**EXPLANATORY MEMORANDUM TO**

**THE INDUSTRIAL TRAINING LEVY (ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2023**

**2023 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. Purpose of the instrument

2.1 The Industrial Training Levy (Engineering Construction Industry Training Board) Order 2023 ("the Levy 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 levy funds the expenses of the ECITB in carrying out its functions encouraging adequate training in the industry under the Industrial Training Act 1982 ("the Act").

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None

## 4. Extent and Territorial Application

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

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

## 5. European Convention on Human Rights

5.1 The Minister of State, Minister for Skills, Apprenticeships and Higher Education has made the following statement regarding Human Rights:

"In my view the provisions of the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2023 are compatible with the Convention rights."

## 6. Legislative Context

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 ECITB.

## 7. Policy background

***What is being done and why?***

*Industry Training Boards Background*

7.1 Industrial Training Boards ("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, which may include addressing skills shortages due to market failures within the industry for which it is established.

7.2 There are currently two ITBs covering the construction and engineering construction industry, respectively. The two ITBs are Non-Departmental Public Bodies. The ECITB, to which this order relates[1], 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 consists of contracting companies and their supply chain who collectively are responsible for designing, building, maintaining, repairing, and decommissioning some of the UK's most critical national infrastructure; this includes power generation (conventional and renewable), oil and gas, as well as sectors such as water treatment, pharmaceuticals, food processing, steel and cement. The industry is core to building the infrastructure that is needed to power the economy and grow our energy independence. At the heart of the industry is its workforce, and it is vital the industry has the skills base and expertise to build the infrastructure required to achieve net-zero by 2050 (2045 in Scotland).

7.4 There is a strong public interest in a high-performing, efficient and safe engineering construction industry. A 2017 study by The Centre for Economics and Business Research estimated that the industry contributes up to £325bn in turnover and £100bn in GVA and employs around 190,000 people in the UK. The country's economic success relies on delivering key infrastructure. There is a further economic benefit from the large number and wide range of employment opportunities that the industry provides, many of them well-paid, highly skilled and offering good progression opportunities.

7.5 However, past reviews and studies into the engineering construction industry consistently highlight the inherent sectoral barriers – or market failures - that inhibit workforce training and the development of skills. Employment is linked to the project lifecycle, which means there are high numbers of temporary workers and a lot of movement between employers. Furthermore, the need for high-level skills in what are safety-critical industrial settings means that training costs are high, while many of the core engineering skills are transferrable to other industries. As a result, individual employers lack the incentive to train their workforce, out of fear of 'poaching' by rival firms.

7.6 The ECITB addresses this market failure by providing grants to employers to train new staff or develop the skills of their existing workforce. The ECITB's levy and grant system delivers a host of functions to aid skills development in the engineering construction industry. These include technical, management and professional training as well as support for apprenticeships and graduates entering industry.

[1] The other is the Construction Industry Training Board, also created in 1964; see SI 1964/1079, as amended by SI1992/ 048.

*ECITB Levy and consensus*

7.7 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.

7.8 This Order gives effect to ECITB's proposals for a levy to be imposed in respect of each of the levy periods ending in 2023, 2024, 2025. Any person who is an employer in the engineering construction industry at any time in a levy period is liable to pay the levy, unless exempted. 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). ECITB have proposed to continue with the method for assessing the amount of levy used under The Industrial Training Levy (Engineering Construction Industry Training Board) Order 2020 (the "2020 Levy Order").

7.9 The Order prescribes three base periods of 12 months commencing on 6th April 2022, 6th April 2023 and 6th April 2024 respectively. Salaries and other payments made by employers during the base periods are used as the basis of the levy calculation and for establishing whether an employer is liable to pay the levy.

7.10 The levy rates are set out in article 7 of this instrument for different categories of employees; with a levy amount 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 amount in respect of off-site employees and labour only contractors engaged in engineering construction activities at or from the employers' establishments (offsite employees).

7.11 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). The 2020 Levy Order introduced a phased increase to levy rates payable by offsite employees. The levy rate for offsite employees started at 0.2% in 2020 and increased to 0.27% in 2021 and 0.33% in 2022. The levy rate for offsite employees will be maintained at the existing rate of 0.33%. The exemption thresholds for small employers remain unchanged.

7.12 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.

7.13 The condition that is relevant to the Order is that the Secretary of State must be satisfied that:

i. the ITB has taken reasonable steps to obtain the views of employers who are likely to be liable to pay the levy; and

ii. 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.

7.14 ITBs can take a range of "reasonable steps" to ascertain the views of employers. ITBs can ascertain the views of employers in one of four ways:

a) By consulting the organisations which represent employers

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.

7.15 It is estimated that, based on the levy proposals, the amount of levy payable (in respect of each levy period) by at least one industry employer will exceed an amount which the Secretary of State estimates is 1% of any employer's overall relevant emoluments. The Secretary of State must consider the amount to be paid by employers in the industry appropriate in the circumstances.

