



# Readjusting the political thermostat: fuel poverty and human rights in the UK

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**Abstract:** Fuel poverty – the inability to afford adequate warmth in the home – is a widespread problem across the UK. Cold, damp homes are detrimental to human health and contribute to thousands of ‘excess winter deaths’ every year. This article analyses fuel poverty from a human rights perspective – asking whether it engages human rights protections. It first discusses the definition, scale and health impacts of the problem. Second, it explores the relationship between fuel poverty and the rights contained within the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. It concludes that fuel poverty readily engages rights to adequate housing, food and health and certain civil and political rights in extreme circumstances. It discusses the legal implications of these findings for fuel poverty policy, arguing for a ‘human rights approach’ to tackling the problem. These conclusions focus on the particularly drastic fuel poverty situation in the UK, but can also be applied globally to the various nations where citizens suffer similar problems and extend to the wider debate on the relationship between poverty and human rights.

**Keywords:** poverty; fuel poverty; European Convention on Human Rights; right to adequate housing; United Kingdom; energy justice.

*The persistent problem of fuel poverty is a continuing national scandal . . . (It) should be addressed with the sort of urgency and determination usually reserved for more sudden crises here and abroad.*<sup>2</sup>



## 1. Introduction

‘Fuel poverty’ is the name given to the abject situation where people are unable to afford adequate warmth in the home. It is the manifestation of the interaction between low incomes, high energy prices and the poor thermal efficiency of homes which makes them difficult to heat. The UK has been a signatory to a variety of international human rights treaties which seek to ensure that individuals within the UK’s jurisdiction enjoy the right to adequate housing for many years – yet cold, damp homes still remain a cause of misery, illness and death. Despite longstanding commitments to eradicate fuel poverty in England and Scotland by 2016 (and in Wales by 2018),<sup>3</sup> the problem remains widespread.

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2 UK Environmental Audit Committee, Energy Efficiency (7th Report, 1999), para. 46.

3 The Warm Homes and Energy Conservation Act 2000 established a commitment to eradicate fuel poverty in England ‘as far as reasonably practicable’ by 2016. However, this has recently been downgraded to a more limited pledge to ‘ensure that as many fuel poor homes as is reasonably practicable achieve a minimum energy efficiency rating of Band C, by 2030’ – The Fuel Poverty (England) Regulations 2014, SI 2014/3220, regulation 2(2). See also, UK Department of Energy and Climate Change, *Cutting the cost of keeping warm: a fuel poverty strategy*

Approximately 4.5 million households across the UK currently live in fuel poverty<sup>4</sup> – and, in England, recent policy changes have reduced the ambition and efficacy of anti-fuel poverty policies.<sup>5</sup>

Research on fuel poverty has often been restricted to areas of economics, health, energy efficiency and social policy; with little existing legal research on the topic. As a result, understanding is limited as to whether fuel poverty touches on issues of fundamental human rights, and must be addressed accordingly.<sup>6</sup> This article takes a human rights approach, asking to what extent fuel poverty interacts with the framework of human rights obligations which the UK is required to protect. It seeks to establish whether fuel poverty can be described as a ‘human rights issue’ by determining which (if any) of the UK’s obligations are of relevance to fuel poverty.

The article begins by introducing the problem of fuel poverty in the UK; discussing the definition and its origins, the extent of the problem and its attendant health impacts. Second, it explores the human rights dimension of fuel poverty. Civil and political rights are examined first – particularly the rights to life, freedom from torture and degrading treatment, and respect for private and family life as protected by the European Convention on Human Rights (ECHR). It then asks which socio-economic rights are engaged by fuel poverty, looking at the UK’s obligations to secure rights to adequate housing, food and health set out within the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter. The article finds that fuel poverty affects a variety of human rights, concluding that it is intimately connected to the enjoyment of socio-economic rights and may conflict with the State’s duty to uphold civil and political rights in extreme circumstances. Thus, in light of this analysis, the UK should adopt a ‘human rights approach’ to tackling fuel poverty. Although this analysis focuses on the UK, its conclusions are also applicable to other signatory States to the various international rights instruments discussed, particularly EU Member States where evidence shows that fuel poverty is pervasive.<sup>7</sup> It also contributes to the wider debate on the relationship between poverty and human rights.

## 2. Fuel poverty in the United Kingdom

### 2.1. What is ‘fuel poverty’?

A variety of definitions of ‘fuel poverty’ now exist across the UK, but it essentially denotes the inability to afford adequate warmth in the home.<sup>8</sup> Although related to and partly produced by ‘traditional’ relative income poverty, its causes also include the poor thermal efficiency of housing (the most important factor) and high energy prices.<sup>9</sup>

The term ‘fuel poverty’ arose in the late 70s and early 80s; privatisation of the energy utilities saw the end of the UK government’s counter-inflationary energy policy (which had limited increases in fuel prices) and returned economic energy pricing to the country. Paul Richardson was among the first to define fuel poverty in 1978, describing it as a situation where people lack the resources to ‘afford the cost of the fuel they need for heating, lighting and cooking’.<sup>10</sup> Fuel poverty was then given a more tangible definition by Brenda Boardman in 1991 as relating to households whose fuel expenditure on all energy services exceeded ten per cent of their income,<sup>11</sup> and her efforts went on to popularise the term.

Fuel poverty initially struggled for political recognition. The Thatcher and Major Conservative governments in power from the late 70s to the late 90s dismissed the notion of fuel poverty being a problem distinct from income

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for England (DECC, 2015), 20. For Scotland: Scottish Executive, *The Scottish Fuel Poverty Statement* (Scottish Executive, 2002). For Wales: Welsh Assembly Government, *Fuel Poverty Strategy 2010* (WAG, 2010). Northern Ireland’s 2016 goal is not fuel poverty eradication, but instead, ‘to reduce fuel poverty in as many vulnerable households as far as practicable by 2016’: DSDNI, *Warmer Healthier Homes: A New Fuel Poverty Strategy for Northern Ireland* (DSDNI, 2011).

4 DECC, *Annual Fuel Poverty Statistics Report 2014* (London: DECC, 2014), 61.

5 See section 3.2.2 below.

6 On the relationship between energy and human rights in general: Adrian Bradbrook and Judith Gardam, ‘Placing access to energy service within a human rights framework’, *Human Rights Quarterly* 28, no. 2 (2006): 389; Stephen Tully, ‘The human right to access electricity’, *The Electricity Journal* 19, no. 3 (2006): 30; Benjamin Sovacool et al., *Energy Security, Equality, and Justice* (Abingdon: Earthscan, 2014).

7 Harriet Thomson and Carolyn Snell, ‘Quantifying the prevalence of fuel poverty across the European Union’, *Energy Policy* 52 (2013): 563; Stefan Bouzarovski, ‘Energy poverty in the European Union: landscapes of vulnerability’, *WIREs Energy and Environment* 3 (2014): 276.

8 Paul Lewis, *Fuel Poverty Can be Stopped* (Bradford: National Right to Fuel Campaign, 1982).

9 Brenda Boardman, *Fixing Fuel Poverty: Challenges and Solutions* (London: Earthscan, 2010). Thermal efficiency is the permanent component of fuel poverty. Highly thermally efficient housing can be made almost ‘fuel poverty proof’, meaning ‘that a dwelling will be sufficiently energy efficient that regardless of who occupies the property, there is a low probability that they would be in fuel poverty’: DTI, *Energy – its Impact on the Environment and Society* (London: DTI, 2006), 31.

10 Paul Richardson, *Fuel Poverty: A Study of Fuel Expenditure Among Low Income Council Tenants* (York: University of York, 1978), 10.

11 Brenda Boardman, *Fuel Poverty: From Cold Homes to Affordable Warmth* (London: Belhaven Press, 1991); Baron Isherwood and Ruth Hancock, *Household Expenditure on Fuel: Distributional Aspects* (London: DHSS, 1979).

poverty.<sup>12</sup> New Labour adopted fuel poverty eradication as a policy priority following their election in 1997.<sup>13</sup> A private member's bill on tackling fuel poverty was introduced by the Conservative MP David Amess in 2000 and passed with cross-party support. The resulting legislation, the Warm Homes and Energy Conservation Act 2000, required the 'appropriate authority' in England and Wales to set out a definition of fuel poverty, create and implement a strategy to tackle it, and set a target date for achieving the Act's objective: 'as far as reasonably practicable persons in England or Wales do not live in fuel poverty'.<sup>14</sup>

On election in 2010, the Coalition government initiated a review of fuel poverty policy and definition aiming to consider the problem 'from first principles'.<sup>15</sup> The resultant report, 'The Hills Review', offered a thorough analysis of the problem in the UK. It recommended that the definition be changed from the historic 'ten per cent of income' description, to a 'low income-high costs' (LIHC) measurement<sup>16</sup> – now adopted in England. Notably, however, the change has caused disquiet among academics and those in the third sector<sup>17</sup> – and all of the devolved administrations have rejected its use, preferring to retain the ten per cent definition.<sup>18</sup> The Scottish Fuel Poverty Forum strongly advised against using the LIHC definition, describing it as 'too complex and, in particular, it would appear to result in very low-income households faring badly'.<sup>19</sup>

## 2.2. The scale of fuel poverty in the UK

Fuel poverty is endemic across the UK. The latest statistics show that approximately 4.5 million households currently fall into this category (approximately 17 per cent of the total number in the UK).<sup>20</sup> There are significant geographical variations – for example, the levels of fuel poverty in Northern Ireland are much higher than in the rest of the UK, for reasons including lower average incomes and the fact that a higher proportion of households use heating oil (due to a highly geographically limited gas network) relative to the rest of the country.<sup>21</sup>

**Table 1. Fuel poor households in the UK<sup>22</sup>**

Country	Number of fuel poor households (millions)	Proportion of the population fuel poor (%)	Year of estimate
England	3.05	14%	2012
Scotland	0.65	27%	2012
Wales	0.39	29%	2012
Northern Ireland	0.29	42%	2011

## 2.3. Health impacts of fuel poverty

### 2.3.1. Excess winter deaths

Fuel poverty causes a range of harms to human health. The relationship between it and 'excess winter deaths' (EWDs) – the name given to the observation that more deaths occur during the winter than in the warmer months of the year – is

12 Boardman, *Fixing Fuel Poverty*, 1–2.

13 Ibid, 3.

14 Warm Homes and Energy Conservation Act 2000, c. 31, Section 2(2)(d). This has since been amended by the Energy Act 2013, S145.

