims include sporting or recreational activities. Can you expand on the purpose of the exemptions provided for in this sub-section and tell us how you arrived at the specifications of the bodies included in the exemption?

[40] **David Lloyd:** The specifications were arrived at on the basis of the consultation responses that we received. The defining interest of the exemptions is to exempt any body, including another local authority, if it came to it, or a charity that has an abiding and continuing community interest, in other words, any body that has the community interest at heart, and if it is a sporting body, it will have an abiding sporting community interest at heart. So, the exemptions apply to ensure that the playing field continues as a playing field, without being onerous in a bureaucratic sense.

[41] **Nick Ramsay:** You have decided to exempt all registered charities from the requirements of the proposed Measure. You have not limited it to those whose aims would include the promotion of sporting activities. Is that right?

[42] **David Lloyd:** Yes.



[43] **Nick Ramsay:** So, it is a blanket exemption for charities.

[44] **David Lloyd:** I was happy to accept what the consultation responses said about that, because charities have an abiding community interest and an abiding community prejudice, if you like. This is about trying to redress the balance and giving the community fair play. So, I am unashamedly prejudiced in favour of community groups and interests that would have the interests of their local community at their heart.

[45] **Nick Ramsay:** But they would not necessarily want to obtain the land for sport or recreational purposes.

[46] **David Lloyd:** No, but as I have mentioned, this is not just about sporting activities; it is about the wider health and wellbeing agenda, and ensuring people's wellbeing can lead to all sorts of ramifications, which I could go into, but I see that the Chair is shaking her head, so I will not go into all the possible ramifications of the health and wellbeing agenda. However, the exemption does include all charities.

[47] **Nick Ramsay:** What guarantee is there that the bodies referred to in section 1 that may obtain a playing field, particularly when they are other local authorities or charities, would continue to use it for the same purpose—or perhaps there are not guarantees?

[48] **David Lloyd:** There are no guarantees. As I said, my proposed Measure is completely separate to the planning programme, so whoever takes over a playing field would have to be subject to planning law. My proposed Measure is outwith planning law; it kicks in before that. It is about community information—telling the community what may or may not happen—and the critical and pivotal role that the community would have in getting its views across before the local authority made its decision to dispose of it in one way or another. Further disposal would be a matter for planning law or for future planning law. My proposed Measure is about pre-sale consultation with local residents and other statutory bodies.

[49] **Nick Ramsay:** So, was the decision on which bodies or associations should fall into that exemption made on the basis of the consultation? Is it now set that it would be local authorities, charities and so on?

[50] **David Lloyd:** I am always open to being flexible, but the decision on which bodies would be exempt would presumably be made by local authorities, and such a decision could possibly be challenged in the courts. I am looking for some legal expertise from my right.

[51] **Mr Bush:** A local authority that was proposing to dispose of a playing field by allowing a particular body or individual to take it over would first need to ask itself whether that body is included in section 1(2) and, therefore, whether it was necessary to go through the procedures laid down by the proposed Measure. So, the local authority, in the first instance, would have to decide whether or not the disposal would be exempt. If it decided that it was not, it would not follow the procedure. If its decision proved to be wrong and it had made a mistake or had not inquired properly into whether the body that it was proposing to dispose of the land to was an exempted body, then it would not be acting lawfully, it would be subject to intervention by Welsh Ministers under the power in section 7, or, ultimately, it would be subject to control by the courts. So, in the first instance, it is for the disposing authority to take a view as to whether a body falls into one of those categories. Obviously, there can be no argument as to whether a body is a local authority or registered charity. A body or association whose aims include the promotion of sporting or recreational activities is, again, pretty clear. So, a body that claimed that it fell within that exemption would produce its aims for the authority to look at and it would be fairly clear, in almost all cases, as to whether it fell within that description.

[52] **Nick Ramsay:** You mentioned at the start of your presentation the Local Government Act 1972. Under that legislation, local authorities—and, again, you told us this—may not dispose of open spaces unless they first publish a notice of their intention for, I think, two successive weeks in the local newspaper, which seems to be quite limited. Will local authorities continue to be subject to requirements contained in sections 123 and 127 of the 1972 Act in cases where the proposed disposal of a playing field is to persons specified in section 1(2) of the proposed Measure?

[53] **David Lloyd:** I will defer to Keith in a moment. The Local Government Act 1972 applies to open spaces; my Measure applies to playing fields. So, where, previously, a playing field was subject to the Local Government Act 1972, which relates to all open spaces, my Measure would take over that duty for community consultation and that requirement. There are other open spaces that are not playing fields, which will still be subject to the provision of the Local Government Act 1972. So, if it is an open space that is not a playing field, the only protection afforded to that open space will be the fortnight's worth of adverts in the local press. Have I interpreted things correctly, Keith?

[54] **Mr Bush:** So far, yes. However, the question is right in the sense that if a piece of land was both a playing field and an open space, and a local authority was proposing to dispose of it to a body other than one that fell within section 1(2), then section 123 of the Local Government Act 1972 would continue to apply. So, the local authority would still need to advertise for two weeks and that system would continue to operate.

[55] **Chris Franks:** Before I ask my question, I would like to note that I have had some involvement, as an AM, with two of the recreation spaces listed as being under threat. That is okay, but for the record, they are Rumney recreation ground and St Cyres.

[56] I would like to move on to discuss section 2: principal definitions. Is the meaning of 'dispose' provided for in existing legislation?

[57] **David Lloyd:** The simple answer is 'yes'. However, I emphasise once again that my Measure is to do with pre-sale consultation and that is the stage before any decisions to sell and any decisions to invoke planning law. However, the straightforward answer is that there is a legal definition of 'disposal', which Keith can elaborate upon.

