

EDUCATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 8 – Teachers

Teachers' Pay and Conditions

Sections 119 to 130

Section 119 & Schedule 11: School Teachers' Review Body

253. This section affirms the continued existence of the School Teachers' Review Body (STRB) set up under the STPCA. The arrangements will continue to apply to England and Wales. The section also provides that the members of the STRB will be appointed by the Secretary of State, rather than by the Prime Minister as under the STPCA. This will bring the appointment of members of the STRB into line with similar bodies, reflecting the general move away from Prime Ministerial appointments. The Chairman of the STRB will, however, continue to be appointed by the Prime Minister. Schedule 11 reflects consequential changes. The Schedule recasts Schedule 1 to the STPCA and makes minor simplifications and modifications to it. Matters covered are STRB membership, arrangements for the appointment of a chairman and deputy chairman, resignation and dismissal arrangements, payments to members and proceedings of the STRB.

Section 120: Review Body: function

254. Under this section, the STRB will, as at present, report on school teachers' remuneration and related conditions of employment (professional duties and working time), at the request and under the direction of the Secretary of State, including on the timing of a report. Any such report will be sent to the Prime Minister and the Secretary of State and published.

Section 121: Consultation by Review Body

255. This section requires bodies which the STRB deems it appropriate to consult to be notified of any referral to them by the Secretary of State. The 'relevant bodies' for consultation are LEA associations, LEAs, organisations representing governors of maintained schools, and bodies representing school teachers (teacher unions). These bodies must be given an opportunity to submit evidence and make representations. The STRB will be explicitly able to determine the way in which the relevant bodies are entitled to respond and may limit this as appropriate. For example, if the STRB considered it appropriate, some bodies could be permitted to respond in writing only.

256. The section also gives the Secretary of State a formal entitlement to submit evidence and make representations. This has been accepted practice hitherto.

Section 122: Power to prescribe pay and conditions

257. This section enables the Secretary of State to make orders determining school teachers' pay, working time and professional duties. This replicates the existing structure whereby such orders legally define school teachers' conditions of employment by reference to a document. As at present, school teachers must be paid only in accordance with such orders and nothing in a teacher's contract which is prohibited by or inconsistent with an order will be effective.
258. The section also defines 'school teacher'. A school teacher provides primary or secondary education under a contract of employment or a contract for services, where the other party to the contract is the governing body of a maintained school or an LEA. This includes teachers who are self-employed, but excludes those who are employed by an agency such as a teacher supply agency. A school teacher will either be a qualified teacher, as defined elsewhere under regulation; or unqualified, as prescribed by order. The latter category will encompass overseas-trained teachers, instructors, and those following the Graduate or Registered Teacher Programme routes. The definition also specifically includes anyone serving as a head teacher of a school maintained by a local education authority, which will ensure that all relevant head teachers are covered by pay and conditions orders made under this section. Teachers employed by local authorities for social services purposes are excluded from the definition.

Section 123: Order under section 122: scope

259. This section sets out some specific matters which the orders under the previous section may cover. It is not an exhaustive list. An order may confer discretions on LEAs or governing bodies. It may also confer a function on the Secretary of State or on another person who has agreed to carry it out. This may cover matters such as assessments or the exercise of a discretion. In practice this would include arrangements such as those relating to threshold or fast track assessment. An order may also require that any guidance issued relating to such matters is taken into account. Appeals rights may also be set out in an order.
260. Orders may also enable a teacher's pay to be set with regard to qualifications, experiences, duties, skills or previous salary, though this does not exclude other factors from being taken into account. The reference to previous salary is to make clear that there are, for example, powers to safeguard teachers' previous teaching salary in certain specific cases where they have moved to other posts, such as where there are statutory school closures or reorganisations. Limits on payments may be set and certain provisions may be applied to certain schools. For example, there are at present special arrangements for calculating the pay of head teachers of special schools.
261. Retrospective provision is allowed by order under this section, but not so as to reduce a teacher's remuneration, or alter a teacher's conditions of employment to his or her disadvantage, prior to the order. Orders may also specify that certain matters are not to be treated as remuneration, or related to professional duties or working time. This will enable it to be made clear that certain conditions of employment should be determined locally.

