

2005 No. 1101

EDUCATION, ENGLAND AND WALES

**The Education (School Teachers' Pay and Conditions) (No. 2)
Order 2005**

<i>Made</i> - - - -	<i>4th April 2005</i>
<i>Laid before Parliament</i>	<i>5th April 2005</i>
<i>Coming into force</i>	
<i>Articles 1-2(d), 2(g)-(l), 2(n) and 2(s)</i>	<i>6th May 2005</i>
<i>Article 2(e), (f), (m) and 2(o)-(y)</i>	<i>1st September 2005</i>

Whereas the School Teachers' Review Body(a) have, following the reference to them of certain matters, reported to the Prime Minister and to the Secretary of State in accordance with section 120 of the Education Act 2002(b);

And whereas the Secretary of State has consulted, in accordance with section 126 of that Act, such associations of local education authorities, such bodies representing the interests of governing bodies of schools and such bodies representing the interests of teachers as appeared to her to be appropriate having regard to the contents of this Order;

Now therefore, in exercise of the powers conferred on the Secretary of State by sections 122(1), 123, 124 and 210(7) of that Act, the Secretary of State for Education and Skills hereby makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Education (School Teachers' Pay and Conditions) (No. 2) Order 2005 and shall come into force on 6th May 2005 except for paragraphs (e), (f), (m) and (o)-(r) of article 2, which shall come into force on 1st September 2005.

(2) This Order applies to school teachers within the meaning of section 122 of the Education Act 2002 in England and Wales.

(a) The School Teachers' Review Body was established by section 1 of the School Teachers' Pay and Conditions Act 1991 (1991 c.49). Section 1 was repealed by section 215(2) of, and Part 12 of Schedule 22 to, the Education Act 2002 (c.32) but the review body continues to exist by virtue of section 119(1) of that Act.
(b) 2002 c.32.

School Teachers' Pay and Conditions

2. The provisions set out in section 2 of the document published by The Stationery Office Limited and entitled "School Teachers' Pay and Conditions Document 2004 and Guidance on School Teachers' Pay and Conditions"^(a) shall have effect with the following amendments—

- (a) in paragraph 1.2, after the definition of "third key stage" insert—
 - ““TLR” means a teaching and learning responsibility payment awarded to a classroom teacher in accordance with paragraph 23A;”;
- (b) after paragraph 1.9 insert—
 - “**1.10.** For the purposes of paragraphs 23B and 47A, the safeguarding period ends on the third anniversary of the relevant date; and in the case of a determination made by the relevant body between—
 - (a) 1st September and 31st December, the relevant date is 1st January immediately after the end of that period;
 - (b) 1st January and 31st March, the relevant date is 1st April immediately after the end of that period; and
 - (c) 1st April and 31st August, the relevant date is 1st September immediately after the end of that period.”;
- (c) after paragraph 4.1 insert—
 - “**4.1A.** When determining the remuneration of a teacher, the relevant body must have regard to its pay policy and to the teacher’s particular post within its staffing structure.”;
- (d) after paragraph 4.3(d) insert—
 - “(e) in the case of a classroom teacher, the annual value of any TLR awarded to him, the nature of the significant responsibility for which it was awarded and, if the award is temporary, the date on which or the circumstances in which (if occurring earlier) it will come to an end.”;
- (e) in paragraph 7.3(a) substitute “paragraph 47A” for “sub-paragraph (e)”;
- (f) omit paragraph 7.3(e);
- (g) in paragraph 12.3.2(b) insert “or TLR awarded to that teacher under paragraph 23A” after “paragraph 23”;
- (h) in paragraph 12.3.3 insert “TLR,” before “special educational needs”;
- (i) in paragraph 23.1 insert “On or before 31st December 2005” before “the relevant body may”;
- (j) in paragraph 23.3 insert “Subject to paragraph 23C,” before “any classroom teacher”;
- (k) in paragraph 23.4 insert “Subject to paragraph 23C,” before “where the relevant body”;
- (l) after paragraph 23 insert—

