



**THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)**

**UPPER TRIBUNAL CASE No: CTC/0073/2021  
[2022] UKUT 10 (AAC)**

**SK v COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS AND  
SECRETARY OF STATE FOR WORK AND PENSIONS**

Decided without a hearing

**Representatives**

Claimant	Angela Marke (and others at earlier stages), Cardinal Hume Centre
Commissioners	HM Revenue and Customs
Secretary of State	DMA Leeds

**DECISION OF UPPER TRIBUNAL JUDGE JACOBS**

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Reference: SC242/19/06276  
Decision date: 21 August 2019  
Venue: Fox Court

The decision of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

**REASONS FOR DECISION**

**A. The issue**

1. This appeal is about the transition from tax credits to universal credit. In particular, it is about the interpretation of regulation 8 of the Universal Credit (Transitional Provisions) Regulations 2014 (No 1230). This refers to the basic condition for entitlement to universal credit in section 4(1)(c) of the Welfare Reform Act 2012, which reads: 'a person meets the basic conditions who ... (c) is in Great Britain ...' Do those words have to be understood as they stand or subject to

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qualifications in regulations authorised by the Act? I have decided that they are freestanding and have to be read without regard to the qualifying regulations.

2. My decision has to be read in conjunction with another case involving the regulation, which is before me: *JL v Calderdale Metropolitan Borough Council and Secretary of State for Work and Pensions* [2022] UKUT 9 (AAC).

**B. What happened**

3. The claimant was in receipt of tax credits from 2017. From 10 November 2018, she received her award as a single claimant. On 17 March 2019, she made a claim online for universal credit. Her claim was accepted online and an electronic notification was sent to the decision-maker in Revenue and Customs, which is responsible for tax credits. This is known as a 'stop notice'.

4. On 5 April 2019, the Secretary of State for Work and Pensions, who is responsible for universal credit, notified the claimant that she was not entitled to universal credit on the ground that she did not have a right to reside in Great Britain.

5. On the same day, the claimant's award of tax credit came to an end with effect from 16 March 2019. This was recorded in a decision that she had been entitled for the inclusive period from 10 November 2018 to 16 March 2019 only. The First-tier Tribunal dismissed her appeal against that decision, but gave her permission to appeal to the Upper Tribunal. I added the Secretary of State as a second respondent on the ground that the appeal involved the interpretation of legislation made by the Secretary of State.

6. The claimant was later awarded universal credit from 4 May 2019 following a grant of settled status under the EU Settlement Scheme. This does not affect this appeal.

**C. Why the claimant was not entitled to universal credit**

7. Universal credit was created by section 1 of the Welfare Reform Act 2012. In order to be entitled to the credit, a claimant must meet the basic conditions and the financial conditions of entitlement: section 3. Putting it simply, the basic conditions relate to the claimant and the financial conditions relate to finance.

8. The basic conditions are set out in section 4:

**4 Basic conditions**

- (1) For the purposes of section 3, a person meets the basic conditions who—
- (a) is at least 18 years old,
  - (b) has not reached the qualifying age for state pension credit,
  - (c) is in Great Britain,
  - (d) is not receiving education, and
  - (e) has accepted a claimant commitment.

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...

- (5) For the basic condition in subsection (1)(c) regulations may—
- (a) specify circumstances in which a person is to be treated as being or not being in Great Britain;
  - (b) specify circumstances in which temporary absence from Great Britain is disregarded;
  - (c) modify the application of this Part in relation to a person not in Great Britain who is by virtue of paragraph (b) entitled to universal credit.

9. The financial conditions are set out in section 5:

**5 Financial conditions**

- (1) For the purposes of section 3, the financial conditions for a single claimant are that—
- (a) the claimant's capital, or a prescribed part of it, is not greater than a prescribed amount, and
  - (b) the claimant's income is such that, if the claimant were entitled to universal credit, the amount payable would not be less than any prescribed minimum.
- (2) For those purposes, the financial conditions for joint claimants are that—
- (a) their combined capital, or a prescribed part of it, is not greater than a prescribed amount, and
  - (b) their combined income is such that, if they were entitled to universal credit, the amount payable would not be less than any prescribed minimum.

