Neutral Citation Number: [2026] UKUT 202 (AAC)
Appeal No. UA-2024-001737-ESA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Secretary of State for Work and Pensions

Appellant

- v -

Timothy Barnes-Watts

Respondent

Before: Upper Tribunal Judge Wikeley
Decided on consideration of the papers

Representation:
Appellant: Mrs A. Sterling
Respondent: Mr D. Edwards of Counsel, instructed by the Government Legal Department

On appeal from:
Tribunal: First-Tier Tribunal (Social Security and Child Support)
Judge / Panel: Tribunal Judge Connor
Tribunal Case No: SC316/23/00605
Digital Case No: 1691749469665149
Tribunal Venue: Coventry
Hearing Date: 3 April 2024

SUMMARY OF DECISION

The claimant, who was in receipt of ESA, travelled abroad for a funeral, intending to return to Great Britain within three weeks. This temporary absence would have been covered by regulation 152 of the Employment and Support Allowance (ESA)

Regulations 2008 (SI 2008/794). However, he fell ill while abroad, was quarantined and required extensive medical treatment. The claimant was unable to return to Great Britain for some months, being absent in total for 21 weeks. The Secretary of State's decision-maker decided the claimant had no entitlement to ESA whilst abroad. The First-tier Tribunal allowed the claimant's appeal. The Upper Tribunal allowed the Secretary of State's appeal, holding that the FTT had misapplied regulation 153 of the ESA Regulations 2008 on temporary absence to receive medical treatment. This provision required that the claimant had left Great Britain at the outset for the purpose of receiving medical treatment, not that they had required such treatment due to a medical emergency whilst abroad. *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23 applied and *KK v SSWP (UC)* [2025] UKUT 258 (AAC) considered.

KEYWORD NAME (Keyword Number)
29.8 Residence and presence conditions – temporary absence from GB
40.33 Employment and support allowance – other

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal by the Secretary of State.

The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(ii) and (4) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and substitute the following decision:

> *The claimant's appeal is refused.*
> *The Secretary of State's decision dated 28 March 2023 is confirmed.*
> *The claimant ceased to be entitled to ESA with effect from 7 December 2022 by reason of his temporary absence from Great Britain for more than 4 weeks.*

REASONS FOR DECISION

Introduction

1. This appeal concerns the rules governing entitlement to Employment and Support Allowance where the claimant is temporarily absent from Great Britain. In particular, it concerns the proper construction of regulation 153 of the Employment and Support Allowance Regulations 2008 (SI 2008/794).

2. Regulation 153, which is entitled "Absence to receive medical treatment", has recently been the subject of a judgment by the Court of Appeal – *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23, discussed below – a decision which is binding on both the Upper Tribunal and the First-tier Tribunal.

The Upper Tribunal's decision in summary

3. I allow the Secretary of State's appeal to the Upper Tribunal. The decision of the First-tier Tribunal (FTT), which allowed the claimant's appeal, involves a legal error. For that reason, I set aside the FTT's decision. There is no point in remitting the case to be re-decided by another FTT as the underlying facts are not in dispute. I therefore substitute my decision for the decision of the FTT. This decision is to the effect that the claimant ceased to be entitled to Employment and Support Allowance (ESA) with effect from 7 December 2022 by reason of his temporary absence from Great Britain for more than 4 weeks.

4. For the avoidance of confusion – given that the Appellant before the FTT is now the Respondent in the Upper Tribunal proceedings and *vice versa* – I refer to the parties in these proceedings as the claimant and the Secretary of State respectively.

An outline of the factual background

5. The background facts are not in dispute and can be shortly stated. In summary, the claimant, who had several pre-existing medical conditions and was in receipt of ESA, travelled to Jamaica on 9 November 2022 to attend a funeral. He planned to return to the UK within three weeks and bought a return ticket accordingly. However, on 18 November 2022, during this three-week stay, he contracted the monkeypox virus and was quarantined until 25 November 2022. Thereafter he was hospitalised in Jamaica as his existing health conditions deteriorated. On medical advice he was not able to return to the UK until April 2023, by which time he had been absent abroad for some 21 weeks.

The legislative framework

6. ESA is one of the so-called legacy benefits that is in the process of being phased out and replaced by universal credit. However, in this decision I refer to the benefit in the present tense as it continues to apply to some existing claimants and, more importantly, it applied to the claimant in the instant case at the material time.

