Explanatory Memorandum: The Older People’s Rights (Wales) Bill

# The proposed title of the Bill

1. The proposed title of the Bill is the Older People’s Rights (Wales) Bill[[1]](#footnote-1)

# The proposed policy objective(s) of the Bill

1. **The purpose of the Bill is to embed a rights based approach in the development, planning and delivery of public services which affect older people in Wales.**[[2]](#footnote-2)
2. The Bill will seek to Further enshrine the rights of older people within Welsh law by placing a duty on Welsh Ministers to have due regard for the United Nations Principles for Older Persons when making decisions which may impact upon older people in Wales.
3. It will also provide for:

* the ability to extend the due regard duty to local authorities, local health boards and other Welsh public authorities;
* a duty for the Welsh Ministers to promote knowledge and understanding of the UN Principles for Older Persons amongst older people and Welsh public authorities;
* a requirement for Welsh Ministers to consult the Older Person’s Commissioner, older people, and other relevant stakeholders before making or revising the Older People’s Rights Scheme;
* a duty for Welsh Ministers to issue guidance to Welsh public authorities;
* a requirement for Welsh Ministers to publish reports on their compliance with their Older People’s Rights Scheme; and
* the application and promotion of the duties imposed under the Social Services and Wellbeing (Wales) Act 2014in relation to the UN Principles for Older Persons.

1. Welsh Ministers and Welsh public authorities are well placed to facilitate older people’s access to human rights through public services. Appropriate and accessible public services are vital to making rights real for older people.
2. This Bill moves towards a more proactive approach to public service delivery. It’s two main functions are:
   1. To make practical improvements to the decision-making and delivery of public services in Wales; and
   2. To raise awareness of older people’s rights and to give them recognition and status.
   3. To empower older people to access their rights.
3. The proposed Bill has previously received cross-party support and the Welsh Government supported a motion which was agreed by the National Assembly for Wales in 2016 to bring forward legislation to protect and promote the rights of older people.[[3]](#footnote-3)
4. Wales was the first UK nation to incorporate the UN Convention on the Rights of the Child into domestic law, the first to establish the Public Sector Equality Duty under the Equality Act 2010, and the first nation in the world to appoint an Older People’s Commissioner. The National Assembly for Wales now has the opportunity once again to lead the way on human rights and supporting older people.

*United Nations Principles for Older Persons*

1. Under the Human Rights Act 1998 (HRA 1998) and the United Nations Principles for Older Persons, the UK government, the Welsh government and Welsh public authorities have a shared responsibility to ensure that due regard is given to older people’s human rights when delivering public services.
2. Public authorities should do everything in their power to avoid violating human rights. For example, public authorities should not deny an individual their human rights because they have reached a certain age, or because they are unable to resist or protest where their rights are violated.
3. Public authorities also have a duty to protect rights by ensuring, as far as possible, that others do not infringe or prevent access to older people’s human rights. This will be especially important where older people are living in care homes in the private sector. For example, public authorities should take action where there is evidence that older people are subjected to abuse, exploitation, or discrimination in private care home settings.

*Legislation which already features the UN Principles*

1. Duties similar to those set out in this proposal currently exist for children and young people in relation to the United Nations Convention on the Rights of the Child, through the Children and Young Persons (Wales) Measure 2011[[4]](#footnote-4).
2. The principles also feature in the Commissioner for Older People (Wales) Act 2006[[5]](#footnote-5) and the Social Services and Well-being (Wales) Act 2014[[6]](#footnote-6), which provides a single statutory framework for supporting older people and places a duty on public authorities exercising functions under that Act to pay due regard to the UN Principles.
3. The Children and Young Persons (Wales) Measure 2011, which has been well received by stakeholders, has made a positive impact on children’s experiences and in raising awareness of children’s rights. This would therefore be an excellent example of what can be achieved through legislation on older people’s rights.
4. The proposals in this Bill will also complement the well-being goals, as set out in the Well-being of Future Generation (Wales) Act 2015[[7]](#footnote-7).
5. The work undertaken by the Welsh Government in recent years is welcome; the proposed Bill seeks to supplement, not to replace these measures.

