



# Education Act 2002

## 2002 CHAPTER 32

### PART 8 **E+W**

#### TEACHERS

##### *Teachers' pay and conditions*

#### **119 School Teachers' Review Body **E+W****

- (1) The body established under section 1 of the School Teachers' Pay and Conditions Act 1991 (c. 49) (review body)—
  - (a) shall continue to exist, and
  - (b) shall be known as the School Teachers' Review Body.
- (2) The Prime Minister shall appoint the chairman of the Review Body.
- (3) The Secretary of State shall appoint other members of the Review Body.
- (4) Schedule 11 (which makes provision about the Review Body) shall have effect.

#### **120 Review Body: function **E+W****

- (1) The School Teachers' Review Body shall consider any matter which is referred to them by the Secretary of State and which relates to—
  - (a) the remuneration of school teachers, or
  - (b) other conditions of employment of school teachers which relate to their professional duties or working time.
- (2) In subsection (1) "school teacher" means a person who is a school teacher for the purposes of the Secretary of State's power under section 122 to make orders about remuneration and other conditions of employment.

*Status: Point in time view as at 01/12/2004.*

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- (3) Following consideration of a matter under subsection (1) the Review Body shall report to the Prime Minister and the Secretary of State in accordance with any direction of the Secretary of State about—
  - (a) a consideration to which they are to have particular regard,
  - (b) matter on which they are to make a recommendation, or
  - (c) the time within which they are to report.
- (4) Where the Prime Minister and the Secretary of State receive a report under subsection (3) they shall arrange for it to be published.
- (5) A direction under subsection (3) may be varied or revoked.

#### Commencement Information

- I1** S. 120 partly in force; s. 120 not in force at Royal Assent, see s. 216; s. 120(1)(3)-(5) in force at 1.10.2002 by S.I. 2002/2439, art. 2 (with transitional provisions and savings in Sch.)
- I2** S. 120(2) in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 121 Consultation by Review Body **E+W**

- (1) Before reporting on a matter referred to them under section 120(1) the School Teachers' Review Body shall—
  - (a) notify each relevant body,
  - (b) give each relevant body an opportunity to submit evidence and make representations, and
  - (c) give the Secretary of State an opportunity to submit evidence and make representations.
- (2) In relation to a matter referred to the Review Body “relevant body” means such of the following as appear to the Review Body to be appropriate to consult about the matter—
  - (a) associations of local education authorities,
  - (b) local education authorities,
  - (c) bodies representing the interests of governing bodies of schools, and
  - (d) bodies representing the interests of teachers.
- (3) The Review Body may—
  - (a) determine the manner in which each relevant body is permitted to submit evidence or make representations, and
  - (b) may make different determinations in respect of different relevant bodies.

### 122 Power to prescribe pay and conditions **E+W**

- (1) The Secretary of State may by order make provision for the determination of—
  - (a) the remuneration of school teachers;
  - (b) other conditions of employment of school teachers which relate to their professional duties or working time.
- (2) Where an order under this section applies to a school teacher—
  - (a) his remuneration shall be determined and paid in accordance with any provision of the order which applies to him,

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- (b) a provision of the order which relates to a condition of employment other than remuneration and which applies to him shall have effect as a term of his contract of employment, and
  - (c) a term of that contract shall have no effect in so far as it makes provision which is prohibited by the order or which is otherwise inconsistent with a provision of the order.
- (3) A person is a school teacher for the purposes of this section if—
- (a) he is a qualified teacher,
  - (b) he provides primary or secondary education under a contract of employment or for services,
  - (c) the other party to the contract is a local education authority or the governing body of a foundation, voluntary aided or foundation special school, and
  - (d) the contract requires him to carry out work of a kind which is specified by regulations under section 133(1).
- (4) A person is also a school teacher for the purposes of this section if he serves as the head teacher of a school maintained by a local education authority.
- (5) A person is also a school teacher for the purposes of this section if his case satisfies paragraphs (b), (c) and (d) of subsection (3) and—
- (a) he possesses a prescribed qualification,
  - (b) he provides education of a prescribed kind or in prescribed circumstances (or both),
  - (c) he is undertaking training of a prescribed kind, or obtaining experience of a prescribed kind, with a view to becoming a qualified teacher,
  - (d) he is within a prescribed class of persons awaiting assessment for the purpose of becoming a qualified teacher, or
  - (e) he is within a prescribed class of persons awaiting the award of a qualification.
- (6) A person providing education in an establishment maintained by a local authority in the exercise of a social services function is not a school teacher for the purposes of this section.
- (7) In the application of subsection (2)—
- (a) it is immaterial whether someone other than the party mentioned in subsection (3)(c) provides or is responsible for providing all or part of a teacher's remuneration,
  - (b) it is immaterial whether someone other than the party mentioned in subsection (3)(c) is treated wholly or partly as a teacher's employer for some or all purposes by virtue of an enactment, and
  - (c) in relation to a person who provides education under a contract for services, a reference to his contract of employment is a reference to the contract for services.
- (8) In this section “prescribed” means prescribed by an order under this section.