7. A person is entitled to ESA if they satisfy the 'basic conditions' as well as either the contribution conditions or the ESA means-test (Welfare Reform Act 2007, section 1(2)). One of the basic conditions is that the claimant "is in Great Britain" (section 1(3)(d)).

8. Temporary absence from Great Britain is governed by Chapter 3 of Part 11 (Supplementary Provisions) of the Employment and Support Allowance Regulations 2008 (SI 2008/794; 'the ESA Regulations 2008'). Regulation 151(1) provides that "A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Great Britain only in accordance with this Chapter."

9. Regulation 152 then provides as follows:

> **Short absence**
>
> **152.** A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Great Britain if—
>
> (a) the period of absence is unlikely to exceed 52 weeks; and
>
> (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

10. It does not appear to be in dispute that the claimant would have remained entitled to ESA by virtue of regulation 152 if he had stayed in Jamaica for just three weeks and returned to Great Britain immediately thereafter, as originally planned.

11. Regulation 153 makes specific provision for the situation of "absence to receive medical treatment":

> **Absence to receive medical treatment**
>
> **153.**—(1) A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Great Britain if—
>
> (a) the period of absence is unlikely to exceed 52 weeks;
>
> (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
>
> (c) the claimant is absent from Great Britain solely—
>
> (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Great Britain; or
>
> (ii) because the claimant is accompanying a dependent child in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement;
>
> (d) those arrangements relate to treatment—
>
> (i) outside Great Britain;
>
> (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
>
> (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment; and
>
> (e) [*repealed*]
>
> (2) In paragraph (1)(d)(iii), "appropriately qualified" means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

12. The central issue on this appeal was whether "the claimant is absent from Great Britain solely—(i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Great Britain" within the meaning of regulation 153(1)(c).

13. I note for completeness that Chapter 3 of Part 11 of the ESA Regulations 2008 includes three further provisions, namely regulations 154 (Absence in order to receive NHS treatment), 155 (Absence of member of family of member of His Majesty's forces) and 155A (Absence where His Majesty's Government provides public information to advise British nationals to leave a country or territory or arranges the evacuation of British nationals from that country or territory), the last being a recent 2025 amendment. However, there is no suggestion that the claimant's case falls within any of these special and narrow categories.

The First-tier Tribunal's decision

14. The FTT issued a Decision Notice (which it later directed to stand as the Statement of Reasons) in the following terms:

> 1. The appeal is allowed.
>
> 2. The decision made by the Respondent on 28/03/2023 is set aside.
>
> 3. [The claimant] remains entitled to ESA IR & Cont from 17/08/2018. Whilst [the claimant] was absent from the UK for a period of 21 weeks and 3 days from the 09/11/2022 his absence was temporary and solely in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Great Britain.
>
> 4. [The claimant] attended the hearing today and gave oral evidence which was considered by the Tribunal together with the appeal bundle to page K2.
>
> 5. [The claimant] has a number of health conditions including Addison's Disease, Fibromyalgia, Rheumatoid arthritis, Osteoporosis and chronic urticaria. He travelled to Jamaica on 09/11/2022 with a friend to attend a funeral. He purchased a return ticket and intended to return within 3 weeks. On 18/11/2022 during this three week stay he was diagnosed with Monkey pox and quarantined until 25/11/2022. Thereafter [the claimant's] existing health conditions deteriorated and he required weekly hospital treatment for his Addison's Disease, eye infections, flares of his chronic urticaria and fibromyalgia. When [the claimant] went to Jamaica he only intended to be absent for three weeks. Regulation 152 of the ESA Regulations 2008 (this is an old style ESA claim) permits a four week temporary absence. The Respondent has decided that because [the claimant] was absent beyond the four weeks his ESA was closed. The Tribunal finds that whilst [the claimant] was initially absent from the UK for a funeral, he was unable to return to the UK due to his existing health conditions and the need for ongoing treatment. He was unable to take the flight home until April 2023

> due to a risk of further deterioration which was potentially life threatening. The letters at pages 30-35 confirm the ongoing treatment.
>
> Regulation 153 of the 2008 ESA Regulations provides that a claimant [continues] to be entitled to ESA during the first 26 weeks of absence if it is in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work (LCW) which commenced before leaving Great Britain. Whilst [the claimant] was not for the first three weeks absent for medical treatment, he continued to be absent solely due to the deterioration of his existing conditions and the need for medical treatment. His overall absence was for less than 26 weeks.

