EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL TEACHERS' PAY AND CONDITIONS) (No. 4) ORDER 2005

2005 No. 3479

1. 1.1 This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 The Education (School Teachers' Pay and Conditions) (No. 4) Order 2005, which comes into force on 1 January 2006, makes minor amendments and clarifications to the School Teachers' Pay and Conditions Document 2005 (" the Document"), which was brought into force on 1 September 2005 by The Education (School Teachers' Pay and Conditions) (No. 3) Order 2005.

2.2 The Document applies to teachers employed in local authority maintained schools in England and Wales. It is updated annually in September and from time to time by order in the year.

2.3 The amendments relate mainly to the safeguarding provisions and in particular, to those who are on fixed-term contracts or whose permanent contracts are varied for a fixed period. Safeguarding protects teachers who would otherwise be subject to loss of salary, in accordance with certain set principles. The amendments do not change policy, but clarify the safeguarding position for teachers in such circumstances. The order also clarifies the meaning of the word 'temporary' in respect of teachers who are awarded Teaching and Learning Responsibility payments (TLRs) from 1 January 2006.

2.4 The position of teachers in receipt of management allowances who begin general safeguarding arrangements before 1 January 2006, and who are awarded a TLR, is brought into line with that of all other teachers. The order also makes necessary minor corrections.

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 main reason for the failure to meet the 21 day rule is the complexity of the issues relating to safeguarding and the need to ensure consistency both within the amending order itself and across the pay document. The need for the amending order despite previous statutory consultations reflects the difficulty in getting the detail right.

3.3 The coming into force date cannot be delayed because the amendments to the Document relate to existing pay provisions which have effect from 1 January 2006,

therefore the amendments are needed to synchronise with this.

4. Legislative Background

4.1 The Education (School Teachers' Pay and Conditions) (No. 4) Order 2005 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. The Order comes into force on 1 January 2006. The Order makes provision by reference to the Document, under section 124(3) of the Act. It makes provision about matters determined by the Secretary of State in accordance with her subsidiary powers under section 125(3). Before the Order was made, the Secretary of State carried out a consultation on the Order and the Document in accordance with section 126 of the Act.

4.2 The statutory consultation on the pay order ran from 17 November – 1 December. It resulted in four responses, all from teacher associations. Minor corrections were noted as a result of points raised.

4.3 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

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 Amendments to the Document are the result of a statutory process that requires first of all a formal reference of matters concerning the remuneration or other conditions of employment of school teachers to the School Teachers' Review Body (an independent statutory body established under the School Teachers' Pay and Conditions Act 1991) which then reports on those matters. 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. The Secretary of State considers the report and publishes it. The Secretary of State determines how and to what extent the recommendations in the report should be implemented, and then conducts a statutory consultation on the draft Order before it is made. Orders may also be made by the Secretary of State using her subsidiary powers.

7.3 In tandem with the formal consultation process, the Department conducts an on-going informal dialogue with representatives of the main stakeholders (teachers'

unions and employers' organisations), so that the changes represent a shared agenda for reform.

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 order has an impact on the public sector in that it makes changes to the pay and conditions of teachers employed by local education authorities and governing bodies. The changes will have a negligible impact on school budgets.

9. Contact

Helen Walker at the Department for Education and Skills (tel: 0207 925 6141; e-mail helen.walker@dfes.gsi.gov.uk can answer any queries regarding the instrument.