

## [2023] AACR 4

### His Majesty's Revenue and Customs v Secretary of State for Work and Pensions & SA (TC) [2022] UKUT 350 (AAC)

**Judge Wright**  
**Judge Markus KC**  
**Judge West**  
**20 December 2022**

**UA-2020-000563-TC**

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#### **Tax Credit and family credits; Tribunal Procedure and Practice; Universal Credit; Right to Reside; Entitlement**

The claimant and his wife are German nationals. They had been in receipt of tax credits since 2010 and child tax credit since 1 October 2011. On 21 June 2018 the claimant made a claim for universal credit, giving a London address.

On 25 June 2018 His Majesty's Revenue and Customs (HMRC) received a stop notice from the Department for Work and Pensions (DWP) stating that the basic conditions in section 4(1)(a) to (d) of the Welfare Reform Act 2012 ("the 2012 Act") were satisfied. It was accepted that the basic conditions of entitlement to universal credit were met on the basis of the claimant's and his wife's ages as given in their application, their presence in Great Britain as tested through the provision of their London address, and their statement that they were not receiving full-time education.

The claimant and his wife were subsequently issued with a notice under section 18 of the Tax Credits Act 2002 that they were no longer entitled to tax credits from the date of their universal credit claim.

Thereafter, the DWP made a decision on the universal credit claim, concluding that they were not entitled to universal credit as they did not have a qualifying right to reside in the United Kingdom and were therefore, by regulation 9(1) of the Universal Credit Regulations 2013, treated as not "in Great Britain", with the result that they did not meet the entitlement condition of presence in Great Britain set out in section 4(1)(c) of the 2012 Act, as read with regulation 9.

The claimant appealed to the First-tier Tribunal (F-tT) under section 38 of the 2002 Act against the decision to stop his award of tax credit. The F-tT allowed the appeal stating that as the claimant and his wife did not meet all the relevant basic conditions of entitlement to universal credit, they remained entitled to tax credits.

This appeal was brought by HMRC against the F-tT's decision. The claimant was the second respondent to the appeal and the DWP, earlier having been joined to the Upper Tribunal appeal proceedings because he is responsible for the administration of the universal credit benefits scheme and making decisions under that scheme, was the first respondent and supports the appeal.

*Held*, allowing the appeal, that:

1. regulation 8(2) of the Universal Credit (Transitional Provisions) Regulations 2014 (UC TP Regs) provided that where regulation 8 applied, the tax credit award was to cease by operation of law. Whether regulation 8 applied at the material time involved answering two questions of fact, which had to be determined on relevant evidence: (i) whether a claim for universal credit had been made; (ii) whether the Secretary of State was in fact satisfied that the claimant met the basic conditions specified in section 4(1)(a) to (d) of the Welfare Reform Act 2012. The language used in regulation 8(1) of the 2014 Regulations was not concerned with any wider issue of whether the claim had been properly made or the Secretary of State had been properly satisfied that the specified basic conditions had been met. Had that been the intention such language could have been used. Perhaps more importantly, there was no sound basis for reading in language such as "properly satisfied" by necessary implication when to do so would involve HMRC trespassing on the decision-making functions for universal credit (paragraphs 31, 32).

2. whatever the reach of regulation 8 of the 2014 Regulations, the appeal before the F-tT had been an appeal against HMRC's decision under section 18 of the 2002 Act and not an appeal against the Secretary of State's decision that the claimant was not entitled to universal credit. It followed that the F-tT had erred in law in considering that it had been required to determine, as a matter of substance, whether the Secretary of State had been properly satisfied at the time of issue of the stop notice that the claimant met the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act. The relevant issue for the F-tT had been limited to whether the Secretary of State had in fact been satisfied that the conditions specified in section 4(1)(a) to (d) of the 2012 Act were met. That factual question had been answered affirmatively by the stop notice which was received by HMRC from the Secretary of State. Once those two questions of fact had been determined, the only remaining question for the F-tT arising under regulations 8 and 12A of the 2014 Regulations had been the correct date of termination of the tax credits award under regulation 8(2) (paragraphs 28, 29, 31, 33).

