In response to the invitation to give evidence to the Scottish Parliament's Local Government and Regeneration Committee's call for evidence on the above Bill, Glasgow City offers the following comments.

In general, the Bill presents a package of measures designed to encourage community empowerment and create conditions that will encourage active citizenship and participation in civic life. Many of the provisions in themselves are helpful. However, the Council, has concerns as to whether the measures in the Bill, will, on their own, achieve these aims.

In earlier submissions to this Committee (the Inquiry into the Flexibility and Autonomy of Local Government March 2014) we presented evidence to argue for a reinvigorated local government, able to effectively exercise a broad range of powers on relevant local issues and properly resourced to do so. In that submission we set out the range of powers or issues where we believe it is essential they are returned or devolved to more local decision making. These include raising local income and taxation, enhanced local economic powers, transport; and welfare. We continue to believe that a significant increase in local decision-making powers is essential to achieve the Bill’s stated objectives.

In relation to responses to the specific parts of the Bill, we offer the following comments.

1. To what extent do you consider the Bill will empower communities, please give reasons for your answers

PART 1 – National Outcomes

Dependent upon how the Scottish Government intends to “consult on” a set of national outcomes for Scotland, this may increase involvement and engagement. Further details would be helpful.

PART 2 – Community Planning

CPPs should already be engaging with their communities in identifying and prioritising the outcomes that are to be delivered, and working with communities to develop their capacity to contribute to community planning and to their achievement of better outcomes. However, this is not currently a clear statutory requirement.

PART 3 - Participation Requests

Glasgow City Council welcomes the Bill’s recognition of points raised by the City Council in the earlier consultation in early 2014 in relation to:

- Representativeness and accountability of community groups
- The inclusion of “communities of interest”
- The inclusion of groups without a constitution but with a statement of aims and purposes. GCC welcomes this, and suggests that the Bill or Guidance nonetheless suggest that it would strengthen such bodies position if they worked towards becoming constituted.

However, in relation to the specific matter of empowerment, the City Council remains concerned regarding the detailed process which will ensue following refusal of a participation request. Whilst this may be included in regulations or Guidance, until there is clarity in this area, the effect may be disempowering, as in having raised expectation and then having hopes dashed. This could impact on working relationships and may be counter productive to establishing longer term collaboration and trust on which effective community planning and community empowerment should be based.

PART 4 – Community Right to Buy Land

Whilst some communities may be able to take advantage of this provision, the mere introduction of a community right to buy will not, of itself, empower communities. It is what
can be then done with the building/land through self sustaining use that could allow a community take decisions for themselves. If the new ownership relies on significant ongoing financial and capacity building support from the public sector then, the community will, in practice, be no more empowered than before. If reliant on such support, and vulnerable to its withdrawal due to other competing locally expressed priorities taking precedence, this is not being truly empowered.

**PART 5 - Asset Transfer Requests**

Comments as above for “Community Right to Buy.”

In addition,:

- The timescales (and stages) involved each have associated costs. The level of costs incurred at stages could be significant if organisations are to be properly empowered by local authorities and other bodies.
- The interested organisations may incur costs in preparing their case – e.g. producing business plans and provision of technical advice.
- If organisations take over assets but did not wish to TUPE staff or use maintenance services previously provided then this could have cost implications.
- Paragraph 52 (4) should perhaps also make explicit that a community transfer body should provide when making a request:
  1. a Business Case (possibly as part of a Business Plan) outlining its credentials and expertise (whether internally or sourced) including but not limited to its ability to execute and monitor delivery of the services
  2. a timetable for when it expects to start delivering the benefits it consider will arise if the authority were to agree the request

**PART 6 – Common Good Property**

As above for “Asset Transfer”.

**PART 7 - Allotments**

Glasgow City Council is in general supportive of the Bill in relation to Allotments. However, GCC would question extent to which the Bill increases the opportunities for empowerment currently in place through devolved management to allotment associations.

**PART 8 - Non- Domestic Rates**

Not applicable.

2. What will be the benefits and disadvantages for the public sector organisations as a consequence of the provision of the Bill

**PART 1 – National Outcomes**

If the National Outcomes are co developed in consultation with local authorities and CPP partners, there may be an opportunity to rationalise priorities.

**PART 2 – Community Planning**

The new formulation of community planning: “planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the community planning partners.”

This is a much clearer statement than the current one in the 2003 Act.

