

# SL(5)458 – The School Teachers’ Pay and Conditions (Wales) Order 2019

## Background and Purpose

This Order makes provision for the determination of the remuneration of school teachers 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 2019 and guidance on school teachers’ pay and conditions” (“the Document”).

The Order makes retrospective provision, under section 123(3) of the Education Act 2002, to provide that the provisions set out in section 2 of the Document have effect on and after 1 September 2019 notwithstanding that the Order comes into force after that date (article 2).

## Procedure

Negative.

## Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Section 124(3)(a) of the Education Act 2002 says that when an order (such as this Order) refers to a document (such as the Document referred to in this Order) then the **order** must include **provision** about publication of the document.

In this Order, the reference to publication is made in a **footnote**. We do not believe that a statutory requirement to include provision in an order is properly satisfied by including it in a footnote in the order.

## Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Implications arising from exiting the European Union

None.

## Government Response

The technical scrutiny element of the draft report refers to one drafting point – that reference to publication of the School teachers pay and conditions (Wales) document (“the document”) is made in a footnote rather than the main body of the Order and as such the statutory requirement under section 124(3)(a) of the Education Act 2002, that the order must include provision about publication of the document, is not properly satisfied.



This point is noted. We consider that the purpose of that statutory requirement is to ensure that the user of the legislation is clear as to where the document is published. While the reference to publication is in the footnote rather than the main body of the Order, we think there is a reasonable argument that it would still be clear to the user of the legislation where the document is published. However, in the interests of accessibility and legal certainty the Government undertakes to amend the Order at the earliest possible opportunity.

**Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**23 October 2019**

