

# The UN Convention on



# the Rights of People with Disabilities

# Introduction

The Convention on the Rights of Persons with Disabilities was the first comprehensive human rights treaty of the 21st century. It was adopted in 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day.

The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as “objects” of charity, medical treatment and social protection towards viewing persons with disabilities as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

# Introduction

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

The Convention was negotiated during eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, making it the fastest negotiated human rights treaty.

*Information taken from*

*<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>*

# The UNCRPD & the UK

The UK agreed to follow it in 2009.

By following CRPD, the UK agrees to protect and promote the human rights of disabled people, including:

- eliminating disability discrimination
- enabling disabled people to live independently in the community
- ensuring an inclusive education system
- ensuring disabled people are protected from all forms of exploitation, violence and abuse

When the UK ratifies a treaty it agrees that it will follow it and will make any new laws compatible with the Articles in the Convention. Although it has not been made part of the UK domestic law (meaning you cannot bring a legal case relying only on the UNCRPD), it is meant to be followed and should be referred to by courts, tribunals and public bodies as they make decisions.

# The UNCRPD & the UK

As an advocate you can use the UNCRPD in your work as you push for things your partner wants and when you make challenges (particularly when you are concerned the person human rights are at risk).

The UNCRPD is monitored by the Committee on the Rights of Persons with Disabilities and each state is monitored every five years. UK's monitoring progress can be found by visiting the Human Rights Tracker for UNCRPD

<https://humanrightstracker.com/en/un-treaty/crpd/>

# Aim of the UNCRPD

The purpose of the UNCRPD (article 1) 'is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

# Principles

There are eight guiding principles (article 3) that underlie the Convention.

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
2. Non-discrimination
3. Full and effective participation and inclusion in society
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
5. Equality of opportunity
6. Accessibility
7. Equality between men and women
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

# Articles

There are 50 articles of the UNCRPD including the purpose and principles.

For a full list of the Articles please go to :

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

We are going to look in depth at two of the Articles which advocates frequently refer to:  
Article 12 and Article 19



# Article 12: Equal Recognition before the law

Article 12 of the UN Convention on the Rights of Persons with Disabilities says that disabled people are entitled to legal capacity on an equal basis with other people in all areas of life. In other words, a disabled person must not be treated differently because of impaired decision making (or lacking capacity to make decisions)

Crucially Article 12(3) obliges State Parties to provide access to the support that disabled people may require in exercising their legal capacity.

There are 5 parts to Article 12:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

# Equal Recognition before the law

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

# Article 12 & Advocacy

Article 12(3) says: "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity".

Independent advocacy is a provision that can absolutely support disabled people who have difficulty in understanding and/or negotiating their rights. The purpose of advocacy is to give people the same chance as others to negotiate their wishes, needs and feelings about the way they live. Advocates provide support for people to understand and access the legal framework so that their rights and needs are upheld in the best way possible.

The Care Act 2014 with its emphasis on a person-centred and personalised approach to care and support is important in this respect and Independent Care Act Advocates are appointed under the Care Act 2014 to help people with substantial difficulty and no other person appropriate to support them to ensure the best outcome for them with regard to care and support.

There is some debate over whether the Mental Capacity Act 2005 is compliant with the UNCRPD. Current UK law can mean that legal capacity can be denied to people who lack capacity to make decisions. In these instances, the Mental Capacity Act 2005 relies on a best interests model that requires the 'state' to substitute a decision on behalf of the person. The argument is that this does not comply with the safeguards set out in UNCRPD Article 12(4) because people are supported under the Mental Capacity Act for mental and not legal capacity. Support is therefore provided to achieve a mental capacity to permit a person to exercise a legal capacity (eg IMCA writing a report on what a person might have wanted if they had mental capacity). It has also been suggested that the way that mental capacity is tested does not meet legal requirements. Recommendations have been made to review this but this was not included in the Mental Capacity (Amendment) Act 2019

***Source: Implementation of the United Nations Convention on the Rights of Persons with Disabilities, Shadow Report, January 2017, Disability Rights UK and Disability Wales pp.18– 20***

<https://www.disabilityrightsuk.org/sites/default/files/pdf/CRPD%20shadow%20report%20-%20England%20Wales%2026%20January%202017.pdf>

# Article 19: Living independently and being included in the community

This Article recognises the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html>

# The UNCRPD & Care Act 2014

Did you know the UNCRPD is actually referenced in the Care and Support Statutory Guidance (for the Care Act 2014):

Independent living

1.18 Although not mentioned specifically in the way that wellbeing is defined, the concept of 'independent living' is a core part of the wellbeing principle. Section 1 of the Care Act includes matters such as individual's control of their day-to-day life, suitability of living accommodation, contribution to society - and crucially, requires local authorities to consider each person's views, wishes, feelings and beliefs.

1.19 The wellbeing principle is intended to cover the key components of independent living, as expressed in the UNCRPD in particular, Article 19 of the Convention. Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act. The language used in the Act is intended to be clearer, and focus on the outcomes that truly matter to people, rather than using the relatively abstract term 'independent living'.

The well-being principle and the person-centred approach is central to the delivery of the Care Act 2014. Advocates can draw on the Guidance and the UNCRPD when delivering their work.

If, through your work, you are supporting a person to live more independently, or you wish to raise concerns that decision making is not promoting the independent living your partner wants, you may find it helpful to quote from both the Care Act 2014 (UK domestic law) and the UNCRPD (international treaty).

# References & Further Reading

Equality and Human Rights Commission:

<https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

Implementation of the United Nations Convention on the Rights of Persons with Disabilities, Shadow Report, January 2017, Disability Rights UK and Disability Wales

<https://www.disabilityrightsuk.org/sites/default/files/pdf/CRPD%20shadow%20report%20-%20England%20Wales%2026%20January%202017.pdf>

UNCRPD Actual Treaty:

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>



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