

**SCOTTISH GOVERNMENT MAIN BARGAINING UNIT**

**PAY SUPPLEMENT GUIDANCE**

## Contents

Section 1 – Introduction	Page 3
Section 2 – Guidance for the Responsible Person	Pages 4 – 6
Section 3 – Payment arrangements and other terms and conditions	Page 7
Section 4 – Equal pay	Page 8
Annex A – Outline Business Case (template)	Pages 9 – 10
Annex B – Checklist	Pages 11 – 12
Annex C – Business Case (template)	Pages 13 – 16
Annex D – Application process for a new pay supplement (flowchart)	Page 17
Annex E – Review process for an existing pay supplement (flowchart)	Page 18

## **Introduction**

1. Pay supplements may be awarded in respect of posts in the Scottish Government Main bargaining unit (SGM) which are affected by recruitment and retention difficulties. The award of pay supplements is at Management discretion and linked directly to the need to recruit and retain staff with the necessary skills to fill posts which are subject to market pressures.

2. The expectation is that most posts will not attract a pay supplement. Payment will, therefore, be made only where there is a clear requirement to recruit and retain individuals with particular skills, knowledge and experience in professional and specialist posts, where the requisite skills, knowledge and experience are core to the post and where problems with recruitment and retention would cause material operational difficulties and put at risk the delivery of key objectives.

3. Pay supplements will normally be considered only where the maximum of the relevant pay range is below the median of the relevant market by at least 5%. The case for the award of a pay supplement must be based on market pressures.

4. It is the responsibility of the relevant Head of Profession/Deputy Director/Agency Chief Executive (the responsible person) to consider, in the first instance, whether payment of a supplement may be an appropriate means of addressing the recruitment and retention difficulties being faced. However, a decision about whether a pay supplement should be paid rests with the Pay Supplement Panel. The Panel is chaired by DG Strategy and External Affairs and will normally have as its members Director, People, the Head of Employee Relations & Reward and any other individual who the chair may wish to invite. The Panel's decision will be informed by a business case and evidence gathered and submitted by the responsible person.

5. It is important that the responsible person reads this guidance and particularly that relating to equal pay set out in Section 4 before considering payment of a supplement.

6. Summary of key points:

- Pay supplements are payable only with strong, supporting, up-to-date evidence.
- Pay supplements are post specific, i.e. individuals do not take the supplement with them on moving to another post (except in some specific circumstances – see Section 3)
- Pay supplements are linked directly to recruitment and retention difficulties associated with market pressures
- Pay supplements will normally only be paid where the maximum of the relevant pay range is below the median of the relevant market by at least 5%
- Individual pay supplements plus any relevant protected allowance may total up to £5,000 or 20% of basic pay if greater
- Pay supplements are temporary payments payable for up to 3 years and subject to regular review

## Guidance for the Responsible Person

### New pay supplements

7. Where recruitment and retention difficulties are being experienced you must, in the first instance, explore all options in consultation with your HR Business Partner or Agency HR team before considering the payment of a supplement.

8. If you conclude that a pay supplement may provide the answer you should prepare an outline business case setting out the key factors which have led you to conclude that a pay supplement should be paid and submit it to the HR Reward Team. The HR Reward Team will forward your outline business case to the Council of Scottish Government Unions (CSGU) and invite their comments. HR Reward will also convene the Pay Supplement Panel.

9. Your **outline** business case should be completed using the pro-forma at **Annex A**, be no longer than a single sheet of A4, and provide brief details of:

- How many posts are involved;
- Details of the skills, qualifications, knowledge and experience required;
- An explanation of the recruitment/retention difficulties;
- The risks involved in not paying a supplement;
- Evidence of a market rate for equivalent posts out with the Scottish Government: and
- The amount of supplement proposed.

10. Based on your outline business case and taking account of any comments received from the CSGU, the Pay Supplement Panel will consider whether there is a prima facie case for the award of a pay supplement. You may be invited to discuss your conclusions with the Panel. If the Panel concludes that there is such a case you should then prepare a full business case for submission to, and consideration by, the Pay Supplement Panel.

