



Council of Advice
Raad van Advies

To His Excellency the Governor of Sint Maarten
drs. E.B. Holiday
Falcon Drive # 3
Harbour View
Sint Maarten

RvA No. SM/18-14-LB

Subject: Draft National Decree containing general measures laying down rules concerning the remuneration of educational staff (Educational Staff Remuneration National Decree). Your reference number LH-14/0021.

Advice: With reference to your request dated October 2, 2014 for the opinion of the Council of Advice on the abovementioned subject and the discussion thereof at the meeting of the Council on March 17, 2015, and the adoption thereof at the meeting of the Council on March 17, 2015, the Council informs you as follows.

The purpose of the draft is to lay down the remuneration system for educational staff by national decree containing general measures, and to keep that system in line with the salary scales and salary grades adopted in Annex A to the Civil Servants Remuneration Scheme.

The Council endorses the purpose of the legislative proposal, but has some reservations about the possibility of being able to deviate from the requirements for appointment of the educational staff and the determination of the salary.

1. Legal assessment

The requirements for appointment

The Explanatory Memorandum states that educational staff members who do not meet all requirements set may still be appointed based on Article 4 of the draft.

The Council notes that, under the different national ordinances in the field of education, it is not possible to deviate from the requirements for appointment by national decree containing general measures. After all, a national decree ranks below a national ordinance.

SM/18-14-LB



Council of Advice
Raad van Advies

The Council also believes that Article 4 provides no basis for appointing educational staff members who do not meet all requirements set. Article 4 merely stipulates that Article 3 may be deviated from. This Article only deals with the determination of the salary of public sector staff. Therefore, Article 4 only provides for the possibility to determine the salary of the educational staff that does not meet the requirements set in a deviating manner (upon appointment). The Council also notes that Article 35, third paragraph, of the Secondary Education National Ordinance and Article 34, fourth paragraph, of the Secondary Vocational Education National Ordinance already offer the possibility to appoint educational staff members that do not meet all requirements set.¹

2. Policy analytical assessment

The salary

Under Article 3, the salary will be determined upon appointment in accordance with the job evaluation of that job in the educational performance manual or in accordance with the job that is most similar to it. The introduction of the educational performance manual states that schools may only fill jobs listed in the job list of the educational level in question. In view of this, the Council advises to explain in more detail why Article 3 makes it possible to determine the salary in accordance with a job that most closely matches the job for which the person concerned is appointed.

3. Legal-technical assessment

The annex contains comments of an editorial and legal-technical nature. These comments are deemed to form an integral part of this advice.

4. Conclusion

¹ Thus, Article 35, third paragraph, of the Secondary Education National Ordinance stipulates that, in the temporary absence of a teacher, the requirements for appointment may be deviated from as regards the person who replaces him, each time for a maximum period of two years. Under Article 34, fourth paragraph, of the Secondary Vocational Education National Ordinance, the requirements for appointment may be deviated from as regards a teacher for a period not exceeding two years, or for a period exceeding two years, if it was agreed in writing, upon employment, how the requirements for appointment will be met within that period.

SM/18-14-LB



Council of Advice
Raad van Advies

In conclusion, the Council asks the Government to adopt the draft National Decree, containing general measures after attention has been given to the observations of the Council.

3

Thus adopted at the meeting of the Council of March 17, 2015.

The Secretary

[was signed:]

Mr. *mr.* A.G. Baly

The Vice-Chair

[was signed:]

Ms. *mr. drs.* M.C.C. Brooks-Salmon

SM/18-14-LB

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ANNEX to the advice of March 17, 2015, RvA No. SM/18-14-LB

4

Comments of an editorial and legal-technical nature

The draft and the Explanatory Memorandum contain a number of editorial and legal-technical imperfections. The Council gives the following non-exhaustive examples.

- a. Article 1 of the draft refers to the competent authority in Article 4, second paragraph, subparagraph b, of the Substantive Civil Servants Law National Ordinance. Article 4 has no second paragraph, however. Reference should be made to Article 4, subparagraph b, of the Substantive Civil Servants Law National Ordinance.
- b. The following is printed on the performance manual: Annex 1 to Article 2, paragraph 2, National Decree containing general measures laying down rules for the remuneration of educational staff. The Council notes that reference is incorrectly made to the second paragraph instead of the first paragraph of Article 2. The Council also advises to change or remove the date on the performance manual.
- c. The explanatory notes to Article 8 state that the part-time salary is calculated by dividing the number of working hours by 40 and then multiplying by the number of hours worked. The Council advises to replace the phrase “the number of hours worked” by “the full-time monthly salary”, as used in the calculation example.
- d. The Council notes that Article 3, second paragraph, only applies to the teaching staff and not to the other staff. The Council asks the Government to consider clarifying this in the draft.

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