**Modifications etc. (not altering text)**

- C1** S. 122(3)(d) excluded (W.) (temp. from 19.12.2002) by [The Education Act 2002 \(Transitional Provisions\) \(Wales\) Regulations 2002 \(S.I. 2002/3184\)](#), [reg. 6\(2\)](#)

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### Commencement Information

**I3** S. 122 in force at 1.8.2003 by S.I. 2003/1667, art. 2

## 123 Order under section 122: scope **E+W**

- (1) An order under section 122 may, in particular—
- (a) confer discretion on a local education authority or a governing body;
  - (b) confer a function (which may include the administration of a test or assessment, the exercise of a discretion or the exercise of a supervisory or appellate jurisdiction) on the Secretary of State or on a specified person who has agreed with the Secretary of State to perform that function;
  - (c) require a discretion or function conferred under paragraph (a) or (b) to be exercised having regard to guidance given by the Secretary of State or another specified person;
  - (d) make provision for the determination of a teacher's remuneration by reference to any matter including, in particular, his qualifications, experience, duties, aptitude or previous salary;
  - (e) make provision for a right of appeal specified by or determined in accordance with the order;
  - (f) limit the aggregate amount of an allowance, or of a number of allowances, payable to teachers in a school;
  - (g) set a lower or upper limit on the number or proportion of teachers in a school who are paid on a specified scale;
  - (h) set a lower or upper limit on the number or proportion of teachers in a school who are paid a specified allowance;
  - (i) provide for special provisions to apply in relation to a description of school specified by or determined in accordance with the order;
  - (j) provide for the determination of a question of the interpretation or application of a provision of the order.
- (2) Provision under subsection (1)(e) or (j) may—
- (a) confer jurisdiction on a court, tribunal, person or body;
  - (b) provide for a matter to be settled by agreement between, or in a manner agreed between, teachers and local education authorities or teachers and governing bodies.
- (3) An order under section 122 may make retrospective provision, but not so as to—
- (a) reduce remuneration in respect of a period wholly or partly before the making of the order, or
  - (b) alter a condition of employment to the detriment of a teacher in respect of a period wholly or partly before the making of the order.
- (4) The Secretary of State may by order provide—
- (a) that a payment or entitlement of a specified kind is or is not to be treated as remuneration for the purpose of section 122(1);
  - (b) that a specified matter is or is not to be treated for that purpose as relating to the professional duties of school teachers;
  - (c) that a specified matter is or is not to be treated for that purpose as relating to the working time of school teachers.

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#### Commencement Information

**I4** S. 123 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 124 Order under section 122: supplemental **E+W**

- (1) An order under section 122 may—
  - (a) make provision which applies generally or only in a specified case or in specified circumstances;
  - (b) make different provision for different cases or circumstances;
  - (c) make transitional provision.
- (2) An order under section 122 may make provision by reference to the exercise of another power under this Act.
- (3) An order under section 122 may make provision by reference to a document; and—
  - (a) an order which makes provision by reference to a document must include provision about publication of the document, and
  - (b) a reference in this section to an order includes a reference to a document referred to by an order.

#### Commencement Information

**I5** S. 124 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 125 Reference to Review Body **E+W**

- (1) An order under section 122 may make provision about a matter only if the Secretary of State has—
  - (a) referred the matter to the School Teachers' Review Body under section 120, and
  - (b) considered their report.
- (2) But subsection (1) shall not apply—
  - (a) to subsidiary provision, or
  - (b) in a case where the Secretary of State has consulted the chairman of the Review Body about disapplying that subsection.
- (3) Provision is subsidiary for the purpose of subsection (2)(a) if the Secretary of State thinks that it—
  - (a) concerns only the criteria for entry into or exit from a particular class of teachers for purposes of remuneration,
  - (b) concerns only the criteria for moving from one scale of remuneration to another,
  - (c) concerns only the implementation or application of a system or principle on which the Review Body has reported,
  - (d) prescribes a matter for the purpose of section 122(5),
  - (e) is made under section 123(4), or

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- (f) is minor, consequential, temporary, transitional or designed to resolve an anomaly.
- (4) The Secretary of State may by order provide that provision of a specified kind (which may be described wholly or partly by reference to an opinion of the Secretary of State or another person)—
  - (a) shall be subsidiary for the purpose of subsection (2)(a), or
  - (b) shall cease to be subsidiary for that purpose.
- (5) An order under subsection (4) may amend subsection (3).

