

## SCHEDULE 5

Regulation 53

### FINANCIAL ASSESSMENT

#### Definitions

1.—(1) In this Schedule—

- (a) “existing student” (“*myfyriwr presennol*”) means an eligible student who is not a new eligible student;
- (b) “financial year” (“*blwyddyn ariannol*”) means the period of twelve months in respect of which the income of a person whose residual income is calculated under the provisions of this Schedule is computed for the purposes of the income tax legislation which applies to it;
- (c) “household income” (“*incwm yr aelwyd*”) has the meaning given in paragraph 3;
- (d) “independent eligible student” (“*myfyriwr cymwys annibynnol*”) has the meaning given in paragraph 2;
- (e) “Member State” (“*Aelod-wladwriaeth*”) means a Member State of the European Union;
- (f) “new eligible student” (“*myfyriwr cymwys newydd*”) means an eligible student who begins a designated course on or after 1 September 2004;
- (g) “parent” (“*rhiant*”) means a natural or adoptive parent and “child” (“*plentyn*”) is construed accordingly;
- (h) “parent student” (“*myfyriwr sy'n rhiant*”) means an eligible student who is the parent of an eligible student;
- (i) “partner” (“*partner*”) in relation to an eligible student means any of the following —
  - (i) the spouse of an eligible student;
  - (ii) the civil partner of an eligible student;
  - (iii) a person ordinarily living with an eligible student as if he or she were his or her spouse where an eligible student falls within paragraph 2(1)(a) and he or she begins the designated course on or after 1 September 2000;
  - (iv) a person ordinarily living with an eligible student as if he or she were his or her civil partner where an eligible student falls within paragraph 2(1)(a) and he or she begins the designated course on or after 1 September 2005;
- (j) “partner” (“*partner*”) in relation to the parent of an eligible student means any of the following other than another parent of the eligible student—
  - (i) the spouse of an eligible student’s parent;
  - (ii) the civil partner of an eligible student’s parent;
  - (iii) a person ordinarily living with the parent of an eligible student as if he or she were the parent’s spouse;
  - (iv) a person ordinarily living with the parent of an eligible student as if he or she were the parent’s civil partner;
- (k) “preceding financial year” (“*blwyddyn ariannol flaenorol*”) means the financial year immediately preceding the relevant year;
- (l) “prior financial year” (“*blwyddyn ariannol gynharach*”) means the financial year immediately preceding the preceding financial year;
- (m) “relevant year” (“*blwyddyn berthnasol*”) means the academic year in respect of which the household income falls to be assessed;

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- (n) “residual income” (“*incwm gweddillio!*”) means taxable income after the application of paragraph 4 (in the case of an eligible student), paragraph 5 (in the case of an eligible student’s parent), paragraph 6 (in the case of an eligible student’s partner) or paragraph 7 (in the case of the partner of a new eligible student’s parent) and income referred to in sub-paragraph (2) received net of income tax; and
- (o) “taxable income” (“*incwm trethadwy!*”) means, in relation to paragraph 4, in respect of the academic year for which an application has been made under regulation 9 and, in relation to paragraph 5, in respect (subject to sub-paragraphs (3), (4) and (5) of paragraph 5) of the prior financial year, a person’s taxable income from all sources computed as for the purposes of—
- (i) the Income Tax Acts;
  - (ii) the income tax legislation of another Member State which applies to the person’s income; or
  - (iii) where the legislation of more than one Member State applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 5),
- except that no account is taken of income referred to in sub-paragraph (2) paid to another party.

(2) The income referred in this sub-paragraph is any benefits under a pension arrangement pursuant to an order made under section 23 of the Matrimonial Causes Act 1973(1) which includes provision made by virtue of sections 25B(4) and 25E(3) of that Act or pension benefits under Part 1 of Schedule 5 to the Civil Partnership Act 2004(2) which includes provision made by virtue of Parts 6 and 7 of that Schedule.

