

SCHEDULE 3 NIAA 2002

HUMAN RIGHTS

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Para. 3 Schedule 3

Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of--

- (a) **a person's Convention rights, or**
- (b) a person's rights under the Community Treaties.

HR's most frequently relied upon

- Article 3 ECHR “no one shall be subject to torture or to inhuman or degrading treatment or punishment”
- Article 8 ECHR: right to respect for home, family and private life

Article 3

Street homeless, lacking food, warmth and basic necessities = breach of article 3:

R (Limbuela) v. SSHD

Article 3 (cont'd)

Breach can be avoided by return to country of origin?

Kimani v LB Lambeth

Article 3 (cont'd)

Impediment to travel?

- Lack of travel documents;
- no route of return;
- medically unable to travel.

Article 3 (cont'd)

Is an extant art.8 application to HO an impediment to travel?

local authority may only consider whether it is *manifestly unfounded* - if not, it cannot rely on return to country of origin: R (Binomugisha) v LB Southwark

Article 3 (cont'd)

- Medical issues – note that these will frequently have been rejected by SSHD
 - High threshold - N v SSHD

Article 8 ECHR

- Return to country of origin
- Travel assistance if required
- s.2 Local Government Act 2000: Grant v LB Lambeth

Article 8 ECHR

- Kimani v LB Lambeth (weak art.8 case)
- M v LB Islington (Brit Cit child, contact with F)
- PB v LB Haringey (care proceedings)

Article 8 ECHR

Assessment:

- family life in the UK
- quality of family life on return
 - Citizenship issues
- Contact with settled parent
- ? education/ medical issues

Article 8

- Medical issues - again, high threshold
 - Be aware of 8(2) justification