7.16 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".

7.17 The ECITB undertook the Consensus Process in autumn 2022. The ECITB 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 Consensus Process are that 85% of likely levy payers, who between them are likely to pay 97% of the levy voted in favour of the levy proposals. Section 10 below contains further information on the consultation outcome.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 None

## 10. Consultation outcome

10.1 The ECITB carried out a formal industry-wide consultation exercise between 14 September and 28 October 2022. It used option b) detailed in 7.14 above and measured the views of levy paying employers through consultation with the industry's two employer associations: the Engineering Construction Industry Association and the British Chemical Engineering Contractors Association. These two associations then consulted with and measured the views of their levy paying members.

10.2 The ECITB consulted with "unrepresented employers" (i.e. levy payers which are not currently members of employer associations named in 10.1) both in writing and at Regional Forum meetings held in September and October 2022. Employers were invited to submit voting forms to the ECITB.

10.3 The ECITB has demonstrated, therefore, that it has the support of the majority of employers (85%) who together are likely to be liable to pay more than half of the total levy (97%). This is a significant increase to the ECITB's 2019 consultation with industry, when 75% of employers, who between them were likely to pay 87% of the levy, were in support of the levy proposals.

*10.4* The Secretary of State must consult Scottish Ministers before exercising the levy-making power under the Scotland Act 1998, Section 88. The Minister of State, Minister for Skills, Apprenticeships and Higher Education wrote to the Minister for Higher and Further Education and Veterans in the Scottish Government to consult on the levy proposals who confirmed he is content with the proposals.

## 11. Guidance

11.1 The 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 the ECITB's website (www.ecitb.co.uk).

## 12. Impact

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

i. On business - The ECITB 2021 Statement of Financial Activities for Year ended 31 December 2021, showed the ECITB levy income in 2021 amounted to £28.7m (2020: £27.8m). The ECITB estimates that the 2023 levy order proposals will raise at least £30.6m in 2024, £29.5m in 2025 and £30.1m in 2026 from the sector. These are current forecasts based on the levy that ECITB will raise in 2023, projected out to future years by factoring in both the expected change in wages and employee numbers across the Engineering Construction Industry. Some key changes that would affect this forecast are changes in the list of employers who are eligible to pay the levy and major, unforeseen changes in the size of the industry.

   The total costs to industry of the levy proposals are based on the amount the ECITB expects to raise during the levy periods 2023-25, as well as the indirect administrative costs to employers (namely, completing a levy declaration and making a levy payment transaction). The estimates for levy income are based on assumptions around headcount and wages, which are calculated in line with HM Treasury's assessment of independent economy forecasts, published in November 2022.

ii. Charities are exempted from the levy.

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

12.3 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 in paragraphs 12.4 to 12.7 below.

12.4 Based on information reported in the ECITB's 2021 Annual Accounts, approximately 235 (82%) of the 285 employers currently on the ECITB's register, who collectively employ over 80,000 in-scope workers, are expected to pay levy. These employers are liable to pay the levy 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), and their labour

emoluments exceed the relevant minimum thresholds. 50 employers (18%) will not pay levy owing to the minimum thresholds set out in 13.2 and 13.3 below.

12.5 The money raised by the levy is used to fund the ECITB's functions to support the engineering construction industry to make sure it has the skilled workforce it requires and help address skills gaps and shortages. Over the 2020-2022 strategy period, the ECITB used £22m worth of grant funding to:

i. provide training for more than 41000 learners on ECITB licensed products,

ii. deliver over 4500 Technical Tests to assure competence,

iii. support over 2100 apprentices including 820 new starts,

iv. support approximately 1000 learners on diversity and inclusion programmes.

12.6 The ECITB's £22m grant support over the period also covered grant funding towards training on a wide range of non-ECITB licensed products, ranging from craft and technical engineering to project management and leadership training.

12.7 All employers registered with the ECITB, regardless of whether they are liable to pay levy, can claim grants towards training, subject to the conditions of ECITB grant schemes. In 2022, 95% of levy payers received training grants, while 60% of non-levy payers – the vast majority of which were smaller businesses - also accessed ECITB grants.

## 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.

13.4 The basis for the final decision on what action to take to assist small business is the proposals made by the ECITB to the Secretary of State following its consultations with the industry as described in 7.12 to 7.14 above.

## 14. Monitoring & review

14.1 The Order does not include a statutory review clause as it gives effect only for the ECITB levies to be collected in relation to levy periods ending in 2023, 2024 and 2025.

14.2 The ECITB 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.

## 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 Emma Davies, Deputy Director of Sector Skills, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Halfon, Minister of State, Minister for Skills, Apprenticeships and Higher Education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.