

# SCHEDULES

## SCHEDULE 3

Regulation 28

### Calculation of income

#### PART 1

##### Introduction

##### **Overview of Schedule**

1.—(1) This Schedule is arranged as follows.

(2) Part 2 makes provision about the calculation of an eligible student's household income for the purposes of determining the amount of contribution to costs grant payable to the student.

(3) Part 3 sets out the meaning of "taxable income", which is required in order to calculate a person's residual income.

(4) Part 4 makes provision about the calculation of residual income where—

(a) Chapter 1 sets out how to calculate the residual income of an eligible student for the purposes of calculating the student's household income, and

(b) Chapter 2 sets out how to calculate the residual income of an eligible student's parent, eligible student's partner or eligible student's parent's partner for the purposes of calculating the student's household income.

(5) Part 5 defines certain terms used in this Schedule.

#### PART 2

##### Household income

##### **Household income of an eligible student**

2. This Part makes provision about the calculation of an eligible student's household income.

##### **Calculation of household income**

3.—(1) An eligible student's household income is calculated by applying the following steps—

##### *Step 1*

If the student is not an independent eligible student (see paragraph 4), aggregate the total residual income of the persons listed in List A.

If the student is an independent eligible student, aggregate the total income of the persons listed in List B.

##### **List A**

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The persons are—

- (a) the eligible student, plus
- (b) either—
  - (i) each of the eligible student’s parents (subject to paragraph 5), or
  - (ii) where the student’s parents have separated, the parent selected under paragraph 6(3) and that parent’s partner (if that parent has one), (subject to paragraph 7).

**List B**

The persons are—

- (a) the independent eligible student, plus
- (b) the student’s partner (if the student has one), (subject to paragraphs 7 and 8).

*Step 2*

Calculate the applicable amount of dependent child deduction (see sub-paragraphs (2) to (4)) and deduct that from the aggregated total calculated under Step 1.

The result is the eligible student’s household income.

(2) A dependent child deduction is a deduction made in respect of each child wholly or mainly financially dependent on—

- (a) the eligible student,
- (b) the eligible student’s partner,
- (c) the eligible student’s parent, or
- (d) the partner of the eligible student’s parent,

where the income of that person is taken into account for the purpose of calculating household income.

(3) But no deduction is to be made in respect of a child of—

- (a) the eligible student’s parent, or
- (b) the partner of the eligible student’s parent,

if the child is the eligible student.

(4) In Table 2, Column 2 sets out the amount of dependent child deduction in respect of the academic year set out in the corresponding entry in Column 1.

**Table 2**

<i>Column 1</i>	<i>Column 2</i>
<i>Academic year</i>	<i>Amount of dependent child deduction</i>
Beginning on or after 1 September 2019	£1,130

**Independent eligible students**

4.—(1) An eligible student is an independent eligible student if one of the following cases applies—

*Case 1*

The student is aged 25 or over on the first day of the current academic year.

*Case 2*

The student is married or is in a civil partnership before the beginning of the first day of the current academic year, whether or not the marriage or civil partnership continues to subsist after that date.

*Case 3*

The student has no parent living.

*Case 4*

The Welsh Ministers are satisfied that—

- (a) (a) neither of the student's parents can be found, or
- (b) (b) it is not reasonably practicable to get in touch with either of the student's parents.

*Case 5*

Either—

- (a) (a) the student has not communicated with either of the student's parents for a period of one year or more ending on the day before the first day of the current academic year, or
- (b) (b) in the opinion of the Welsh Ministers, the student is irreconcilably estranged from the student's parents on other grounds.

*Case 6*

The student's parents reside outside the European Union and the Welsh Ministers are satisfied that—

- (a) (a) the assessment of the household income by reference to the parents' income would place those parents in jeopardy, or
- (b) (b) it would not be reasonably practicable for the parents to send funds to the United Kingdom for the purposes of supporting the student.

*Case 7*

Where paragraph 6 (separation of parents) applies, the parent selected by the Welsh Ministers under sub-paragraph (3) of that paragraph has died, irrespective of whether that parent had a partner.

*Case 8*

On the first day of the current academic year, the student has the care of a person under the age of 18.

*Case 9*

The student has been supported by the student's earnings for any period of three years (or periods which together aggregate at least three years) ending before the first day of the first academic year of the designated course.

*Case 10*

The student is a care leaver within the meaning given by regulation 29.

