EXPLANATORY MEMORANDUM TO

THE SCHOOL TEACHERS' PAY AND CONDITIONS (ENGLAND) (CORONAVIRUS) (AMENDMENT) ORDER 2021

2021 No. 806

1. Introduction

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

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

2. Purpose of the instrument

2.1 The School Teachers' Pay and Conditions (England) Order 2020 makes provision for the remuneration and conditions of employment of certain school teachers to be determined by reference to the provisions set out in section 2 of the "School Teachers' Pay and Conditions Document 2020 and Guidance on School Teachers' Pay and Conditions ("the Document"). The provisions of the Document set out the number of days on which a teacher must be available for certain duties. This Order modifies the Document to reduce by one the number of days a teacher must be available to teach pupils and perform other duties in the academic year 2020/21, and allows one extra day on which a teacher must be available to teach and perform other duties or must be available to only perform other duties ("the Modification").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Modification to the provisions of the Document will have effect retrospectively from 1st September 2020.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 This Order is made under section 122(1) of the Education Act 2002 ("the Act"), which provides the Secretary of State with the power to make provision for the remuneration of school teachers in England as defined in section 122(3) to (6) of the Act and other conditions of employment related to their professional duties and working time. By virtue of section 122(2)(b) of the Act, the provisions of the Document which relate to conditions of employment other than remuneration have effect as terms of their contracts of employment.

6.2 Section 123 of the Act makes provision about the scope of orders under section 122 including permitting such an order to confer a discretion on a local authority or governing body and permitting such an order to make retrospective provision. Section 124 makes supplemental provision about orders under section 122 including permitting an order under section 122(1).

6.3 Section 125 requires the referral of matters included in orders under section 122 to the School Teachers' Review Body other than where the conditions in section 125(2) of the Act are met. This Order makes provision in respect of which the Chair of the School Teachers' Review Body (STRB) has been consulted about disapplying section 125(1) of the Act as permitted by section 125(2)(b).

6.4 In accordance with section 126 of the Act the Secretary of State has consulted such of the persons and bodies referred to in that section as appeared to the Secretary of State to be appropriate.

7. Policy background

7.1 In December 2020 the Secretary of State for Education announced that schools could take an additional optional in-service training (inset) day on 4 January 2021 to prepare for mass testing of pupils for coronavirus (COVID-19) on their return to school after the Christmas holiday.

7.2 The Document sets out the number of teaching sessions and the number of inset days that teachers are required to be available to work. Usually, a school year consists of 190 teaching days and 5 inset days. In order to allow schools the option to provide this extra inset day without breach of the contractual terms imposed by the Document, an amendment to the 2020 Order modifying the application of the Document is necessary.

7.3 The Education (School Day and School Year) (England) Regulations 1999 require schools maintained by local authorities and special schools not maintained by local authorities to meet for at least 380 sessions every academic year. Those regulations have also been amended to provide for this inset day. The effect of The Education (School Day and School Year) (England) (Coronavirus) (Amendment) Regulations 2021 is that up to two sessions in the academic year 2020/21 can be counted towards the minimum number of sessions held during that year even if they are devoted wholly or mainly to the training of teachers rather than the teaching of pupils.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no intention to consolidate the legislation since this instrument makes a single amendment to the 2020 Order.

10. Consultation outcome

10.1 By correspondence with the chair of the STRB, the Secretary of State sought the views of the STRB on the proposed amendment to the 2020 Order and the chair confirmed that the STRB had no objection.

10.2 A focused consultation has also been undertaken in relation to the proposed amendment to the 2020 Order with a number of bodies listed in section 126 of the Act. The consultation prompted a discussion with four consultees (NAHT, ASCL, NEU and NASUWT) in which it was made clear to them that the effect of the Modification will be that the additional inset day is optional for schools. The four consultees were content with this explanation and approach.

11. Guidance

11.1 The Department does not intend to issue any guidance.

11.2 The Modification will be published on the Department's website alongside the Document - School teachers' pay and conditions document 2020 and guidance on school teachers' pay and conditions - September 2020 (publishing.service.gov.uk) .

12. Impact

12.1 The impact on the public sector relates to maintained schools in England and Wales to the extent that it makes changes to the conditions of teachers employed by local authorities and governing bodies.

12.2 There is no, or no significant, impact on business, charities or voluntary bodies.

12.3 There is no, or no significant, impact on the public sector.

12.4 An Impact Assessment has not been prepared for this instrument because its impact is minimal. This is because no impact upon the private or voluntary sectors is foreseen.

12.5 Any impact upon parents should have been minimised by the notice that schools or local authorities gave them about local arrangements.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There will be no formal monitoring or review as the Department does not gather data on the number of days teachers are required to work or the number of hours a teacher may be required to perform their duties.

15. Contact

15.1 Dominic Mahon (07469 031780) e-mail dominic.mahon@education.gov.uk), at the Department for Education.

15.2 Kate Copley, Deputy Director for Teacher Reward and Incentives Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for School Standards, Nick Gibb, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.