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

Julia Smyth of counsel instructed by His Majesty's Revenue and Customs and the Secretary of State for Work and Pensions

Desmond Rutledge of counsel instructed by William Ford of Osbornes Law appeared for the respondent

**DECISION**

The decision of the First-tier Tribunal sitting at Fox Court dated 22 March 2019 under file reference SC242/18/11148 involves an error on a point of law. The appeal against that decision is allowed and the decision of the Tribunal is set aside.

The decision is remade. The remade decision is to dismiss the second respondent's (or appellant's (as he was before the First-tier Tribunal)) appeal from HMRC's decision of 31 July 2018.

This decision is made under section 12(1), (2)(a) and (2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

**REASONS**

**Introduction**

1. The question we have to decide on this appeal is whether the First-tier Tribunal ("F-tT") erred in law in its decision of 22 March 2019 when it allowed the claimant's appeal from the decision of a decision maker for His Majesty's Revenue and Customs ("HMRC"), dated 31 July 2018, that the claimant was not entitled to tax credits from 21 June 2018 because he had claimed universal credit.

2. The F-tT allowed the claimant's appeal, and found he remained entitled to child tax credit from 21 June 2018. The summary reasons given by the F-tT in its decision notice on the appeal on 22 March 2019 distil accurately the basis of its decision.

"The Tribunal is satisfied that the Secretary of State for Work and Pensions has determined that [the claimant] is not eligible for Universal Credit on the basis that he is

treated as not in Great Britain. The Tribunal accepts that by virtue of Regulation 9 of the Universal Credit Regulations 2013, [the claimant] does not meet the basic conditions of entitlement to Universal Credit set out in Regulation 8 of the Universal Credit (Transitional Provisions) Regulations 2014 and section 4(1)(c) of the Welfare Reform Act 2012. For these reasons, he therefore remains entitled to Child Tax Credit from 21/06/2018.”

3. In paragraph 16 of its subsequent full reasons for its decision, the F-tT said this:

“In the appeal before me, [the claimant and his wife] are not treated as habitually resident in the United Kingdom and they are consequently treated as not in Great Britain in accordance with regulation 9(1) Universal Credit Regulations 2013. Therefore, they do not meet the basic conditions for eligibility for Universal Credit in accordance with regulation 8(1)(b) of the Universal Credit (Transitional Provisions) Regulations 2014. Further, their claim for Tax Credits was terminated incorrectly and they remain entitled to Child Tax Credit from 21 June 2018.”

4. Whether the F-tT erred in law in so concluding may turn on the meaning and legal effect of certain provisions within the Universal Credit (Transitional Provisions) Regulations 2014 (“the UC TP Regs”), as they were in force at the date of HMRC’s decision on 31 July 2018. A related and logically prior question also arises, however, about the extent of an F-tT’s jurisdiction to consider issues concerning entitlement to universal credit under the UC TP Regs when considering an appeal from an HMRC decision which has brought a claimant’s entitlement to tax credits to an end when the claimant claims universal credit.

5. This appeal was initially stayed behind a block of cases which dealt with a number of issues relating to eligibility for what are termed ‘legacy benefits’ (which include tax credits ) after the making of a claim for universal credit. After those appeals had been determined, the stay was lifted on 19 January 2022. The Chamber President, Mrs Justice Farbey, on 28 June 2022 convened a three-judge panel to decide this appeal in order to give a definitive answer to the questions summarised above.

6. The appeal is brought by HMRC against the F-tT’s decision. The claimant is the second respondent to HMRC’s appeal, the Secretary of State for Work and Pensions earlier having been joined to the Upper Tribunal appeal proceedings and made the first respondent to the appeal. The Secretary of State was joined to the appeal because he is responsible for the administration of the universal credit benefits scheme and making decisions under that scheme.

