

Explanatory Memorandum to the School Teachers' Pay and Conditions (Wales) Order 2020.

This Explanatory Memorandum has been prepared by the Education and Public Services Department and is laid before the 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 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education

15 October 2020

PART 1

1. Description

The School Teachers' Pay and Conditions (Wales) Order 2020 ("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 2020 and guidance on school teachers' pay and conditions ("STPC(W)D"). The Order will come into force on 6 November 2020. Provisions on teachers' pay and conditions under section 2 of the STPC(W)D will have retrospective effect from 1 September 2020.

Responsibility for school teachers' pay and conditions was devolved to the Welsh Ministers on 30 September 2018 and is reviewed annually. 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 2019 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 2020. 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 education authorities; local education 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 is made annually and 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.

The Secretary of State's functions regarding the determination of teachers' pay and conditions in Wales were transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) Order 2018 and the relevant provisions of that Order came into force on 30 September 2018.

Following the transfer of powers over teachers' pay and conditions to the Welsh Ministers on 30 September 2018, a new annual process has been established. This process includes 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 2019 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 performance standards for teachers and

interpretation matters. Section 3 of the STPC(W)D is statutory guidance to accompany the provisions in section 2 and replaces the previous section 3.

The revisions to the STPC(W)D follow a review of teachers' pay in Wales by the Independent Welsh Pay Review Body (IWPRB). The IWPRB put forward seven recommendations relating to teachers' pay in Wales for the 2020/21 academic year, for consideration by the Minister for Education. In accordance with section 126 of the Act, the Welsh Ministers then consulted with key stakeholders on the proposed changes to the STPC(W)D.

The principal changes to teachers' pay and conditions are to remove performance based pay progression for teachers and leaders, reintroduce national statutory pay scales and make provision for the September 2020 pay award of:

September 2020 pay award

In response to the recommendations in the IWPRB's second Report, from 1 September 2020:

- i. a 8.48% uplift has been applied to the minimum of the Teacher Main Pay Range.
- ii. a 3.75% uplift has been applied to the statutory maxima of the main pay range.
- iii. a 2.75% uplift has been applied to the statutory minima and maxima of the upper pay range.
- iv. a 2.75% uplift has been applied to the statutory minima and maxima of the leading practitioner pay range, the unqualified teachers' pay range, the leadership pay ranges (including headteacher groups) and all allowances across all pay ranges.
- v. Statutory national pay scales have been reintroduced for all pay points on the Teacher Main Pay Range, Teacher Upper Pay Range, Unqualified Teachers' Pay Range and Leadership Pay Ranges.
- vi. In accordance with their own pay policy, schools should ensure a 2.75% uplift across interim pay points of the leading practitioner pay range and teacher allowances to match the uplift to the national framework in making individual pay progression decisions.

All pay uplifts will be from 1 September 2020.

There are also some miscellaneous changes and general updates.

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 delays in the timings of each stage in this year's pay process, and the decision to consult for eight weeks (in parallel with the process in England), it was not possible to lay the Order earlier.

The Order revokes the School Teachers' Pay and Conditions (Wales) Order 2019 and the School Teachers' Pay and Conditions (Wales) (Amendment) Order 2019.

5. Consultation

An eight week stakeholder consultation ran from 29 July 2020 to 22 September on the Minister's proposals relating to teachers' pay for 2020/21. Further information is contained in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. 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).
3. Taking a legislative approach by implementing changes as recommended by the IWPRB.
4. Taking a legislative approach by implementing changes above those recommended by the IWPRB.

7. Costs and benefits

Option 1 – Do nothing

Benefits

The only identified benefit of taking this baseline option is potential immediate cost-saving across school budgets. The Welsh Government's evidence to the IWPRB stated that whilst we could recommend pay increases of up to 3% for teachers, any increase is potentially unaffordable and could place undue pressures on school or local authority budgets. HMT were clear that government departments are free to implement pay increases across the public sector, but that these would not be specifically funded by HMT.

