Draft laid before Parliament under section 12(6) of the Industrial Training Act 1982, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Industry Training Board) Order 2007

Made - - - -

Coming into force - -

This Order is made in exercise of the powers conferred by section 11(2) and section 12(3) and (4) of the Industrial Training Act 1982(**a**) ("the Act").

This Order is made to give effect to levy proposals submitted by the Construction Industry Training Board ("the Board") pursuant to section 11(1) of the Act which, as required by section 11(3) of the Act, include proposals for the exemption of employers employing a small number of employees.

The levy proposals include proposals for securing that no exemption certificates shall be issued by the Board and the amount of levy payable by employers will exceed 0.2 per cent of their relevant emoluments. Accordingly, section 11(5) of the Act applies to this Order.

In relation to the requirements set out in section 11(5) of the Act the Secretary of State for Education and Skills is satisfied that the levy proposals are necessary to encourage adequate training in the industry and the condition in section 11(6)(a) is met.

The Secretary of State for Education and Skills estimates that the levy to be paid by employers in the industry exceeds one per cent of their relevant emoluments and accordingly this Order falls within section 11(7)(b) of the Act; the Secretary of State considers that the amount to be paid by employers in the industry is appropriate in the circumstances.

The Secretary of State for Education and Skills has consulted the Scottish Ministers as required by section 88(2) of the Scotland Act 1998(**b**).

A draft of this Order was laid before Parliament in accordance with section 12(6) of the Act and approved by resolution of each House of Parliament.

(**a**) 1982 (c.10). Sections 11 and 12 were amended by paragraphs 10 and 11 respectively of Schedule 4 to the Employment Act 1989 (c.38).

(**b**) 1998 (c.46). The Construction Industry Training Board has been specified as a cross-border public authority for the purposes of section 88 of the Scotland Act 1998 by the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999 (S.I. 1999/1319).

Accordingly the Secretary of State for Education and Skills makes the following Order:

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Construction Industry Training Board) Order 2007 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

(a) "agriculture" means agriculture within the meaning, as the case may be, of—

(i) section 109(3) of the Agriculture Act 1947(**a**); or

(ii) section 85(1) of the Agricultural Holdings (Scotland) Act 1991(**b**);

(b) "assessment" means an assessment of an employer to the levy;

(c) "the base period" means the period of twelve months that began on 6th April 2005;

(d) "the Board" means the Construction Industry Training Board(**c**);

(e) "business" means any activities of industry or commerce;

(f) "the construction industry" does not include any activities of an establishment which have been transferred from the industry of the Board to the industry of another industrial training board by one of the transfer orders, but otherwise means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the industrial training order, are specified in paragraph 1 of that Schedule as the activities of the construction industry or, in relation to an establishment whose activities have been transferred to the industry of the Board by one of the transfer orders, any activities so transferred;

(g) "emoluments" means—

(i) all salaries, fees and wages;

(ii) all gratuities or other profits or incidental benefits of any kind obtained by an employee other than pension contributions;

(iii) anything else that constitutes an emolument of the relevant employment;

(h) "employer" means a person who is an employer in the construction industry at any time in the levy period;

(i) "the industrial training order" means the Industrial Training (Construction Board) Order 1964(**d**);

(j) "labour-only agreement" means any agreement or arrangement, either written or oral, not being a contract of service or of apprenticeship or for provision of professional services, between an employer and any other person or persons, the purpose of which is wholly or mainly the provision of services of such person or persons or of any other person or persons to the employer in his trade or business;

(k) "the levy" means the levy imposed by the Board in respect of the levy period;

(l) "the levy period" means the period commencing on the day on which this Order comes into force and ending on 31st March 2007;

(m) unless the context requires otherwise, "notice" means a notice in writing;

(n) "the transfer orders" means the orders specified in the Schedule.

(2) Any references in this Order to an establishment that starts to carry on business or that ceases to carry on business do not apply where the location of the establishment is changed but its

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(**a**) 1947 (c.48).
(**b**) 1991 (c.55).
(**c**) The Board was established under the Industrial Training (Construction Board) Order 1964 (S.I. 1964/1079).
(**d**) S.I. 1964/1079; a relevant amending instrument is S.I. 1992/3048.

business is continued wholly or mainly at or from the new location, or where the suspension of activities is of a temporary or seasonal nature.

(3) For the purposes of this Order in the case of a construction establishment that is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, the person or persons carrying on the establishment on the day on which this Order comes into force is to be treated as the employer of any person who was employed at any time in the base period at or from the establishment under a contract of service or of apprenticeship or under a labour-only agreement, and that employer is to be assessed to levy in accordance with article 4.