11. In preparing a full business case to put to the Pay Supplement Panel you must gather relevant information and evidence to support the payment of a supplement. In gathering the evidence you may find it helpful to use the checklist at **Annex B**.

12. In the event of an equal pay challenge the information and evidence contained in the business case will be critical in helping to mount a defence.

13. The business case should be completed using the pro-forma at **Annex C** and prepared in consultation with your HR Business Partner.

14. The information within the business case should cover:

- Recruitment – a description of the nature of the recruitment difficulties being experienced. The results of recruitment exercises which have been held to fill the relevant post(s) – applicable only if you are tackling recruitment problems.

## Section 2 – Guidance

- Retention – evidence of retention difficulties, in particular the number of staff who have left the Scottish Government for comparable jobs elsewhere at a better salary/employment package – applicable only if you are tackling retention problems.
- Risk to business – a description of the consequences of not being able to attract or retain staff with the necessary skills and experience, e.g. material operational difficulties and/or a risk to the delivery of key objectives;
- Market evidence (external) – up to date evidence about the pay and terms and conditions for comparable jobs in the external labour market. Market evidence should focus primarily on Scotland but can extend beyond the border if the relevant job market is UK-wide.
- Market evidence (public) – up to date evidence about the pay and terms and conditions for comparable jobs elsewhere in the Scottish Administration, e.g. Scottish Prison Service, Registers of Scotland, Scottish Court Service etc., NDPBs, and other Government Departments (particularly those located in Scotland), and local authorities.
- Reward and overall employment package evidence – up to date evidence from the HayGroup Reward benchmarking report. The HayGroup Reward benchmarking report (available from HR Reward) will be used as the starting point to inform decisions about pay supplements. Where this does not include sufficient information to support decisions about a particular specialism, or where there are factors not covered by the report, the Pay Supplement Panel, in consultation with the responsible person, will agree any additional data sources and contextual information to be used.
- Posts – set out the eligibility criteria which will apply to the award of pay supplements, the number of posts which will attract a pay supplement, the value and duration of the proposed supplement.
- Equal Pay – provide an assurance that so far as possible any possible equal pay issues have been considered.

15. If there are posts in scope of the award of a pay supplement which are out with your direct command you should consult the relevant budget holder with the aim of agreeing a consistent approach. In order to preserve the integrity of the Scottish Government Main bargaining unit and to avoid potential equal pay challenges it is not possible to pay a supplement to staff working in one area of the Scottish Government and to deny a supplement of the same value to staff working in another area who have the same skills and are undertaking like work. In the event that you and the relevant budget holder disagree about the need to pay a supplement and you cannot resolve this disagreement, you should advise your HR Business Partner. A meeting of all parties (including the relevant trade union(s)), will then be arranged and a consistent approach agreed.

16. Once you have prepared the business case you should forward it to the CSGU who will complete their section of the pro-forma. After the CSGU has returned the pro-forma to you, you should then forward it on to HR Reward who will convene the Pay Supplement Panel as soon as possible. You may be invited to attend the Pay Supplement Panel.

17. After considering your business case the Pay Supplement Panel will advise you of their conclusions in writing. Where it is agreed that a pay supplement should

be paid you will be required to notify HR Reward of the names of staff occupying posts which attract a pay supplement along with their employee number, amount of supplement they are to receive and the review date which will apply. HR Reward will arrange payments and notify individuals of the terms of the supplement.

18. It is important to note that you must make arrangements to hold securely all of the evidence and papers gathered in support of your application to award pay supplements. These will be needed in the event of an equal pay challenge. Legal advice suggests that the papers should ideally be held indefinitely but not less than 10 years.