15 John Hills, *Getting the Measure of Fuel Poverty – Final Report of the Fuel Poverty Review* (London: CASE, 2012), 25.

16 Ibid, 175.

17 Richard Moore, 'Definitions of fuel poverty: implications for policy', *Energy Policy* 49 (2012): 19; Lauren Probert et al., 'The Hills Fuel Poverty Review Interim Report: assessing proposals and implications', *People, Place & Policy Online* 5, no. 3 (2011): 161; CSE, *CSE's response to the Hills Review Interim Report* (Bristol: CSE, 2012).

18 NEA and ESA, *UK Fuel Poverty Monitor 2013–2014* (NEA and EAS, 2014), 14; Scottish Executive, *The Scottish Fuel Poverty Statement* (Scottish Executive, 2002); Welsh Assembly Government, *Fuel Poverty Strategy 2010* (WAG, 2010); DSDNI, *Warmer Healthier Homes: A New Fuel Poverty Strategy for Northern Ireland* (DSDNI, 2011).

19 Scottish Fuel Poverty Forum, *Review of the Scottish Government's Fuel Poverty Strategy – Interim Report* (Scottish Fuel Poverty Forum, 2012), para. 2.2.1.

20 DECC, *Annual Fuel Poverty Statistics Report 2014* (London: DECC, 2014), 61. These figures are from the 2011/12 period, using the 10% fuel poverty definition (which is adopted in this article since the devolved administrations do not use the LIHC definition).

21 Eleanor Murphy et al., *Fuel Poverty: Research and Information Service Research Paper* (Belfast: NIA, 2011), 15.

22 DECC, *Annual Fuel Poverty Statistics Report 2014*, 62.

perhaps fuel poverty's most concerning feature.<sup>23</sup> Many factors play a part in causing EWDs, making it challenging to directly attribute a certain proportion of these fatalities to the experience of living in fuel poverty. However, several studies have shown that cold indoor temperatures are strongly associated with excess winter deaths, with risk especially high for residents of poorly insulated homes.<sup>24</sup> The World Health Organization (WHO) has estimated that approximately 30 per cent of such fatalities are related to cold housing,<sup>25</sup> echoed by the Marmot Review, which found that:

...21.5 per cent of all EWDs can be attributed to the coldest quarter of housing, due to it being cold, over and above the amount of deaths which would have occurred had these houses had the same winter excess as the warmest housing. This means that EWDs in the coldest quarter of housing are almost three times as high as in the warmest quarter.<sup>26</sup>

Exposure to cold weather, and in particular cold homes, is believed to be a key factor in the winter increase of respiratory and circulatory diseases, the cause of most of the excess deaths.<sup>27</sup> The Marmot Review found that 73 per cent of EWDs are attributable to cardiovascular and respiratory illnesses, with a strong association existing between low temperatures and these diseases.<sup>28</sup> Several studies have concluded that a large proportion of these fatalities are preventable when the correct protective measures are taken during cold weather.<sup>29</sup> The most recent figures (for the 2012/13 period) show the scale of the problem across the UK: 31,100 EWDs in England and Wales, 2,000 in Scotland and 560 in Northern Ireland (a total of 33,660).<sup>30</sup> Even at the more conservative end of the estimates, this would suggest that 7,237 excess fatalities in the country during the 2012/13 winter were related to cold homes.<sup>31</sup>

### 2.3.2. Morbidity

Prolonged exposure to cold conditions can have numerous physical health impacts. Levels of circulatory diseases increase during cold periods as low temperatures cause blood vessels to narrow, raising blood pressure and increasing its thickness. Elevated blood pressure and viscosity raise the risk of strokes and heart attacks and contracting influenza is associated with higher heart attack levels.<sup>32</sup>

Respiratory diseases also increase in low temperatures. Cold air affects the respiratory tract, increasing bronchoconstriction and mucus production.<sup>33</sup> The relationship between respiratory problems and low temperatures is suggested by the varying seasonal levels of contact between patients and the healthcare services. A study by Rudge and Gilchrist showed a direct relationship between the position of a person aged over 65 on a 'fuel poverty risk index' and emergency respiratory hospital admissions; those with higher fuel poverty risk index values were more likely to be admitted.<sup>34</sup> Incidences of the common flu, colds, arthritis and rheumatisms are all influenced by cold temperatures as well.<sup>35</sup>

Children are particularly susceptible to developing respiratory conditions from living in damp, mouldy homes. Those in poor housing have been found to be between one-and-a-half to three times more prone to coughing and

23 The UK's Office for National Statistics calculates excess winter deaths as the difference between the number of fatalities in the period from December to March and the average number in the preceding period of August to November and the following April to July: ONS, *Excess Winter Mortality in England and Wales, 2012/13 (Provisional) and 2011/12 (Final)* (ONS, 2013), 2.

24 Christine Liddell and Chris Morris, 'Fuel poverty and human health: a review of recent evidence', *Energy Policy* 38(6) (2010): 2897. Paul Wilkinson et al., *Cold Comfort: The Social and Environmental Determinants of Excess Winter Deaths in England, 1986-96* (Bristol: The Policy Press, 2001).

25 Janet Rudge, 'Indoor cold and mortality', in *Environmental Burden of Disease Associated with Inadequate Housing: Methods for Quantifying Health Impacts of Selected Housing Risks in the WHO European Region*, ed. M. Braubach et al. (Bonn: WHO Regional Office for Europe, 2011).

26 The Marmot Review Team, *The Health Impacts of Cold Homes and Fuel Poverty* (London: Friends of the Earth, 2011), 25.

27 Ibid, 23-6.

28 Ibid, 24.

29 Ibid; Adrian Barnett et al., 'Cold periods and coronary events: an analysis of populations worldwide', *Journal of Epidemiology and Community Health* 59 (2005): 551; Stirling Howieson and Majella Hogan, 'Multiple deprivation and excess winter deaths in Scotland', *Journal of the Royal Society for the Protection of Health* 125 (2005): 18.

30 ONS, *Excess Winter Mortality in England and Wales*; NRS, *Winter Mortality in Scotland 2012/13* (NRS, 2013); NISRA, *Tables for Excess Winter Mortality in Northern Ireland, 2012/13* (NISRA, 2013).

31 Using the 21.5% estimate from the Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*.

32 The Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*, 26-30.

33 Ken Collins, 'Cold, cold housing and respiratory illness', in *Cutting the Cost of Cold: Affordable Warmth for Healthier Homes*, ed. Janet Rudge and Fergus Nicol (London: E & F Spon, 2000).

34 Janet Rudge and Robert Gilchrist, 'Measuring the health impacts of temperatures in dwellings: investigating excess winter morbidity and cold homes in the London Borough of Newham', *Energy and Buildings* 39 (2007): 847.

35 The Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*, 26.

wheezing than children in warm, dry homes;<sup>36</sup> indicators of asthma or other respiratory afflictions. These symptoms can impact on children's lives and development through sleep loss, restriction of daily activities and absence from school.<sup>37</sup>

### 2.3.3. Mental health

Less robust research is available concerning the links between fuel poverty and poor mental health,<sup>38</sup> however the implications of fuel poverty (living in poor housing conditions, the need to balance various household needs and having to manage debts) are increasingly being linked to stress, anxiety and depression.<sup>39</sup> Liddell notes that for infants and children the health impacts of living in a cold home are primarily physical, whereas for adolescents the impacts fall mainly upon mental health.<sup>40</sup> A 2008 study suggested that adolescents living in fuel poverty face an increased risk of multiple mental health problems; with cold homes suggested to increase the chances of children and adolescents experiencing stress, anxiety and depression.<sup>41</sup> However, caution must be exercised when drawing such conclusions as children living in such conditions often experience considerable adversity besides substandard accommodation, making it difficult to establish a causal link between cold housing and mental health problems.<sup>42</sup>

Focusing on adults, a study on the effectiveness of the 'Warm Front' energy efficiency scheme found that occupants with bedroom temperatures at 21°C were 50 per cent less likely to experience high levels of psychological distress than those with bedroom temperatures of 15°C or below,<sup>43</sup> with some evidence that the presence of mould in a home and adult mental health are also linked.<sup>44</sup> There is also a correlation between the stress associated with financial difficulties in paying household bills (such as the cost of fuel) and mental health problems: those facing such challenges are more likely to experience mental health conditions.<sup>45</sup>

In addition, those experiencing fuel poverty are likely to change their behaviour in the home, with several responses to cold temperatures being evident. Broadly categorised as 'wrapping up and cutting back', a variety of techniques are used for coping with the cold such as putting on extra clothes, wrapping up in blankets or quilts, only using one room, going to bed earlier, sharing beds, staying with relatives, and keeping curtains closed during the day.<sup>46</sup> These behavioural changes can lead to social exclusion, often progressing to the development of anxiety and depression.<sup>47</sup>

Insofar as human rights are concerned, living in fuel poverty has negative impacts for human wellbeing – they range from excess winter morbidity and excess winter deaths to physical and mental health issues associated with life in cold (and often also damp) homes. These causes and impacts engage a specific range of human rights, which are discussed in the next section.

## 3. UK human rights law and fuel poverty

Fuel poverty's primary cause is thermally inefficient housing, with significant health implications. This may engage a variety of socio-economic rights, such as the right to an adequate standard of living and the right to the highest attainable standard of health. These 'represent objectives or aspirations for a State to pursue in promoting the well-being of its people'.<sup>48</sup> They are provided for in such treaties as the ICESCR,<sup>49</sup> the European Social Charter 1961/(revised) 1996<sup>50</sup> and the Charter of Fundamental Rights of the European Union 2000.<sup>51</sup>

36 Jennifer Peat et al., 'Effects of damp and mould in the home on respiratory health: a review of the literature', *Allergy* 53, no. 2 (1998): 120.

37 Lisa Harker, *Chance of a Lifetime: The Impact of Bad Housing on Children's Lives* (London: Shelter, 2006), 13.

38 Jenny Harris et al., *Health, Mental Health and Housing Conditions in England* (London: NatCen, 2010), 43.

39 The Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*, 29; Liddell and Morris, *Fuel Poverty and Human Health*, 2992–3 and Jan Gilbertson et al., 'Psychosocial routes from housing investment to health: evidence from England's home energy efficiency scheme', *Energy Policy*, 49 (2012): 122, 130.