7. The Secretary of State supports HMRC in arguing that the F-tT erred in law by going too far in holding that the determination of whether the claimant was eligible (i.e. entitled) to universal credit was relevant to the termination of his tax credits award under regulation 8 of the UC TP Regs. Both HMRC and the Secretary of State contend that the issue for HMRC, and on appeal the F-tT, is a narrower one under the UC TP Regs. The claimant, unsurprisingly, seeks to uphold the F-tT’s decision. He argues the UC TP Regs required the F-tT (and HMRC) to decide whether the claimant was entitled to universal credit at the time of HMRC’s decision on 31 July 2018.

### **Relevant factual background**

8. The claimant and his wife (both of whom were born in Iraq but are German nationals) had been in receipt of tax credits since 2010 and child tax credit since 1 October 2011. On 21 June 2018 the claimant made a claim for universal credit, giving his address as being in St John's Wood, London.

9. Subsequent to that universal credit claim, on 25 June 2018 HMRC received an electronic notification from the Department for Work and Pensions ("a stop notice") stating that the basic conditions in section 4(1)(a) to (d) of the Welfare Reform Act 2012 ("the 2012 Act") were satisfied.

10. Although the stop notice in the claimant's case was not before the F-tT (or us), it was not disputed that the stop notice evidenced that the Secretary of State was satisfied that the conditions in regulation 8(1)(a) and (b) of the UC TP Regs were satisfied in the claimant's case because (i) he had made a claim, and (ii) he satisfied the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act, by virtue of his age which he gave, his presence in Great Britain (tested through the provision of his above address in Great Britain) and his statement that he was not receiving full-time education. The same applied to his wife.

11. On 27 June 2018 the claimant and his wife were issued with a notice pursuant to section 17(1) of the Tax Credits Act 2002 ("TCA 2002") that they were not entitled to child tax credit from 21 June 2018. That notice also doubled up as the section 18 final decision notice. The claimant and his wife had until 23 July 2018 to notify HMRC if anything on that notice was incorrect. They did not give any such notification and the section 18 decision was taken thereafter on 31 July 2018.

12. To complete the relevant factual background, by a decision made on 6 July 2018 the Secretary of State had decided that the claimant was not entitled to universal credit because he was a jobseeker, which was an excluded right to reside for the purposes of the universal credit legislation. On 11 July 2018 the Secretary of State decided that his wife did not have the right to reside and so was not entitled to universal credit either.

13. It is worth noting at this stage that at no stage did the claimant seek to withdraw his claim for universal credit before it was decided.

### **Further submissions following the oral hearing on 12 August 2022**

14. As a result of observations made by the panel at the outset of the hearing before us on 12 August 2022, HMRC and the Secretary of State were directed to file and serve a further submission, with a submission in reply from the claimant being required three weeks thereafter. Those submissions were limited to the following three questions:

(i) the construction of regulation 8(2) of the UC TP Regs;

(ii) whether the First-tier Tribunal has jurisdiction under section 38 of the TCA 2002 to entertain an appeal against a decision to terminate an award of tax credits under regulation 8 of the UC TP Regs and, if so, on what basis; and

(iii) whether the jurisdiction of the First-tier Tribunal when dealing with an appeal against a decision by HMRC to terminate an award of tax credits encompasses the resolution of any issue relating to the satisfaction of the Secretary of State that the claimant met the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act.

## **The Legislation**

15. Section 38 of the TCA 2002 deals with appeals against tax credits decisions. It provides, so far as is relevant:

**38.**-(1) An appeal may....be brought against:

(a) a decision under section 14(1), 15(1), 16(1), 19(3), or 20(1) or(4) or regulations made under section 21,

(b) the relevant section 18 decision in relation to a person or persons and a tax credit for a tax year and any revision of that decision under that section.

16. The 2012 Act provides for entitlement to universal credit as follows:

### **3 Entitlement**

(1) A single claimant is entitled to universal credit if the claimant meets—

(a) the basic conditions, and

(b) the financial conditions for a single claimant.

