STATUTORY INSTRUMENTS

1980 No. 1111

EDUCATION, ENGLAND AND WALES

The Education (Students' Dependants Allowances) Regulations 1980

Made - - -	*28th July* 1980
Laid before Parliament	*6th August* 1980
Coming into Operation	*1st September* 1980

The Secretary of State for Education and Science, in exercise of the powers conferred by section 3 of the Education Act 1973(**a**), hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Education (Students' Dependants Allowances) Regulations 1980 and shall come into operation on 1st September 1980.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

"award" means an award bestowed under the principal Regulations or previous Awards Regulations;

"child", in relation to a student, includes a person adopted in pursuance of adoption proceedings, a step-child and an illegitimate child of whom the student is the mother or in whose case he has admitted paternity or been adjudged the putative father;

"eligible dependant" has the meaning assigned thereto by Regulation 4;

"the principal Regulations" means the Education (Mandatory Awards) Regulations 1980(**b**);

"spouse" includes a woman who cohabits with a man as his wife and a man who cohabits with a woman as her husband but nothing in this definition shall affect the meaning of "wife" or "husband";

"student" means a person who holds an award;

and other expressions have the same meanings as in the principal Regulations.

(2) In these Regulations, except where the context otherwise requires, a reference to a Regulation is a reference to a Regulation of these Regulations and a reference in a Regulation to a paragraph is a reference to a paragraph of that Regulation.

Revocations and transitional provisions

3.—(1) Subject to paragraph (2), the Students' Dependants Allowances Regulations 1979(**c**) are hereby revoked.

(**a**) 1973 c. 16. (**b**) S.I. 1980/974. (**c**) S.I. 1979/900.

(2) The Regulations revoked by paragraph (1) shall continue to have effect in relation to an allowance payable thereunder in respect of a period falling before the coming into operation of these Regulations but Regulation 8(2) of these Regulations shall apply for the purpose of correcting any overpayment or underpayment of such an allowance as it applies in the case of an allowance under these Regulations.

Power to pay allowances

4.—(1) Subject to Regulation 5, the Secretary of State may pay an allowance to a student in respect of any eligible dependant within the meaning of paragraph (2) where his requirements in respect of that dependant are not taken into account for the purposes of his award in pursuance of Part 3 of Schedule 2 to the principal Regulations.

(2) The eligible dependants of a student shall be—

(*a*) the student's wife or husband, where they ordinarily live together, if—

(i) the wife or husband does not hold a statutory award and they have a dependent child, or

(ii) it is for the time being certified by a registered medical practitioner that the wife or husband is incapable of being gainfully employed for a period of at least eight weeks;

(*b*) a child dependent on the student unless—

(i) the parents do not ordinarily live together and the child resides with the other parent, or

(ii) the student's spouse holds a statutory award in the calculation of which account is taken of the child.

Exceptions

5. No allowance shall be payable to a student if—

(*a*) no payment in respect of maintenance falls to be made to him under Regulation 17(*b*) of the principal Regulations (whether by reason of Regulation 20 or 23 thereof (sandwich courses; assisted students) or otherwise) and no such payment is made to him under Regulation 26 (discretionary payments), or

(*b*) in pursuance of Regulation 16 or 27 of the principal Regulations (withholding of payments), payments in respect of maintenance falling to be made to him under the said Regulation 17(*b*) are—

(i) wholly withheld, or

(ii) except where the payments fall to be determined in accordance with Regulation 24 of the principal Regulations (students provided with free board and lodging), withheld in such part that the partial payment does not exceed the minimum maintenance payment.

Amount of allowance

6.—(1) Subject to paragraphs (4) and (5), an allowance shall be payable to a student with an eligible dependant in any week in a year at the weekly rate determined in accordance with paragraphs (2) and (3)—

(*a*) where he ordinarily lives with his spouse, for any week or part of a week for which—

(i) the student attends his course at the establishment, or

(ii) he is pursuing a period of vacation study undertaken as mentioned in paragraph 8(1) of Part 2 of Schedule 2 to the principal Regulations or a period of term-time residential study such as is mentioned in paragraph 9(1) of the said Part 2 (whether or not the establishment is such as is mentioned in the said paragraphs);

(*b*) where he does not so live, irrespective of whether he is attending his course, or pursuing a period of study, as aforesaid.

(2) The weekly amount of the allowance shall, subject to paragraphs (3) and (5), be the amount by which the aggregate of—

(*a*) one fifty-second of the relevant sums mentioned in paragraph 18(4) of Part 3 of Schedule 2 to the principal Regulations so, however, that for the purposes hereof no account shall be taken of a dependent child who is not an eligible dependant, and

(*b*) where the student maintains a home for himself and an eligible dependant at a place within the United Kingdom, other than that at which he resides while attending the course, the sum specified in paragraph 20 of the said Part 3 divided by the number of weeks in the year for which he attends his course,

exceeds one fifty-second of the annual income of the student's family (within the meaning of Regulation 7) for the year in question.