10. Regulation 9 of the Universal Credit Regulations 2013 (SI No 376) contains the provisions made under section 4(5)(a). The regulation has a complicated structure. For present purposes, it is sufficient to say that essentially it deals with people who do not have a right to reside in Great Britain for benefit purposes. The simplest way to understand its effect is to look at the first two paragraphs:

**9 Persons treated as not being in Great Britain**

- (1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.
- (2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

Paragraph (1) contains a rule and paragraph (2) contains a qualification. For convenience, I will state the rule and the qualification without resorting to double

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negatives. The rule says: a person must be habitually resident in Great Britain in order to be treated as present here. The qualification says: a person must have a right to reside in Great Britain in order to be habitually resident.

11. How did that apply to the claimant? From the evidence I have seen, the claimant was habitually resident here when she made her claim. So far so good. But she did not have a right to reside here. So she could not be habitually resident here and was not treated as present here. This is what led the Secretary of State to refuse the claim for universal credit.

**D. Why the claimant's tax credits were terminated**

12. Universal credit replaces tax credits, which were abolished with effect from 1 February 2019 by section 33(1)(f) of the 2012 Act, brought into force by Article 2 of the Welfare Reform Act 2012 (Commencement No 32 and Transitional Provisions) Order 2019 (SI No 167). This was subject to the savings in Article 3 of the Order.

13. The transition from tax credits to universal credit is governed by the Universal Credit (Transitional Provisions) Regulations 2014. Regulations 8 and 12A are relevant here. These are the versions of the regulations as in force at the relevant time:

**8 Termination of awards of certain existing benefits: other claimants**

- (1) This regulation applies where—
  - (a) a claim for universal credit (other than a claim which is treated, in accordance with regulation 9(8) of the Claims and Payments Regulations, as having been made) is made; and
  - (b) the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Act (other than any of those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).
- (2) Where this regulation applies, all awards of ... a tax credit to which the claimant (or, in the case of joint claimants, either of them) is entitled on the date on which the claim is made are to terminate, by virtue of this regulation—
  - (a) on the day before the first date on which the claimant is entitled to universal credit in connection with the claim; or
  - (b) if the claimant is not entitled to universal credit, on the day before the first date on which he or she would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.
- ...
- (5) Where an award terminates by virtue of this regulation, any legislative provision under which the award terminates on a later date does not apply.

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**12A Modification of tax credits legislation: finalisation of tax credits**

- (1) This regulation applies where—
  - (a) a claim for universal credit is made, or is treated as having been made;
  - (b) the claimant is, or was at any time during the tax year in which the claim is made or treated as made, entitled to a tax credit; and
  - (c) the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Act (other than any of those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).
- (2) Subject to paragraph (3), where this regulation applies, the amount of the tax credit to which the person is entitled is to be calculated in accordance with the 2002 Act and regulations made under that Act, as modified by the Schedule to these Regulations ('the modified legislation').
- (3) Where, in the opinion of the Commissioners for Her Majesty's Revenue and Customs, it is not reasonably practicable to apply the modified legislation in relation to any case or category of cases, the 2002 Act and regulations made under that Act are to apply without modification in that case or category of cases.

**E. The arguments in summary**

*For the claimant*

14. I take this from the reply to the appeal. Ms Marke accepts that the claimant made a claim for universal credit and that the tax credit award was terminated. She argues that it was wrong to terminate the award 'because the Secretary of State could not be satisfied that SK met the basic conditions of eligibility for universal credit.' In other words, the basic conditions had to be read as they apply to govern entitlement, including regulation 9 of the 2013 Regulations.

*For the Commissioners*

15. The representative explains that the decision-maker acts on the Secretary of State's notification that regulation 8 is satisfied (the stop notice) and terminates the award accordingly. She explains that this is sent from the universal credit computer system to the tax credit computer system as an electronic notification or signal. The position of the Commissioners is that if a notice is received, the conditions in regulation 8(1) must have been satisfied. The ultimate decision on entitlement to universal credit has no bearing on how regulation 8 applies.

*For the Secretary of State*

16. The representative argues that the decision-making on an online claim for universal credit is in two stages. At the first stage, the basic conditions in section

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4(1)(a) to (d) are checked. If they are met, the award of tax credit is terminated. At the second stage, all the conditions of entitlement are assessed. Regulation 9 of the 2013 Regulations is irrelevant at the first stage and only relevant at the second stage. She then explains how the online claim and stop notice work:

9. The UC service is designed so that the information provided by a claimant via their online claim is sufficient for SSWP to be satisfied that the claimant meets the basic conditions of entitlement to UC for the purposes of regulation 8, by collecting information that relates to age, address, and educational status. All of this must have been supplied by the claimant to allow a valid UC claim to be submitted online. When making her UC claim the claimant was able to provide all the relevant information to submit a valid UC claim online, including that she was resident at an address in Great Britain.