40 Christine Liddell, *The Impact of Fuel Poverty on Children* (Belfast: Save the Children, 2008), 9.

41 Matt Barnes et al., *The Dynamics of Bad Housing: The Impact of Bad Housing on the Living Standards of Children* (London: NatCen, 2008).

42 Harker, *Chance of a Lifetime*, 14.

43 Geoff Green and Jan Gilbertson, *Warm Front Better Health: Health Impact Evaluation of the Warm Front Scheme* (Sheffield: CRESR, 2008), 14. Notably, however, where households actively choose to occupy colder homes due to personal thermal preference, they report similar mental health levels to those occupying warmer homes: Roger Critchley et al., 'Living in cold homes after heating improvements: evidence from Warm-Front, England's home energy efficiency scheme', *Applied Energy*, 84 (2007): 147, 155.

44 Harris, *Health, Mental Health and Housing in England*, 45.

45 Mark Taylor et al., *The Psychological Costs of Unsustainable Housing Commitments* (Colchester: University of Essex, 2006).

46 Will Anderson et al., *Coping with Low Incomes and Cold Homes* (Bristol: CSE, 2010), 31–8.

47 The Marmot Review, *The Health Impacts of Cold Homes and Fuel Poverty*, 29–30.

48 Richard Burchill et al., ed., *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (Farnham: Ashgate Publishing, 2013), 2.

49 International Covenant on Civil and Political Rights 1966 (ICCPR), 993 UNTS 3.

50 European Social Charter 1961, 529 UNTS 89; European Social Charter (revised) 1996, ETS 163.

51 Charter of Fundamental Rights of the European Union 2000, OJ C364/01 (2000).

It is also possible that in more extreme circumstances fuel poverty engages civil and political rights such as those relating to life, to freedom from inhuman or degrading treatment, and to physical integrity (as provided for within the right to respect for family and private life). These are ‘concerned with freedom from State interference’<sup>52</sup> and with enabling ‘people to participate freely in the political process’.<sup>53</sup> They are provided for within the International Covenant on Civil and Political Rights 1966 (ICCPR)<sup>54</sup> and the ECHR.<sup>55</sup>

The UK has ratified each of these treaties,<sup>56</sup> with the exception of the European Social Charter (revised) 1996 of which it is a signatory.<sup>57</sup> Once an international treaty is created it is each individual State’s choice as to whether it wants to become a party to that treaty, which is a two-tiered process. The State can opt to sign it, which means that while it is not bound by the treaty, it is ‘obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty’.<sup>58</sup> Usually this indicates a State’s intention to ratify at a later date, but this is not guaranteed.<sup>59</sup> Or the State can ratify the treaty, which ‘establishes consent to be bound by the instrument’<sup>60</sup> and means that the obligations contained within are enforceable. As a dualist State, international laws are not automatically given legal effect within the UK.<sup>61</sup> That is, they do not automatically become a part of domestic law and are limited to having only persuasive authority within the court system. For treaty obligations to become domestically enforceable, primary legislation is required, such as the Human Rights Act 1998 (HRA), which gives effect to the ECHR.

The UK, by virtue of having ratified the ECHR, has been bound by this treaty since 1951. Since the HRA came into force in 2000, the substantive rights set out in the Convention have experienced legal effect in this country. The special treatment of the ECHR does not make the other treaties that the UK has ratified less applicable or mean that it can neglect its non-Convention human rights obligations. The State had a choice of whether to be bound or not by these treaties; it opted for the former. Yet, as a dualist State which distinguishes between domestic and international law, it faces challenges in enforcing international obligations at a domestic level.

The practical effect of the HRA is that the rights contained within the ECHR are directly applicable in the domestic courts and against public bodies. They are the only set of human rights obligations to be given domestic legal effect in the UK and to such a degree that the Convention operates like a ‘shadow constitution’ in this country.<sup>62</sup> The result has been that the nation’s legislature and judiciary have taken a more human rights-based approach in their policies and judgments,<sup>63</sup> and its public authorities have a duty to act in a way which is compatible with the Act.<sup>64</sup>

The scope of the HRA is limited as it safeguards rights which are civil and political in nature. As discussed below in section 3.1, socio-economic rights are integral to the enjoyment of civil and political rights, but the limited remit of the Act is insufficient for the purposes of adequately promoting and protecting socio-economic obligations,<sup>65</sup> which provides an explanation as to why there are calls for a UK Bill of Rights.<sup>66</sup> The UK has adopted an inconsistent approach to the protection of socio-economic rights, stating that they are ‘mere principles and values and ... most of the rights contained in the [ICESCR] are not justiciable’.<sup>67</sup> The Joint Committee on Human Rights (JCHR) explains

52 Burchill, *Defining Civil and Political Rights*, 2.

53 Sabine Carey et al., *The Politics of Human Rights: The Quest for Dignity* (Cambridge: CUP, 2010), 105.

54 ICCPR 1966, 999 UNTS 4.

55 European Convention on Human Rights 1950 (ECHR), 213 UNTS 221.

56 The UK ratified the ECHR on 8 March 1951. The UK signed the ICESCR and ICCPR on 16 September 1968 and ratified these treaties on 20 May 1976. The UK ratified the Charter of Fundamental Rights of the European Union 2000 by ratifying the Lisbon Treaty 2007 on 17 July 2008.

57 The UK has ratified the European Social Charter 1961, but only signed the European Social Charter (revised) 1996. Nevertheless, by signing the 1996 Charter, the UK is not bound by it, but is obliged, in good faith, from carrying out acts that would defeat the object and purpose of the Charter. Furthermore, commentators have stated that the impact of the Charter should not be defined by its legal status and that its increased use by the European Court of Justice is an indicator that the Charter may achieve a similar status to the UDHR in the future. The UDHR was originally a non-binding treaty which is now viewed as a part of customary international law: Miguel Maduro, ‘The double constitutional life of the Charter’, in *Economic and Social Rights Under the EU Charter of Fundamental Rights: A Legal Perspective*, ed. T. Hervey and J. Kenner (Portland: Hart Publishing, 2003), 284; John Morijin, ‘Judicial reference to the EU Fundamental Rights Charter: first experiences and possible prospects’, *Working Paper of the IGC Institute/Human Rights Centre*, 1 (2010).

58 NIHRC and IHRC, *The Advice of the Joint Committee on a Charter of Rights for the Island of Ireland* (Belfast: NIHRC and IHRC, 2011), 18.

59 Ibid.

60 Ibid.

61 Alec Stone Sweet and Helen Keller, ‘Assessing the impact of the ECHR on national legal systems’, *Yale Faculty Scholarship Series*, 88 (2008): 677, 686.

62 Ibid.

63 DCA, *Review of the Implementation of the Human Rights Act* (DCA, 2006), 1–2.

64 Human Rights Act 1998, c. 42, Section 6(1).

65 Ellie Palmer, *Judicial Review, Socio-Economic Rights and the Human Rights Act (Human Rights Law in Perspective)* (Portland: Hart Publishing, 2007).

66 Alexander Horne and Lucinda Maer, ‘From the Human Rights Act to a Bill of Rights?’, in *Key Issues for the New Parliament 2010*, ed. Adam Mellows-Facer (London: House of Commons Library Research, 2010) 85.

67 UNCESCR, *Concluding Observations of the UNCESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories* (UNCESCR, 12 June 2009), para. 13; UNCESCR, *Implementation of the ICESCR: United Kingdom of*

that the UK's 'commitment to economic, social and cultural rights in the international context contrasts with an apparent reluctance to use the language of these rights when addressing relevant issues in domestic law and policy'.<sup>68</sup>

The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) has voiced its deep regret at the UK not incorporating the ICESCR into the 'domestic legal order and that there is no intention by [the UK] to do so in the near future'.<sup>69</sup> Socio-economic rights are better embedded within the domestic constitutional structure of other States. For example, the Constitution of Ireland 1937 and Constitution of India 2012 require that socio-economic justice is pursued through implementing 'Directive principles of State policy'.<sup>70</sup> These are non-justiciable principles aimed at guiding elected representatives to improve socio-economic conditions.<sup>71</sup> There is also precedent of countries such as Brazil, Portugal and South Africa,<sup>72</sup> making socio-economic rights justiciable. Yet the Committee has clarified that: 'irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order'.<sup>73</sup> Therefore, by virtue of its treaty ratifications, the UK has committed itself to securing the enjoyment of these rights. The subsequent sub-sections consider what obligations it has bound itself to protect, respect and fulfil<sup>74</sup> in relation to fuel poverty.

### 3.1. Civil and political rights

Traditionally all forms of poverty, including fuel poverty, were understood to be primarily socio-economic rights issues.<sup>75</sup> However, the indivisibility, interrelatedness and interdependence of all rights mean that fuel poverty affects civil and political rights too. Living in conditions of material deprivation compounds disempowerment – making it more difficult to exercise civil and political rights due to the more immediate concern which those experiencing such conditions may have with securing the basic necessities of life. Consequently, as parts of the population become disengaged from civil and political life, they may find that their interests become more neglected by their political representatives, and their ability to challenge the structural economic conditions which give rise to poverty lessens.<sup>76</sup> Persons living in poverty, 'experience many interrelated and mutually reinforcing deprivations – including dangerous work conditions, unsafe housing, lack of nutritious food, unequal access to justice, lack of political power and limited access to healthcare – that prevent them from realising their rights and perpetuate their poverty'.<sup>77</sup>

Awareness is increasing of the importance of civil and political rights to those living in conditions of poverty. As Palmer notes regarding the ECHR, 'there has been progress towards a principled jurisprudence of positive obligations to provide for the basic human needs of vulnerable dependent individuals in a range of contexts, although the limits of State responsibility remain fluid and contested'.<sup>78</sup> Furthermore, O'Conneide writes that, 'State action or inaction which ensures that individuals become exposed to destitution, degrading living conditions or similar manifestations of extreme poverty should in certain specific and limited circumstances be recognised as constituting a violation of the ECHR'.<sup>79</sup> The European Court of Human Rights (ECtHR) has affirmed that 'there is no water-tight division separating [the sphere of social and economic rights] from the field of civil and political rights covered by the Convention'.<sup>80</sup> Yet

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*Great Britain and Northern Ireland* (UNCESCR), 31 January 2008, para. 75.

