

Explanatory Memorandum to the School Teachers' Pay and Conditions (Wales) Order 2023.

This Explanatory Memorandum has been prepared by the Education, Social Justice and Welsh Language Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the School Teachers' Pay and Conditions (Wales) Order 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

20 April 2023

PART 1

1. Description

The School Teachers' Pay and Conditions (Wales) Order 2023 ("the Order") makes provision for the remuneration and conditions of employment of school teachers in Wales, to be determined by reference to the provisions set out in section 2 of the School Teachers' Pay and Conditions (Wales) Document 2022 and guidance on school teachers' pay and conditions (revised) – April 2023 ("STPC(W)D"). The Order will come into force on 12 May 2023. Provisions on teachers' pay and conditions under section 2 of the STPC(W)D will have retrospective effect from 1 September 2022.

Responsibility for school teachers' pay and conditions was transferred to the Welsh Ministers on 30 September 2018. The STPC(W)D applies to teachers employed in local authority maintained schools in Wales.

The STPC(W)D is a replacement for the School Teachers' Pay and Conditions (Wales) Document 2022 and guidance on school teachers' pay and conditions ('the initial 2022 Document') which was brought into force on 7 December 2022 and had retrospective effect from 1 September 2022 for the school year 2022-23.

The initial 2022 Document introduced changes to teachers' pay and conditions in line with the recommendations of the Independent Welsh Pay Review Body's fourth report. Since the implementation of the initial 2022 document, there has been a period of industrial action undertaken by teachers' unions. Extensive negotiations have led to Welsh Government offering a revised package on pay and conditions to teachers. As part of this package, Welsh Government has agreed to implement a further pay rise for the 2022/23 academic year. The revised STPC(W)D being brought into effect by the Order makes changes to pay for 2022/23 only. Further changes to pay and conditions which to be made as a result of the negotiations will be implemented through a future STPC(W)D.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The provisions under section 2 of the STPC(W)D will have effect retrospectively from 1 September 2022. This is expressly permitted under section 123(3) of the Education Act 2002. The Order will replace the School Teachers' Pay and Conditions (Wales) Order 2022 with the STPC(W)D replacing the initial 2022 Document. The only changes between the initial 2022 Document and the STPC(W)D being brought into effect by the Order will be to make changes to pay for the 2022/23 academic year.

3. Legislative background

The Welsh Ministers have the power to set school teachers' pay and conditions in Wales by way of Order under sections 122 to 124 and 126 to 127 of the Education Act 2002 ("the Act"). These functions, in relation to Wales, were transferred to the Welsh Ministers on 30 September 2018 from the Secretary of State by the Welsh Ministers (Transfer of Functions) Order 2018.

Section 122(1) of the Act provides the Welsh Ministers with the power to make provision for the remuneration of school teachers in Wales and other conditions of employment related to their professional duties and working time.

Section 124(3) of the Act provides that an Order made under section 122 can make provision through a document, which must also be published.

Section 123(3) of the Act provides that an Order under section 122 may make retrospective provision, but not so as to—

- a. reduce remuneration in respect of a period wholly or partly before the making of the Order, or
- b. alter a condition of employment to the detriment of a teacher in respect of a period wholly or partly before the making of the Order.

Section 126 of the Act requires the Welsh Ministers to consult those appropriate bodies they feel relevant before making any Order under section 122. The relevant bodies are: associations of local authorities; local authorities, those representing governing bodies of schools, and bodies representing school teachers (teacher unions).

These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

The Order applies to all school teachers (as defined in section 122(3) to (6) of the Act) in Wales. This Order serves to introduce new pay and allowance ranges in the national pay framework for school teachers in maintained schools in Wales only. Non-maintained schools in Wales have the freedom and flexibility to adopt pay and allowance ranges for their teachers which best reflect their local circumstances.

This Order gives effect to section 2 of the STPC(W)D.

The process that led to the STPC(W)D included the following key stages which include the consultation on the initial 2022 Document and the more recent consultation as part of the pay negotiations which have led to this STPC(W)D and Order:

- Teachers' Pay Partnership Forum (all teacher unions and employers) discusses scope of draft remit and makes recommendations to Welsh Ministers;
- Welsh Ministers issue a remit letter to the Independent Welsh Pay Review Body (IWPRB) which outlines areas of teachers' pay and conditions for potential change;
- IWPRB considers evidence submitted by stakeholders and provides recommendations to Welsh Ministers;
- Welsh Ministers consider recommendations and set teachers' pay and conditions following a written consultation with key stakeholders;
- Further negotiations with teacher unions and employers led to revised teacher' pay.

