EXPLANATORY MEMORANDUM TO

THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2012

2012 No. [ ]

1. This explanatory memorandum has been prepared by The Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order will enable the Construction Industry Training Board (CITB) to raise and impose a levy on employers in the construction industry. This Order sets out the rate and exemptions from that levy.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 11 of the Industrial Training Act 1982 (ITA) enables an industrial training board to submit, to the Secretary of State, proposals for the raising and collection of a levy to be imposed for the purpose of meeting the board's expenses. That levy is to be imposed in accordance with an order made by the Secretary of State. This Order will give effect to levy proposals submitted to the Secretary of State by CITB.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Further Education, Skills and Lifelong Learning has made the following statement regarding Human Rights:

In my view the provisions of the Industrial Training Levy (Construction Industry Training Board) Order 2012 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Industrial Training Boards (ITBs) are set up under the ITA to ensure that the quantity and quality of training are adequate to meet the needs of the industries for which they were established.

7.2 There are currently ITBs covering the construction and engineering construction sectors and both are Non-Departmental Public Bodies (NDPBs). They provide a wide range of services and training initiatives including: setting occupational standards; developing vocational qualifications; delivering apprenticeships and paying direct grants to employers who carry out training to approved standards.

7.3 Employers in the construction and engineering construction sectors have consistently supported statutory underpinning for their training arrangements. They argue that the nature of their industries mean that individual employers are unable or unwilling to accept the responsibility of training their own employees. They believe that a national pool of labour, collectively funded by all employers, is the only way the industries' skill needs can be met.

7.4 An order to establish a third ITB covering the film industry came into force on 7 December 2007.

Levy Arrangements

7.5 The ITA contains provision for a levy to be imposed on employers to finance an ITB's activities. It is for the ITB to make proposals for the rate of levy for the industry it covers and for the Secretary of State to make an order giving effect to the proposals.

7.6 This Order gives effect to proposals submitted by the CITB for levies to be collected by them in 2012, 2013 and 2014. Levy rates are decided by the employer members of the ITB in the light of the Board's policies and plans and they must cover the costs of the Board's plans for the years in question. The levy rates are set out in article 8 of this instrument for different categories of employees. People engaged under contracts for services are included as "employees" under the ITA. There is no ceiling to the amount of levy paid by an employer which is calculated by reference to the emoluments paid by them to their workers (broadly these are salaries, fees and wages).

7.7 The Order also sets out the employers on whom the levy can be imposed. This includes every employer whose main activity is included in the definition of the construction industry as set out in the ITB's founding legislation.

7.8 The CITB's proposals involve a levy greater than 0.2% of an employer's relevant emoluments. Consequently, to make this Order, the

Secretary of State must be satisfied that the proposals are necessary to encourage adequate training in the industry and that one of three conditions is met. The prime condition is that the Secretary of State must be satisfied that the ITB has taken reasonable steps to obtain the views of employers who are likely to be liable to pay the levy. Also, that these employers agree that the proposals are necessary to encourage adequate training. These employers must be i) more than half in number of those likely to pay the levy and ii) likely to pay more than half in value of the total levy to be paid as a result of the order.

7.9 **Note:** Two changes were made to the ITA in 2007 by the Further Education and Training Act 2007 (FETA).

i) In previous years ITBs submitted levy proposals annually. However, as levy rates have stayed the same since 2001, the ITA was amended to allow ITBs to submit levy proposals for a three year period. This reflects the need for a more strategic relationship with the ITBs, allows them to take a longer term view of their finances and reduces the bureaucratic burden, especially on Parliamentary time.

ii) At the same time, changes were made to the manner in which support for levy proposals can be demonstrated. Up until 2008, in order to establish the level of support for their levy proposals, ITBs were only able to consult with representative employer organisations rather than directly with employers. However, as fewer firms chose to join associations, it became increasingly difficult for the ITBs to demonstrate support. As a consequence of an amendment made to the ITA by FETA, ITBs can take a range of "reasonable steps" to ascertain the views of employers. ITBs are now able to ascertain the views of employers in one of four ways:

a) By consulting the organisations which represent employers (as previously)
b) By consulting the employer organisations and also consulting all other employers who are likely to be liable to pay levy but are not represented by organisations
c) By consulting the employer organisations and obtaining a sample of the views of other employers who are not represented by organisations
d) By sampling the views of all employers

Consolidation

7.10 None

8. Consultation outcome

8.1 The CITB consulted formally on the levy proposals. They used option c) detailed above in 7.9 and have consulted with relevant employer organisations and sampled the views of non-represented employers. The

results show that 13 out of the 14 employer organisations, signifying 99% of represented employers, support the levy proposals. In total this represents 52% of all levy paying employers in the industry and 63% of all levy likely to be payable by all employers. In addition, a sample survey of non-represented employers indicates that 68% of non-federated employers support the levy. Applying this sample percentage to the total number of non members represents 33% of all levy payers that are likely to pay a further 20% of the forecast levy. The aggregation of the figures for employer association support and non member support is therefore 85% and in value terms is 83% of the total levy forecast.

8.2 CITB has demonstrated, therefore, that it has the support of the majority of employers (85 %) who together are likely to be liable to pay more than half of the total levy (83%).

9. Guidance

9.1 Guidance will be issued to employers by the CITB to explain how levy is assessed and how funding and grants can be claimed. General guidance is also available on-line from their website (www.cskills.org).

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows:

i) on business - The proposals are expected to raise £134m in 2012, £127m in 2013 and £127m in 2014 from the sector. The CITB has calculated that, in 2010, for every £1 raised in levy, £1.24 was returned to the industry. This comprised a direct return of £0.85 (provided through the payment of grants, college fees and other training allowances) plus an indirect return of £0.39 linked with the provision of trainee recruitment and selection, advice on training, the provision of schemes for recording achievements and the development of industry standards. CITB also generate income through self-funded commercial activity which enables them to return more money to the industry than raised by the levy.

10.2 The impact on the public sector is negligible as the levy is funded from the industry and CITB receives no grant in aid. Charities are exempted from the levy.

10.3 As the proposed levy rates remain unchanged from the previous (2009) Levy Order an impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is determined by the ITA which requires levy proposals to include an exemption for small companies. The exemption level

is set according to an employer's total emoluments rather than by the number of employees. This reflects the nature of the industry where employers make extensive use of labour only subcontractors and may directly employ few people. The 2009 levy order set the exemption level at £80,000 and this threshold exempted more than 50% of the employers in the industry in 2010. This Order proposes to retain the exemption level at £80,000. However, this Order also proposes to introduce a taper to reduce the impact of levy for employers whose payments fall between £80,0000 and £99,999 by offering them a 50% levy reduction. It is forecast that around 1,500 firms would benefit at a cost of around £500,000 in reduced levy.

11.3 Small firms who do not have to pay the levy are, however, eligible to claim grants towards the cost of training their employees.

11.4 The basis for the final decision on what action to take to assist small business is the proposals made by the CITB to the Secretary of State following their consultations with the industry as described in 8 above.

12. Monitoring & review

12.1 As an NDPB, CITB's performance is subject to annual review by BIS. The CITB will also be subject to Triennial Reviews to assess the effectiveness and value for money of the ITB model. The first Triennial Review is due to take place in the last quarter of 2013.

13. Contact

13.1 Andy Duncan at the Department for Business, Innovation and Skills Tel: 0114 207 5066 or email: andrew.duncan@bis.gsi.gov.uk can answer any queries regarding the instrument.