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.
- WG has made a political commitment that there will be 'no detriment' to the profession following devolution. There is therefore an expectation that we will at least match any increases awarded in England, which will be for an overall increase to the pay bill of 3.1% for 2020/21.
- The established pay process includes the appointment of an Independent Welsh Pay Review Body. The IWPRB has recommended a range of increases across the pay scales totalling an increase of 3.0% of the overall pay bill. To do nothing 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 WG presented written evidence which supported its recommendation of an increase of up to 3% across the pay bill for teachers for 2019/20. Such an increase would be in line with what we would expect LAs to have budgeted for in 2020/21, and would be comparable with other public sector pay awards. A lower award would provide potential immediate cost-saving across anticipated school budgets.

Costs

In the WG evidence to the IWPRB it was identified that a 3% increase in pay would have a projected annual cost of approximately £40.2m. WG is not set to receive consequential funding and therefore any increase may place pressure on existing school budgets.

There is a potential risk to the recruitment and retention of teachers in Wales under this option if the proposed increase in pay is below the increase awarded in England.

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

Benefits

The IWPRB has recommended a range of increases to teacher pay scales and allowances totalling an increase of 3.0% of the overall pay bill. Accepting the recommendations as prescribed by the IWPRB would demonstrate confidence in the relatively new system and the role of the IWPRB.

Costs

The projected cost of a 3% increase is £40.2m annually.

WG is not set to receive consequential funding and therefore any increase may place pressure on existing school budgets.

There is a potential risk to the recruitment and retention of teachers in Wales under this option since the proposed increase in pay is below the increase awarded in England.

Option 4 - Taking a legislative approach by implementing changes above those recommended by the IWPRB.

Benefits

Welsh Ministers have previously committed that there will be 'no detriment' to the profession following devolution. The Department for Education has awarded an uplift to the pay scales and allowances for teachers in England totalling a 3.1% increase. Whilst this is above the percentage recommended by the IWPRB, aligning with those in England would ensure pay parity, and meet the no detriment commitment. This option may also ensure that retention of teachers in Wales remains steady.

Additionally, this option would also meet the IWPRB recommended higher uplift to the minimum and maximum of the main pay scale, including introduction of a new 5 point main pay scale allowing teachers in Wales to routinely reach the scale maximum in 4 years in comparison to 5 years in England

These changes may have a positive effect on attracting newly qualified teachers to the profession in Wales.

Costs

The projected cost of the range of increases to teacher pay scales and allowances, totalling an increase of 3.1% of the overall pay bill, would be £41m annually.

WG is not set to receive consequential funding and therefore any increase may place pressure on existing school budgets.

Summary of the preferred option

In summary, the chosen option is Option 4. To ensure that teachers in Wales are not disadvantaged post-devolution, the overall cost of the pay award for 2020/21 will be equal to that in England, with an increase of 3.1%.

This decision is made in view of the benefits to be gained as set out above, including:-

- Pay parity with the profession in England.
- A positive effect on attracting newly qualified teachers to the profession in Wales.

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 England and Wales to the extent that it makes changes to the pay and conditions of teachers employed by local authorities and governing bodies.

8. Consultation

An eight week stakeholder consultation on the Minister's recommendations for changes to teachers' pay ran from 29 July 2020 to 22 September 2020. The organisations/individuals consulted are those key stakeholders agreed as part of the pay and conditions model established prior to devolution. The consultees include; local authorities, teacher unions and diocesan authorities, all of whom are represented on the Teachers' Pay and Conditions Partnership Forum.

Consultees were generally pleased the commitment of 'no detriment' was being met, though some consultees suggested that the offer itself was not sufficient to compensate for the relative fall in wages of leaders and senior staff in the years since the introduction of austerity measures by the UK Government.

The majority also welcomed the proposed reintroduction of national pay scales and the recommendation to remove performance related pay progression, but were disappointed with the pay award for all ranges.

Following consideration of the consultation responses, no evidence was provided that necessitated reconsideration of the Minister's proposals.

9. Competition Assessment

Not applicable

10. Post implementation review

This is an annual legislative process and these changes are applicable only for 2020/21. The pay process for year 3 has commenced, and this will determine the STPC(W)D for 2021/22.