“Teaching and Learning Responsibility Payments

23A.1. On or after 1st January 2006, the relevant body may award a TLR to a classroom teacher for undertaking a sustained additional responsibility in the context of its staffing structure for the purpose of ensuring the continued delivery of high-quality teaching and learning and for which he is made accountable. The award may be while the teacher

(a) ISBN 0 11 271163 4; section 2 was given effect by the Education (School Teachers' Pay and Conditions) (No.2) Order 2004 (S.I. 2004/2142) and amended by S.I. 2005/539.

remains in the same post or temporary, in accordance with and subject to paragraphs 3 and 23A.2 to 23A.4.

23A.2. Having decided to award a TLR, the relevant body must determine whether to award a first TLR (“TLR1”) or a second TLR (“TLR2”) and its value, in accordance with its pay policy, provided that—

- (a) the annual value of a TLR1 shall be no less than £6,500 and no greater than £11,000;
- (b) the annual value of a TLR2 shall be no less than £2,250 and no greater than £5,500; and
- (c) if the relevant body awards TLRs of different annual values to two or more teachers, the minimum difference in the annual value between each award of a TLR1 is £1,500 and between each award of a TLR2 is £1,500.

23A.3. Before awarding a TLR the relevant body must be satisfied that the teacher’s duties include a significant responsibility that is not required of all classroom teachers and that—

- (a) is focused on teaching and learning;
- (b) requires the exercise of a teacher’s professional skills and judgement;
- (c) requires the teacher to lead, manage and develop a subject or curriculum area; or to lead and manage pupil development across the curriculum;
- (d) has an impact on the educational progress of pupils other than the teacher’s assigned classes or groups of pupils; and
- (e) involves leading, developing and enhancing the teaching practice of other staff.

23A.4. Before awarding a TLR1, the relevant body must be satisfied that the significant responsibility referred to in paragraph 23A.3 includes in addition line management responsibility for a significant number of people.

23B.1. If the relevant body determines (“the determination”), whether as a result of a change to its pay policy or to the school’s staffing structure or otherwise, either—

- (a) that the teacher’s duties are no longer to include the significant responsibility for which the TLR was awarded; or
- (b) that his significant responsibility (whether or not this has changed) merits, in accordance with its pay policy and staffing structure, a TLR of a lower annual value (“the new payment”),

it shall pay him the safeguarded sum.

23B.2. For the purposes of paragraph 23B.1, the safeguarded sum in the case of a teacher referred to in—

- (a) paragraph 23B.1 (a) is the value of the TLR to which he was entitled immediately before the determination; and
- (b) paragraph 23B.1 (b) is the difference between the value of the TLR to which he was entitled immediately before the determination and the new payment.

23B.3. Within one month of the date of the determination, the relevant body must notify the teacher in writing of—

- (a) the reason for the determination;
- (b) the date on which the teacher’s TLR ends and, if applicable, from which the new payment comes into effect;

- (c) the value immediately before the determination of the point at which he is placed on the pay scale set out either in paragraph 17.3 or in paragraph 19.2, taking into account the annual determination required by paragraph 4.1 (“the original salary”);
- (d) the value of the safeguarded sum;
- (e) the date on which the safeguarding period will end; and
- (f) where a copy of the school’s staffing structure and pay policy may be inspected.

23B.4. Subject to paragraph 23B.5, the teacher shall be paid the safeguarded sum until—

- (a) the date on which the safeguarding period ends;
- (b) the teacher ceases to be a classroom teacher;
- (c) the teacher is awarded a TLR as a result of a subsequent determination by the relevant body that exceeds the combined value of the new payment (if any) and the safeguarded sum;
- (d) the teacher is placed on a higher point on the pay scale set out either in paragraph 17.3 or in paragraph 19.2, or he first becomes entitled to be paid on the pay scale set out in paragraph 19.2 as a result of a subsequent determination; and the combined value of that point and any new payment exceeds the combined value of his original salary and the safeguarded sum; or
- (e) the teacher’s employment at the school ends other than in circumstances to which paragraph 47 applies,

whichever is the earliest.