[58] **Mr Bush:** It is essentially the same definition as in section 123 of the Local Government Act 1972.

[59] **Chris Franks:** So, it remains the same as the definition in existing legislation.

[60] **David Lloyd:** Yes, it is the same as in the existing legislation.

[61] **Chris Franks:** Okay. I think that I will move on from that. The requirements in the proposed Measure do not apply to a 'short tenancy', which is a seven-year period. How did you arrive at this threshold? Do you consider that the impact of a short tenancy on the health and wellbeing of the local community could be just as significant as for any other disposal, albeit over a shorter period of time?

[62] **David Lloyd:** We arrived at that definition on the basis of expert legal and historical guidance.

1.30 p.m.

[63] **Mr Bush:** As I say, we have adopted the same definition as in section 123 of the

Local Government Act 1972, which draws that line between what counts as a disposal that needs to be consulted on and what does not. Where you draw that line is a matter of judgment, but a short disposal, for example, renting out land for a short time, should not, in principle, attract the same kind of safeguards as selling it or leasing it for 99 years or 30 years or whatever. Where you draw the line is a matter of judgment, but the judgment that has been adopted here is to follow the same approach as is taken in the Local Government Act 1972 in relation to disposals of open space.

[64] **Chris Franks:** I will now move on to the definition of a playing pitch. How did you arrive at that definition?

[65] **David Lloyd:** The starting point was the town and country planning legislation—the Town and Country Planning (General Development Procedure) Order 1985, for those of you who are into the details of planning law. There is a definition of a playing pitch in that. I was also aware, as I have mentioned, of the developments in the ether of the imminent TAN 16, which also provides an updated definition of a playing field as regards outdoor physical activities, usually team sports. That is how we have arrived at the definition of a playing field for the purposes of this proposed Measure. It is an amalgam of town and country planning law that is already in place and what is expected to be in TAN 16, which is why we have arrived at the definition of a playing field being a delineated area for sports such as football, rugby, American football and other activities such as bowls and tennis, which are new to the definition of a playing field—the definition has been expanded as a result of those. However, it is based on what is already in place and what is anticipated to be in TAN 16.

[66] **Chris Franks:** So, can I take it that you are content with the definition of ‘playing field’ and ‘playing pitch’? Is it sufficient to include the whole list that you mentioned? Your memory may have failed you, because you did not mention Shinty and perhaps you could explain to us what that means on another occasion. Therefore, you are content that the definitions are sufficiently broad.

[67] **David Lloyd:** Yes, I am content, particularly in terms of what looks likely to be included in TAN 16, which is why the size has been reduced from 0.4 ha to 0.2 ha. As you will appreciate, that definition happily includes all junior school playing fields. So, you need a delineated area, but it does not have to be a posh stadium like the Liberty Stadium. Any generalised, unofficial marking of a football pitch outline will do for a playing field and 0.2 ha covers junior school playing fields. So, a statutory pre-sale consultation will need to take place with local residents before any junior school playing field gets sold off.

[68] **Mr Bush:** As Dai Lloyd has indicated, the starting point was the definition of a playing field in the Town and Country Planning (General Development Procedure) Order 1985 just for the sake of consistency, but it has been tweaked, particularly in the light of consultation, and that is why it includes references to bowls and tennis. On the other hand, the list of sports in the Town and Country Planning (General Development Procedure) Order 1985 is somewhat longer because that piece of legislation extends beyond Wales and so we have not included some of the sports such as Gaelic football, Shinty, hurling, polo—

[69] **David Lloyd:** Australian football.

[70] **Mr Bush:** Yes, Australian football and lacrosse, although you will see, in deference to the popularity of baseball in Cardiff and Newport, that we have included baseball.

[71] **Chris Franks:** So Shinty is not included.

[72] **Mr Bush:** If there is a Shinty club somewhere in Wales, we are willing to consider its inclusion.

[73] **David Lloyd:** Flexibility is the name of the game. These were just noted examples. I would also like to point out that novel ones like bowls and tennis are included—up until now, the list had consisted of just team games.

[74] **Rosemary Butler:** I will just go back slightly. I am a bit concerned that unless you have a marking on your field, you will be excluded by this definition. There are lots of new sports, such as t'ai chi, for which you do not have to mark the pitch or the playing field. Are you constraining yourself with this, in that if the sport has to have lines on the pitch, it is okay, but if it does not, it is excluded?

[75] **David Lloyd:** No, I do not think so. This is another attempt to be flexible by trying to define as many playing fields as possible as playing fields. That is why I made the point that I am not just looking at purpose-built stadia-type playing fields; I am looking at unofficial pieces of grass where the kids have traditionally played football with a couple of coats on the ground—places that are have obviously been used as football pitches for generations. The field does not have to have all the posh lines, but has been demarcated in some way so that it is a recognised playing field, as opposed to an open space or any open piece of green uncovered area. The proposed Measure does not apply to such places, but it does apply to playing fields and there is a rigid and well-trammelled definition of 'playing field' that comes from the Town and Country Planning (General Development Procedure) Order 1995, which would appear to be well tested hitherto. As Keith mentioned, we have tweaked it in the light of consultation and in the light of what is likely to appear in TAN 16. However, I am quite prepared to be flexible and if anybody has a pet sport, such as t'ai chi, that is tremendous. 'Get out there', I say.

[76] **Rosemary Butler:** However, the thing is that you are giving a list and therefore if you are not on the list, you are excluded. We cannot tweak the proposed Measure after we have agreed it as an Assembly. Are you not constricting things by having that list?

[77] **David Lloyd:** I do not think so. If we did not have a list at all, people would say, 'Well, you are just looking after the footie then, are you?' No, this is a very wide—

[78] **Rosemary Butler:** They would say that you were just looking after what?

