EXPLANATORY MEMORANDUM TO

THE SCHOOL TEACHERS' PAY AND CONDITIONS ORDER 2015

2015 No. 1582

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

2. Purpose of the instrument

Article 2 of the School Teachers' Pay and Conditions Order 2015 ("the Order"), which comes into force on 1 September 2015, 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 2015 and Guidance on School Teachers' Pay and Conditions" ("the Document").

Section 2 of the Document replaces the provisions set out in section 2 of the School Teachers' Pay and Conditions Document 2014 and Guidance on School Teachers' Pay and Conditions ("the previous Document"). It applies to teachers employed in local authority maintained schools in England and Wales. Teachers' pay and conditions are reviewed at least annually. 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 2015 pay award to teachers.

Section 1 of the Document summarises the changes to pay and conditions and associated guidance since 2014 and other relevant information about the Document. 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 related to particular categories of teacher, and commencement and interpretation matters.

Section 3 of the Document is guidance to accompany the provisions in Section 2 and replaces the previous Section 3.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

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).

The Order applies to all school teachers as defined in section 122(3) to (5) of the Act in England and Wales. 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.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

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.

2015 Pay Award

On 10 September 2014 the Secretary of State asked the STRB to consider application of the 2015 pay award for teachers, within the context of the government's policy that public sector pay awards should average 1%.
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 12 March 2015, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 25th report, and its response to that report. The STRB recommended:

- a 1% uplift should be applied to the statutory minima and maxima of all pay ranges in the national pay framework, including allowances, with two exceptions – a 2% increase to the maximum of the main pay range and no increase to the maxima of the eight headteacher pay group ranges;

- where a classroom teacher/leadership group member is paid on the minimum of their pay range/band, their salary – excluding any allowances – must be uplifted to the new minimum, as appropriate;
- For all other classroom teachers/leadership group members, schools must determine – in accordance with their own pay policy – how to apply the uplift to individual salaries and pay ranges and how to take account of the uplift to the national framework in making individual pay progression decisions.

Following a period of statutory consultation the Secretary of State has accepted these recommendations in full. The Document has therefore been revised to include the new pay and allowance ranges. The revised document will come into effect on 1 September 2015.

8. Consultation

On 12 March 2015, the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's 25th report and the proposed government response. Following the consultation the Secretary of State considered consultees' comments prior to confirming the government's response in a letter to the Chair of the STRB on 6th July 2015.

Individual responses were received from the following groups: ASCL - Association of School and College Leaders, ATL - Association of Teachers and Lecturers, LGA/NEOST - Local Government Association/National Employers' Organisation for School Teachers, NAHT – National Association of Head Teachers, NASUWT - National Association of Schoolmasters Union of Women Teachers, NUT - National Union of Teachers, Voice – the union for education professionals, UCAC - National Association of Teachers of Wales, and the Welsh Government.

For summaries of the consultation responses, please see **Annex A.**

Taking account of the STRB's recommendations and the subsequent views of the statutory consultees, the Document was revised in draft. On the 6th July consultees (listed above) were invited to comment on the revised draft Document.

For summaries of the consultation responses, please see **Annex B.**

9. Guidance

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.

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 was updated in August 2014.

10. Impact

This instrument has no impact on business, charities or voluntary bodies.

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

An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

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.

13. Contact

Dominic Mahon (0207 3408227; e-mail dominic.mahon@education.gsi.gov.uk), or William Thursfield (020 7783 8758) email: william.thursfield@education.gsi.gov.uk) at the Department for Education.

Annex A

Consultation on the School Teachers' Review Body's (STRB) 25th Report: (12th March – 23rd April 2015)
Summary of consultation responses

Note: Department responses to issues raised are in **bold**. We have not provided responses where points raised are rhetorical or where we have already provided a response to a specific point.

Consultee	Main issues raised
ASCL - Association of School and College Leaders	• Call on Govt to ease the pressure on school budgets and to fund a universal uplift to all teachers' pay. **2% uplift to the maximum of the main pay range (MPR):** • Adjustments to salary and allowance ranges should be made to ensure that pay of teachers remains competitive and supports recruitment and retention. Pay awards should remain separate from the pay progression awards and are not linked to performance. • Can already differentiate between high and low performers at the top of the MPR as those who are performing at the appropriate level are able to access the upper pay range (UPR) – so anomalous to also offer an additional level of differentiation at this point in the pay system – **there is a difference between those who might have performed well enough "in-year" to justify the 2% progression and the kind of sustained year on year success needed to justify movement from main pay range to upper pay range.** **Leadership group:** • STRB have not considered the impact of their recommendation on pay progression. Nor have they reflected upon the limited circumstances in which governing bodies are able to review leadership pay using the new pay setting arrangements, which are set out clearly in the STPCD. Concerned about the message this will send out to members of the leadership group in general, as well as to those staff whose pay will be frozen for a third year in four. Although the monetary value is small, the message that it sends is that the contribution that some staff make is not valued. As many of them may be nearing retirement there is a risk they will decide not to continue in the profession, thereby further exacerbating the retention problems in the leadership group – **having reached the top of their pay range should not mean an expectation that it will be increased every year.**