15. The FTT gave the Secretary of State permission to appeal, identifying (but perhaps rather inelegantly) the main issue in the appeal as being whether the claimant "needed to have had treatment the sole purpose for the absence before going abroad or whether this applies once the short absence of four weeks in Regulation 152 is exhausted".

A summary of the Secretary of State's grounds of appeal to the Upper Tribunal

16. The Secretary of State's grounds of appeal can be summarised briefly. The Secretary of State submits that the FTT erred in law in its interpretation of regulation 153 of the ESA Regulations 2008. In particular, the Secretary of State submits that the claimant's absence from Great Britain was not *solely* for the purpose of medical treatment, as required by regulation 153(1)(c). The Secretary of State's notice of appeal was filed before the Court of Appeal's judgment in *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23 became available. The notice of appeal accordingly relied upon (by analogy) the decision of the Upper Tribunal in *KK v Secretary of State for Work and Pensions (UC)* [2025] UKUT 259 (AAC), decided in relation to the universal credit scheme. In written submissions in support of the appeal, counsel for the Secretary of State put the point as follows:

> 26. … The starting point in the Respondent's case is that when [the claimant] left GB he had no purpose whatsoever in going to Jamaica associated with obtaining medical treatment there. His only reason for leaving GB was to attend a funeral. His need for medical treatment arose because of a condition he suffered while abroad, which in turn aggravated pre-existing conditions, which then led to him being absent for much longer than he originally intended.
>
> 27. The FTT failed to focus on the 'sole' reason why the Respondent left GB to go abroad in the first place. Given that his reason for leaving GB was not solely in connection with medical treatment, this is determinative of his non-entitlement to ESA after the end of the permissible 4 weeks of absence.

The claimant's submissions in outline

17. The claimant acknowledges that he travelled to Jamaica, as he puts it, "for the sole purpose of attending a funeral". However, his extended stay, which was for

a period of less than 26 weeks, was unavoidable and wholly dictated by medical necessity, as well as being fully supported by documentary evidence. He returned to Great Britain as soon as his treating medical professionals in Jamaica confirmed that it was safe for him to do so. The claimant further argued that the Secretary of State's reliance in this appeal on the decision in *KK v Secretary of State for Work and Pensions (UC)* [2025] UKUT 259 (AAC) was misplaced, as the two cases were fundamentally different medically, legally and evidentially. In addition, the claimant submitted that the FTT had correctly interpreted and applied regulation 153 of the ESA Regulations 2008. In particular, he contended, regulation 153 did not require that the claimant needed to have left Great Britain for medical treatment – rather, the requirement was that during the relevant period of absence the claimant was abroad solely because of medical treatment.

Analysis

Introduction

18. I agree with the analysis of the Secretary of State's representative. My reasons follow.

19. I start by considering the temporary absence rules under the Social Security Act 1975, before considering the position as it stands under the ESA Regulations 2008 and the Universal Credit Regulations 2013 (SI 2013/376).

The temporary absence rule under the Social Security Act 1975

20. As a benefit for those incapable of work, ESA replaced Incapacity Benefit and before that Sickness Benefit under the Social Security Act 1975. Section 82(5)(a) of the Social Security Act 1975 provided that "except where regulations otherwise provide, a person shall be disqualified for receiving any benefit ... for any period during which the person – (a) is absent from Great Britain". Regulation 2(1)(b) of the Social Security Benefit (Persons Abroad) Regulations 1975 (SI 1975/563) further provided that a person "shall not be disqualified for receiving sickness benefit … by reason of being temporarily absent from Great Britain for any day if – (b) the absence is for the specific purpose of being treated for incapacity which commenced before he left Great Britain". The proper construction of regulation 2(1)(b) was considered by a Tribunal of three Social Security Commissioners in reported decision *R(S) 2/86*.

