COMMUNITY EMPOWERMENT (SCOTLAND) BILL

NORTH LANARKSHIRE COUNCIL – EVIDENCE SUBMISSION

To: Clerk to the Local Government and Regeneration Committee
Scottish Parliament
Edinburgh
EH99 1SPT

QUESTION ONE
To what extent do you consider the Bill will empower communities, please give reasons for your answer?

1. The Bill reflects the introduction of a wide range of duties on both Scottish Ministers, Community Planning partners and local authorities and provides access to a range of involvement mechanisms and opportunities for community controlled bodies to become more directly involved in the management of services and property in their local area.

2. The Bill will empower communities by embedding in legislation the right of involvement and also the mechanisms to directly impact on their geographic communities and services through the right to purchase neglected land; to purchase, lease or manage local authority land and buildings and access allotments. Communities will benefit from the clarity in process relating to asset transfer from the public sector to the third sector. The Bill creates a framework of understanding between the public and voluntary sectors and will support and inform policy develop.

3. However, alongside these rights and benefits come responsibilities and obligations (legal and otherwise) which need to be fully understood by the community organisations wishing to exercise them. It will therefore be important to ensure that resources are available to provide such support, thus ensuring that the undoubted empowerment potential of this legislation can be fully and properly realised. Similarly, the requirements of the Bill are being introduced alongside additional demands on local services through a generally ageing population, economic and resources pressures; and wider public sector reform. The challenges that all of this presents alongside achieving community empowerment should not be underestimated.

4. Notwithstanding the above cautionary notes, North Lanarkshire Council is committed to actively involving communities in the shaping and delivery of public services and an outcome based approach to regeneration. Traditionally this has been achieved via North Lanarkshire Community Planning Partnership (NLP) and a programme of consultation via our citizens’ panel, resident’s survey, subject specific consultation exercises and recent community participative budgetary exercises.

5. North Lanarkshire Council is committed to developing and growing the social economy, and specifically opportunities for social enterprise, as a vehicle to empowering communities. Our new social enterprise framework 2013-2018 sets out how the Council and partners will work with communities to develop capacity, realise opportunities, develop community assets and build responsive purchasing arrangements. The Council is currently developing a new Community Asset Transfer policy and is piloting three projects to inform the final policy. The new Bill will support us in this process and provides a mechanism for communities to make informed decisions and have their say about local service delivery.

QUESTION TWO
What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

6. There are potential benefits arising from more clearly defined rights and responsibilities in community planning and participatory democracy; however there could be some additional and un-quantified costs for local authorities as referred to in paragraph 3 above. For example direct costs associated with the need
for professional services, such as legal advice, or capacity building to support community involvement and participation.

7. There is also a real risk that the Bill could widen inequalities by creating further opportunities for those communities who already have the capacity to take action. Ensuring that people in the most deprived and marginalised communities have the same opportunities and can exercise their rights effectively will be a significant challenge for the Bill. Some communities will need additional support and guidance to progress their ideas and develop projects. There is a risk that any regulations and duties emerging will encourage a culture of minimal requirements for compliance rather than a culture shift towards co-production.

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

8. There is considerable and extensive expertise within the third sector which positions some community organisations to take advantage of the Bill’s provisions. These capabilities, both within and between communities, however, are variable. There are excellent examples of organisations that would be capable of taking advantage of the Bill’s provisions but these skills levels are not universal. It will be necessary to ensure that all community organisations have access to the appropriate level of legal and developmental support to allow them to utilise the provisions of this Bill. This support could be provided through organisations such as the Third Sector Interfaces and/or Law Centres or through direct financial support to community organisations themselves but it will require additional resources to be made available from Scottish Government as it will be unlikely that this work can be accommodated within existing resources. Where capacity needs to be improved community development support will be key to achieving sustained success within communities and projects.

9. North Lanarkshire Partnership has a long history of working with communities to shape and deliver local services and structures and arrangements are kept under review to ensure that they remain fit for purpose and make the best use of opportunities available. It is recommended that the Bill incorporates sufficient flexibility to enable community planning partnerships to review existing structures and put in place improvement actions as part of its local outcomes improvement plan review. All partners and community bodies should sign up to this plan and the underlying principles of cooperation and partnership working to deliver the agreed outcomes.