(2) Joint claimants are jointly entitled to universal credit if—

(a) each of them meets the basic conditions, and

(b) they meet the financial conditions for joint claimants.

### **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.

(2) Regulations may provide for exceptions to the requirement to meet any of the basic conditions (and, for joint claimants, may provide for an exception for one or both).

(3) For the basic condition in subsection (1)(a) regulations may specify a different minimum age for prescribed cases.

- (4) For the basic condition in subsection (1)(b), the qualifying age for state pension credit is that referred to in section 1(6) of the State Pension Credit Act 2002.
- (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.
- (6) For the basic condition in subsection (1)(d) regulations may—
- (a) specify what “receiving education” means;
  - (b) specify circumstances in which a person is to be treated as receiving or not receiving education.
- (7) For the basic condition in subsection (1)(e) regulations may specify circumstances in which a person is to be treated as having accepted or not accepted a claimant commitment.

## **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.

17. The Universal Credit Regulations 2013 (“the UC Regs”) provide, so far as is relevant, as follows:

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

9 (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.

(3) For the purposes of paragraph (2), a right to reside does not include a right which exists by virtue of, or in accordance with....

(aa) regulation 14 of the EEA Regulations, but only in cases where the rights exists under that regulation because the person is:

(i) a qualified person for the purposes of regulation 6(1) of those Regulations as a jobseeker, or

(ii) a family member....of such a jobseeker.

18. It was not disputed before us, and is correct in any event, that the effect of regulation 9(3)(aa)(i) of the UC Regs when read with section 4(5)(a) of the 2012 Act is to treat certain jobseekers as not being in Great Britain and so, per section 3(1)(a) of the 2012 Act, not entitled to universal credit. That such broad deeming powers as in section 4(5)(a) of the 2012 Act can lawfully have such legal effect has been settled since the Court of Appeal's judgment in *R v Secretary of State for Social Security ex parte Sarwar and Getachew* [1996] EWCA Civ 801; 24 October 1996.

19. The UC TP Regs provide, so far as is material, as follows.

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

8 (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.

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

(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.

20. Regulation 5(3) of the Universal Credit (Transitional Provisions) Amendment Regulations 2022 removed sub-paragraph (1)(b) from regulation 8 of the UC TP Regs with effect from 25 July 2022. The Explanatory Memorandum to those 2022 Amendment Regulations contains the following information about this amendment:

“7.8 These regulations include a provision that will remove regulation 8(1)(b) of the 2014 Regulations. This provision was introduced for the very early stages of the UC rollout. It requires that the Secretary of State is satisfied that the basic conditions of eligibility for UC (excluding the condition that a claimant commitment has been agreed) have been met before awards of IS, HB or Tax Credits can be terminated when UC is claimed.

7.9 This particular amendment resolves an inconsistency in the current legislation. The provision governing the termination of income-based Jobseeker’s Allowance (JSA(IB)) and income-related Employment and Support Allowance (ESA(IR)) is contained in Commencement Orders rather than the Transitional Regulations. Here, the only requirement is that a Universal Credit (UC) claim has been made; there is no requirement for the Secretary of State to be satisfied the basic conditions have been met.

7.10 This means that under the current Regulation 8(1)(b) there could be cases where a doubt as to whether meeting the basic conditions means that a Housing Benefit (HB) and/or Tax Credits award cannot be terminated at the point of UC claim pending further investigation, but the income-based Jobseeker’s Allowance (JSA(IB)) or income-related Employment and Support Allowance (ESA(IR)) award must be terminated. Where it is



found that the claimant does not satisfy UC's basic conditions, the claimant would find themselves remaining on HB or Tax Credits (subject to continued entitlement), but unable to make a new claim for JSA(IB) or ESA(IR). Therefore, this amendment is to ensure such a situation cannot arise".

