

**“Sometimes
I feel like I am
in prison.”**

**Placing Children
in Hotel-Type
Accommodation**

**A Human Rights
Analysis Report**

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For the purposes of this report, we will use the term “hotel-type accommodation” throughout. This covers a range of different environments including hotels, hostels, B&Bs, and cruise ships or barges. We consider these to share many of the same features in terms of congregant living and potential breaches of children’s human rights.

Introduction

No child should have to live in hotel-type accommodation. As we set out below, this is the clear and long-standing view of national and international human rights institutions, statutory inspection bodies, third sector organisations and academic experts.

And yet, in both the asylum and homeless systems, children are experiencing significant periods in environments which can be actively dangerous, exacerbate trauma and cause long-term harm to health and development. Use of hotel-type accommodation for anything other than a short-term, emergency basis is likely to violate a wide range of children’s human rights

under the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). These are environments that are inherently not conducive to the realisation of children’s rights.

Children in the asylum system

In the case of the asylum system, children have spent increasing amounts of time in hotels as a direct consequence of a series of UK Government legislative and policy decisions which disregard human rights. Across the UK, billions of pounds a year are spent on hotel accommodation while the backlog of asylum decisions steadily increases. The Scottish Refugee Council describes this arrangement as a “gross waste of public monies”¹. The recently passed Illegal Migration Act 2023², while framed by the UK Government as a solution,

will serve only to compound the damage to an already broken immigration system. By denying children the right to claim refugee status, it will result in thousands of children and their families being left in legal limbo, unable to work or support themselves³ and having to be accommodated by the State in hotels, barges and other institutional types of accommodation. Although the UK Government has recently

“Staying in the hotel has affect my mom badly she is always sad she is always crying and I am so worried, my mom is not the same she is always crying and never happy this makes me feel down and sad.”

A young person living in hotel accommodation⁶⁶

announced that some hotels will be closed, this is because many refugees and asylum seekers are being required to share rooms, or being moved into other similar forms of accommodation such as barges or camps. Meanwhile, the recent Home Office decision to expedite the eviction and removal of support from asylum-seekers who are either successful in their claims, or who have their claim refused, will place additional pressure on Scottish local authorities and on social housing.

Children experiencing homelessness

While the bulk of attention has focused on the use of hotels in the asylum system, temporary hotel-type accommodation is also becoming an increasingly common feature for children experiencing homelessness. For some time now, civil society organisations and trade unions have been raising the alarm about a homelessness crisis in Scotland.⁴ The Scottish Housing Regulator’s thematic review on homelessness services in Scotland⁵ in February 2023 warned that some local authorities are facing “an emerging risk of systemic failure” in homelessness services. It identified three major strategic challenges in providing homelessness services: the significant numbers of people in temporary accommodation; maintaining a sufficient supply of appropriate temporary accommodation; and ensuring access to the number of permanent homes that are needed. The Scottish Government has committed to deliver 110,000 affordable homes by 2032, of which at least 70% will be available for social rent and 10% will be in remote, rural and island communities. It has also committed to introducing homelessness prevention legislation. These are all longer-term responses. However, concerns have been raised by expert civil society organisations about whether this is enough, with Shelter Scotland describing the plan as one that “lacks urgency”.⁶

Economic impact

In addition to the impacts on human rights set out in more detail below, there are potentially significant economic costs associated with children living in hotel-type accommodation for prolonged periods of time. While it is not possible to quantify the specific impacts in the absence of more detailed research and economic modelling, reports by the Joseph Rowntree Foundation⁷ and the Building Research Establishment⁸ suggests that the longer-term costs to public finances of life in poor quality housing range across areas including health, education and employment.

Purpose of this Report

Given the legal, policy and system pressures that underpin it, there seems little prospect of the use of hotel-type accommodation ending in the immediate future; in either the asylum or homelessness systems.

In that light, this report is intended to support decision-makers and frontline practitioners in minimising the use of, and mitigating the harms caused by, this type of environment.

The report sets out the human rights framework relevant to use of hotel-type accommodation for children and families in any circumstance, whether in the asylum system or as part of a local authority response to homelessness. It links international human rights standards with domestic law obligations, and the most up to date research evidence, illustrated and informed by insights from those who have experience of living in hotel-type accommodation for lengthy periods of time.

Section 4 of the Commissioner for Children and Young People (Scotland) Act 2003 provides that the office's function is to (inter alia) keep under review law, policy and practice with a view to assessing its adequacy, and to promote good practice by service providers. This report is intended to assist public bodies in complying with their human rights obligations and empower frontline staff to advocate on behalf of children and families who are experiencing, or are at risk of experiencing, hotel-type accommodation.

It sets out clear criteria and recommendations that must be taken into account by local authorities and asylum accommodation providers when considering placing children and families in hotels, hostels, B&Bs, barges, cruise ships or other forms of temporary/contingency accommodation, by any public body consulted in the course of such a decision (for example, local authorities, NHS Boards, Police Scotland etc), or which provides support to a child in such an environment.

In order to do so, we draw on evidence and analysis from a range of existing sources including our own work on the so-called Mother and Baby Unit⁹ and hotels run by Mears in Glasgow, reports and research by civil society organisations, inspection reports by statutory bodies, as well as reports by commissions of inquiry and parliamentary Committees.

The report incorporates analysis and conclusions from two expert research papers compiled on our behalf. The first is by Professor Helen Ball, Director of the Durham Infancy and Sleep Centre, who made in-person observations of Glasgow asylum hotel accommodation in March 2023. The second, by Sally Hogg, Senior Policy Fellow at Cambridge University's Play in Education Development and Learning (PEDAL) Centre, sets out the most up to date research evidence, analysis and professional expertise on the impact of hotel-type accommodation on children's rights to play and development. Both papers contain clear recommendations which we have incorporated.

Most importantly, this report reflects the lived experiences of refugee and asylum seeker children, young people and their families who are current and former residents of hotel accommodation in Scotland. This includes:

- asylum-seeking mothers residing in hotel-type accommodation in Glasgow
- the young unaccompanied asylum seeker children from Guardianship Scotland's Young People's Voices (YPV) group
- evidence from a community research project run by Migrants Organising for Rights and Empowerment (MORE) with young people under 16 who have been housed in hotels in Glasgow
- the experience of case workers from Positive Action in Housing, Amma Birth Companions and the Scottish Refugee Council who have supported families in hotels and others forms of institutional accommodation

While we have avoided the use of detailed case studies in order to protect privacy, their voices sound a clear warning of the profound impacts living for prolonged periods in this type of environment can have. We note there appears to be little research into the experiences of children living in local authority homelessness accommodation and consider that this is a gap which requires to be addressed by the Scottish Government.

