EXPLANATORY MEMORANDUM TO

THE SCHOOL TEACHERS' PAY AND CONDITIONS (ENGLAND) ORDER 2024

2024 No. 1037

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. Declaration

2.1 Catherine Mckinnell, Minister for School Standards at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Patrick Carey, Director of School Workforce, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Dominic Mahon at Department for Education, at dominic.mahon@education.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The School Teachers' Pay and Conditions (England) Order 2024 ("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 2024 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2024.

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

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 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.

5.2 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 School Teachers' Review Body (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.

5.3 On 20 December 2023 the Secretary of State asked the STRB for their views on the adjustments that should be made to the salary and allowance ranges for classroom teachers, unqualified teachers, and school leaders in 2024/25. The remit letter to the STRB also advised that the Secretary of State wished the STRB to consider these uplifts within the context of "the cost pressures that schools are already facing and may face over the year (and how they affect individual schools)."

5.4 Section 121 of the Education Act 2002 requires the STRB to consult various representative bodies in addition to the Secretary of State before reporting on a matter referred to them. On 29th July 2024, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 34th report, and its proposed response to that report - School Teachers' Review Body 34th report: 2024 - GOV.UK (www.gov.uk)[1]

5.5 In its 34th Report, the STRB recommended a 5.5% increase to all pay and allowance ranges and advisory points.

5.6 As set out in the Written Ministerial Statement[2] of 29th July 2024, the Secretary of State accepted the STRB's recommendations in full. In addition to the STRB report pay recommendations, Ministers also made three proposed additional changes to the Document that: remove the requirement for schools to use performance related pay as the statutory basis for all pay decisions; clarify wording that would enable teachers to take their planning, preparation and assessment time at home if operationally feasible; move the current annex of administrative tasks that should not ordinarily be undertaken by teachers from Section 3 to Section 2. The first two additional changes were expressly referenced in the Written Ministerial Statement.

5.7 In relation to the first additional change detailed above, the Secretary of State consulted the Chair of the STRB about disapplying the requirement for a formal STRB referral, as permitted under Section 125(2) of the Education Act 2002 – the Chair agreed to this process. In relation to the two other additional changes detailed above, the Secretary of State notified the Chair of the STRB of these proposed changes as a matter of courtesy. No formal disapplication of the requirement for an STRB referral was required for these matters as they are "subsidiary" provisions under Section 125(2) and (3) of the Education Act 2002.

[1] https://assets.publishing.service.gov.uk/media/66ab42d5ce1fd0da7b59313b/STRB_34th_Report_2024_Accessible.pdf

[2] https://questions-statements.parliament.uk/written-statements/detail/2024-07-29/hcws35

5.8 The revised Document will come into force on 8th November 2024, with the effect of its provisions backdated to 1st September 2024.

What was the previous policy, how is this different?

5.9 This Order is an annual Statutory Instrument that gives effect every year to the school teachers' annual pay award and any other changes to their statutory terms and conditions as set out in the Document.

6. Legislative and Legal Context

How has the law changed?

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 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 – namely the two matters outlined above in paragraph 5.6 that were not referred to the STRB due to being "subsidiary" (S125(2)(a) and (3) relied on); and the additional matter outlined above in paragraph 5.7 where the Secretary of State consulted the Chair of the STRB in order to disapply S125(1).

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.

6.2 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 School Teachers' Pay and Conditions (England) Order 2023.

6.3 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 2024 pay award and the three additional changes set out in paragraph 5.6 above, relating to performance related pay, planning, preparation and assessment time and the annex of tasks that teachers should not ordinarily be expected to undertake.

6.4 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.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 On 29 July, the Secretary of State issued a Written Ministerial Statement outlining the Government's response to the School Teacher Review Body (STRB) Report and launching a 10-week consultation with statutory consultees on the Report, the Government's response, the revised 2024 draft School Teachers' Pay and Conditions Document (STPCD) and the associated 2024 Pay Order. The consultation closed on 7 October.

7.2 Six of the eight (excluding the Department) consultees to the process responded. Only the National Governance Association (NGA) and the British Association of Teachers of the Blind (BATOD) provided no response.

7.3 The Association of School and College Leaders (ASCL) were critical of delays to the STRB process (particularly around delivery of the Department's written evidence) and believe an appropriate standing timetable should be implemented to govern timings of the process. In that regard, they did warmly welcome the Secretary of State's commitment, to prioritise ensuring that the current pay round works better for schools. They welcomed this year's pay uplift but stated that "increases of this nature must continue n forthcoming years until the real terms value of teacher and leader pay has been restored and salaries become competitive with comparable graduate professions." They also welcomed the additional funding for the pay award but stated that the distribution methodology attached to the additional funding is formulaic, rather than matching actual costs for schools. ASCL were "delighted" to see confirmation from the Secretary of State that the requirement for schools to used Performance Related Pay has been removed from September.

