EXPLANATORY MEMORANDUM TO

THE SCHOOL TEACHERS' PAY AND CONDITIONS (ENGLAND) ORDER 2019

2019 No. 1267

1. Introduction

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

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

2. Purpose of the instrument

2.1 The School Teachers' Pay and Conditions (England) Order 2019 ("the Order") , makes provision for the remuneration and conditions of employment of school teachers to be determined by reference to the provisions set out in section 2 of the "School Teachers' Pay and Conditions Document 2019 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2019.

2.2 The Document applies to teachers employed in local authority maintained schools in England. Previous Documents have applied to teachers in England and Wales. However, from 30th September 2018, the Welsh Ministers, rather than the Secretary of State, have had devolved competence to make provision for teachers in Wales. Teachers' pay and conditions are reviewed annually; this year's Order and Document will only apply to teachers in England. Section 2 of the Document reproduces the text in section 2 of the previous Document but with a number of changes. These changes cover primarily the application of the September 2019 pay award to teachers together with removal of references and material relating to Wales where appropriate.

2.3 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the 2018 Order and other relevant information about the Document. Section 2 of the Document is laid out in seven parts and two annexes. Parts 2 to 6 set out how pay and allowances for the various categories of teacher are to be determined. Part 7 sets out conditions of employment for the various categories of teacher that will have effect as terms of their contracts of employment. The Annexes to section 2 of the Document set out the performance standards for teachers and interpretation matters. Section 3 of the Document is statutory guidance to accompany the provisions in section 2 and replaces the previous section 3.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The provisions of the Document will have effect retrospectively from 1st September 2019.

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 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 Content

What is being done and why?

6.1 The 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 teachers and other conditions of employment related to their professional duties and working time. The Order makes provision by reference to the provisions of the Document under section 124(3) of the Act. In accordance with section 125(1) of the Act, the Order makes provision about matters that have been referred to the School Teachers' Review Body (STRB) under section 120(1) of the Act, on which the STRB has reported under section 120(3).

6.2 The Order applies to all school teachers as defined in section 122(3) to (6) of the Act in England. By virtue of section 122(2)(a), their remuneration is to be determined and paid in accordance with the pay ranges and other provisions of the Document. By virtue of section 122(2)(b), the provisions of the Document which relate to conditions of employment other than remuneration have effect as terms of their contracts of employment. The Order revokes the 2018 Order to the extent that it applies in relation to school teachers in England. The 2018 Order will continue to apply to Wales until it is revoked by the Welsh Ministers to the extent that it applies in relation to school teachers in Wales when the Welsh Ministers make their own instrument.

7. Policy background

What is being done and why?

7.1 This Order is made annually and serves to introduce new pay and allowance ranges in the national pay framework for school teachers in maintained schools in England. Non-maintained schools, including Academies and Free Schools, have the freedom and flexibility to adopt pay and conditions arrangements for their teachers which best reflect their local circumstances. However, many of these continue to follow the Document.

7.2 The Secretary of State's functions regarding the determination of teachers' pay and conditions in Wales were transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) Order 2018 (SI 2018/644) and the relevant provisions of that Order came into force on 30th September 2018. The Welsh Ministers will be making

their own separate 2019 Order shortly which will cover teachers in Wales. The 2018 Order continues to apply in relation to Wales until it is revoked by the Welsh Ministers.

7.3 The provisions in section 2 of the Document that differ substantively from those in section 2 of the previous Document are the result of a statutory process and the devolution of competence to Welsh Ministers already referred to. The first stage of this process requires a formal reference of matters concerning the remuneration and/or other conditions of employment of school teachers to be made to the STRB, 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 STRB's 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.

7.4 On 21st November 2018, the Secretary of State asked the STRB, to consider application of the 2019 pay award for teachers, within the context of the pay award focusing on the Government's flexible approach to public sector pay and teacher recruitment and retention challenges. The STRB were asked to consider 'how the pay award can best utilise the flexibility within the Government's pay policy to address areas of skill shortage, while remaining within the bounds of affordability across the school system as a whole. In particular, you will want to consider how the pay award can best encourage high quality entrants to join the profession and support their progression within the workforce.'