**QUESTION FOUR**
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?

10. No additional comments other than those expressed elsewhere.

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

11. The assessment of equal rights, impacts on island communities and sustainable development appear considered and measured.

**SPECIFIC BILL PROVISIONS – PART ONE**

**National Outcomes** Places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on The national outcomes must be reviewed at least once every 5 years. They must also regularly and publicly report progress towards those outcomes.

12. This duty would seem appropriate given the community planning duties being proposed for other public sector bodies.
In terms of Part 1, subsection (2), the list ought to be more prescriptive (i.e. it should identify who Scottish Ministers will consult with in terms of determining the national outcomes and any associated, subsequent revisions). Or, at least, public bodies ought to be able to apply to ministers to have their views considered. In terms of subsection (5), once again, the list ought to be more prescriptive or alternatively provision ought to be made to allow public bodies to have their views considered.

**SPECIFIC BILL PROVISIONS – PART TWO**

Seeks to put Community Planning Partnerships on a statutory basis with defined roles and responsibilities, and place new duties on public sector partners to play a full and active role in community planning and the resourcing and delivery of local priority outcomes.

This provision will reinforce the importance of the community planning process and provide the necessary legislative support should partners not be engaging fully in the process. In addition the inclusion of provisions in respect of Single Outcome Agreements (or local outcome improvement plans) will also ensure that these plans have a similar status to other strategic planning arrangements for public sector organisations. In addition the Bill places responsibility on public bodies to commit appropriate resources to achieve these outcomes by ensuring that the mechanisms and processes for community planning and joint resourcing are embedded in legislation. It is, however, still not clear how these powers will blend in practice with existing accountability and audit mechanisms.

**SPECIFIC BILL PROVISIONS – PART THREE**

**Participation Requests** This provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists “public service authorities” to whom participation requests can be made.

Whilst the principle of a mechanism to support communities’ proactive involvement in service delivery and planning is to be welcomed, it is not clear how effective the process outlined in the Bill will be in delivering truly effective involvement. All public bodies have a long history and well developed involvement and participation processes in place to facilitate both service planning and delivery. For example, North Lanarkshire Housing Service takes a pro-active role in ensuring the voices of tenants and residents are considered by virtue of Tenant Participation legislation introduced in the Housing (Scotland) Act 2001. In addition the Scottish Social Housing Charter and regulations introduced to promote Tenant Scrutiny ensure we are constantly engaged with the Tenants Federation and Registered Tenant Organisations (RTOs) on service planning and delivery issues. Any additional participation requests will be considered and aligned within that framework.

North Lanarkshire Council would therefore suggest that it is likely that almost all existing organisations, fitting the definition of a “local community controlled body,” will already be involved as routine based on previous and current good practice. It would also be necessary as part of any participation request process to ensure that any community controlled body asking to be involved does not assume that by using such a process their involvement/ perspective carries greater weight than through normal involvement processes.

Consideration is also required for inclusion of arms-length bodies whose primary purpose is the provisions of services on behalf of local authorities.

Consideration should also be given to the merits of inclusion of the range of public sector authorities in Scotland covered by the Public Sector Equality Duty.

As part of the outcome improvement process any participation request should demonstrate that participation will promote or improve service delivery. In North Lanarkshire, our Third Sector Interface, Voluntary Action North Lanarkshire (VANL), will be key to this engagement and is a full partner in NLP.
SPECIFIC BILL PROVISIONS – PART FOUR

Community Right to Buy Land Amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.

20. This provision could be helpful to local authorities if the land in question is considered to be a blight or hindrance to development and investment proposals. Housing Services should be included in the list of consulted bodies when any application to buy is lodged to ensure the intended use of the acquired land is consistent with the aims and objectives of the Local Housing Strategy.

21. In terms of section 29, consideration should be given to a prescriptive list whereby articles of association or memorandum can be altered, without consent, if they adhere to the matters contained within the list.

22. Under Section 28 (3) (c), where information contained in the minutes is to be withheld and a reason is to be given, it should be specified that the reason must be a reasonable one.

23. In connection with the late applications procedure (Section 31 (9) (7)), it would appear to be unreasonable that the definition of land to which “relevant work” and “relevant steps” may have been taken does not have to be the same land as that which the landowner is intending to dispose of.

SPECIFIC BILL PROVISIONS – PART FIVE

Asset Transfer Requests Provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, certain Scottish public bodies or Scottish Ministers. The list of “relevant authorities” affected is given in schedule 3.