#### Commencement Information

**I6** S. 125 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 126 Consultation by Secretary of State **E+W**

The Secretary of State may not make an order under section 122 or 125(4)(a) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the content of the order—

- (a) associations of local education authorities,
- (b) local education authorities,
- (c) bodies representing the interests of governing bodies of schools, and
- (d) bodies representing the interests of teachers.

#### Commencement Information

**I7** S. 126 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 127 Guidance **E+W**

- (1) The Secretary of State may issue guidance about the procedure to be followed in applying provision of an order under section 122.
- (2) The following shall have regard to guidance under subsection (1)—
  - (a) a local education authority, and
  - (b) the governing body of a school.
- (3) Where an employer fails to follow guidance under subsection (1)—
  - (a) the failure shall not give rise to civil liability, but
  - (b) a court or tribunal may take the failure into account in any proceedings.
- (4) The Secretary of State may not issue guidance under subsection (1) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the nature of the guidance—
  - (a) associations of local education authorities,
  - (b) local education authorities,
  - (c) bodies representing the interests of governing bodies of schools, and
  - (d) bodies representing the interests of teachers.

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#### Commencement Information

**18** S. 127 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 128 Education action zone **E+W**

- (1) This section applies to a school which forms part of an education action zone for the purposes of Chapter 3 of Part 1 of the School Standards and Framework Act 1998 (c. 31).
- (2) On the application of the governing body of a school, the Secretary of State may by order provide that section 122(2) shall not apply to any school teacher at the school.
- (3) Where an order under subsection (2) is in force in respect of a school—
  - (a) the governing body shall determine the remuneration and other conditions of employment of each school teacher at the school,
  - (b) the local education authority shall do anything necessary to give effect to the governing body's determination, and
  - (c) pending a determination under paragraph (a), the terms on which a school teacher works at the school shall remain unchanged (irrespective of any new order under section 122).
- (4) A governing body may not make an application under subsection (2) unless they have consulted each school teacher at the school.
- (5) An application under subsection (2) must specify a date for commencement of the order sought; and—
  - (a) the date specified must not precede the expiry of the period of three months beginning with the date on which the application is made, and
  - (b) an order made on the application must provide that it comes into force on the date specified in the application or on a later date which is agreed between the Secretary of State and the governing body and which is specified in the order.
- (6) The Secretary of State may make regulations about the application of section 122(2) where an order under subsection (2) above—
  - (a) is revoked, or
  - (b) lapses (in whole or in part) because one or more schools to which the order relates cease to form part of an education action zone.
- (7) In this section “school teacher” has the same meaning as in section 122.

#### Commencement Information

**19** S. 128 in force at 1.8.2003 by S.I. 2003/1667, art. 2

### 129 Transfer of employment **E+W**

- (1) Section 122(2) shall not apply to a person if—
  - (a) a maintained school is established in place of an independent school in pursuance of proposals published under section 28 or 31 of the School Standards and Framework Act 1998, and

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- (b) the person becomes a school teacher in the maintained school in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794).
- (2) But if the school teacher gives a notice in writing under this subsection to his new employer, section 122(2) shall apply to him in respect of the period beginning with—
- (a) a date specified in the notice,
  - (b) if no date is specified under paragraph (a), a date agreed between the teacher and the new employer, or
  - (c) if no date is specified under paragraph (a) or agreed under paragraph (b), the date on which the employer receives the notice.
- (3) Where the governing body of a foundation, voluntary aided or foundation special school receive a notice under subsection (2), they shall inform the local education authority.
- (4) In this section “school teacher” has the same meaning as in section 122.
- (5) In subsection (1) “maintained school” means—
- (a) a community school,
  - (b) a foundation school,
  - (c) a voluntary school,
  - (d) a community special school,
  - (e) a foundation special school, or
  - (f) a maintained nursery school.

#### Commencement Information

**I10** S. 129 in force at 1.8.2003 by [S.I. 2003/1667](#), [art. 2](#)

### 130 Repeal of School Teachers' Pay and Conditions Act 1991 E+W

The School Teachers' Pay and Conditions Act 1991 (c. 49) shall cease to have effect.

#### Commencement Information

**I11** [S. 130](#) partly in force; [s. 130](#) not in force at Royal Assent, see [s. 216](#); [s. 130](#) in force for certain purposes at 1.10.2002 by [S.I. 2002/2439](#), [art. 2](#) (with transitional provisions and savings in [Sch.](#)); Act repealed (1.10.2002) by [Education Act 2002 \(c. 32\)](#), ss. [130](#), [216\(2\)](#), [Sch. 22 Pt. 1](#); [S.I. 2002/2439](#), [art. 2](#)

**I12** [S. 130](#) in force at 1.8.2003 in so far as not already in force by [S.I. 2003/1667](#), [art. 2](#)



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