EXPLANATORY MEMORANDUM TO

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

2012 No. […]

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills 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 Engineering Construction Industry Training Board (ECITB) to raise and impose a levy on employers in the engineering 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 gives effect to levy proposals submitted to the Secretary of State by ECITB.

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 (Engineering 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. 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 ECITB for levies to be collected by them in 2013. 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. There are different levy rates to be applied in respect of "site" and "off-site" 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 engineering construction industry as set out in the ITB's founding legislation.

7.8 In deciding whether workers should be classed as "site" or "off-site" employees for the purposes of levy assessment, the key consideration is whether they work wholly or mainly at a place where certain activities (which are defined in the Board's founding legislation) are carried on. For example, the activities of fabrication, assembly, construction, erection or installation of any chemical, electrical or mechanical apparatus, machinery or plant of a chemical works etc. If this is the case, they would be classed as "site" employees. People engaged in occupations such as planning or design could also be classed as "site" employees if they work wholly or mainly at a site where such activities take place. All other employees are classed as "off-site" employees for the purposes of this order.

7.9 The ECITB'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.

7.10 **Note:** Two changes were made to the ITA 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 for a number of years, 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

7.11 ECITB have proposed a one year levy order. In view of the current economic conditions and the ECITB's reserve levels, employers considered that they should retain flexibility on the issue of future levy rates. It was anticipated that in 2012 there would be greater clarity with regard to capital build projects (and in particular in the power generation sector), which would significantly affect the demand for training. Consequently ECITB wanted flexibility to review the levels of levy income required to fund such activities over the period 2014 to 2017 and beyond.

Consolidation

7.12 None

8. Consultation outcome

8.1 The ECITB consulted formally on the levy proposals under the new arrangements between April and October 2011. They used option d) detailed in 7.10 and sought the views of all employers who are likely to be liable to pay the levy. The results show that 59% of levy payers are in favour of the proposals and together they will be likely to pay 69% of the value of the forecast levy.

9. Guidance

9.1 ECITB will issue guidance to employers explaining how levy is ssessed and how funding and grants can be claimed. Guidance is also available on-line from their website (www.ecitb.org.uk).

10. Impact

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

i) on business – the proposals are expected to raise £20 m in 2013 from the sector. In 2010, for every £1 raised in levy, ECITB has calculated that £3.29 was returned to the industry. This comprised a direct return of £0.71p (provided through the payment of grants, college fees and other training allowances) plus an indirect return of £2.58 linked with productivity gains and completion values of apprentices, the provision of trainee recruitment and selection, advice on training, the provision of schemes for recording achievements and the development of industry standards.

10.2 The impact on the public sector is negligible as the levy is funded from the industry and ECITB 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. This Order proposes an exemption level for an employer whose payments to site employees are less than £275,000. This equates to an employer who employs 15-20 people. The corresponding exemption level for off-site employees is £1m. In 2010, 135 establishments (55%) were exempted from paying the levy because they fell below the exclusion thresholds. Small firms are, however, eligible to claim grants towards the cost of training their employees.

11.3 The basis for the final decision on what action to take to assist small business is the proposals made by ECITB to the Secretary of State following their consultations with the industry as described in 7 above.

12. Monitoring & review

12.1 As an NDPB, ECITB's performance is subject to annual review by BIS. The ECITB 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.