EXPLANATORY MEMORANDUM TO

THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2025

2025 No. [XXXX]

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.

2. Declaration

2.1 Baroness Jacqui Smith, Minister for Skills, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Charlotte Govan, Deputy Director for Growth and Sector Skills, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alex Birtwistle/Larissa Cesar at the Department for Education Telephone: 07780 903484/07770 544937 or email: Jobshare.Birtwistle-Cesar@education.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Industrial Training Levy (Construction Industry Training Board) Order 2025 ("the Levy Order") enables the Construction Industry Training Board ("CITB") to raise and collect a levy on employers in the construction industry.

4.2 The levy funds the expenses of the CITB in carrying out its functions encouraging training in the industry under the Industrial Training Act 1982 ("the Act").

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 Industry training boards ("ITBs") were established in the 1960s across over 20 industries, and the CITB is one of the only 2 ITBs remaining. Both ITBs are classed as Non-Departmental Public Bodies.

5.2 The purpose of ITBs (section 1 of the Act) is to make better provision for the training of persons over school age for employment in activities of industry or commerce, with the aim of addressing skills shortages due to market failures within the industry for

which it is established. These activities include the provision or approval of courses and facilities for training, reviewing and publishing training recommendations, providing advice connected to training, and paying or making allowances, grants, or loans to training providers.

5.3 Employers in the construction sector have consistently supported statutory underpinning for their training arrangements. There is a fundamental acceptance that incentivising employers in the industry to train their direct and subcontracted workforce, to develop a national pool of labour collectively funded by all in-scope employers, is the only way the industry's skill needs can be met.

5.4 However, there remains a serious and distinct market failure in the development and maintenance of skills in the construction industry: the trading conditions, incentives, and culture do not lead to a sufficient level of investment in skills by employers.

CITB Levy

5.5 The Act provides 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 the ITB covers and for the Secretary of State to make an order that gives effect to the proposals.

5.6 This Order gives effect to the CITB's proposal for a levy to be imposed in one levy period ending in 2025. Any person who is an employer in the construction industry at any time in a levy period is liable to pay the levy. The levy rates are set out in article 9 of this instrument for different categories of employees. 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). The CITB have proposed to continue with the method for assessing the amount of levy used under The Industrial Training Levy (Construction Industry Training Board) Order 2022[1] (the "2022 Levy Order").

5.7 The amount of levy to be assessed is calculated by reference to the formula in the Order. The levy rate for direct employment will be 0.35%, and the levy rate for indirect employment will be 1.25%. These rates remain the same as the 2022 Levy Order, after the rates were halved in a one-year levy order in 2021 in response to the pandemic. The exemption thresholds for small employers have increased from the 2022 Levy Order to a ceiling of £134,999 to account for increased business costs. This allows smaller firms to access grants and receive support to train their workforce, without needing to contribute. For similar reasons, the reduction threshold has increased to be applied to employers with a wage bill between £135,000 and £449,999. The reduction rate will remain at 50% of levy liability.

5.8 The CITB's proposal involves 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 within Section 11(6) is met. Condition (6B) is relevant in that i) this Order is being made after consensus was achieved for the 2022 Levy Order, ii) this Order is being made within the third and fourth anniversary of the 2022 Levy Order, and iii) no exemption certificates are proposed to be issued. A levy order made in reliance on section 11(6)(b) must provide for a single levy period in accordance with section 11 (2D), which this Order does.

5.9 It is also estimated that under the CITB's proposals, the levy to be paid by employers in the industry in respect of each levy period exceeds 1% of their relevant emoluments

[1] https://www.legislation.gov.uk/uksi/2022/492/contents/made.

and consequently, the Secretary of State must consider the amount to be paid by employers in the industry appropriate in the circumstances.

What was the previous policy, how is this different?

5.10 The CITB is principally funded by the raising of a levy on employers in the construction industry. It usually submits levy order proposals for a 3-year period after seeking industry approval for the proposals, a process known as 'consensus'. The CITB carried out consensus in 2021 for the 2022 Levy Order proposals, and 66.5% of the industry, who between them were likely to pay 63.2% of the levy, supported them.