(2) For the purposes of Case 9, an eligible student is treated as being supported by the student's earnings if during the period or periods referred to in Case 9 one of the following grounds applies—

*Ground 1*

The eligible student was participating in arrangements for training unemployed persons under a scheme operated, sponsored or funded by a public body.

*Ground 2*

The eligible student received a benefit payable by a public body in respect of a person who is available for employment but is unemployed.

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*Ground 3*

(3) The eligible student was available for employment and had complied with any registration requirement of a public body as a condition of entitlement for participation in arrangements for training or the receipt of benefits.

*Ground 4*

The eligible student held a state studentship or comparable award.

*Ground 5*

The eligible student received a pension, allowance, or other benefit paid by reason of the student's disability, injury or sickness or for a reason associated with childbirth.

**Eligible student's parent dies leaving a surviving parent**

5.—(1) Where—

- (a) the parent of an eligible student dies before the current academic year, and
- (b) the parent's income has been or would have been taken into account for the purposes of determining household income,

only the residual income of the surviving parent is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the parent dies during the current academic year, the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by  $X/52$ , and
- (b) the residual income of the surviving parent for the applicable financial year multiplied by  $Y/52$ ,

where—

X is the number of weeks in the current academic year during which both parents were alive, and

Y is the remaining number of weeks in the current academic year.

**Separation of eligible student's parents**

6.—(1) Where the eligible student's parents are separated for the duration of the current academic year, only the residual income of the parent selected under sub-paragraph (3) is aggregated for the purposes of Step 1 in paragraph 3(1).

(2) Where the student's parents have separated during the current academic year the residual income of the eligible student's parents, for the purposes of Step 1 in paragraph 3(1), is the aggregate of—

- (a) the residual income of both parents for the applicable financial year multiplied by  $X/52$ , and
- (b) the residual income of the parent selected under sub-paragraph (3) for the applicable financial year multiplied by  $Y/52$ ,

where—

X is the number of weeks in the current academic year during which the parents were not separated, and

Y is the number of weeks in the current academic year during which the parents were separated.

(3) Where sub-paragraph (1) or (2) applies, the Welsh Ministers must select the parent whose residual income it is the most appropriate to take into account in the circumstances.

### **Separation of eligible student's parent or independent eligible student from partner**

7.—(1) Where—

- (a) the parent of an eligible student, or
- (b) an independent eligible student,

is separated from his or her partner for the duration of the current academic year, the income of the partner is not aggregated under Step 1 in paragraph 3(1).

(2) Where—

- (a) the parent of the eligible student, or
- (b) an independent eligible student,

has separated from his or her partner during the current academic year, the amount of the partner's residual income to be aggregated under Step 1 is calculated by applying the formula in sub-paragraph (3).

(3) The formula to be applied is—

$$X \times \left( \frac{C}{52} \right)$$

Where—

**X** is the residual income of—

- (a) the eligible student's parent's partner, where List A of Step 1 applies, or
  - (b) the independent eligible student's partner where List B of Step 1 applies,
- for the applicable financial year;

**C** is the number of complete weeks of the current academic year during which—

- (a) the eligible student's parent and his or her partner, or
  - (b) the independent eligible student and the student's partner,
- were not separated.

were not separated.

(4) Where an eligible student has more than one partner in any one academic year, this paragraph and Step 1 of paragraph 3(1) apply in relation to each partner.

### **Independent eligible student or partner is a parent of an eligible student**

8. Where—

- (a) an independent eligible student ("I") or the partner of the independent eligible student ("PI") is a parent of an eligible student ("S"), and
- (b) a statutory award payable to S is calculated by reference to the residual income of I or PI, or both,

the residual income of PI is not aggregated under List B of Step 1 in paragraph 3(1) for the purposes of calculating the household income of I.

## PART 3

### Taxable income

#### **Taxable income**

- 9.—(1) In this Schedule, a person’s taxable income means—
- (a) the aggregate of—
    - (i) the total income on which the person is charged to income tax under Step 1 of section 23 of the Income Tax Act 2007(1), and
    - (ii) if not already a component of total income under sub-paragraph (i), payments and other benefits specified in section 401(1) of the Income Tax (Earnings and Pensions) Act 2003(2) received by the person or treated as received by the person (but disregard section 401(2) of that Act for the purposes of this sub-paragraph), or
  - (b) where the income tax legislation of another member State applies to the person’s income, the person’s total income from all sources as determined for the purposes of the income tax legislation of that member State.
- (2) For the purposes of sub-paragraph (1)(b), where the income tax legislation of more than one member State applies to the person in respect of the year under consideration, the person’s total income from all sources is the amount derived from the determination resulting in the greatest amount of total income, including any income which is required to be taken into account under paragraph 18.
- (3) But a person’s taxable income does not include income paid to another person under a pension arrangements order.

