

EXPLANATORY MEMORANDUM TO
THE SCHOOL TEACHERS' PAY AND CONDITIONS ORDER 2017
2017 No. 811

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 2017 ("the Order"), which comes into force on 1 September 2017, 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 2017 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 2017 pay award to teachers.

2.3 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the 2016 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 School Teachers' Review Body (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 25 October 2016 the Secretary of State asked the STRB, to consider application of the 2017 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 10 July 2017, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 27th report, and its proposed response to that report.
- 7.4 The STRB recommended a 2% uplift to the minimum and maximum of the main pay range and a 1% uplift to the minimum and maximum of all other pay ranges and allowances in the national pay framework.

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 2017.

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 27th Report and recommendations were received by the Department in April and publication of the report and the commencement of its consultation process were delayed because of the general election purdah arrangements. Following the election the new Government required time to consider the recommendations again within the context of the election result and the need to gain cross-government clearance of the report's recommendations at a time when there was wider ongoing discussion around the public sector pay cap. Once these cross-government discussions had been concluded it was decided to publish the report and begin a three-week consultation process from 10th July to 28th July. Although the Department would have preferred the consultation period to be longer, in the circumstances it was considered acceptable given the relative simplicity and brevity of the report and its recommendations and because it was considered essential to ensure that the teachers' pay award could be implemented from 1st September. A consultation period that was longer than three weeks would have meant it would be impossible to lay the Pay Order in Parliament in time for a 1st September implementation date. Another relevant consideration was that all consultees had already had considerable opportunity to express their views on teachers' pay to the Department and to the STRB through the formal STRB evidence process, and the recommendations were accepted in full.
- 8.2 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 2017.
- 8.3 The key message from all of the respondees was that while they welcomed the STRB's recommendation of 2% on the MPR, they do not believe it goes far enough to address what they believe to be significant recruitment and retention issues and that any future remit to the STRB must allow it to make recommendations that go beyond the current 1% pay cap. All of the teaching unions believe that schools should award 2% to all teachers on the MPR and 1% to all other pay ranges, which is contrary to STRB's stated view that, with the exception of those on the minima, all other awards should be discretionary and based on performance. Other significant points made were around school funding and the belief that schools will struggle to make pay awards without additional funding. NEOST, the school employers, were especially concerned about schools capacity to fund pay awards and believed this would be exacerbated this year with schools coming under extreme pressure from the teaching unions to implement 2% and 1% respectively for all teachers on the MPR and UPR. Almost all respondees were also dissatisfied with the 3 week consultation period.

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

- 13.1 Dominic Mahon ([07469 031780](tel:07469031780)) e-mail dominic.mahon@education.gov.uk), at the Department for Education.