21. In *R(S) 2/86* the majority of the Tribunal of Commissioners, having noted that previous decisions on appeal did not "materially assist", ruled as follows (at paragraph 12):

> Accordingly we have found it necessary to make our own basic appraisal as to the proper construction and thrust of regulation 2(1)(b). Clearly, as a starting point, this particular regulation was intended to afford a possible, but limited, avenue of escape for a claimant from the effect of section 82(5)(a). The real question at issue is how restricted is the escape route. In our judgment it is a necessary and basic requirement for success in invoking regulation 2(1)(b) that the claimant was immediately prior to the commencement of the relevant period of absence from Great Britain

> incapacitated for work by reason of some specific disease or bodily or mental disablement; that he went abroad for the purpose of having treatment for that condition; and that the condition giving rise to the incapacity abroad was capable of being identified with the condition giving rise to the incapacity subsisting at the date of departure abroad. In other words we adopt a strict construction of the words of the regulation.

22. The majority of the Tribunal of Commissioners in *R(S) 2/86* also sounded the following cautionary note of warning (at paragraph 13):

> Although the temptation to stretch the relevant wording further in "hard cases" is no doubt strong and understandable, it must, in our judgment, be resisted if the accepted principle of statutory construction are not to be breached. We suspect that in some of the earlier decisions the Commissioner may have departed from this principle.

23. The issue of the proper interpretation of regulation 2(1)(b) was revisited by another Tribunal of three Social Security Commissioners shortly afterwards in reported decision *R(S) 1/90*. Their unanimous view was set out as follows:

> 28. … The basic structure of the Act and of the Regulation is that a claimant will be disqualified for receiving any benefit, including sickness benefit, for any period during which he is absent from Great Britain (section 82(5)(a) of the Act of 1975) unless: -
>
> (i) the Secretary of State has given a certificate under regulation 2(1)(a) and
>
> (ii) paragraph (b) or (bb) or (c) applies.
>
> 29. If we were required to approach the problem afresh, we would without hesitation take the view that for paragraph (b) to apply the purpose or intention to be treated (or to receive treatment under paragraph (bb)) must have been formed before the claimant's departure from Great Britain. There is great force in the observations of the Tribunal of Commissioners in *R(S) 2/86* at paragraph 12 … and we agree with them that "it is a necessary and basic requirement for success in invoking regulation 2(1)(b)" that the claimant, in addition to the other requirements, "went abroad for the purpose of having treatment."
>
> 30. In our view, the decisions which favour the claimant in the present case – namely, that a claimant will avoid disqualification if, while abroad, he obtains or receives treatment although he had no such purpose or intention at the time of departure – are an over-liberal and erroneous interpretation of paragraph (b). The decisions to which we have referred span a period of 40 years. Overseas travelling facilities have in that period of time been radically changed and a re-appraisal of those earlier decisions is overdue. It falls to this tribunal to make that re-appraisal. We accept the strict construction adopted by the Tribunal of Commissioners in *R(S) 2/86* at paragraph 12, and have reached the decision set out in paragraph 29 above.

The temporary absence rule under the ESA Regulations 2008

24. Regulation 153 of the ESA Regulations 2008 has now been the subject of detailed analysis by the Court of Appeal in *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23. NJ, an ESA claimant, suffered from OCD. Her husband was a retired cancer surgeon but was no longer licensed to practice. The couple owned a second home in Spain, where they noticed NJ's symptoms improved due to the higher levels of sunlight. The DWP sought recovery of payments of ESA in respect of the claimant's extended periods of absence in Spain. The FTT allowed NJ's appeal, finding that the claimant's exposure to sunlight constituted "treatment" and that her husband was "appropriately qualified" to supervise it. The Upper Tribunal upheld that decision on appeal ([2024] UKUT 194 (AAC)). However, the Secretary of State appealed successfully to the Court of Appeal.