## PART 4

### Residual income

#### CHAPTER 1

#### Residual income of an eligible student

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

10. For the purposes of calculating an eligible student’s household income under Part 2, the student’s residual income is calculated as follows—

The eligible student’s taxable income in respect of the current academic year.

*Plus*

Income payable to the eligible student under a pension arrangements order during the current academic year, net of income tax.

*Minus*

The aggregate of the deductions set out in paragraph 11 (unless already deducted for the purposes of determining the student’s taxable income).

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(1) 2007 c. 3; section 23 was amended by the Finance Act 2009 (c. 10), Schedule 1, paragraph 6(o)(i), the Finance Act 2013 (c. 29), Schedule 3, paragraph 2(2) and the Finance Act 2014 (c. 26), Schedule 17, paragraph 19.

(2) 2003 c. 1; section 401 was amended by S.I. 2005/3229, S.I. 2011/1037 and S.I. 2014/211.

## **Deductions for the purpose of calculating residual income of an eligible student**

**11.** For the purposes of calculating an eligible student's residual income, the deductions are—

### *Deduction A*

Remuneration paid to the eligible student in the current academic year for work done during any academic year of the course, but not remuneration in respect of any—

- (a) period of leave taken by the student, or
- (b) other period during which the student is relieved of a duty to attend work,

so that the student may undertake the course.

### *Deduction B*

The gross amount of any premium or sum paid by the eligible student during the current academic year in relation to a pension in respect of which—

- (a) relief is given under section 188 of the Finance Act 2004<sup>(3)</sup>, or
- (b) where the student's income is computed for the purposes of the income tax legislation of another member State, relief would be given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

## **Income of eligible student received in currency other than sterling**

**12.—**(1) Where the eligible student receives income in a currency other than sterling, the value of the income is—

- (a) the amount of sterling the eligible student receives for the income, or
- (b) where the student does not convert the income into sterling, the value of the sterling which the income would purchase using the HMRC exchange rate.

(2) The HMRC exchange rate<sup>(4)</sup> is the rate published by Her Majesty's Revenue and Customs for the month corresponding to the month in which the income is received.

## CHAPTER 2

### Residual income of persons other than an eligible student

#### **Persons to whom this chapter applies**

**13.** This Chapter makes provision for the calculation of a person's ("P's") residual income where P means the following—

- (a) the parent of the eligible student,
  - (b) the eligible student's partner, or
  - (c) the eligible student's parent's partner,
- as the case may be, and where P's income is aggregated under Step 1 in paragraph 3(1) for the purpose of calculating an eligible student's household income.

#### **Calculation of residual income of persons other than eligible student**

**14.** P's residual income is calculated as follows—

(3) 2004 c. 12; section 188 was amended by the Finance Act 2007 (c. 11), sections 68 and 114 and Schedules 18, 19 and 27, the Finance Act 2013 (c. 29), section 52 and the Finance Act 2014 (c. 26), Schedule 7.

(4) See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>.

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P's taxable income for the applicable financial year.

*Plus*

Income payable to P under a pension arrangements order during the applicable financial year, net of income tax.

*Minus*

The aggregate of the deductions set out in paragraph 15 (unless already deducted for the purposes of determining P's taxable income).

### **Deductions for the purpose of calculating residual income of persons other than eligible student**

**15.**—(1) For the purpose of calculating P's residual income, the deductions are—

#### *Deduction A*

The gross amount of any premium or sum paid by P in respect of a pension during the applicable financial year, in relation to which—

- (a) relief is given under section 188 of the Finance Act 2004, or
- (b) where P's income is computed for the purpose of the income tax legislation of another member State, relief would have been given if that legislation made provision equivalent to the Income Tax Acts,

but not including any sum paid as a premium under a policy of life assurance.

#### *Deduction B*

Where paragraph 18 applies, a sum equivalent to Deduction A provided that this sum does not exceed the deductions which would be made if the whole of P's income were in fact income for the purposes of the Income Tax Acts.

#### *Deduction C*

£1,130, where P—

- (a) is an eligible student in respect of the current academic year but is also the parent of an eligible student, or
- (b) holds a statutory award in respect of the same period.

