**EXPLANATORY MEMORANDUM TO**

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

**2021 No. 1101**

## 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 2021 ("the Order") sets out the remuneration and conditions of employment for certain school teachers as set out in section 2 of the "School Teachers' Pay and Conditions Document 2021 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2021.

2.2 The Document applies to teachers employed in local authority maintained schools in England.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 The Order makes retrospective provision, under section 123(3) of the Education Act 2002, to provide that the provisions in Section 2 of the Document have effect on and after 1st September 2021 notwithstanding that the Order comes into force after that date and this is explained further in paragraph 7.5 below.

## 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 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 certain school teachers and other conditions of employment related to their professional duties and working time.

6.2 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).

6.3 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 School Teachers' Pay and Conditions (England) Order 2020 (S.I. 2020/1020) and the School Teachers' Pay and Conditions (England) (Coronavirus) (Amendment) Order 2021 (S.I. 2021/806) ("the previous Orders").

6.4 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the previous Orders and other relevant information about the Document. 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 1) the application of the September 2021 pay award to unqualified teachers, 2) changes to terms and conditions for a newly qualified teacher in their first or second year of their statutory induction as a consequence to changes to Induction Regulations whereby the statutory induction period will be extended from one to two years with effect from 1 September 2021, 3) a change to enable teachers working additional hours providing tutoring to deliver catch-up support to pupils and address learning disruption during the pandemic to be paid via Teaching and Learning Responsibility payment 3 (TLR3) as the payment mechanism and 4) the changes, for the school year beginning in 2021, to days that a teacher must be available for work and the directed hours that a teacher employed full-time must be available to perform such duties at such times and such places as may be specified by the headteacher as a result of the additional Bank Holiday on Friday 3rd June 2022 to mark the Queen's Platinum Jubilee.

6.5 Section 2 of the Document is laid out in seven parts and three 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 and advisory pay points. Section 3 of the Document is statutory guidance to accompany the provisions in section 2 and replaces the previous section 3.

## 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 for the current academic year. 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, most of these continue to follow the Document.

7.2 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. 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.

7.3 Following the Chancellor of the Exchequer's announcement at the Spending Review in November 2020 that pay rises in the public sector will be restrained and targeted in 2021/22, the Secretary of State asked the STRB their views on uplifts for teachers earning the full time equivalent of basic earnings of less than £24,000. It was outlined that the Department proposes to continue to pay uplifts for these teachers at a value of £250 or the National Living Wage increase, whichever is higher. The remit letter to the STRB advised 'my priority continues to be improving recruitment and retention, ensuring we can attract high-quality recruits to the profession and retain teachers with experience and expertise. Although the pay restraint means that progress towards achieving £30,000 starting salaries will be slower, I am still committed to raising pay for new entrants to make teaching an attractive graduate option'' The remit letter also stated 'It will remain the case that schools will be responsible for determining increases in individual teachers' pay on the basis of a school-level assessment of performance. Pay points introduced this year for the main and upper pay range will also remain advisory in order to provide school leaders and governors with the flexibility to adopt different approaches to pay in their schools.'

7.4 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 21st July 2021, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 31st report, and its proposed response to that report - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005678/STRB_2021_Web_Accessible.pdf

7.5 Until recently, the government has always made and laid the pay order by 10th August to enable the pay award and any other changes to the Document to come into force and have effect from 1st September – the date on which, historically, teachers' pay awards have always come into effect. However, for the previous three years, it has been 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; as a result the pay order will come into force on 22nd October 2021 and its provisions will have effect retrospectively from 1st September 2021.

7.6 The STRB recommended a pay award of £250 for all teachers earning less than £24,000 (FTE), with recommended equivalent values for those in the London pay areas, plus the reintroduction of advisory pay points on the Unqualified Teacher (UQT) pay range.