### Independent eligible student

- 2.—(1) An eligible student is an independent eligible student in every case where—
- (a) he or she is aged 25 or over on the first day of the relevant year;
  - (b) he or she is married or is in a civil partnership before the beginning of the relevant year, whether or not the marriage or civil partnership is still subsisting;
  - (c) he or she has no parent living;
  - (d) the Welsh Ministers are satisfied that neither of his or her parents can be found or that it is not reasonably practicable to get in touch with either of them;
  - (e) he or she has communicated with neither of his or her parents for the period of one year before the beginning of the relevant year or, in the opinion of the Welsh Ministers, he or she can demonstrate on other grounds that he or she is irreconcilably estranged from his or her parents;
  - (f) he or she was looked after by a local authority within the meaning of section 22 of the Children Act 1989(3) throughout any three-month period ending on or after the date on which he or she attained the age of 16 and before the first day of the first academic year of the course (“the relevant period”) provided that he or she has not in fact at any time during the relevant period been under the charge or control of his or her parents;

(1) 1973 c. 18; section 23 was amended by the Administration of Justice Act 1982 (c. 53), section 18. Section 25B was inserted by the Pensions Act 1995 (c. 26), section 116(1) and was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 4. Section 25E was inserted by the Pensions Act 2004 (c. 35), section 319(1), Schedule 12, paragraph 3.

(2) 2004 c. 33, paragraph 25 of Schedule 5 was modified by S.I.2006/1934.

(3) 1989 c. 41. Section 22 has been amended by the Children (Leaving Care) Act 2000 (c. 35), section 2, Local Government Act 2000 (c. 41), Schedule 5, paragraph 19, the Adoption and Children Act 2002 (c. 38), section 116(2) and the Children Act 2004 (c. 31), section 52.

- (g) his or her parents are residing outside the European Community and the Welsh Ministers are satisfied that either—
    - (i) the assessment of the household income by reference to their residual income would place those parents in jeopardy; or
    - (ii) it would not be reasonably practicable for those parents as a result of the calculation of any contribution under paragraph 8 or 9 to send any relevant funds to the United Kingdom;
  - (h) paragraph 5(9) applies and the parent whom the Welsh Ministers considered the more appropriate for the purposes of that paragraph has died (irrespective of whether the parent in question had a partner);
  - (i) he or she began the current course before 1 September 2009 and is a member of a religious order who resides in a house of that order;
  - (j) he or she has the care of a person under the age of 18 as at the first day of the relevant year; or
  - (k) he or she has supported himself or herself out of his or her earnings for any period or periods ending before the first academic year of the course which periods together aggregate not less than three years, and for the purposes of this sub-paragraph he or she is to be treated as supporting himself or herself out of his or her earnings during any period in which—
    - (i) he or she was participating in arrangements for training for the unemployed under any scheme operated by, sponsored or funded by any state authority or agency, whether national, regional or local (“a relevant authority”);
    - (ii) he or she was in receipt of benefit payable by any relevant authority in respect of a person who is available for employment but who is unemployed;
    - (iii) he or she was available for employment and had complied with any requirement of registration imposed by a relevant authority as a condition of entitlement for participation in arrangements for training or receipt of benefit;
    - (iv) he or she held a state studentship<sup>(4)</sup> or comparable award; or
    - (v) he or she received any pension, allowance or other benefit paid by any person by reason of a disability to which he or she is subject, or by reason of confinement, injury or sickness.
- (2) An eligible student who qualifies as an independent eligible student under paragraph 2(1) (j) in respect of an academic year of a designated course retains that status for the duration of the period of eligibility.

