

Devolved powers in judicial review cases under the 2010 Contract

Summary

The 2010 Standard Civil Contract contains rules about devolved powers to grant emergency certificates for judicial review cases. This guidance explains how these rules will operate until 31 January 2012. Please note that this extends the period during which this interim position applies from that given in previous guidance.

Broadly, until this date, all providers who previously held devolved powers for judicial review for a Category under the Unified Contract may continue to exercise those powers provided they had the appropriate Schedule Authorisation under the 2010 contracts (see below for full details). We will provide a further update in due course on the use of devolved powers in judicial review cases after 31 January 2012.

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 Specialist Quality Mark. These powers applied unless the devolved power was specifically withdrawn under the contract.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 paragraph 4.6(a) of the UC Specification).

The 2010 Contract, which came into force on Monday 15 November 2010, contains 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.

Interim position

The LSC introduced an interim position regarding the use of devolved powers in judicial review on 15 November 2010. This will now apply until 31 January 2012, namely providers may exercise devolved powers in judicial review proceedings provided:

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

- In the Immigration Category to any provider who has not been specifically granted them
- Providers whose devolved powers under the Unified Contract were removed or suspended when that contract came to an end
- New entrants who did not previously hold the Unified Contract

Contacts

If you have any queries concerning the extent of your devolved powers under the 2010 contract please contact your Contract Manager. For queries on the general rules contact:

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