10. In practice a stop notice is issued by the system automatically when a valid UC claim is made, not when it is decided. A claimant is only required to have met the basic conditions (except for having agreed to a claimant commitment), and not all entitlement conditions, for regulation 8 to come into effect.

17. The representative emphasises, correctly, that this appeal is against the termination of the tax credit award, not a challenge to the universal credit decision. She argues that the only issue is whether the tax credit decision-maker received the stop notice under regulation 8. She refers to and relies on evidence given in *SL*.

**F. The stop notice**

18. I have to deal with this first because it is relevant to the scope of the appeal. The representatives for both the Commissioners and the Secretary of State have submitted that the only issue is whether the tax credit decision-maker received a stop notice. In order to assess that argument, it is necessary to understand what a stop notice is.

19. The effect of regulation 8, if it applies, is to terminate the claimant's existing award of tax credit on the day before the effective date of the universal credit decision under regulation 8(2). There is no doubt about that. However, there is a practical issue of ensuring that the tax credit decision-maker is aware that regulation 8 has been satisfied. That is where the stop notice comes in. It is a purely administrative step to ensure co-ordination between the Departments involved, or at least their computer systems. It is not an adjudicative step or part of an adjudication process. It is purely an administrative step conveying information that a determination – I explain that choice of word later - has been made. This step protects the public purse from the risk of overpayment of tax credit, and it protects the claimant from liability to repay an overpayment. But that does not make it adjudicative.

20. There is a flaw in the argument that the stop notice is all that is in issue on appeal. The flaw is to confuse the fact that regulation 8 applies with the notice of that fact. It is regulation 8 that operates to terminate the tax credit award, not the stop

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notice. The tax credit award is only terminated if the conditions in regulation 8 have been satisfied. The claimant's argument raises the issue of what the regulation requires and, therefore, whether it was properly satisfied. The representatives for both Departments have made arguments on the point. It is part of a set of arguments on the scope and operation of regulation 8. Whether the issue is properly within the scope of the appeal against the termination of the tax credit award, or only the universal credit decision, it potential affects both and it is appropriate for me to deal with it.

**G. My analysis of regulation 8**

*The issue and my conclusion*

21. Ms Marke is undoubtedly correct that, for the purposes of entitlement, section 4(1)(c) has to be read subject to regulations made under section 4(5)(a). The issue for me, though, is different: what is meant by the basic condition specified in section 4(1)(c) *for the purposes of regulation 8 of the 2014 Regulations?*

22. Regulation 8(1)(b) refers to 'the basic conditions specified in section 4(1)(a) to (d)'. My conclusion is that this means 'the basic conditions *as specified in* section 4(1)(a) to (d)'. That excludes cases in which a person is *treated as* not being in Great Britain under section 4(5)(a). In other words, it excludes cases in which section 4(1)(c) is qualified by deeming provisions. The words used are capable of bearing that meaning and it is the appropriate meaning in the context of the 2014 Regulations. My analysis provides a clear and rational basis for adopting an interpretation that limits the reference to the basic condition to the language of the section consistently with the omission of any reference to the financial conditions.

*A summary of what follows*

23. A summary of my reasoning may make the detailed reasoning below easier to follow. If there were no regulation 8(1)(b), the regulation would transfer cases from the old regime (tax credit) to the new regime (universal credit) at the moment that a claim is made. By itself it would do so regardless of the outcome of the claim. That is a classic transitional provision. Regulation 8(1)(b) provides a qualification. The issue in this case is the extent to which its effect is to align the operation of the regulation with the outcome of the claim for universal credit. Any alignment would be imperfect, because the regulation takes no account of the financial conditions, which must be met. If Ms Marke's argument is correct, the result is an arbitrary distinction between the basic conditions and the financial conditions. Furthermore, it leaves decision-makers and claimants uncertain, potentially for months, while information and evidence is gathered and enquiries made. From an administrative perspective, it is inefficient and far from the way that transitional provisions usually operate. My interpretation avoids those problems, it gives a limited effect to regulation 8(1)(b) that provides a coherent explanation for what conditions are included and for what are excluded, it recognises that the provision operates to the benefit of claimants, and it

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provides a coherent meaning that explains the operation of regulation 8 as a whole and as a transitional provision.