7.4 The National Association of Head Teachers (NAHT) welcome what they describe as the 34th report's strong focus on the need '…to address, in a balanced way, the structural deterioration in the pay of teachers relative to comparable professions and to improve levels of recruitment and retention.' They also welcome the government's swift acceptance of the pay uplift recommendation and the additional £1.2bn core schools budget funding to support schools in delivering the uplift. Going forward they believe that the ambition should be to at least return teachers' and leaders' real terms pay to 2010 levels by the end of this Parliament. They welcome the decision to remove the requirement for schools to use performance related pay from this September but believe government should go further in subsequent years to ensure that all schools are encouraged to realise the full workforce benefits of the removal of performance related pay. In relation to targeting pay, they agree this is controversial and likely to have a negative overall impact unless demonstrably fair and reasonable. Finally they call for a reformed national pay structure with mandatory minimum pay points, and pay portability and a comprehensive review of the factors that determine leadership pay.

7.5 NASUWT (previously known as the National Association of Schoolmasters Union of Women Teachers) welcomes the 34th report and what it calls "its recognition of the

crisis affecting the teaching profession. We further welcome the Review Body's agreement that a coherent national plan is now needed to fix the crisis and to restore the status of the teaching profession". They urge the Government and the pay review body to consider the steps needed to restore competitiveness and to ensure that teaching is "once again the profession of first choice for UK graduates". They welcome the government's acceptance of the pay award recommendations and both the removal of the performance related pay requirement and the change to enable planning, preparation and assessment time to be taken at home. They welcome the Review Body's observation that further analysis is needed with regard to equalities matters. They agree with the Review Body's view that targeting remuneration remains controversial and problematic and that there are other systemic challenges surrounding recruitment and retention in shortage subjects which should be considered as a priority. Finally, they call for further with regard to: career pathways and supporting structures; a strategic and transparent workforce plan for the teaching profession; publication annually of national equality, diversity and inclusion data; agreed guidance on appraisal and pay progression; flexible working and flexibility in remuneration; and an appropriate standing timetable to support the timeliness of the STRB process.

7.6 The National Education Union (NEU) state that reducing workload is essential to improving retention and making the profession more attractive in a competitive labour market. They go on to say that, though there are signs that advancing flexible working in schools is being taken more seriously, a step change is required both nationally and locally. They believe the STRB should recommend further flexible working options for education staff and dispel the negative myths around flexible working in schools. In relation to performance related pay, NEU welcome the decision to implement the removal of the obligation on schools from this September but claim this does not go far enough and call for the removal of performance related pay on a mandatory basis for all schools and academies. They also call on the department to restore mandatory pay points and pay portability for all teachers and school leaders to the STPCD. On targeted pay, they claim that this would not solve the systemic recruitment and retention problems and would create additional problems. They state that proposals to target pay by subject will reduce the overall transparency of the pay structure and will be perceived as unfair by those not eligible for higher pay.

7.7 Like the other consultees, Community were critical of the delays to this year's STRB process. And, while they were also supportive of this year's pay award and the additional funding to support it they were also of the view that "teacher pay has deteriorated in relative terms against economywide earnings and other professional occupations." They welcomed the removal of performance related pay but were "dismayed" that there appeared to have been no consideration of their recommendation to increase planning, preparation and assessment time from 10% to 20%.

7.8 As in previous years, ASCL, NAHT, NASUWT, NEU and Community (previously known as Voice) also produced a joint response, that reiterated the key messages that they each set out in their individual responses. In addition it also set out a number of issues that the unions would like to see reflected in future STRB remits.

7.9 The response from the National Employers Organisation of School Teachers (NEOST) welcomed the decision to fully implement the STRB recommendations for teachers' pay and the decision to provide additional funding to enable schools to

implement the pay award. In relation to the additional funding they state that while they understand that estimating affordability (to ensure all schools can afford to implement the pay award without having to make savings elsewhere) is extremely difficult, "it remains the case that any quoted 'national average' will not reflect the reality of affordability for a significant number of schools". In relation to recruitment and retention, they say it is too early to predict if the proposed pay award will improve recruitment and retention rates at this stage, though they note the calmer industrial relations environment, and on-going commitment to work on additional issues that may form part of the solution to this challenge. NEOST said that the vast majority of their survey respondents welcomed the removal of the requirement to use performance related pay, and that it gave employers flexibility to adopt a performance management model that is most effective for their schools. The majority also welcomed the proposed planning, preparation and assessment time changes in the STPCD. Finally, NEOST welcome the government's publication of the STRB's remit for 2025 on 30 September, earlier than in recent years.

7.10 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 and other changes to the STPCD announced on 29th July.

8. Applicable Guidance

8.1 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.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

9.4 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.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 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 2024 notwithstanding that the Order comes into force after that date.

12. European Convention on Human Rights

12.1 The Minister for School Standards has made the following statement regarding Human Rights:

"In my view the provisions of The School Teachers' Pay and Conditions (England) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").