Dear Colleague,

I am writing as Vice Chair of Glasgow’s Third Sector Forum, a partner in Glasgow’s Third Sector Interface. The Forum provides a collective voice for the Third Sector in the city, so we welcome the opportunity to contribute to this Call for Evidence for the Community Empowerment Bill.

Much of the Third Sector: comprises of community led or community based groups; responds to or has evolved out of community need; and has its core the desire to support communities to empower themselves. We therefore believe that the Third Sector has an important contribution to make, both to the Bill process and to its subsequent implementation, and that its role should be made explicit in the Bill. On this basis, we would welcome the opportunity to discuss in more detail both the Bill and the role of the Third Sector within it.

We have answered the questions provided in the Call for Evidence below. We also attach a detailed review of the main sections of the Bill, highlighting our assessment of both the strengths and challenges of the Bill as it currently stands. This has been written by members of Glasgow’s Third Sector Executive Committee, which is the governing body of the Third Sector Forum.

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

We believe that as it stands, the Bill contains some important provisions which will go some way to empowering communities. However, if this legislation is really to achieve empowerment, it will require political commitment, a long-term view, and sustained investment and support. We would also highlight that the need to request to participate, and the lack of grounds for appeal in the participation process, present serious challenges to communities wishing to avail of the spirit of the legislation. We would further suggest that if the Bill is to inform service design and provision in line with Christie Commission recommendations, its implementation must address existing public sector cultures, and as such, an investment must also be made in workforce development.

There is a need to ensure a synergy between this Bill and other Scottish Government priorities and commitments, for example, the Community Learning and Development...
legislation and guidance. It is important to ensure that these policies reinforce rather than undermine one another, with each adding incentive and pressure to really do things differently.

2. **What will be the benefits and challenges for public sector organisations as a consequence of the provisions in the Bill?**

It is our view that this Bill, if implemented well, could deliver significant and transformative benefits - not just for communities, but for the public sector too. In particular we would highlight a democratic benefit and a financial benefit. Empowered communities are active communities, and the legitimacy and trust in our public institutions could be greatly improved if this Bill is well implemented. To us, empowered communities go hand-in-hand with public sector reform. Therefore the delivery of the Christie dividend, savings to the public sector budget, will only be possible if communities are supported to empower themselves. By co-producing services with communities, services will become better targeted and more effective in responding to need.

We believe that in the long-term, empowered communities will deliver the benefits above, and so the challenges for public sector organisations are essentially short to mid-term. However, we would note that the public sector may experience a big demand on its resources and services as communities seek to use the Bill. Public sector organisations may need to disinvest in some services in order to re-invest in more preventative, co-produced and community oriented services. It will need to balance responding to ongoing priorities with facilitating a shift to a more preventative approach. Resources will be required by the Public Sector (and others) if we are to address culture change and staffing issues.

We would argue that an indicator of the success of the Bill will be an increased demand on public sector organisations. We believe that public services should be supported to respond to this demand.

3. **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?**

From an asset-based perspective, we believe that all communities at their core have the capabilities to take advantage of the Bill. However, we feel that communities may need supported to help unlock these capabilities. Given the diverse nature of communities in Scotland, this support will vary but it is likely to include:

- Support to ensure they have the opportunity to develop or access the skills, knowledge, confidence, finance, technical expertise and time to engage with the process;
- Support to take responsibility for any outcome – for example managing a facility or delivering a service.
Recognising this, we believe the Bill should reduce obstacles and acknowledge and address structural barriers.

As such, our key recommendation is that there is a ‘universal’ approach to support, ensuring that all communities, of interest and of place, have access to a basic level of support which they would identify as necessary to empower themselves. At the same time, it is important to recognise that particular support may need to be concentrated on disadvantaged communities to ensure that existing inequalities are not reinforced.

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?