*Regulation 8 is a transitional provision*

24. In *Commissioners for Her Majesty's Revenue and Customs v LH* [2018] UKUT 306 (AAC), I said:

13. The purpose of transitional provisions is to manage change. In this case, the change was from tax credits to universal credit. The change from one benefit to another can take different forms. Regulation 8 takes the form that is sometimes known as sudden death: the occurrence of an event triggers the transfer of the claimant from one benefit to another. That is how Parliament has chosen to move claimants into the universal credit regime. The trigger event is the making of a claim. That is what happened and what happened thereafter did not rewrite history.

I stand by that, but it is very general. There is more to be said about the nature of transition that is relevant to the issue that arises in this case.

*The structure of regulation 8*

25. I begin with the language of regulation 8. It lays down the conditions that must be satisfied before it applies and it stipulates its effect once those conditions are satisfied. The former are in regulation 8(1); the latter is in regulation 8(2).

26. Regulation 8(1) contains two conditions. The first, in regulation 8(1)(a), is that there must be a claim for universal credit. This is not controversial in this case. There was a claim. The second, in regulation 8(1)(b), is that the basic conditions specified in section 4(1)(a) to (d) must be satisfied.

*Regulation 8 does not depend on the outcome of the claim for universal credit*

27. There is a lot to learn from regulation 8(1)(b). One thing to learn is that the operation of the regulation is not dependent on the ultimate outcome of the claim. It would, therefore, not be surprising or anomalous if it had the effect that the claimant was left with neither her tax credit nor an award of universal credit. We know this because regulation 8(1)(b) only refers to section 4(1)(a) to (d). It does not include the basic condition in section 4(1)(e). This refers to the claimant's commitment, which is a condition of entitlement. Its omission from regulation 8 must be deliberate and leaves open the possibility that the claimant might be refused an award despite satisfying the other basic conditions, however they are defined. Making a commitment does not arise until later in the claim process. Which is an indication that the focus of regulation 8(1) is the time when the claim is made. Which is consistent with the way that transitional provisions operate: they pick circumstances that exist at a moment in time and stipulate the changes that happen thereafter.

28. The omission of any reference to the financial conditions likewise separates regulation 8(1)(b) from the ultimate outcome of the claim. The result is that regulation



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8 applies even if the claimant does not satisfy the financial condition and so does not receive an award. There can be no doubt about that, because regulation 8(2)(b) provides for the possibility that a claim is made but refused. The regulation also applies if the claimant satisfies the financial conditions and receives an award, but it does so regardless of whether the terms of the award are more favourable, less favourable or neutral from the claimant's point of view.

*Regulation 8 provides for a clean and efficient transfer from the tax credit scheme to the universal credit scheme.*

29. It is worth considering why the operation of regulation 8 does not depend on the outcome of the claim. The answer is that that is the nature of a transitional provision as put into effect by regulation 8(2). This covers two possibilities: (a) the Secretary of State makes an award and (b) the Secretary of State refuses the claim. Either way, the effect is to terminate the award of tax credit on the day before the decision on universal credit takes effect, which will usually be the date of claim. This ensures that (a) there is no overlap in entitlement to tax credit once an award of universal credit is made and (b) the tax credit will terminate even if no award of universal credit is made. Result (b) is consistent with the condition in regulation 8(1)(b), as I have already said.

30. This is why I described regulation 8 in *LH* as a sudden death provision. It may be a sudden death provision, but when the claimant makes a claim for universal credit, that means sudden death for the individual case. In theory, the cleanest way to arrange a transition would be to abolish the existing benefit on a specified date and provide for all future entitlement for all claimants to be governed by the new benefit from that date. That would require advance planning and the application of considerable administrative resources to ensure that claimants were not left in limbo until decisions were made. The transition to universal credit has not been handled like that. Tax credits were abolished on 1 February 2019 but only subject to savings provisions. This allows a staged transition that is more easily managed, and one that brings certainty for both the decision-makers and claimants.

