Draft Order 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

2009 No.

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Industry Training Board) Order 2009

Made - - - -

Coming into force on the day after the day on which it is made

The Secretary of State for Innovation, Universities and Skills makes this Order 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(**b**) 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 in respect of the base period for each levy period. 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 Innovation, Universities 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 Innovation, Universities 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 Innovation, Universities and Skills has consulted the Scottish Ministers as required by section 88(2) of the Scotland Act 1998(**c**).

(**a**) 1982 (c.10). Sections 11 and 12 were amended by paragraphs 10 and 11 of Schedule 4 to the Employment Act 1989 (c.38) and by sections 24, 25, 29 of and paragraphs 3 and 4 of Schedule 1 to the Further Education and Training Act 2007 (c.25).
(**b**) The Board was established under the Industrial Training (Construction Board) Order 1964 (S.I. 1964/1079).
(**c**) 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).

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.

Accordingly the Secretary of State for Innovation, Universities 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 2009 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 Board" means the Construction Industry Training Board;

(d) "construction establishment" has the meaning given in article 6;

(e) "the construction industry" means the activities of the construction industry as defined by Schedule 1 to the Industrial Training (Construction Board) Order 1964(**c**) read together with the orders listed in the Schedule to this Order;

(f) "emoluments" means—

(i) all salaries, fees and wages;

(ii) any gratuity or other profit or incidental benefit of any kind obtained by an employee, if it is money or money's worth, other than pensions contributions;

(iii) anything else that constitutes, or is intended to constitute, earnings of the relevant employment;

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

(h) "labour-only agreement" means any agreement or arrangement (other than contracts of service or contracts of apprenticeship) between an employer and any other person, the purpose of which is wholly or mainly the provision of services (not including professional services) of such a person or any other person to the employer in his trade or business;

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

(j) "the relevant base period" means the particular base period defined in article 5 in respect of a particular levy period defined in article 4 by reference to which the relevant emoluments are to be calculated;

(k) "the relevant levy period" means the particular levy period defined in article 4 by reference to which levy is to be established in respect of a construction establishment during a particular levy period.

(2) In this Order, references to a construction establishment starting or ceasing to carry on business do not include instances where—

(a) a construction establishment starts carrying on business after, or ceases carrying on business because of, a suspension of activities of a temporary or seasonal nature; or

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(**a**) 1947 (c.48).
(**b**) 1991 (c.55).
(**c**) S.I. 1964/1079; a relevant amending instrument is S.I. 1992/3048.

(b) the location of a construction establishment changes but the establishment continues its business at or from the new location.

Imposition of the levy

3. The levy shall be imposed on employers in the construction industry.

Levy periods

4. An employer's liability to levy is to be established by reference to the following levy periods—

(a) the period commencing on the day on which this Order comes into force and ending on 31st March 2009 (in this Order referred to as "the first levy period");

(b) the period commencing on 1st January 2010 and ending on 31st March 2010 (in this Order referred to as "the second levy period"); and

(c) the period commencing on 1st January 2011 and ending on 31st March 2011 (in this Order referred to as "the third levy period").

Base periods

5.—(1) The base period for the first levy period is the twelve months commencing on 6 April 2007.

(2) The base period for the second levy period is the twelve months commencing on 6 April 2008.

(3) The base period for the third levy period is the twelve months commencing on 6 April 2009.

Construction establishments to be assessed

6.—(1) The Board must assess the amount of levy to be paid in respect of each construction establishment of an employer.

(2) In this Order, "construction establishment" means any particular establishment of the employer engaged wholly or mainly in the construction industry during the necessary period.

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

(a) a period (which need not be continuous) consisting of a total of 27 or more weeks falling within the relevant base period; or

(b) in the case of a construction establishment which started carrying on business during the relevant base period, a period (which need not be continuous)—

(i) falling within the relevant base period; and

(ii) consisting of a total number of weeks exceeding one half of the number of weeks in the part of the relevant base period starting on the day on which the construction establishment started carrying on business and ending on the last day of the relevant base period.

(4) The person who on the first day of the relevant levy period owns or otherwise has responsibility for a construction establishment is to be treated as the employer of all persons employed at or from that establishment during the relevant base period.

Treatment of construction establishments as one establishment

7. The Board and an employer may agree that two or more construction establishments of that employer be treated as one construction establishment for the purposes of assessment of the amount of levy payable.

Assessment of amount of levy

8.—(1) The amount of levy to be assessed in respect of each construction establishment is—

A + B - C

where

A is an amount equal to 0.5% of all emoluments which have been paid or are payable by the employer to or in respect of persons employed by the employer in the relevant base period;

B is an amount equal to 1.5% of all payments (excluding payments in respect of the provision of materials and any other payments which are not in respect of the provision of services) made to persons during the relevant base period under labour-only agreements in respect of work carried out at or from the establishment; and

C is an amount equal to 1.5% of all payments (excluding payments in respect of the provision of materials and any other payments which are not in respect of the provision of services) received by the employer during the relevant 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.

(2) Where an amount described as "A", "B" or "C" is not a whole number of pounds, the amount should be rounded down to the nearest £1.

(3) In paragraph (2) the following persons are to be excluded from all calculations—

(a) a person whose usual working pattern consists of an aggregate of less than 8 hours of working time per week;

(b) a company director remunerated solely by fees;

(c) a person employed wholly in agriculture; and

(d) a person employed wholly in the supply of food or drink.

(4) Where a construction establishment ceases to carry on business during a levy period, the amount of levy imposed in respect of the construction establishment is to be in the same proportion to the amount that would otherwise be due under this article as the number of days between the commencement of the levy period and the date of the cessation of business (both dates inclusive) bears to the number of days in the levy period.

