

## **Explanatory Memorandum to the School Teachers' Incentive Payments (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' Incentive Payments (Wales) Order 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS  
Minister for Education and Welsh Language  
27 October 2023

## **PART 1**

### **1. Description**

- 1.1 The School Teachers' Incentive Payments (Wales) Order 2023 ("the Order") provides that lump sum payments paid to school teachers in Wales under the Welsh in Education Teacher Retention Bursary are not treated as remuneration for the purpose of section 122(1) of the Education Act 2002 and so are not subject to the statutory pay framework and are not pensionable.

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

- 2.1 None

### **3. Legislative background**

- 3.1 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 2002 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.
- 3.2 Section 122(1) of the 2002 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.
- 3.3 Section 123(4) of the 2002 Act provides that an Order can be made to provide—
- (a) that a payment or entitlement of a specified kind is or is not to be treated as remuneration for the purpose of section 122(1).
- 3.4 This Order is being made under the negative procedure.

### **4. Purpose and intended effect of the legislation**

- 4.1 In May 2022 the Welsh Government published its [Welsh in education workforce plan](#) setting out a range of actions to be taken with key partners to deliver four key objectives:
- increase the number of teachers able to teach Welsh as a subject and other subjects through the medium of Welsh;
  - increase the number of practitioners able to work through the medium of Welsh who are supporting learners;
  - develop all practitioners' Welsh language skills and expertise to teach Welsh and through the medium of Welsh, and

- develop leadership capacity for Welsh-medium schools and equip all leaders with the skills to strategically plan the development of Welsh within a culture of schools as learning organisations.
- 4.2 One of the specific actions in the plan is to develop a pilot programme to pay a retention bursary to teachers to encourage them to remain within the profession.
  - 4.3 In April 2023, the Minister for Education and Welsh Language agreed to establish a pilot Welsh in Education Teacher Retention Bursary. The Bursary of £5,000 is available to teachers who have been awarded Qualified Teacher Status (QTS) from August 2020 onwards, and who have completed 3 years of teaching in a Welsh-medium secondary or middle school or through the medium of Welsh in a bilingual secondary or middle school or teaching Welsh as a subject in any maintained secondary or middle school, in Wales.
  - 4.4 The Bursary is a pilot scheme, which will be available for the next 5 years until the end of the pilot period in 2028. The final bursaries of the pilot period will be paid in autumn 2028.
  - 4.5 The retention bursary is a one-off payment which is effectively a bonus in recognition of remaining in the Welsh-medium teaching profession. In order for the retention bursary to be paid to eligible individuals, following a successful application, Welsh Government will be liaising with local authorities and schools to ensure that the bursary can be paid together with their pay in December 2023.
  - 4.6 The Welsh Government will cover tax and national insurance contributions to ensure all recipients are paid the full £5,000 with their salary.
  - 4.7 The bursary payment is exempt from inclusion as pensionable earnings. This is compliant with The Teachers' Pension Scheme Regulations 2014, as it is a bonus rather than a payment made in respect of contractual duties.
  - 4.8 An Order under section 123(4) of the 2002 Act is required to make it clear that lump sum payments paid to school teachers in Wales under the Welsh in Education Teacher Retention Bursary are not to be treated as remuneration for the purpose of section 122(1) of the 2002 Act, so are not subject to the statutory pay framework and are not pensionable.
  - 4.9 The Order applies to all school teachers (as defined in section 122(3) to (6) of the Act) in Wales. The Order will come into force on 17 November 2023.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **5. Options**

5.1 In order to make it clear that lump sum payments paid to school teachers in Wales under the Welsh in Education Teacher Retention Bursary are not to be treated as remuneration for the purpose of section 122(1) of the 2002 Act, so are not subject to the statutory pay framework and are not pensionable, the following options were identified:

Option 1: Do nothing

Option 2: Take a legislative approach by implementing an Order under section 123(4) of the 2002 Act

### **6. Costs and benefits**

#### **Option 1 – Do nothing**

##### Benefits

6.1 There are no benefits to taking this option. However, there are significant risks in not making the Order:

- the bursary could be found to be part of teachers' remuneration with the effect that-
  - 1) it is considered pensionable, in which case both employer and employee pension contributions will need to be paid, which are unfunded;
  - 2) it should have been included within the terms of pay and conditions made in an Order under section 122(1) of the 2002 Act and included in the statutory consultation process.

