1976 No. 161

INDUSTRIAL TRAINING

Industrial Training Levy (Catering Industry) Order (Northern Ireland) 1976

Made . . . . . 24*th May* 1976

Coming into operation . . . . 1*st July* 1976

The Department of Manpower Services, after approving proposals submitted by the Catering Industry Training Board for the imposition of a further levy on employers in the catering industry and in exercise of the powers conferred by section 4 of the Industrial Training Act (Northern Ireland) 1964(**a**) and now vested in it(**b**) and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Industrial Training Levy (Catering Industry) Order (Northern Ireland) 1976 and shall come into operation on 1st July 1976.

(2) In this Order—

"an appeal tribunal" means an industrial tribunal established under section 13 of the Industrial Training Act (Northern Ireland) 1964;

"assessment" means an assessment of an employer to the levy;

"the Board" means the Catering Industry Training Board established under the Industrial Training (Catering Board) Order (Northern Ireland) 1966(**c**);

"business" means any activities of industry or commerce;

"catering establishment" means an establishment in Northern Ireland engaged wholly or mainly in the catering industry for a total of twenty-seven or more weeks in the eleventh base period, or, being an establishment that commenced to carry on business in the eleventh base period for a total number of weeks exceeding one half of the number of weeks in the part of the said period commencing with the day on which business was commenced and ending on the last day thereof, or, where an election is made, in any part of the alternative eleventh base period;

"the catering industry" means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the industrial training order, are specified in paragraph 1 of that Schedule as the activities of the catering industry but shall not include the supply for immediate consumption of light refreshments to persons employed at or from an establishment engaged mainly in activities not being activities specified in paragraph 1 of Schedule 1 to the industrial training order except where the employer—

(a) 1964 c. 18 (N.I.)
(b) By S.R. & O. (N.I.) 1973 No. 504, Article 6(1) (II, p. 2992)
(c) S.R. & O. (N.I.) 1966 No. 32 (p. 117) as amended by S.R. & O. (N.I.) 1967 No. 236 (p. 852)

(*a*) also supplies for immediate consumption other food and drink; or

(*b*) manufactures any chocolate or flour confectionery so supplied;

"the Department" means the Department of Manpower Services;

"election" means an election, under the provisions of Article 2(3)(*b*)(ii), by an employer to pay the levy in respect of the emoluments of the persons employed in the relevant establishment during the alternative eleventh base period;

"the eleventh base period" means the year that commenced on 6th April 1975 and "the alternative eleventh base period" means the year that commenced on 6th April 1976;

"the eleventh levy period" means the year commencing on 1st September 1976;

"emoluments" means all emoluments assessable to income tax under Schedule E (other than pensions and any income derived from gratuities or service charges), being emoluments from which tax under that Schedule is deductible, whether or not tax in fact falls to be deducted from any particular payment thereof;

"employer" means a person who is an employer in the catering industry at any time in the eleventh levy period, but does not include a person in whose case the sum of the emoluments paid or payable to all persons in, or deemed under the provisions of paragraph (3) to have been in, his employment in the eleventh base period or, where an election is made, the alternative eleventh base period, is less than £10,000 or in the case of two or more catering establishments where the sum of the emoluments of all the persons employed in all of such establishments is less than £10,000;

"establishment comprising catering activities" means an establishment in Northern Ireland (not being a catering establishment) at or from which persons were employed, or deemed under the provisions of paragraph (3) to have been employed, in the eleventh base period, or, where an election is made, the alternative eleventh base period—

(*a*) in the supply in the course of any business of food or drink to persons for immediate consumption; or

(*b*) in the supply by any body of persons of food or drink to persons in their employment for immediate consumption;

"the industrial training order" means the Industrial Training (Catering Board) Order (Northern Ireland) 1966;

"the levy" means the levy imposed by the Board in respect of the eleventh levy period;

"light refreshments" means tea, coffee or other non-alcoholic beverage supplied with or without chocolate confectionery or flour confectionery;

"notice" means a notice in writing.

(3) In the case where a catering establishment is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, a person employed at or from the establishment at any time in the eleventh base period, or, in any case where an election is made, at any time during that part of the alternative eleventh base period which precedes the date upon which an assessment notice is first served under Article 3, shall be deemed, for the purposes of this Order, to have been so employed by the employer carrying on the said establishment on 1st September 1976.

(4) Any reference in this Order to an establishment that commences to carry on business or that ceases to carry on business shall not be taken to apply where the location of the establishment is changed but its business is continued wholly or mainly at or from the new location, or where the suspension of activities is of a temporary or seasonal nature.

Imposition and assessment of the levy for the eleventh levy period

2.—(1) The levy to be imposed on employers shall be assessed in accordance with the provisions of this Article.

(2) The levy shall be assessed by the Board separately in respect of each catering establishment or establishment comprising catering activities of an employer, but in agreement with the employer one assessment may be made in respect of any number of such establishments, in which case those establishments shall be deemed for the purposes of that assessment to constitute one establishment.

(3) Subject to the provisions of this Article, the levy—

(*a*) shall be assessed in respect of the emoluments of the following persons employed, or deemed under the provisions of Article 1(3) to have been employed, by the employer at or from the establishment, that is to say—

(i) in the case of a catering establishment, all such persons;

(ii) in the case of an establishment comprising catering activities, all such persons employed wholly either in the supply in the course of any business of food or drink to persons for immediate consumption or in the supply by any body of persons of food or drink to persons in their employment for immediate consumption; and

(*b*) shall be an amount equal to 1 per centum of the sum of such emoluments of such persons—

(i) in the eleventh base period; or

(ii) where the employer elects in accordance with the provisions of paragraph (4), in the alternative eleventh base period.

