

## **Devolved Powers in Judicial Review cases under the 2010 Contract**

The 2010 Standard Civil Contract contains new rules about devolved powers to grant emergency certificates for Judicial Review cases. This note explains how these rules will operate from the start of the contract and in the longer term.

Broadly, all providers who held devolved powers for judicial review proceedings for a Category under the Unified Contract may continue to exercise those devolved powers under the 2010 Standard Civil Contract provided they have the appropriate Schedule Authorisation under the 2010 contract i.e. they hold a contract for either Public Law or for the Category which covers the subject matter of the Judicial Review. This position will however apply only for a limited period up to 31 March 2011, after which there will be a more restrictive approach to which providers may exercise these powers.

### **The new contract rules**

Under the Unified Contract, all providers held devolved powers to grant, amend or refuse emergency representation for all types of civil proceedings for which they held the SQM. These powers applied unless the devolved power was specifically withdrawn under the contract. The exception was judicial review proceedings in the Immigration category – for those cases devolved powers could only be exercised where providers had been specifically authorised to do so – see para 4.6(a) of the UC Specification.

Under the 2010 Contract, which applies from Monday 15<sup>th</sup> November 2010, there are increased controls over devolved powers for judicial review. All other Categories are brought into line with the approach previously applying only to Immigration i.e devolved powers only apply if specifically granted. The rules are set out at paragraph 5.5 (a) of the 2010 Civil Specification. Devolved powers continue to apply for certain high priority judicial reviews such as homelessness challenges under Part VII Housing Act 1996, but for other judicial reviews devolved powers must be specifically granted.

The contract also makes clear that, for all types of case, devolved powers may not be exercised to grant on public interest grounds. Decisions must therefore be based on the merits of the individual case without consideration of any significant wider public interest.

### **The Interim Position from 15<sup>th</sup> November to 31<sup>st</sup> March 2011**

Because we wish to take time to draw up and consult upon criteria for which providers should exercise devolved powers in these cases, the following will apply:

Providers may exercise devolved powers in judicial review proceedings provided:

1 They hold appropriate Schedule Authorisation under the 2010 contract in either Public Law or the Category into which the judicial review falls AND

2 Prior to the new contract coming into force they held devolved powers under the Unified Contract allowing them to grant emergency judicial reviews in that Category

This means that, apart from the high priority cases listed at paragraph 5.5 of the Specification, devolved powers do not apply in the following situations:

- i) In the immigration Category to any provider who had not been specifically granted them
- ii) Providers whose devolved powers under the UC were removed or suspended when that contract came to an end
- iii) New entrants who did not previously hold the UC

### **Devolved Powers from 1 April 2011**

We will be drawing up and consulting on a system and criteria for awarding devolved powers for judicial review. Subject to any extension of the date, from 1 April 2011 only providers who have individually been awarded devolved powers will be able to exercise them in judicial review cases generally.

### **Contacts**

If you have any queries concerning the extent of your devolved powers under the 2010 contract please contact your relationship manager. For queries on the general rules contact [ian.hollins@legalservices.gsi.gov.uk](mailto:ian.hollins@legalservices.gsi.gov.uk) for Immigration matters and [zoe.farrant@legalservices.gsi.gov.uk](mailto:zoe.farrant@legalservices.gsi.gov.uk) for other Categories.