7.5 Section 121 of the Act requires the STRB to consult various representative bodies in addition to the Secretary of State before reporting on a matter referred to them. On 22nd July 2019, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 29th report, and its proposed response to that report.

7.6 Historically, the government has always laid the pay order by 10th August, (with the exception of 2018) to enable the pay award and any other changes to the Document to come into effect from 1st September – the date on which, historically, teachers' pay awards have always come into effect. However, like last year, as it was necessary to consider the teachers' pay award in the context of the wider public sector pay process and awards and provide a meaningful (8 week) consultation with schools and consultees, the pay order will come into force on 11th October 2019 and its provisions will have effect retrospectively from 1st September 2019. These are the same principles that were in place for the 2018 pay award.

7.7 The STRB has recommended a 2.75% uplift to the minima and maxima of all pay ranges and allowances in the national pay framework. The rationale underpinning the STRB's uniform recommendations were concerns that maintaining teacher supply is becoming more difficult and deteriorations in recruitment and retention; analysis shows that teachers' salaries lag behind the graduate labour market and other professions; and given the autonomy available to schools in the pay system, affordability of recommendations could only be assessed at an individual school level.

7.8 The government's view was that it was imperative to increase the competitiveness of the pay framework in the wider graduate and labour market and support schools to help attract and retain good teachers and leaders. The Secretary of State has therefore

accepted the STRB's recommendation in full for a 2.75% uplift to the minima and maxima of all pay ranges and allowances. The flexible performance-based pay system will provide schools with the option to give teachers and leaders a higher pay rise where appropriate to their local context and budget.

7.9 As this pay award is more than the 2% the Department assessed as affordable in its evidence to the STRB, it has invested a further £105 million into the existing Teachers' Pay Grant this financial year. This is on top of the £321 million funding that schools are already receiving through the Teachers' Pay Grant in 2019-20.

7.10 The Document has therefore been revised to include the new pay and allowance ranges. The revised document will have effect from 1st September 2019. It should be noted that the recent funding announcement for higher pay for teachers from 2020 is an entirely separate matter and will be dealt with through a future remit to the STRB.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The issue of consolidation is not relevant because this instrument is a stand-alone annual order.

10. Consultation outcome

10.1 The STRB's 29th Report and recommendations were published on 22nd July 2019. Taking account of the recommendations the Document was revised in draft.

10.2 On 22nd July 2019, the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's 29th report and the revised draft Document during an eight week statutory consultation process which ran from 22nd July to 13th September 2019. During this consultation period consultees were also invited to meet officials from the Department for Education to discuss the STRB recommendations and the government's response. The NEU – National Education Union accepted this invitation and met officials in August 2019.

10.3 Following the consultation the Secretary of State considered consultees' comments and the Minister will confirm the government's response in a letter to the Chair of the STRB.

10.4 Of the eight (excluding the Department) consultees to the process, seven responded, either individually or through a joint response.

10.5 As in previous years, the Association of School and College Leaders (ASCL), the National Association of Head Teachers (NAHT), NEU and Voice produced a joint response, as well as sending in individual responses that largely reiterated the same messages as in the joint response.

10.6 The key messages in the joint submission were that they considered the 2.75% pay award as below the current rates of inflation and average earnings in the wider economy and will not, therefore, improve the position of teacher pay at all relative to inflation or earnings elsewhere. They were also of the view that the level of the additional pay grant funding will mean schools may be required to "make significant

cuts to spending from other areas of their already overstretched budgets." They reiterated their call for Government to reject the STRB recommendations and impose a 5% pay award for all teachers. The unions were also critical of the time taken to publish the STRB report and that the subsequent consultation ran largely over the school holiday period.

10.7 In addition to their comments in the joint union submission, which were reiterated and expanded upon in their individual response, NAHT highlighted what they consider to be large real-time losses to leaders' pay since 2010. They also urge the STRB to press for the resources and capacity to undertake a full review of teacher and leadership pay structures concurrently. ASCL made very similar comments in their individual response but focussed in more detail on the difficulties that schools will face in funding the pay award.