23B.5. The relevant body shall review the duties assigned to a teacher who is paid a safeguarded sum and allocate such additional duties to the teacher as it reasonably considers are appropriate and commensurate with the safeguarded sum, for as long as the teacher continues to be paid the safeguarded sum. The teacher shall not be paid the safeguarded sum if he unreasonably refuses to carry out such additional duties, provided that the teacher is notified of the relevant body’s determination to cease paying the safeguarded sum at least one month before it is implemented, in accordance with paragraph 4.3.

Safeguarding management allowances

23C.1. Paragraph 23C applies to a classroom teacher who was awarded a management allowance on or before 31st December 2005.

23C.2. The relevant body shall on or before 31st January 2006 notify the teacher in writing of—

- (a) the value at 31st December 2005 of the management allowance;
- (b) if the allowance was awarded for a fixed period, the date the fixed period expires, being 31st December 2008 or such earlier date as was determined at the time the allowance was awarded;
- (c) the value at 31st December 2005 of the point at which he is placed on the pay scale set out either in paragraph 17.3 or in paragraph 19.2, taking into account the annual determination required by paragraph 4.1 (“the original salary”);
- (d) the value of the safeguarded sum, being the allowance less any TLR awarded on or before the date of the notice; and
- (e) where a copy of the school’s staffing structure and pay policy may be inspected.

23C.3. Subject to paragraph 23C.4, the teacher shall be paid the safeguarded sum from 1st January 2006 until—

- (a) 31st December 2008;

- (b) if the safeguarded sum is a management allowance that was awarded for a fixed period that would have expired before 31st December 2008, that earlier date;
- (c) the teacher ceases to be a classroom teacher;
- (d) the teacher is awarded a TLR that, either at the time it is awarded, or as a result of a subsequent determination by the relevant body, exceeds the combined value of the safeguarded sum and any TLR awarded on or before the date of the notice given under paragraph 23C.2;
- (e) the teacher is placed on a higher point on either the pay scale set out in paragraph 17.3 or in paragraph 19.2, or he first becomes entitled to be paid on the pay scale set out in paragraph 19.2 as a result of a pay determination that has effect after 1st September 2005; and the combined value of that point and any TLR awarded to him after the date of the notice given under paragraph 23C.2 exceeds the combined value of his original salary and the safeguarded sum; or
- (f) the teacher's employment at the school ends other than in circumstances to which paragraph 47 applies,

whichever is the earliest.

23C.4. The relevant body shall review the duties assigned to a teacher who is paid a safeguarded sum and allocate such additional duties to the teacher as it reasonably considers are appropriate and commensurate with the safeguarded sum, for as long as the teacher continues to be paid the safeguarded sum. The teacher shall not be paid the safeguarded sum if he unreasonably refuses to carry out such additional duties, provided that the teacher is notified of the relevant body's determination to cease paying the safeguarded sum at least one month before it is implemented, in accordance with paragraph 4.3.”;

(m) after paragraph 38.5 insert—

“**38.6.** Scale points awarded under paragraphs 38.2 to 38.4 shall be permanent while the unqualified teacher remains in the same post or takes up a new one.”;

- (n) in paragraph 46.1 insert “, having regard to its pay policy and the teacher's particular post within its staffing structure” after “the circumstances of the case”;
- (o) in paragraph 47.1.2 omit “or would (but for this paragraph) suffer a diminution in his remuneration”;
- (p) in paragraph 47.1.3 insert “in circumstances described in paragraph 47.1.1” before “(but for this paragraph 47.1.3)”;
- (q) in paragraph 47.4(b) insert “, 23A” after “23”;
- (r) after paragraph 47, insert—

“Safeguarding for members of the leadership group and advanced skills teachers

47A.1. This paragraph applies where the relevant body determines (“the determination”), whether as a result of a change to its pay policy or to the school's staffing structure or otherwise, to—