*Regulation 8 can benefit claimants*

31. Regulation 8 may be clean and efficient. It may also seem unfair – the claimant certainly sees it that way - but it is important to remember that regulation 8 is a transitional provision. It deals with cases in which a claimant has an existing award but makes a claim for universal credit. The provisions governing entitlement to social security benefits are inevitably detailed and complicated. Allowing for revocations, the 2013 Regulations currently contain 118 regulations and 12 Schedules. That means that the outcome of a huge number of claims will be uncertain until the necessary information and evidence have been obtained and any enquiries made. Entitlement on an award usually begins on the date of claim, meaning that there will be arrears when the award is made. Given those features, it is important to prevent overlapping entitlement. This is what regulation 8(2) achieves. Transitions in social security law do not operate by allowing overlapping entitlements. There are a variety

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of techniques that can be used to give a claimant some kind of transitional protection. A transfer from disability living allowance to personal independence payment, which is taking place at the moment, protects claimants by postponing the transfer to the personal independence payment scheme until, roughly, one month after the decision is made. That is very short-term protection. Claimants received longer-term protection in 1988 by ringfencing the monetary amount of their previous supplementary benefit award in their new income support award. Techniques there may be, but allowing overlapping entitlements is not the way that transitions are handled.

32. Universal credit itself contains no protective provisions for claimants, but regulation 8 does. The claimant has emphasised that regulation 8 has operated to her disadvantage. This must be set against the way that it can operate to protect claimants. It would have been possible for a transitional provision to provide for a tax credit award to terminate immediately on the claimant making a claim for universal credit. But it does not do so. Instead it adds the requirement relating to the basic condition. The effect of doing so is to provide for claims that do not meet the most basic conditions to have no effect on the tax credit award. This protection for a class of claimant must be added to the advantages of efficiency for the administration of social security and certainty for claimants that have already been identified. There may be disadvantage to some claimants, but that is part of the price that has to be paid. As Underhill LJ said in *R (Johnson) v Secretary of State for Work and Pensions* [2020] PTSR 1872, another universal credit case but on a different issue:

113. I start by saying that I recognise, as does Rose LJ, the extraordinary complexity of designing a system such as universal credit, and that it necessarily involves a range of practical and political assessments of a kind which the Court is not equipped to judge. I also accept that in order to be workable any such system may have to incorporate bright-line rules and criteria which do not discriminate fully between the circumstances of different individuals. ...

*The exclusions from regulation 8(1)(b) are significant*

33. I have to interpret regulation 8 as a whole in its context. The meaning of a provision should be rational and coherent. That presents a difficulty if Ms Marke's interpretation is correct. If she is right, the Secretary of State has to apply all the regulations that qualify the basic conditions in section 4(1)(a) to (d) in order to be satisfied that they are met, but not the basic condition in section 4(1)(e) or either of the financial conditions. Is there anything that distinguishes what is included in regulation 8(1)(b) and what is excluded?

34. I have already explained the absence of the claimant commitment in section 4(1)(e). But what about the financial conditions? The financial conditions are all the subject of detailed provisions in the 2013 Regulations. They may require more information and evidence, and perhaps enquiries. But the same is true for the basic conditions. If Ms Marke is correct, I can see no way to explain the inclusion of the

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qualifying regulations of the basic conditions but the exclusion of the financial conditions. In other words, her analysis produces a result that is not coherent or rational. There is, though, a difference that avoids that result. The only thing that distinguishes the basic conditions and the financial conditions is the way that they are stated in the Act. The financial conditions are worded in a way that is incomprehensible without reference to the Regulations. Section 5 of the Act sets out those conditions, referring to a prescribed part and a prescribed amount of the claimant's capital, and to a prescribed minimum entitlement to universal credit based on the claimant's income. In contrast, the language in which the basic conditions in section 4(1)(a) to (d) are set out is capable of being freestanding. All they require is an answer to three questions: (a) what is your date of birth; (b) are you in Great Britain; and (c) are you receiving education? Claimants should all be able to answer those questions as I have set them out. And with the assistance of computer checks on the information provided by the claimant, the universal credit computer system should be able to identify whether those conditions are satisfied. And not only to do so, but to do so promptly and without the need for further information or evidence or enquiries.

35. What I have said so far may be correct, but it does not explain why the basic conditions are included at all, even with the limited interpretation I have suggested. The explanation is found in a point I have already made. The inclusion of the reference to the basic conditions creates a class of claimants who fail to satisfy the most fundamental elements of entitlement to universal credit. That is all that it adds to the requirement that there be a claim. The result of excluding those cases from regulation 8 is to ensure the award of tax credit continues for the time being. This may not be a perfectly calibrated filter, but that (as I have said) is the price that has to be paid for efficiency and certainty. This consideration provides a rational explanation for the relevance of regulation 8(1)(b).