24. The Council understands the potential for Community Asset Transfer to provide a useful vehicle for improved service delivery and effective community empowerment. Working with local community organisations to deliver successful Community Asset Transfers empowers communities and contributes to building resilient communities as well as bringing in additional resources to the local area. Community Asset Transfers should be delivered within a local context to support community regeneration.

25. North Lanarkshire piloted the establishment of Development Trust Associations in 2011 and valuable lessons learned may be applied to Community Asset Transfers. Any potential Community Asset Transfer to a third sector organisation should:

- Take place via an application process (supported by a robust business plan), which demonstrates clear benefits to the Council, third sector and communities;
- Ensure appropriate capacity building and business support arrangements are to be in place to support organisations through the Community Asset Transfer process and ensure long term viability and sustainability;
- Take forward further policy developments required to deliver strategic priorities on asset transfer.

26. Specific recommendation must be made in relation to Section 55 (5), Section 59 and Section 60 where it states that the relevant authority must agree an asset transfer request unless there are reasonable grounds for refusing it. There is to be provision for review of a local authority’s decision by the local authority.

27. If a relevant authority leases land as a tenant and to transfer or share occupation of the land would breach the terms of the lease it must be considered reasonable to refuse a request. This would be without prejudice to the provisions of Section 60. It would be better to legislate to exempt land held on lease in these circumstances.

28. As highlighted in Question One, North Lanarkshire Council is currently developing a new Community Asset Transfer policy.
SPECIFIC BILL PROVISIONS – PART SIX

Common Good Property Places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

29. North Lanarkshire Council would reiterate the points made previously in our response to consultation on the draft Bill submitted in January 2014. It will be unclear until Guidance is produced as to what does and does not constitute a disposal for the purpose of the legislation. Leases, especially shorter terms (less than 20 years) should be excluded, as should change of use for public use and benefit and alienable common good property.

30. It is acknowledged in the Explanatory Notes at point 276, that it is sometimes difficult to know whether property is part of the common good and that in some cases this has to be decided by the courts. The Bill does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property and an opportunity has been missed to assist with the acknowledged difficulties.

31. There is recognition in the Financial Memorandum at point 89 that the new statutory duties will have associated costs. This was not quantified during the consultation process but there is an assumption that the process required to establish an accessible register will be starting from a very firm foundation. Local authorities are currently required to account for common good assets separately and it is for this reason that the assumption of a firm foundation is made. This is at odds with the recognition that it is difficult to know whether property is common good and that in some cases the decision has to be made by the courts.

SPECIFIC BILL PROVISIONS – PART SEVEN

Allotments Updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.

32. The provisions within the Bill will involve local authorities in the administration and provision of allotments, publication of a food growing strategy and potential for compensation. These may or may not presently be provided by a local authority; either wholly or in part, and as such could have resource and land provision consequences. It can also potentially affect the council’s future use of sites used for allotments, e.g. requiring Scottish Minister consent for change of use or disposal.

33. In terms of section 70 (2) it would be beneficial for regulations to specifically include what information is to be included in the request.

34. Section 72 may be onerous to the local authority particularly if sub sections (4) and (5) are used.

35. Section 75 (2) may restrict the ability of the authority to provide allotments in sites that are temporarily available, an approach that has been successfully tried in other local authority areas, and could provide a mechanism to increase provision.

36. Sections 77, 78, 79 regarding producing strategies, reviewing and providing an annual report may prove onerous on the staff resource. A longer reporting cycle in particular would reduce this burden and still provide adequate information for users.

SPECIFIC BILL PROVISIONS – PART EIGHT

Non Domestic Rates Provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.
37. At present the strength of the Non Domestic Rates taxation system is that it provides a consistent, and reasonably non-discriminatory, tax on business regardless of the location of that business within Scotland. There is a danger that the proposal may create a ‘race to the bottom’ where businesses will look to the local authority to better the scheme on offer elsewhere and the cost of the relief granted will be met by the Council Tax payer. This may favour larger / Council Tax rich local authorities in their ability to fund such schemes at the expense of other local authorities.

**SPECIFIC BILL PROVISIONS – PART NINE**

**General Provisions** Makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and schedule 5 provides for repeals.

38. No further comments.

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