ATL - Association of Teachers and Lecturers	• Essential that teachers receive an annual cost of living increase – disappointed that STRB has left this to discretion of schools to implement. **Affordability**: • Budgets – without fully funded pay increases caution will be exerted that will limit the number of staff receiving the recommended pay award. With no additional funding schools may be forced to reduce staff levels **– evidence from local government suggests that the pay award is fully affordable from existing school budgets.** **1% increase to the maximum of the UPR:** • 2% should be applied to top of the UPR. Need to encourage UPR teachers to remain in the profession. **Reference pay scales:** • Should be reintroduced – reduces the admin burden for schools **– STRB very clear on need to remove reference pay scales as restrictive to flexibility and innovation.**
NAHT- National Association of Heat Teachers	• School budgets shrinking in real terms so difficult to pay cost of living increases as well as competitive salaries. • Best funded schools can attract and retain staff; others fill positions with supply staff for long periods. • Should be national pay and conditions. Oppose recommendation that increases only applied to bottom and maximum of each pay scale and that points in between should no longer be presented by DfE. **2% uplift to the maximum of the MPR:** • Welcome 2% uplift recommendation. However, all teachers need a significant increase. Without fully funding, there will be very little take up of the 2% increase. • Believe 2% should be applied to both parts of the classroom teacher's scale (UPR as well as MPR). **Leadership group:** • Recommendation that leadership groups and scale points do not need to be uplifted because of existing flexibility fails to understand the impact of the new leadership pay arrangements. New arrangements only apply to individuals appointed to a leadership post on or after 1 Sept 2014 or whose responsibilities have significantly changed on or after that date. This means that leaders at the top of their scale in a role that has not been re-evaluated under new arrangements will receive no pay increase in Sept 2015 – **Department believes that the current arrangements provide sufficient flexibility for governing bodies to review leadership salaries in appropriate circumstances.** • See no justification for failing to apply the 1% increase to the maximum of the Headteacher pay scales and school groups. Cost of living increase

	must be applied to all salaries if teachers/leaders are not to see a reduction in their salary in real terms.
NASUWT – National Association of Schoolmasters Union of Women Teachers	• Strong concern that the STRB has recommended the end of the annual cost of living award for teachers. **2% uplift to the maximum of the MPR:** • Recommendation is fundamentally flawed. Uplift is discretionary and therefore does not mean that teachers on the maximum will receive a 2% increase **– STRB were clear that all pay uplifts, except for those on minima of ranges, should be discretionary and based on performance.** **Leadership group:** • Does not support recommendation not to award uplift to the maxima of the leadership and Headteacher group pay ranges. Could compress the group pay ranges which could potentially encourage governing bodies to exceed the maximum for those ranges. **Affordability:** • Concerns re overall costs and affordability for schools. **Reference points:** • Removal of reference points was deeply unhelpful. • Majority of schools continue to have a desire to adopt pay reference points as the 'nationally defined pay scale'. • Their use can reduce the vulnerability of employers to equal pay claims. **Equalities:** • Concerns that the 2015 pay award will lead to discrimination/adverse impact for different groups **– no evidence to suggest that this is the case this year or in previous years**.
NUT – National Union of Teachers	• Reject STRB's position that pay recommendations should not translate into uniform pay increases in every school and its opposition to the retention of pay points even as 'reference points'. • All teachers should receive an increase in line with amounts recommended by STRB. • Progression will also depend on school budget, so teachers may be penalised irrespective of their performance – not addressed by STRB; **2% uplift to the maximum of the MPR:** • Many will not get due to the state of school budget. Those on maximum of MPR who perform well will progress to UPR so will not get 2%. Need higher pay increase applied to all salaries within a national pay structure **– Department has been clear that affordability should not be used as justification for not awarding pay uplifts where performance deserves it.**