[79] **David Lloyd:** Footie—football. This list includes a wide breadth of sports and the point that I am trying to get across is that it does not include just the recognised traditional team sports of football and rugby. There is a whole gambit of sports there.

[80] **Rosemary Butler:** Yes, there are other sports.

[81] **David Lloyd:** Yes, there are. You will see bowls and tennis for both genders—

[82] **Rosemary Butler:** Being a former lacrosse player, I am a bit concerned that you are excluding me from this.

[83] **Eleanor Burnham:** But then, Chair, with lacrosse you do not have—

[84] **Rosemary Butler:** Okay. So, you are comfortable with what you are proposing on that.

[85] **David Lloyd:** I am comfortable, yet always willing to be flexible, Chair.

[86] **Rosemary Butler:** Chris, are you fine on that point?

[87] **Chris Franks:** I think that we have explored all that.

[88] **Huw Lewis:** Dai, I want to move on to section 3 and to take a look at the impact statement that you mention. You are going to require that local authorities prepare what you are calling an 'impact statement'. First, what is the purpose of that? Secondly, when you take into account that TAN 16 recommended that planning authorities undertake an open-space assessment, could we be in a situation, because your Measure is outside the planning side of the law, where you are essentially asking local authorities to do the same thing twice? First of all, they would have to undertake an impact statement prior to the planning law kicking in and then, when the planning law does kick in, they would have to do it all over again. In what way are you adding value? That is what I am asking.

[89] **David Lloyd:** I am adding value in that householders in the immediate vicinity of a playing field will have a letter through their letterbox not just telling them of the possibility that the playing field could be sold off, but also including an attempt to explain the rationale behind such a proposal in terms of an impact assessment. I would see the impact assessment as the open-space assessment that should already have been carried out. All planning authorities know that TAN 16 is imminent and they all know that an open-space assessment is part of that and, therefore, an open-space assessment should already have been prepared. I am not talking about doing the work twice over.

1.40 p.m.

[90] An impact assessment is the same as the open-space assessment, but if you are talking specifically, as the explanatory memorandum states, a summary of the impact assessment—which would be a bit of a document—would be included in the letter to the householder explaining the exact nature of the proposed disposal and giving some idea of how many playing fields or facilities exist locally and the impact of any proposed disposal, and not just in the form of lost civic amenity, but on the population's health and wellbeing as well, because health and wellbeing strategies should also have been prepared in advance by a variety of bodies, including the local authority. I am not asking for a novel piece of work; health and wellbeing strategies should already have been prepared, as should the open-space assessment as part of the imminent TAN 16. All I am saying is that you have the information, so why not stick it in a letter to every local resident affected? That would enrich the consultation process, so that not only does the householder get a letter to say, 'There's a chance that your local playing field is going to be sold off. What do you think?', there is also an opportunity to explain in rational detail the rationale behind such a proposition to present a more even-handed message. It is about trying to be even handed all round.

[91] **Huw Lewis:** I will come on to the health and wellbeing aspect in a second. Essentially, you are telling us that an impact statement and an open-space assessment are the same animal. I suppose that the outcome would be that the public would get to see it earlier, but they are the same beast.

[92] **David Lloyd:** They would get to see a summary of it earlier. I am not talking about sending everybody a copy of the full impact assessment, because that would be a fairly bulky document. As part of the letter, I would include a summary of the main aspects of the impact assessment in terms of the open-space assessment and in terms of health and wellbeing as well.

[93] **Huw Lewis:** I will just shift our attention for a moment to your explanatory memorandum. Paragraph 1.2 states:

[94] 'The primary purpose of the proposed Measure is to place a duty on local authorities to consider the impact that selling off local authority owned playing fields would have on

local communities, in terms of health, well-being and social inclusion’.

[95] I am very pleased to see the phrase ‘social inclusion’ included. But then, when you get on to the body of the wording in your proposed Measure, paragraph 3(1)(c), ‘social inclusion’ has been dropped. Why is that?

[96] **David Lloyd:** It is an omission. I am quite happy to restore the phrase.

[97] **Huw Lewis:** Okay. So there was no nefarious purpose behind it. Good.

[98] **David Lloyd:** There is never a nefarious purpose to this proposed Measure—  
[*Inaudible.*]

[99] **Huw Lewis:** Well, that is what this process is for, to iron out the bumps. I think that many members of this committee would appreciate the inclusion of the phrase ‘social inclusion’.

[100] I mentioned that we would come back to the health and wellbeing side of things, and this, too, relates to the impact statement. Sub-paragraph 3(1)(c)(ii) of the proposed Measure requires that the authority identifies as part of its impact statement

[101] ‘the impact of the proposed disposal on... the health and well-being of residents’.

[102] You have touched on this point already. Are you not expecting rather a lot of a local authority with this requirement? How is it going to put that together? Is it not a lot to ask an authority to explain the impact of each and every particular proposal on the health and wellbeing of each and every resident? How can authorities possibly do that?

[103] **David Lloyd:** The answer has several facets. I am content and comfortable to ask that of local authorities, as they should have health and wellbeing strategies in place now. The health and wellbeing legislation has been an established part of life in Wales for some time now. The other point is that it is not onerous when it comes to how often local authorities contemplate selling off any playing field. As I mentioned, there are 24 of them currently under threat, which is roughly one per local authority, although I am aware that there are at least three under threat in the city and county of Cardiff. So, in other words, potentially selling off a playing field is not an everyday event; it should be quite an extraordinary event, and it should be an unusual and an important event.