Executive Summary and Recommendations

Use of hotel-type accommodation is increasing in both the asylum and homelessness spaces.

As a general principle, children should not be placed in hotel-type accommodation. This includes expectant mothers and newborn babies.

Where unavoidable, hotel-type accommodation for children must only be used as:

- a last resort,
- for the shortest time possible, and
- in line with international and domestic law obligations

Use of hotel-type accommodation on anything other than a short-term emergency basis is likely to violate a wide range of children's human rights under the European Convention on Human Rights (ECHR), the United Nations Convention on the Rights of the Child (UNCRC) and other international treaties.

ECHR rights are directly enforceable via the Human Rights Act 1998, and even though the UNCRC is not yet incorporated into domestic law and the rights not directly justiciable, the obligations under the UNCRC apply in Scotland (and the rest of the UK). All public bodies should constantly review and constructively challenge their policy and practice to ensure children's human rights are given the greatest level of protection.

The **Home Office** should:

- adopt rights-based minimum standards for children living in hotel-type accommodation and build this into the Asylum Accommodation and Support Services Contract (AASC). In the interim, asylum accommodation providers should develop and adopt voluntary human rights standards.

The **Scottish Government** should:

- ensure it addresses the housing crisis as a matter of urgency, with the goal of providing sufficient and suitable housing for children and families.
- take the necessary steps to ensure that the views and experiences of children in hotel-type homelessness accommodation are able to fully inform policy-making.

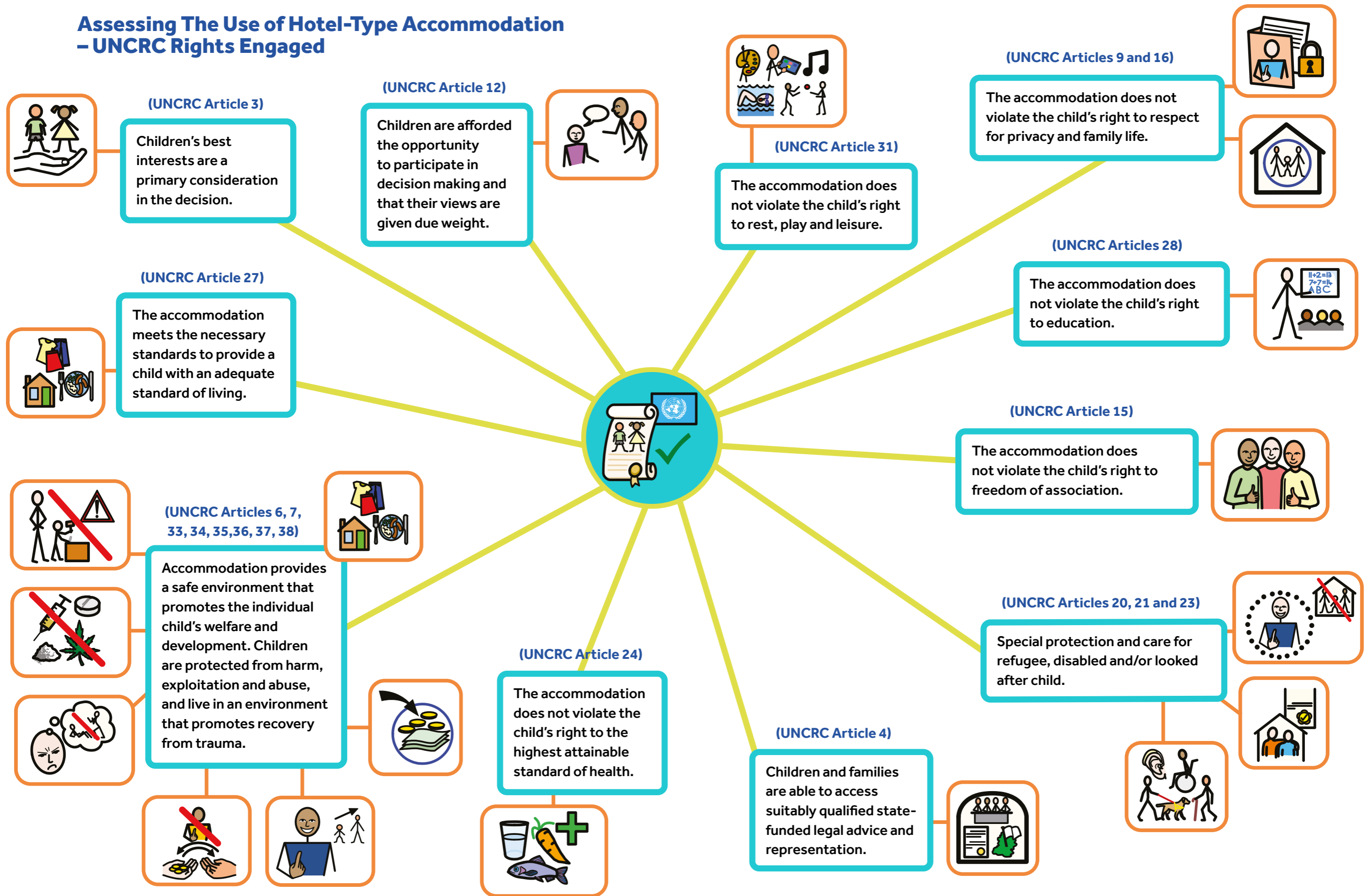
For public authorities, existing Getting it Right for Every Child (GIRFEC) processes, and particularly the Child's Plan, can provide a vehicle for ensuring that all of the rights issues identified in this report are considered, the available information assessed, and the necessary support provided to the child and their family.

When considering placing a child into hotel-type accommodation, or providing support to a child already placed, public authorities and/or accommodation providers must:

- **Ensure that children's best interests are a primary consideration in the decision.** This requires an assessment of the impact on all of the child's human rights that are engaged by the decision to place a child within hotel-type accommodation.
- **Ensure that children are afforded the opportunity to participate in decision making and that their views are given due weight.** This includes supporting them to understand the decision and its consequences, any alternative options, and means of challenge.

