



Human rights framework

September 2018

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All of the themes

What should happen for you

Theme	The name of the theme	Easy read description of the theme	Full text description of the theme	Main CRPD rights in this theme
1	Standards of living	Standards of living	The right to an adequate standard of living and social protection	Articles 22 and 28
2	Health	Achieving your best level of health	The right to enjoyment of the highest attainable standard of physical and mental health	Article 25
3	Freedom and safety	Being able to make your own decisions, and being free and safe	The right to exercise legal capacity and the right to personal liberty and the security of person	Articles 12, 13, 14 and 17
4	Protected from abuse	Not being tortured or treated cruelly, and not being used or abused	Freedom from torture or cruel, inhuman or degrading treatment or punishment and from exploitation, violence and abuse	Articles 10, 15 and 16
5	Independent living	Independent living and being a part of the community	The right to live independently and be included in the community	Articles 19 and 26

All of the themes

How things should happen for you

Theme	The name of the theme	Easy read description of the theme	Full text description of the theme	Main CRPD rights in this theme
A	Dignity	Dignity	Disabled people have the same rights as everybody else	Article 1
B	Equality and non-discrimination	Being equal	Everyone is equal under the law and that discrimination against disabled people will not be allowed	Articles 5, 6 and 7
C	Accessibility	Accessibility	Disabled people have equal access to things in all areas of life	Article 9
D	Implementation and monitoring	Information and making rights happen	Countries collect the information they need to help make this agreement happen, and disabled people can access this information.	Articles 31 and 33

Each theme in detail: **What** should happen for you

Theme 1: Standards of Living

Number		Article	Right	What is required	Examples
1	1	Article 22 CRPD / Article 8 ECHR	Respect for privacy	No unreasonable interference with your privacy, especially personal and health information	I can keep things private when I want to I have a private life
1	2	Article 28 CRPD	Adequate standard of living and social protection	Adequate living conditions, including in healthcare and residential facilities	I like the place where I live
1	3			Continuous improvement of their living conditions	The place where I live is getting better and better, not worse
1	4			An adequate standard of food, clothing, clean water	I like the food I eat I can have a drink when I need to
1	5			Devices and other assistance that people need for their disability	I can get help with my disability when I need it
1	6			A decent social environment with things to do and connections with the outside world	I have things to do I have people to see

Each theme in detail: **What** should happen for you

Theme 2: Health

Number		Article	Right	What is required	Examples
2	1	Article 25 CRPD	Right to health	Care and treatment for your mental health and physical health has to be: Available – there are enough people & places to provide healthcare and there is enough information	I can get help with my health when I need it
2	2			Care and treatment for your mental health and physical health has to be: Accessible – everyone should be able to get healthcare equally. It shouldn't be too expensive or too hard to get to and everyone should be able to understand the information	I get information about my health and how to get help I can understand this information Cost does not stop me from getting the care and treatment that I need
2	3			Care and treatment for your mental health and physical health has to be: Acceptable – to everyone, even if they have different cultures	My care and treatment is acceptable for my culture
2	4			Care and treatment for your mental health and physical health has to be: Quality – meeting good standards	I like the help I get for my health The help I get for my health is good
2	6			You have the right to healthy conditions, including safe drinking water, safe and healthy food, decent housing, information and education about health	The place where I live helps me to be healthy.
2	7			People with disabilities have the right to the same standards of healthcare as anyone else.	The help I get for my health is as good as other people get.

Each theme in detail: **What** should happen for you

2	8			If people need healthcare because they have a disability, or to prevent it becoming worse, they must be given it.	I get help to live with learning disability I get help to live with autism
2	9			People with disabilities, like anyone else, have the right to make choices about their healthcare.	I can make choices about my health I can make choices about the help I get for my health.
2	10			Staff must make sure they don't treat people differently because they have a disability.	I am treated the same way as everyone else

Each theme in detail: **What** should happen for you

Theme 3: Freedom and safety

Number		Article	Right	What is required	Examples
3	1	Article 12 CRPD	Equal recognition before the law	Systems based around supported decision-making	I have made an advance statement
	2			When needed, to be given support to make decisions and exercise legal capacity	I am supported to make decisions I can get advocacy when I need it I can have a lawyer if I need one
	3			Respect for the rights, will and preferences of disabled people	My advance statement was used to help make decisions about my care and treatment People listened to me at tribunals Health professionals respected my rights and what I want
	4			A move away from substitute decision-making (decisions made by others)	I can make decisions about my life Other people do not make decisions for me about my life
3	5	Article 13 ECHR	Right to an effective remedy	Everyone whose rights and freedoms are violated will have an effective remedy	I wasn't happy about my care and treatment, but I got things changed
3	6	Article 13 CRPD	Access to justice	That justice systems are accessible to disabled people so they can participate – as the person concerned, as witnesses. Information, communication, physical environment and financial costs must all be accessible. Accommodation to	I know how to challenge decisions about my care and treatment I can challenge decisions about my care and treatment I can take part in my tribunals in every way I can take part in my own trial in every way