- (a) reduce the number of members of the leadership group;
- (b) end the designation of one or more advanced skills teachers' posts as such;
- (c) reduce the individual school range and the reduction would lead to a reduction in the head teacher's salary;
- (d) reduce a deputy head teacher's pay range and the reduction would lead to a reduction in the deputy head teacher's salary;
- (e) reduce an assistant head teacher's pay range and the reduction would lead to a reduction in the assistant head teacher's salary; or

- (f) reduce an advanced skills teacher's pay range and the reduction would lead to a reduction in the advanced skills teacher's salary.

47A.2. A member of the leadership group or an advanced skills teacher whose salary is reduced as a result of the implementation of the determination shall be paid the safeguarded sum.

47A.3. In the case of a teacher who is affected by a determination within paragraph 47A.1 (a) or (b), the safeguarded sum is the difference between his original salary and the value of the new point on which he is placed on the pay scale set out either in paragraph 17.3 or in paragraph 19.2 combined with any TLR or special educational needs allowance awarded to him.

47A.4. In the case of a teacher who is affected by a determination within paragraph 47A.1(c)–(f), the safeguarded sum is the difference between the original salary and the value of the point at which he is placed in the new pay range.

47A.5. The relevant body shall, within one month (and after having made the annual determination required by paragraph 4.1), notify in writing a teacher who is or may be affected by the determination of that fact and of—

- (a) the reason for the determination;
- (b) the date on which the determination is to be implemented in relation to that teacher (if known);
- (c) the date on which the safeguarding period will end;
- (d) his original salary;
- (e) the value of the safeguarded sum or, if the determination is to be implemented at a later date and its precise effect on the teacher is not yet known, the maximum amount by which his original salary may be reduced; and
- (f) where a copy of the school's staffing structure and pay policy may be inspected.

47A.6. Subject to paragraph 47A.7, the teacher shall be paid the safeguarded sum until—

- (a) the date on which the safeguarding period ends;
- (b) in the case of a teacher affected by a determination within paragraph 47A.1 (a) or (b)—
 - (i) he ceases to be a classroom teacher,
 - (ii) as a result of a subsequent determination by the relevant body, he is placed on a higher point on the pay scale set out either in paragraph 17.3 or in paragraph 19.2, or he first becomes entitled to be paid on the pay scale set out in paragraph 19.2, and the value of that point combined with any TLR or special educational needs allowance awarded to him exceeds his original salary; or
 - (iii) the teacher is awarded a TLR that, either at the time it is awarded or as a result of a subsequent determination by the relevant body, exceeds the combined value of the safeguarded sum and any TLR or special educational needs allowance that was awarded to him on or before the date of the notice given under paragraph 47A.5;
- (c) in the case of a teacher affected by a determination within paragraph 47A.1(c)–(f), the value of his point on the leadership or advanced skills teachers' pay spine exceeds his original salary; or
- (d) the teacher's employment at the school ends other than in circumstances to which paragraph 47 applies,

whichever is the earliest.

47A.7. The relevant body shall review the duties assigned to a teacher who is paid a safeguarded sum and allocate such additional duties to the teacher as it reasonably considers are appropriate and commensurate with the safeguarded sum, for as long as the teacher continues to be paid the safeguarded sum. The teacher shall not be paid the safeguarded sum if he unreasonably refuses to carry out such additional duties, provided that the teacher is notified of the relevant body's determination to cease paying the safeguarded sum at least one month before it is implemented, in accordance with paragraph 4.3.

47A.8. In paragraph 47A "original salary" means the value of the point on either the leadership or the advanced skills teachers' pay spine to which the teacher was entitled immediately before the determination, taking into account the annual determination made under paragraph 4.1."; and

(s) in paragraph 57.8.5 insert "or a TLR under paragraph 23A" after "paragraph 23".