This question is answered in detail in our attached submission. However, we would draw attention to two key issues:

- We would like to see an explicit recognition of the role and purpose of the Third Sector, as outlined in our opening statement;
- The right to request to participate puts communities at an automatic disadvantage. By having to ask to participate, the power imbalance between communities and public sector organisations is reinforced from the beginning.

Finally, we would suggest that the rest of the Bill process would be enhanced and validated by working with communities.

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?

We believe the Bill should be underpinned by a human rights and equalities approach. This should be viewed as fundamental, not as an add-on. This should be explicitly stated in the Bill.

The rights of property owners is welcome, but universal and fundamental rights should be the overarching principles and are therefore just as important, if not more so.

Glasgow’s Third Sector Forum would welcome further opportunities to be engaged and to discuss the Bill and its implementation. We would like to note out interest in giving oral evidence to the Committee and look forward to hearing from you in the future.

Yours sincerely,
Introduction

The TSEC believes the Community Empowerment (Scotland) Bill to be an excellent opportunity to engage communities, promote local, participatory democracy and devolve decision making to communities and will give communities greater control over their built environment. However, it does not take into account the work required to ensure that all community members have equitable and fair access to the powers outlined in the legislation. Our comments are designed to help address this and strengthen the provisions in the Bill.

The Third Sector Executive Committee (TSEC) is the governing body of the Glasgow Third Sector Forum, and welcomes the opportunity to offer feedback on the proposals contained in this Bill. We hope the government will seize this opportunity to utilise the diverse nature of Scotland’s communities of place and of interest to reinvigorate participation. Delivering the rights of communities will require an understanding of human rights and their impact on the participation of people in decision-making.

Wider rights context

Human rights

Awareness and learning about human rights promotes understanding and acceptance of people who are at the margins of communities. Without this, many in communities would remain disadvantaged. Embedding openness, human rights and equalities is therefore vital if the Bill is to deliver the opportunities it aspires to.

We believe that the Scottish Government endorsed Scottish Human Rights National Action Plan (SNAP) is central to the concept of community empowerment. A key SNAP priority is to promote empowerment. The plan acknowledges:

“People don’t know enough about what human rights are and their benefits in everyday life. There is a need for greater consistency to ensure meaningful
participation of people in decisions that affect their lives. While ideas of fairness and ‘difference’ are widely accepted in Scotland; negative social attitudes against certain groups persist.”

SNAP promotes a human rights based approach which emphasises: Participation, Accountability, Non-discrimination, Empowerment and Legality (PANEL). We believe that the Bill, and its associated guidance, should adopt these principles. We propose that the Bill’s proposed ‘right to request to participate’ is strengthened by adopting the PANEL approach.

Equality

While welcoming the concept of a right for community bodies to request participation, we feel that this cannot be delivered in isolation from the Public Sector Equalities Duties. These duties recognise that public bodies must adopt consistently proactive approaches to empowerment through community engagement and funded community development. The Bill should therefore address the empowerment aspects of equality.

These duties require public bodies to work to eliminate unlawful discriminatory conduct; advance equality of opportunity, and foster good relations. Fulfilling duties such as assessing equalities impacts, monitoring and setting equalities outcomes all rely on high-quality community engagement and sustainable community development approaches.

International duties

Regardless of the outcome of the referendum, any future government is bound to uphold various international obligations, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child. We would argue that empowerment is central to this, and therefore an important aspect of the Bill.

For the Bill to effectively enshrine human rights, the TSEC recommends the following:

- The Bill incorporates explicit reference to the need for marginalised groups within communities to have access to specialised support to realise benefits from the Bill;
- The human rights principles of non-discrimination, accessibility, participation and accountability be enshrined within the Bill. We feel this is especially pertinent to the section defining and underpinning “Community Bodies”, as well as the more general expectations of public bodies;
- The right to request participation be kept simple, rendered fully accessible, and underscored by focussed community development with marginalised
groups. Specialist support organisations should be used as necessary to achieve this aim;

- The Bill contains a duty on public authorities to produce and oversee the implementation of viable community engagement plans;

- An explicit connection be made between community engagement, Community Planning Partnerships (CPPs), the relevant equality duties, and SNAP;

- The Bill embraces its role in delivering Scotland’s international commitments to participation and democracy.