10.8 The response from the National Employers Organisation for School Teachers (NEOST) covered very similar ground to that of the unions. While NEOST welcome the decision to fully implement the STRB recommendations, they are disappointed that the pay award is not being fully funded from September 2019 with new money. They also requested that they should be consulted about the funding formula/mechanism ahead of any announcements relating to the final 2019 pay award and that confirmation must be given of the intention and mechanism to provide ongoing funding of the pay increases related to September 2018, post March 2020.

10.9 The NEU's individual response focussed on their belief that the 2.75% uplift should be given to all teachers, regardless of performance and that the previous system of pay scales with incremental points should be restored.

10.10 The National Association of Schoolmasters Union of Woman Teachers (NASUWT), who were not part of the joint union response, were critical of the delay in publishing the STRB report and the consultation over the school holiday period. They argue that the pay uplift should be awarded to all teachers automatically and that the pay grant should be ring-fenced in schools and used solely for the purpose of meeting the costs of the pay award. NASUWT also argue that the Department has failed to undertake an adequate assessment of the equalities impact of the pay award.

10.11 Voice argue that the pay award should be higher, given the levels of the 2018 pay award and that funding levels in schools are inadequate to meet the costs. They call for the STRB to carry out a review of the national pay framework in its next remit.

10.12 The National Governors Association (NGA), while welcoming the pay award as being above the current rate of inflation and not targeted, argue that the pay grant will not cover schools costs. They also call for the STRB to consider how pay flexibilities are used in the context of setting leaders' pay and call for greater clarity and assistance for governing boards when making these kinds of decisions.

10.13 Having made a thorough assessment of the equality impacts of the STRB recommendations prior to the consultation and having carefully considered the consultation responses and given due consideration to the Public Sector Equality Duty (PSED) under section 149(1) Equality Act 2010, the Government's assessment is that the consultation responses do not undermine the reasons given for the proposed pay award announced on the 22nd July. In particular, as set out in the Written Ministerial Statement of 22nd July, the government's proposed approach to the pay award was based on the need to ensure the affordability of pay award to public finances and across the whole school system. The government's view was that accepting the

STRB's recommendations in full was affordable. A key objective for the government is getting debt falling as a share of our economy, while investing in our public services and keeping taxes low, and around a quarter of all public spending is spent on pay. Therefore, the affordability of pay awards is critical to ensuring the government can meet its objectives and ensure that public services remain affordable for the future. In this context, the only way to ensure the affordability of the pay award to the public purse, is through accepting the uplifts to the pay ranges recommended by the STRB, rather than accepting the considerably higher pay uplifts called for by a number of the statutory stakeholders.

10.14 The government noted consultees' concerns about the need for further details on the proposed teachers' pay grant, and will be providing further details on the methodology and rates for the Teachers' Pay Grant alongside confirming the pay award and publishing the revised STPCD.

10.15 The government noted consultees' comments concerning the timing of the announcement and publication of the STRB report. As noted above, this was a result of the need to consider individual departmental pay awards within the context of the wider public sector pay policy. DfE officials are continuing to work with HMT to ensure the timetable next year allows for earlier publication of the response.

11. Guidance

11.1 Section 3 of the Document contains statutory guidance (in accordance with section 127(1) of the Act) about the procedure to be followed in applying the provisions of the Order.

11.2 In addition, the Department has published revised non-statutory advice on implementing the changes to the Document which are given effect by this Order. This advice was originally published in August 2013 and updated in subsequent years. This guidance is published alongside the Document.

12. Impact

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

12.2 The impact on the public sector is that relating to the budgets of maintained schools in England to the extent that it makes changes to the pay and conditions of teachers employed by local authorities and governing bodies.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 A new Document is prepared each year and any changes identified as necessary during the course of a year will be included in the next iteration of the Document if and when it is brought into force. Feedback is received from schools and local authorities as well as the national representatives of teachers and teacher employers and this is taken into consideration when the statutory process for the next year commences.

15. Contact

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

15.2 Stephen Baker, 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.