### **Household income**

- 3.—(1) The amount of an eligible student’s contribution depends on the household income.
- (2) The household income is—
- (a) in the case of an eligible student who is not an independent eligible student, the residual income of the eligible student aggregated with the residual income of the eligible student’s parents (subject to paragraph 5(9)) and —
    - (i) in the case of a new eligible student who began his or her specified designated course before 1 September 2005, the residual income of the partner (other than a partner within the meaning of paragraph 1(j)(iv)) of the student’s parent (provided that the Welsh Ministers have selected that parent under paragraph 5(9)); or

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(4) Funding provided by the Research Councils in respect of full time post graduate study.

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- (ii) in the case of a new eligible student who began his or her course on or after 1 September 2005, the residual income of the partner of the student's parent (provided that the Welsh Ministers have selected that parent under paragraph 5(9));
  - (b) in the case of an independent eligible student who has a partner, the residual income of the eligible student aggregated with the residual income of the eligible student's partner (subject to sub-paragraph (4)); or
  - (c) in the case of an independent eligible student who does not have a partner, the residual income of the eligible student.
- (3) In determining the household income under sub-paragraph (2), the sum of £1,130 is deducted—
- (a) for each child wholly or mainly financially dependent on the eligible student or the eligible student's partner; or
  - (b) for each child other than the eligible student wholly or mainly financially dependent on the eligible student's parent or the eligible student's parent's partner whose residual income is being taken into account.
- (4) For the purpose of calculating the contribution payable in respect of a parent student, the residual income of the parent student's partner must not be aggregated under paragraph (b) of sub-paragraph (2) in the case of a parent student whose child or whose partner's child holds an award in respect of which the household income is calculated with reference to the residual income of the parent student or of the parent student's partner or of both.

#### **Calculation of eligible student's residual income**

4.—(1) For the purpose of determining the residual income of an eligible student, there is deducted from his or her taxable income (unless already deducted in determining taxable income) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) any remuneration for work done during any academic year of the eligible student's course, provided that such remuneration does not include any sums paid in respect of any period for which he or she has leave of absence or is relieved of his or her normal duties for the purpose of attending that course;
  - (b) the gross amount of any premium or other sum paid by the eligible student in relation to a pension (not being a pension payable under a policy of life insurance) in respect of which relief is given under section 273 of the Income and Corporation Taxes Act 1988<sup>(5)</sup> or under section 188 of the Finance Act 2004<sup>(6)</sup>, or where the eligible student's income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium or sum in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts.
- (2) Where the only paragraph in Part 2 of Schedule 1 into which an eligible student falls is paragraph 9 and his or her income arises from sources or under legislation different from sources or legislation normally relevant to a person referred to in paragraph 9 of Part 2 of Schedule 1, his or her income is not disregarded in accordance with sub-paragraph (1) but is instead disregarded to the extent necessary to ensure that he or she is treated no less favourably than a person who is referred to in any paragraph of Part 2 of Schedule 1 would be treated if in similar circumstances and in receipt of similar income.

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(5) 1988 c. 1; section 273 was amended by the Finance Act 1988 (c. 39), Schedule 3, paragraph 10 and the Income Tax (Trading and other Income) Act 2005 (c. 5), Schedule 1, the Finance Act 2004 (c. 12), section 281 and Schedule 35 and the Income Tax Act 2007, Schedule 1.

(6) 2004 c. 12; section 188 was amended by the Finance Act 2007, sections 68,69 and 114 and Schedules 18,19 and 27.

(3) Where the eligible student receives income in a currency other than sterling, the value of that income for the purpose of this paragraph is—

- (a) if the student purchases sterling with the income, the amount of sterling the student so receives;
- (b) otherwise, the value of the sterling which the income would purchase using the rate for the month in which it is received published by the Office for National Statistics<sup>(7)</sup>.

### **Calculation of parent's residual income**

5.—(1) For the purposes of determining the taxable income of an eligible student's parent, any deductions which fall to be made or exemptions which are permitted—

- (a) by way of personal reliefs provided for in Chapter 1 of Part VII of the Income and Corporation Taxes Act 1988 or, where the income is computed for the purposes of the income tax legislation of another Member State, any comparable personal reliefs;
- (b) pursuant to any enactment or rule of law under which payments which would otherwise under United Kingdom law form part of a person's income are not treated as such; or
- (c) under sub-paragraph (2)

must not be made or permitted.

