

EXPLANATORY MEMORANDUM TO
THE SCHOOL TEACHERS' PAY AND CONDITIONS ORDER 2018
2018 No. 998

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 Order 2018 ("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 2018 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2018.
- 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 2018 pay award to teachers.
- 2.3 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the 2017 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.

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 The provisions of the Document will have effect retrospectively from 1st September 2018.

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 and Wales.

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 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.

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 and Wales. 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 While this Order applies to England and Wales, from 30 September 2018 the Welsh Government has competence in regard to teachers’ pay and conditions in Wales. The Secretary of State’s functions regarding the determination of teachers’ pay and conditions in Wales have been transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) Order 2018 (SI 2018/644) and the relevant provisions of that Order come into force on 30 September 2018.
- 7.3 The School Teachers’ Pay and Conditions Order 2018 and the Document will have effect in Wales until the Welsh Government makes its own sometime in 2019.
- 7.4 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.

- 7.5 On 7 December 2017, the Secretary of State asked the STRB, to consider application of the 2018 pay award for teachers, within the context of the Government's new flexible approach to public sector pay. The STRB were asked to consider *"how the pay award should utilise the flexibility within the Government's pay policy to address areas of skill shortage and support the productivity of the workforce, while remaining within the bounds of affordability"*.
- 7.6 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 24 July 2018, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 28th report, and its proposed response to that report.
- 7.7 Historically, the government has always laid the pay order by 10 August to enable the pay award and any other changes to the Document to come into effect from 1 September – the date on which, historically, teachers' pay awards have always come into effect.
- 7.8 In September 2018, the government ended the 1% public sector pay cap which had been in place for a number of years, and asked the pay review bodies to take account of the government's new flexible approach to public sector pay.
- 7.9 Subsequently, the announcement on teachers' pay was delayed as a cross-government process looked across pay recommendations submitted to departments. The announcement on teachers' pay was made together with four other departments (Armed Forces, Police, Prison Officers, Doctors and Dentists), in a cross-government announcement on public sector pay.
- 7.10 As a result of the delay referred to above the department needs to employ the power to make the Document retrospective in effect contained in section 123(3) of the Education Act 2002 so that once the Order comes into force the Document provisions have effect from 1 September 2018.
- 7.11 The STRB recommended a 3.5% uplift to the minima and maxima of all pay and allowance ranges in the national pay framework. The rationale underpinning the STRB's uniform recommendations were concerns that maintaining teacher supply is becoming more difficult and deteriorations in recruitment and retention; concerns about schools continued ability to attract teachers into leadership positions; analysis that teachers' salaries lag behind other professions; and given the autonomy available to schools in the pay system, affordability of recommendations could only be assessed at an individual school level.
- 7.12 The government's view was that it was imperative to ensure the affordability of the award to both public finances and the whole school sector and accepting the recommendations in full would not be affordable. Given these affordability constraints, it judged that the award should be best targeted to support schools with recruitment and retention. The government's view was that targeting the award at the unqualified and main pay range best achieves this. It therefore announced, subject to consultation, that the minima and maxima of the upper and the leading practitioner

pay ranges and all allowances would be uplifted by 2% and the minimum and maximum of the leadership pay range would be uplifted by 1.5% rather than the STRB's recommendation of 3.5%. Further discussion of the government's reasoning for this approach is included at paragraphs 10.6 and 10.7 in this explanatory memorandum.

- 7.13 Following a period of statutory consultation the Secretary of State has accepted the STRB's recommendation for a 3.5% uplift to the minima and maxima of the main and unqualified pay ranges.
- 7.14 The Secretary of State has agreed to uplift the minima and maxima of the upper and the leading practitioner pay ranges and all allowances by 2%; and to uplift the minimum and maximum of the leadership pay range by 1.5%.
- 7.15 The Document has therefore been revised to include the new pay and allowance ranges. The revised document will have effect from 1 September 2018.