[104] As I have outlined, it is important in its impact on health, the obesity epidemic and the wider public health agenda. I have a copy of a *British Medical Journal* here, which praises the Welsh Assembly Government to the heavens for its innovative approach to health promotion, specifically meaning that it has been tackling the wider public health agenda for years—and not just since 2007—by truly getting to grips with the determinants of ill health that lie outside the NHS. Health and wellbeing strategies are to do with housing, poverty, social inclusion and physical inactivity. Brave words are said about playing fields—even the Welsh Local Government Association’s guidance is very strong on protecting playing fields. The British Medical Association and all sorts of other bodies feel that protecting playing fields is pivotal.

[105] So, this is an important issue, and I imagine that it would be incredibly rare for a local authority even to contemplate selling off a playing field. The importance of this issue justifies all this necessary trouble, if you see it as that, on the part of the local authority. Having said that, the work should have been done already in preparation for the open-space assessment in technical advice note 16. Local authorities should have already done this work, as well as their work on the health and wellbeing strategies. There should be a summary for the

householder. Surely they would be justified in receiving that if we are talking about depriving them of possibly the only green space locally, as that could impinge on their wellbeing.

[106] Therefore, the proposed Measure is vital, and I make no apologies for getting local authorities to treat this issue with the importance that it deserves.

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

[108] **Huw Lewis:** I am sure that we will revisit those points, because the financial impact of that on the local authority needs to be explored. Going back to the impact statement in the round, I take on board the comprehensive answers that you have given, Dai, but how would you ensure all-Wales consistency in impact statements? How can we make sure that an impact statement in Monmouthshire is as good and as thorough as an impact statement in Pembrokeshire, say?

[109] **David Lloyd:** There is an element of our having to trust local authorities, and certain elements of the National Assembly need to learn to trust local authorities more on certain aspects. However, there is legislation around the corner, and present at the moment, as I have just said. In one part of the impact assessment, we would expect an assessment of what open spaces are available. That is in TAN 16, which has a pan-Wales application. Health and wellbeing strategies also have a pan-Wales application, albeit with 22 local variants.

1.50 p.m.

[110] We have not worried too much about possible local variations, because the situations regarding health and wellbeing are all different locally, and that needs to be taken into account. All of the legislation and documents that I have read, including various Welsh Assembly Government strategies such as ‘Climbing Higher’, the policy statements in the ‘One Wales’ agreement and information produced by medical and nursing colleagues about the pivotal role of a green, open space, in the form of a playing field, plays in ensuring the wellbeing of a community. That is the importance of this. We must have some local flexibility and we have to trust local authorities, but there are national guidelines to guide local authorities on how they would produce their impact assessments and their health and wellbeing strategies.

[111] **Huw Lewis:** Moving on to section 3(3) of the proposed Measure, in which you provide a definition of the phrase ‘the locality’—and I do not wish to read it all out, as you have a copy before you—did you get that from existing legislation or did you arrive at it during drafting?

[112] **David Lloyd:** The question of how we would drill that definition down arose often in the consultation responses, and they tended to indicate that ‘ward level’ and ‘the locality’ are in legislation somewhere, as alluded to by Keith.

[113] **Mr Bush:** It is a tailor-made definition to address the particular need of the proposed Measure. It does not reflect any precedent to be found elsewhere, and that follows from the fact that there is nothing quite like this in existing legislation.

[114] **Huw Lewis:** So, this is a novel definition.

[115] **David Lloyd:** It is a novel Measure.

[116] **Huw Lewis:** Yes, and there is nothing wrong with being novel, as such. However, are you content that the definition is sufficiently clear for local authorities to identify the relevant area easily? For instance, we could be talking about playing fields that are used by residents living from beyond the boundaries of the ward in which the fields are located. Schoolchildren could be bussed in to use playing fields that are outside their area. We could be talking about a playing field that is on the boundary of electoral divisions, which do not necessarily follow the pattern of how people move around a community; it could be on the boundary of three or four, particularly in a built-up area. So, are you absolutely confident that this definition will work for local authorities?

[117] **David Lloyd:** Yes, I am. The combination of local involvement in the community—which I would define, for the average playing field, as the local electoral ward, but, as you pointed out, certain large playing fields could involve more than one ward, in which case, I would send a letter to two wards—and our list of statutory consultees would encompass the people from outside the ward who would be regular users of that playing field. So, the combination of writing to each household involved and the other statutory consultees, such as sporting clubs that regularly use the playing fields, would take care of the scenario that you envisage. However, I am happy to be flexible where needs be. If it is a large playing field that is in two electoral wards, we would consult households in two electoral wards. However, the intention is to consult the residents of the electoral ward that is directly next door to the playing field.

[118] **Huw Lewis:** That brings me on to a concern that I have, Dai, because there will be financial implications to your proposed Measure for local authorities. I could envisage situations in which, for instance, there is a large playing field in the centre of a city, bordering several electoral divisions, and a primary school 2 miles away, which is outside all those wards, could be busing its kids to the field and so would also need to be consulted, as well as the parents perhaps. You could be talking about a large playing field that is used for competitions, and so teams from all over Wales could be using it regularly. Would they come into this? It would not be long before you were talking about sending a personalised letter to tens of thousands of people. Even with four or five city wards bordering a playing field, you could be talking about around 20,000 to 30,000 people. By the time you put a stamp on all those envelopes, the cost involved could easily amount to the cost of employing a council worker. This could involve a considerable cost for some authorities.

[119] **David Lloyd:** I take on board that concern, and I have never denied that there are financial implications to this for local authorities. Again, in many respects, the issue is one of proportionality. If the local authority gets it wrong, and there are huge campaigns, inquiries, tribunals, and judicial reviews about the proposed sale of a playing field, defending that viewpoint would not be a cheap option for the local authority either. I am trying to get structured and comprehensive community involvement at an early stage, so that everyone is not just involved with the idea but is also happy with the potential solution, to try to head off scenarios including the expensive defence of judicial reviews. I very much take on board your point about those rare examples of large playing fields in the middle of cities that encompass many wards, and would involve many schools and statutory consultees, but ultimately there is a balance to be struck between the cost involved and the importance of the whole topic. If this sort of decision will involve legal wrangling for years through the courts, with judicial reviews and so on, it will entail costs that have to be borne. So, there is a balance to be struck.

