EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL TEACHERS' PAY AND CONDITIONS) (NO. 2) ORDER 2004 No.2142

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Education (School Teachers' Pay and Conditions) (No. 2) Order 2004 ("the Order"), which comes into force on 1st September 2004, makes provision for the remuneration of school teachers and for the other conditions of their employment relating to their professional duties and working time by reference to section 2 of a document known as the "School Teachers' Pay and Conditions Document 2004 and Guidance on School Teachers' Pay and Conditions" ("the Document").

2.2 The Document applies to teachers employed in local authority maintained schools in England and Wales. It replaces the School Teachers' Pay and Conditions Document 2003 from 1 September 2004.

2.2 The Document is laid out in 12 parts and 6 annexes. Part I deals with commencement and interpretation matters. Parts II to VII set out how pay for the various categories of teacher is to be determined. Parts VIII to XII set out conditions of employment for the various categories of teacher that will have effect as terms of their contracts of employment. The annexes set out the performance standards related to particular categories of teacher, the list of clerical and administrative tasks which teachers should not be expected to undertake routinely, and details of further changes to teachers' pay and conditions that will have effect from 1 April 2005 and 1 September 2005, respectively.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department regrets the breach of the 21 day rule in respect of the Order.

3.2 The timetable for this annual Order is always tight. The basis for the Document is the recommendations of the School Teachers' Review Body ("STRB") and changes on subsidiary matters made by the Secretary of State which do not require the involvement of the STRB. The STRB reports annually on matters referred to it by the Secretary of State. The Secretary of State and the national representatives of teachers and teacher employers each have the opportunity to submit evidence and make representations on those matters before the report is finalised.

3.3 Having considered the STRB report, the Secretary of State consults key stakeholders, namely the employers' organisations and teachers' unions , on any changes he proposes to make to the remuneration and conditions of employment of school teachers, whether those changes are the result of the STRB's recommendations

or concern subsidiary matters. There is a final statutory consultation on the draft Order as required by the Education Act 2002.

3.3 This year the report of the STRB was published in two parts. The recommendations in Part 1 were implemented through the Education (School Teachers' Pay and Conditions) Order 200[ ]4 made in March 2004 (now incorporated in the Document). Part 2 of STRB's report was published in March 2004. The consultation on their recommendations and the Secretary of State's response began on 16 March 2004 and ran until 16 April 2004.

3.4 Formal consultation on the draft Document began on 10 June 2004 and ran until 9 July 2004. Informal discussions with members of the Rewards and Incentives Group (set up in January 2004 by the Secretary of State to discuss teachers' pay issues before they are referred to the STRB) regarding issues of detail continued until 29 July 2004.[ ] The Group's members represent most of the key stakeholders, so their input is a useful adjunct to formal consultation. Formal consultation on the draft Order began on 22 July 2004 and ran until 29 July 2004. However the Order could not be made until the Document had been printed by TSO, which did not take place until 13 August 2004.

4. Legislative Background

4.1 The Order is made under section 122 of the Education Act 2002 ("the Act"), which provides the Secretary of State with the power to make provision for the pay of teachers and other conditions of their employment related to professional duties and working time. It makes provision by reference to the Document, under section 124(3) of the Act. In accordance with section 125 of the Act, the Order makes provision about matters that have been referred to the STRB (an independent statutory body established under the School Teachers' Pay and Conditions Act 1991) under section 120(1) of the Act, on which the STRB has reported under section 120(3). Before the Order was made, the Secretary of State carried out a consultation in accordance with section 126 of the Act.

4.2 The Order applies to all school teachers within the meaning of section 122 of the Act in England and Wales. By virtue of section 122(2)(a) of the Act, the pay of school teachers to whom the Order applies is to be determined and paid to them in accordance with the pay scales and other provisions of the Document. By virtue of section 124(3)(b) of the Act, the provisions set out in the Document relating to the conditions of employment have effect as terms of the contracts of employment of school teachers to whom the Order applies.

5. Extent

The Order applies to England and Wales.

6. European Convention on Human Rights

The Minister for School Standards, David Miliband, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the Education (School Teachers' Pay and Conditions) (No. 2) Order 2004 and the School Teachers' Pay and Conditions Document 2004 are compatible with the Convention rights."

7. Policy background

7.1 Teachers' pay and conditions are reviewed annually and the pay scales for the various categories of teacher are updated in line with the annual pay settlements. The new Document incorporates the changes that are consequent on this annual review.

7.2 Although the Document is replaced annually, the STRB's recommendations on teachers' pay are currently subject to a two and a half year settlement, of which school year 2004-5 (the period for which this Document is intended to apply) is the second year.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 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 education authorities and governing bodies.

9. Contact

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