### Review of pay supplements.

19. Pay supplements are normally approved for a period of 3 years and are subject to review prior to the end of this approved period. However, it will be open to you to review the supplement at any time in the event of a significant change in market conditions. Regardless, the Pay Supplement Panel will meet annually to take stock of the market conditions which apply to those supplements in payment. The Panel may request that you carry out a review if they are of the view that there has been a significant change in market conditions.

20. You should give staff in receipt of a pay supplement 6 months' notice of a review. In the case of a review being carried out at the 3 year stage, HR Reward will write to you after 30 months reminding you of the need to carry out a review.

21. The review arrangements are similar to the arrangements which apply when considering the need for a new pay supplement. If you are of the view that the evidence suggests that there is a continuing need to pay a supplement then you should submit an outline business case to the Pay Supplement Panel followed by a full business case if the Panel is satisfied with the outline business case.

22. Flowcharts summarising the process for considering a new pay supplement and for reviewing an existing pay supplement are set out at **Annexes D and E** respectively.

### Payment arrangements and other terms and conditions

23. Pay supplements plus any protected allowance may total up to a maximum value for any individual of £5,000 or 20% of basic pay if this is greater.
24. Pay supplements are subject to regular review following which they may be increased, decreased, remain at the same level or be withdrawn altogether.
25. Pay supplements are paid monthly, in addition to basic pay and will normally be pensionable. However, in certain circumstances, for example where a supplement is to be paid for a short time only, a non-pensionable supplement may be paid. The Trade Unions will be consulted prior to the payment of a non-pensionable supplement.
26. Pay supplements do not reckon for overtime or starting pay on promotion.
27. Where staff in receipt of a pay supplement move voluntarily out of a qualifying post (this includes a move on promotion) to a non-qualifying post then payment of the supplement will cease immediately. The exception to this is where an individual moves to a trade union full-time facility time post. In such a circumstance the individual will retain the pay supplement only for so long as they occupy the full-time facility time post and the supplement continues to be paid in the functional specialism.
28. Where an individual is asked to move from a qualifying post the pay supplement will cease 6 months from the date of the move or from the agreed pay supplement review date, whichever is earlier.
29. Where an individual is subject to the redeployment procedures and ceases to be employed in a qualifying post, the pay supplement will cease 6 months from the date of move.
30. Where the move is as a result of a planned career move approved by the appropriate Head of Division/Head of Profession, mark-time payment arrangements will apply, i.e. the total of the basic salary plus pay supplement will mark-time until it is overtaken by pay increases applied to the basic salary. In these circumstances the planned career move would be from a post that attracts a pay supplement to one that does not. There must be a clear intention set out in writing that the individual will return to the qualifying area within a specified period of time.
31. If the move to a non-qualifying post follows a performance improvement programme or disciplinary procedures, the pay supplement will be withdrawn immediately.
32. Following a review, if the supplement is to be withdrawn completely staff will be given 12 months' notice, i.e. after 12 months the pay supplement will no longer be paid
33. Following a review, if the supplement is to be decreased, staff will be given 6 months' notice, i.e. after 6 months the reduced payment will come into effect.

### Equal Pay

34. In order to protect the Scottish Government against equal pay claims it is important that there is robust and up to date evidence to support any pay supplements in payment.

35. The Equal Pay Act gives men and women the right to equal pay for equal work (including work of equal value). Equal pay claims are considered by an Employment Tribunal. In SGM, posts which fall within the same pay range are deemed to be of equal value. For example, a female B1 administrator in one area could therefore claim equal pay with a male B1 professional in another area.