[120] Everyone keeps going on about the importance of putting the citizen at the centre—being citizen-focused—so here I am suggesting a novel proposed Measure, with some novel definitions, and, in a novel way, this is about being citizen-focused. There will be a cost attached to that. As I said, local authorities already communicate with all of their burghers, across the whole county, at least twice annually. In fact, it is probably more than that if you



count communications relating to the council tax, the electoral roll and so forth. In other words, the mechanism is already there to send stamped addressed or franked envelopes to the relevant households. I am not talking about needing a whole new tranche of machinery to encompass what is required. I would stoutly defend the pivotal role of what I am talking about.

[121] **Lorraine Barrett:** For me, the local Assembly Member, this has resonance the Rumney, Llanrumney and St Mellons areas of Cardiff. Rumney recreation ground is under threat of having a school built on it, and I am just thinking of the borders that Huw has mentioned. People living in St Mellons use this particular playing field a lot, but you would not automatically think that it was near the St Mellons area. Further to what Huw said, do you think that you are more likely to be challenged by judicial review if you have not sent a copy of the impact statement to those living in the outlying areas who may rely heavily on a particular playing field? I know that you have just said that your aim is almost to negate the need for, or at least not have as many, judicial reviews, but, in some ways, the more people you say you should send a copy to, the more likely you are to be the subject of a judicial review, because there may be residents of a whole area who did not receive a copy. If it is written in your legislation—

[122] **David Lloyd:** That is a valid point. As part of this novel proposed Measure, there is also a novel stop directive on the part of Ministers.

[123] **Mr Bush:** That was not actually the point that I was going to deal with. There are two different concepts that one has to bear in mind. The impact is on the locality, which includes the whole area that, in effect, benefits from the playing field. As the proposed Measure makes clear, that could extend beyond the boundaries of the local authority and could certainly extend beyond the local ward. That is a judgment that has to be made and a local authority has to take into consideration the fact that people may be coming from a distance to make use of such a facility. The precise requirement to provide a copy or summary of the impact statement is strictly limited to the ward or wards that are contiguous with the playing field. So, a local authority would know exactly who it has to send a copy of the note of the impact statement to, and so the risk of people saying, 'I am being impacted upon, but I live outside that area', would not arise.

2.00 p.m.

[124] **Rosemary Butler:** So, you have a list of all of the statutory consultees. So, would the people who use the sports field be included, not just the locals?

[125] **David Lloyd:** Yes.

[126] **Huw Lewis:** I take on board what you say about the importance of consultation, which is really the essence of your Measure. However, if we try to apply a test of reasonableness here—everyone accepts that consulting people costs money—are you not setting playing fields on a pedestal? A series of tests and duties would be placed on local authorities that they would otherwise never have to face if a health trust was closing a hospital, for instance, or a council was closing a school or a local library. You are making an exceptional case of playing fields, and local authorities could reasonably say that they could be closing down three schools but would not have to spend that amount of money on a consultation.

[127] **David Lloyd:** I do not think that I am being unreasonable. I have outlined the fundamental importance of playing fields to people's health and wellbeing, and I have referred to the obesity statistics and all the rest of it. Someone must make a call, one of these days, and I am suggesting that this Measure could make it a tiny bit more difficult than it

currently is—it is now distinctly easy—for local authorities to sell off playing fields. If we are talking about being proportionate, the Local Government Act 1972 states that local authorities just have to advertise the intention to sell off a playing field for a fortnight in the local press. If, as a local resident, you do not spot that, you will wake up one morning to find a pink laminated planning order on a tree on your road; you will be up in arms, and there will be a residents' campaign before you know it, because no-one has ever heard of this intention to sell off a large local playing field, which has been much loved for generations. People are understandably annoyed when they wake up one morning to find that, and already think that it is a stitch up. That is the perception in our communities at the moment of how things are run by our local authorities.

[128] I not only feel strongly as regards citizens' rights and their health rights, but also, as a former county councillor in Swansea, I am cognisant of the need to build up the reputation of local authorities. They need to be seen as being fair and reasonable, involving their citizens in important decisions. This is an opportunity to do that. I am not pre-empting what that decision would be; I am just enabling a proper, meaningful consultation to occur with each householder—not just to tell them that there is potential for the playing field to be flogged off, but the reason why that might happen, with an impact assessment, an open-space assessment or whatever. The fundamental issue is to be compared with what is currently happening—the perception that it is a stitch up against the local residents. Local authorities need to be seen to be doing something to redress that.

[129] **Eleanor Burnham:** I think that you have already answered my question, but I will ask it in case I have missed anything.

[130] Given the requirements provided for in section 3 relating to arrangements that a local authority must make to publicise the impact statement, to which you have just referred again, why do you think that it is necessary to include the specific duty to consult, which is provided for in section 4(1)?

[131] **David Lloyd:** The main crux of the Measure is consultation with local householders.

[132] **Eleanor Burnham:** That is fine. I also think that you have answered my next question too, but I will go through it in case. Why do you think it is necessary to consult as extensively as provided for in section 4(1), in particular section 4(1)(c)—that the occupiers of every household in each local government electoral division that includes any part of the playing field or which has a common boundary with any part of the playing field? If you have already answered it, fine.

[133] **David Lloyd:** As I said, I fundamentally believe in proper citizen-focused engagement and consultation before any decision is made, and this provides a way of doing that.

[134] **Rosemary Butler:** You do not mention house owners; you only mention the people who live in the house.