Total amount of levy

9. The total amount of levy to be paid by an employer is the aggregate amount of levy for all construction establishments of the employer.

Exemptions

10.—(1) An employer is exempt from payment of the levy in respect of the relevant levy period if the aggregate amount of—

(a) all emoluments of all the persons employed at or from the construction establishments of the employer in the relevant base period; and

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

is less than £80,000.

(2) The persons listed in article 8(3) as those to be excluded from all calculations in article 8(2) are also to be excluded from all calculations in paragraph (1) of this article.

(3) A charity or charitable company within the meaning of section 506 of the Income and Corporation Taxes Act 1988(**a**) is exempt from the levy.

Assessment notices

11.—(1) The Board must serve an assessment notice on every employer assessed to the levy.

(2) An assessment notice may comprise two or more assessments.

(3) An assessment notice must state—

(a) the total amount of levy payable by the employer under the assessment notice;

(b) whether each assessment is based on—

(i) information submitted by the employer to the Board; or

(ii) a reasonable estimate by the Board of the employer's liability to levy;

(c) the methods of payment of the levy which the Board will accept; and

(d) the Board's address for service of a notice of appeal(**b**) and an application for an extension of time for appealing.

(4) The Board may—

(a) withdraw any assessment contained in an assessment notice in accordance with article 12; or

(b) amend any assessment contained in an assessment notice in accordance with article 13.

Withdrawal of assessments

12.—(1) In order to withdraw an assessment the Board must serve a withdrawal notice on the relevant employer.

(2) The withdrawal notice referred to in paragraph (1) must make clear which assessment is withdrawn.

(3) Where an assessment has been withdrawn the assessment notice shall have effect as if the assessment withdrawn by the Board had not been included in that notice.

Amendment of assessments

13.—(1) In order to amend an assessment the Board must serve an amended assessment notice on the relevant employer.

(2) The amended assessment notice referred to in paragraph (1) must—

(a) comply with the requirements for an assessment notice specified in article 11(3); and

(b) make clear which assessment which is amended.

Service of notices

14. Notices under articles 11, 12 and 13 must be served on an employer assessed to the levy by—

(a) delivering the notice to the employer personally; or

(b) delivering the notice to the employer's last known address, place of business or registered office; or

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(**a**) 1988 (c.1). Section 506 was amended by paragraph 95 of Part 1 of Schedule 1 to the Income Tax Act 2007 (c.3).

(**b**) Regulation 16 of and Schedule 3 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861) set out the rules of procedure that apply in relation to appeals against an assessment to levy. Rule 3 of Schedule 3 makes provision about notices of appeal. 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.

(c) sending the notice by post to the employer's last known address, place of business or registered office; or

(d) where the employer has notified the Board of an e-mail address at which the employer is content to accept service, sending an electronic copy of the assessment notice to that e-mail address.

Time at which payment becomes due and recoverable

15.—(1) The amount of levy payable under an assessment notice is due and payable by the employer one month after service of the assessment notice, unless paragraph (2) or (3) applies.

(2) Where the Board has withdrawn an assessment under article 12, the amount of levy in respect of that assessment is no longer due and payable.

(3) Where the Board has amended an assessment in accordance with article 13—

(a) if the amount of levy in respect of that assessment has been increased—

(i) the amount of the assessment prior to amendment remains due and payable one month after service of the assessment notice; and

(ii) the additional amount of the assessment is due and payable one month after service of the amended assessment notice;

(b) if the assessment has been reduced, the amended amount of the assessment is due and payable one month after service of the assessment notice.

(4) Any amount payable by an employer by way of the levy—

(a) is not recoverable by the Board during any period in which that employer has pending either—

(i) an appeal against the levy; or

(ii) a request to allow more time to appeal;

(b) is otherwise recoverable once it becomes due.

Time to appeal

16. For the purposes of section 12(4) of the Industrial Training Act 1982, the period of time within which a person assessed to the levy may appeal to an employment tribunal against the assessment is—

(a) one month commencing with the date of service of the assessment notice; or

(b) where the Board has served an amended assessment notice under article 13, one month commencing with the date of service of the amended assessment notice; or

(c) such further time as the Board may allow; or

(d) such further time as an employment tribunal may allow where the Board has not allowed an extension of time for appealing.

Certificate of payment

17.—(1) An employer may request a certificate as evidence that the employer has paid all sums due under—

(a) an assessment notice; or

(b) an amended assessment notice.

(2) The Board must issue a certificate to an employer when—

(a) the Board has received a request for a certificate from an employer; and

(b) all sums due under the relevant notice have been paid by that employer.

(3) The certificate must state—

(a) the total amount of levy paid by the employer; and

(b) that no further sums are due from the employer in respect of the relevant notice.

Name
Parliamentary Under Secretary of State
Department

Date

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 Innovation, Universities 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 three levy periods in 2009, 2010 and 2011 (article 4).

The Board will calculate the amount of levy due in respect of each construction establishment of an employer in accordance with article 8. This calculation is carried out with reference to the base periods in article 5. The total amount of levy payable by the employer is the aggregate amount of levy for all the employer's construction establishments (article 9). An employer assessed to levy will receive a written assessment notice from the Board setting out the amount of levy payable by that employer (article 11). Payment of the levy must usually be made within one month of service of the assessment notice by the Board (article 15). An assessment notice may be withdrawn by the Board and the Board may also serve amended assessment notices (articles 12 and 13).

Article 10 makes provision for small employers to be exempt from the levy.

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 (article 16).

A full impact assessment of the effect that this Order will have on the costs of business is available from the Department for Innovation, Universities and Skills, Skills Group, Moorfoot, Sheffield S1 4PQ.

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