### **Discussion and conclusion**

21. We should emphasise two points at the outset of our discussion of the issues on this appeal.

22. First, no part of this appeal concerns the effect of withdrawal of a claim for universal credit on the effective operation of regulation 8 of the UC TP Regs. Accordingly, our decision does not decide whether *HMRC v AB* [2021] UKUT 209 (AAC) was correctly decided on this withdrawal point nor whether the decision in *JL v Calderdale MBC and SSWP* [2022] UKUT 9 (AAC) is correct in holding that once made a claim for universal credit cannot (effectively) be withdrawn so as to prevent regulation 8(1)(b) of the UC TP Regs from having effect. We do, however, set out below the explanation provided by the Secretary of State concerning how the system for claiming universal credit operates.

23. Second, as noted above, regulation 8 of the UC Regs has been amended since 25 July 2022 to remove sub-paragraph (1)(b) from it. Our decision on the reach of regulation 8(1)(b) of the UC TP Regs is therefore likely to be limited in its effect.

24. As initially argued before us, the central issue on the appeal appeared to be whether, for the purposes of regulation 8(1)(b) of the UC TP Regs, the Secretary of State was required to investigate and determine whether the claimant met the right to reside test before he could be satisfied that the basic condition specified in section 4(1)(c) of the 2012 Act was met.

25. It was the view of F-tT that the statutory language of "the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Welfare Reform Act 2012" in regulation 8(1)(b) of the UC TP Regs required the Secretary of State to be satisfied not only that the claimant was 'in Great Britain' (per section 4(1)(c) of the 2012 Act) but also that he met the deeming provisions (i.e. had a qualifying right to reside in Great Britain) made under section 4(5)(a) of the 2012 Act. The reasoning of the F-tT plainly proceeded on the basis that, as the Secretary of State had decided, on the claimant's (and his wife's) claim for universal credit, that he was not entitled to universal credit because he did not have a qualifying right to reside under regulation 9 of the UC Regs, this meant that regulation 8(1)(b) of the UC TP Regs was not met. This was because the Secretary of State could not be satisfied that the claimant (or his wife) met the basic condition specified in section 4(1)(c) of the 2012 Act (when read with section 4(5)(a) and regulation 9 of the UC Regs).

26. We are not concerned in this appeal with whether the claimant (or his wife) was correctly found by the Secretary of State not to be entitled to universal credit because he (or his wife) did not have a qualifying right to reside in Great Britain under regulation 9 of the UC Regs. The appeal before us is not an appeal from a decision of a First-tier Tribunal on an appeal against the decision of the Secretary of State that the claimant was not entitled to universal credit. Indeed, for the purposes of this appeal, and the appeal before the F-tT from HMRC's decision 31 July 2018 terminating the claimant's award of tax credits, the claimant seeks positively to rely on the Secretary of State's decision that he was not entitled to universal credit as showing that the Secretary of State could not properly be satisfied that he met the basic condition specified in section 4(1)(c) of the 2012 Act.

27. However, although much of the argument on this appeal has concerned the meaning, or correct scope, of the relevant language that was in regulation 8(1)(b) of the UC TP Regs, we raised during the course of argument the extent to which that could be in issue on an appeal concerning tax credits. We will address this issue first because it places in the correct context our (necessarily, as it turns out, *obiter*) views on the correct construction of regulation 8(1)(b) of the UC TP Regs.

28. In our judgment, the fundamental error of law the F-tT made was to consider on the appeal before it against HMRC's decision under section 18 of the TCA 2002 that it was for the tribunal to determine as a matter of substance whether the Secretary of State had been properly satisfied at the time of issue of the stop notice that the claimant met the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act. Whatever the reach of regulation 8 of the UC TP Regs, the F-tT did not have before it an appeal against the Secretary of State's decision that the claimant was not entitled to universal credit (on the ground that he did not have a right of residence in Great Britain that qualified for the purposes of universal credit). We add, though strictly not a matter for us on this appeal, that it is difficult to see the basis on which the Secretary of State *being satisfied* under the regulation 8(1)(b) UC TP Regs test could amount to him arriving at an appealable decision under sections 8(1) and 12(1) of the Social Security Act 1998: see further paragraphs [15] to [16] of *Carpenter v SSWP* [2003] EWCA Civ 33; *R(IB) 6/03*. By way of example, even if the Secretary of State was satisfied that the basic conditions stipulated in regulation 8(1)(b) were met, he could not by that alone have decided (per section 8(1)(a) of the Social Security Act 1998) the claim for universal credit, because satisfaction of the financial conditions in section of the 2012 Act would need to be established to decide that claim.