[135] **David Lloyd:** I mean the addressees.

[136] **Rosemary Butler:** Would the consultation be with the occupiers or with the owners? It is usually the owner as regards planning, is it not?

[137] **Eleanor Burnham:** Are you not referring, Chair, to the present usage of the playing field, and therefore it would be the occupier rather than the owner?

[138] **Rosemary Butler:** I am just clarifying that.

[139] **David Lloyd:** I was talking about the people living in the house at the time, whatever title you want to bestow upon them. As I keep on saying, this is completely separate to planning law; that kicks in later. This is pre-sale consultation.

[140] **Eleanor Burnham:** Moving on to the next question, why do you consider the method of consultation provided for in section 4(1)—that is, notification in writing—to be the most appropriate and/or effective way to engage with local communities and residents? We live in a changing technological world. Would you expect other forms of communication to be used, such as e-mail?

[141] **David Lloyd:** As I said earlier, I am a reasonable, flexible kind of guy. I will take all these technologies on board, but fundamentally, not everyone in the street in question will have a computer. There is a digital divide, but everyone, in my experience, has a letter box.

[142] **Eleanor Burnham:** What consideration did you give to other forms of consultation, and/or methods by which local communities and residents could be involved with a disposal decision? For instance, did you consider holding a public meeting, beyond writing to each occupier?

[143] **David Lloyd:** I considered a variety of those options, including e-mail and public meetings, but, fundamentally, I strongly believe that everyone has a right to know, and the way to guarantee that is to write to them. Whether they choose to do anything about it, and whether they even choose to open the letter, is up to the individual occupier, but at least they will have had the opportunity.

[144] **Eleanor Burnham:** How do you encourage them to open it, because many people will be intimidated by an official-looking communication? We know to our cost that many people bin such letters before opening them. Will you use an envelope with an enticing outward appearance that is perhaps less intimidating?

[145] **David Lloyd:** That would be a matter for the local authority. I would not intend to personally visit every occupier and open the envelopes for them.

[146] **Eleanor Burnham:** Finally, it could be suggested that section 4(1)(c) on requirements allows insufficient flexibility for local authorities to use more innovative ways to consult and involve local communities and residents in disposal decisions. Why did you choose not to include a more general duty to consult local communities and residents, which could be supplemented by guidance issued by Welsh Ministers?

[147] **David Lloyd:** As I have already said, I believe passionately in every resident being informed of the proposal before any decision is made. I believe that the most efficient way of achieving that is to write to them individually. That is the crux of this novel Measure. It is about pre-sale consultation. I am cognisant of the workload of Welsh Ministers, and I would not want them to be involved in issuing guidance all the time as regards who should be involved, and who should be informed. I have gone for the simplest, most straightforward way—these addresses are already on the council's database, the electoral rolls and so on, so it should be a case of clicking a couple of buttons, dashing off a couple of letters, and it is job done.

[148] **Rosemary Butler:** Will you come back later on that point?

[149] **David Lloyd:** Yes.

[150] **Rosemary Butler:** Ann Jones is next. Welcome back, Ann—I hope that the royal

visit was successful.

[151] **Ann Jones:** Yes, it went very well. I think that she is very impressed with the building, which is good.

[152] You may have covered part of my question. I wanted to ask you about the reasoning behind the statutory consultees listed in the Schedule. I am perplexed as to why you have chosen to include Barnardo's over other charities that support disadvantaged children and young people, such as Children in Wales and many others.

[153] **David Lloyd:** Originally, I had a different list—there were some similarities, and some differences. It has been tweaked following the responses to our consultation on the draft proposed Measure. Basically, the list of consultees reflects the response to the consultation. As I have said, I am quite happy to be flexible, so, if there are strong feelings about other statutory consultees, I am quite happy to have the list amended thus.

2.10 p.m.

[154] **Ann Jones:** How do you respond to the suggestion that the statutory consultees identified may have a predisposition to oppose the disposal of playing fields?

[155] **David Lloyd:** I feel passionately that we should be involving the community. This is about pre-sale consultation. I am not prejudging what the community, having received a fairly full impact assessment and a letter of explanation through their letterboxes, is likely to say. This is about the rights of local residents to be consulted about a potential sale before the decision has been made, so that they have the opportunity to influence the decision. If thousands of people send letters back saying that they do not agree with the sale of the land and two people agree, we know what should happen. This is about pre-sale consultation, before any decision to sell has taken place. Okay, I would certainly be predisposed to oppose the disposal of such land, because of all of the health-related biases and prejudices that I naturally have as a simple physician trying to make people's health better generally in this murky little old world of ours. I would protect, generally, green open spaces. However, my Measure is about playing fields, rigidly defined as they are, and I make no apology for being passionately in favour of playing fields.

[156] **Ann Jones:** You said that you drew the list up following consultation with various people, before you arrived at this Measure. Therefore, what consideration has been given to the list? Following the consultation responses, on what have you based the ability of national organisations or representative bodies, such as the British Heart Foundation, the Commissioner for Older People in Wales or the children's commissioner, to respond to what are essentially local decisions?

[157] **David Lloyd:** As I said in answer to an earlier question from Huw, there are some very local issues, but, with some fields, there are some fairly widespread regional issues as well. Therefore, the list of consultees was an attempt to encompass the local issues and the strategic regional or national issues. All of these bodies, including the children's commissioner and the commissioner for older people, must have cognisance of the health and wellbeing agenda as well, which are wider issues than simply what you might expect from, say, a children's commissioner. I would certainly expect the issues of health and wellbeing and the right to play, including the right to access free play activities, to be up there as major concerns of the children's commissioner, wherever there was a play area.