*The Department's policy intention is irrelevant*

36. The Secretary of State's representative has referred to evidence in the *JL* case. The evidence was provided in a statement by a policy adviser from the Department for Work and Pensions, setting out the intention behind the transitional arrangements, which was that claimants should be transferred from their existing benefits to universal credit at the moment a claim was made. That may well explain why the Department's computer has been programmed as it is. But it does not determine the issue I have to decide. That depends on the proper interpretation of regulation 8. Legislation does not necessarily embody the policy intention behind it.

37. If authority is needed to demonstrate the danger of relying on policy intention, it is *CG/0953/1999*, a memorable case from my back catalogue. It concerned statutory maternity pay. The claim was refused and the appeal tribunal dismissed the appeal. The Secretary of State opposed the appeal to the Social Security Commissioner, setting out the law as it was applied by the Secretary of State. At the oral hearing, however, there was a different approach. As I recorded:

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11. At the hearing, Miss Main-Thompson resiled from that statement of the law. She said that the Secretary of State had consistently applied this interpretation since 1986, but now accepted, on advice from leading counsel, that this interpretation was incorrect. She could not fully explain why the Department of Social Security had taken that interpretation, but said that it appeared to relate to the policy intention of the legislation as originally drafted without the words 'but has ceased to work for him wholly or partly because of pregnancy or confinement'.

In other words, the Secretary of State had relied for 13 years on the policy intention behind an initial draft of the legislation that had not been made into law.

*The online decision-making*

38. I now come to the requirement that the Secretary of State must be satisfied that the claimant meets the basic conditions as specified. From the submission of the Secretary of State's representative, we know how the decision is made online.

39. The Secretary of State is entitled to rely on a computer programme to identify cases in which the transitional condition is satisfied. Section 2 of the Social Security Act 1998 is the authority for this:

**2 Use of computers**

(1) Any decision, determination or assessment falling to be made or certificate falling to be issued by the Secretary of State under or by virtue of a relevant enactment, or in relation to a war pension, may be made or issued not only by an officer of his acting under his authority but also—

- (a) by a computer for whose operation such an officer is responsible; and
- (b) in the case of a decision, determination or assessment that may be made or a certificate that may be issued by a person providing services to the Secretary of State, by a computer for whose operation such a person is responsible.

(2) In this section 'relevant enactment' means any enactment contained in—

...

(k) Part 1 of the Welfare Reform Act 2012; ...

Universal credit is governed by Part 1 of the Welfare Reform Act 2012 and so within section 2. What the computer produces is not a decision or an assessment, but it is a determination. The Court of Appeal explained the difference between a decision and a determination under the 1998 Act in *Carpenter v Secretary of State for Work and Pensions* (reported as *R(IB) 6/03*). Laws LJ said:

14. ... if one looks at the whole legislative scheme there is a plain distinction between a decision (that is, a decision upon the actual question whether a claimant is entitled to a particular benefit or not) and what may conveniently be called a determination (that is, a determination of any matter along the way

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leading to a decision, including a determination of a procedural issue such as an application for an adjournment). ...

The conclusion that the Secretary of State must reach under regulation 8(1)(b) is aptly captured by Laws LJ’s words as a ‘matter along the way leading to a decision’.

*Postscript*

40. I have interpreted the legislation that applies in this case. That is what I have to do. I have treated regulation 8 as providing for a class of case in which a claim for universal credit does not result in the termination of a tax credit award. If I have understood the submission from the Secretary of State’s representative correctly, this cannot happen in practice, because the computer prevents a claim being made at all. The Secretary of State’s practice must follow the proper interpretation of the legislation. I do not need to explore the Secretary of State’s practice further because in this case the claim was accepted online. There may be an issue of how a claimant can challenge a refusal to allow a claim to be made, but that is for another case.

**H. Commissioners for Her Majesty’s Revenue and Customs v AB [2021] UKUT 209 (AAC)**

41. This is a decision of Upper Tribunal Judge Mitchell. His analysis of regulation 8 differs from mine but was made on a different issue, on different arguments and, having seen the file in his case, a different explanation of how the online universal credit system works. That is why I have not followed it.

**Authorised for issue  
on 19 January 2022**

**Edward Jacobs  
Upper Tribunal Judge**