- **Ensure that the accommodation meets the necessary standards to provide a child with an adequate standard of living.** This should take into account their rights to education, play, health, safety and development.
- **Undertake a risk assessment and Children's Rights Impact Assessment, based on the individual needs and vulnerabilities of the child/children and family.** For example, assessments should include; whether or not rooms are child-proofed, availability of age-appropriate sleeping spaces away from hazards, accessibility and safety. It should also include risks presented by adults (including hotel staff, far right extremist groups, criminals and other unrelated adults) and the level of supervision and support provided by professionals.
- **Ensure that the accommodation does not violate the child's right to the highest attainable standard of health.** This includes rights to food and nutrition, access to healthcare services such as GPs and dentists, sanitation and protection from avoidable diseases. Parents with babies must be provided with safe and accessible bathing facilities, changing tables or changing mats, sufficient bins to dispose of nappies, somewhere to refrigerate and store breast milk, and a means of safely sterilising/washing bottles.
- **Ensure that the accommodation does not violate the child's right to education.** This includes ensuring that all children in hotel-type accommodation are able to register at a local school which they can get to easily, are assessed for additional support needs that may arise or be exacerbated by their living conditions, are able to access free and online learning resources, and have a suitable quiet space to study and complete homework.
- **Ensure that the accommodation does not violate the child's right to rest, play and leisure.** This includes provision of age and culturally appropriate play opportunities. For example, babies and toddlers will need safe, clean floor space. Older children will need access to private space where they can play independently.
- **Ensure that the accommodation does not violate the child's right to freedom of association.** This includes making sure the child is afforded opportunities to socialise with peers in a way that respects the age and stage of the child concerned.
- **Ensure that the accommodation does not violate the child's right to respect for privacy and family life.** This includes considering the behaviour of staff, the impacts of room sharing, family dynamics, and aspects of privacy that are age, disability, religion or gender-related. Social work or other child protection interventions must also respect the child's rights to family life.
- **Take particular care when proposing to place a refugee, disabled and/or looked after child in hotel-type accommodation.** The risk assessment and CRIA must take account of these additional needs, legal rights, duties on public bodies, and potential liabilities.
- **Consider how to ensure that children and families are able to access suitably qualified state-funded legal advice and representation.** This is important in order to afford access to justice and routes to challenge decisions and rights violations.

Assessing The Use of Hotel-Type Accommodation – UNCRC Rights Engaged



Background, Context and Legislation

Children in the asylum system

Within the asylum system, ss95 and 96 of the Immigration and Asylum Act 1999¹⁰ require the Home Office to provide an asylum-seeking child with accommodation adequate for their needs if they would otherwise face destitution. In discharging this duty, the Home Secretary must take account of the special needs of any asylum seeker who is a pregnant woman, or a lone parent with a minor child.

Hotel-type accommodation was originally intended only as a short-term, contingency option for refugees and asylum-seekers. However, since the Covid-19 pandemic, hotel-type accommodation has become an increasingly common part of the asylum accommodation

landscape, and a way for the Home Office to claim it is discharging its duty to accommodate asylum-seekers. In Scotland, hotel accommodation for refugees and asylum-seekers is provided under contract by the Mears Group on behalf of the Home Office.

As Home Office decision making has continued to slow down, and backlogs of cases built up, children and families are spending increasingly longer periods of time in hotel-type accommodation. Data compiled by Refugee Action¹¹ between mid-2021 and January 2023 shows that, of the adults surveyed, more than half had been held in hotels for more than six months, 33% had been held for more than a year, and 8% had

been there for more than 15 months. Although families are supposed to be prioritised for longer-term housing, 95% of the families with children surveyed said they had been held for more than six weeks in hotels, 58% said they have been there for more than six months, and 27% said they had been in hotels for a year or longer. More than 90% of the families surveyed reported that the hotels they were staying in were unsuitable for children.

The Illegal Migration Act 2023 will require significantly increased levels of hotel-type accommodation, if implemented. Recently the UK Government has proposed using barracks, barges and cruise ships as cheaper alternatives to hotels, raising additional serious concerns about children's rights. The Refugee Council has estimated that 45,000 children will arrive in the UK but be barred from claiming asylum in the first three years of the Bill's operation¹². This includes nearly 15,000 unaccompanied children.

Troublingly, there have also been some instances raised with us of Unaccompanied Asylum-Seeking Children having been placed in hotel accommodation by Scottish local authorities, in at least one case for a period of six months. We are concerned that this creates additional risks of criminal exploitation, abuse, and exposure to alcohol, drugs and violence.

Children experiencing homelessness

Hostels and B&Bs are sometimes used as temporary accommodation by local authorities discharging their duties under the Housing (Scotland) Act 1987 and the Homelessness etc (Scotland) Act 2003.

The Homeless Persons (Unsuitable Accommodation) Order 2014¹³ provides that households (of any type) may not be placed in accommodation which is 'unsuitable' for more than seven days, and only then in an emergency. A property is considered 'unsuitable' if, for example, it is not near schools or health facilities that are used or might reasonably be expected to be used by members of the family, or it does not have use of adequate and accessible cooking facilities and a living room. Hotel-type accommodation will therefore generally be considered 'unsuitable' in terms of the Order. The Order also refers to the need to meet "minimum accommodation safety standards".

The 2014 Order was amended in 2017, 2020 and 2021. It now makes no specific reference to children (previously property was defined as 'unsuitable if it was "unsuitable for occupation by children"). In 2011, the Scottish Government produced guidance entitled "Meeting the Best Interests of Children Facing Homelessness"¹⁴, but this simply recommends a GIRFEC wellbeing-based approach to assessment.

Further guidance issued in 2021¹⁵ provides that "in the case of children, a local authority must be satisfied that overall, the accommodation does not pose significant risk to the safety of children and ensure that the best interests of the child is met.... Local authorities will need to use their judgment in deciding the possible risk posed by any sort of accommodation, after carrying out a risk assessment that includes involving the applicant and covers equality considerations, the welfare and safety of children to ensure that they are not exposed to trauma triggers, and corporate parenting duties for young adults (including homeless 16 and 17 year olds) which is applicable to the accommodation they are to be offered as well as people associated with the accommodation such as residents and workers." Although it makes reference to best interests, the examples given (welfare, risk, equality, safety) do not provide a comprehensive rights-based approach to assessment.

It is obviously important that public authorities and accommodation providers consider children's human rights (in terms of specific legal entitlements and duties), not simply their wellbeing as they are not equivalent concepts. That said, it is possible to map across many of the rights issues raised in this paper to the GIRFEC wellbeing indicators, demonstrating that living in hotel-type accommodation will negatively impact many aspects of a child's physical, mental and emotional wellbeing as well as violating their rights. So long as rights are properly considered, that allows the Child's Plan to act as a locus for identifying mitigating action for many of the issues that may negatively impact children in hotel-type accommodation.