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 / 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 School Teachers' Review body's 28th Report and recommendations were published on 24 July 2018. Taking account of the STRB's recommendations the Document was revised in draft.
- 10.2 On 24 July 2018, the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's 28th report and the revised draft Document during a six week consultation process which ran from 24 July to 3 September 2018. 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. Three consultees accepted this invitation and met officials in August 2018. The consultees were: NAHT - National Association of Head Teachers, ASCL - Association of School and College Leaders and NEU – National Education Union.
- 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 on 14 September.
- 10.4 A joint union response was submitted by five of the unions - ASCL - Association of School and College Leaders, NEU – National Education Union, Voice – the union for education professionals, NAHT – National Association of Headteachers, UCAC - National Association of Teachers of Wales. In addition, individual responses were also received from all of the five unions above and NEOST - National Employers' Organisation for School Teachers, NGA – National Governors Association, NASUWT - National Association of Schoolmasters Union of Women Teachers and the Welsh Government.

- 10.5 The key message was that almost all consultees disagreed with the government's decision not to implement all of the STRB's recommendations. A number of consultees suggested that adequate reasoning had not been provided for the government's decision to depart from the STRB's full set of recommendations. In addition, while some consultees welcomed the 3.5% uplift to the main pay range, a number of consultees suggested the lower uplift for the upper pay range and leadership pay range was unjustified and would impact negatively on this group. Several consultees, such as NEU, expressed the view that annual uplifts should be applied to all teachers and all teachers should receive the relevant cost of living increase - 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. Several consultees welcomed the additional funding, but many requested the urgent need for further details on how the teacher pay grant is to be distributed and some consultees expressed concern about schools' ability to meet the cost of a 1% award, as expected under the teachers' pay grant. Several consultees expressed the view that the UK government should be providing funding to meet the cost of the award in Wales. Finally, several consultees expressed concerns about timing of publication of the STRB's report and the government's proposed response, arguing it did not give schools adequate time to prepare.
- 10.6 Having carefully considered the consultation responses, the government's view was the consultation responses did not undermine the reasons given for the proposed pay award announced on the 24 July. In particular, as set out in the Written Ministerial Statement of 24 July, the department proposed approach to the pay award was based on the need to ensure the affordability of pay award to public finances and across the whole school system. The government's view was that accepting the STRB's recommendations in full was not affordable. A key objective for the government is getting debt falling as a share of our economy, while investing in our public services and keeping taxes low, and around a quarter of all public spending is spent on pay. Therefore, the affordability of pay awards is critical to ensuring the government can meet its objectives and ensure that public services remain affordable for the future. In this context, the only way to ensure the affordability of the pay award to the public purse, is through lower uplifts to some pay ranges than what was recommended by the STRB.
- 10.7 A number of consultees focused on the need for a uniform uplift to all pay and allowance ranges, as the STRB recommended. However, given the affordability constraints discussed above, it remains vital that the award is best targeted to support schools with recruitment and retention. The government's view is that targeting the award at the unqualified and main pay range best achieves this. This is because uplifting these ranges significantly increases starting salaries for new teachers, supporting schools to address recruitment challenges and ensuring teaching remains a competitively paid career choice for high quality graduates. These uplifts will also ensure that schools are best supported to address retention challenges in the early career stage through an increase in the relative competitiveness of the early career pay framework. The government's view is that the consultation responses do not undermine this position, given the affordability constraints discussed above, and therefore did not necessitate any change to the proposed approach to the pay award announced on 24 July.
- 10.8 The government noted consultees concerns about the need for further details on the proposed teachers' pay grant, and will be providing further details on the

methodology and rates for the Teachers' Pay Grant alongside confirming the pay award and publishing the revised STPCD.

- 10.9 The government noted consultees' comments concerning the timing of the announcement and publication of the STRB report. This was a result of a cross-government process that looked at pay recommendations submitted to departments, in the light of the ending of the 1% cap. DfE officials are currently working with HMT to ensure the timetable next year allows for earlier publication of the response.

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 was updated in August 2014 and 2015. This guidance is published alongside the Document.

12. Impact

- 12.1 This instrument has no impact on business, charities or voluntary bodies.
- 12.2 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.
- 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 Stephen Baker, Deputy Director for School Employment and Retention Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Nick Gibb at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.