STATUTORY INSTRUMENTS

1978 No. 1098

EDUCATION, ENGLAND AND WALES

The Students' Dependants Allowances Regulations 1978

Made - - - -	*26th July* 1978
Laid before Parliament	*7th August* 1978
Coming into Operation	*1st September* 1978

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

Citation and commencement

1. These Regulations may be cited as the Students' Dependants Allowances Regulations 1978 and shall come into operation on 1st September 1978.

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;

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

"the principal Regulations" means the Local Education Authority Awards Regulations 1978**(c)**;

"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.

(3) The Interpretation Act 1889**(d)** shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

Revocations and transitional provisions

3.—(1) Subject to paragraph (2), the Students' Dependants' Allowances Regulation 1977**(e)** are hereby revoked.

(a) 1973 c. 16.
(b) S.I. 1964/490.
(c) S.I. 1978/1097.
(d) 1889 c. 63.
(e) S.I. 1977/1308.

(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 23 thereof (assisted students) or otherwise), 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 paragraph (4), 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 paragraph (3), 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 (assessed in accordance with Part III of Schedule 1 to the Supplementary Benefits Act 1976**(a)**) amount to £1,200 or more.

(5) 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 I of Schedule 3 to the principal Regulations in calculating a student's income for the purposes there mentioned except—

(i) the first £735 of any such income as is mentioned in paragraph 1(*b*) thereof (awards and payments by employer);

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

(iii) where the student's course is a sandwich course, such income as is mentioned in paragraph 3(*b*) of Schedule 6 to the principal Regulations (payments in respect of periods of experience);

(a) 1976 c. 71.

(*b*) income (reduced by income tax, child benefit and social security contributions and disregarding the income specified in paragraph (2)) of a spouse or child who is a member of the same household; 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 in a case falling within sub-paragraph (*c*) below, in respect of the earned income of the spouse whichever is the less of £235 and half that income;

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

(*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.

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.

Given under the Official Seal of the Secretary of State for Education and Science on 26th July 1978.

(L.S.)

Shirley Williams,
Secretary of State for Education
and Science.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate the Students' Dependants' Allowances Regulations 1977, with amendments. The principal changes are described below.

The present Regulations are drafted by reference to the Local Education Authority Awards Regulations 1978 ("the principal Regulations"), which supersede the Local Education Authority Awards Regulations 1977 (S.I. 1977/1307) 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.

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*)).

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