Scottish Government data provided to our office suggests that as of 30 September 2022, 160 children were living in hostels or B&Bs, up from 75 at the same point in 2019. Between 1 April and 30 September 2022, households with children spent an average of 43 days in hostel accommodation and an average of 14 days in B&Bs. Anything over seven days in a hostel or B&B would very likely be a breach of the Unsuitable Accommodation Order.

43
days

The average time spent by a family with children in hostel accommodation between 1 April and 30 September 2022

14
days

The average time spent by a family with children in B&B accommodation between 1 April and 30 September 2022

90%

The number of families surveyed by Refugee Action who reported being placed in a hotel that was unsuitable for children

Human Rights Framework Analysis

“The Committee is deeply concerned about... the large number of children in alternative care, including in unregulated accommodations such as hotels... The Committee urges the State Party to: Prohibit and prevent the placement of children in... unregulated alternative care, including hotels and bed and breakfast accommodation.”

“The Committee is deeply concerned about the potential impact of the Illegal Migration Bill on children... The Committee urges the State party to... strengthen measures to ensure that all asylum-seeking, refugee and migrant children have equal and prompt access to education, health services, housing, psychosocial support, and social protection including benefit entitlements.”

“Noting with deep concern the large number of children living in poverty, food insecurity and homelessness, the Committee recommends that the State party... address the root causes of homelessness among children, strengthen measures to phase out temporary and “contingency” accommodation schemes, and significantly increase the availability of adequate and long-term social housing for families in need.”

- **UN Committee on the Rights of the Child, 2023 Concluding Observations on the combined sixth and seventh reports of United Kingdom of Great Britain and Northern Ireland¹⁶**

Human rights are universal; they apply to everyone, without exception. However, some groups are entitled to additional legal protections to take account of their vulnerability to rights abuses. In particular, mothers and children have long been recognised as requiring additional protections to secure their rights.

Article 25 of the Universal Declaration on Human Rights (UDHR)¹⁷ states that everyone has the right to a standard of living adequate for the health and wellbeing of them and their family, including food, clothing, housing, medical care and necessary social services. It goes on to state that: “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸ sets out rights to an adequate standard of living, including rights to housing and to food. It also recognises that mothers and children are entitled to special measures of protection.

The United Nations Convention on the Rights of the Child (UNCRC)¹⁹ builds on the UDHR, on ICESCR and other human rights treaties. It proclaims children’s status as human beings with a distinct set of rights, not just as passive objects of care and charity. And it requires special protection be provided for the rights of particular groups of children; those in the care system, refugees and asylum-seekers, and disabled children.

The Scottish Parliament and Government remain committed to passing the United Nations

Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which will incorporate the UNCRC into domestic law. When the Bill comes into force the duties on public bodies to comply with the provisions of the UNCRC will become directly justiciable in the domestic courts.

However, both the European Court of Human Rights and the UK Supreme Court²⁰ have made clear that unincorporated international conventions may be used by the courts to ensure that ECHR rights are interpreted in a way which is consistent with rules of international law and as evidence of internationally accepted common values. In assessing whether there has been a breach of Convention rights in respect of a child, regard should be had to the principle embodied in Article 3(1) of the UNCRC that the best interests of the child must be a primary consideration.

Furthermore, as the UK Parliament’s Joint Committee on Human Rights points out, even unincorporated treaties require to be considered carefully by public bodies when taking decisions that engage human rights:

“When reviewing the exercise of discretion by public authorities, the courts subject decisions or acts which interfere with human rights under international treaties to especially anxious scrutiny. Such decisions or acts require particularly strong justification if they are not to be regarded as irrational or disproportionate and, therefore, unlawful²¹.”

The obligations under the UNCRC therefore already apply in the UK and in Scotland. All public bodies should constantly review and constructively challenge their policy and practice to ensure children’s human rights are given the greatest level of protection.

Best Interests (UNCRC Article 3)

Article 3 of the UN Convention on the Rights of the Child (UNCRC) requires the child’s best interests to be a primary consideration in all decisions affecting them. The Committee on the Rights of the Child (CRC) has described this as a right, a principle and a rule of procedure aimed at ensuring the full and effective enjoyment of all rights recognised in the Convention as well as the holistic development of the child.

As the CRC points out in its General Comment No.14²²: “Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.” A decision to place a child in hotel-type accommodation clearly engages this duty. For local authorities making decisions in relation to a child looked after by them, domestic law reflects the international law obligation (for example, s17 of the Children (Scotland) Act 1995).

The obligation is not limited to decisions taken directly as a consequence of legal duties. As the Committee notes: “The word ‘action’ does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures. Inaction or failure to take action and omissions are also ‘actions.’” Therefore, when a public authority is consulted on provision of accommodation for children it must ensure that its response is human rights-based and that the child or children’s best interests are a primary consideration.

The Committee goes on to say that: "There is no hierarchy of rights in the Convention; all the rights provided for therein are in the child's best interests... The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity."

The interconnected and indivisible nature of human rights means therefore that a determination by a public authority or accommodation provider on best interests must of necessity include an assessment of the impact on all of the child's human rights that are engaged by the decision to place a child within hotel-type accommodation.

Right to be heard (UNCRC Article 12)

In its General Comment No. 12²³, the Committee on the Rights of the Child (CRC) explains that "the right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention..." but that "...certain groups of children, including younger boys and girls, as well as children belonging to marginalized and disadvantaged groups, face particular barriers in the realization of this right."

The CRC makes clear that the starting point must be to presume the child has capacity. Children should be recognised as rights holders from the earliest stages of life and even very young children can express views on matters that are important to them. Preparation and support are essential, and particular care should be taken to support children who might otherwise experience barriers in expressing their views (for example, disabled children, refugee and asylum seeker children). In order to participate fully, children must understand the issues, the options, the possible decisions and their consequences.

The Committee also notes that "Article 12 stipulates that simply listening to the child is insufficient; the views

of the child have to be seriously considered when the child is capable of forming her or his own views". This will usually require the child's views to be recorded and for there to be some process for them to be accorded due weight in any decision making.

Finally, meaningful participation requires that the child have access to complaints mechanisms, or some other form of remedy to enable them to challenge decisions.

The experience of living in hotel-type accommodation can be intensely distressing and disempowering for children. Refugee Action's 'Waiting in the Dark' report²⁴ sets out the extent to which asylum-seekers are left in fear, anxiety and distress by their experiences of the immigration system, and the interviewees noted how much more difficult it was for children to understand and participate in the process.

"Hotels and congregate living (such as the use of barrack buildings) are not suitable accommodation for people seeking asylum. They were not suitable during the pandemic, and they are not suitable now."