36. An employer can only pay a man more than a woman (or vice versa) for doing equal work where there is a genuine and material reason for doing so that is unrelated to sex. In the case of pay supplements, the difference in remuneration levels have to be justified by demonstrating that ‘market forces’ have created a need to pay an individual or one group of staff more than others to recruit staff to or retain staff in that post. **An Employment Tribunal would, however, expect such an argument to be supported by hard evidence which demonstrates the state of the market during the period the pay supplement was being paid. You are therefore encouraged to make periodic checks of the relevant market during the period which the pay supplement is paid. An Employment Tribunal will not accept anecdotal or unsubstantiated evidence.**

37. Paying supplements to recruit or retain staff may serve to undermine the principles of equal pay (because it may perpetuate any inherent discrimination in the labour market). Therefore Employment Tribunals tend to adopt a critical approach to such cases. You must, therefore, provide robust evidence in support of such a practice. **In the event of an equal pay challenge you may be required to appear at an Employment Tribunal to defend your case for awarding pay supplements to your staff.**

38. **The consequences of losing an equal pay challenge are considerable.** In addition to the negative publicity which such a case would attract there are significant cost implications. An individual who succeeds in a claim for equal pay is entitled to equalisation of their terms and conditions and compensation consisting of arrears of pay (up to a maximum of 5 years). **Furthermore, losing an equal pay case could impact on the pay of other staff in the same pay range throughout the whole of SGM.**

39. The Scottish Government’s published Equal Pay Policy Statement commits the Scottish Government to operating a pay and reward system which is transparent, based on objective criteria and free from bias:

40. In support of this commitment it is a requirement that those involved in making decisions about pay and benefits are provided with training and guidance. You should discuss with your HR-Business Partner the requirement for you to undertake equal pay training.



## Restricted Management (when complete)

### Annex A – Outline Business Case

#### Request for new Pay Supplement

Pay supplements will be paid only where there is a clear requirement to recruit and retain individuals with particular skills, knowledge and experience in professional and specialist posts, where the requisite skills, knowledge and experience are core to the post and where problems with recruitment and retention would cause material operational difficulties and put at risk the delivery of key objectives.

**Summary Application** (prepare an outline business case setting out the key factors which have led you to conclude that a pay supplement should be paid) – see [Notes](#).

Summary information should be no longer than a single sheet of A4

**Restricted Management (when complete)**

**Annex A – Outline Business Case**

Con't



**Head of Profession/Director/Agency Chief Executive**

Signed:

Date:

Contact Details:

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Notes on summary application – please provide information on the following:

- How many posts are involved
- Details of the skills, qualifications, knowledge and experience required
- An explanation of the recruitment/retention difficulties
- The risks involved in not paying a supplement
- Evidence of a market rate for equivalent posts out with the SG (and that SG rates are below the market median by at least 5%)
- How much by way of pay supplement is proposed

## CHECKLIST

41. The following checklist may be used as an aid in ensuring that all relevant and up to date information/evidence has been gathered for inclusion in the business case for a pay supplement.

### Recruitment

- How many recruitment exercises have been undertaken in an attempt to fill the post(s)?
- How long have the post(s) been vacant?
- How much interest did the advertisement attract and how many post(s) were to be filled?
- From what sectors were applicants attracted?
- What standard of applicant did the advert attract?
- How many candidates were interviewed?
- How many candidates received pass marks?
- Did any candidates receive a starting salary above the pay range minimum?
- How many candidates could have done the job (a) immediately and (b) with appropriate training?
- Did any candidates reject the offer of a job? If so, why?
- Were all the vacant post(s) filled?
- Was all information on the SGM total employment package properly explained to candidates (e.g. pension, annual leave, public holidays, flexi leave, flexible working etc.)?
- If the recruitment campaign was not successful, what alternatives have been considered (different advertising strategy, internal training scheme, etc.)?

### Retention

- What are the business area's staff turnover rates?
- How do they compare with the Scottish Government generally?
- How do they compare with comparable external market turnover rates?
- Why did staff leave – was salary & terms and conditions a major issue?
- Does the business area have a formal exit interview process?
- Have they gone to work for another employer in a similar job?
- Are any other members of staff actively considering alternative employment – if so why?
- Have any staff left for external jobs but returned to work in the SG after a period of time?

### Market comparisons, pressures and rates of pay

Has up to date and relevant information/market evidence been obtained from?

- Other Agencies etc. within the Scottish Administration?
- NDPBs?