5.11 When the CITB began planning its next consensus for a 2025-27 levy order, the DfE announced a review of ITBs, which is conducted once each Parliament as part of the Cabinet Office review programme of arm's length bodies. Therefore, the CITB submitted a proposal for a one-year levy order without consensus to be made from 28 April 2025 to allow time for the review recommendations to be considered by ministers. A one-year levy order without consensus is permitted under the Act if the Secretary of State is satisfied that the conditions laid out in 5.8 and 5.9 are met.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 11 of the Act enables an industrial training board to submit proposals to the Secretary of State for the raising and collection of a levy to be imposed for the purpose of meeting the board's expenses. The Order gives effect to levy proposals submitted to the Secretary of State by the CITB.

Why was this approach taken to change the law?

6.2 A levy can only be imposed by way of an Order made under Section 11 of the Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 As outlined in 5.10, the CITB would usually run a consensus process on its levy proposals to seek industry approval before submitting final proposals to the Secretary of State. However, as stated in 5.11, this process did not take place for this Levy Order. As the proposal meets the conditions of Section 11(6)(b), there is no requirement to achieve consensus on this one-year levy order, although informal consultation has suggested that industry is supportive of the proposal.

8. Applicable Guidance

8.1 The CITB provides guidance to employers explaining how the levy is assessed and how funding and grants can be claimed. This guidance is available online from the CITB's website (www.citb.co.uk).

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 The Levy Order is outside the scope of the Better Regulation Framework as it is made in connection with imposing a levy on employers in the industry, but a full Impact Assessment is submitted with this memorandum and published alongside the

Explanatory Memorandum on the legislation.gov.uk website. The economic impacts of the Order are summarised below.

9.2 Based on information provided by the CITB, approximately 74,000 construction employers are currently on the CITB levy register.

9.3 The money raised by the levy is used to fund the CITB's functions to support the construction industry to make sure it has the skilled workforce it requires. The CITB also uses levy funds to deliver a range of functions to support skills development, including technical, management and professional training as well as support for apprenticeships and graduates entering industry. In 2023-24 £202m was raised through the levy and the CITB distributed grants of £128.6m to employers to support Apprenticeships, Qualifications and Short-Duration training. A further £27.1m was distributed to industry through various funding initiatives.

9.4 All employers registered with CITB, regardless of whether they are liable to pay levy, can claim grants towards training.

Impact on businesses, charities and voluntary bodies

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

i. On business – as of November 2024, the CITB forecasts that the 2025 levy order proposals are expected to raise £223.7m in 2025-26 from the sector. The CITB annual report and accounts for 2023-24 showed that the CITB raised £202m in levy income. The money raised by the levy is used to benefit the industry. These benefits are comprised of direct returns to employers (provided through the payment of grants, college fees and other training funds allowances) plus indirect returns 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. The CITB also generates income through self-funded commercial activity which helps support its running costs to reduce the burden on the Levy funds. In 2023-24 the total non-levy income was £55.8m. In 2023-24 the investment back into the industry included £128.6m through the Grants Scheme and £27.1m in other funding schemes. These do not include the costs for direct support to employers by CITB staff.

ii. Charities are exempted from the levy.

9.6 The legislation does impact small or micro businesses.

9.7 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), the approach taken is determined by the Act 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 subcontractors and may directly employ few people. The 2022 Levy Order set the exemption level at £119,999 and this threshold currently exempts around 62% of the employers in the industry. The 2022 Levy Order also included a taper to reduce the impact of levy for employers whose total emoluments fell between £120,000 and £399,999 by offering them a 50% levy reduction.

9.8 This Order increases the exemption level to £134,999 (exempting 69% of employers) and increases the taper at £135,000 to £449,999. Circa 10,000 small businesses out of the 67,000 assessable employers will benefit from this levy reduction. To note, the 67,000 assessable employers differ from the 74,000 registered employers for two main

reasons a) newly registered employers are not assessed to Levy in the first year; b) group companies often consolidate multiple businesses under one Levy Return.

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

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause as it gives effect only for the CITB levy to be collected in relation to one levy period ending in 2025.

10.2 The CITB will need to submit further proposals for the raising and collection of a levy beyond 2025 following industry consultation and approval by the Secretary of State.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Skills has made the following statement regarding Human Rights:

"In my view the provisions of the Industrial Training Levy (Construction Industry Training Board) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").