S. 8 lists those partners who must “facilitate Community Planning” and take reasonable steps to ensure that the CPP “carries out its functions … efficiently and effectively.”
S. 9 sets out the duties of these "core" partners. These are clear. However, it is not clear what steps will be taken to make it easier for partners to meet them in particular how they will be assisted to commit "appropriate resources to the achievement of local outcomes set out in … (the Local Outcomes)… plan"

Whilst the change in duties addresses perceived problem of lack of accountability of other public bodies for their contribution to Community Planning, the question arises as to whether this new formulation alters the role of local authorities in Community Planning. On one reading the new duties offer a shared leadership model. However, how will this work in practice, if partners don’t agree roles and responsibilities. In addition does it meet the test of accountability?

The summary of consultation responses published with the Bill states that -

"The predominant view amongst respondents was that local authorities should retain their statutory duty to initiate, facilitate and maintain community planning on account of their democratic mandate, but structural and cultural changes are needed to shift perceptions away from CPPs being seen as extensions of local authorities."

Rather than simply end local authority leadership the summary of consultation responses suggests that the consensus was to seek "robust accountability" frameworks, in which individual CPP partners are held to account for their contributions, coupled with statutory duties on different public bodies, supported by guidance on their roles "This was to "help to address perceptions of council dominance."

Neither the Policy or Explanatory Memorandum are clear on the rationale behind the wording of the Bill on this point.

PART 3 - Participation Requests

Benefits

There may be the opportunity for groups not currently involved to become involved and bring different perspectives, expertise and knowledge to bear.

Disadvantages

Unspecified or unknown costs for staff time to deal with participation requests and asset use/transfer requests. Depending on Guidance, costs for staff time building community capacity may be significant. Staff development in relation to working with communities and costs to improve assets for handover would also be significant additional burdens.

GCC proposes that for the aspirations of the Bill to be achieved, for community empowerment to become part of the culture of organisations a programme of organisational/staff development would be helpful, even essential. We suggest that the Scottish Government initiate discussions with Local Authorities and community planning partners on how to support this and delivery of the Bill’s aspirations.

PART 4 – Community Right to Buy Land

Benefits

It potentially allows the City Council to work with community bodies to take over surplus assets and undertake community owned and backed projects or deliver some public and/or provide services required or not currently provided in a community.

Disadvantages
Part 3A: In the circumstance where Council and/or Council ALEO land is identified there will be the financial implication of putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale. In addition, the financial implications for Glasgow may be significant in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy. As a precaution the Council and/or Council ALEO will require to resource a search in the Register of Community Interests in Abandoned and Neglected Land in advance of both marketing and disposal of property which could potentially fall within this category.

Part 4: The financial implications for Glasgow may be significant in the circumstance where a registered interest has a negative impact on potential investment in the City. The Council and/or Council ALEOs will require to resource responses to applications and the cost of searches in the Register of Community Interests.

PART 5 - Asset Transfer Requests

Benefits

Disadvantages

Local authorities may incur costs in getting assets into a state where they are transferable. Local authorities would incur costs in supporting the empowerment of organisations to participate in the process of community asset transfer and beyond. If organisations take over assets but did not wish to TUPE staff or use maintenance services previously provided then this could have cost implications. As indicated earlier Q3 abortive costs, which may be substantial, could be incurred by both the applicant and the local authority. However each party would require to bear these costs with no re-imbursement. If an organisation purchased an asset from Glasgow City Council and then, for whatever reason, the organisation failed or ceased to exist, then GCC may, for wider public interest, be compelled to buy the asset back.

PART 6 – Common Good Property

Benefits

Disadvantages

One of the main difficulties encountered by Local Authorities in dealing with Common Good issues is determining what actually constitutes ‘Common Good land’. The existing law on Common Good is obscure and uncertain due, mainly, to the lack of legislation in the area and the absence of definitive and clear case law. The Bill does not attempt to define ‘Common Good land’ and no guidance is given as to which assets ought to be included in the Register.

Therefore, the Council will be required to make its own assessment, based on the existing case law, as to which assets should be included in the Register.

In establishing the Common Good Register, the Council will be required to review the title deeds to all land which may potentially form part of the Common Good. If the title is silent on Common Good, or the position is unclear, other information may have to be looked at, such as the Minutes of the Council meeting at which the acquisition was authorised or historical Common Good accounts - these may give an indication as to how the property was intended to be used and whether it was considered to be Common Good.

In compiling a Common Good Register, the Council will require to review the status of all property in its ownership. This not only involves a detailed review and interpretation of the title
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deeds, but also an at times resource-intensive review of available historic and current information.

Given the high number of properties owned by the Council, reviewing the status of all of them will be a time-consuming exercise and will have significant cost and resource implications. In the absence of a definition of ‘Common Good’, the Council will require to make its own judgement as to which assets should be added to the Register. This adds to the complexity of the task.