## Annex B – Checklist

- UK Government Departments based in Scotland?
- UK Government Departments outside London?
- Scottish Local authorities?
- External job market, e.g. benchmarking surveys?
- Are any of the above organisations experiencing similar recruitment/retention problems and are they paying supplements or any other recruitment/retention allowance? If they are not experiencing similar problems, why not?
- Where salary differences appear to exist consideration should be given to whether the rate of pay offered is affected by specific factors, e.g. posts located in 'hot spots' such as SE England are likely to attract higher salaries; where a contributory pension scheme is in operation salaries may be higher to reflect the need to pay contributions etc.
- Information contained in the most recent HayGroup benchmarking report covering the Civil Service (available from HR-Reward)?**
- Is the maximum of the relevant pay range below the median of the relevant market by at least 5%?
- Have comparisons been made with the total employment package, e.g. pension entitlement, annual leave, family friendly policies etc.? A comprehensive list of benefits available to staff in SGM can be found on the Intranet under Benefits

## Restricted Management (when complete)

### Annex C – Business Case

#### APPLICATION FOR NEW/REVIEW OF EXISTING PAY SUPPLEMENT

Pay supplements will only be paid where there is a clear requirement to recruit and retain individuals with particular skills, knowledge and experience in professional and specialist posts, where the requisite skills, knowledge and experience are core to the post and where problems with recruitment and retention would cause material operational difficulties and put at risk the delivery of key objectives.

Before completing this application please read Section 2 of the Pay Supplement Guidance.

#### BUSINESS CASE

##### **Posts** ([see Note 1](#))

complete information after reading relevant note

##### **Recruitment** (where applicable) ([see Note 2](#))

complete information after reading relevant note

##### **Retention** (where applicable) ([see Note 3](#))

complete information after reading relevant note

##### **Risk to business** ([see Note 4](#))

complete information after reading relevant note

##### **Market evidence (external)** ([see Note 5](#))

complete information after reading relevant note

##### **Market evidence (public)** ([see Note 6](#))

complete information after reading relevant note

##### **Reward and overall employment package evidence** ([see Note 7](#))

complete information after reading relevant note

##### **Equal Pay** ([see Note 8](#))

complete information after reading relevant note

##### **Other Information** ([see Note 9](#))

complete information after reading relevant note

## Restricted Management (when complete)

### Annex C – Business Case

#### CONTACT DETAILS – RESPONSIBLE PERSON

Name:  
Position:  
DG/Directorate/Division:  
Telephone:  
Email:

#### ADDITIONAL CONTACT DETAILS

Name:  
Position:  
DG/Directorate/Division:  
Telephone:  
Email:

#### HR BUSINESS PARTNER [\(see Note 10\)](#)

Before a business case can be considered by the Pay Supplement Panel the HR Business Partner must be consulted and include their views within the business case.

HRBP comment

HRBP contact details

#### COUNCIL OF SCOTTISH GOVERNMENT UNIONS (CSGU) [\(see Note 11\)](#)

Before a business case can be considered by the Pay Supplement Panel the CSGU must be consulted and include their views within the business case.

CSGU comment

CSGU contact details

**ONCE COMPLETED THE BUSINESS CASE SHOULD BE SUBMITTED TO THE HR REWARD TEAM.**

## Restricted Management (when complete)

### Annex C – Business Case

#### NOTES FOR COMPLETION OF BUSINESS CASE

**Please delete these notes before your business case is submitted to the HR Reward Team.**

##### **Posts – Note 1**

Set out the eligibility criteria which will apply to the award of pay supplements, the number of posts (pay ranges) which will attract a pay supplement, the value and duration of the proposed supplement. [\(back to text\)](#)

##### **Recruitment (where applicable) – Note 2**

Provide a description of the nature of the recruitment difficulties being experienced. The results of recruitment exercises which have been held to fill the relevant post(s) – applicable only if you are tackling recruitment problems. [\(back to text\)](#)