- Independent Commission of Inquiry into Asylum Provision in Scotland⁶⁷

Public authorities and accommodation providers must ensure that children are afforded the opportunity to participate in decision making and that their views are given due weight. This includes supporting them to understand the decision and its consequences, any alternative options and means of challenge.

Right to an Adequate Standard of Living (ICESCR Article 11 and UNCRC Article 27)

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESR) provides that everyone has the right: "...to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In its General Comment No. 4²⁵, the Committee on Economic Social and Cultural Rights (CESCR) states that: "In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity... the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised."

CESCR goes on to state that: "An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating, and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;"

Article 27 of the UN Convention on the Rights of the Child (UNCRC) sets out this right in more detail as it relates to children. It requires States Parties to recognise: "...the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. [...] The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.... States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

The right to an adequate standard of living therefore is about far more than just a roof over someone's head, or basic physical safety. It must be an environment conducive to the realisation of the full range of children's human rights, including safety, health, education and play. Hotel-type accommodation risks violating those rights in a wide range of different ways.

"It's not a good place for children to be. You can't make any decisions, you can't decide what to eat, what they give you is what you take"

A young person living in hotel accommodation⁶⁸

In a recent judgment²⁶, the High Court of England and Wales considered what 'adequate' means in terms of the Home Secretary's duty to provide adequate accommodation to asylum-seekers. The court found that adequacy must be tested by reference to – and so measured against – the individual circumstances and needs of each relevant individual, including each dependent, and having regard to the age of any child. It must ensure, as an objective minimum standard, a dignified standard of living, which is adequate for health and is capable of ensuring subsistence. It may also be informed by length of time in the accommodation; that is, it may be adequate in the short-term but not for a longer period. The court identified a number of specific considerations that bear on an assessment of adequacy

for hotel accommodation, including: the size of the room, availability of a separate dining area, availability of a space for children to do homework, and somewhere for children to play. We discuss each of these further in the report.

Public authorities and accommodation providers must ensure that the accommodation meets the necessary standards to provide a child with an adequate standard of living, taking into account their rights to education, play, health, safety and development.

Right to Survival, Safety and Development (UNCRC Article 6)

An unsafe environment cannot be considered to represent an adequate standard of living in terms of Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESR) or Article 27 of the UN Convention on the Rights of the Child (UNCRC). Furthermore, children have the specific right to be kept safe from harm in terms of Article 6 of the UNCRC.

This applies to all children, but the Committee on the Rights of the Child's (CRC) General Comment No. 7²⁷ makes particular comment on the importance and scope of Article 6 rights for babies and infants. "Ensuring

survival and physical health are priorities, but States parties are reminded that Article 6 encompasses all aspects of development, and that a young child's health and psychosocial wellbeing are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realising human potential."

"Long-term hotel accommodation is not suitable for families with children. A hotel car park does not constitute a safe or appropriate play area, nor does it provide the variety of activities required by children."

- Independent Chief Inspector of Borders and Immigration: 'An inspection of contingency asylum accommodation May 2021 – November 2021'⁶⁹

An environment that places the child at risk of physical harm, and particularly where a parent or carer is unable to mitigate that risk, will violate the child's Article 6 rights. Professor Ball's report²⁸ identifies a number of practical examples relating to babies and toddlers, for example where lack of space means that cots are placed too close to heaters or cookers, where windows are not fitted with safety latches meaning they cannot be safely opened for ventilation, where gaps between beds and walls present a risk of infant entrapment, or where electrical sockets are uncovered. For newborn babies, she notes that failure to provide brand new mattresses in cots may elevate the risk of Sudden Infant Death Syndrome (SIDS). Concerns of SIDS risks being further elevated by overheated rooms with poor ventilation; sometimes a feature of older or cheaper hotels. UK guidelines recommend that infant sleep environments should not exceed 20°C²⁹.

As pointed out by One Life to Live in its "The Trauma of Water" briefing³⁰, the proposed use of cruise ships or barges meanwhile presents a specific risk of drowning, particularly given many refugee and asylum seeker children cannot swim. The briefing notes that women and girls are likely to be at especially high risk due to cultural factors that impact on the likelihood of having learned to swim.

Public authorities and accommodation providers must undertake a risk assessment and Children's Rights Impact Assessment, based on the individual needs and vulnerabilities of the child/children and family. For example, assessments should include; whether or not rooms are child-proofed, availability of age-appropriate sleeping spaces away from hazards, accessibility and safety.

Right to protection and recovery from exploitation, harm, abuse, trafficking, cruel, inhuman or degrading treatment (UNCRC Articles 32, 33, 34, 35, 36, 37 and 39 and ECHR Article 3)

Risks to the safety of children in hotel-type accommodation may arise from sources other than simply the physical environment. Children have the right to be protected from harm, abuse and exploitation. This means that child protection and safeguarding risks that may be presented by adults outwith the hotel (for example far right groups, or organised crime gangs), from hotel staff, and from other residents must be carefully assessed.

The Home Office's failure to protect unaccompanied asylum-seeking (UAS) children from going missing in hotels is well known³¹, as is the fact that unaccompanied children are highly vulnerable to being trafficked or re-trafficked. Vulnerability to sexual or criminal exploitation must therefore be considered and mitigated.

"My room was very cold, and the heating didn't work. Most of the night I slept with my coat and socks on. We had mould/damp in our room."

A mother living in hotel accommodation⁷⁰

"I did not have my own room; I did not see other children. The TV in our room was not working, I was very lonely and scared."

A young person living in hotel accommodation⁷¹

In his 2022 report³² into use of hotels to accommodate unaccompanied asylum-seeking children, the Independent Chief Inspector of Borders and Immigration raised significant concerns about staff residing in two hotels without having been subject to appropriate criminal records checks. This presents an obvious risk to children and should be checked in every case.

Young trafficking survivors interviewed in Scotland by the Modern Slavery and Human Rights Policy and Evidence Centre³³ talked about the importance of safety in promoting recovery from trauma. They described safety in terms of three components; physical safety, but also "stability provided by familiar routines and regular contact with people they trust, as well as a sense of predictability about the future".

The temporary nature of hotel-type accommodation prevents children and families putting down roots and limits opportunities for community integration. This has the likely impact of reducing children and young people's sense of safety and inhibiting recovery from traumatic experiences.

Safety can also be linked to the level of supervision provided by professionals. Members of the Young People's Voices group supported by Guardianship Scotland³⁴ reported feeling unsafe when living in hotels. This was not just about the environment and the people around them, but was linked to the extent they felt cared for, and connected with, social workers and others with legal responsibilities to keep them safe. Public bodies must therefore be confident that they are able to provide the appropriate level of oversight necessary to keep children safe, if considering making or acquiescing to a placement in hotel-type accommodation. This is particularly the case for looked after children to whom local authorities owe specific duties in domestic law.