68 JCHR, *The International Covenant on Economic, Social and Cultural Rights* (21st Report, 2004), 9; CAB, *A UK Bill of Rights: Response by Citizens Advice to the Discussion Paper on a UK Bill of Rights* (London: CAB, 2011), 6.

69 UNCESCR, *Concluding Observations, United Kingdom of Great Britain and Northern Ireland* (UNCESCR, 5 June 2002), para. 11.

70 Constitution of Ireland 1937, Article 45; Constitution of India 2012, Articles 36–51.

71 Rehan Abeyratne, 'Socio-economic rights in the Indian Constitution: towards a broader conception of legitimacy', *Brooklyn Journal of International Law* 39 (2014): 1.

72 Constitution of the Federative Republic of Brazil 1988, Article 6–11; Constitution of the Republic of South Africa 1996, Article 38; Constitution of the Portuguese Republic 2005, Article 64; Langford, *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge: CUP, 2009).

73 UNCESCR, *Concluding Observations of the UNCESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories* (UNCESCR, 12 June 2009), para. 13.

74 Elisabeth Koch, 'Dichotomies, trichotomies or waves of duties?', *Human Rights Law Review*, 5, no. 1 (2005): 81, 82.

75 Lucy Williams, 'Towards an emerging international poverty law', in *International Poverty Law: An Emerging Discourse*, ed. Lucy Williams (London: Zed Books, 2006), 6–7.

76 OHCHR, *Guiding Principles on Extreme Poverty and Human Rights* (Geneva: OHCHR, 2012), 5.

77 *Ibid.*, 2.

78 Ellie Palmer, 'Protecting socio-economic rights through the European Convention on Human Rights: trends and developments in the European Court of Human Rights', *Erasmus Law Review* 397, 2, no. 4 (2009): 397.

79 Colm O'Conneide, 'A modest proposal: destitution, State responsibility and the European Convention on Human Rights', *European Human Rights Review*, 5 (2008): 583.

80 *Budina v Russia*, Application no 45603/05, Admissibility, 18 June 2009, section 3; *Airey v Ireland* (1979) 2 EHRR 305, para. 26.

while civil and political rights do offer some form of protection, it is limited.<sup>81</sup> In the context of this article, it is only ‘extremes of fuel poverty [that] may ... raise issues’ related to such rights.<sup>82</sup>

This section explores whether fuel poverty engages the UK’s civil and political rights framework. While the UK has ratified the ICCPR,<sup>83</sup> its most commonly used source for civil and political rights is the ECHR, the focus of this section. A number of civil and political rights are recognised as being linked to poverty,<sup>84</sup> but drawing from the jurisprudence of the ECtHR, not all of them are directly relevant to fuel poverty.<sup>85</sup> Instead, this article focuses on the rights to life, freedom from torture or inhuman or degrading treatment, and respect for family and private life.

### 3.1.1. Right to life

Article 2 of the ECHR protects the right to life. It is a limited right<sup>86</sup> with ‘no or less scope of margin of appreciation’,<sup>87</sup> the latter of which only arises in a ‘truly exceptional’ circumstance.<sup>88</sup> It has been interpreted by the ECtHR as requiring that the State should take reasonable steps to prevent intentional and unintentional deprivation of life.<sup>89</sup> The acknowledgement that this provision includes unintentional deprivation of life, combined with the reality that extreme poverty (to which fuel poverty can be a contributor) brought about by State policies and State inaction can threaten life, creates the possibility of a violation of Article 2 in certain circumstances.

Judicial consideration of poverty and Article 2 of the Convention is limited and applications made on that basis have generally been unsuccessful (with the exception of *Nencheva v Bulgaria* (2013) – discussed below).<sup>90</sup> Nevertheless, even these unsuccessful cases show that in extreme circumstances, Article 2 may be significant. For example, in *Wasilewski v Poland* (1999)<sup>91</sup> the applicant, who was involved in a prolonged dispute over his pension payments, complained that his right to life had been breached by the fact that he did not have sufficient means of subsistence at his disposal. The ECtHR found that ‘neither Article 2 nor any other provision of the Convention can be interpreted as conferring on an individual a right to enjoy any given standard of living, or a right to obtain financial assistance from the State’.<sup>92</sup> However, the Court indicated that if the applicant had been exposed to ‘any danger to life or limb’, it might bring the case ‘within the ambit of Article 2 of the Convention’.<sup>93</sup> This approach was upheld in *Sokur v Ukraine* (2002).<sup>94</sup> In this case the applicant challenged the non-enforcement of a court decision related to salary arrears, including the claim that his low standard of living infringed Article 2. The Court stated that while this claim was inadmissible, the outcome might have been different if the applicant had shown that he suffered ‘such destitution as to put his life at risk’.<sup>95</sup>

Furthermore, O’Cinneide proposes that the State ‘may be under a specific responsibility in particular circumstances to protect the destitute against knowable threats to their life’.<sup>96</sup> This view fits within the findings of *Öneryıldız v Turkey* (2004),<sup>97</sup> where the applicant challenged the State authorities’ failure to take steps to prevent the explosion of methane generated by decomposing refuse close to his home. The ruling in this case provided that instances where the State should have known that a risk to life existed and did not act reasonably can constitute a violation of Article 2. Yet in *Burke v United Kingdom* (2006),<sup>98</sup> where the applicant challenged the discretion of the medical services to withdraw

81 O’Cinneide, ‘A modest proposal’, 584.

82 JCHR, *Scrutiny of Bills: Final Progress Report* (23rd report, 2004), 46.

83 The UK signed this treaty on 16 September 1968 and ratified it on 20 May 1976.

84 Palmer, *Protecting Socio-economic Rights*; O’Cinneide, ‘A modest proposal’; Aoife Nolan, ‘Addressing economic and social rights violations by non-State actors through the role of the State: a comparison of regional approaches to the “Obligation to Protect”’, *Human Rights Law Review*, 9, no. 2 (2009): 225.

85 Those excluded from this article’s analysis are the right to peaceful enjoyment of property, the right to a fair trial and freedom from discrimination: *Moskal v Poland* (2010) 50 EHRR 22, paras 74 and 76; *Tfayo v United Kingdom* (2009) 48 EHRR 18, paras 46–9; *Relating to Certain Aspects of the Laws on the Use of Languages in Education of Belgium v Belgium* (1968) 1 EHRR 252, para. 9.

86 Limited rights are those that can be ‘subject to limitations, but only insofar as those limitations are listed’: Gordon Anthony, *UK Public Law and European Law* (Oxford: Hart Publishing, 2002), 68.

87 That is less scope when compared to the margin of appreciation available in relation to qualified rights: *ibid*; Karen Reid, *A Practitioner’s Guide to the European Convention on Human Rights* (London: Sweet and Maxwell, 2011), 744. Qualified rights are those that can be ‘subject to such constraints as are “prescribed by law” (legality) and “necessary in a democratic society”’.

88 *Finogenov and Others v Russia* (2011) 32 BHRC 324, para. 213.

89 *Wöckel v Germany* (1998) 25 EHRR CD156; *Öneryıldız v Turkey* (2005) 41 EHRR 20; *Solomou and Others v Turkey* [2008] ECHR 552.

90 *Nencheva and Others v Bulgaria* [2013] ECHR 554.

91 *Wasilewski v Poland* application no. 32734/96, Admissibility, 20 April 1999.

92 *Ibid*, para. 3.

93 *Ibid*.

94 *Sokur v Ukraine* application no. 29439/02, Merits, 26 November 2002, para. 1.

95 *Ibid*, para. 1.

96 O’Cinneide, ‘A modest proposal’.

97 *Öneryıldız v Turkey*.

98 *Burke v United Kingdom*, application no. 19807/06, Merits, 11 July 2006.

artificial nutrition and hydration where such measures would risk shortening rather than prolonging life, the ECtHR stressed that the risk to life must be ‘real and imminent’.<sup>99</sup>

*Nencheva v Bulgaria* (2013),<sup>100</sup> the only successful Article 2 complaint concerning conditions of poverty to date, explains that State action against a real and imminent risk to life must be ‘swift, practical and sufficient’ to prevent fatalities.<sup>101</sup> In this case, Bulgaria was found to be in violation of Article 2 in relation to the deaths of 15 children and young adults with disabilities in a care home during the winter of 1996/97 due to lack of food, heating and basic care. The State had become aware of the risk to the children due to the harsh winter that was developing and the severe economic crisis that persisted as early as 10 September 1996, when the care home manager reported the threat to the State authorities. However, the State did not offer the required support. The specific facts of this case led to the ECtHR’s conclusion that a violation of Article 2 had occurred. These included the fact that the victims were vulnerable persons, they were in the care of the State, which had been fully aware of the dangers, and the events had ‘not occurred in a sudden, one-off and unforeseen manner as the case of a *force majeure* event with which the State might be unable to cope’.<sup>102</sup>

The ECtHR has also considered the possibility of the State being held accountable for the actions of third parties, for example, in relation to the State’s failure to address the non-implementation of regulations by the responsible parties.<sup>103</sup> In *LCB v United Kingdom* (1998),<sup>104</sup> the Court provided that the State must ‘take appropriate steps to safeguard the lives of those within its jurisdiction’.<sup>105</sup> The Court has balanced this by requiring a causal link between the State’s failure and the harm. This case concerned a claim that the applicant’s life-threatening illness, leukaemia, was the result of her father being exposed to high doses of radiation, prior to her conception, during nuclear trials conducted by the UK on Christmas Island in the 1960s. The ECtHR found that there was not enough evidence to prove the causal link.

Therefore, for a case claiming that destitution, of which fuel poverty is a component, has led to a violation of Article 2 to have a chance in succeeding, it must be shown that: i) the destitution was a result of State action or inaction; ii) the destitution posed a real and imminent risk to life; and iii) the State was aware that a real and imminent risk existed and failed to take reasonable steps to counteract this. It is also relevant to note that the Court will take into account whether the victims were vulnerable and in the State’s care.