25. According to Cobb LJ, the purpose of regulation 153 "is to facilitate unbroken entitlement to ESA for a time-limited period (i.e., of up to 26 weeks) while the claimant is abroad provided that the claimant is abroad specifically in order for them to receive 'treatment' directly related to the claimant's limited capability for work, by or under the supervision of someone who is appropriately qualified to carry it out" (at [56]). In terms of the statutory requirement that the absence be "solely … in connection with arrangements made for the treatment of the claimant", the Court of Appeal ruled as follows:

> *"Solely… in connection with arrangements…"*
> 58. The FTT was correct when it determined that: "medical treatment must be the sole reason for the absence" (see §24 above). Of course, a claimant is likely to engage in incidental activities while they are abroad receiving treatment (eating, sleeping, taking exercise, sight-seeing, for example), but Mr Jackson is right when he argues that in this context 'solely' means 'solely'. Judge Stout correctly observed that the use of 'solely' in the 2008 Regulations was a "tightening up" of the wording of the predecessor legislation (Social Security (Persons Abroad) Regulations 1975), and imposed a "stricter" test than 'absence for a specific purpose'.
>
> 59. However, there are three identifiable errors in the UT's approach to the interpretation of this part of the regulation.
>
> 60. First, it seems clear to me, as Ms Smyth has argued, that regulation 152 and regulation 153 operate independently of each other. Counsel before the UT were therefore wrong, in my view, to agree between themselves that regulation 153 only becomes relevant "after the regulation 152 exception has been exhausted" (see §43 above). Judge Stout understandably accepted that agreement, but was regrettably wrong to do so.
>
> 61. Under regulation 152, the claimant is not required to provide any reason for their absence from Great Britain for up to four weeks, and in that period they will continue to be entitled to the ESA. The regulation 152 absence abroad could therefore legitimately be for a holiday. By contrast, regulation 153 expressly stipulates that the claimant has a "sole" reason for a lengthier absence (up to 26 weeks) abroad, and that reason must be for "treatment"

> of a disease or bodily or mental disablement directly related to the claimant's limited capability for work. The wording of regulation 153 is clear: it specifically relates to the "the first 26 weeks of a temporary absence" (emphasis added). The FTT and the UT were both in error in blending the provisions of regulation 152 and regulation 153, and applying the "solely" requirement in regulation 153 only to the period which "extended" beyond the first four weeks of the (otherwise unspecified) absence from Great Britain (see §24 and §29 above). The word "extended" is not to be found in the regulation either expressly or by implication.
>
> 62. Secondly, the FTT and the UT fell into error in interpreting the phrase "arrangements made for the treatment" (regulation 153(1)(c)(i)), as including arrangements to *travel* to Almeria, and arrangements to *live* in the couple's Spanish home (see §34 above). In my judgment, the regulation is clear that the "arrangements" must relate to the *treatment* of the claimant and not to these other or ancillary purposes. This is, it seems to me, put beyond question by regulation 153(d)(iii) which is specific that the "arrangements" contemplated by the regulation "relate to treatment" which is to be carried out "by, or under the supervision of, a person appropriately qualified to carry out that treatment". That is to say that the 'arrangements' have to be the kind of arrangements which a *medical* professional might make, not a travel agent.
>
> 63. Thirdly, the error in approach of both the FTT and the UT is further illustrated by the finding of the FTT (not corrected by the UT) that this was "not a case of a couple simply spending holiday time holidaying in their second home" (Ground 2). The phraseology of the FTT in this regard suggests that it had assessed, on the evidence, that 'holidaying' was at least one reason for the couple spending time in Almeria during the periods under review. This may have related, impermissibly as I have found in §60 above, to the FTT's assessment of how NJ and DJ spent at least their first four weeks in Almeria.
>
> 64. For all of the three reasons set out above, I am satisfied that the FTT and UT were in error in their construction of this part of regulation 153.

26. The Court of Appeal's judgment (and in particular paragraph 61) is on any reading fatal to the claimant's case in the present appeal.

The temporary absence rule under the Universal Credit Regulations 2013

27. It is also relevant to consider the decision of Upper Tribunal Judge West in *KK v Secretary of State for Work and Pensions (UC)* [2025] UKUT 258 (AAC) ('*KK v SSWP (UC)*'). The issue in *KK v SSWP (UC)* was whether a period of temporary absence abroad could be split into multiple phases, such that a universal credit claimant who suffered a medical emergency after departure from Great Britain could have his continued absence from Great Britain disregarded under the medical treatment provisions in regulation 11 of the Universal Credit Regulations 2013 (SI 2013/376). At the relevant time the material paragraphs of regulation 11 provided as follows:

> *Temporary absence from Great Britain*
>
> **11.**—(1) A person's temporary absence from Great Britain is disregarded in determining whether they meet the basic condition to be in Great Britain if—
>
> (a) the person is entitled to universal credit immediately before the beginning of the period of temporary absence; and
>
> (b) either—
>
> (i) the absence is not expected to exceed, and does not exceed, one month, or
>
> (ii) paragraph (3) or (4) applies.
>
> …
>
> (3) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and is solely in connection with—
>
> (a) the person undergoing—
>
> (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner, or
>
> (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or impairment before leaving Great Britain; or
>
> (b) the person accompanying their partner or a child or qualifying young person for whom they are responsible for treatment or convalescence or care as mentioned in sub-paragraph (a).