29. What was before the F-tT was an appeal under section 38(1)(b) of the TCA 2002 against the section 18 decision of HMRC (as modified by regulation 12A(2) and the Schedule to the UC TP Regs, the effect of which provided for "in year" finalisation of the tax credit award). Section 38(1) of the TCA 2002 provided the claimant with no right of appeal against the Secretary of State being 'satisfied' under regulation 8 of the UC TP 2014 Regulations that the condition specified in section 4(1)(c) of the 2012 Act was met. Section 18 governed the F-tT's jurisdiction: *HO v HMRC* (TC) [2018] UKUT 105 (AAC) at [73] and the F-tT stood in the shoes of the HMRC decision maker and gave the decision which that decision maker was empowered to give under section 18: *HO* at [75].

30. Once this point is reached, the critical question is what HMRC and, for our purposes, the F-tT needed to decide about regulation 8(1)(b) (and 12A(c)) of the UC TP Regs. The answer is much more limited than the F-tT considered.

31. Regulation 8(2) of the UC TP Regs provides that where regulation 8 applies, a tax credit award is "to terminate by virtue of this regulation." In other words, the tax credit award is to cease by operation of law if regulation 8 applies. Whether regulation 8 applied at the material time in our judgment involved no more than two questions of fact, which had to be determined on relevant evidence. First, whether a claim for universal credit had been made. A claim for universal credit plainly had been made in this case and the same was and is not disputed. Second, whether the Secretary of State was in fact satisfied that the claimant met the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act. That factual question in our judgment was answered affirmatively by the stop notice which was received by HMRC from the Secretary of State on HMRC on 25 June 2018. Again, even though the stop notice was not

before the F-tT or us (though we set out below the information provided to us concerning how these stop notices were generated), the claimant does not dispute that the stop notice in fact concerned him and stated that the Secretary of State was satisfied that he met the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act. Once these two questions of fact had been determined, the only remaining question for the F-tT arising under regulations 8 and 12A of the UC TP Regs was the correct date of termination of the tax credits award under regulation 8(2) of the UC TP Regs.

32. The language of regulation 8(1) of the UC TP Regs, particularly the statutory focus of it applying where a claim ‘*is*’ made and where the Secretary of State ‘*is*’ satisfied, is the language of fact. The language used is not concerned with any wider issue of whether the claim was properly made or the Secretary of State was properly satisfied that the specified basic conditions were met. Had that been the intention then such language could have been used. Perhaps more importantly, however, there is no sound basis for reading in language such as “properly satisfied” by necessary implication when to do so would involve HMRC trespassing on the decision making functions for universal credit for which it has no statutory authority otherwise conferred on it.

33. Put shortly, the relevant issue for the F-tT was limited to whether the Secretary of State *was* (ie in fact) satisfied, and not whether he *was entitled to* be satisfied, that the conditions specified in section 4(1)(a) to (d) of the 2012 Act were met, and it erred in law in going further than this.

34. Our decision in effect ends at this point. Just as it was not for the F-tT to decide whether the Secretary of State had been properly satisfied about the specified basic conditions being met, it is not strictly for us to decide what regulation 8 of the UC TP Regs requires of the Secretary of State to be ‘satisfied’. If the evidence shows that he was in fact satisfied that the claimant bringing the section 18 appeal met the specified basic conditions in section 4(1)(a) to (d) of the 2012 Act, why he was satisfied is not for the First-tier Tribunal on an appeal under section 18 of the TCA 2002. It must follow that issues about whether the Secretary of State was properly satisfied cannot arise on any further appeal to the Upper Tribunal from such a section 18 appeal. The Upper Tribunal in such a circumstance is not dealing with a judicial review of whether the Secretary of State had been properly satisfied that the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act were met, and nor are we. To that extent, we consider that Upper Tribunal case law which has sought to decide the correct meaning of regulation 8(1)(b) of the UC TP Regs in the context of appeals concerning benefits other than universal credit (for example, *SK v Revenue and Customs Commissioner and another* [2022] UKUT 10 (AAC), [2022] PTSR 818) should be treated as being *obiter* on the point.

