EXPLANATORY MEMORANDUM TO

THE INDUSTRIAL TRAINING LEVY (ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2017

2017 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 Her Majesty.

2. Purpose of the instrument

2.1 The Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017 (the Order) enables the Engineering Construction Industry Training Board (ECITB) to raise and collect a levy on employers in the engineering construction industry.

2.2 The Order revokes the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2015 (the 2015 Order) subject to a saving provision which means that the 2015 Order continues to have effect in respect of the first and second levy periods specified in that Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 The Order is made in exercise of the powers conferred by sections 11(2), 12(3) and (4) of the Industrial Training Act 1982 (the Act). Section 11 of the Act 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. The Order gives effect to levy proposals submitted to the Secretary of State by ECITB.

5. Extent and Territorial Application

5.1 The extent of this instrument is England, Wales and Scotland.

5.2 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

6.1 The Minister of State for Apprenticeships and Skills has made the following statement regarding Human Rights:

"In my view the provisions of the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Industrial training boards (ITBs) have operated in the UK since 1964. ITBs can be established under the Act for the purpose of making better provision for the training of persons over compulsory school age for employment in any activities of industry or commerce. ECITB has been in operation since 1991 and was formed out of the former Engineering Industry Training Board.

7.2 There are currently ITBs covering the construction, engineering construction and film sectors. ECITB provides a wide range of services and training initiatives to the engineering construction industry, including setting occupational standards, developing vocational qualifications, delivering apprenticeships and paying direct grants to employers who carry out training to approved standards.

7.3 Work in the engineering construction sector is often short-term, project based and heavily reliant on economic output. Employers in the sector frequently use specialist contract labour, depending on where a project is in its lifecycle, which does not lend industry or employers to consider long term skills requirements. Employers in the sector have consistently supported the raising and collection of a levy to meet its skills needs.

7.4 A significant proportion of employers in the engineering construction sector will also pay the apprenticeship levy from April 2017 due to their size (c.240 employers). ECITB consulted with its levy-paying employers over the issue of paying two levies. The consultation covered the levy periods 2017 to 2019. ECITB submitted its proposal to the Secretary of State in October 2016.

7.5 It is ECITB's proposal to supersede the 2015 Order for the third levy period of that Order with this Order. ECITB's proposal is to reduce the industrial training levy rate for employers in order to lessen the financial burden on those large employers who will be captured by both the apprenticeship levy and ECITB's industrial training levy. ECITB's proposal will also ensure small employers are not required to pay more as a percentage of the total levy paid by industry. This change will reduce ECITB's total levy income by approximately £7m each year, from £31m to £25m from 2018 onwards.

7.6 Section 11 of the Act 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 an ITB's expenses. The Secretary of State is satisfied that the proposals are necessary to encourage training in the industry and that ECITB has taken reasonable steps to obtain the views of employers who are likely to be liable to pay the levy.

7.7 The Order gives effect to proposals submitted by the ECITB for a levy to be imposed in each of the levy periods ending on 31st December 2017, 31st December 2018 and 31st December 2019. The Order provides for a levy in respect of site employees and labour only contractors and a levy in respect in respect of off-site employees and labour only contractors for the base periods of twelve months commencing on 6th April 2016, 6th April 2017 and 6th April 2018.

7.8 The amount of levy to be assessed is calculated by reference to the formula in article 7 of the Order. The levy rates in the Order are lower than the rates in the 2015 Order. The rate has been reduced by 0.3% in respect of "site" and by 0.04% in respect of "off-site". The exemption thresholds for small employers remain unchanged.

Consolidation

7.9 None.

8. Consultation outcome

8.1 ECITB carried out a consultation exercise between July and October 2016. ECITB consulted with, and measured the views of levy paying employers through consultation with the industry's three employer associations. The three employer associations are the Offshore Contractors Association, the Engineering Construction Industry Association and the British Chemical Engineering Contractors Association. These organisations in turn consulted and measured the views of their levy paying members.

8.2 ECITB also consulted with "unrepresented employers". These are levy payers which are not members of the above employer associations. ECITB consulted with these unrepresented employers in writing and at regional forum meetings held in September and October 2016.

8.3 The above groups of employers were asked whether they supported an industry levy at the rates set out in ECITB's proposal. The result of the consultation was that 78% of levy payers were in favour of the proposals. Together they will be likely to pay a total of 87% of the value of the forecast levy. The remaining 13% of the value of the forecast levy will be paid by the 22% of levy payers who either voted against or did not submit a vote to ECITB.

9. Guidance

9.1 ECITB will issue guidance to employers explaining how levy is assessed 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:

10.1.1 On business – the proposal is expected to raise approximately £25m per year in 2018, 2019 and 2020 from employers in the engineering construction sector. Employers will not pay both the CITB and ECITB levy on the same worker. The exact figure raised during the course of the Order will vary based on the economic performance of the industry.

10.1.2 In 2016, ECITB raised £32m in levy and returned £28m to the industry. Returns to the industry comprise of direct returns to employers (provided through the payment of grants, college fees and other training 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.

ECITB also generate some income through self-funded commercial activity which helps cover overheads.

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

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is partial exemptions. The Act requires levy proposals to include proposals for exempting small employers from the levy. 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 Order provides an exemption for an employer whose payments to site employees are less than £275,000. The corresponding exemption level for off-site employees is £1m. Small firms are, however, eligible to claim grants towards the cost of training their employees.

12. Monitoring & review

12.1 As a non-departmental public body, ECITB's performance is subject to annual review by the Department for Education. The Triennial Review of ECITB, as published in December 2015 confirmed the continued role ECITB has to play in addressing skills issues within the industry. It was announced in the Skills Plan (July 2016) that Government would review the Construction Industry Training Board and ECITB and come forward with a new model after the current levy period. Whilst the ITB Review will report in Spring 2017, the Secretary of State has deemed these proposals to offer significant benefit to industry and the new Order should be put in place.

13. Contact

13.1 Simon Mason (Telephone: 0739108337 or email: simon.mason@education.gov.uk) and Dan Foster (Telephone: 0114 207 5394 or email: Daniel.foster@education.gov.uk) at the Department for Education can answer any queries regarding the instrument.