Due to the time and resource required, Local authorities tend to consider common good on a case by case basis should they be intending to dispose of, or otherwise deal with, a property. Glasgow has an approved policy to this effect: any assets have to be reviewed against the law of common good prior to disposal.

The lack of definition of ‘Common Good’ also means the completed Register will not be definitive and will still be open to challenge. In the event of any Court decisions which clarify, or change, the law on Common Good, the Register will have to be reviewed.

The duty to consult with and take into account representations made by community bodies and community councils, and anyone else, when compiling the Register, and again when disposing of, or changing the use of, Common Good assets will also have significant time, cost and resource implications for the Council.

This definition of ‘community bodies’ is very broad; it includes groups which are not formally constituted, there is no requirement that they are of a minimum size or that they can demonstrate that they are representative of the wider community.

Given the broad definition of ‘community bodies’, there will potentially be a high number in any ‘community’, with the result that the Council will be required to liaise with each of them, and take into account representations from a potentially wide range of parties.

PART 7 - Allotments
The potential benefits and disadvantages to public sector in relation to allotments would be

Benefits.
Empowering allotment communities with ambitions to take responsibility for their local assets

Ability to engage in a more productive dialogue with wider communities on potential innovative use of assets which could assist in the delivery of health and well being and other national outcomes.

Disadvantages

The detailed policy proposals in regards to allotments will come with a significant requirement for capital investment to meet the demands of Section 72 (Duty to Provide Allotments). See sub section 1 ie where sub section (2) or (3) applies, each local authority must take reasonable steps to ensure that the number of persons entered in the list maintained under section 71(1) is no more than one half of the total number of allotments owned and leased by the authority.

There will potentially be capacity issues within the local authority to comply with
Section 71 Duty to maintain list
Section 77 Duty to prepare a food growing strategy
Section 78 Duty to review food growing strategy
Section 79 Annual Allotments Report
All may require additional financial support..
Disadvantages
The Bill proposes powers for local authorities to create local NDR relief schemes from 2015/16 onwards. The scheme would not be funded by the central NDR pool. Therefore any local relief scheme would have to be funded by the local authority and so would therefore have to be built into the budgeting process.

3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions of the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

PART 1 – National Outcomes
See comments above

PART 2
Community Planning

Neither the Policy or Explanatory Memorandum are clear on the distinction, if any, between the Local Outcomes Improvement plan, and the local Single Outcome Agreement. If there new plan is additional, there are clearly implications for community engagement and for resources required to undertake the consultation required.

PART 3 – Participation requests
GCC welcomes the Bill whilst recognising that resources are limited. Giving public bodies the capacity to prioritise those communities with greatest need (poverty, barriers to participation, etc) for resourcing, in the form of capacity building support, contributions to improving assets before handover, etc would be essential. This would help with the risk of the Bill unintentionally increasing inequalities by helping only those communities who are already empowered.

PART 4 – Community Right to Buy Land
It would be useful if examples of what “conditions” might cover were identified (probably in Guidance) in order that the Part 3A community body might have an idea of their responsibilities re eg timescale for delivery of their objective; and in the event of a failure of sustained delivery of their objectives by the Part 3A community body (or its permitted nominee), would a right of pre-emption in favour of the owner be a way forward?

PART 7 – Allotments
Allotment communities are run on a voluntary basis. Allotment communities have varying capabilities, skills profiles and capacity. There may be skills gaps. The impact of the Bill could perversely lead to disadvantage communities effectively becoming more isolated and further disadvantaged. A challenge to achieving the purpose of the Bill would be to ensure all communities have access to training in capacity building and personal skills development with the appropriate financial commitments being attached to the Bill

4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill, and why?

PART 1 – National Outcomes
As above details of consultation process would be helpful.
As above, clarity on the future role of local authorities in relation to co-ordination of Community Planning would be helpful and avoid potential confusion. In addition clarity of relationship between SOA and Local Outcomes Improvement Plan would assist.

PART 3 – Participation requests
GCC remain unclear to what extent the Community Learning and Development Regulations and the requirements of the Bill fit with the existing requirement to engage local communities in the development and delivery of CLD services. Clarification of this is essential to ensure we avoid confusion and competing expectations.

PART 4 – Community Right to Buy Land

Issues are -
- Definition of what is wholly or mainly abandoned or neglected land is unclear and may be the subject of litigation;
- the interpretation of sustainable development will be a subject of debate;
- Council (including Council’s ALEOs) land may fall into this category which may have an adverse impact on the delivery of Council strategy;
- the 60 day period for owners to respond is an extremely short timescale and we query whether this is compatible with the preservation of human rights;
- right to compensation is not available to the owner if the decision is to refuse – surely a fairer outcome would be that the owner is not out of pocket. Is it possible for this to be reconsidered?