[158] **Ann Jones:** As you said, you passionately believe that there should be this consultation before the disposal of playing fields. Have you given any consideration to the capacity of the consultees you have listed to respond to the consultation on proposed

disposals? Did they offer themselves? Have they assured you that they would manage to do it?

[159] **David Lloyd:** Obviously, there will be some capacity issues. I quoted figures earlier of possible costs and officers' time for organisations such as Fields in Trust and the Sports Council for Wales. Obviously, there are implications for them, but the overriding concern is that, frankly, this is such an important concern that it deserves to be treated with the proper respect, and due diligence must be exercised in preparing the consultation responses. To balance that out, as I have also mentioned already, this will not be a frequent event. Thankfully, local authorities are not considering flogging off playing fields every day of the week. Having said that, there are 24 under threat in Wales as we speak, and we have lost 13 in the past three or four years. Therefore, there is a significant potential threat to those local communities, but the numbers are not huge. When the consultation document comes along, I would hope that all statutory consultees would give it the prominence that it deserves.

[160] **Ann Jones:** Have you consulted with all of the bodies on the list about their inclusion on it or have you simply put them on the list because people have told you that they think that those are the bodies that should be consulted?

[161] **David Lloyd:** Some have been included in that way, but a fair number of them have been involved in the decision and are quite happy to be there. I have obviously had longer discussions with some, such as Fields in Trust and the Sports Council for Wales, than with others. Fields in Trust and the Sports Council for Wales in particular are obviously major drivers of this Measure and believe passionately in the righteousness of this path.

[162] **Ann Jones:** What about consideration of the practical and financial implications for statutory consultees of responding to any consultation? Are you proposing that if they demonstrate that there would be a vast burden on them in terms of their work, they should receive more funding to allow them to do those things?

[163] **David Lloyd:** As I have said, I am prepared to be flexible. We want the maximum number of consultation responses. As I said in my other answer, you have to balance the fact that this is an important issue and that that importance deserves to be recognised, with the fact that it would be fairly rare for them to be involved in pre-sale consultation. So, there are balances to be struck, but there is no getting away from the fact that there are financial implications—and I outlined figures earlier in terms of Fields in Trust and the Sports Council for Wales—in terms of officer time, paper, printing and all the rest of it.

[164] **Nick Ramsay:** You have received a fair grilling on the consultation issue. We now have that image of you going down a street and going to each house with the letter.

[165] I would like to move on to the other side of the process. Putting aside the consultation issues, on the requirement on the authority to deal with the representations that it receives and its capacity to do that, what arrangements are currently in place for local authorities to consider representations made in respect of proposed disposals under sections 123 and 127 of the Local Government Act 1972, and is it intended that those arrangements would continue under the provisions of the proposed Measure?

[166] **David Lloyd:** As I mentioned earlier, my proposed Measure applies to playing fields, and the Local Government Act 1972 applies to all open spaces, including playing fields. So, there would still be a requirement on local authorities to place an advertisement in the local press for a fortnight in terms of an open space that was not a playing field, and measures would have to be in place to respond to responses received from any members of the public who happened to be fortunate enough to tag onto these advertisements, which seem to appear at random over a fortnight in the free press, or wherever, locally. So, it is fair to say, I would

imagine, that the volume of local responses thus far under the Local Government Act 1972 is not onerous, and I would expect a far larger volume of responses under my proposed Measure. There need to be systems in place to cope with that, because if you are serious about consulting on your proposed idea as a local authority to develop or dispose of a playing field, you should have the structures in place to deal with the public consultation. After all, this is about citizen engagement. Every local authority talks about it, so they should have the measures in place to deal with it.

[167] **Nick Ramsay:** What consideration, if any, did you give to including more detail in section 5 about the way in which, and the extent to which, an authority considers the representations that it receives?

[168] **David Lloyd:** Section 5 extends to just two paragraphs. I am one for brevity on occasion—

[169] **Rosemary Butler:** Really?

[170] **David Lloyd:** Absolutely, and this is one such occasion. Section 5 states that:

[171] ‘The authority must consider any representations’.

[172] That is fairly straightforward, and I would expect local authorities to abide by that, but I would also give them the flexibility to abide by it in whichever way they deem best.

[173] **Nick Ramsay:** On the subject of transparency and openness, have you given any consideration to where the local authority should be required to publish all the representations that it receives?

[174] **David Lloyd:** I was always mindful of bureaucracy here. I know that I have taken some questions on bureaucracy. We could make local authorities publish all the consultation responses, but I think that that would be a tad onerous, particularly when it comes to the decision statement, which is the next step. I am all for being open and transparent, but there is a balance to be struck. The question of how a local resident’s response counts is covered by the next section, which is on the decision statement. The consultation responses, which will express a view for or against or whatever, will be included in the decision statement.

[175] **Nick Ramsay:** So, you think that while openness and transparency are important, it would be more important to deal with the representations and consultations first.

[176] **David Lloyd:** The consultation responses would be made public in the next step, when we receive the decision from the local authority, which it would communicate to householders and occupiers in order to explain how the authority arrived at its decision.

2.20 p.m.

[177] **Rosemary Butler:** Eleanor, you wanted to move on to the next question.

[178] **Eleanor Burnham:** My question refers to section 6, on the decision as to whether to proceed with the proposed disposal, particularly section 6(2)(b), which requires local authorities to send a copy of its decision statement to all those consulted under section 4(1). What is the purpose of this requirement? Why do you consider this requirement to be necessary?

[179] **David Lloyd:** My response is the same as my response to the openness and transparency question that Nick has just asked. This is where I am being open and transparent.

Instead of being open and transparent twice, I will do so once.

[180] **Eleanor Burnham:** I have to go through the questions because we have a certain protocol.

[181] **Nick Ramsay:** There is a crossover here.

