

EXPLANATORY MEMORANDUM TO
THE SCHOOL TEACHERS' PAY AND CONDITIONS (ENGLAND) (NO. 2) ORDER
2022

2022 No. 1043

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His 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)(No.2) Order 2022 ("the Order") sets out the remuneration and conditions of employment for certain school teachers as set out in section 2 of the "School Teachers' Pay and Conditions Document 2022 and Guidance on School Teachers' Pay and Conditions" ("the Document"). The provisions of the Document have effect from 1st September 2022.
- 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 Order makes retrospective provision, under section 123(3) of the Education Act 2002, to provide that the provisions in Section 2 of the Document have effect on and after 1st September 2022 notwithstanding that the Order comes into force after that date.
- 3.2 The Order revokes the School Teachers' Pay and Conditions (England) Order 2022 (S.I. 2022/1041) before the coming into force of that Order as a result of a drafting error in the commencement provision.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 certain school teachers and other conditions of employment related to their professional duties and working time. It revokes and replaces the School Teachers' Pay and Conditions (England) Order 2022 (S.I. 2022/1041) before the coming into force of that Order as a result of a drafting error in the commencement provision.

- 6.2 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).
- 6.3 Section 125 requires the referral of matters included in orders under section 122 to the STRB other than where the conditions in section 125(2) of the Act are met. The Order makes provision for that which is subsidiary as permitted by section 125(2)(b) to take account of the additional Bank Holiday that took place on Monday 19th September 2022 to mark the state funeral of Her Majesty Queen Elizabeth II.
- 6.4 In accordance with section 126 of the Act the Secretary of State has consulted such of the persons and bodies referred to in that section as appeared to the Secretary of State to be appropriate, where there is a requirement.
- 6.5 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 School Teachers' Pay and Conditions (England) Order 2021 (S.I. 2021/1101).
- 6.6 Section 1 of the Document summarises the changes to pay and conditions and associated guidance since the previous 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 changes relating to the application of the September 2022 pay award and the additional Bank Holiday mentioned at paragraph 6.3 to reflect a change in the number of days and hours that a teacher must be available for work and the directed hours that a teacher employed full time must be available to perform such duties at such times and such places as may be specified by the headteacher as a result.
- 6.7 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 The 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 for the current academic year. 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, most 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 17 December 2021 the Secretary of State asked the STRB their views on uplifts to the pay and allowances framework for teachers and leaders for the two years from September 2022/23 and September 2023/24. The remit letter to the STRB advised that the Secretary of State wished the STRB to consider these uplifts within the context of promoting "recruitment and retention, within the bounds of affordability across the school system as a whole and in the light of my views on the need for an uplift to starting salaries to £30,000".

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 19th July 2022, following submission of evidence from the Secretary of State and the representative bodies, the government laid before Parliament the STRB's 32nd report, and its proposed response to that report - [School Teachers' Review Body 32nd Report 2022 – CP 714 \(publishing.service.gov.uk\)](#)

7.4 The Government is committed to ensuring that we have a sufficient, high-quality supply of teachers in our schools. Teachers are the single biggest in-school determinant of pupil outcomes. We recognise the importance of pay in ensuring that teaching is a well-rewarded and prestigious profession. This will make teaching more competitive in the graduate market, ensuring we can attract the most able graduates, which in turn will support improved outcomes for pupils. The Government's manifesto commitment to raise starting salaries for teachers to £30,000 will help to raise the status of the teaching profession and provide a pay offer that better motivates teachers to stay. This is particularly important at early career, where we know pay has the most impact for recruitment and retention. That is why, in its evidence to the STRB, the Department set out proposals to deliver a £30,000 starting salary for teachers through an 8.9% uplift in 2022/23, followed by 7.1% in 2023/24, to reach £30,000 within two years. This also proposed that experienced teachers should receive a 3% award next academic year and a 2% award in 2023/24.

7.5 In its 32nd Report, the STRB recommended an 8.9% uplift to starting salaries outside London in 2022/23. It then recommended uplifts of between 5% and 8% along the rest of the main pay range (including advisory points). The STRB also recommended a 5% pay award for experienced teachers and leaders in 2022/23, as well as for other pay and allowance ranges. For 2023/24 the STRB recommended a total pay uplift worth 3.5%.

- 7.6 As set out in the [Written Ministerial Statement](#) of 19th July 2022, the Secretary of State signalled his intention to accept the STRB’s recommendations in full for 2022/23. In relation to 2023/24, after careful consideration, the Secretary of State believed it was not appropriate to determine pay awards for 2023/24 at present. The government therefore intends to remit the STRB for the 2023/24 pay year in line with other public sector workforces.
- 7.7 As well as revisions to the STPCD resulting from the STRB process, the Government has also introduced the measures mentioned in paragraph 6.3 above.
- 7.8 The revised Document will come into force on 3rd November 2022, with the effect of its provisions backdated to 1st September 2022.