**Part 2: Community Planning**

**Setting national outcomes**

We support embedding the setting of national outcomes in the Bill, and see this as a critical framework for policy development, including that of Community Planning. However, this should be subject to meaningful consultation with civic society and communities. It is essential that the outcomes are consensually agreed, address inequalities, and are not determined solely by government. Explicit national outcomes about empowerment, participation and public sector reform could then be included in, for example, SOAs, and CPP improvement plans.

The proposals to put CPPs on a statutory basis – with defined roles, responsibilities and duties on public sector partners – are broadly welcomed, provided that the mechanisms for genuine partnerships with the Third Sector and communities are in place. We are concerned that limited progress has been made on achieving this in the current iteration of the legislation.

In particular, in relation to Community Planning we would highlight:

- The role of the Third Sector within Community Planning and the need for Third Sector parity within the community planning process for it to fully play its role as working for, and behalf of, on communities

- To secure the input of community bodies, there needs to be clearer duties on public bodies for the resourcing, planning and co-delivery of work. This would strengthen community confidence, knowledge and skills via asset based community development and capacity building techniques.

- We would advocate that the Bill and associated guidance should define more clearly what constitutes ‘reasonable effort’ in securing the participation of communities and explores how genuine participation opportunities are maximised and measured;
• A key element of local outcome improvement plans is tackling inequalities either of income and/or other protected characteristics. We believe it is essential that CPPs link closely with the Third Sector and groups with expertise in this area to assist CPPs to respond to these issues through a human rights and equalities lens.

The interim report of the Commission on Strengthening Local Democracy concludes: “The link between representative democracy and participatory democracy has become hard to bridge because of the gap between the scale of representative institutions and the community base for participation”.

We think the work of the Commission should be considered alongside this Bill, in order to ensure that the powers of the Bill are strengthened. Work is required to rebuild the trust of local communities in the democratic structures that represent them. Local authorities, CPPs and other public bodies should be required to state how they will respond to this challenge.

We would like to see the following requirements for CPPs included in the Bill:

• To advise local communities of their activities through public information and dialogue with representatives;
• To conduct ongoing monitoring and evaluation of engagement levels, such as attendance at community council meetings and public partnership forums, and conduct research with communities to determine reach and impact;
• To engage in active dialogue about how participation and empowerment could be improved;
• To be accountable – for example by ensuring community members are given feedback on their issues and suggestions and on the effectiveness of CPP actions.

These measures should foster a greater degree of trust and understanding of the role of local structures, encourage wider engagement, and improve the impact of the Bill for the wider community.

Additionally, building local, participatory democracy that will demonstrably allow equitable access to the powers of the Bill requires an asset based approach. We believe that people are the greatest asset of any community, and it is the responsibility of local and national government to give everyone equal opportunity to engage in any decision-making or service design that impacts upon them. This may mean developing long-term, achievable action plans. The Bill could require the development of long-term achievable action plans to help strengthen communities.

**Part 3: Participation requests**
We welcome that this Bill provides an additional and robust process for participation and engagement, as well as a clear requirement on authorities to justify the rejection of requests.

We do, however, see a potentially negative impact on participation arising from a bureaucratic process with no right to appeal decisions. We therefore strongly recommend that a streamlined system with minimum bureaucratic hurdles be developed, with clear guidance from government about what this should entail.

The TSEC believes there is a need to be explicit in the Bill and associated guidance that this new power is in addition to, and in enhancement of, existing routes. These existing routes include things such as direct representation to officers or elected members, membership of existing joint planning structures, and lobbying and campaigning for the use of legal instruments such as the Equalities Act. This would be consistent with the stated intention in the policy memorandum.