[182] **Eleanor Burnham:** What consideration did you give, if any, to limiting this requirement to those who made representations in relation to the proposed disposal?

[183] **David Lloyd:** Fundamentally, it is an important decision, particularly if it does not seem to go the way that some householders believe it should go. So, it is only right that every householder should know what the decision is and how it was arrived at in terms of the individual consultation responses.

[184] **Eleanor Burnham:** I would like to ask a quick supplementary question. If you get this Measure through, once you have set this precedent, I would like to ask Mr Bush whether this would then open the way to further precedents being set in terms of what Huw Lewis asked about earlier, and moving the boundaries, in Welsh terms, about being much more open and transparent and much more integrated in community transactions beyond this.

[185] **Mr Bush:** That is not really a question that is open for me to answer, because if, in future, Members of the Assembly decided that this was an approach that could be applied or adapted to some other kind of community asset, then it is entirely a matter for the Assembly, subject to the legislative competence of the Assembly. However, on the other hand, it does not necessarily make it more likely that Assembly Members would apply that precedent in other cases. It is entirely a matter for Assembly Members to decide.

[186] **Eleanor Burnham:** This is an important precedent.

[187] **Mr Bush:** It would certainly provide information as to how well it worked and whether it was of any benefit.

[188] **Rosemary Butler:** It could be a good precedent.

[189] Before I ask you the final questions, I have one query. You have a list of consultation responses, but in the Schedule to the Measure there is a list of consultees that you propose should be consulted. I assume that you have consulted those who appear in the list of proposed consultees. You did not receive a response from Play Wales; there appears to be no response from local Communities First partnerships, Barnardo's, the British Heart Foundation, Disability Wales, Disability Sport Wales, or the Children's Commissioner for Wales. You propose that they should be consulted; did you consult them and did they not respond, or did you just have a discussion with them without submitting a written request for a response?

[190] **David Lloyd:** I had discussions with a variety of people—residents as well as various bodies on this list—with regard to who should be consulted, and this is the list that emerged from those responses and the various consultations. I have had long discussions with various residents' groups in Cardiff and Swansea, with Fields in Trust, with the Sports Council for Wales, and North Wales Play Association; those are the main ones. However, in terms of the health and wellbeing strategy, you would expect me to include all of the local health boards, and so on.

[191] **Rosemary Butler:** I am just interested in whether they are prepared to respond if you consult them. That is what I was trying to get at. You have obviously had discussions with

some of these.

[192] **David Lloyd:** Yes, and the proof of the pudding is in the eating. As I said, this is an important agenda and we will see how they would carry that responsibility, but I would expect them to respond positively to such a request.

[193] **Rosemary Butler:** Yes, I was comparing the two lists that I have here in terms of one who did respond and one who it was suggested should respond.

[194] The final questions are about directions by Welsh Ministers. How do you ensure that the public is aware of its right to make representations to Welsh Ministers if, for example, an authority fails to comply with the requirements of sections 3 to 6 of your proposed Measure in relation to the proposed disposal, and how is that provided for in the proposed Measure?

[195] **David Lloyd:** It is not provided for in the proposed Measure. Like I said, the emphasis of my proposed Measure is on pre-sale consultation. Having said that, directions by Welsh Ministers are a neat way of resolving any issues or complaints that people have on the process of consultation. I am grateful for the experts' legal advice that has gathered this little neat answer together. In direct response to your question on how you ensure that the public is aware, I am afraid that my proposed Measure does not cover that.

[196] **Rosemary Butler:** Section 7 relies on representations being received before the disposal has taken place. If representations were received by Welsh Ministers once a disposal had been completed, what form of redress, if any, would be available?

[197] **David Lloyd:** If an authority is deemed to have failed to have followed the proper procedures, the only redress would be through the courts. Perhaps Keith would like to elaborate on that.

[198] **Mr Bush:** That is right. If a local authority that should have complied with the requirements of a Measure, failed to do so, then the disposal would be outside of its powers and could be quashed in the courts. So, the ultimate long-stop is that the courts could be required to intervene in a case where a local authority had acted unlawfully.

[199] **Rosemary Butler:** Finally—and we are getting technical now—it has been suggested, in response to your consultation on the draft proposed Measure, that the powers of Welsh Ministers to issue directions, as provided for in section 7, appear out of line with the principle of local determination of local matters. What are your views on that?

[200] **David Lloyd:** I do not agree because this further reinforces local decision making and local determination. As I have said, selling off a playing field is a fairly rare event. I imagine that it would be even rarer to complain about or dispute the process by which the local authority reaches its decision based on the consultation responses. So, the involvement of Ministers will not be onerous because these will be fairly rare events. The involvement of Ministers would be purely to adjudicate whether the process was carried out lawfully or not. That is the only involvement. The Minister would not get involved in the decision or in overturning any decision. The Minister would adjudicate whether anything was amiss with the process. So, this provision strengthens local decision making rather than takes it away.

[201] **Mr Bush:** To underline that last point, there is nothing in section 7 that would allow Ministers to second-guess a proper decision made by a local authority. Their powers would simply be to referee the rules so that if the local authority had not followed the rules—to pursue the sporting analogy a bit further—the Welsh Ministers could blow the whistle and require the game to be restarted in accordance with the rules. So, that preserves the principle that the decision is one for the local authority.



[202] **Rosemary Butler:** Are there any supplementary questions from Members or officials? I see that there are none. Thank you, Dai, for putting up with our grilling this afternoon. I also thank Mr Bush for his representations. We will meet again in a week's time when we will start to take evidence from the Sports Council for Wales and Fields in Trust. The Minister will come before us the following week. We may choose to call you back, Dai, at some point. That brings our business to a close.

*Daeth y cyfarfod i ben am 2.30 p.m.*  
*The meeting ended at 2.30 p.m.*