

Explanatory Memorandum to the School Teachers' Pay and Conditions (Wales) Order 2019.

This Explanatory Memorandum has been prepared by the Education and Public Services Department and is laid before the National Assembly for Wales 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 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
22 October 2019

PART 1

1. Description

The School Teachers' Pay and Conditions (Wales) Order 2019 ("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 2019 and guidance on school teachers' pay and conditions ("STPCD"). The Order will come into force on 12 November 2019. Provisions on teachers' pay and conditions under section 2 of the STPCD will have retrospective effect from 1 September 2019.

Responsibility for school teachers' pay and conditions was devolved to the Welsh Ministers on 30 September 2018 and is reviewed annually. The STPCD applies to teachers employed in local authority maintained schools in Wales. The STPCD is a replacement for the School Teachers' Pay and Conditions Document 2018 and guidance on school teachers' pay and conditions, which covered both England and Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The provisions under section 2 of the STPCD will have effect retrospectively from 1 September 2019.

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 were transferred to the Welsh Ministers on 30 September 2018 from the Secretary of State for Education via 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. The Secretary of State has made his own separate 2019 Order (the School Teachers' Pay and Conditions (England) Order 2019) which covers school teachers in England only.

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.

The introduction of a 'Wales only' STPCD via the Order is the final step in the new pay process for year 1.

Section 1 of the STPCD summarises the changes to pay and conditions and associated guidance since the School Teachers' Pay and Conditions Order 2018 and other relevant information about the STPCD. Section 2 of the STPCD 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 STPCD set out the performance standards for teachers and interpretation matters. Section 3 of the STPCD is statutory guidance to accompany the provisions in section 2 and replaces the previous section 3.

The revisions to the STPCD follow a review of teachers' pay in Wales by the newly established Independent Welsh Pay Review Body (IWPRB). The IWPRB put forward eight recommendations relating to teachers' pay in Wales for the 2019/20 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 STPCD.

The principal changes are to section 2 (pay section) of the STPCD which has been amended to include:

- i. a 5% uplift to the minimum of the teacher main pay range.
- ii. a 2.75% uplift to the statutory maximum of the main pay range and the statutory minima and maxima of the upper pay range; the leading practitioner pay range; the unqualified teacher pay range; the leadership pay ranges (including headteacher groups), and all allowances across all pay ranges.

There are also some miscellaneous changes and general updates, including the removal of references to England and amendments to references to legislation that is not applicable in Wales.

Section 3 (statutory guidance) of the STPCD has also been amended to provide that there is an expectation that any discretionary pay scale points would be uplifted by 2.75% also.

Historically, the UK Government would lay the pay Order by 10th August every year, (with the exception of 2018) to enable the pay award and any other changes to the STPCD to come into effect from 1st September – the date on which teachers' pay awards have always come into effect. However, due to a commitment made by the Welsh Ministers that there would be no detriment to pay for teachers in Wales following devolution of powers, this year the Welsh Government aligned its process with the Department for Education's. This was to ensure that the Welsh Ministers' final decision in relation to the pay award in Wales was fully informed, and that the Welsh Government was able to implement a fair pay award for school teachers in Wales. It was also necessary to consider

the teachers' pay award in the context of the wider public sector pay process and awards and provide a meaningful (8 week) consultation with stakeholders. As a result of this delay, the Welsh Ministers need to employ the power under section 123(3) of the Education Act 2002 to make the STPCD retrospective in effect so that once the Order comes into force on 12 November 2019, section 2 of the STPCD has effect from 1 September 2019. These are the same principles that were in place for the 2018 pay award.

The Order revokes the School Teachers' Pay and Conditions Order 2018 to the extent that it applies in relation to school teachers in Wales.

5. Consultation

An eight week stakeholder consultation ran from 22 July 2019 to 13 September on the Minister's proposals relating to teachers' pay for 2019/20. 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 was clear that whilst we could recommend pay increases of up to 2% 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 above 2%, but that these would not be 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:

- As this is the first year that pay and conditions will be set by Welsh Government, 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 is a 2.75% increase to the minimum and maximum of all pay scales for 2019/20.
- The newly established pay process includes the appointment of an Independent Welsh Pay Review Body. The IWPRB has recommended 2.4% across the pay scales and a 5% uplift to the teacher main pay scale. To do nothing would be to ignore the 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 2% across the pay bill for teachers for 2019/20. A 2% increase would be in line with what we would expect LAs to have budgeted for in 2019/20, and would be comparable with other public sector pay awards (e.g, the Civil Service).

Costs

In the WG evidence to the IWPRB it was identified that a 2% increase in pay would have a projected annual cost of £24.6m. 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 3 - Taking a legislative approach by implementing changes as recommended by the IWPRB.

Benefits

The IWPRB recommended a 5% uplift to the minimum of the main pay scale and a 2.4% uplift to the minima and maxima of other pay scales and allowances. Accepting the recommendations as prescribed by the IWPRB would demonstrate confidence in the new system and the role of the IWPRB.

Accepting an uplift to the minimum of the main pay scale that is higher than the uplift in England may have a positive effect on attracting newly qualified teachers to the profession in Wales.

Costs

The projected cost of a 2.4% increase is £31.0m annually.

The cost of increasing the statutory minimum of the main pay scale by 5% would be £640k annually. The additional cost of this option is therefore estimated to be £31.6m per annum. WG is not set to receive consequential funding and therefore any increase may place pressure on existing school budgets.

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

Benefits

The First Minister and Minister for Education have previously committed that there will be 'no detriment' to the profession following devolution. The Department for Education has awarded an uplift to the minimum and maximum of pay scales and allowances for teachers in England of 2.75%. Whilst this is above the percentage recommended by the IWPRB, aligning increases 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 include meeting the IWPRB recommended 5% uplift to the minimum of the main pay scale.

Accepting an uplift to the minimum of the main pay scale that is higher than the uplift in England may have a positive effect on attracting newly qualified teachers to the profession in Wales.

Costs

The projected cost of a 5% uplift to the minimum of the main pay scale and 2.75% uplift to all other minimum and maximum of pay scales and allowances would be £34.6m 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 but with a variation to include the IWPRB's recommendation of a 5% uplift to the minimum of the teacher main pay scale. To ensure that teachers in Wales are not disadvantaged post-devolution, the pay award for 2019/20 will be equal to the award in England, with a further increase to the minimum of the teacher main pay scale amounting to a 5% uplift. The cost of increasing the statutory minimum of the main pay scale by 5% would be an additional £640k annually.

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 22 July 2019 to 13 September 2019. 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.

There was broad agreement to the proposals to meet the 'no detriment' commitment, and to uplift the minima and maxima of pay scale points by 2.75%. There was also general agreement to uplift the minimum of the teacher main pay scale by 5%. 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 2019/20. The pay process for year 2 has commenced, and this will determine amendments to the STPCD for 2020/21.