In addition,
- there is no reference to the proposals being required to be consistent with planning policy. It would be useful if Guidance were to confirm the need to liaise with Planning Authorities; and
- it might be useful in Guidance to suggest that there be a liaison with Police/Council etc in order to find out whether there is any evidence of the condition of the land causing a public nuisance.

The Council has a concern that in a still fragile economic environment, when the role of the public sector in enabling development is of increased significance, the additional layer of potential problem which this register creates for proposed investors may deter them. Clarification is required regarding the interaction between Parts 3A, 4 and 5 of the Bill.

PART 5 - Asset Transfer Requests
The Bill refers in Paragraph 54 to the possibility that Scottish Ministers may by regulation make further provision about asset transfer requests. Glasgow City Council would caution against any measures in this regard without first seeking input from authorities experienced in administering such processes.

Glasgow City Council has a process in place in relation to Community Asset Transfer. Its emphasis is on the pre-application stage and providing support to organisations empowering them to advance their case in a coherent manner. Our experience thus far is focused on enabling organisations to submit proposals in the form of an Expression of Interest (covering many elements outlined in Paragraphs 52 and 55) and allowing the request to progress at a pace which enables both parties (authority and community transfer body) to work together. This does not mean that all requests are approved but it does generally mean that in working with the community transfer body is better able to understand the context and reasons for why a request has not been progressed.

Glasgow City Council’s experience is that community transfer bodies have different levels of expertise. Even with a well established body the process can be complicated (e.g. technical and legal considerations) and more costly than first anticipated which may not be in line with their expectations.

Consideration also requires to be given to the consequences of where the Bill interacts with existing legislation, for example:
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- Local Government (Scotland) Act 1973, Section 74(2), which places local authorities under a duty to achieve best consideration – it will be essential to clarify that in responding to an asset transfer request, it is deemed to have complied with this duty
- In relation to Common Good, clarification is required on whether the law pertaining to disposal of Common Good property prevails over the Local Authorities statutory obligations
PART 6 – Common Good Property

The Common Good Register will not be definitive; it will still be open to interpretation and challenge. Anything omitted from the list could still be held to be part of the Common Good. What is “all property held [by a local authority] for the common good” will be open to interpretation unless a definition is provided. Certainty as to what property is included and what restrictions there are to be on that property cannot be achieved without also setting out which type of dealings or disposals are permissible, and which are not. The Council could incur significant cost and resources in establishing a Register only for the law to be overturned by a court decision.

Likewise, although community bodies or members of the public would still be able to object if they disagree, the new legislation will not give the public any greater certainty that their contention is correct than they have at present.

The likelihood of delay, expense and ultimately contentious litigation will remain the same – whether as regards what is common good property and what is not, whether that property is alienable or not, or as regards which types of dealing amount to alienation (or disposal) and which do not.

By addressing the definition of common good in the legislation, the difficulties with the current position could be resolved, or at least significantly reduced. Once there is a clear definition, the goals of increasing transparency and increasing community involvement in the use of common good assets can be properly addressed. Until there is a clear definition, there will continue to be disputes about what is and what is not part of the common good, and what can be done with such assets.

With regard to the terms of the draft Bill, as noted above, the definition of ‘community bodies’ is broad and the exercise of consulting with all of them could have significant time, cost and resource implications. Therefore, the definition of community bodies should be such that only community bodies which are formally constituted, have a reasonable level of support from the community (e.g. can demonstrate a minimum number of members with an identifiable connection to the locality, such as residency or a business interest) and have expressed an interest in a property to the local authority should be consulted.

PART 7 - Allotments

The Financial Memorandum attached to the Bill would put the Capital Invest required to comply with the Section 72 Duty to provide Allotments at £3.4m. Glasgow City Council’s own estimates are significantly higher. It is essential that the Financial Memorandum which accompanies the Bill makes adequate provision for the costs of implementing the provisions. It is also unclear whether conversion of existing green space to Allotments by the Local Authority constitutes permitted development.

Regarding Section 77 Duty to prepare a food growing strategy- this appears to be an attempt to add on community gardens to allotment legislation. Both are specific legal constructs, with very different rights and responsibilities attached to them in law. Recognition of this should be given in the Bill and it may be separate legislation is required to address community gardening.

PART 8 – Non – Domestic Rates

The council welcomes the provision of powers to local authorities to create local non-domestic relief schemes. This is in keeping with the wider localisation agenda, and will help the council respond to local needs.

5 What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

No comment.