STATUTORY INSTRUMENTS

1982 No. 1041

EDUCATION, ENGLAND AND WALES

The Education (Students' Dependants Allowances) Regulations 1982

Made - - - -	*26th July* 1982
Laid before Parliament	*5th August* 1982
Coming into Operation	*1st September* 1982

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 1982 and shall come into operation on 1st September 1982.

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 1982(**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.

(**a**) 1973 c. 16. (**b**) S.I. 1982/954.

(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 Education (Students' Dependants Allowances) Regulations 1981(**a**) are hereby revoked.

(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, or

(iii) the wife or husband is for the time being registered for employment with the Manpower Services Commission or a local education authority and is available for employment within the meaning of section 17(1)(*a*)(i) of the Social Security Act 1975(**b**) or of regulations made for the purposes thereof (availability for employment for the purposes of unemployment benefit) and is neither entitled to supplementary benefit under the Supplementary Benefits Act 1976(**c**) nor receiving unemployment benefit under the Social Security Act 1975;

(*b*) a child wholly or mainly financially 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.

(a) S.I. 1981/981.
(b) 1975 c. 14, amended by section 22 of the Social Security Pensions Act 1975 (c. 60).
(c) 1976 c. 71, amended by section 6 of the Social Security Act 1980 (c. 30).

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 (5) and (6), 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), (3) and (4)—

(*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), (4) and (6), 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 any reference in the said paragraph to the student's spouse or child shall be construed as a reference to an eligible dependant who is his spouse or, as the case may be, child for the purposes of these Regulations and the reference therein to an adult dependant shall be disregarded, 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 19 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 the weekly amount of the allowance ascertained in accordance with paragraph (2) would exceed one fifty-second of the amount by which the student's award would be increased if his eligible dependants were all dependants for the purposes of Part 3 of Schedule 2 to the principal Regulations, then the weekly amount of the allowance shall instead equal one fifty-second of the amount of that increase.

(4) If an allowance is payable by virtue of these Regulations to both the student and the student's spouse the weekly amount shall, in both cases, be—

(*a*) unless sub-paragraph (*b*) below applies, a half of the amount ascertained in accordance with paragraphs (2) and (3);

(*b*) if the amounts so ascertained in both cases are not the same, a half of whichever is the higher of those amounts.

(5) No allowance shall be paid for any week in which the capital resources of the student's household exceed £2,500; 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, in each case as for the time being calculated for those purposes.

(6) 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), (3) and (4).

(7) 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 £845 of any such income as is mentioned in paragraph 1(1)(*b*) thereof (awards and payments by employer) so, however, that in relation to a student who holds an Industrial Scholarship this sub-paragraph shall have effect as if for the sum "£845" there were substituted the sum "£1,080";

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

(iii) where the student's course is a sandwich course, such income as is mentioned in paragraph 4(*b*) of Schedule 5 to the principal Regulations (payments in respect of periods of experience);

(*b*) the income, disregarding such income as is mentioned in paragraph (3), 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) For the purposes of paragraph (1)(*a*)(i), the reference therein to an Industrial Scholarship is a reference to a scholarship awarded by the Industrial Scholarships Trust.

(3) 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 £345 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;

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

(*e*) any income by way of attendance or mobility allowance under section 35 or 37A of the Social Security Act 1975;

(*f*) any income by way of an allowance payable by an adoption agency in pursuance of a scheme approved by the Secretary of State under section 50 of the Adoption Act 1958(**a**), and

(*g*) where a child in the care of a local authority is boarded out with the person, any payment made to that person in pursuance of section 21(1) of the Child Care Act 1980(**b**).

(**a**) 1958 c. 5, amended by section 32 of the Children Act 1975 (c. 72).
(**b**) 1980 c. 5.

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—

(*a*) any underpayment, or

(*b*) if the Secretary of State so determines, any overpayment,

in any year shall be corrected by way of an addition to, or deduction from, any allowance payable in the next following year or, if no such allowance is payable, by payment to or repayment by the Secretary of State.

26th July 1982.

Keith Joseph,
Secretary of State for Education and Science.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations consolidate the Education (Students' Dependants Allowances) Regulations 1981 with amendments. The principal changes are described below.

The present Regulations are drafted by reference to the Education (Mandatory Awards) Regulations 1982 ("the principal Regulations"), which supersede the Education (Mandatory Awards) Regulations 1981 (S.I. 1981/943) and, *inter alia*, increase the amount prescribed as a student's requirements. An allowance payable under the present Regulations is payable at a rate determined by reference to the principal Regulations (*Regulation 6(2)(a)*) and, accordingly, is payable at an increased rate in the generality of cases.

The rate of an allowance under the present Regulations is, however, restricted in a case in which, taking into account both the allowance and the award under the principal Regulations, the student would be better off than if his "eligible dependants" for the purposes of the present Regulations had been "dependants" for the purposes of the relevant provisions of the principal Regulations (*Regulation 6(3)*).

The level at which capital resources of a student preclude the payment of an allowance is raised from £2,000 to £2,500.

The means test for an allowance is relaxed where the student or a member of his family is in receipt of certain adoption or boarding-out allowances (*Regulation 7(1)(a)(ii) and (3)(f) and (g)*).

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