The House of Commons Women and Equality Committee's "Equality and the UK asylum process" report called for "a needs-based risk assessment to be carried out before any women, families, children, or LGBT people at risk of hate crime are housed in hotels and other types of contingency accommodation alongside single men." This reflects both the level of risk associated with this type of accommodation and the additional vulnerability and rights protections due to children.

Public authorities and accommodation providers must undertake a risk assessment and Children's Rights Impact Assessment, based on the individual needs and vulnerabilities of the child/children and family. For example, assessments should include; risks presented by adults (including hotel staff, far right extremist groups, criminals and other unrelated adults), and the level of supervision and support provided by professionals

"The current policy of placing unaccompanied asylum-seeking children in hotels places them outside of the UK child protection system and is discriminatory."

- **Joint statement from the UN Special Rapporteur on trafficking in persons, especially women and children, the UN Special Rapporteur on the human rights of migrants, and the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences – April 2023³⁵**

Right to the Highest Attainable Standard of Health (UNCRC Article 24)

In its General Comment No.15³⁶, the Committee on the Rights of the Child (CRC) defines child health as a state of complete physical, mental, and social wellbeing and not merely the absence of disease or infirmity. The CRC notes that it interprets: "...children's right to health as defined in Article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health."

The right to health also encompasses entitlements including the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. The CRC says that rights respecting health care must be available and accessible to everyone without discrimination (that includes physical and economic accessibility).

The Committee also reinforces the link between maternal and infant health: "Among the key determinants of children's health, nutrition and development are the realisation of the mother's right to health and the role of parents and other caregivers. A significant number of infant deaths occur during the neonatal period, related to the poor health of the mother prior to, and during, the pregnancy and the immediate post-partum period, and to suboptimal breastfeeding practices. The health and health related behaviours of parents and other significant adults have a major impact on children's health." An environment that causes damage to the health of a mother therefore will also negatively impact on the child's rights to health and development.

As Professor Ball notes in her report, hotel-type accommodation is often noisy, and the type and quality of beds and bedding are outwith the control of the individual. This can cause sleep disruption and have profound health impacts for mothers and children: "...lack of adequate sleep during pregnancy (whether due to anxiety, noise, or discomfort) increases the chance of accidents, and is associated with longer labour, higher caesarean rates, greater chance of preterm labour, and higher levels of proinflammatory serum cytokines, all of which increase the risk of infant mortality and morbidity.... Maternal sleep disturbance during late pregnancy is also linked with impaired child neurodevelopmental and behavioural outcomes³⁷."

The Medact Migrant Solidarity Group's November 2022 report³⁸ noted a number of concerns about the impacts of living in hotel accommodation on physical and mental health. It states

that poor heating and ventilation - often features of older or cheaper hotels/hostels - can exacerbate respiratory and cardiovascular disease. Overcrowding (for example requiring families to share small rooms) can increase risks of infectious diseases such as Covid-19, and a lack of access to green spaces is detrimental to both physical and mental health.

There are other direct health risks associated with hotel-type accommodation. Shelter's Chance of a Lifetime report³⁹ notes that "...living in bed and breakfast accommodation puts children at greater risk of infection, especially gastroenteritis, skin disorders and chest infections, and accidents."

The Medact report also found that refugees and asylum-seekers living in hotel accommodation across the UK experienced difficulties accessing primary care, mental health services, and maternity services. Children have a right to access such services in terms of Article 24 UNCRC, meaning that local authorities and accommodation providers must consider not only the direct health impacts of living in hotel-type accommodation, but also the impact on children's ability to access services including GPs, dentists, health visitors, CAMHS etc. Location can be a critical determinant of access to health services and is specifically referenced in article 5 of the Unsuitable Accommodation Order as a key consideration.

The right to food is recognised as a fundamental part of the right to health and to securing an adequate standard of living in terms of Article 11 of ICESCR and Article 27 of the UNCRC. It also engages several other rights including rights to survival and development (UNCRC Article 6). As Professor Ball points out in her report⁴⁰, weight loss during pregnancy impairs foetal development meaning that pregnant women must be able to access sufficient quantities of nutritious food that is sensitive to the particular needs and circumstances of pregnancy.

Once a child is born, accommodation which limits the ability of a mother to provide nutritious food for her baby and herself is also therefore likely to breach these rights. Accommodation which in any way inhibits or restricts the ability to breastfeed is especially concerning; this may be directly (for example, lack of space or access to appropriate facilities) or indirectly (for example, failing to ensure adequate nutritious food for a breastfeeding mother that is accessible outwith set mealtimes).

Where children have moved on to solid food, or where older children are living in hotel-type accommodation without a parent or carer, failure to provide sufficient nutritious and culturally appropriate food options in a flexible way will also risk violating children's rights to health and development.

Participants in Edinburgh Napier University's research⁴¹ (in partnership with Migrants Organising for Rights and Empowerment (MORE)) into use of hotel accommodation during the COVID-19 pandemic spoke about the lack of choice and agency around cooking and nutrition, which clearly impacted on their mental health. All those residing in hotels raised the issue of poor quality food and the impact on their physical health. As a result, many did not eat well and felt unwell or sick. They also noted that the food served often did not take into account religious and cultural observances, which may breach children's Article 14 UNCRC rights. Similar issues were raised by the residents of Mears' so-called Mother and Baby Unit in Glasgow⁴².

In addition, hotel-type accommodation often does not provide a space for children and families to eat other than in their room. The High Court was critical of this aspect of hotel living in the SA case⁴³, and it was identified as a factor in the court's decision to deem the accommodation inadequate.

Mental health can also be profoundly impacted by living in hotel-type accommodation, and this is true of both children and parents or carers. Refugee Action describes asylum hotels as "mental health crisis factories"⁴⁴ and the NSPCC points out⁴⁵ that if parents experience mental health problems in pregnancy or the first year of a baby's life, this can affect the way they are able to bond with and care for their child. It can then have an impact on the child's intellectual, emotional, social and psychological development.

Health impacts can arise from other aspects of life in hotel-type accommodation. For example, where laundry facilities do not take account of the particular needs of children (and especially babies), parents may be forced to wash and dry clothes in their rooms, creating issues with damp and condensation that may affect children's health. This was another feature identified by the High Court in the SA case⁴⁶.

