

Explanatory Memorandum to the School Teachers' Pay and Conditions (No. 2) (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 (No. 2) (Wales) Order 2023. I am satisfied that the benefits justify the likely costs.

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

PART 1

1. Description

The School Teachers' Pay and Conditions (No. 2) (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) – September 2023 ("the 2022 Document") and the School Teachers' Pay and Conditions (Wales) Document 2023 and guidance on school teachers' pay and conditions ("the 2023 Document"). The Order will come into force on [28] October 2023. Provisions on teachers' pay and conditions under section 2 of the 2022 Document will have retrospective effect for the period beginning with 1 September 2022 and ending with 31 August 2023 and under section 2 of the 2023 Document from 1 September 2023.

Responsibility for school teachers' pay and conditions was transferred to the Welsh Ministers on 30 September 2018. The 2022 Document and the 2023 Document apply to teachers employed in local authority maintained schools in Wales.

The 2022 Document is a replacement for the School Teachers' Pay and Conditions (Wales) Document 2022 and guidance on school teachers' pay and conditions (revised) - April 2023 which was brought into force on 12 May 2022 and had retrospective effect from 1 September 2022 for the school year 2022-23.

The Document revised in April 2023 introduced changes to teachers' pay and conditions in line with the recommendations of the Independent Welsh Pay Review Body's fourth report and subsequent extensive negotiations on pay and conditions to teachers with teacher unions and employers. As part of this package, Welsh Government agreed to implement a further pay rise for the 2022/23 academic year. The 2022 Document being brought into effect by the Order makes changes to pay for 2022/23 only, providing slightly amended calculations of the 1.5% non-consolidated lump sum payment which formed part of the 2022/23 pay award to replace the original calculation. Further changes to pay and conditions are introduced in the 2023 Document from 1 September 2023.

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

The provisions under section 2 of the 2022 Document will have effect for the period beginning with 1 September 2022 and ending with 31 August 2023. The 2022 Document will replace the School Teachers' Pay and Conditions (Wales) Document 2022 and guidance on school teachers' pay and conditions (revised) - April 2023. The provisions under section 2 of the 2023 Document will have effect from 1 September 2023. Retrospective effect is expressly permitted under

section 123(3) of the Education Act 2002. The Order will revoke the School Teachers' Pay and Conditions (Wales) Order 2023.

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 such of the following bodies they feel appropriate before making any Order under section 122; 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 2022 Document and section 2 of the 2023 Document.

The process that led to these changes 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:

- 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 2022 Document 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 2022 Document. The 2022 Document differs from the School Teachers' Pay and Conditions (Wales) Document 2022 and guidance on school teachers' pay and conditions (revised) - April 2023 in that it provides slightly amended calculations of the 1.5% non-consolidated lump sum payment which formed part of the 2022/23 pay award to replace the original calculations. An amended methodology has been used to calculate the non-consolidated payment as a result of representations made by teacher unions. The amended methodology results in a very slight increase in each case. Section 2 of the 2022 Document 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 2022 Document set out the professional standards for teachers and interpretation matters. Section 3 of the 2022 Document is statutory guidance to accompany the provisions in section 2.

Section 1 of the 2023 Document summarises the changes to pay and conditions and associated guidance since the 2022 Document and other relevant information about the 2023 Document. Section 2 of the 2023 Document is laid out in seven parts and three 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 2023 Document set out the professional standards for teachers; interpretation matters; and a list of administrative tasks not to be routinely carried out by teachers. Section 3 of the 2023 Document is statutory guidance to accompany the provisions in section 2.

September 2023 pay award

In response to negotiations with teacher unions and employers, from 1 September 2023 a 5% uplift will be applied to all scale points and allowances. All pay uplifts will be from 1 September 2023.

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.