Section 1 of the STPC(W)D summarises the changes to pay and conditions and associated guidance since the School Teachers' Pay and Conditions Order 2021 and other relevant information about the STPC(W)D. Section 2 of the STPC(W)D is laid out in seven parts and two annexes. Parts 2 to 6 set out how pay and allowances for the various categories of teacher are to be determined. Part 7 sets out conditions of employment for the various categories of teacher that will have effect as terms of their contracts of employment. The Annexes to section 2 of the STPC(W)D set out the professional standards for teachers and interpretation matters. Section 3 of the STPC(W)D is statutory guidance to accompany the provisions in section 2.

September 2022 pay award

In response to negotiations with teacher unions and employers, from 1 September 2022 a 6.5% uplift will be applied to all scale points and allowances (increased from 5% previously applied). An additional 1.5% non - consolidated lump sum will also be applied to all statutory scale points and allowances. All pay uplifts will be from 1 September 2022.

It has been established practice for an order determining teachers' pay to be made annually with the new pay proposals within the document having effect from 1 September every year. It is the Welsh Ministers' intention to continue this practice. However, negotiations after the initial 2022 Document around the level and funding of the pay award, resulted in changes being needed to the initial 2022 Document. This Order and this STPC(W)D reflect those recently concluded negotiations.

The Order revokes the School Teachers' Pay and Conditions (Wales) Order 2022 and replaces the initial 2022 Document. However, the differences between the initial 2022 Document and the STPC(W)D are limited to pay.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

In order to achieve the policy objective of responding to concerns about pay and conditions for teachers in Wales, the following options were identified:

1. Do nothing; keep changes previously implemented as recommended by the IWPRB for 2022/23 including a pay rise of the recommended 5%
2. Take a legislative approach by implementing further changes for 2022/23 to increase the pay rise to 6.5% and an additional 1.5% non-consolidated payment

6. Costs and benefits

Option 1 – Do nothing; keep changes previously implemented as recommended by the IWPRB for 2022/23 including a pay rise of the recommended 5%

Benefits

A benefit of taking this baseline option is the potential immediate cost-saving across local authority and school budgets. It also respects the established pay process in which the Independent Welsh Pay Review Body (IWPRB) makes recommendations based on the evidence provided.

Costs

There are no additional costs associated with this option. However, doing nothing carries a high degree of risk of continuing industrial action by teacher unions which will have a negative impact on young people's education. While this option would follow the recommendations of the IWPRB, the wider economic context has changed substantially since those recommendations were made. We consider that whilst there may be some immediate cost saving benefits this option does not achieve the objective to appropriately recognise and reward the teaching profession in Wales.

Option 2 - Take a legislative approach by implementing further changes for 2022/23 to increase the pay rise to 6.5% and an additional 1.5% non-consolidated payment

Benefits

This option may help to resolve industrial action being taken by teacher unions and end disruption to young people's education. It may also have a positive impact on retention of teachers in Wales and attracting newly qualified teachers to the profession in Wales.

Costs

Briefly, the overall financial impact of increasing teachers' pay in 2022/23 by an additional 1.5% and making a further 1.5% non-consolidated lump sum payment is £30 million in financial year 2022-23 and £21.3 million in financial year 2023-24. To mitigate the impact of these costs on school and local authority budgets, which have already been set for 2022-23 and 2023-24, the Welsh Government will fully fund these additional costs through additional in year grant funding to local authorities via the Local Authority Education Grant.

Summary of the preferred option

In summary, the chosen option is Option 2.

This decision is made in view of the benefits to be gained as set out above.

These legislative changes have no impact on business, charities or voluntary bodies.

The impact on the public sector relates to the budgets of maintained schools in Wales to the extent that it makes changes to the pay and conditions of teachers employed by local authorities and governing bodies. However, additional funding is being provided by Welsh Government to cover the budget impact of these changes.

7. Consultation

An eight - week written consultation with key stakeholders on the Minister's recommendations for changes to teachers' pay ran from 21st July 2022 to the 16th September 2022. The organisations/individuals consulted are those key stakeholders agreed as part of the pay and conditions model established following transfer of powers. The consultees include; teacher unions, local authorities and diocesan associations, all of whom are represented on the Teachers' Pay and Conditions Partnership Forum.

Responses from consultees were generally very similar in terms of the main points and reiterated their earlier evidence to the IWPRB. Overall, the response to the consultation was generally negative indicating disappointment and concerns that the increase of 5% for 2022/23 would not be sufficient.

Following implementation of the 5% pay award, further consultation has been undertaken with the same consultees as part of negotiations to resolve the pay dispute. That consultation and negotiation has resulted in the revised pay award set out in section 2 of the School Teachers' Pay and Conditions (Wales) Document 2022 and guidance on school teachers' pay and conditions (revised) – April 2023 which will be given effect by the School Teachers' Pay and Conditions (Wales) Order 2023.

8. Competition Assessment

Not applicable.

9. Post implementation review

This is an annual legislative process and these changes are applicable only for 2022/23. A strategic review into Teachers' Pay and Conditions is currently underway by the IWPRB with a report due in 2023.