Public authorities and accommodation providers must ensure that the accommodation does not violate the child's right to the highest attainable standard of health. This includes rights to food and nutrition, access to healthcare services such as GPs and dentists, sanitation and protection from avoidable diseases. Parents with babies must be provided with safe and accessible bathing facilities, changing tables or changing mats, sufficient bins to dispose of nappies, somewhere to refrigerate and store breast milk, and a means of safely sterilising/washing bottles.

Right to Education (UNCRC Articles 28 and 29, ECHR Optional Protocol 1 Article 2)

Children's right to education is protected under both the UN Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR). It is recognised as a key social and cultural right, which plays an important role in reducing poverty and inequality, as well as promoting democracy, peace, tolerance and community cohesion. The Committee for Economic Social and Cultural Rights (CESCR) in its General Comment 13⁴⁷ describes education as "both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities." It goes on to note the need for education to be accessible to everyone, without discrimination, within the jurisdiction of the State party.

"We arrived the night and all they gave us potatoes, the food was not enough we were not allowed second portions."

A child living in hotel accommodation⁷²

The recent Court of Session judgment in *Jassim v Scottish Ministers*⁴⁸ described education as “not only a right which enjoys direct protection under the [ECHR] Convention, but one which has been recognised as so fundamental a right as to fall to be regarded as constitutive of a democratic society...”

However, there are regular reports that children living in hotel-type accommodation have no, or restricted access to education. This may arise directly from a number of features of this type of accommodation as well as from failures of accommodation providers or public services.

For example, the Independent Chief Inspector of Borders and Immigration’s inspection report⁴⁹ noted that location of a hotel could negatively impact a child’s access to education, with those on the outskirts of towns, or in residential areas less likely to be able to secure places in school. The inspectors also heard concerns about space for children to learn and study when a family is confined to one room, issues with hotel Wi-Fi being able to support remote learning and access to digital resources, and the impact of noise and disruption from other residents.

The Young People’s Voices group supported by Guardianship Scotland also reported that they were concerned about the impact of digital exclusion on their education rights, for example the ability to do their homework. They noted that three of the hotels in which group members lived had no Wi-Fi connection meaning they could not access online learning resources.

The impacts of limitations on education rights can last far beyond the period the child spends in hotel-type accommodation. Shelter’s ‘Chance of a Lifetime’ report⁵⁰ notes the long-term developmental impact of homelessness on children.

There have also been reports⁵¹ of children living in hotel-type accommodation not being supported to register and take up a place at school at all. Schools are places of education, but also places where children play, socialise, eat, and access supports that keep them safe. Consequently, lack of access to school can have impacts on a wide range of children’s rights. This was no more vividly demonstrated than during the Covid pandemic.

Accommodation providers and local authorities must therefore ensure that the accommodation does not violate the child’s right to education. This includes ensuring that all children are able to register at a local school which they can get to easily, are assessed for additional support needs that may arise or be exacerbated by their living conditions, are able to access free Wi-Fi and online learning resources, and have a suitable quiet space to study and complete homework.

Right to Leisure, Play and Recreation (UNCRC Article 31)

The UN Committee on the Rights of the Child (CRC) points out in its General Comment No.17⁵² that the right to leisure, play and recreation under Article 31 of the Convention is: “... fundamental to the quality of childhood, to children’s entitlement to optimum development, to the promotion of resilience... Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles, and experiences and in so doing, learn to understand and construct their social position within the world.”

It goes on to say that: “Play and recreation are essential to the health and wellbeing of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills. They contribute to all aspects of learning; they are a form of participation in everyday life and are of intrinsic value to the child, purely in terms of the enjoyment and pleasure they afford. Research evidence highlights that playing is also central to children’s spontaneous drive for development, and that it performs a significant role in the development of the brain, particularly in the early years.”

While room for a child to play is not expressly recognised as a feature of an adequate standard of living in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESR), the reference to the child’s “physical, mental... and social development” in Article 27 of the UN Convention on the Rights of the Child (UNCRC), coupled with the research evidence on the developmental value of play means that an environment that restricts or eliminates the ability of children to play is highly unlikely to be considered as providing an adequate standard of living for a child and will also risk breaching their rights to education, health and development (Articles 6, 24 and 28 UNCRC).

The PEDAL report⁵³ notes that play deprivation is likely to exacerbate harms caused by the experience of migration and seeking asylum, and will impair a child’s chances of recovery. Play can have specific benefits for children experiencing adversity, a description that will often apply to children in hotel-type accommodation. It can help to overcome trauma, provide an important sense of normality and stability, offer a sense of autonomy and control, support integration and maintain links with culture and place of origin.

However, it also points out that refugee and asylum-seeking children experience significant barriers to play including: poor mental health as a result of trauma, displacement and separation from loved ones, lack of space and resources in hotel-type accommodation, transience, limited access to educational settings, cultural and linguistic barriers.

And the paper makes clear that the ability to play can also be inhibited when children’s other rights are not met, for example, when they feel unsafe, when their health is poor, or when opportunities to engage with peers are limited. Conversely, play also has an important role in realising children’s other human rights; for example, the development of relationships between children and their parents or caregivers. And those benefits also accrue for parents and carers themselves; sharing play with their child enables them to experience joy, and reduce stress, and bond with their child.

“There is no designated study area, my parents have to leave the room so I can get time to study or join in my online lessons, coz if they are speaking on the phone or moving in the room that is distracting, at least in a house even if you have one room you can go to the sitting room”.

A child living in hotel accommodation⁷³

Research by Migrants Organising for Rights and Empowerment (MORE)⁵⁴ heard from children and young people that living in a hotel significantly curtailed their ability to play. The children spoke about the lack of child-friendly activities and spaces and about feeling bored.

Ensure that the accommodation does not violate the child's right to rest, play and leisure. This includes provision of age and culturally appropriate play opportunities. For example, babies and toddlers will need safe, clean floor space. Older children will need access to private space where they can play independently.

"It is not child friendly - there were no activities for children no one spoke to me about what my needs are, we were stuck in one place and was unable to play it was horrible. I hope my family and I never go through this again".

A child living in hotel accommodation⁷⁴

Freedom of Association (UNCRC Article 15, ECHR Article 11)

The Committee on the Rights of the Child (CRC) remarks in its General Comment No. 17⁵⁵ that "Children need to engage with peers of both sexes, as well as with people of different abilities, classes, cultures and ages, in order to learn cooperation, tolerance, sharing and resourcefulness." Socialisation is also recognised as an important part of children's education and development, as well as supporting their mental and physical health.

