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

2015 No. 0000

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Industry Training Board) Order 2015

Made - - - - [2015]

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

The Secretary of State 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% 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 is satisfied that the levy proposals are necessary to encourage adequate training in the industry and the condition in section 11(6)(a) of the Act is met.

The Secretary of State estimates that the levy to be paid by employers in the industry exceeds 1% 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 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 and 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.

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Construction Industry Training Board) Order 2015 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

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

(b) "the Board" means the Construction Industry Training Board;

(c) "construction establishment" has the meaning given in article 5;

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

(e) "contract payment" has the meaning given in article 7(3);

(f) "emoluments" means—

(i) salaries, fees and wages excluding fees which are paid to a company director who is remunerated solely by fees;

(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" has the meaning given in article 3;

(h) "labour-only agreement" means any agreement or arrangement (other than a contract of service, a contract of apprenticeship or a contract which requires substantial use of plant or specialist equipment or both) 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;

(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 4 in respect of a particular levy period defined in article 3 by reference to which the relevant emoluments are to be calculated;

(k) "the relevant levy period" means, in relation to a levy imposed on employers in the construction industry under article 3(1), the levy period in respect of which the levy is imposed;

(l) "the relevant part of a contract payment" has the meaning given in article 7(4).

(2) In this Order, references to a construction establishment starting or ceasing to be engaged in the construction industry do not include instances where—

(a) a construction establishment starts to be engaged in the construction industry after, or ceases to be engaged in that industry because of, a suspension of activities of a temporary or seasonal nature; or

(b) the location of a construction establishment changes but the establishment continues to be engaged in the construction industry at or from the new location.

(**a**) S.I. 1964/1079; a relevant amending instrument is S.I. 1992/3048.

Imposition of the levy

3.—(1) A levy shall be imposed on employers in the construction industry in respect of each of the following levy periods—

(a) the period commencing with the day on which this Order comes into force and ending with 31st March 2015 (in this Order referred to as "the first levy period");

(b) the period commencing with 1st January 2016 and ending with 31st March 2016 (in this Order referred to as "the second levy period"); and

(c) the period commencing with 1st January 2017 and ending with 31st March 2017 (in this Order referred to as "the third levy period").

(2) Subject to article 9, a person is liable to pay an amount by way of levy in respect of a levy period if that person is an employer in the construction industry at any time in that period.

(3) In this Order (other than in this article), references to an "employer" are references to a person who is an employer in the construction industry.

Base periods

4.—(1) The base period for the first levy period is the twelve months commencing with 6th April 2013.

(2) The base period for the second levy period is the twelve months commencing with 6th April 2014.

(3) The base period for the third levy period is the twelve months commencing with 6th April 2015.

Construction establishments to be assessed

5.—(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 being engaged in the construction industry 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 being engaged in that industry 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

6. 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

7.—(1) In respect of the first levy period and the second levy period, 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 at or from the establishment 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) In respect of the third levy period, the amount of the levy to be assessed in respect of each construction establishment is—

$$A + B$$

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 at or from the establishment in the relevant base period; and

B is an amount equal to 1.25% of the relevant part of all contract payments made by the employer at or from the establishment in the relevant base period.

(3) "Contract payment" has the meaning given to it by section 60 of the Finance Act 2004(**a**).

(4) The relevant part of a contract payment is the part of the contract payment in respect of which the relevant percentage is applied for the purpose of section 61 of the Finance Act 2004.

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

(6) Where a construction establishment ceases to be engaged in the construction industry during a levy period, the amount of levy imposed in respect of the construction establishment for that period 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 engagement (both dates inclusive) bears to the number of days in the levy period.

Total amount of levy

8.—(1) Subject to paragraphs (2) and (3), the total amount of levy to be paid by an employer in respect of the relevant levy period is the aggregate amount of levy assessed as payable for all construction establishments of the employer.

(2) In respect of the first levy period and the second levy period, the total amount of levy to be paid by an employer under paragraph (1) shall be reduced by 50% in respect of the relevant levy period if the aggregate amount of—

(a) all emoluments of all the persons employed by the employer in the relevant base period; and

(**a**) 2004 c.12. Chapter 3 of Part 3 of the Finance Act 2004 makes provision for the Construction Industry Scheme under which certain payments under construction contracts are made under deduction of sums on account of tax.

(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 £80,000 or more and less than £100,000.

(3) In respect of the third levy period, the total amount of levy to be paid by an employer under paragraph (1) shall be reduced by 50% in respect of that levy period if the aggregate amount of—

(a) all emoluments of all the persons employed by the employer in the relevant base period; and

(b) the relevant part of all contract payments made by the employer in the relevant base period;

is £80,000 or more and less than £400,000.

Exemptions

9.—(1) In respect of the first levy period and the second levy period, 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 by 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) In respect of the third levy period, an employer is exempt from payment of the levy in respect of that levy period if the aggregate amount of—

(a) all emoluments of all the persons employed by the employer in the relevant base period; and

(b) the relevant part of all contract payments made by the employer in the relevant base period;

is less than £80,000.

(3) Any body of persons or trust established for charitable purposes only is exempt from the levy.

Assessment notices

10.—(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) where the assessment notice comprises two or more assessments, the total amount of levy payable by the employer in respect of each assessment;

(c) 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;

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

(e) the Board's address for service of a notice of appeal 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 11; or

(b) amend any assessment contained in an assessment notice in accordance with article 12.

Withdrawal of assessments

11.—(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

12.—(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 10(3); and

(b) make clear which assessment is amended.

Service of notices

13. Notices under articles 10, 11 and 12 must be served on an employer assessed to the levy by—

(a) delivering the notice to the employer personally;

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

(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 notice to that e-mail address.

Time at which payment becomes due and recoverable

14.—(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 11, 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 12—

(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

15. For the purposes of section 12(4) of the Industrial Training Act 1982(**a**), 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;

(b) where the Board has served an amended assessment notice under article 12, one month commencing with the date of service of the amended assessment notice;

(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

16.—(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
Minister of State for Skills and Equalities
Date Department for Business, Innovation and Skills

(**a**) Section 12(4) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8), section 1(2).

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 Business, Innovation and Skills under section 11 of the Industrial Training Act 1982 (c.10) ("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 Board must calculate the amount of levy due in respect of each construction establishment of an employer in accordance with article 7. This calculation is carried out with reference to the base periods in article 4. This Order introduces a new method of assessment in relation to sub-contractors for the third levy period. In relation to that period, part of the amount of levy paid will be based on the relevant part of the contract payment upon which the sub-contractor is liable to deduction of sums on account of tax under the Construction Industry Scheme (see Chapter 3 of Part 3 of the Finance Act 2004 (c.12)).

The total amount of levy payable by the employer is the aggregate amount of levy for all the employer's construction establishments. If this aggregate amount is £80,000 or more but less than £100,000 in the first and second levy periods or less than £400,000 in the third levy period then a 50 % reduction will apply (article 8).

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 10). Payment of the levy must usually be made within one month of service of the assessment notice by the Board (article 14). An assessment notice may be withdrawn by the Board and the Board may also serve amended assessment notices (articles 11 and 12).

Article 9 makes provision for employers employing a small number of employees 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 15).

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Innovation & Skills, 1 Victoria Street, London, SW1H 0ET and is annexed to the Explanatory Memorandum which is available alongside the instrument on the www.legislation.gov.uk website.

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