### **Applicable financial years: calculating residual income of persons other than eligible student**

**16.**—(1) This paragraph specifies the applicable financial year for the purposes of calculating P's residual income.

(2) Unless sub-paragraph (3) applies, the applicable financial year is PY-1.

(3) Where the Welsh Ministers are satisfied that P's residual income for CY is likely to be at least 15% lower than P's residual income for PY-1, the applicable financial year is CY.

### **Income from business or profession**

**17.**—(1) Sub-paragraph (2) applies where—

- (a) the applicable financial year for the purposes of calculating P's residual income is PY-1, and
- (b) the Welsh Ministers are satisfied that P's income is wholly or mainly derived from the profits of a business or profession carried on by P.



(2) Where this paragraph applies, P's residual income is P's income for the earliest period of twelve months ending in PY-1 in respect of which accounts are kept relating to P's business or profession.

#### **Treatment of income not treated as income for income tax purposes**

**18.**—(1) Sub-paragraph (3) applies where P is in receipt of any income which, for any of the reasons set out in sub-paragraph (2), does not form part of P's income for the purpose of the Income Tax Acts or the income tax legislation of another member State.

(2) The reasons are—

##### *Reason 1*

- (a) P is not resident or domiciled in the United Kingdom, or
- (b) P's income is computed for the purposes of the income tax legislation of another member State and P is not resident or domiciled in that member State.

##### *Reason 2*

- (a) P's income does not arise in the United Kingdom, or
- (b) P's income does not arise in the member State in which P's income is computed for the purposes of that State's income tax legislation.

##### *Reason 3*

The income arises from an office, service or employment, income from which is exempt from tax.

(3) P's taxable income is to be taken to include the income described in sub-paragraph (1) as if it were part of P's income for the purposes of the Income Tax Acts or the income tax legislation of another member State, as the case may be.

#### **P's income in currency other than sterling**

**19.**—(1) Where P's income is computed for the purposes of the income tax legislation of another member State, P's residual income is to be calculated in accordance with this Part in the currency of that member State and is to be taken to be the sterling value of that income determined in accordance with the relevant HMRC rate.

(2) The relevant HMRC rate is the average exchange rate issued by Her Majesty's Revenue and Customs for the calendar year ending immediately before the end of PY-1.

## PART 5

### Interpretation

#### **Interpretation**

**20.**—(1) In this Schedule, any reference to a person's ("A's") partner means—

- (a) A's spouse or civil partner, or
- (b) a person ordinarily living with A as if the person were A's spouse or civil partner.

(2) In this Schedule—

"applicable financial year" ("*blwyddyn ariannol gymwys*") means the financial year determined in accordance with paragraph 16;

"CY" ("*BG*") means the financial year beginning immediately before the first day of the current academic year;

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“financial year” (“*blwyddyn ariannol*”) means the period of twelve months in respect of which the income of a person is computed for the purposes of the income tax legislation which applies to it;

“PY” (“*BF*”) means the financial year immediately preceding CY;

“PY-1” (“*BF-1*”) means the financial year immediately preceding PY;

“pension arrangements order” (“*gorchymyn trefniadau pensiwn*”) means an order under which a person pays benefits under a pension arrangement to another person under—

- (a) section 23 of the Matrimonial Causes Act 1973<sup>(5)</sup> which includes provision made by virtue of section 25B(4) (and including such an order as it may have effect by virtue of section 25E(3) of that Act)<sup>(6)</sup>, or
- (b) Part 1 of Schedule 5 to the Civil Partnership Act 2004<sup>(7)</sup> which includes provision made by virtue of Part 6 of that Schedule (and including such an order as it may have effect by virtue of Part 7 of that Schedule);

“public body” (“*corff cyhoeddus*”) means a state authority or agency whether national, regional or local.

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(5) 1973 c. 18; section 23 was amended by the Administration of Justice Act 1982 (c. 53), section 16.

(6) Section 25B was inserted by the Pensions Act 1995 (c. 20), section 166(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 and amended by the Pensions Act 2008 (c. 30), Schedule 6, paragraphs 1 and 6 and Schedule 11, Part 4.

(7) 2004 c. 33; paragraph 25 of Schedule 5 was modified by S.I. 2006/1934 and paragraph 30 of Schedule 5 was amended by the Pensions Act 2008 (c. 30), Schedules 6 and 11.