*The practical impact of the proposed Bill*

1. An approach based on the rights set out in the UN Principles could prevent issues escalating to levels where the quality and safety of care provided to older people is insufficient. For example, the case at Tawel Fan ward at Ysbyty Glan Clwyd in Bodelwyddan and the findings of reviews into the neglect of older people, Operation Jasmine[[8]](#footnote-8) and Trusted to Care[[9]](#footnote-9).
2. Older people may also be disproportionately affected by changes to local facilities, such as the closure of public toilets, banks, libraries, post offices and hospitals, or by the withdrawal of important public transport services, such as bus routes. Giving due regard to the UN Principles when making decisions about such public services could give older people greater access to vital community facilities, promote their independence and improve community cohesion.
3. This Bill will go some way to empower older people to take charge of decisions that affect their lives, including the quality of their care. In ensuring that the UN Principles underpin all elements of services and care for older people, the Bill could help public authorities to tackle inequalities and address negative attitudes in society by promoting and protecting the rights of older people in Wales.
4. It is clear that there is a need for a positive narrative around rights for older people which will provide the basis for any legislative protection or promotion.
5. Following the determination to achieve the Bill’s policy objective, through consultation with stakeholders, the Bill would then propose a proportionate enforcement regime, again following consultation with stakeholders.

# Details of any support received for the Bill, including details of any consultation carried out

1. Following the ballot of 14 November 2018, a number of organisations and individuals with an interest in Older People’s Rights have shown their interest and support for the Bill’s overall principle aims and policy objectives.
2. The current Older People’s Commissioner for Wales and her predecessor have shown their support for the Bill’s Policy Objectives, in particular showing strong support for a legal framework to tackle abuse of older people more effectively. The Older People’s Commissioner for Wales ‘Making Human Rights Real for Public Services’[[10]](#footnote-10) provides guidance to leaders in the public sector to embed the human rights of older people in public services. The guidance sets out an Older People’s Rights Approach (OPRA) as a way of working to safeguard and promote older people’s human rights in public services planning and delivery in Wales.
3. The following organisations have shown their support for the proposed Bill:

* Action on Elder Abuse Cymru
* Age Alliance Wales
* Age Connects Cardiff
* Age Connects Wales
* Age Cymru
* Alzheimer's Society Cymru
* Caerphilly 50+ Forum
* Care & Repair Cymru
* Carers Wales
* Carmarthenshire 50+ Forum
* Cymru Older People’s Alliance
* Pembrokeshire 50+ Forum
* PRIME Cymru
* Rhondda Cynon Taff 50+ Forum
* The British Geriatrics Society
* The Centre for Aging and Dementia Research (Swansea University)
* Vale of Glamorgan 50+ Forum
* The Centre for Innovative Aging (Swansea University)