Section 124: Order under section 122: supplemental

262. This section provides for an order made under section 122 to make provision through a document, which must also be published. This means that current practice, whereby a document which sets out all appropriate pay and conditions requirements is brought into effect by a pay order, can continue.

Section 125: Reference to Review Body

263. This section sets out the circumstances in which the Secretary of State may make an order under section 122. Usually, as at present, the provision in an order will follow a

request for a report to the STRB, and the STRB's response. But the section also makes some changes to the Secretary of State's powers. At present, the STPCA allows the Secretary of State to make orders relating to matters which she does not consider so significant as to require referral to the STRB. The section here enables the Secretary of State to make an order where the matter concerned is subsidiary; or where the STRB's chairman is consulted on disapplying the provision requiring detailed consideration by the STRB.

264. The section explains what 'subsidiary' means for this purpose. It will cover the standards which the Secretary of State may set for different classes of teachers – for example, Advanced Skills Teachers – and criteria for progression from one pay scale to another – this would cover movement from the main pay scale to the upper pay scale following threshold assessment. (It should be noted that this does not mean that the Secretary of State will take decisions without involving the STRB on whether such categories of teachers or such pay scales should exist at all.)
265. Minor but necessary amendments could in future also be made to pay orders without reference back to the STRB in order to cover issues arising from the implementation of their recommendations, for example to ensure that groups of teachers are not disadvantaged, or to make recommendations work in practice. This might cover matters such as the complex arrangements necessary for the payment of recruitment and retention allowances, and assimilation arrangements resulting from changes to the pay structure. The matters might also be those which are minor in policy effect and therefore do not need to be subject to the full rigour of the STRB process, such as a desirable adjustment following on from a main policy or an interpretation of the intention, for example a change in the way training days are calculated to enable teachers to be paid for additional training undertaken in the evenings.
266. The section also gives the Secretary of State power by order to determine that provision of a particular kind should be, or cease to be, subsidiary, and to describe this provision by reference to her own opinion or to the opinion of another person. Section 210 provides for an order making such a determination to be subject to affirmative resolution procedure.

Section 126: Consultation by the Secretary of State

267. This section requires the Secretary of State to consult appropriate bodies before making any order under section 122 or section 125(4)(a). The relevant bodies are again LEAs and LEA associations, governor bodies, and bodies representing school teachers (teacher unions). Consultation with relevant bodies takes place under existing arrangements for making pay orders and is an important part of the review process. The consultation requirement relating to section 125(4)(a) relates to the Secretary of State's power to make an order identifying a certain provision as 'subsidiary', which may be used where such a provision is not already covered in section 125(3).

Section 127: Guidance

268. This section enables the Secretary of State to issue guidance on how any order made under section 122 should be put into practice, and requires LEAs and governing bodies to have regard to it. There must be consultation with the usual parties (as above) before any guidance may be issued. LEAs and governing bodies are expected to follow such guidance, and this section provides that a court or tribunal could take failure to do so into account in any proceedings.

Section 128: Education action zone

269. As at present under section 3 of the STPCA, this section entitles the governing body of a school in an EAZ to seek permission from the Secretary of State for it to determine the pay and conditions of the teachers at its school. This must, as at present, follow consultation with all the teachers at its school. The section provides a new power for

*These notes refer to the Education Act 2002 (c.32)
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the Secretary of State to make regulations to deal with the situation which could arise if the opt out should end for a particular reason.

Section 129: Transfer of employment

270. This section carries forward the current arrangements about Transfer of Undertakings and provides that pay and conditions orders shall not apply to any teacher of a previously independent school which becomes a maintained school, including a maintained nursery school, except at the request of the teacher.

Section 130: Repeal

271. This section repeals the STPCA. As described above, most of the STPCA is being re-enacted in the new legislation, with minor modifications where necessary.