It is important to ensure that the right to participation is promoted to and understood by communities. We believe the resourcing of participation, as outlined in the duties, should extend to other ‘outcome improvement processes’, whether these arise from a participation request or from involvement in other partnership work with CPPs or with public authorities, where a request to participate has not been required to secure a seat at the table.

**Participation request decisions**

The Bill states that the authority must agree to the request unless there are reasonable grounds for refusing. The emphasis on authorities to justify their position is welcome, but the lack of an appeals process is a concern in a context of challenges around engagement, participation, and connection to the decision-making process. We strongly recommend an appeals process be introduced to improve confidence in the system and avoid a negative impact on the Bill’s overall community credibility.

**Generally**

We further recommend that:

- Authorities be instructed in the Bill to demonstrate fairness and equity in the setting of any bar for the agreement of participation requests;

- An authority instigating a process based upon a community request is required to clearly document the aims, methods and outcomes of participation. These should be co-produced with community and Third Sector partners in order to achieve high standards of participation;

- The participation requests process is extended to apply to CPP boards, and this be made explicit in the Bill;
Involvement of community bodies and other stakeholders should be standard in establishing outcome improvement processes, therefore reducing the need for participation requests;

Participation goes beyond one-off dialogue, and services must provide specifications of the ‘outcome improvement processes’ to applicants when these are approved, so the community’s role is defined;

Co-production should be the design assumption of outcome improvements in relation to all public services;

Whilst “reasonable” is a term extensively used in reference to processes and decisions about participation requests, this can be open to interpretation. Introduction of a definition of reasonable’ and guidance on the issue should appear within the Bill.

We believe that resourcing empowerment is crucial, especially where the resources to help build community strengths are very limited. Such resources need to be based on accurate assessments of need, and provided for as long as is required to make participation work for all partners. Such issues must be systematically addressed if this Bill is to have real impact. As such, the Bill, or its associated guidance, should make clear links for the provision and resourcing of community learning and development support with other statutory requirements for CPPs and Local Authorities.

A community body taking on responsibility for delivering a service as a result of a participation request or an asset transfer should be enabled to ensure that future funding arrangements are sustainable.

We note that authorities can decline a participation request related to a service within a period of two years if it is substantially the same as a previously refused request, regardless of which body has made the request. We would like clarification on the reasoning behind this, and suggest that it should be possible to accept requests when circumstances have changed. This should be the subject of co-produced guidance.

We note that Ministers can designate bodies as public service authorities if they are wholly owned by one or more public service authority, or deliver services on their behalf. However, we feel it is essential for the Bill to be explicit in terms of how Arms Length External Organisations (ALEOs) are to be included in provisions. Specifically, we would like clarity over who or what entity can agree or refuse requests when a service is being delivered on behalf of a health board or council. Could, for example, an attached ALEO be involved in the refusal, where they may have a conflict of interest?
We respect the requirement for a participation request to be submitted from a body with a written constitution, especially when public funds are involved.

However this may not be desirable in all circumstances and may create a barrier to participation. The level of formality of the arrangement should be flexible. Groups of people such as domestic abuse survivors, pupil or parent councils, or organisations in the process of forming may have an essential perspective on how services could be improved. There should therefore be scope to apply some latitude in such circumstances.

The TSEC wants this Bill to be a genuine engine for involving communities in the design and delivery of services. We do, however, recognise that this will necessitate a culture change for public services. It is essential to incorporate an open monitoring process which looks at outcomes and allows cultural challenges to be pragmatically resolved in an effective and equal partnership process. We accept that this is partly recognised in the policy memorandum, and recommend that it is also addressed in the guidance.

We recommend that at all stages, parties to the Bill’s implementation are encouraged to simplify the steps to be taken in achieving its aims. This principle should be enshrined in the Bill.

**Part 5: Asset transfer**

The TSEC welcomes the commitment to enabling the transfer of assets from public bodies to local communities. We believe that the ownership and/or control of local assets is an important lever in empowering communities, enabling them to make best use of the resources available to them.

