

# **SL(6)282 – The School Teachers’ Pay and Conditions (Wales) Order 2022**

## **Background and Purpose**

This Order makes provision for the determination of the remuneration of school teachers (within the meaning of section 122 of the Education Act 2002) in Wales and other conditions of employment of school teachers in Wales which relate to their professional duties and working time.

The Order makes this provision by reference to section 2 of a document entitled “School Teachers’ Pay and Conditions (Wales) Document 2022 and guidance on school teachers’ pay and conditions” (“the Document”). The Document can be found on the Welsh Government website: [www.gov.wales](http://www.gov.wales).

The Document provides for a 5% uplift from 1 September 2022 to be applied to all scale points and allowances. It also makes miscellaneous changes such as a change in the number of days and hours that teachers must be available to work as a result of additional Bank Holidays to mark the funeral of Her Majesty The Queen and the coronation of His Majesty King Charles III.

The Order makes retrospective provision to provide that the provisions set out in section 2 of the Document have effect on and after 1 September 2022 notwithstanding that the Order comes into force after that date (article 2).

The Order revokes the School Teachers’ Pay and Conditions (Wales) Order 2021, which made reference to the “School Teachers’ Pay and Conditions (Wales) Document 2021 and guidance on school teachers’ pay and conditions”.

## **Procedure**

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

## **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## **Merits Scrutiny**

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



### **1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The Explanatory Memorandum (“EM”) to this Order contains numerous errors which are likely to lead to confusion as to the effect of both this Order and section 2 of the Document. These include:

- a. In one instance, both the English and Welsh language versions of the EM refer to section 2 of the Document having retrospective effect from 1 September **2021** (emphasis added). In fact, article 2 of the Order provides that section 2 of the Document has retrospective effect from 1 September **2022** (emphasis added). The correct date is referred to in other parts of the EM;
- b. The EM contains a short summary as to the changes that have been made to the Document since its 2021 predecessor. However, both the English and Welsh language versions of the EM state that teachers must be available to work for **194** days (**1258.5** hours of directed time) (emphasis added). The Document actually provides that teachers must be available to work for **193** days (see paragraph 50.2 of the Document) (**1252** hours of directed time – see paragraph 50.5, or paragraph 50.6 in relation to proportioning for a teacher employed part-time) (emphasis added);
- c. The EM does not indicate when the Order comes into force, instead stating “*The order will come into force on **xxxx***” (emphasis added). This error also occurs in the Welsh language version of the EM;
- d. In both the English and Welsh language versions of the EM, it indicates that the Document is a replacement for the “School Teachers’ Pay and Conditions (Wales) Document **2020** and guidance on school teachers’ pay and conditions” (emphasis added). In reality, the Document replaces the “School Teachers’ Pay and Conditions (Wales) Document **2021** and guidance on school teachers’ pay and conditions” (emphasis added).

### **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

It is noted that this Order was not laid before the Senedd until 15 November 2022 and does not come into force until 7 December 2022, more than 3 months after which section 2 of the Document has retrospective effect (as provided for by article 2 of the Order).

In the EM, the Welsh Government explains that:

*“...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.”*

### **3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**



Dispute between unions and the Welsh Government as to the level of pay award is noted and some unions are currently in the process of balloting their members in relation to associated industrial action.

For example, NASUWT, the Teachers' Union, states on its [website](#) that it:

*"...has confirmed to governments and employers in England, Scotland and Wales that we are in dispute over their failure to pay all teachers a minimum 12% pay award this year.*

*Whilst decisions may be taken by government and employers to implement below-inflation pay awards this year, we will remain in dispute on the basis of the failure to pay a 12% award.*

*[...] For the avoidance of doubt, pay awards of less than 12% are not acceptable and our negotiators are not authorised to agree pay awards that do not meet the 12% demand."*

In a [Written Statement](#) on 14 November 2022, Jeremy Miles MS, Minister for Education and Welsh Language, stated that:

*"On 21 July, subject to consultation with key stakeholders, I agreed in principle to accept all of the Independent Welsh Pay Review Body's recommendations for 2022/23 including an uplift of 5% to all statutory salary points on all pay scales and for all allowances from September 2022. I can confirm today that we will be accepting the Review Body's recommendations.*

*[...] I accept that some may be disappointed that a higher award could not be provided and recognise the legitimate right of all workers to seek a fair and decent pay rise during this challenging time of inflation and cost of living rises.*

*However, as additional funding has not been made available by the UK Government, we are not in a position to further address these issues over and above what has previously been considered..."*

Furthermore, the Regulatory Impact Assessment (RIA) connected to this Order states that:

*"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."*

## **Welsh Government response**

A Welsh Government response is required in relation to point 1 only.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**22 November 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**