From a fuel poverty standpoint, the UK is aware of the risks that living in fuel poverty poses to human health, and has been for some time.<sup>106</sup> However, its privatised energy market and largely privatised housing sector (two of fuel poverty’s most important causes), mean that being able to meet the first condition may be difficult, except in State-owned social housing (a small proportion of the UK’s housing stock). An argument could be made that the State’s failure to regulate housing and energy markets is allowing fuel poverty to flourish. The second and third conditions may also only be applicable in the most serious of cases for particularly vulnerable individuals during very cold weather, as most of the health risks from living in fuel poverty are long-term rather than posing an imminent risk to life.

### 3.1.2. Freedom from torture, inhuman or degrading treatment

Article 3 of the ECHR provides for freedom from torture, inhuman or degrading treatment or punishment. This is an absolute and non-derogable right,<sup>107</sup> guaranteed ‘irrespective of the victim’s conduct’.<sup>108</sup> Court jurisprudence supports the argument that severe poverty can constitute inhuman or degrading treatment.<sup>109</sup>

The possibility that Article 3 may be engaged by conditions of extreme poverty was first recognised, in principle, in *Larioshina v Russia* (2002) (although the claim was unsuccessful) in a complaint regarding a senior citizen’s pension.<sup>110</sup>

99 Ibid, para. 1.

100 *Nencheva and Others v Bulgaria*, n 90.

101 Ibid, para. 4.

102 Ibid, para. 4.

103 *Budayeva and Others v Russia* (2014) 59 EHRR 2. In this case the authorities were found to have violated Article 2 by failing to implement land-planning and emergency relief policies in an area where there was a foreseeable risk to the lives of residents from mudslides. *Kalender v Turkey*, application no. 4314/02, Merits, 15 December 2009. In this case the authorities breached Article 2 by failing to ensure safety regulations for rail transport were implemented.

104 *LCB v United Kingdom* (1999) 27 EHRR 212.

105 Ibid, para. 36.

106 DTI, *Warmer Healthier Homes*, paras 1.11–1.22.

107 This is a right that cannot be interfered with under any circumstances: ECHR 1950, 213 UNTS 221, Article 15(2); ICCPR 1966, 999 UNTS 4, Article 4(2).

108 *Chahal v United Kingdom* (1996) 23 EHRR 413, para. 79; *D v United Kingdom* (1997) 24 EHRR 423, paras 47 and 49; *Bensaid v United Kingdom* (2001) 33 EHRR 205, para. 32.

109 *Larioshina v Russia* application no. 56869/00, Admissibility, 23 April 2002; *Budayeva and Others v Russia*; *MSS v Belgium and Greece* (2011) 53 EHRR 2.

110 *Larioshina v Russia*, para. 3.

The ECtHR has since upheld complaints concerning violations of Article 3 in relation to extreme poverty, amounting to destitution, in two other cases. In *Moldovan v Romania (no. 2)* (2005) the Court unanimously ruled that forcing people to live in dire conditions in which many fell ill constituted a violation of Article 3,<sup>111</sup> reasoning that it aroused ‘in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them’.<sup>112</sup> The Court looked at whether the object was to ‘humiliate and debase the person concerned’.<sup>113</sup> As exemplified by *MSS v Greece and Belgium* (2011), the ECtHR’s definition of destitution has been unhelpfully vague. In this case, concerning the detention conditions of the applicant, the Court found that ‘difficulty in finding food, no access to sanitary facilities etc’ constituted ‘complete destitution’.<sup>114</sup> It provided no further indication of what ‘etc’ meant. Lord Hope’s consideration of Article 3 and destitution in the UK House of Lords case, *Limbuella* [2005], provides more guidance. The destitute, he found, are those who ‘are frequently cold, tired, and hungry and have not had access to washing facilities’.<sup>115</sup> Varying degrees of ‘desperation and humiliation, as well as mental and physical illnesses’ were also referenced.<sup>116</sup> Being frequently cold is one of the symptoms of fuel poverty and, as shown in section 2.3, exposure to fuel poverty has a negative effect on mental and physical health, opening the possibility of it equating to a violation of Article 3.

Unlike torture, inhuman or degrading treatment does not require the conduct to be deliberate.<sup>117</sup> The ECtHR has further confirmed that the individual’s suffering must be due to State action or inaction, not an individual’s own volition.<sup>118</sup> It must be shown that either the services (such as accommodation maintenance, food, sanitary and cultural services, and health and sanatorium treatment) are not offered or, if they do exist, are set up in a way which makes them categorically unavailable, as opposed to merely inconvenient and bureaucratic.<sup>119</sup> Even where the State authorities cannot be found to have imposed any direct ill-treatment on the applicant, a claim can be brought on the basis that ‘subsistence and livelihood is not sufficient for [an individual’s] basic human needs’.<sup>120</sup> As such, ‘the Court cannot exclude that State responsibility could arise for “treatment” where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity’.<sup>121</sup> Therefore, the State’s action or inaction which contributes to fuel poverty, or its failure to take steps to the maximum of its available resources to tackle fuel poverty,<sup>122</sup> could be deemed a component in a case of wider destitution that is severe enough to constitute a violation of Article 3.<sup>123</sup>

The European and domestic courts have established that a minimum level of severity must exist for Article 3 to be engaged.<sup>124</sup> With this depending on the circumstances of the case, the ECtHR has set out a number of factors that could be considered.<sup>125</sup> These include the treatment’s duration, the physical and mental effects of the treatment on an individual, and the victim’s sex, age and state of health.<sup>126</sup> Furthermore, once the minimum threshold is achieved, the level of severity thereafter will determine what kind of violation of Article 3 has occurred – torture, or inhuman or degrading treatment.<sup>127</sup>

The Court has indicated that Article 3 is only engaged in exceptional circumstances which relate to the most severe and degrading situations. These include a:

severely overcrowded and unsanitary environment and its detrimental effect on the applicants’ health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering,

111 *Moldovan and Others v Romania (no. 2)* (2007) 44 EHRR 16, para. 101; *Peers v Greece* (2001) 33 EHRR 51, para. 74.

112 *Moldovan and Others v Romania (no. 2)*, para. 101; *Kudla v Poland* (2002) 35 EHRR 11, paras 149–50.

113 *Moldovan and Others v Romania (no. 2)*, para. 101; *Raninen v Finland* (1998) 26 EHRR 563, para. 55.

114 *MSS v Belgium and Greece*, para. 170.

115 *Regina v Secretary of State for the Home Department, ex parte Limbuella* [2005] UKHL 66, para. 36.

116 *Ibid.*

117 *Peers v Greece; Keenan v United Kingdom* (2001) 33 EHRR 913; *Ilhan v Turkey* (2002) 24 EHRR 36; *Price v United Kingdom* (2002) 34 EHRR 1285.

118 *O’Rourke v United Kingdom*, application no. 39022/97, Admissibility, 26 June 2001. In this case the applicant had spent 14 months living on the streets, a situation which had become detrimental to his health. Yet in that case the applicant had been unwilling to accept temporary accommodation and refused two offers of permanent housing.

119 *Budina v Russia*, section 3; *O’Rourke v United Kingdom*.

120 *Ibid.*

121 *Ibid.*

122 Section 3.2.

123 JCHR, *The ICESCR*, 46.

124 *Ireland v United Kingdom* (1980) 2 EHRR 25, para. 162; *Regina v Secretary of State for the Home Department, ex parte Limbuella* [2005] UKHL 66, paras 7 and 78.

125 *Ireland v United Kingdom*, para. 162.

126 *Ibid.*

127 *Ibid.*, point 4 of reasoning.

thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.<sup>128</sup>

The level of severity required to engage Article 3 indicates that fuel poverty alone would not be viewed as a violation of this right, except in the most extreme circumstances. However, fuel poverty could be a component of general conditions of destitution severe enough to violate Article 3.

### 3.1.3. *Right to respect for private and family life*

Article 8 of the ECHR provides for the right to respect for private and family life. This is a far-reaching, but qualified right.<sup>129</sup> The ECtHR has found it to contain a positive obligation on the State to ‘take reasonable and appropriate measures to secure and protect individuals’ rights to respect their private life, which includes the right to physical and psychological integrity’.<sup>130</sup>

There is no precedent for Article 8 to be applied in instances of poverty or destitution. All cases dealing with physical and psychological integrity under Article 8 have been in the context of detention<sup>131</sup> or deportation.<sup>132</sup> However, the right to physical and psychological integrity creates the possibility that a State’s failure to tackle issues leading to poverty may violate this right. Yet, as with Article 3, this would only be in the most extreme cases. For such a claim to succeed, it must be proven that the State’s failure to address an individual’s state of poverty was unlawful, that the failure was not brought about due to the preservation of a legitimate purpose, and that the inaction was not proportionate.<sup>133</sup> The Court has also established that for Article 8 to be engaged there must be a ‘direct and immediate link’ between the measures sought by the applicant and their private, family or home life.<sup>134</sup> There also must be a ‘singular lack of respect for the claimant’s private and family life’;<sup>135</sup> such as condemning the claimant to ‘living conditions which made it virtually impossible for them to have any meaningful private or family life for the purposes of Article 8’.<sup>136</sup>

Article 8 requires that the principles of margin of appreciation,<sup>137</sup> proportionality and interests of a democratic society must be taken into account, providing States with discretion. The ECtHR has stated that the margin of appreciation will vary ‘according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the aim pursued by the restrictions’.<sup>138</sup> Therefore, it will ‘tend to be narrower where the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights’.<sup>139</sup> It will be wider when ‘the issues involve an assessment of the priorities in the context of the allocation of limited State resources’.<sup>140</sup> Lord Woolf, in the English case *Anufrijeva v Southwark* [2003], ruled that there are some circumstances when a public authority will be required to devote resources to ensure enjoyment of Article 8 rights, for example obliging the State to provide positive welfare support, such as housing, in special circumstances.<sup>141</sup> However, he was clear that Article 8 did not impose ‘such a requirement as a matter of course’.<sup>142</sup> He continued that Article 8 may more readily be engaged where a family unit, particularly the welfare of children, is involved.<sup>143</sup>

Thus, fuel poverty could engage Article 8 if it can be proven that the poverty, with fuel poverty a contributing factor, was: i) a direct consequence of the State’s actions or inaction; and ii) led to an unfair burden that directly and

128 *Moldovan and Others v Romania*, para. 111.

129 A right which is subject to limitations in certain situations, in this case those circumstances are outlined in Article 8(2) of the ECHR 1950. Anthony, *UK Public Law and European Law*, 68.