Each theme in detail: **What** should happen for you

				make procedures accessible	
3	7	Article 13 CRPD	Access to justice	Training for people working in the justice system on these issues	People in the justice system have the skills that they need to make the justice system accessible for me
3	8	Article 6 ECHR	Right to a fair trial	Fair hearing and due process, including having the opportunity to participate effectively in hearings, having enough information and time to prepare for a hearing	My tribunal was fair My trial was fair
3	9	Protocol 7, Article 2 ECHR	Right of appeal in criminal matters	Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal	I know that I can sometimes appeal the decision of a Mental Health Tribunal I know that I can sometimes appeal the decision of a court
3	10	Article 14 CRPD	Liberty and security of person	No detention based on disability (in tension with 3 10)	I know why I am here I am here for care and treatment I am here to stop me from hurting myself I am here to stop me from hurting someone else I am here because I have a learning disability I am here because I have autism
3	11			Informed consent to admission to healthcare / residential settings	I understand why I am here, and I am choosing to be here

Each theme in detail: **What** should happen for you

3	12	Article 5 ECHR	Right to liberty and security	No unjustified detention (in tension with 3 12)	<p>I know why I am here</p> <p>I am here for care and treatment</p> <p>I am here to stop me from hurting myself</p> <p>I am here to stop me from hurting someone else</p> <p>I am here because I have a learning disability</p> <p>I am here because I have autism</p>
3	13			Procedures and safeguards when a person is detained e.g. information about why you have been detained, the opportunity to challenge your detention	<p>I understand why I have been kept here</p> <p>I know what to do if I think I should not be kept here</p>
3	14	Article 17 CRPD	Protecting the integrity of the person	Free and informed consent to treatment	I can say no if I don't want treatment / medicine / to see a health worker
3	15	Article 8 ECHR	Right to respect for private and family life	Not to be interfered with without your consent, unless it is necessary.	<p>I can have visitors that I want to see</p> <p>I can see people in private that I want to see</p> <p>People can give me things that I want to have when I am here</p>

Each theme in detail: **What** should happen for you

Theme 4: Protection from abuse

Number		Article	Right	What is required	Examples
4	1	Article 10 CRPD / Article 2 ECHR	Right to life	Duty not to take away anyone's life	Being here stops me from hurting other people
	2			Duty to take reasonable steps to protect life	Being here stops me from hurting myself
	3			Remedies when things go wrong, including investigating	If something goes wrong I know who to speak to If something goes wrong I know people will help to make it better
4	4	Article 15 CRPD / Article 3 ECHR	Freedom from torture or cruel, inhuman or degrading punishment	Treatment which causes severe harm, or is grossly humiliating and undignified must never occur	My treatment doesn't hurt me. My treatment doesn't upset me. My treatment doesn't harm me.
	5			Duty to take reasonable steps to protect from risks of ill-treatment	People always do everything that can be done to treat me with respect
	6			Remedies when ill-treatment occurs, including investigating	I told someone that I was not being treated with respect, and now I am treated with respect
4	7	Article 15 CRPD	Freedom from torture or cruel, inhuman or degrading punishment	No participation in medical or scientific experiments without free consent	If the person has taken part in experiments: I had a choice in whether to take part in experiments I had support that I needed to help me decide whether to take part in experiments

Each theme in detail: **What** should happen for you

4	8	Article 16 CRPD	Freedom from exploitation, violence and abuse	Take steps to prevent abuse, including through information and support on how to deal with it	I know what abuse is I know what to do if I think I am being abused
4	9			Effective independent monitoring of facilities and programmes for disabled people	I have someone I can trust who will check that my care and treatment is right
4	10			Measures to help people recover if they have been victims of abuse	I was not treated with respect, but people helped me to recover

Each theme in detail: **What** should happen for you

Theme 5: Independent living

Number		Article	Right	What is required	Examples
5	1	Article 19 CRPD	Living independently and being included in the community	To decide where, with whom and how to live and individualised support to allow that to happen	I can live where I want I can live with people I want to live with I get support to live how I want to live
	2			Not to be obliged to live in a particular arrangement e.g. in an institution in order to receive mental health services	I can live where I want to live I don't have to live in a hospital / care home / (place where the person doesn't want to live)
	3			Full participation in all aspects of the community e.g. education, work, public life, leisure and sport.	I feel that I am part of my community
	4			All services in the community for the general population must also be available, universally accessible, acceptable and adaptable to disabled people.	I can use all the services in my community
	5			Article 26 CRPD	Habilitation and rehabilitation
6	Ensure there are services available for this as early as possible	I have support for things to get better in all of my life: for my health, for work, for learning and for living well			