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; not to implement any changes to teacher's pay and conditions for 2023/24 and not to amend the methodology of calculating the 1.5% non-consolidated payment one-off payment awarded for academic year 2022/23.
2. Take a legislative approach by
 - a. implementing changes for 2023/24 to increase the 3.5% pay rise recommended by IWPRB to 5% and provide clarification on administrative tasks not to be routinely carried out by teachers; and
 - b. Amend the identified concerns to the methodology of calculating the 1.5% non-consolidated one-off payment awarded for academic year 2022/23.

6. Costs and benefits

Option 1 – Do nothing; not to implement any changes to teacher's pay and conditions for 2023/24 and not to amend the methodology of calculating the 1.5% non-consolidated one-off payment awarded for academic year 2022/23.

Benefits

A benefit of taking this baseline option is the potential immediate cost-saving across local authority and school budgets.

Costs

There are no additional costs associated with this option. However, doing nothing carries a high degree of risk of industrial action by teacher unions which will have a negative impact on young people's education. 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

- a. **implementing changes for 2023/24 to increase the 3.5% pay rise recommended by IWPRB to 5% and provide clarification on administrative tasks not to be routinely carried out by teachers; and**
- b. Amend the identified concerns to the methodology of calculating the 1.5% non-consolidated one-off payment for individual scale points awarded for academic year 2022/23.

Benefits

This option will meet previously agreed commitments on teachers' pay and conditions by implementing the Year 2 award of 5% from September 2023 and providing clarity on clerical and administrative tasks that should not be routinely carried out by teachers. The agreement has already helped avoid further industrial action being taken by teacher unions so reducing potential 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. Clarification of the statutory position that teachers should not be required routinely to participate in any administrative, clerical and organisational tasks will potentially help improve school efficiency and avoid unnecessary teacher workload.

Costs

Briefly, the impact of an increased pay offer from 3.5% to 5% for 2023/24 will result in additional financial implications for schools (excluding Sixth forms) of £13.7m for 2023-24 financial year (Sept 23-Mar24) and £23.4m for 2024-25 financial year (Apr 24-Mar25). The 6th form element (which is funded separately through the Post-16 Provision BEL of the EWL MEG) will be £0.81m for this f/y (Sept 23-Mar24) and £1.39m for next f/y (Apr 24-Mar25). This is in addition to the original costs to local authorities of a 3.5% pay award for 2023/24: £32m in 2023-24 and £54.9m for the full financial year impact from 2024-25.

Clarification of the statutory requirement for teachers not to carry out certain tasks could potentially reduce costs. Schools that are currently misinterpreting the statutory requirements will likely reduce costs by implementing them, as school support staff not only usually cost less but can bring specialist skills and knowledge to the carrying out of such tasks thereby improving efficiency.

In relation to the non-consolidated one-off payment for individual scale points identified differences are quite small, with small additional amounts being due to school teachers and leaders using the revised methodology; for example varying for individual teacher annual salary scales between 5p and 70p and from 0p to 95p for school leaders. There is no impact on the overall costs as funding previously provided by Welsh Government to local authorities towards cost of 2022 award did not include variance identified for calculation of amount of lump sum due to individual teachers (which was calculated at a later stage in process).

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.

Specific additional funding was provided by Welsh Government towards the Year 1 elements of the pay award but no specific additional funding has been provided for the Year 2 elements of the pay award i.e. the 5% rise from September 2023 or for the ongoing baseline rise in costs. There is a reasonable expectation that the academic year 2023/24 element of the revised pay award, and associated financial impact for 2023-24 financial year, would be met from within the existing local government settlement. There was a significant increase in the Local Government Settlement for financial year 2023-2024 (7.9% overall, minimum 6.5%).

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% and 3.5% for 2022/23 and 2023/24 respectively would not be sufficient.

Further consultation was undertaken with the same consultees as part of negotiations to resolve industrial action arising from the pay award. That consultation and negotiation resulted in the revised pay award; the Year 2 element of which is set out in section 2 of the 2023 Document.

8. Competition Assessment

Not applicable.

9. Post implementation review

This is an annual legislative process and also a strategic review into Teachers' Pay and Conditions is currently underway by the IWPRB with a report due in early 2024.