130 *Storck v Germany* (2006) 43 EHRR 6, para. 149; *Tysiac v Poland* (2007) 45 EHRR 42, para. 110–13; *B v Romania* (no. 2), application no. 1285/03, Merits, 19 February 2013, para. 85.

131 *B v Romania* 128.

132 *N v United Kingdom* (2008) 47 EHRR 39.

133 European Convention on Human Rights 1950, 213 UNTS 221, Article 8(2).

134 *Botta v Italy* (1998) 26 EHRR 241, para. 34.

135 *R (Bernard) v Enfield London Borough* [2002] EWHC 2282, paras 33–4. In this case the Court found in favour of the husband and wife claimants who had been provided with severely inadequate accommodation, given that the wife was a wheelchair user with severe disabilities.

136 *Ibid.*

137 The margin of appreciation doctrine allows the ECtHR to take account the fact that each contracting State is legally, culturally, historically and philosophically different. In some instances a State may be given broad discretion, otherwise referred to as a wide margin of appreciation. This is where it is felt that the State’s position is lawful, proportionate and justified in terms of the interest of a democratic society, to protect public morals and/or to maintain public order. A narrow margin of appreciation refers to instances where States are awarded limited discretion.

138 *Connors v United Kingdom* (2004) ECHR 223, para. 82.

139 *Ibid.*, para. 81.

140 *R (McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33, para. 16; *Pentiacova v Moldova* (2005) 40 EHRR SE23, 218; *Molka v Poland*, application no. 56550/00, Admissibility, 11 April 2006, 17.

141 *Anufrijeva v Southwark* [2003] EWCA Civ 1406, para. 28.

142 *Ibid.*, para. 33.

143 *Ibid.*, para. 43.

immediately affected the individual's family life, privacy and/or home. A successful claim is more likely if a family unit or the welfare of a child is involved.

### 3.2. Socio-economic rights

Fuel poverty engages a range of socio-economic rights. Those of most relevance to fuel poverty are the right to an adequate standard of living (including adequate housing and food) and the right to the highest attainable standard of health. The rights to social security,<sup>144</sup> and to protection against poverty and social exclusion,<sup>145</sup> are also relevant but are not covered here on the basis that they concern the wider issue of income poverty. Before considering the relevant rights, attention must be given to the complexities regarding the full realisation of socio-economic rights.

#### 3.2.1. General ICESCR obligations

Unlike all elements of civil and political rights which are to be given immediate effect,<sup>146</sup> different approaches are required for ICESCR rights. States have varying obligations when implementing socio-economic rights: these are 'minimum core' or 'progressively realised' obligations.

The minimum core obligations attached to socio-economic rights must be realised with immediate effect. On those occasions when States do not have the resources to satisfy their minimum core obligations, proof must be provided that this is de facto the case to safeguard against unjustified non-compliance. States must demonstrate that they have made every effort to use all available resources to satisfy, as a matter of priority, these obligations.<sup>147</sup> Thus, 'even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances'.<sup>148</sup>

In relation to progressively realised obligations, State Parties are required to 'take steps ... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights'.<sup>149</sup> Full realisation places an obligation on the State to respect, protect and fulfil these rights.<sup>150</sup> In summary:

the obligation to *respect* requires States to refrain from interfering with the enjoyment of human rights. The obligation to *protect* requires States to prevent violations of such rights by third parties, and the obligation to *fulfil* requires States to take appropriate legislative, budgetary, judicial and other measures towards the full realisation of such rights.<sup>151</sup>

The State does not necessarily have to be directly involved at every level in realising ICESCR rights. However, the obligation to respect, protect and fulfil rests with the State, meaning that it must step in where individuals are not able to enjoy their rights.<sup>152</sup> For example, if an individual does not have adequate food, the State must offer temporary assistance.<sup>153</sup>

The steps that States must take can include, but are not limited to: legislative, administrative, financial, educational and social measures.<sup>154</sup> They also include provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.<sup>155</sup> In practice this involves:

- a) assessing the enjoyment of socio-economic rights
- b) formulating realistic, achievable and effectively designed strategies and plans
- c) adopting the necessary laws and policies, which includes making available adequate funds
- d) regularly monitoring and assessing progress

144 Universal Declaration of Human Rights 1948, Article 22; European Social Charter 1961, 529 UNTS 89, Articles 12–17; ICESCR 1966, 993 UNTS 93, Article 9; Charter of Fundamental Rights of the European Union 2000, OJ C364/01 (2000), Article 34.

145 European Social Charter (revised) 1996, ETS 163, Article 30.

146 CCPR, *General Comment No 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant* (CCPR, 29 March 2004), para. 5.

147 UNCESCR, *General Comment No 3: The Nature of States Parties' Obligations (Art. 2(1) of the Covenant)* (UNCESCR, 14 December 1990), para. 10.

148 *Ibid.*, para. 11.

149 ICESCR 1966, 993 UNTS 3, Article 2(1).

150 Koch, *Dichotomies, Trichotomies or Waves of Duties*, 82.

151 *Ibid.*, 82.

152 OHCHR, *Report of the United Nations High Commissioner for Human Rights* (OHCHR, 25 June 2007), para. 34.

153 *Ibid.*

154 UNCESCR, *General Comment No 3*, paras 3 and 7.

155 *Ibid.*, para 5.

e) establishing grievance mechanisms<sup>156</sup>

These measures must be ‘taken within a reasonably short time after the Covenant’s entry into force’ and ‘move as expeditiously and effectively as possible towards’ the full realisation of the rights in question.<sup>157</sup> Consequently, they should be ‘deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant’.<sup>158</sup>

These steps should be non-retrogressive meaning that States should not allow existing protection to deteriorate without strong justification,<sup>159</sup> and that retrogressive measures are prohibited in nearly all circumstances.<sup>160</sup> Any deliberate retrogression requires ‘the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources’.<sup>161</sup> Consequently, the requirement that States are judged in light of the maximum resources available means that lack of resources does not justify inaction.<sup>162</sup> The extent of the ‘maximum available resources’ is a difficult concept to define – particularly because allocating them falls within the margin of discretion given to States.<sup>163</sup> Yet as the UNCESCR provides, ‘in order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations’.<sup>164</sup>

Furthermore, in line with the realistic approach that progressive realisation facilitates, States are obliged to offer goods and services required for the enjoyment of economic, social and cultural rights at ‘affordable prices’.<sup>165</sup> Direct or indirect costs should not prevent access to goods and services or compromise the ability to enjoy rights.<sup>166</sup> This does not impose a general obligation to offer them free of charge.<sup>167</sup> However, it can include the obligation to provide subsidised or free services for those who could not otherwise enjoy their rights.<sup>168</sup>

The subsequent sub-sections consider the rights to an adequate standard of living (including the rights to adequate housing and food) and the highest attainable standard of health from a fuel poverty perspective.

### 3.2.2. Adequate standard of living

In the words of Eide, ‘a life in dignity requires an adequate standard of living’.<sup>169</sup> The main provisions for the right to an adequate standard of living are Article 25 of the UDHR and Article 11 of the ICESCR.<sup>170</sup> This right can be broken into four components – the rights to adequate housing,<sup>171</sup> food,<sup>172</sup> clothing<sup>173</sup> and water.<sup>174</sup> This article focuses on the two most fuel poverty-relevant components of the right to an adequate standard of living – the rights to adequate housing and food.

156 Ibid.

157 Ibid, paras 2 and 9.

158 Ibid, para. 2.

159 Ibid, para. 9.

160 Rory O’Connell et al., *Applying an International Human Rights Framework to State Budget Allocations* (Oxford: Routledge, 2014), 64.

161 UNCESCR *General Comment No 3*, para. 9.

162 Ibid, para. 9.

163 Marco Odello and Francesco Seatzu, *The UN Committee on Economic, Social and Cultural Rights: The Law, Process and Practice* (Oxford: Routledge, 2013), 17.

164 UNCESCR, *General Comment No 3*, para. 10.

165 OHCHR, *Factsheet No 33: Frequently Asked Questions on Economic, Social and Cultural Rights* (Geneva: OHCHR, 2008), 20.

166 Ibid.

167 Ibid.

168 Ibid.

169 Asbjorn Eide, ‘Adequate standard of living’, in *International Human Rights Law*, ed. D. Moeckli et al. (Oxford: Oxford University Press, 2014), 196.

170 The UK signed the ICESCR treaty on 16 September 1968 and ratified it on 20 May 1976. The UK is bound by the UDHR by virtue of its being a part of customary international law: Hurst Hannum, ‘The status of the Universal Declaration of Human Rights in national and international law’, *Georgia Journal of International and Comparative Law* 25 (1995/96): 287, 290. The right to an adequate standard of living is also provided for in Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women 1979, 1249 UNTS 8; Article 27 of the Convention on the Rights of the Child 1989, 1577 UNTS 11; Article 70 of the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families 1990, 2220 UNTS 13; and Article 28 of the Convention on the Rights of Persons with Disabilities 2006, 2515 UNTS 15. The UK has ratified and is therefore bound by each of these, apart from the Migrant Convention, which it has only signed.

171 UNCESCR, *General Comment No 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)* (UNCESCR, 13 December 1991);

UNCESCR, *General Comment No 7: The Right to Adequate Housing (Art.11.1): Forced Evictions* (UNCESCR, 20 May 1997).

172 UNCESCR, *General Comment No 12: The Right to Adequate Food (Art. 11 of the Covenant)* (UNCESCR, 12 May 1999).

173 ICESCR 1966, 993 UNTS 3, Article 11(1).

174 UNCESCR, *General Comment No 15: The Right to Water (Arts. 11 and 12 of the Covenant)* (UNCESCR, 20 January 2003).

*Right to adequate housing*

As summarised by the United Nations (UN), ‘to live in a place, and to have established one’s own personal habitat with peace and security and dignity, should be considered neither a luxury, a privilege nor purely the good fortune of those who can afford a decent home’.<sup>175</sup> Consequently, the recognition of the need for ‘personal security, privacy, health, safety, protection from the elements and many other attributes to a shared humanity’ is reflected in the right to adequate housing.<sup>176</sup>

Stating that there is a ‘right to adequate housing’ leaves the boundaries and obligations of signatory States unclear. The right is complex, containing a series of elements which can be difficult to reconcile: public versus private ownership of housing, rented versus owned accommodation, and the issue of whether there should be total, partial or no intervention by the State in the construction, allocation and pricing of housing. This complexity is multiplied by the diversity of housing needs, with different types of households having differing needs; making the delineation of the right to adequate housing a challenging task.<sup>177</sup> The right to adequate housing is of significance to fuel poverty because its primary cause is the inadequacy of housing, particularly in relation to poor thermal efficiency which makes homes hard to heat.