# An initial assessment of any costs and/or savings arising from the Bill

1. Under Standing Order 26.91A (iv) there is a requirement for an initial assessment of any costs and/or savings arising from the Bill.
2. The closest comparator in terms of legislation and associated costings would be the Rights of Children and Young Persons (Wales) Measure 2011.
3. The RIA for the Children and Young Persons (Wales) Measure estimated costs over 3 years[[11]](#footnote-11) of around £1.5 million, £900,000 and £600,000 opportunity costs.  Uprating these costs from 2010 prices to 2019 would suggest costs of around £1¾ million, £1.1 million of these would be direct costs.
4. It is clear that any consideration to include a requirement on Welsh public authorities would need investigation and consultation with stakeholders and experts as part of developing this Bill to consider whether the same arguments hold in terms of practicalities and cost, as were the case when the Rights of Children and Young People (Wales) Measure was considered.
5. In considering the potential costs of the Bill, allowances will need to be made to reflect existing due regard duties arising from the Social Services and Well-being Act 2014.
6. Breaking down these potential costs, a significant number of staff working with older people have already received training through Welsh Government led initiatives, but legislation could promote consistency of training standards across all regions and organisations, provide a clear means by which implementation and maintenance of such standards can be monitored and secure the delivery of such training on an ongoing and permanent basis.
7. There would be additional costs in relation to awareness raising and programmes of awareness raising would need to be tailored towards older people. The Rights of Children and Young People (Wales) Measure did include provision for training, but how costs of awareness raising and training for other public sector staff may be required may also need to be considered. As part of the Autism (Wales) Bill it was estimated that awareness raising and developing training packages would cost around £260,000 over a five year period and there would be opportunity costs of around £2.5 million over 5 years to reflect officials time that would be taken up by autism awareness and other associated training. As part of developing this Bill, research would be undertaken to establish current levels of awareness and training needs requirements.
8. Similarly, the Autism (Wales) Bill Regulatory Impact Assessment estimated costs of developing a strategy and guidance of around £50,000. These estimates could form a starting point for estimating the costs of tailoring existing policies and duties, already imposed under the Social Services and Wellbeing (Wales) Act 2014, to meet the requirements of this Bill and producing accompanying guidance.
9. I am looking at a spectrum of options in terms of how this Bill will be developed and it is clear from my initial discussions with stakeholders, that there will be opportunities to craft a Bill that will minimise the impact of the Bill while holding true to the UN Principles.

1. As required by Standing Order 26.91B, I consider this proposed title to be broadly consistent with that provided in my pre-ballot information. It has been slightly amended to provide greater clarity that the Bill will strengthen the rights of older people in Wales. [↑](#footnote-ref-1)
2. As required by Standing Order 26.91B, I consider this policy objective to be broadly consistent with that stated in my pre-ballot information. The additional information under ‘Policy Objectives of the Bill’ (compared to that included in the pre-ballot information), has been provided so that Members have a greater level of clarity on my thinking as to how the policy objective may be achieved. [↑](#footnote-ref-2)
3. National Assembly for Wales – Plenary - Item 7 – [Amended motion 12 January 2016.](http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3521&language=en&assembly=4&c=Record+of+Proceedings&startDt=01/01/2016&endDt=31/01/2016#C266378)  [↑](#footnote-ref-3)
4. National Assembly for Wales [Children and Young Person (Wales) Measure 2011](http://www.assembly.wales/en/bus-home/bus-third-assembly/bus-legislation-third-assembly/bus-leg-measures/business-legislation-measures-rightsofchildren/Pages/business-legislation-measures-rightsofchildren.aspx) [↑](#footnote-ref-4)
5. National Assembly for Wales [Older People (Wales) Act 2006](https://www.legislation.gov.uk/ukpga/2006/30/contents) [↑](#footnote-ref-5)
6. National Assembly for Wales [Social Service and Well-being (Wales) Act 2014](https://www.legislation.gov.uk/anaw/2014/4/contents) [↑](#footnote-ref-6)
7. National Assembly for Wales [Well-being of Future Generation (Wales) Act 2015](http://www.legislation.gov.uk/anaw/2015/2/contents/enacted) [↑](#footnote-ref-7)
8. [The Flynn report - In search of accountability](https://gov.wales/topics/health/publications/socialcare/reports/accountability/?lang=en) (March 2016). [↑](#footnote-ref-8)
9. [Trusted to Care: Report of the external independent Review of the Princess of Wales Hospital and Neath Port Talbot Hospital at Abertawe Bro Morgannwg University Health Board (September 2014).](https://gov.wales/topics/health/publications/health/reports/care/?lang=en) [↑](#footnote-ref-9)
10. Older People’s Commissioner for Wales [Making Human Rights Real in Public Services](http://www.olderpeoplewales.com/en/equality_human_rights/making-rights-real.aspx) (January 2016) [↑](#footnote-ref-10)
11. [2] The initial year covered 9 months of the first financial year so costs are effectively for the first 2 ¾ years following introduction. [↑](#footnote-ref-11)