Meaning of "construction establishment"

3.—(1) For the purposes of this Order "construction establishment" means an establishment engaged wholly or mainly in the construction industry during the necessary period.

(2) In this article "the necessary period" means—

(a) unless sub-paragraph (b) applies, a period (which need not be continuous) consisting of a total of 27 or more weeks falling within the base period; or

(b) in the case of an establishment that started to carry on business in the base period, a period (which need not be continuous) falling within the base period consisting of a total number of weeks exceeding one half of the number of weeks in the part of the base period starting on the day on which business began and ending on the last day of the base period.

Imposition of the levy

4.—(1) The levy on an employer is assessed in accordance with this article.

(2) The Board must assess the levy separately in respect of each construction establishment of an employer, but in agreement with the employer one assessment may be made in respect of any number of such establishments, in which case those establishments are to be treated for the purposes of that assessment as constituting one establishment.

(3) Subject to the exemptions in article 5 the amount to be assessed by way of levy in respect of a construction establishment is **A** + **B** - **C** (and if A + B is less than C no levy shall be assessed) where—

A is an amount (rounded down where necessary to the nearest £1) equal to 0.5 per cent of the aggregate of the emoluments and payments intended to be disbursed as emoluments which have been paid or are payable by the employer to or in respect of persons employed by the employer in the base period;

B is the sum which (rounded down where necessary to the nearest £1) represents 1.5 per cent of all payments (other than payments which are not in respect of the provision of services) made to any persons during the base period under labour-only agreements in respect of work carried out at or from the establishment; and

C is the sum which (rounded down where necessary to the nearest £1) represents 1.5 per cent of all payments (other than payments which are not in respect of the provision of services) received by the employer during the base period from any other employers in the construction industry under labour-only agreements in respect of work carried out at or from the establishment.

(4) For the purposes of paragraph (3)—

(a) a person employed wholly in the supply of food or drink for immediate consumption or in agriculture is to be left out of account;

(b) a person who was normally working for an aggregate of less than 8 hours weekly is to be left out of account; and

(c) a company director remunerated solely by fees shall be left out of account, but otherwise a company director (including a person occupying a position of director by whatever title he is called) is to be treated as employed.

Exemptions from levy

5.—(1) An employer is exempt from the levy if the aggregate amount of—

(a) the sum of the emoluments and payments intended to be disbursed as emoluments of all the persons employed at or from the construction establishments of the employer in the base period; and

(b) all sums (if any) paid in the base period by the employer to any person under labour-only agreements in respect of work carried out at or from those establishments

was less than £73,000.

(2) A charity within the meaning of section 506 of the Income and Corporation Taxes Act 1988(**a**) shall be exempt from the levy.

Assessment notices

6.—(1) The Board must serve an assessment notice on every employer assessed to the levy, but one notice may comprise two or more assessments.

(2) An assessment notice must state the amount of the levy payable by the employer assessed to the levy, and that amount must be equal to the total amount of the levy assessed by the Board under the provisions of this Order in respect of each establishment included in the notice.

(3) An assessment notice must state the Board's address for the service of a notice of appeal or of an application for an extension of time for appealing.

(4) An assessment notice may be served on the employer assessed to the levy—

(a) by delivering it to him personally; or

(b) by leaving it at or posting it to his last known address, place of business or registered office in the United Kingdom; or

(c) where the employer has an e-mail address, by sending an electronic copy of the assessment notice to that e-mail address.

Payment of the levy

7.—(1) Subject to paragraph (2) and articles 8 and 9, the amount of the levy payable under an assessment notice served by the Board is due and payable by the employer to the Board one month after the date of the notice.

(2) The amount of an assessment is not be recoverable by the Board until there has expired the time allowed for appealing against the assessment by article 9(1) and any further periods of time that the Board or an employment tribunal may have allowed for appealing under article 9(2) or (3) or, where any appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

8.—(1) The Board may, by a notice served on the employer assessed to the levy in the same manner as an assessment notice, withdraw an assessment.

(2) The withdrawal of an assessment is without prejudice—

(a) to the power of the Board to serve a further assessment notice in respect of any establishment to which that assessment related; or

(b) to any other assessment included in the original assessment notice, and such notice shall have effect as if any assessment withdrawn by the Board had not been included in the original assessment notice.

(**a**) 1988 (c.1).