28. In summary, counsel for the Secretary of State in that appeal made the following submission (as recorded at paragraph 91(2)):

> The natural and proper meaning of regulation 11(3)(a)(i) is that, as at the date of the relevant decision, the entire period of absence abroad, from leaving Great Britain to return, must be solely in connection with qualifying treatment to be disregarded. It does not operate as an extension to the usual one month period for persons who are absent abroad for some other reason and then find that their return is delayed by unplanned medical treatment. In such cases, the usual one month disregard period alone applies.

29. Judge West agreed with that submission for the following reasons:

> 129. I accept the arguments of the Secretary of State. The problem with the Appellant's submissions is that they all ultimately founder on the preamble to regulation 11(3) which states that the paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and is solely in connection with treatment or convalescence or care. The Appellant's arguments are all an attempt to get round that express wording.

In this case it is common ground that the Appellant went abroad for a holiday and it was only whilst he was on holiday that he became ill and required medical treatment. The exception in regulation 11(3) cannot therefore have applied to him.

130. The Appellant's submissions on the construction of regulation 11(3)(a) run contrary to the express wording of regulation 11(3), the structure of regulation 11 as a whole and its purpose.

131. In the first place they do not give full force and effect to the requirement that the absence must be "solely in connection with" the medical treatment or the convalescence. "Solely" in this context, on its natural meaning, must refer to singularity of purpose. In other words, absence which is for the mixed purpose of holiday and medical treatment, or absence which commences for the purpose of holiday, but then becomes absence for the purpose of medical treatment, will not be "solely in connection with" medical treatment.

132. As a matter of the construction of the regulation, regulation 11(1) provides that the exceptions in regulations 11(1)(b)(i) and 11(3) or (4) are in the alternative ("either … or"). Regulation 11(b)(i) can be extended by up to a further month if the bereavement provision in regulation 11(2) applies, but the one month period in regulation (b)(i) is an alternative to, and is not to be construed cumulatively with, regulation 11(3) or (4)

133. I agree with Ms Ivimy KC that, if it had been intended that a period of absence for medical reasons could extend the standard one month disregard by up to a further six months, the draftsman could and should have included an extension provision similar to regulation 11(2).

134. By contrast, the wording of regulation 11(3) is noticeably different: it does not extend the one month period (as does regulation 11(2)), but provides for an entirely separate six month period of disregard, provided that it is "solely in connection with" qualifying treatment. It is not open to a claimant to mix and match regulations 11(b)(i) and 11(b)(ii), or to indulge in "phasing" of them, as the Appellant seeks to do. It is therefore incorrect to assert that, at a time when his absence fell squarely within the one month rule, his absence ceased to be for any other reason than medical treatment and that that allowed his continued absence to be disregarded.

135. Regulation 11(3) is not intended to extend the period for which UC is available to persons temporarily absent from Great Britain if they experience medical emergencies within one month of travelling abroad. Rather, the mischief at which regulation 11(3) is aimed is ensuring that people who need to leave Great Britain to obtain treatment or for convalescence are not penalised by having their benefit withdrawn.

136. There is considerable force in Ms Ivimy KC's submission that the position of someone who leaves Great Britain for the purpose of qualifying treatment is to be contrasted with that of a person who unexpectedly experiences a medical emergency whilst abroad. Anyone who chooses to

> travel abroad can be expected to assume that risk and, in principle, to insure against it. That underlying purpose is reflected in the fact that regulation 11(3)(a)(i) is drafted by reference to treatment by a qualified practitioner. If it were intended to extend time for persons who experience a medical emergency abroad, one would expect it to be drafted by reference to whether a medical condition (and not specific treatment for a medical condition) prevents a claimant from returning to Great Britain.

