

EXPLANATORY MEMORANDUM TO
THE SCHOOL TEACHERS' PAY AND CONDITIONS (ENGLAND) ORDER 2020
2020 No. 1020

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.
- 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 2020 ("the Order"), 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 2020 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2020.
- 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 provisions of the Document will have effect retrospectively from 1st September 2020.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument 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 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).

- 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 2019 Order. Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the 2019 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 a number of changes. These changes cover primarily the application of the September 2020 pay award to teachers and the inclusion of an annex setting out advisory pay points for teachers on the main pay range and upper pay range. 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 This 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. 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, many 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 18th September 2019, the Secretary of State asked the STRB, to consider application of the 2020 pay award for teachers, within the context of promoting recruitment and retention within the bounds of affordability across the school system as a whole. He asked the STRB to have regard to the Government's commitment to a

£30,000 starting salary by September 2022. The remit letter to the STRB advised ‘It is important that alongside the significant increase to starting salaries, schools are supported to ensure spending on pay is as efficiently directed as possible. To that end, I am asking you to set out additional advice to schools on the pay progression pathway for classroom teachers, including advisory pay points on the main and upper pay ranges, to support schools to address recruitment and retention challenges and reward good performance.’ The remit letter also requested the STRB’s advice on pay progression including the performance-related pay progression pathway for classroom teachers and advisory pay points on the main and upper pay ranges.

- 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 21st July 2020, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB’s 30th report, and its proposed response to that report.
- 7.5 Until recently, the government has always laid the pay order by 10th August to enable the pay award and any other changes to the Document to come into force and have effect from 1st September – the date on which, historically, teachers’ pay awards have always come into effect. However, like last year and 2018, as it was necessary to consider the teachers’ pay award in the context of the wider public sector pay process and awards and provide a meaningful (8 week) consultation with schools and consultees, the pay order will come into force on 14th October 2020 and its provisions will have effect retrospectively from 1st September 2020.
- 7.6 The STRB has recommended a 5.5% increase to the minimum of the main pay range; and that the maximum of the main pay range and the minima and maxima of all other pay and allowance ranges for teachers and school leaders are uplifted by 2.75%. They also recommended advisory pay points for teachers on the main pay range and upper pay range in order to support a transparent and coherent career pathway and to assist with recruitment and retention. These pay points are advisory only and not mandatory – all decisions relating to pay progression must continue to be based on performance.
- 7.7 Ministers signaled their intent to accept all of the STRB recommendations. As set out in the Written Ministerial Statement of 21 July, the recommendations provide for a substantial above-inflation increase to the pay ranges for all teachers and leaders, the largest since 2005, and the 5.5% increase for the MPR is a significant first step towards the commitment to increase starting salaries nationally for teachers to £30,000 by 2022/23. Ministers also believe that the pay award will be affordable, on average, nationally for schools as a result of the three-year investment package announced at the 2019 Spending Round. The Document has therefore been revised to include the new pay and allowance ranges. Furthermore, an Annex 3 has been inserted in the Document setting out the advisory pay points for the upper and main pay ranges. The revised Document will come into force on 14th October 2020, with the effect of its provisions backdated to 1st September 2020.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or 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 30th Report and recommendations were published on 21st July 2020. Taking account of the recommendations the Document was revised in draft.
- 10.2 On 21st July 2020, the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's 30th report and the revised draft Document during an eight week statutory consultation process which ran from 21st July to 14th September 2020. During this consultation period consultees were also invited to meet officials from the Department for Education to discuss the STRB recommendations and the government's response. The NEU – National Education Union and NASUWT – National Association of Schoolmasters Union of Women Teachers accepted this invitation and met officials in August 2020.
- 10.3 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.
- 10.4 All eight of the consultees to the process (excluding the Department) responded, either individually or through a joint response.
- 10.5 As in previous years, ASCL Association of School and College Leaders), NAHT (National Association of Headteachers), NEU and Voice produced a joint response, as well as sending in individual responses that largely reiterated the same messages as in the joint response.
- 10.6 The key messages in the joint submission were that, while the 5.5% increase for early career teachers was welcome, the majority of teachers would receive around 2.75%. While this was acknowledged as likely to be above Retail Prices Index for September 2020, they did not consider it sufficient to adequately address the recruitment and retention concerns expressed by the STRB. They were also strongly of the view that additional funding was required to ensure the pay awards were affordable for all schools. They also believed that, while the introduction of advisory spine points was a step in the right direction, performance related pay itself should be abolished and mandatory spine points reintroduced to establish a fair and transparent pay system for all. As in previous years, they also criticised the timing of the publication of the report over the school holiday period and highlighted the detrimental impact it has on school planning.
- 10.7 In addition to their comments in the joint union submission, which were reiterated and expanded upon in their individual response, NAHT called for bolder reform to the pay structure for teachers and leaders, recognising that professional pay is a continuum. This reform should include:
- restoring leaders' real pay to 2010 levels and reinstate the pay differential for leadership;
 - collaboration with trade unions to develop new career pathways underpinned by a reformed national pay system, with mandatory pay points and pay portability;

- codification of executive leadership roles within a revised STPCD, and include or align school business leader roles with the leadership pay range;
 - establishment of a range of ‘key worker’ packages, differentiated to meet local or regional circumstance and need.
- 10.8 The response from NEOST (National Employers Organisation for School Teachers) welcomed the introduction of advisory spine points but focussed on what it believes to be affordability and budgetary problems for schools. Their submission provided significant evidence of regions and individual authorities where schools are increasingly having to set deficit budgets and the prospect of significant further redundancies of school staff.
- 10.9 NASUWT, who were not part of the joint union response, were critical of the delay in publishing the STRB report and the consultation over the school holiday period. They also argue, as in previous years, that the pay uplift should be awarded to all teachers automatically
- 10.10 BATOD (British Association of Teachers of the Deaf) welcomed the advisory spine points but argued that the pay award is insufficient to attract new recruits to teaching, nor stop the loss of experienced teachers too, with particular concerns about Qualified Teachers of the Deaf.
- 10.11 The NGA (National Governors Association), while welcoming the 5.5% pay award for early career teachers and the introduction of advisory spine points, also expressed much the same concern as NEOST over affordability and impact on budgets and redundancies for a significant number of schools.
- 10.12 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) 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 the 21st July. In particular, as set out in the Written Ministerial Statement of 21st July, in confirming acceptance of the STRB recommendations in full, the Government has made a commitment to increase starting salaries nationally for teachers to £30,000 by 2022/23. This pay award takes the first step to delivering this commitment, with a 5.5% increase to starting salaries worth between £1,341 and £1,677 depending on location. This will mean that starting salaries for new teachers will be between £25,714 and £32,157 depending on location in the 2020-21 academic year.
- 10.13 These substantial increases to teacher starting pay will help ensure teaching is rightly regarded as a well-rewarded and prestigious profession, enabling us to attract the most able graduates and career changers into teaching to support improved outcomes for pupils. This pay award also takes a decisive step towards a pay structure which better supports teacher retention, with large increases to early career pay where we know retention is most challenging.

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.

- 11.2 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 updated in subsequent years. This guidance is published alongside the Document.

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](tel:07469031780)) e-mail dominic.mahon@education.gov.uk), at the Department for Education.
- 15.2 Kate Copley, 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 School Standards, Nick Gibb, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.