Environments that inhibit or limit children's ability to socialise with their peers, for example due to space restrictions or the stigma associated with living in temporary accommodation, will risk violating these rights, with particular age groups experiencing different kinds of impact. For example, PEDAL notes in its paper⁵⁶ that "...in adolescence, peer relationships have a particular importance" and that interaction and play with peers supports social connection.

The children interviewed as part of MORE's research expressed shame about living in a hotel, which discouraged them from socialising with friends. This is likely to place limits on the ability of children to integrate into their communities.

Accommodation providers and local authorities must ensure that the accommodation does not violate the child's right to freedom of association. This includes making sure the child is afforded opportunities to socialise with peers in a way that respects the age and stage of the child concerned.

Rights to Respect for Private and Family Life (ECHR Article 8 & UNCRC Articles 9 and 16)

Children have the right to respect for private and family life in terms of European Convention on Human Rights (ECHR) Article 8 and UN Convention on the Rights of the Child (UNCRC) Article 16. Requiring a child to live in accommodation that limits the ability of a parent to spend quality time with the child, build an attachment and engage in play, violates these rights and can place significant pressure on the parent/child relationship to the detriment of both.

Migrant Voice's 'No Rest, No Security' report⁵⁷ sets out the huge challenges inherent in living in close and confined quarters with strangers, often without a shared language and in circumstances which exacerbate existing stress and trauma.

Baroness Kennedy KC's Asylum Inquiry Report (Stage 2)⁵⁸ goes further, noting the lack of privacy from staff inherent in hotel accommodation. "Likely furthering the culture of fear, Mears staff enter rooms and property at will, without warning, often just letting themselves in. The impact that this has on the lives and wellbeing of the people for whom Mears is 'caring,' is hugely detrimental. Few people in the UK can imagine what it must be like to know that a closed and locked door does not mean privacy."

The impact on the child and family of living in hotel-type accommodation may increase the need for social work involvement and support. However, children and families can be fearful of the potential consequences of State intervention. The extent to which risks can be mitigated by the local authority, in partnership with the child and family, is an important consideration⁵⁹. British Association of Social Workers (BASW) notes⁶⁰ that social workers "should seek, wherever possible, to avoid placing a child in the care system where homelessness or acute housing stress is a predominant factor in contributing to the care of that child falling short of what is necessary to meet their needs and/or protect them from harm."

Accommodation providers and public authorities must ensure that the accommodation does not violate the child's right to respect for privacy and family life. This includes considering the behaviour of staff, the impacts of room sharing, family dynamics, and aspects of privacy that are age, disability, religion or gender-related. Social work or other child protection interventions must also respect the child's rights to family life.

"Sometimes I feel like I am in prison. I do not know anywhere around me, sometimes I take a walk to ease the tension as there are no other young person in the hotel, I can talk to."

A child living in hotel accommodation⁷⁵

Special protection measures for children in care, refugee children, and disabled children (UNCRC Articles 20, 22 and 23) and non-discrimination (Article 14 ECHR)

The UN Convention on the Rights of the Child (UNCRC) recognises that particular groups of children require additional protections. It is important to note that these groups are not separate and distinct; they intersect with one another, meaning some children will have special protection rights under a number of different categories.

In its General Comment Number 6⁶¹, the UN Committee on the Rights of the Child (CRC) notes that refugee and asylum seeker children are likely to have experienced loss, trauma, disruption and violence. They may also have undergone separation from family members which creates particular risks. "The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation... They and their

parents are entitled to equal access to health care, education and other services."

The Committee elaborates on the rights of disabled children to special care in its General Comments Numbers 7⁶² and 9⁶³. The Committee notes that early childhood is the period during which disabilities are usually identified and the impact on children's well-being and development recognized. While in adolescence disabled children face multiple challenges and risks, particularly in the area of establishing relationships with peers. The UNCRC makes clear that disabled children have the right to enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community. However, living in hotel-type accommodation may exacerbate the impact of a disability.

For example, Professor Ball's report found that autistic

children or those with ADHD were likely to find noisy hotel environments frightening and that they exacerbated their conditions.

The UN Guidelines on Alternative Care⁶⁴ provide: "Every child and young person should live in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment... It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care." Unaccompanied asylum-seeking children are looked after for the purposes of the Children (Scotland) Act 1995. This places the local authority under a duty to safeguard and promote their welfare, as well as making the authority subject to a number of 'corporate parenting' duties in terms of the Children and Young People (Scotland) Act 2014.

In addition, being in care, being disabled, and being an asylum seeker are all grounds on which treatment may be found to be discriminatory in terms of Article 14 European Convention on Human Rights if it interferes with "the enjoyment of the rights and freedoms set out in the Convention". This is the case even if there is no violation of a substantive Convention right.

"It is really frustrating coz I don't have my privacy; I am a teenager and I share one room with my parent."

A child living in hotel accommodation⁷⁶

Public authorities and accommodation providers must take particular care when proposing to place a refugee, disabled and/or looked after child in hotel-type accommodation, or supporting a child so placed. The risk assessment, CRIA and Child's Plan must take account of these additional needs, legal rights, duties on public bodies, and potential liabilities.

Access to justice (Article 4 UNCRC, Articles 6 and 13 ECHR)

Access to justice is a fundamental principle of international human rights law, and of the rule of law. For rights to be effective they must be capable of being enforced, and this will often depend on the ability of children and families to receive advice and representation from a suitably qualified solicitor. However, the Law Society of Scotland has been raising increasing concerns about legal aid "not spots"⁶⁵, where access to state-funded advice and representation is limited or non-existent. The issue is most acute in the most deprived areas, meaning that children and families placed in hotel-type accommodation in these areas will risk being cut off from the support necessary to identify and challenge human rights violations. This will further compound the vulnerabilities and risks identified elsewhere in this report.

Accommodation providers and local authorities must therefore consider how to ensure that children and families are able to access suitably qualified state-funded legal advice and representation, in order to afford access to justice and routes to challenge decisions and rights violations.

Cruel, inhuman or degrading treatment (Article 3 ECHR)

Finally, accommodation providers and public authorities should consider whether in totality the conditions experienced by children in hotel-type accommodation might amount to cruel, inhuman or degrading treatment in terms of Article 3 European Convention on Human Rights (ECHR). The European Court of Human Rights has made clear that where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and fall within the prohibition set forth in Article 3.

"Accommodation of asylum-seekers with a range of vulnerabilities arising from protected characteristics, including single women, mothers, children and LGBT people, in crowded hotel and other contingency accommodation, including the recently acquired accommodation barges, is unacceptable from both safeguarding and equalities perspectives."

House of Commons Women and Equalities Committee report: Equality and the UK asylum process – June 2023⁷⁷

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