30. In short, *KK v SSWP (UC)* was decided before (but in the event entirely consistently with) the judgment of the Court of Appeal in *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23.

The temporary absence rule for the purpose of medical treatment summed up

31. Regulation 153 requires that the claimant must have left Great Britain for the purpose of medical treatment. It follows that I reject the claimant's submission that it is sufficient that his continued absence beyond the initial three weeks was exclusively due to the need to have medical treatment. I reach that conclusion for the following three reasons.

32. First and foremost, the requirement that at the outset the claimant must have left Great Britain for the purpose of medical treatment is the clear effect of the Court of Appeal's decision in *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23 at [61], a judgment which is binding upon me. The claimant points to a series of factual differences between the circumstances in the Court of Appeal's case and the circumstances of his own case. However, none of those factual differences are relevant to the principle laid down in the Court of Appeal's judgment (at [61]), namely that under regulation 153 the absence from Great Britain must have been "solely in connection with arrangements" for medical treatment from the outset of the absence.

33. Secondly, and in any event, the Secretary of State's construction is consistent with the structure of the legislation. This relates both to the inter-relationship between regulations 152 and 153 and the internal structure of regulation 153 itself.

34. As to the former, regulation 152 provides that a claimant continues to be entitled to ESA "during the first 4 weeks of a temporary absence from Great Britain" if the criteria in paragraphs (a) and (b) are both satisfied. Regulation 153 in turn provides that a claimant continues to be entitled to ESA "during the first 26 weeks of a temporary absence from Great Britain" if the criteria in paragraphs (1)(a) to (d) are all met. If follows that the respective maximum periods of temporary absence must each commence from the date of departure from Great Britain – as both refer to the first 4 or 26 weeks as appropriate. If the intention was that a regulation 153 permissible temporary absence of up to 26 weeks for medical treatment could be tacked on the end of a regulation 152 temporary absence of up to 4 weeks for any reason then the drafting would not refer in both cases to the *first* period of temporary absence. It follows, as the Court of Appeal held in *Secretary of State for Work and Pensions v NJ* [2026] EWCA Civ 23, that regulations 152 and 153 are mutually exclusive alternatives, and not cumulative.

35. As to the latter, the internal structure of regulation 153 itself is telling. As noted above, the maximum permissible temporary absence relates to "the *first* 26 weeks", which must mean counting those weeks as from the date of departure from Great Britain. Then the claimant's continued entitlement to ESA is made subject to four qualifying conditions, the second of which is that "the claimant is absent from Great Britain *solely* – (a) in connection with arrangements made for the treatment [etc.]". Thus, the sole or exclusive reason for the temporary absence (adjudged as at the date of departure) must be the arrangements for medical treatment. Travel abroad for some other reason for a period which is then extended due to some medical emergency does not fall within the plain terms of regulation 153. This construction is reinforced by the heading to regulation 153. This asserts the purposive nature of the absence – notably the statutory provision governs 'Absence *to receive* medical treatment' (emphasis added) and not 'Absence during which medical treatment is received'.

36. The third reason is that the Secretary of State's interpretation is consistent with the well-established construction afforded to equivalent provisions under earlier benefit schemes. Notably, two Tribunals of Social Security Commissioners affirmed that for the purpose of sickness benefit (a precursor to ESA) "it is a necessary and basic requirement for success in invoking regulation 2(1)(b) that the claimant was immediately prior to the commencement of the relevant period of absence from Great Britain incapacitated for work by reason of some specific disease or bodily or mental disablement; [and] *that he went abroad for the purpose of having treatment for that condition*" (emphasis added, see *R(S) 2/86* at paragraph 12 and *R(S) 1/90* at paragraph 29).

37. It follows that the FTT erred in law in its construction of regulation 153.

Conclusion

38. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I re-make the decision of the First-tier Tribunal under section 12(2)(b)(ii) in the following terms:

> *The claimant's appeal is refused.*
>
> *The Secretary of State's decision dated 28 March 2023 is confirmed.*
>
> *The claimant ceased to be entitled to ESA with effect from 7 December 2022 by reason of his temporary absence from Great Britain for more than 4 weeks.*

My decision is also as set out above.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 22 May 2026