	• Recruitment & retention – graduates seek professions within which they can map out a clear career path. Overwhelming evidence of supply problems and clear link to approach on pay. Should not wait for 'improved labour market data' as suggested by the STRB – trends in supply and demand are already clear and delay will make it worse **– no clear evidence that recruitment to teaching is a significant issue. Pay reforms already allow heads to be much more flexible in responding to recruitment needs.**
NEOST – National Employers' Organisation for School Teachers	**2% uplift to the maximum of the MPR:** • Question the impact – teachers at the top of the MPR who are performing well are more than likely to move to the UPR. **Leadership group:** • The STRB has said that an uplift to the maxima of the head teacher school group ranges is unnecessary because schools can exercise the flexibility to pay up to 25% above the top of the group where the challenges of the post or particular skills or experience of the head teacher merits it. However, the STPCD is currently drafted such that it is not possible to amend the head teacher pay range for an incumbent head unless there is a significant change in responsibilities (page 7, paragraph 4.1). • It seems anomalous also to apply a 1% increase to every pay range maximum except head teachers. NEOST urges the Government to act to avoid confusion and ensure that all heads are treated equitably, by rejecting this recommendation and applying an uplift of 1% to the maxima of the school group ranges.
UCAC – Undeb Cenedlaethol Athrawon Cymru (NUT for Wales)	• Pay rise should be awarded regardless of progression to all teachers. Pay progression is a performance related payment – the pay increase should be a cost of living increase. It should be significantly higher than 1%. **2% uplift to the maximum of the MPR:** • Welcome this but disappointed not applied across the board **No increase to Headteacher pay ranges –** • Detrimental effect on recruitment and retention of leaders. Fewer Heads in Wales – partly due to school closures but increasing trend for HTs to be 'persuaded' to take responsibility for more than one school due to inability to appoint a Head; The move from the points framework has added to workload of Heads, governors and LAs. Individual points should be re-introduced or at least the discretionary reference points should be published. STRB failed to recognise their usefulness to governors who have had little or no training in issues concerning remuneration and have little or no access to expert advice on remuneration.

Voice	• Concerns re the increasing pay gap between teaching and other comparable graduate professions – 25th report will do little to improve the situation. • Supports continued publication of reference points at the increased levels.
Welsh Govt.	• Believe fairest approach would be a 1% increase added to all points and allowances. • Concerns over proposal to discontinue non-statutory indicative scale points – increase complexity and workload for GBs.

Annex B

Consultation on the Draft version of the School Teachers' Pay and Conditions Document (STPCD) - 6th July to 30th July 2015
Summary of consultation responses

Note: Department responses to issues raised are in **bold**. We have not provided responses where points raised are rhetorical or where we have already provided a response to a specific point.

Consultee	Main issues raised
ASCL - Association of School and College Leaders	**Minima and maxima figures** Figures used in the Leadership Group Pay Range are incorrect. The correct process for calculating percentage increases is to round up to the nearest pound **- corrected** **TLRs** Request to clarify the position regarding the ability of governing bodies to award an uplift to TLR holders who are not on the minimum or maximum. Paragraph 49 of Section 3 **– position clarified**
ATL - Association of Teachers and Lecturers	21.2(a) Concerned at the addition of a criterion for the award of an SEN allowance which states that in addition to a teacher being in a post which requires a mandatory qualification the teacher must also be teaching pupils with SEN.
BATOD – British Association of Teachers of the Deaf	Are in broad agreement with its contents. On the two areas for comment: September Pay Award and Chartered London Teachers, have no further comments to make.
NAHT- National Association of Heat Teachers	• The STPCD's advice on the uplift of TLR allowances. Clause 49 in Section 3 of the Document sets out when changes to the value of TLRs can be made. Clarification sought. • Paragraph five (b) and (c) of section three of the document. Question the suggestion that the relevant body "may consider" uplifting the pay of teachers who reach the top of the 2014 pay scale. This may cause confusion regarding discretion. It should be much clearer that the top of the main pay scale should be uprated by 2% regardless of how a school decides to apply the increase **–STRB clear that this is at discretion of schools**. • An issue with the wording in section 3, clause 71 in relation to housing and relocation allowances. Believe that this is unclear and could lead to error: a housing and relocation allowance would be outside the limit on head teachers' salaries. Hope that the Department can review this drafting in clause 71 to make it transparent in itself without having to double check other parts of the Document **– we have now provided**