4th April 2005

Stephen Twigg
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the School Teachers' Pay and Conditions Document 2004 ("the 2004 Document"). Its provisions come into effect on 6th May 2005, except for paragraphs (e), (f), (m) and (o)-(r) of article 2, which come into effect on 1st September 2005.

By article 2(l), the Order inserts new paragraph 23A in the 2004 Document that enables relevant bodies to award Teaching and Learning Responsibility payments to classroom teachers (qualified teachers who are paid on the main or upper pay scale) from 1st January 2006. These new payments, known as "TLRs" (a new definition is inserted in paragraph 1.2), are for undertaking a sustained additional responsibility within the context of the relevant body's staffing structure for the purpose of ensuring continued delivery of high-quality teaching and learning and for which he is made accountable. Before awarding a TLR, the relevant body must be satisfied that the responsibility meets certain criteria, set out in new paragraph 23A.3. Before awarding a TLR1, the relevant body must in addition be satisfied that the teacher has line management responsibility for a significant number of people.

The relevant body must determine the value of the TLR: the annual value of a TLR1 must be no less than £6,500 nor greater than £11,000 and of a TLR2 must be no less than £2,250 or greater than £5,500. If a relevant body makes awards of different values in each band, there must be a difference in the value of each award of at least £1,500. When making this determination or any other determination regarding the remuneration of a teacher, the relevant body must have regard to its pay policy and to the teacher's particular post within its staffing structure (new paragraph 4.1A of the 2004 Document, inserted by article 2(c)).

The award may last while the teacher remains in post or may be temporary. If it is temporary the notice of the relevant body's determination (required under paragraph 4.3 of the 2004 Document) must set out the date on which, or the circumstances in which (if occurring earlier), it will cease (article 2(d)).

The Order also makes provision for safeguarding the payment of a TLR for a limited period of up to 3 years (“the safeguarding period”) if the relevant body subsequently decides to withdraw or reduce the award of a TLR, following a review of its pay policy or staffing structure or otherwise (new paragraph 23B of the 2004 Document). The method of calculating the safeguarding period (which applies both to paragraph 23B and to paragraph 47A of the 2004 Document) is set out in new paragraph 1.10, inserted in the 2004 Document by article 2(b). The relevant body may allocate additional duties to a teacher who is entitled to receive a “safeguarded sum”. The duties must be ones it reasonably considers are appropriate and commensurate with the safeguarded sum. If the teacher unreasonably refuses to undertake the additional duties, his entitlement to the safeguarded sum must cease provided the teacher is given one month’s notice before the change is implemented.

No new management allowances may be awarded to classroom teachers after 31st December 2005, as a result of changes made to paragraph 23 of the 2004 Document (article 2(i)-(k)). Under new paragraph 23C, from 1st January 2006 all management allowances will be safeguarded until 31st December 2008 at the latest, if not replaced by a TLR of at least the same value. The relevant body may allocate additional duties to a teacher who is entitled to receive a safeguarded sum under this paragraph. The duties must be ones it reasonably considers are appropriate and commensurate with the safeguarded sum. If the teacher unreasonably refuses to undertake the additional duties, his entitlement to the safeguarded sum must cease provided the teacher is given one month’s notice before the change is implemented.

The amendment introduced by article 2(m) makes points awarded to teachers paid on the unqualified teachers’ pay spine permanent.

New paragraph 47A, introduced in the 2004 Document by article 2(r), provides for the safeguarding of the salaries of teachers paid on the leadership pay spine (including the head teacher) or on the advanced skills teachers’ pay spine, if the relevant pay ranges are reduced or posts are deleted or re-designated as a result of changes to the school’s pay policy or staffing structure. Safeguarding is limited to a maximum of 3 years and the relevant body may allocate additional duties to a teacher who is entitled to receive a safeguarded sum. The duties must be ones it reasonably considers are appropriate and commensurate with the safeguarded sum. If the teacher unreasonably refuses to undertake the additional duties, his entitlement to the safeguarded sum must cease provided the teacher is given one month’s notice before the change is implemented.

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