The UNCESCR has interpreted this right expansively, going beyond the need to provide a roof over a person’s head or the notion of shelter being framed purely as a commodity;<sup>178</sup> but instead as the ‘right to live somewhere in security, peace and dignity’.<sup>179</sup> The Committee set out a list of seven conditions in the General Comment no. 4, against which the adequacy of housing can be measured. Of those conditions, three are of particular relevance to fuel poverty:

- a) availability of services, materials, facilities and infrastructure – certain facilities essential for health, security, comfort and nutrition must be offered for a house to be deemed adequate. These include energy for cooking, heating and lighting<sup>180</sup>
- b) affordability – the accommodation must be affordable and ‘at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised’<sup>181</sup>
- c) habitability – the housing must be habitable, which means that it must, *inter alia*, protect inhabitants from cold, damp, heat, rain, wind or other threats to health<sup>182</sup>

The requirements that a house is offered energy and that accommodation is made affordable are important. Critically, the ‘habitability’ requirement makes clear that thermally inefficient housing, which fails to protect its inhabitants from cold and damp, violates Article 11.

Signatories of the ICESCR must submit reports every five years to the UNCESCR outlining the measures they have taken to ensure the enjoyment of the Covenant’s rights. Using these reports, the Committee then issues ‘concluding observations’ indicating its decision regarding the status of the Covenant in a given State. The past two concluding observations from the UNCESCR in relation to the UK have expressed concern about the impact fuel poverty has had on its Covenant obligations. In 2002 the Committee noted that fuel poverty in this country was creating problems in relation to the right to adequate housing,<sup>183</sup> and recommended that it ‘take immediate measures to improve the situation of the large number of families and individuals who live in poor housing conditions and to relieve the situation of those who are “fuel poor”’.<sup>184</sup> These concerns remained in 2009, at which time the UNCESCR stated that it ‘continues to be concerned that poverty and fuel poverty, especially among children, remain widespread [in the UK] ... despite the level of its economic development and the positive steps it has taken’.<sup>185</sup> The UK was called

175 UNHRP, *Housing Rights Legislation: Review of International and National Legal Instruments* (Nairobi: UN-HABITAT and OHCHR, 2002), 1.

176 *Ibid.*

177 Scott Leckie, ‘The UN Committee on Economic, Social and Cultural Rights and the right to adequate housing: towards an appropriate approach’, *Human Rights Quarterly*, 11, no. 4 (1989): 522, 527.

178 UNHRP, *Housing Rights Legislation*, 4; UN Special Rapporteur on the Right to Adequate Housing, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and On the Right to Non-discrimination in this Context* (UN, 4 February 2009).

179 UNCESCR, *General Comment No 4*, para. 7.

180 *Ibid.*, para. 8(b).

181 *Ibid.*, para. 8(c).

182 *Ibid.*, para. 8(d).

183 UNCESCR, *Concluding Observations of the UNCESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories* (UNCESCR, 5 June 2002), para. 20.

184 *Ibid.*, para. 39.

185 UNCESCR, *Concluding Observations of the UNCESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories* (UNCESCR, 12 June 2009), para. 28.

upon to 'develop human rights based poverty-reduction programmes'.<sup>186</sup> Furthermore, during her visit to the country in 2013, Raquel Rolnik (the former UN Special Rapporteur on adequate housing) drew attention to fuel poverty as a 'threat' to the realisation of the adequate standard of living<sup>187</sup> – cementing the conclusion that fuel poverty engages Covenant rights.

In the case of 'deliberate retrogressive measures' relating to the right to adequate housing, the UNCESCR has offered guidance that, 'a general decline of housing and living conditions, deliberately attributable to policy and legislative decisions by State Parties, and in the absence of accompanying compensatory measures'<sup>188</sup> would be inconsistent with ICESCR obligations. Of particular importance to fuel poverty, it is clear that the prohibition covers the unjustified reduction of public expenditures committed to the implementation of Covenant rights (in the absence of adequate compensatory measures)<sup>189</sup> – also explicitly prohibited in the 'Maastricht Guidelines'.<sup>190</sup>

The coalition government's decision to end the 'Warm Front Scheme' (WFS) in early 2013 provides an example of a potentially retrogressive step. The WFS provided State-funded grants for heating and insulation improvements to English households receiving particular income-related benefits and living in properties that were poorly insulated and/or did not have a working central heating system. Broadly accepted as an effective anti-fuel poverty policy, it has been replaced by an energy supplier-delivered scheme, the 'Energy Companies Obligation'<sup>191</sup> (ECO), a move described as the 'privatisation of energy efficiency and fuel poverty policy'.<sup>192</sup> Particularly important within the context of this article, the ECO has been criticised for the reduced and inadequate levels of resources it devotes to fuel poverty. These have been derided as 'insufficient'<sup>193</sup> by the Energy and Climate Change Select Committee (ECCSC), with one study demonstrating, for example, that (at current funding levels) it will take between 100–400 years for the ECO to take all households out of fuel poverty.<sup>194</sup> A 2012 study of the UK government's spend on fuel poverty policies showed a 26 per cent reduction in spending on the fuel poor in England between 2009 and 2013, in part due to the ECO having replaced the WFS<sup>195</sup> – a move which may well have been an impermissible retrogressive step.

The obligation to respect, protect and fulfil rests with the State, meaning that it must step in where individuals are not able to enjoy their rights. For example, where a person lacks the resources to provide adequate warmth, lighting and cooking in the home, the State must offer temporary assistance. Two examples of this type of support, which are available in the UK to assist elderly and low-income homes with winter heating costs, are the Winter Fuel Payment (WFP) and Cold Weather Payment (CWP). The former is paid at a fixed rate (a one-off payment of £100–300 between November and December) to householders of State Pension age; whereas CWP allowances of £25 per week are issued to those on a range of social security benefits when the average temperature in their area has fallen below 0°C for a period of seven consecutive days.<sup>196</sup> Although these are helpful to low-income households during the coldest parts of the year, they are not necessarily reflective of need. The WFP is not means-tested – eligibility being based on age – and the Hills Report calculated that only ten per cent of recipients were fuel poor under the LIHC definition,<sup>197</sup> suggesting that it is a grossly mistargeted fuel poverty policy. The ECCSC recommended that it would be more 'intellectually honest'<sup>198</sup> to rename the WFP as a general income supplement rather than a fuel poverty measure. The CWP allowance is also mistargeted, being highly geographically variable,<sup>199</sup> and a blunt measure, which fails to take into account the thermal efficiency of the recipient's housing, and ignores required energy costs during cold spells. The State's duty to use the maximum available resources also implies the obligation to use its resources in an effective and efficient manner.<sup>200</sup> Although it is difficult to assess compliance with this duty, the lack of targeting of both sets of payments may be legally flawed in this regard.

186 Ibid.

187 Special Rapporteur on the Right to Adequate Housing, *Adequate Housing as a Component of the Right to an Adequate Standard of Living*, para. 59.

188 UNCESCR, *General Comment No 4*, para 11.

189 Magdalena Sepúlveda, *The Nature of Obligations Under the International Covenant on Economic, Social and Cultural Rights* (Cambridge: Intersentia, 2003), 324.

190 UNCESCR, *Maastricht Guidelines on Violation of Economic, Social and Cultural Rights* (UNCESCR, 2 October 2000), para 14(e) and 14(g).

191 Electricity and Gas (Energy Companies Obligation) Order 2012.

192 Stefan Bouzarovski, 'We need an ambitious and comprehensive fuel poverty policy', 21 May 2013, <http://ukerc.wordpress.com/2013/05/21/we-need-an-ambitious-and-comprehensive-fuel-poverty-policy-by-stefan-bouzarovski/> (accessed 22 August 2014).

193 UKECCC, *Energy Prices, Profits and Poverty* (UKECCC, 5<sup>th</sup> Report, 2013), 57.

194 Jan Rosenow et al., 'Fuel Poverty and Energy Efficiency Obligations – A Critical Assessment of the Supplier Obligation in the UK', *Energy Policy*, 62 (2013): 1194, 1199.

195 Antonia Jansz and Pedro Guertler, *The Impact on the Fuel Poor of the Reduction in Fuel Poverty Budgets in England* (London: ACE, 2012).

196 The Social Fund Cold Weather Payments (General) Amendment Regulations 2010.

197 Hills, *Getting the Measure of Fuel Poverty*, 113.

198 UKECCC, 'Fuel poverty' (UKECCC, 5<sup>th</sup> Report, 2010), 16.

199 DWP, *Social Fund Cold Weather Payments For Great Britain, From 1st November 2012 to the Week Ending 22nd March 2013* (London: DWP, 2013).

200 Sepúlveda, *The Nature of Obligations Under the ICESCR*, 315.

The European Social Charter also protects the right to adequate housing, in Article 31 (the right to housing) and Article 16 (the right of the family to social, legal and economic protection).<sup>201</sup> Article 31 requires the State to take measures designed to 'promote access to housing of an adequate standard'<sup>202</sup> and 'make the price of housing accessible to those without adequate resources'.<sup>203</sup> The European Committee of Social Rights (ECSR) has defined 'adequate housing' as requiring 'all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc'.<sup>204</sup> Furthermore, it has found the Article 31(3) requirement to make the price of accommodation accessible to imply a duty to ensure an adequate supply of affordable housing. The latter term is defined as accommodation for which a household can pay: 'the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located'.<sup>205</sup>

Article 16 seeks to ensure the necessary conditions for the development of the family, requiring signatories to promote the economic, legal and social protection of family life by means including the 'provision of family housing'.<sup>206</sup> The ECSR has interpreted Article 16 as including a duty on the State to promote adequate housing for families (similarly to Article 31).<sup>207</sup> The ECSR has been more limited in its definition of the right to adequate housing than the UNCESCR; particularly in relation to the latter's 'habitability' requirements. However, the specificity of the definition of 'adequate' and 'affordable' housing, given by the ECSR, are of significance to fuel poverty, making clear that the accommodation must provide heating facilities and be affordable to comply with the Charter.