(3) If an allowance is payable by virtue of these Regulations to both the student and the student's spouse the weekly amount shall be half the amount ascertained in accordance with paragraph (2).

(4) No allowance shall be paid for any week in which the capital resources of the student's household exceed £2,000; and, for the purposes hereof, those resources shall be taken to be the capital resources of the student aggregated with those of any person whose resources would fall to be aggregated with his for the purposes of the Supplementary Benefits Act 1976(**a**), in each case as for the time being calculated for those purposes.

(5) Where the student in any week has an eligible dependant whom he maintains outside the United Kingdom then, as the Secretary of State considers reasonable in all the circumstances, either no allowance shall be paid for that week or the amount thereof shall be such as he so considers reasonable not exceeding the amount ascertained in accordance with paragraphs (2) and (3).

(6) For the purposes of this Regulation a student shall be treated as having attended at an establishment, or as having pursued a period of study, for a part of a week if and only if he attends at an establishment, or pursues a period of study, on four consecutive days; and, in determining whether he has attended the establishment or pursued a period of study, any period during which he is absent on account of illness shall be ignored.

Income of student's family

7.—(1) For the purposes of these Regulations the income of the student's family in any year shall be taken to be the aggregate of—

(*a*) any sums disregarded under Part 1 of Schedule 3 to the principal Regulations in calculating a student's income for the purposes there mentioned except—

(i) the first £810 of any such income as is mentioned in paragraph 1(1)(*b*) thereof (awards and payments by employer) so, however, that in

(**a**) 1976 c. 71; prospectively amended by section 6 of the Social Security Act 1980 (c. 30).

relation to a student who holds a National Engineering Scholarship awarded by the Action Committee for Industrial Scholarships this sub-paragraph shall have effect as if for the sum "£810" there were substituted the sum "£1,045";

(ii) such income as is mentioned in paragraph 1(1)(*f*), (*i*), (*j*), (*k*) or (*l*) thereof (vacation earnings, child benefit, supplementary benefit, attendance or mobility allowance and rent allowance);

(iii) where the student's course is a sandwich course, such income as is mentioned in paragraph 4(*b*) of Schedule 6 to the principal Regulations (payments in respect of periods of experience);

(*b*) the income, disregarding such income as is mentioned in paragraph (2), of a member of the student's household being his spouse or child, less income tax thereon and any social security contributions paid by the recipient thereof; and

(*c*) in the case of a student to whom the minimum maintenance payment is paid under the principal Regulations, the amount (if any) by which his resources exceed his requirements (ascertained as provided in Regulation 18 of those Regulations).

(2) The income to be disregarded under paragraph (1)(*b*) is—

(*a*) except where the student's spouse attends such a course as is mentioned in sub-paragraph (*c*) below and the provisions thereof apply, a half of any earned income she may have or £310 thereof, whichever is the less;

(*b*) any payment under a statutory award;

(*c*) all income of a person who attends—

(i) a designated course not being a part-time course, or the part-time part of a course which is partly full-time and partly part-time, prescribed (in either case) under sub-paragraph (*d*)(iii) of Regulation 10(1) of the principal Regulations (certain courses of teacher training), or

(ii) a full-time course of further education which is not prescribed by or under the said Regulation 10(1) as a designated course; and

(*d*) any income by way of child benefit.

Supplementary

8.—(1) An allowance may be paid in instalments.

(2) An allowance, and an instalment of an allowance, may be paid before the end of the year by reference to which, in accordance with Regulation 6, it falls to be assessed; and any overpayment in any year may, and any underpayment in a year shall, be corrected by way of deduction from or addition to any allowance payable in the next following year or, if no such allowance is payable, by repayment to or payment by the Secretary of State.

Mark Carlisle,
Secretary of State for Education and Science.

28th July 1980.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate the Students' Dependants Allowances Regulations 1979 with amendments. The principal changes are described below.

The present Regulations are drafted by reference to the Education (Mandatory Awards) Regulations 1980 ("the principal Regulations"), which supersede the Local Education Authority Awards Regulations 1979 (S.I. 1979/889) and, *inter alia*, increase the amount prescribed as a student's requirements. An allowance under the present Regulations is payable at a rate determined in part by reference to the principal Regulations (*Regulation* 6(2)(*a*)) and, accordingly, is payable at an increased rate.

Payment of an allowance is not excluded where no payment in respect of maintenance falls to be made under Regulation 17(*b*) of the principal Regulations if a discretionary payment is made under Regulation 26 of those Regulations (*Regulation* 5(*a*)).

The means test for an allowance is relaxed so far as concerns the student's scholarship and similar income and the earned income of his spouse or a person living with him as his spouse (*Regulations* 7(1)(*a*)(*i*) and (2)(*a*)).