##### Costs

6.2 There are no additional costs associated with this option. However, if the Order is not made and it is found that the bursary is pensionable then there will be cost implications for both employer and employee to cover the pension contributions.

6.3 Employers contribute 23.68% of a teacher's pay towards the cost of teachers' pensions. Teachers contribute between 7.4% - 11.7% towards their teacher pension based on their annual salary.

6.4 To ensure the full £5,000 bursary is paid to the recipient, the Welsh Government will cover the cost of tax and national insurance contributions (employer and employee) and we envisage the actual gross cost to be approximately £8,500 per person.

- 6.5 It is therefore estimated that the employer pension contribution on the £8,500 gross bursary payment would be approximately £2,012. The employee contribution would be approximately £731 which equates to 8.6% (assuming that the teachers are paid on pay band M5 (£36,232)).
- 6.6 In order to ensure that the individuals were paid the £5,000 bursary in full, then an additional £2,743 per eligible individual would need to be funded. We are anticipating that around 70 individuals will receive the bursary annually, therefore the additional cost of funding the pension contributions would be approximately £192,000 annually. In the current financial climate, this would create an unfunded pressure on the budget that funds the bursary.

## **Option 2 - Take a legislative approach by implementing an Order under section 123(4) of the 2002 Act**

### Benefits

- 6.7 The benefit of making an Order under section 123(4) of the 2002 Act is to make it clear that the bursary is not to be treated as part of teachers' remuneration and for this reason is not required to be included in either the consultation process under section 126 of the 2002 Act or the School Teachers Pay and Conditions (Wales) Order made under section 122.
- 6.8 Making an Order under section 123(4) of the 2002 Act will also put beyond doubt any question that the bursary is pensionable.

### Costs

- 6.9 There are no additional cost implications to making the Order. Welsh Government staff can undertake the work as part of normal duties. Once the Order is made, there will be clarity that the bursary is exempt from the definition of pensionable earnings and therefore the additional funding of £192,000 per year identified under Option 1 would not be required to fund the contributions.

### Summary of the preferred option

- 6.10 In summary, the chosen option is Option 2.
- 6.11 This decision is made in view of the benefits to be gained as set out above.
- 6.12 These legislative changes have no impact on business, charities or voluntary bodies.
- 6.13 The legislative changes do not have any additional cost implications.

## **7. Consultation**

- 7.1 An action to introduce a retention bursary was included in the Welsh in Education Workforce plan, which was developed in close collaboration with the main stakeholders including teaching unions. The pilot was discussed with a small group of headteachers and with members of the External Implementation Group, which was established to monitor the implementation of the Welsh in Education Workforce plan. As this is a pilot programme, a formal consultation period was not required. A formal consultation may be needed at the end of the pilot period should it be proposed that the bursary is maintained.
- 7.2 No consultation has been undertaken in relation to the making of the Order as it is a procedural matter ensuring the legal effect of the policy is as intended, providing clarity to payroll and pension scheme administrators and mitigating the risk of unfunded pensions contributions being required.

## **8. Competition Assessment**

- 8.1 Not applicable.

## **9. Post implementation review**

- 9.1 The payment of the bursary to eligible individuals has been agreed for a five-year pilot period until 2028. The pilot will be evaluated to determine whether the bursary achieves its objective of retaining Welsh and Welsh-medium secondary teachers in the profession.
- 9.2 A review of the legislation will take place in tandem with the evaluation of the pilot period.