35. However, the correct meaning of regulation 8(1)(b) was fully argued before us and we consider in these circumstances, it is appropriate, subject to what we have just said, to state our views on those arguments, albeit briefly.

36. We address first the process by which a claim for universal credit was made at the relevant time, which in this case was evidenced before us in the claimant’s universal credit application.

37. The default position was that the claim for universal credit had to be made online: see further *GDC v SSWP (UC)* [2020] UKUT 108 (AAC) at [8] to [10] and [39] to [47]. When making the claim, the claimant was asked a number of questions, including what his address

was. If an address in Great Britain was not provided, the claim could not be submitted (and no stop notice would be issued). Conversely, if an address in Great Britain was provided, the Secretary of State accepted, for the purposes of regulation 8(1)(b) of the UC TP Regs, that the claimant met the condition specified in section 4(1)(c) of the 2012 Act and the stop notice would be issued on this basis. Further questions were asked about nationality and absence from the UK. None of those answers would lead to a stop notice being generated. The answers to those questions were used later, to inform whether or not further eligibility checks needed to be conducted. The remaining conditions specified in section 4(1)(a), (b) and (d) of the 2012 Act were tested by questions relating to age and education.

38. Given the above, we have no reason to dissent from the view of Upper Tribunal Jacobs in *SK* that a stop notice was the means by which the Secretary of State communicated to HMRC: (a) that a claim for universal credit had been made for the purposes of regulation 8(1)(a) of the UC TP Regs; and (b) his satisfaction, for the purposes of regulation 8(1)(b) of the UC TP Regs, that the claimant met the basic conditions specified in section 4(1)(a) to (d) of the 2012 Act. Moreover, the Secretary of State had established a system under which he satisfied himself of the relevant matters through reliance on a computer programme, by answers given to relevant questions.

39. On the meaning of regulation 8(1)(b) of the UC TP Regs, we consider that the view of Judge Jacobs in *SK* is correct. The Secretary of State needed only to have been satisfied that the claimant was in Great Britain (which he tested by asking for an address in Great Britain) and did not need to apply the conditions set out in secondary legislation, including provisions which deemed a person to be or not to be in Great Britain. As Judge Jacobs put it in paragraph [22] of *SK*:

“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.”

40. This accords with the language specified in section 4(1)(c). It requires simply that a person be “in Great Britain”. The secondary legislation made under section 4(5) of the 2012 Act sets out the detail for when a person is *deemed*, inter alia, not to be in Great Britain, but that is separate from section 4(1)(c) and is not a basic condition which is specified by regulation 8(1)(b). The use of the word “specified” has to be given meaning. The only sensible meaning is that given in paragraph [22] of *SK*. The claimant was unable to provide us with any persuasive answer for why the word ‘specified’ was needed at all if his argument was correct. His argument really depended on ignoring or omitting the word ‘specified’, but we could identify no good legal reason for doing so.

41. The *SK* construction of regulation 8(1)(b) is also supported by the words in brackets which appeared at the end of it – “(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)” – as this shows the draughtsperson was aware of, but chose not to refer to in the opening words in regulation 8(1)(b), additional conditions imposed by secondary legislation. It is further supported by regulation 8(2)(b) of the UC TP Regs which, by contrast, use more expansive language which includes meeting the financial conditions to be entitled to universal credit. Reading regulation 8 as a whole shows, in our view, a clear and deliberate distinction between the narrow focus in

regulation 8(1)(b) on meeting the basic conditions *specified* in section 4(1)(a) to (d) of the 2012 Act and meeting those (and other) conditions of entitlement to universal credit more generally.

