EXPLANATORY MEMORANDUM TO

THE SCHOOL TEACHERS' PAY AND CONDITIONS (ENGLAND) ORDER 2023

2023 No. 1080

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His 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 2023 ("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 2023 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2023.

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 2023 notwithstanding that the Order comes into force after that date.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Section 125 requires the referral of matters included in orders under section 122 to the STRB other than where the conditions in section 125(2) of the Act are met.

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, where there is a requirement.

6.5 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 (No 2) 2022 and the School Teachers' Pay and Conditions (England) (No. 2) (Amendment) Order 2023.

6.6 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the previous Order and other relevant information about the Document. Section 2 of the Document reproduces the text in Section 2 of the previous Document but with changes relating to the application of the September 2023 pay award the number of days and hours 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.

6.7 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 The 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 On 15 November 2022 the Secretary of State asked the STRB their views on uplifts to the pay and allowances framework for teachers and leaders from September 2023 that took account of the aim to promote recruitment and retention and the Government's commitment to uplift starting salaries to £30,000 and the cost pressures facing both the school system as a whole and individual schools. The remit letter to the STRB also advised that the Secretary of State wished the STRB to consider these uplifts within the context of promoting "recruitment and retention, within the bounds of affordability across the school system as a whole."

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 13th July 2023, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 33rd report, and its proposed response to that report - School Teachers' Review Body 33rd report: 2023 - GOV.UK (www.gov.uk).

7.5 In its 33rd Report, the STRB recommended a 6.5% increase to all pay and allowance ranges and advisory points, with higher increases to some parts of the Main Pay Range to achieve a minimum starting salary of £30,000.

7.6 As set out in the Written Ministerial Statement of 13th July 2023, the Secretary of State accepted the STRB's recommendations in full.

7.7 The revised Document will come into force on 3rd November 2023, with the effect of its provisions backdated to 1st September 2023.

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 33rd Report and recommendations were published on 13th July 2023. Taking account of the recommendations the Document was revised in draft and the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's report. In order to ensure that schools and statutory consultees had sufficient time to consult outside of the school holidays, the consultation period ran for 10 weeks from 13th July to 21st September 2023. This is the longest consultation period that the Government has run for any teachers' pay award process and ensures that schools had at least four weeks of consultation time during normal school term time. Consequently, the Order will come into force on 3rd November 2023 and its provisions will have effect retrospectively from 1st September 2023.

10.2 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.

10.3 Six of the eight (excluding the Department) consultees to the process responded, either individually or through a joint response. Only the National Governance Association (NGA) and the British Association of Teachers of the Blind (BATOD) provided no response. As in previous years, ASCL, NAHT, NASUWT, NEU and Community (previously known as Voice) (which are all headteacher and teaching unions) produced a joint response, as well as individual responses that largely reiterated the same messages.

10.4 The key messages in the joint submission were that the consultees welcome the STRB's recognition that evidence of the longstanding decline of teachers' and school leaders' real and relative terms pay is a key cause of an ongoing supply crisis. They believe that the 2023 pay award should be just a first step in tackling what they see as serious damage done to pay levels since 2010 and that a "major correction in teacher and school leader pay is urgently required". They also complained about the pay award process and particularly that delays in publishing the STRB report mean that pay award implementation cannot happen until October or November. They then go on to provide detailed data on how pay for teachers and leaders has deteriorated since 2010 and how this has contributed to a recruitment and retention crisis. They call on the next remit not to be constrained by funding, and that it should address competitive pay levels, pay portability between schools to support career development, fair pay progression and tackling workload. Additionally, the unions submitted a joint statement on performance related pay (PRP) that states that it should be abolished immediately and replaced with, as a minimum, mandatory pay points.

10.5 In addition to their comments in the joint union submission, which were reiterated and expanded in their individual responses, ASCL, while welcoming the £30k starting salary, believe that it is already uncompetitive due to the delay in implementation, increases to graduate starting salaries and high inflation. They also state that the Government's commitment to fully funding this year's pay award does not work for every school and criticise the school costs document methodology, which is based on assumptions using national averages. They welcomed the Workload Reduction Taskforce and hoped it would make rapid progress.

10.6 NAHT made similar points to ASCL but also criticised the pay award process stating that "government's abuse of the pay process had reached a nadir, a sense further heightened by the 'evidence' submitted by Treasury and DfE that amounted to little more than misinformation". They claim that this meant NAHT's engagement with the STRB process hung in the balance. They also reiterated the point that they remain implacably opposed to salary differentiation by phase, subject, or location and that any such policy is also likely to exacerbate existing pay inequalities. They state that NAHT has provided clear evidence of the gender pay gap, and pressed the DfE to gather, monitor and analyse a full and transparent data set that covers all protected characteristics.

10.7 NASUWT complained that not enough has been done to address workload issues since the last STRB report. They also state that the DfE must implement the abolition of PRP from September 2023.

10.8 The NEU call for Government to help resolve the "huge problems" in education with significant additional investment. They state that there must be stronger focus on the importance of fully transparent pay policies negotiated on and reviewed with teachers and their unions and that DfE should collate and publish robust and comprehensive pay equality data. They also call for the two teacher pay ranges to be reduced to six points, with automatic progression and no artificial barrier to progress such as the current threshold and that part-time teachers should be able to receive the full value of a TLR payment where appropriate. They call for urgent reform and additional investment for teachers taking on additional responsibilities, especially those in special schools or in other posts involving teaching pupils with SEN and expansion of the current salary sacrifice arrangements.

10.9 Community state that the £30k starting salary and this year's pay award will not be enough to resolve the serious recruitment and retention issues in schools. They also say that current Planning Preparation and Assessment time should be doubled and that that clarity is needed on the role of the upper pay scale and TLRs.

10.10 The response from the National Employers Organisation of School Teachers (NEOST) welcomed the decision to fully implement the STRB recommendations and the Government's decision to provide new additional financial support, including an additional 'one off' hardship fund of £40 million - though they do state that as centrally employed teachers and teachers in maintained nurseries are not included in the new Teachers' Pay Additional Grant 2023, this will create a funding gap resulting in further financial pressure on schools. It asks that the Government "continues to provide adequate financial support so that all schools can fully implement the pay award without having to make significant adjustments that are likely to affect the quality of education". NEOST also welcome the establishment of the Workload Reduction Taskforce. In relation to the next remit they call for a review of the Upper Pay Range so that teachers can voluntarily move down to the Main Pay Range and a review of salary safeguarding arrangements and a review of leadership pay. They also say that a more effective consultation process is required that avoids announcements and consultations held almost entirely during the school holidays.

10.11 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 13th July. Taking into account the need to focus on targeting starting and early career salaries with a less steep progression structure, on average, favours female, younger, non-white and disabled teachers, who are disproportionately represented within this group. This positive impact on these protected characteristics groups is significant given the departmental priority of increasing diversity within the teacher workforce. This should also help to address recent reports from the teaching unions detailing concerns over pay inequalities in relation to female and non-white teachers. 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.

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 Schools, Nick Gibb, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.