There are many welcome provisions in the Bill, including: recognising that the leasing of assets is more viable for some communities; the right to appeal; a number of the duties placed on the relevant authority during the process; and the timescales indicated for dealing with requests. However, we would suggest that a number of areas could be enhanced to ensure that the benefits intended by the Bill can be achieved.

The TSEC firmly believe that this section of the Bill has the potential to be transformative, particularly for our most disadvantaged communities and groups.

It is imperative, therefore, that those who have the most to gain from it are able to make best use of it, by being supported to develop and obtain the skills and capacity needed and by having access to essential financial resources.

**In particular:**

Further clarification on what is meant by “reasonable grounds” for refusal of a request would be helpful (Section 55, subsection 5). This would help to ensure that
the grounds are not subject to arbitrary decision-making by the authority, but rather are subject to criteria which have been understood and recognised from the start of the process.

We recommend that further guidance is needed on the appeals process to be followed by Local Authorities. It should be independent, fair and proportionate. There is a need to ensure that all stakeholders can have a voice in the appeals process.

We recommend that any transfer proposal should be subject to published stakeholder analysis. This would identify legitimate and reasonable entitlement to involvement in the decision, for example by neighbours, service users, local groups and community representative organisations. Such views should be actively sought as part of the decision making process.

Underpinning the ability of any community to request a transfer of assets is access to the resources – skills, capacity, time, and finance – to do this. It is, we feel, essential that there is adequate and agreed support available to communities to help them develop and grow their own capacity to both submit a request and manage or own local assets.

The TSEC recommends it be recognised that assets in more disadvantaged communities may be fewer, in poorer condition and in need of more support or resources, to develop or maintain, than in more affluent areas.

The TSEC recommends this issue be, at least in part, addressed through a register of assets, helping to establish that “assets” are not, in fact, liabilities.

**Part 6: Common good property**

The TSEC welcomes the proposals in relation to common good property. We feel the proposals offer the best possible opportunity for identifying and agreeing all common good property, both locally and nationally. Locally agreed registers will allow all interested parties to keep track of common good assets. We welcome the proposal that the register be permanently available online. In our view this represents a step forward for transparency in government.

We recommend use of a simple, standardised, online database to record the inventory. We believe this is critical, and would allow local datasets to be combined into a national record of common good assets.

We note with concern that consultation is planned with community bodies only as Ministers "see fit", with representations only taken from community councils or a community body "known by the Local Authority to have an interest". In making this initial draft available for local consultation, it is essential that government explicitly facilitate individuals and groups to make local comment on the first draft.

The TSEC is of the view that local people with good local knowledge of past benefactors should be enabled to have their voices heard. While section 63 (6) (b)
makes provision for “other persons” we suggest this be more specific, such as “people with local connection”. With this in mind, we think that local papers, local radio and the Edinburgh Gazette should be utilised to ensure the widest possible knowledge of the exercise for local people and for past estate trustees to add commentary.

In relation to future disposals, we are concerned that consultation with community bodies would take place only as Ministers "see fit". We feel that representations taken only from community councils or community bodies “known by the Local Authority to have an interest” could be potentially inadequate in some situations. We recommend that the Bill be explicit in awareness raising in the local press of any proposed changes to the register to allow true local engagement to take place. The TSI would welcome a further consultation on the issue of future disposals, perhaps in guidance on the Bill.

There does not appear to be an appeals process in this section of the Bill. We recommend that it should be possible to appeal the register’s initial content, and thereafter appeal on proposed disposals of assets from the local Common Good Register.

**Part 7: Allotments**

The TSEC generally welcomes the rationalisation of previous legislation and the enhanced proposals for allotments.

We recommend adding a requirement to include a proportionate number of accessible allotments in any new allotment, for use by wheelchair users and buggies. Accessibility aspects would include wide, all-weather decking and raised planting areas.

For all existing allotments, we recommend that accessibility be phased-in over five years from the date of the implementation of the Bill. This equalities-based suggestion would clearly need to be resourced, and public bodies should be encouraged or required to make provision for this.