(2) For the purposes of determining the residual income of an eligible student's parent, there is deducted from the taxable income determined under sub-paragraph (1) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) the gross amount of any premium or sum relating to a pension (not being a premium payable under a policy of life assurance) in respect of which relief is given under section 273 of the Income and Corporation Taxes Act 1988, or under section 188 of the Finance Act 2004, or where the income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts;
- (b) in any case where income is computed for the purposes of the Income Tax Acts by virtue of sub-paragraph (6) any sums equivalent to the deduction mentioned in sub-paragraph (a) of this sub-paragraph, provided that any sums so deducted do not exceed the deductions which would be made if the whole of the eligible student's parent's income were in fact income for the purposes of the Income Tax Acts;
- (c) in the case of a parent student or an eligible student's parent who holds a statutory award, £1,130.

(3) Where the Welsh Ministers are satisfied that the residual income of the parent in the financial year beginning immediately before the relevant year ("the current financial year") is likely to be not more than 85 per cent. of the sterling value of his or her residual income in the prior financial year they may, for the purpose of enabling the eligible student to attend the course without hardship, ascertain the parent's residual income for the current financial year.

(4) In an academic year immediately following one in which the Welsh Ministers have ascertained the residual income of the parent for the current financial year under sub-paragraph (3), the Welsh Ministers must ascertain the parent's residual income in the preceding financial year.

(5) Where the eligible student's parent satisfies the Welsh Ministers that his or her income is wholly or mainly derived from the profits of a business or profession carried on by him or her, then any reference in this Schedule to a prior financial year means the earliest period of twelve months

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which ends after the start of the prior financial year and in respect of which accounts are kept relating to that business or profession.

(6) Where an eligible student's parent is in receipt of any income which does not form part of his or her income for the purposes of the Income Tax Acts or the income tax legislation of another Member State by reason only that—

- (a) he or she is not resident, ordinarily resident or domiciled in the United Kingdom, or where his or her income is computed as for the purposes of the income tax legislation of another Member State, not so resident, ordinarily resident or domiciled in that Member State;
- (b) the income does not arise in the United Kingdom, or where the parent's income is computed as for the purposes of the income tax legislation of another Member State, does not arise in that Member State; or
- (c) the income arises from an office, service or employment, income from which is exempt from tax in pursuance of any legislation,

his or her taxable income for the purposes of this Schedule is computed as though the income under this sub-paragraph were part of his or her income for the purposes of the Income Tax Acts or the income tax legislation of another Member State, as the case may be.

(7) Where the income of the eligible student's parent is computed as for the purposes of the income tax legislation of another Member State, it is computed under the provisions of this Schedule in the currency of that Member State and the income of the eligible student's parent for the purposes of this Schedule is the sterling value of that income determined in accordance with the rate for the month in which the last day of the financial year in question falls, as published by the Office for National Statistics.

(8) Where one of the eligible student's parents dies either before or during the relevant year and that parent's income has been or would be taken into account for the purpose of determining the household income, the household income is—

- (a) where the parent dies before the relevant year, determined by reference to the income of the surviving parent; or
- (b) where the parent dies during the relevant year, the aggregate of—
  - (i) the appropriate proportion of the household income determined by reference to the income of both parents, being the proportion in respect of that part of the relevant year during which both parents were alive; and
  - (ii) the appropriate proportion of the household income determined by reference to the income of the surviving parent, being the proportion in respect of that part of the relevant year remaining after the death of the other parent.

(9) Where the Welsh Ministers determine that the parents are separated for the duration of the relevant year, the household income is determined by reference to the income of whichever parent the Welsh Ministers consider the more appropriate under the circumstances.