Appeals

9.—(1) An employer assessed to the levy may appeal to an employment tribunal against the assessment within one month from the date of the service of the assessment notice or within any further period or periods of time that may be allowed by the Board or an employment tribunal under the provisions of this article.

(2) The Board by notice may for good cause allow an employer assessed to the levy to appeal to an employment tribunal against an assessment at any time within the period of four months from the date of the service of the assessment notice or within such further period or periods as the Board may allow before such time as may then be limited for appealing has expired.

(3) If the Board does not allow an application for extension of time for appealing, an employment tribunal will upon application made to the tribunal by the employer assessed to the levy have the like powers as the Board under paragraph (2).

(4) An appeal or an application to an employment tribunal under this article must be made in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**a**).

(5) The powers of an employment tribunal under paragraph (3) may be exercised by the President of the Employment Tribunals (England and Wales) or by the President of the Employment Tribunals (Scotland).

Cessation of business

10.—(1) This article applies to a construction establishment that ceases to carry on business in the levy period.

(2) The amount of the levy imposed in respect of the establishment is to be in the same proportion to the amount that would otherwise be due under article 4 as the number of days between the commencement of the levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the levy period.

Certificate that levy has been paid

11. The Board must, if requested to do so by an employer who has paid the amount specified in the assessment notice served on him under article 6, issue a certificate to the employer confirming the employer has paid to the Board the amount stated in the relevant assessment notice.

Department for Education and Skills

(**a**) S.I. 2004/1861. Relevant amendments were made by Schedule 4 to the Constitutional Reform Act 2005 (c. 4), S.I. 2004/2351, S.I. 2005/1865 and S.I. 2006/680. Regulation 16 of and Schedule 3 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 set out the rules of procedure that apply in relation to appeals against an assessment to levy.

SCHEDULE

Article 2

TRANSFER ORDERS

The Industrial Training (Transfer of the Activities of Establishments) Order 1975(**a**),

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1975(**b**),

The Industrial Training (Transfer of the Activities of Establishments) Order 1976(**c**),

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1976(**d**),

The Industrial Training (Transfer of the Activities of Establishments) (No 3) Order 1976(**e**),

The Industrial Training (Transfer of the Activities of Establishments) Order 1977(**f**),

The Industrial Training (Transfer of the Activities of Establishments) Order 1978(**g**),

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1978(**h**),

The Industrial Training (Transfer of the Activities of Establishments) (No 3) Order 1978(**i**),

The Industrial Training (Transfer of the Activities of Establishments) Order 1979(**j**),

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1980(**k**),

The Industrial Training (Transfer of the Activities of Establishments) Order 1981(**l**),

The Industrial Training (Transfer of the Activities of Establishments) Order 1985(**m**),

The Industrial Training (Transfer of the Activities of Establishment) Order 1990(**n**).

(**a**) S.I. 1975/434.
(**b**) S.I. 1975/1157.
(**c**) S.I. 1976/396.
(**d**) S.I. 1976/1635.
(**e**) S.I. 1976/2110.
(**f**) S.I. 1977/1951.
(**g**) S.I. 1978/448.
(**h**) S.I. 1978/1225.
(**i**) S.I. 1978/1643.
(**j**) S.I. 1979/793.
(**k**) S.I. 1980/1753.
(**l**) S.I. 1981/1041.
(**m**) S.I. 1985/1662.
(**n**) S.I.1990/928.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to levy proposals of the Construction Industry Training Board ("the Board") which were submitted to the Secretary of State for Education and Skills under section 11 of the Industrial Training Act 1982 ("the Act").

The levy proposals were for the imposition of a levy on employers engaged wholly or mainly in the construction industry for the purpose of raising money towards the Board's expenses.

The levy is to be imposed in respect of the levy period commencing on the day on which this Order comes into force and ending on 31st March 2007. Employers who cease business during the levy period will be assessed proportionately (article 10).

Article 5 makes provision for small employers to be exempt from the levy.

The levy will be assessed by the Board in accordance with article 4. An employer assessed to levy will receive a written assessment notice from the Board setting out the total amount of levy payable by that employer. Payment of the levy must be made within one month of service of the assessment notice by the Board (articles 6 and 7). An assessment notice may be withdrawn by the Board.

An employer assessed to levy may appeal against that assessment. An appeal must normally be made within one month of the date of service of the relevant assessment notice by the Board and in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (article 9).

A full regulatory impact assessment of the effect that this Order will have on the costs of business is available from the Department for Education and Skills, Library and Information Service, Moorfoot, Sheffield S1 4PQ or Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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