	clarity to NAHT • Request to consider bringing back examples of part time teacher remuneration in Section 3, clause 43 **- done**. • May be an error in clause 35 of Section 3 where the paragraph references should be 40, rather than 42, and 87 rather than 86.
NASUWT – National Association of Schoolmasters Union of Women Teachers	• Paragraph ii – would like 'as appropriate' removing • Paragraph 4.4 – minimum values in the leadership group pay ranges have been uplifted by less than 1% • Not publishing the discretionary reference points is unhelpful • If reference points are not in the STPCD they should be published in DfE advice with 1% added **– STRB position already very clear on this** • SEN – new requirement that the allowance must involve teaching pupils with SEN – consider additional text to be superfluous • Paragraph 39.2(b) - request clarification on new text on teacher training – there should be no change to these provisions – any alteration to these provisions should be referred to the Review Body • Section 2, Part 4, Paragraph 28 – the total 2015-16 fee should be added to the pay award rather than the £33 subsidy • Section 3 guidance should be helpful, clear and consistent – do not consider this to be the case • Section 3, paragraph 5 opening sentence is potentially misleading and implies that schools can exercise discretion in applying the 1% uplift. This is qualified in 5(a) but schools are frequently selective in their application of the working of the STPCD. Suggest revised working for paragraph 5 • Suggest additional paragraph after paragraph 5 to reflect that pay policies should permit good teachers to reach the maximum of the main pay range within five years **– not appropriate for STPCD** • Helpful wording at paragraph 4 of Section 3 on reviewing pay and appraisal policies annually. Helpful that 'appraisal system' in paragraph 4 has been replaced by 'appraisal policy' • Paragraph 43, Section 3 Guidance, which corresponds to Paragraph 42 in the 2014 STPCD, concludes at the end of the first row in the first table in the paragraph. The second row of the first table, together with all further text in Paragraph 43, including the second table, have all been omitted. The NASUWT assumes this is a typographical error which will be rectified **– now corrected**
NUT – National Union of Teachers	• Continue to be opposed to the unjustified removal of the "reference" pay scales. • Believe that the Departmental guidance document should be clearly signposted to schools on-line, in the same place as the STPCD, and that this should include the more recent guidance on HR policies. It would

	be useful if the sections agreed with the teacher unions could be identified. • All pay figures in the STPCD need to be rounded up to the nearest £ in order to give full effect to the pay increase – this seems to have been done in most cases, but has not been done for the Leadership Group pay range at 4.4 for example. • Paragraphs 4, 5 and 9 (Leadership group pay) repeatedly and confusingly use the term "pay range" to refer to three separate things - the overall pay range, the school group pay range and the individual pay range. We suggest that the term "individual pay range" is used for individuals' own pay ranges as determined by governing bodies. (This should also replace the term "individual post range" used for leading practitioners at paragraph 16.3.). • At paragraph 39.2, the provision that the authority must not unreasonably refuse to exercise its discretion in favour of the teacher should be restored. • Teachers with Early Years Status: the NUT is concerned that teachers with EYTS cannot currently be paid on the qualified teacher pay ranges, even on a discretionary basis. We suggest that the 2015 STPCD is amended either to entitle such teachers to be paid as QTs when working in early years teaching posts in schools or (by amending paragraph 1.2) to permit relevant bodies the discretion to pay them as QTs in such circumstances **– not within current remit.**
NEOST – National Employers' Organisation for School Teachers	• Wording of paragraph 65 needs to be amended to better reflect the nature of such payments and want confirmation that the removal of heads from paragraph 26.1 will not have an impact on the ability of schools to pay heads temporary payments in circumstances where they are providing services to other schools on a temporary basis. • The values for the minimum value of the leadership group pay ranges for the England and Wales, Inner London and Outer London areas are incorrect. The established method of rounding is to round up - **amended** • **Pay policy** Paragraph 5 contains the following wording: "…. how to apply the uplifts set out in Part 2 of the Document to individual salaries and pay ranges…." NEOST contends that this is not a clear reflection of the arrangements that the Review Body and Department have sought to implement in Section 2 of the Document. Suggest alternative wording for paragraph 5. • **Further DfE guidance** It would be helpful if the Department could provide an indicative timescale for the development and publication of this guidance. We would urge the Department to seek to involve all statutory consultees in

	its development.
UCAC – Undeb Cenedlaethol Athrawon Cymru (NUT for Wales)	• Need to differentiate clearly between pay progression and cost of living increases and apply any cost of living pay rise across the board. • Need to maintain clarity and simplicity in the structure. • Performance related pay is not an appropriate approach to determining teachers' salary. • The reduction in the real value of take home pay is having a detrimental effect on recruitment and retention. • A 1% pay rise is totally inadequate UCAC believes that the argument for the need for continued pay restraint is debateable.
Voice	• The new values for the spine points should continue to be published in the Document for those schools which continue to use them, whilst making it clear that this is a decision for individual schools' pay policies. • Section 3, paragraph 43 the table no longer shows the illustrative part-time loans referred to in the previous paragraph which states that the table shows the "detailed calculations" (plural). The part-time calculation should be retained in the table to demonstrate how it works alongside the full-time calculation. Agree with the removal of the second illustrative table as now that the part-time calculation is embedded a second set of examples are not really necessary.
Welsh Gov	• Continue to believe that the fairest approach would be a 1% increase added to all points and allowances. • Have concerns over the proposal to discontinue the non-statutory indicative scale points as this will increase the complexity within the system and inevitably lead to an increase in workload for governing bodies. • A number of changes to regulation references submitted.