(4) An election shall be made in writing and shall be in such form and made within such period as the Board may, with the approval of the Department, determine.

(5) The amount of the levy imposed in respect of a catering establishment that ceases to carry on business in the eleventh levy period shall be in the same proportion to the amount that would otherwise be due under paragraph (3) as the number of days between the commencement of the said levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the said levy period.

Assessment notices

3.—(1) The Board shall serve an assessment notice on every employer assessed to the levy, but one notice may comprise two or more assessments.

(2) Where an election has been made, the Board may serve two or more assessment notices in respect of any establishment but—

(*a*) the interval between such assessment notices shall be not less than six months; and

(*b*) the amount of the assessment included in each such notice shall not exceed the portion of the levy which has accrued at the date of the notice, and each notice shall specify the period to which the assessment included therein relates.

(3) The amount of any assessment payable under an assessment notice shall be rounded down to the nearest £1.

(4) An assessment notice shall state the Board's address for the service of a notice of appeal or of an application for an extension of time for appealing.

(5) An assessment notice may be served on the person assessed to the levy either by delivering it to him personally or by leaving it, or sending it to him by post, at his last known address or place of business in the United Kingdom or, if that person is a corporation, by leaving it, or sending it by post to the corporation, at such address or place of business or at its registered or principal office.

Payment of the levy

4.—(1) Subject to the provisions of this Article and of Articles 5 and 6 the amount of each assessment appearing in an assessment notice served by the Board shall be due and payable to the Board on 1st December 1976.

(2) The amount of an assessment shall not be recoverable by the Board until there has expired the time allowed for appealing against the assessment by Article 6(1) and any further period or periods of time that the Board or an appeal tribunal may have allowed for appealing under Article 6(2) or (3) or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

5.—(1) The Board may, by a notice served on the person assessed to the levy in the same manner as an assessment notice, withdraw an assessment if that person has appealed against that assessment under the provisions of Article 6 and the appeal has not been entered in the Register of Appeals kept under the regulations specified in Article 6(5).

(2) The withdrawal of an assessment shall be without prejudice to the power of the Board to serve a further assessment notice in respect of any establishment to which that assessment related and where the withdrawal is made by reason of the fact that an establishment has ceased to carry on business in the eleventh levy period, the said notice may provide that the whole amount payable thereunder shall be due one month after the date of the notice.

Appeals

6.—(1) A person assessed to the levy may appeal to an appeal tribunal against the assessment within one month from the date of the service of the assessment notice or within any further period or periods of time that may be allowed by the Board or an appeal tribunal under the following provisions of this Article.

(2) The Board for good cause may, by notice, extend the time within which an appeal may be made by such further period or periods as the Board may allow in any case where an application for such extension is made within the period of four months from the date of the service of the relevant notice of assessment or, where an extension has already been granted, before the period of such extension has expired.

(3) If the Board shall not allow an application for extension of time for appealing, an appeal tribunal shall upon application to the tribunal by the person assessed to the levy within the period of fourteen days from the date of receipt of the decision of the Board refusing such an application have the like powers as the Board under paragraph (2).

(4) In the case of an establishment that ceases to carry on business in the eleventh levy period on any day after the date of the service of the relevant assessment notice the foregoing provisions of this Article shall have effect as if for the period of four months from the date of the service of the assessment notice mentioned in paragraph (2) there were substituted the period of six months from the date of the cessation of business.

(5) An appeal of an application to an appeal tribunal under this Article shall be made in accordance with the Industrial Tribunals Regulations (Northern Ireland) 1965(d).

(6) The powers of an appeal tribunal under paragraph (3) may be exercised by the President of the Industrial Tribunals.

Evidence

7.—(1) Upon the discharge by a person assessed to the levy of his liability under an assessment the Board shall if so requested issue to him a certificate to that effect.

(2) The production in any proceedings of a document purporting to be certified by the Secretary of the Board or any other person, being a member or officer of the Board authorised to act in that behalf, to be a true copy of an assessment or other notice issued by the Board or purporting to be a certificate such as is mentioned in paragraph (1) shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Sealed with the Official Seal of the Department of Manpower Services for Northern Ireland on 24th May 1976.

(L.S.) *T. R. McKnight*
Assistant Secretary

(d) S.R. & O. (N.I.) 1965 No. 112 (p. 402), as amended by S.R. & O. (N.I.) 1966 No. 261 (p. 838) and S.R. & O. (N.I.) 1967 No. 109 (p. 345)

EXPLANATORY NOTE

(This note is not part of the Order but is intended to indicate its general purport.)

This Order gives effect to proposals submitted by the Catering Industry Training Board to the Department of Manpower Services for the imposition of a further levy upon employers in the catering industry for the purpose of raising money towards the expenses of the Board.

The levy is to be imposed in respect of the eleventh levy period commencing on 1st September 1976 and ending on 31st August 1977. The levy will be assessed by the Board and there will be a right of appeal against an assessment to an industrial tribunal.

While the levy rate of 1% is unchanged from the last preceding levy period, the figure in respect of emoluments appearing in the definition of employer has been increased from £5,000 to £10,000.