8. European Union Withdrawal and Future Relationship

- 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 STRB’s 32nd Report and recommendations were published on 19th July 2022. Taking account of the recommendations the Document was revised in draft and the Secretary of State invited consultees who contributed to the STRB process to comment on the STRB's report. In order to ensure that schools and statutory consultees had sufficient time to consult outside of the school holidays, the consultation period ran for almost 10 weeks from 19 July 2022 to 23rd September 2022. This is the longest consultation period that the Government has run for any teachers’ pay award process and ensures that schools had at least four weeks of consultation time during normal school term time. Consequently, the Order will come into force on 3rd November 2022 and its provisions will have effect retrospectively from 1st September 2022.
- 10.2 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.
- 10.3 Seven of the eight (excluding the Department) consultees to the process responded, either individually or through a joint response. Only the National Governance Association (NGA) provided no response. As in previous years, ASCL, NAHT, NEU and Community (previously known as Voice) (which are all headteacher and teaching unions) produced a joint response, as well as sending in individual responses that largely reiterated the same messages as in the joint response.
- 10.4 The key messages in the joint submission were that consultees believed the September 2022 pay award should have been higher than that recommended by the STRB and risked exacerbating the cost-of-living problems for teachers and harming recruitment and retention and morale levels across all levels of the profession. They also criticised the government for not providing additional funding to enable schools to pay the award and recruit and retain sufficient teachers. They called for the abolition of performance related pay, believing that it “creates significant additional workload,

damages wellbeing, undermines positive appraisal and causes conflict within schools” They also believed that where the STRB identified structural issues, including career paths and structures, pay progression, and performance-related pay (PRP), as “future priorities” which may require “multi-year transition”, these matters should be addressed in the next STRB remit as a matter of urgency. The unions welcomed the STRB’s proposal to review flexible working and teacher wellbeing in the next remit, stating that “workload continues to be unmanageable in schools and has only become worse as a result of the pandemic”. All of the unions also called for the reintroduction of mandatory pay scales across all of the pay ranges.

- 10.5 In addition to their comments in the joint union submission, which were reiterated and expanded upon in their individual response, ASCL and NASUWT complained about delays to the 2021 remit and the timing of the publication of the STRB report and the launch of the consultation. They criticised the approach to pay differentiation in this year’s pay award, stating that it leads to disproportionately higher real terms pay cuts for more experienced teachers. ACSL also criticised the decision not to accept the full two-year pay deal, which would have provided schools with considerable budgetary stability.
- 10.6 NAHT urged the DfE to work with unions on developing robust and comprehensive information on the equality issues associated with the pay structure. NAHT were also very specific in calling for the next remit to include a wide range of issues including reforms to the national pay structure and leadership pay and conditions, analysis of equality issues across the pay system and establishment of “key worker” packages.
- 10.7 The NEU called for a review of Teaching and Learning Responsibility Payments (TLRs) and allowances and also called for discussions to open up the current salary sacrifice arrangements – this was also echoed by NASUWT.
- 10.8 NASUWT were critical of the delay in publishing the STRB report. They called on the Secretary of State to engage in “immediate and detailed talks with the NASUWT and other trade unions regarding the substance of the pay award proposals and how they are to be implemented.”
- 10.9 The response from the National Employers Organisation of School Teachers (NEOST) welcomed the decision to fully implement the STRB recommendations for 2022/23 and supported the decision to implement a one year pay award (as opposed to the proposed two years, with a review mechanism). NEOST also called on the government to provide additional financial support. They welcome the continued commitment to a starting salary of £30,000, but believes this should be seen in a wider context, to support the sufficient future supply and retention of quality teachers and school leaders. In relation to the next year’s remit, NEOST ask for a review of Upper Pay Rate and salary safeguarding specific issues to be included. They also criticised the timing of the report and consultation.
- 10.10 The British Association of Teachers of the Blind (BATOD) called for the abolition of PRP but welcomed increased starting salaries while also stating that pay differentials across remainder of pay ranges was not helpful in terms of supporting teachers’ morale. They also believe the pay award should be fully funded.
- 10.11 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) of the 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 19th July. Taking into account the need to focus on targeting starting and early career salaries with a less steep progression structure, on average, favours female, younger, non-white and disabled teachers, who are disproportionately represented within this group. This positive impact on these protected characteristics groups is significant given the departmental priority of increasing diversity within the teacher workforce. This should also help to address recent reports from the teaching unions detailing concerns over pay inequalities in relation to female and non-white teachers. We will continue to monitor and evaluate these changes and their impacts pertaining to equalities.

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 the Order - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786098/Implementing_your_school_s_approach_to_pay.pdf. 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) e-mail dominic.mahon@education.gov.uk), at the Department for Education.
- 15.2 Amy Collins, Deputy Director for the Supporting and Rewarding Teachers and Leaders Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for School Standards, Jonathan Gullis, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.