7.7 Ministers signalled their intent to accept the STRB recommendations, as set out in the Written Ministerial Statement of 21st July. The pause on pay, a policy set out by the Chancellor of the Exchequer whereby only those earning £24,000 or less in the public sector would receive any pay uplift in 2021, applies to headline pay uplifts only, teachers earning below the maximum of their pay range may be eligible for

performance-related pay progression and teachers can also continue to apply for promotion. Academies have the freedom to set their own pay policies. The Government remains committed to increasing the teacher starting salary to £30,000 to make teaching an attractive graduate option. While pay restraint means that progress towards this commitment will be slower, the steps taken in recent years, including the 5.5% uplift to starting pay in September 2020, have already made a substantial difference to the competitiveness of the early career pay offer. The Government will be reassessing the pay policy ahead of the 2022 pay round, taking account of the economic recovery and the impact of the pandemic on the wider labour market.

7.8 As well as revisions to the STPCD resulting from the STRB process, the Government has also introduced the measures mentioned in paragraph 6.4 above.

7.9 The revised Document will come into force on 22nd October 2021, with the effect of its provisions backdated to 1st September 2021.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / 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 31st Report and recommendations were published on 21st July 2021. Taking account of the recommendations the Document was revised in draft.

10.2 On 21st July 2021, the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's 31st report and the revised draft Document during an eight week statutory consultation process which ran from 21st July to 14th September 2021.

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 Seven of the eight consultees to the process responded, either individually or through a joint response. They were: the National Association of Schoolmasters Union of Women Teachers (NASUWT), National Education Union (NEU), Voice, Association of School and College Leaders (ASCL), National Association of Headteachers (NAHT), National Employers Organisation for School Teachers (NEOST) and the British Association of Teachers of the Deaf (BATOD). Only the National Governors Association (NGA) provided no response.

10.5 As in previous years, ASCL, 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 were critical of the Government's "pay freeze" for the majority of teachers and that this has continued a trend in recent years of undermining competitiveness of teacher and leaders pay. They also called for performance related pay to be abolished for a holistic and

evidence-based review of the whole pay structure, that would consider issues such as the need to restore the real and comparative cuts to the value of pay, urgent solutions to the supply problems including reform of the pay structure and effective action on workload and wellbeing.

In addition to their comments in the joint union submission, which were reiterated and expanded upon in their individual response, ASCL complained about the timing of the publication of the STRB report and the launch of the consultation. They welcomed the introduction of advisory spine points for unqualified teachers but also said that spine points should now be extended to include leadership and leading practitioner pay ranges (the only two pay ranges that do not currently have published advisory spine points in the STPCD). The NEU and NAHT urged the DfE to work with unions on developing robust and comprehensive information on the equality issues associated with the pay structure. NAHT called on DfE to undertake a thorough review of leadership pay. NAHT, while welcoming the STRB's approach to the pay award for those teachers earning £24,000 or less, strongly believe that the award should have been fully funded for schools.

10.7 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 and also argued that the DfE's remit and evidence to the STRB effectively amounted to a pay freeze and negated any subsequent consultation responses and evidence gathering by consultees. ASCL and NAHT also separately made this point. NASUWT provided data from a recent survey that shows a very high proportion (92%) of surveyed teachers unhappy with what they refer to as the "pay freeze". They negatively compared the pay award to the more generous awards made in Wales and Scotland and in the FE sector in England. NASUWT also highlighted the STRB's view that the DfE should undertake serious research into the equalities implications of the 2013/14 pay reforms, a point also picked up by NAHT and ASCL.

10.8 The response from NEOST welcomed the introduction of advisory spine points and the consolidated award for unqualified teachers but raised concerns about the impact of the pay pause and agrees with the STRB's conclusion that it is likely to cause significant recruitment and retention difficulties.

10.9 BATOD criticised the "pay freeze" and said it would have a detrimental impact on recruitment and retention.

10.10 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) of the 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 21st July. Taking into account the need to ensure the pay system is best addressing our recruitment and retention challenges and that this year's narrow remit is targeted to prioritise those on low incomes, the proposed changes to the pay system are justified and any differential impacts could not be avoided without undermining these aims. We will continue to monitor and evaluate these changes and their impacts pertaining to equalities.

## 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 Amy Collins, 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, Robin Walker, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.