42. Perhaps the best point that could be made in favour of the claimant’s reading of regulation 8(1)(b) is one we raised with the parties at the outset of the hearing and on which we sought further submissions after the hearing. This concerns the use of the word “entitled” in regulation 8(2)(a) and (b) of the UC TP Regs. Regulation 8(2) deals with the date of termination of the tax credits award where regulation 8(1) applies. However, regulation 8(2)(a)’s language of the tax credits award terminating on the day before the first date on which the claimant is entitled to universal credit in connection with the claim (for universal credit) might suggest that regulation 8 was concerned with stopping the tax credits award only where (and when) it had been decided the claimant had become entitled to universal credit. The language of regulation 8(2)(b) gives rise to same issue, albeit in the context of the tax credits award ending on the day before the claimant would have been entitled to universal credit had he met all the basic and financial conditions of entitlement to universal credit, but again the focus may be said to be on waiting to terminate the tax credits award until it has been decided if a claimant is entitled (or not) to universal credit.

43. However, we do not consider this is a good argument. We accept the argument of HMRC and the Secretary of State that, properly construing the actual words used in regulation 8(2) within the context of the provision as a whole and the wider statutory context (*R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2022] 2WLR 343, at [29] and [31]), nothing in regulation 8(2) required an award of tax credits to continue until a claim for universal credit had been decided.

44. The key focus of regulation 8(2) of the UC TP Regs is on (the day before) the first date on which the claimant is entitled to universal credit (or would have been entitled if their claim had been successful). Importantly, that is not necessarily the same date as the date on which the entitlement to universal credit is *decided*, and often entitlement will arise from an earlier date. Nor does regulation 8(2) tie the termination date for the tax credits award to the date on which the claim for universal credit is decided. Entitlement to universal credit is dependent on a claim being made for it, per section 1 of the Social Security Administration Act 1992. It is also dependent on the basic and financial conditions for universal credit being satisfied. Moreover, universal credit is payable in respect of “each complete assessment period within a period of entitlement” (section 7(1) of the 2012 Act), with regulation 21 of the UC Regs providing that an assessment period is “a period of one month beginning with the first date of entitlement and each subsequent period of one month during which entitlement subsists”. Furthermore, a claim for universal credit may be “backdated” for up to one month if specified conditions are met. Such entitlement will not actually come about until a decision is made on the claim that the person is entitled. However, entitlement does not arise only from the date of the decision. In fact, in most cases where there is entitlement it is likely to arise for a period of weeks (if not months) before the date on which the decision is made.

45. The words “the first date on which the claimant is entitled” in regulation 8(2)(a) clearly mean, in our view, the date from which entitlement to universal credit arose in law in connection with the claim for that benefit and an award was thus payable. They do not mean, nor do they say, the later date on which a decision on entitlement was made. This is supported by the wording in regulation 8(2)(b), which (for the cohort of claimants not entitled to universal credit) is the “date on which he or she would have been entitled to” universal credit. That can only be

the date from which entitlement would have begun (if all the conditions of entitlement had been met), rather than any later date on which an adverse entitlement decision was made.

46. Another powerful indicator against the argument suggested in paragraph 42 above is that if regulation 8(2) were construed such that the award only terminated from the date of the decision on entitlement, the requirement for the Secretary of State to be satisfied that the specified basic requirements were met would be rendered otiose. To do so would run contrary to a generally accepted principle of statutory construction that the legislature does nothing in vain: see *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edition, 2020), section 13.6. Rejecting the argument ensures meaning is given to regulation 8(1)(a).

47. Finally, in addition to what we have said generally about previous Upper Tribunal decisions and the scope of regulation 12(1)(b) of the UC TP Regs now needing to be read as being *obiter* on that issue, we would express specific disagreement with what was said in paragraph [39] of *MR v HM Revenue and Customs* (TC) (*CTC/923/2018*).