EXPLANATORY MEMORANDUM TO

THE INDUSTRIAL TRAINING LEVY (ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2020

2020 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 2020 ("the Levy Order") enables the Engineering Construction Industry Training Board ("ECITB") to raise and collect a levy on employers in the engineering construction industry. The levy funds the expenses of the ECITB in carrying out its functions encouraging training in the industry under the Industrial Training Act 1982.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

3.3 The powers under which this instrument are made do not extend to Northern Ireland (see section 21 of the Industrial Training Act 1982) and therefore cannot apply in relation to it.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

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

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary 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 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 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 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 ECITB.

7. Policy background

What is being done and why?

Industry Training Boards Background

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 with the aim of addressing skills shortages due to market failures within the industry.

7.2 The Engineering Industry Training Board was created in 1964, and re-named the Engineering Construction Industry Training Board in 1991, to ensure the UK has workers with the skills to meet the needs of the engineering construction industry.

7.3 The engineering construction industry is focussed on engineering and construction skills, often higher level, high value activities across a very wide range of industrial sectors. It operates across the oil and gas, nuclear and renewables sectors, as well as major process industries, such as chemicals, pharmaceuticals, food processing, water and waste treatment.

7.4 Work in the engineering construction sector is often short-term, project based and heavily reliant on economic output. The labour force is highly mobile and work undertaken is predominantly of a contractual nature. 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. This results in limited opportunities for individual employers to train and a clear prevalence of market failure in the provision of training.

7.5 ECITB provides a wide range of services and training initiatives to support the engineering construction industry meet its skills needs, including developing and maintaining occupational standards, designing and awarding vocational qualifications, and paying direct grants to employers who carry out training to approved standards.

ECITB Levy and consensus

7.6 The Act sets out a process under which ECITB seeks the industry's approval for its proposed levy rates and the turnover thresholds below which an engineering construction employer will not be levied. This process of obtaining industry approval for the levy proposals is known as the "Consensus Process" and must generally be completed at least every three years. This is because the levy periods of each levy proposal must fall within a period of three years.

7.7 ECITB has undertaken the Consensus Process in relation to its proposals to raise a levy for the period 2020 – 2022. In summary the proposals are to: maintain the existing levy rate for onsite employees and raise the levy rates for offsite employees on a phased basis over the three-year levy period 2020-22. The exemption thresholds for small employers remain unchanged to ensure these firms can access grants and support to train their workforce, without needing to contribute.

7.8 ECITB has consulted with organisations that represent likely levy payers and directly obtained the views of likely levy payers who are not represented by a federation. The results of the consultation are that 75% of the industry, who between them are likely to pay 87% of the levy, are in support of ECITB's proposals. Section 10 below contains further information on the consultation outcome.

7.9 Following the completion of the Consensus Process, ECITB submitted its levy proposal to the Secretary of State who confirmed he is satisfied: that the levy continues to be necessary to encourage adequate training in the industry, and that ECITB has taken reasonable steps to obtain the views of employers who are liable to pay the levy and who collectively are liable to pay more than half of the levy amount. The majority of these employers are supportive and the Secretary of State was satisfied that the proposed employer exemption thresholds are required.

The Levy Order

7.10 This Order gives effect to ECITB's proposals for a levy to be imposed in each of the levy periods ending on 31st December 2020, 31st December 2021 and 31st December 2022 respectively. Any person who is an employer in the engineering construction industry at any time in a levy period is liable to pay the levy.

7.11 The Order provides for a levy in respect of site employees and labour only contractors engaged in engineering construction activities at or from the employers' establishments (onsite employees), and a levy in respect of off-site employees and labour only contractors engaged in engineering construction activities at or from the employers' establishments (offsite employees).

7.12 The Order prescribes three base periods of 12 months commencing on 6th April 2019, 6th April 2020 and 6th April 2021 respectively. Salaries and other payments made by employers during the base periods are used for the basis of the levy calculation and for establishing whether an employer is liable to pay the levy.

7.13 The amount of levy to be assessed is calculated by reference to the formula in the Order. The levy rate for onsite employees will be maintained at the existing 1.2% of total emoluments (including salaries and other allowances). For offsite employees, the rate will increase on a phased basis from the current 0.14% to 0.2% in 2020; 0.27% in 2021 and 0.33% in 2022. The exemption thresholds for small employers remain unchanged.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 ECITB carried out a consultation exercise between July and October 2019. It measured the views of levy paying employers through consultation with the industry's three employer associations: the Engineering Construction Industry Association, the Offshore Contractors Association and the British Chemical Engineering Contractors Association. These organisations in turn consulted with and measured the views of their levy paying members.

10.2 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 2019.

10.3 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 75% of levy payers were in favour of the proposals. Together they will be likely to pay a total of 87% of the forecast levy. The remaining 13% of the value of the forecast levy will be paid by the 25% of levy payers who either voted against or did not submit a vote to ECITB.

11. Guidance

11.1 ECITB provides guidance to employers explaining how the levy is assessed and how funding and grants can be claimed. This guidance is available online from ECITB's website (www.ecitb.org.uk).

12. Impact

12.1 The impact on business, charities or voluntary bodies is approximately £26m, £28m and £30m respectively per year in 2020, 2021 and 2022. These forecasts were produced at the point ECITB consulted industry on proposals and so do not factor in any reduction in levy payments due to the impact of coronavirus (COVID-19).

12.2 There is no, or no significant, impact on the public sector.

12.3 A Regulatory Impact Assessment has not been prepared for this instrument because the Order relates to the collection of levies. The economic impacts of the Order are summarised in paragraphs 12.4 and 12.5 below.

12.4 Based on information reported in ECITB's 2019 Annual Accounts, approximately 300 engineering construction employers, employing about 100,000 workers, are currently in scope of the levy. These employers are liable to pay the levy amounts forecast in paragraph 12.1 as they operate establishments in which at least 50% of the workforce undertakes engineering construction activities as defined in the legislation (the Industrial Training Act, 1982 and associated regulations). Approximately 27% of these employers are exempt from paying the levy because they fall below the income threshold. In ECITB's 2019 consultation with industry, 75% of employers, who between them are likely to pay 87% of the levy, were in support of the levy proposals.

12.5 The money raised by the levy is used to fund ECITB's functions to support the engineering construction industry to make sure it has the skilled workforce it requires. The ECITB's core function is providing direct grants to employers to train new staff or develop the skills of their existing workforce. In 2019, ECITB made grants of £19.9m to employers to subsidise training costs. ECITB also use levy funds to deliver a range of other functions to support skills development, including technical, management and professional training as well as support for apprenticeships and graduates entering industry.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on SMEs, the Order includes exemptions for small employers. The exemption level is set according to an employer's total emoluments (broadly, these are salaries, fees and wages) 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.

13.3 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. Despite not contributing to the levy, small firms are eligible to claim grants toward the cost of training their employees.

14. Monitoring & review

14.1 The Order does not include a statutory review clause as it gives effect only for ECITB levies to be collected.

15. Contact

15.1 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.

15.2 Roger Cotes, Deputy Director of Further Education Improvement and Oversight, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Gillian Keegan, Parliamentary Under Secretary of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.