(10) Where the Welsh Ministers determine that the parents have separated in the course of the relevant year, the household income is determined by reference to the aggregate of—

- (a) the appropriate proportion of the household income determined in accordance with sub-paragraph (9), being the proportion in respect of that part of the relevant year during which the parents are separated; and
- (b) the appropriate proportion of the household income determined otherwise in respect of the remainder of the relevant year.

### **Calculation of eligible student's partner's residual income**

6.—(1) Subject to sub-paragraphs (2), (3) and (4) of this paragraph, an eligible student's partner's income is determined in accordance with paragraph 5 (other than sub-paragraphs (8), (9) and (10) of paragraph 5), references to the parent being construed as references to the eligible student's partner.

(2) Where the Welsh Ministers determine that the eligible student and his or her partner are separated for the duration of the relevant year, the partner's income is not taken into account in determining the household income.

(3) Where the Welsh Ministers determine that the eligible student and his or her partner have separated in the course of the relevant year, the partner's income is determined by reference to his or her income under sub-paragraph (1) divided by fifty-two and multiplied by the number of complete weeks in the relevant year for which the Welsh Ministers determine that the eligible student and his or her partner are not separated.

(4) Where an eligible student has more than one partner in any one academic year, the provisions of this paragraph apply in relation to each.

### **Calculation of parent's partner's residual income**

7. The income of a new eligible student's parent's partner whose income is part of the household income by virtue of paragraph 3(2)(a) is determined in accordance with paragraph 6, references to the eligible student's partner being construed as references to the new eligible student's parent's partner, and references to the eligible student being construed as references to the new eligible student's parent.

### **Calculation of contribution — old system eligible students**

8.—(1) The contribution payable in relation to an old system eligible student who is not an independent eligible student or is an independent eligible student with a partner is—

- (a) in any case where the household income is £23,680 or more, £45 with the addition of £1 for every complete £9.27 by which the household income exceeds £23,680; and
- (b) in any case where the household income is less than £23,680, nil.

(2) The contribution payable in relation to an old system eligible student who is an independent eligible student without a partner is—

- (a) in any case where the household income is £11,025 or more, £45 with the addition of £1 for every complete £9.27 by which the household income exceeds £11,025; and
- (b) in any case where the household income is less than £11,025, nil.

(3) The amount of the contribution payable under sub-paragraph (1) or (2) must in no case exceed £7,992.

(4) The contribution may be adjusted in accordance with paragraph 10.

(5) Where sub-paragraph (6) applies, the aggregate contributions must not exceed £7,992.

(6) This sub-paragraph applies where—

- (a) a contribution is payable in relation to two or more eligible students (other than new system eligible students) in respect of the same income under paragraph 5 or, where the relevant parent's partner's residual income is taken into account, under paragraphs 5 and 7; or
- (b) the household income consists of the residual income of an independent eligible student and his or her partner where both hold a statutory award.

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### **Calculation of contribution — new system eligible students**

**9.**—(1) In relation to an eligible student who is a new system eligible student, the contribution payable is—

- (a) in any case where the household income exceeds £39,793, £1 for every complete £9.27 by which the household income exceeds £39,793; and
  - (b) in any case where the household income is £39,793 or less, nil.
- (2) The contribution must not in any case exceed £6,208.
- (3) The contribution may be adjusted in accordance with paragraph 10.
- (4) Where sub-paragraph (5) applies, the aggregate contributions must not exceed £6,208.
- (5) This sub-paragraph applies where—
- (a) a contribution is payable in relation to two or more eligible students (other than old system eligible students) in respect of the same income under paragraph 5 or, where the relevant parent's partner's residual income is taken into account, under paragraphs 5 and 7; or
  - (b) the household income consists of the residual income of an independent eligible student and his or her partner where both hold a statutory award.

### **Split contributions**

**10.** Where the same household income is used to assess the amount of a statutory award for which two or more persons qualify, the contribution payable in respect of the eligible student is divided by the number of such persons.