EXPLANATORY MEMORANDUM TO

THE SCHOOL TEACHERS' PAY AND CONDITIONS ORDER 2016

2016 No. 831

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.

2. Purpose of the instrument

2.1 The School Teachers' Pay and Conditions Order 2016 ("the Order"), which comes into force on 1 September 2016, 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 2016 and Guidance on School Teachers' Pay and Conditions" ("the Document").

2.2 The Document applies to teachers employed in local authority maintained schools in England and Wales. Teachers' pay and conditions are reviewed 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 2016 pay award to teachers.

2.3 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the 2015 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.

2.4 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 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 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 STRB under section 120(1) of the Act, on which the STRB has reported under section 120(3).

4.2 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. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 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.

7.2 On 7 October 2015 the Secretary of State asked the School Teachers' Review Body (STRB), to consider application of the 2016 pay award for teachers, within the context of the government's policy that public sector pay awards should average 1%.

7.3 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 6 July 2016, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 26th report, and its proposed response to that report.

7.4 The STRB recommended an uplift of 1% to the minima and maxima of all classroom teacher and leadership pay ranges and allowances in the national pay framework. It has also recommended that the School Teachers' Pay and Conditions Document (STPCD) be amended to make clear that schools can use a salary advance scheme for rental deposits as part of the existing recruitment and retention incentives and benefits. In addition, it recommends that the Department develop good practice guidance to help schools make effective use of their existing flexibility to tailor pay policies to meet local recruitment and retention needs in a competitive labour market.

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 2016.

Consolidation

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

8. Consultation outcome

8.1 The School Teachers' Review body's 26th Report and recommendations were published on 6 July 2016. Taking account of the STRB's recommendations the Document was revised in draft.

8.2 On 6 July 2016, the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's 26th report and the revised draft Document during a four week consultation process which ran from 6th July to 2nd August. This consultation period was delayed from its original proposed six week consultation period from mid-May because of the EU referendum purdah arrangements.

8.3 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 on 10th August 2016.

8.4 A joint union response was submitted by six of the unions - ASCL - Association of School and College Leaders, ATL - Association of Teachers and Lecturers, NAHT – National Association of Head Teachers, NUT - National Union of Teachers, Voice – the union for education professionals, UCAC - National Association of Teachers of Wales. In addition, individual responses were also received from all of the six unions above and NEOST - National Employers' Organisation for School Teachers, NASUWT - National Association of Schoolmasters Union of Women Teachers, the Welsh Government and BATOD – the British Association of Teachers of the Deaf.

8.5 All of the respondents welcomed the fact that the STRB had recommended a 1% uplift to the pay ranges and allowances, rather than continuing the differentiated approach they took in 2015. They also welcomed the STRB's decision not to recommend provisions for the use of bonuses or honoraria as part of teachers' remuneration or the facility to allow teachers to step down from the upper pay range (UPR) to the main pay range (MPR). The majority of the respondents were unhappy about what they saw as an unacceptable and avoidable delay in publishing the report and consultation, which they claim gives schools very little time to digest and implement the pay award in September. The majority also welcomed the STRB's view that a significantly higher than 1% uplift to teachers' salaries would be required in future years to address what they see as already acute recruitment and retention difficulties.

8.6 Most respondents also suggested very minor amendments to the STPCD, most of which were accepted.

9. Guidance

9.1 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.

9.2 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 was updated in August 2014 and 2015.

10. Impact

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

10.2 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.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 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.

13. Contact

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