Each theme in detail: **How** things should happen for you

Theme A: Dignity

Number		Article	Right	What is required	Examples
A	1	Article 1 CRPD	Purpose [of the UNCRPD]	Respecting a person's choices.	I can make choices in my life
	2			Respecting that having a disability doesn't mean there is something "wrong" with a person – it just means they are different and should be accepted for who they are.	People accept me for who I am

Theme B: Equality and non-discrimination

Number		Article	Right	What is required	Examples
B	1	Article 5 CRPD	Equality and non-discrimination	Take positive steps to remove barriers and ensure disabled people have equal opportunities	I have the same opportunities as everyone else
	2			Ensure accessibility	I can use all of the services that I need I understand my care and treatment services I can get to my care and treatment services
	3			Provide reasonable accommodation [reasonable adjustments] and individual supports when needed	My care and treatment fit my needs as a person with a disability
B	4	Article 14 ECHR	Equality and non-discrimination	Enjoyment of rights and freedoms without discrimination on any ground	I am treated the same as everyone else

Each theme in detail: **How** things should happen for you

B	5	Article 6 CRPD	Women with disabilities	Positive steps need to be taken to ensure that women with disabilities are protected against things being worse for them because of being both a woman and having disabilities (multiple discrimination)	Being a woman does not mean I am treated differently
B	6	Article 7 CRPD	Children with disabilities	Particular attention to children with disabilities	People always make sure that I have what I need
B	7			The best interests of the child have to come first	People have made decisions for me that are the best decisions for me
B	8			Listen to children's views and respect them for who they are as they grow up.	Adults listen to me and treat me well
B	9			Give disabled children assistance to express their views if they need it	People help me to say what I think or want

Each theme in detail: **How** things should happen for you

Theme C: Accessibility

Number		Article	Right	What is required	Examples
C	1	Article 9 CRPD	Accessibility	Systematic removal of barriers to access	I can use all of the services that I need I understand my care and treatment services I can get to my care and treatment services
	2			Universal design in all new facilities, services etc	If the person has access to new services of facilities that are also used by other people: Everyone can use the services that I use Everyone can use the buildings that I use

Theme D: Implementation and monitoring

Number		Article	Right	What is required	Examples
D	1	Article 31 CRPD	Statistics and data collection	Collection of disaggregated data (broken down into groups) to inform implementation of rights	I know that people use information about me to make sure that my rights are met I know that people use information about people with my condition to make sure that our rights are met
	2	Articles 4.3 and 33 CRPD	National implementation and monitoring	Involving disabled people, through their representative organisations, in all activities to do with CRPD – implementing legislation and policies, monitoring the convention.	I have been helped to make sure that people's human rights are promoted and protected

Explanation of the human rights framework

A human rights framework is needed as part of the human rights based approach to this review. The review follows the Scottish Human Rights Commission's human rights based approach, which is described at:

http://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf

The human rights framework is the main tool that the review uses to comply with the Legality principle of the human rights based approach.

We aimed to have a framework that is broad enough to cover all aspects of the Mental Health Act (the 2003 Act) and to cover all areas of human rights that may be most relevant to mental health law. This framework is meant to:

- give us a foundation for reviewing any aspect of 2003 Act
- help us to see any gaps that may exist in the 2003 Act in the context of current human rights standards
- make it possible for us to put together all of the evidence that we get, which will come from a very wide range of sources.

To develop our framework, we started with the five themes set out in the World Health Organisation's QualityRights (WHO QR) indicator framework. Each theme in that framework corresponds to a right under the Convention on the Rights of Persons with Disabilities (CRPD), but themes in that framework can include more than one CRPD right.

We then expanded the WHO QR framework to include -

- relevant absolute rights: the right to life, in addition to the right to freedom from torture, inhuman and degrading treatment.
- relevant rights from the European Convention on Human Rights (ECHR): there was generally some overlap – and sometimes tension – between CRPD and ECHR rights, and the framework reflects this.
- the principles of the CRPD: These are found in Article 1. They are included because they are fundamental to the CRPD and because the 2003 Act is based on principles.
- other CRPD rights that are particularly relevant: for example, the 2003 Act sets up arrangements for monitoring the operation of that Act, and Article 33 of the CRPD deals with monitoring.

The review's Secretary and Project Manager developed versions of this framework for comment. A lawyer with expertise in human rights based approaches and mental health law proposed plain English descriptions of the relevant content of each human right. The review's Independent Chair and members of the review's Law and Policy Advisory Group commented on this framework.