##### **Retention (where applicable) – Note 3**

Provide evidence of retention difficulties, in particular the number of staff who have left the Scottish Government for comparable jobs elsewhere at a better salary/employment package – applicable only if you are tackling retention problems. [\(back to text\)](#)

##### **Risk to business – Note 4**

Provide a description of the consequences of not being able to attract or retain staff with the necessary skills and experience, e.g. material operational difficulties and/or a risk to the delivery of key objectives. [\(back to text\)](#)

##### **Market evidence (external) – Note 5**

Provide up to date evidence about the pay and terms and conditions for comparable jobs in the external labour market with reference to the HayGroup Reward benchmarking report, or agreed alternative source of evidence if appropriate. Note that pay supplements will normally only be paid where the maximum of the relevant pay range is below the median of the relevant market by at least 5%. Market evidence should focus primarily on Scotland but can extend beyond the border if the relevant job market is UK-wide (or international). [\(back to text\)](#)

##### **Market evidence (public) – Note 6**

Provide up to date evidence about the pay and terms and conditions for comparable jobs elsewhere in the Scottish Administration, e.g. Scottish Prison Service, Registers

## **Restricted Management (when complete)**

### **Annex C – Business Case**

of Scotland, Scottish Court Service etc., NDPBs, and other Government Departments. [\(back to text\)](#)

#### **Reward and overall employment package evidence – Note 7**

Provide up to date evidence from the HayGroup Reward benchmarking report. The HayGroup Reward benchmarking report will be used as the starting point to inform decisions on the award of pay supplements. Where this does not include sufficient information to support decision about a particular specialism, or where there are factors not covered by the report, the Pay Supplement Panel in consultation with the responsible person will agree any additional data sources and contextual information to be used. [\(back to text\)](#)

#### **Equal Pay – Note 8**

Provide an assurance that so far as possible any possible equal pay issues have been considered. [\(back to text\)](#)

#### **Other Information – Note 9**

Give details of any other options explored to address the recruitment/retention difficulties being faced.

Give an assurance of the budgetary implications. Is the increase to SG paybill affordable in the immediate and longer term?

Give information of posts in scope which are out with your direct command. Provide details of discussions with the relevant budget holder. Is the budget holder in agreement with the need for a pay supplement? [\(back to text\)](#)

#### **HR Business Partner – Note 10**

Have you been consulted in the drafting of the business case? Do you agree/disagree with the proposal to pay a supplement? Please give details. [\(back to text\)](#)

#### **Council of Scottish Government Unions – Note 11**

Does the CSGU agree/disagree with the proposal to pay a supplement? Please give full details. [\(back to text\)](#)



## APPLICATION PROCESS FOR A NEW PAY SUPPLEMENT

Where recruitment and retention difficulties are being experienced, the responsible person should explore all options to address these, in consultation with their HR Business Partner, before considering payment of a supplement



The responsible person gathers evidence to form a view about whether there may be a case for paying a supplement. The responsible person may wish to appoint someone within their command to gather the evidence.



If the responsible person concludes that there is a case for paying a supplement they should prepare an outline business case and submit to HR Reward. The outline case will be sent to CSGU for comment and considered by the Pay Supplement Panel.



The Panel will consider whether there is a prima facie case for a supplement. If the Panel is satisfied of this, a full business case should then be prepared by the responsible person.



In preparing the business case the responsible person should take the views of any budget holders who may have staff within scope and who are out with the command of the responsible person. The responsible person should forward the full business case to the Council of Scottish Government Unions (CSGU) for their comments.



The responsible person should submit the business case to HR Reward who will convene the Pay Supplement Panel. The Panel will consider the full business case and make a decision on awarding a pay supplement.



The responsible person will be notified of the outcome of Pay Supplement Panel.



Relevant person notifies HR Reward of individuals to receive payment. HR Reward arranges payment and notifies individuals confirming terms of supplement and review date which will apply.

**REVIEW PROCESS FOR AN EXISTING PAY SUPPLEMENT**