### *Right to food*

Christensen describes the idea of a right to food 'as a socially basic right – everyone's minimum reasonable claims on the rest of humanity'.<sup>208</sup> In addition to Article 11 of the ICESCR, the UK is committed to promoting, protecting and respecting the right to food by virtue of Article 24(2)(c) of the Convention on the Rights of the Child 1989<sup>209</sup> and its commitment to the Rome Declaration on World Food Security 1996. This right is defined as:

the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>210</sup>

As a socio-economic right it must be realised progressively, but 'States have a core obligation to take the necessary action to mitigate and alleviate hunger'.<sup>211</sup> This involves ensuring that food is adequately and sustainably available and accessible.<sup>212</sup> The minimum core obligation relevant to fuel poverty is accessibility – economic and physical.<sup>213</sup> From an economic standpoint, personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level which does not threaten or compromise other basic needs.<sup>214</sup> Physical accessibility is a reference to the need to make adequate food easily obtainable by everyone, including the most vulnerable.<sup>215</sup>

Fuel poverty affects the right to food in two ways. First, it can make it difficult to afford the energy necessary to prepare food which needs to be heated or cooked. As reported by Oxfam, 'people who use food banks have started giving back items that need cooking because they can't afford to turn on the electricity to cook the food they desperately need'.<sup>216</sup> Second, fuel poor homes may face the well-recognised survivalist 'heat or eat' dilemma, whereby they are forced to either limit their calorific intake so that the savings on food expenditure can be used to maintain adequate

201 The UK has ratified the European Social Charter 1961 (which includes Article 16), but only signed the European Social Charter (revised) 1996 (which includes Article 31).

202 European Social Charter (revised) 1996, ETS 163, Article 31(1).

203 Ibid, Article 31(3).

204 ECSR, *Conclusions 2003: Vol. 1 (Bulgaria, France, Italy)* (Strasbourg: CoE, 2003), 221.

205 ECSR, *Conclusions 2003: Vol. 2 (Romania, Slovenia, Sweden)* (Strasbourg: CoE, 2003), 655.

206 European Social Charter 1961, Article 16.

207 ECSR, *European Roma Rights Center v Greece*, complaint no. 15/2003 (decision on the merits, 08/12/2004), para. 24.

208 Cheryl Christensen, *The Right to Food: How to Guarantee* (Piscataway: Transaction Publishers, 1978), 1.

209 The UK signed this treaty on 19 April 1991 and ratified it on 16 December 1991.

210 Jacques Fomerand, *Historical Dictionary of Human Rights* (Lanham: Rowman and Littlefield, 2014), 269; OHCHR, 'Special Rapporteur on the Right to Food', <http://www.ohchr.org/EN/issues/food/Pages/FoodIndex.aspx> (accessed 22 Aug. 2014).

211 UNCESCR, *General Comment No 12*, para. 6.

212 Ibid, para. 8.

213 Ibid, para. 13.

214 Ibid.

215 Ibid.

216 Nigel Morris, 'Poor taking items back to food banks as they can't afford to cook, Oxfam claims', *The Independent*, 3 March 2014.

warmth in the home, or vice versa.<sup>217</sup> As the Trussell Trust reports, the numbers of people in the UK given three days' emergency food has 'risen exponentially from 26,000 in 2008–09 to 913,138 in 2013–14, as growing numbers of people ... are forced to choose between heating, eating or paying for housing costs'.<sup>218</sup>

### 3.2.3. Right to the highest attainable standard of health

The right to health does not provide a right to be healthy. Asher reasons that the State cannot be 'expected to provide people with protection against every possible cause of ill health or disability ... Nor should the right to health be seen as a limitless right to receive medical care for any and every illness or disability'.<sup>219</sup> Instead, it should be understood as 'a right to the enjoyment of a variety of facilities and conditions which the State is responsible for providing as being necessary for the attainment and maintenance of good health'.<sup>220</sup> The right to the highest attainable standard of health – both physical and mental<sup>221</sup> – is provided for within Article 25 of the UDHR and Article 12 of the ICESCR.<sup>222</sup> The UNCESCR has interpreted the right expansively, stating that it is 'an inclusive right extending not only to timely and appropriate health care but also to the underlying determinations of health, such as ... adequate ... housing'.<sup>223</sup> Where fuel poverty is concerned, the right to the highest attainable level of health is closely linked to the right to an adequate standard of accommodation. This is on the basis that often the substandard conditions of housing related to fuel poverty can be detrimental to health, as discussed in section 2.

The requirement to provide housing conditions that do not have an adverse effect on health falls within the category of progressive realisation, as opposed to a minimum core obligation.<sup>224</sup> Nevertheless, the State must take steps to the maximum of its available resources to safeguard this requirement. As discussed in section 3.2.2, doubts exist that the UK is adhering to this.

This country is also bound by Article 11 of the European Social Charter 1961 which protects the right to protection of health.<sup>225</sup> This requires the State to take appropriate measures designed to 'remove as far as possible the causes of ill-health', which includes the enforcement of public health standards in housing where States have not accepted Article 31 (such as the UK).<sup>226</sup>

## 4. Conclusion

The UK is one of many State Parties to the treaties discussed and fuel poverty is only one feature of the 'deprivation landscape'. Consequently, the conclusions here can be applied globally and to the broader debate on poverty and human rights. To summarise, section 3.1 demonstrates the increasingly recognised link between protecting 'civil and political' rights and fulfilling 'socio-economic' obligations. It outlines the threats to these rights and obligations posed by fuel poverty and the legal implications from a human rights perspective. European Convention rights are only infringed where individuals are subject to extreme conditions of poverty, including fuel poverty. Challenging these conditions through civil and political rights is no longer automatically inadmissible.<sup>227</sup> As *Nencheva* demonstrates, an admissible and successful complaint is not impossible. Fuel poverty may breach Article 2 requirements in relation to State-owned housing or accommodation provided by a third party where the cold conditions are life-threatening to already vulnerable residents. An Article 3 claim could be brought where fuel poverty has led to physical and/or mental suffering for prolonged periods of time which have been ignored by the State authorities. Furthermore, an Article 8 claim is possible where the State's actions or inactions have failed to adequately eradicate fuel poverty, and the resulting impact on the potential claimant of continuing in that state has created living conditions that make it virtually impossible to enjoy their Article 8 rights, in particular the right to physical and psychological integrity. Such a claim

217 Jayanta Bhattacharya et al., 'Heat or eat? Cold-weather shocks and nutrition in poor American families', *American Journal of Public Health*, 93, no. 7 (2003): 1149, Will Anderson et al., 'Coping with low-incomes and cold homes', *Energy Policy*, 49 (2012): 40.

218 Justfair, *Going Hungry? The Human Right to Food in the UK* (London: Justfair, 2014), 4.

219 Judith Asher, *The Right to Health: A Resource Manual for NGOs* (London: Commonwealth Medical Trust, 2004), 17.

220 Ibid.

221 ICESCR 1966, 993 UNTS 93, Article 12(1).

222 International Convention on the Elimination of All Forms of Racial Discrimination 1965, 660 UNTS 2, Article 5(e)(iv); Convention on the Elimination of All Forms of Discrimination Against Women 1979, 1249 UNTS 8, Articles 11(1)(f) and 12; Convention on the Rights of the Child 1989, 1577 UNTS 11, Article 24.

223 UNCESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* (UNCESCR, 11 August 2000), para. 11.

224 Ibid.

225 The UK has accepted this provision without reservation: CoE, 'The United Kingdom and the European Social Charter' (CoE, 2014).

226 European Social Charter 1961, 529 UNTS 89, Article 11(1). European Committee on Social Rights Secretariat, *The Right to Health and the European Social Charter* (ECSR, 2009), 3.

227 Williams, *Towards an Emerging International Poverty Law*, 6–7.

would be strengthened if it involved a family and/or the welfare of a child. The advantage for an individual suffering from fuel poverty to the extent of a potential violation of the ECHR is that any admissible claim brought is justiciable before the domestic courts and, if necessary, the ECtHR. As discussed in section 3, the same cannot be said for potential violations of socio-economic rights.

Fuel poverty has been shown to engage the rights to adequate housing and food, and the highest attainable standard of health. Socio-economic rights may not be justiciable within the UK, but it is bound by them by virtue of its ratifications of the ICESCR and the European Social Charter. Lack of political will and the omission of an effective enforcement mechanism have made it difficult to push the State into fully realising its duties. State Parties can fall back on socio-economic rights including progressive obligations. This article has demonstrated that evidence exists suggesting that the UK has taken unjustified retrogressive actions and is not assigning its maximum available resources adequately. For example, the end of the WFS, the introduction of the restrictive ECO, and the poorly targeted WFP and CWP. The country may also be failing to fulfil its minimum core obligation to ensure that food is accessible, exemplified by the existence of the 'heat or eat' dilemma faced by fuel-poor households.

This article argues that the UK should recognise that fuel poverty engages human rights obligations, and develop fuel poverty policies in a manner which recognises this. This should involve the State adopting a 'human rights-based approach'<sup>228</sup> to its fuel poverty policies, broadly requiring that human rights laws and standards are integrated into relevant plans, processes and decision-making.<sup>229</sup> This would provide the UK with 'a sophisticated tool for managing risk, achieving transparency and finding objective, balanced and proportionate solutions' to fuel poverty,<sup>230</sup> ultimately leading to fuel poverty policies which reflect the rights of those within its jurisdiction, rather than those 'who [a government] values'.<sup>231</sup>

228 Wambua Leonard Munyao, 'Understanding the rights-based approach and its role in poverty reduction', *International Journal of Humanities and Social Science*, 3, no. 3 (2013): 276.

229 John Tobin, 'Understanding a human rights-based approach to matters involving children: conceptual foundations and strategic considerations', *The Human Rights of Children: From Visions to Implementation*, ed. A. Invernizzi and J. Williams (Farnham: Ashgate, 2011).

230 Alice Donald et al., *Human Rights in Britain Since the Human Rights Act 1998: A Critical Review* (Manchester: EHRC, 2008), vii.

231 Deborah Budlender, *The Women's Budget* (Cape Town: Institute for Democracy in South Africa, 1996), 7.