

Explanatory Memorandum to the School Teachers' Pay and Conditions (Wales) Order 2022

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 2022. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
15 November 2022

PART 1

1. Description

The School Teachers' Pay and Conditions (Wales) Order 2022 ("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 ("STPC(W)D"). The Order will come into force on 7th December 2022. 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 2021 and guidance on school teachers' pay and conditions.

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.

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 the STPC(W)D.

The process that led to the STPC(W)D included the following key stages:

- 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.

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 the recommendations in the IWPRB's fourth Report, from 1 September 2022 a 5% uplift will be applied to all scale points and allowances. All pay uplifts will be from 1 September 2022.

There are also some miscellaneous changes and general updates including changes to the pro-rata principle for TLRs and the requirement to include provision for the extra bank holiday for Queen's funeral in 2022 so that for academic year 2022/2023, teachers must be available to work for 193 days (1252 hours of directed time).

Section 3 (statutory guidance) of the STPC(W)D also reflects these changes.

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, due to tight timing between each stage in this year's pay process and the need for further discussion around the funding of the pay award it was not possible to lay the Order earlier.

The Order revokes the School Teachers' Pay and Conditions (Wales) Order 2021.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

In order to achieve the policy objective of establishing a pay and conditions system for teachers in Wales, the following options were identified:

1. Do nothing.
2. Taking a legislative approach by implementing changes below those recommended by the Independent Welsh Pay Review Body (IWPRB), including a pay rise lower than the recommended 5%.
3. Taking a legislative approach by implementing changes as recommended by the IWPRB including a pay rise of the recommended 5%.

6. Costs and benefits

Option 1 – Do nothing

Benefits

The only identified benefit of taking this baseline option is the potential immediate cost-saving across school budgets. The Welsh Government's evidence to the IWPRB stated it would not provide any suggested potential pay increase.

Costs

There are no additional costs associated with this option. However, doing nothing was quickly discounted as a non-option and carries a high degree of risk. We consider that whilst there may be some immediate cost saving benefits, this would have a distinctly negative impact on the policy for the following reasons:

- The Welsh Government has been clear there is a need and policy objective to establish a system that recognises and rewards the teaching profession in Wales.
- The established pay process includes the appointment of an Independent Welsh Pay Review Body. The IWPRB has recommended increases across the pay scales totalling an increase of 5% of the overall pay bill. To not implement a pay award would be to ignore the independent expert advice of the IWPRB.

Option 2 - Taking a legislative approach by implementing changes *below* those recommended by the Independent Welsh Pay Review Body (IWPRB).

Benefits

Similarly to Option 1, there are financial benefits to implementing a pay award below that recommended by the IWPRB. The Welsh Government did not provide any suggested potential pay increase in their written evidence to the IWPRB. Instead, it stressed that any increase would need to be met from existing local authority budgets.

Costs

We consider that whilst there may be some immediate cost saving benefits, this would have a distinctly negative impact on the policy for the following reasons:

- The Welsh Government has been clear there is a need and policy objective to establish a system that recognises and rewards the teaching profession in Wales.
- The established pay process includes the appointment of an Independent Welsh Pay Review Body. The IWPRB has recommended increases across the pay scales totalling an increase of 5% of the overall pay bill. To not implement this rise would be to ignore the independent expert advice of the IWPRB.

Option 3 - Taking a legislative approach by implementing changes as recommended by the IWPRB.

Benefits

This option may ensure that retention of teachers in Wales remains steady whilst also having a positive effect on attracting newly qualified teachers to the profession in Wales.

Costs

The IWPRB has recommended a 5% increase to all teacher pay scales and allowances. Briefly, the overall financial impact for local authorities of accepting the 2022/23 pay award increase of 5% amounts to **£43.5m in 2022-23 financial year, with a full year financial impact of £74.6m in 2023-24.**

Accepting the recommendations as prescribed by the IWPRB would demonstrate confidence in the relatively new system and the role of the IWPRB.

Alongside the 2022/23 costs, the IWPRB initially proposed 3.5% and £30k starting salary in 2023/24. If proposed future review accepts this recommendation, there will be a further cost to LAs of £32m in 2023-24, with a full year financial impact of £54.9m in 2024-25. Combined with the implications of the 5% pay award this would represent a **total funding implication of £106.6m in 2023-24 and £129.5m in 2024-25.**

Summary of the preferred option

In summary, the chosen option is Option 3.

This decision is made in view of the benefits to be gained as set out above, including a positive effect on attracting newly qualified teachers to the profession in Wales as well as ensuring that retention of teachers in Wales remains steady.

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.

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 (and potential 3.5% for 2023/24) would not be sufficient.

A number of consultees also called for the pay award to be reconsidered following significant changes to inflation since the completion of the report by the IWPRB in May 2022 (rate of Consumer Prices Index (CPI) inflation, which is the main measure of inflation, rose to 9.9% in August, compared to 9.1% in May).

The majority welcomed the other recommendations, such as: an undifferentiated increase for all pay scales and allowances; and proposed amendments to terms and conditions.

Following consideration of the consultation responses, no compelling new evidence was provided that necessitated reconsideration of the Minister's proposals. In particular, the consultation responses did not provide sufficient additional evidence necessary to support a higher pay award across all pay ranges than had already been considered and rejected on grounds of affordability and potential impact on budgets.

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. The pay process for year 5 will also commence shortly to further determine the STPC(W)D for 2023/24.