STATUTORY INSTRUMENTS

1978 No. 1471

INDUSTRIAL TRAINING

The Industrial Training Levy (Construction Board) Order 1978

Made - - - -	*9th October* 1978
Laid before Parliament	*19th October* 1978
Coming into Operation	*22nd November* 1978

Whereas proposals made by the Construction Industry Training Board for the raising and collection of a levy have been submitted to, and approved by, the Manpower Services Commission under section 7 of the Industrial Training Act 1964(**a**) ("the 1964 Act"), as amended by section 6 of and Schedule 2 to the Employment and Training Act 1973(**b**) ("the 1973 Act") and have thereafter been submitted by the said Commission to the Secretary of State under section 7(1C) of the 1964 Act as inserted by the 1973 Act;

And whereas in pursuance of section 7(1A)(*a*) of the 1964 Act as inserted by the 1973 Act the said proposals include provision for the exemption from the levy of employers who, in view of the small number of their employees, ought in the opinion of the Secretary of State to be exempted from it;

And whereas the Secretary of State estimates that the amount which, disregarding any exemptions, will be payable by virtue of this Order by any employer in the construction industry, does not exceed an amount which the Secretary of State estimates is equal to one per cent. of the aggregate of the emoluments and payments intended to be disbursed as emoluments which have been paid or are payable by any such employer to or in respect of persons employed in the industry, in respect of the period specified in the said proposals as relevant, that is to say the period of twelve months that commenced on 6th April 1977;

And whereas the said proposals relate only to levy payable by virtue of section 7(1B) of the 1964 Act as inserted by the 1973 Act and the Secretary of State is satisfied that they were made in pursuance of that subsection, are necessary as mentioned in paragraph (*a*) thereof and are shown, by evidence furnished by the Board, to be considered necessary as mentioned in paragraph (*b*) thereof;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by section 4 of the 1964 Act, as amended by section 6 of and Schedule 2 to the 1973 Act, and of all other powers enabling him in that behalf hereby makes the following Order: —

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Construction Board) Order 1978 and shall come into operation on 22nd November 1978.

(**a**) 1964 c. 16. (**b**) 1973 c. 50.

Interpretation

2.—(1) In this Order unless the context otherwise requires:—

(*a*) "an appeal tribunal" means an industrial tribunal established under section 12 of the Industrial Training Act 1964;

(*b*) "assessment" means an assessment of an employer to the levy;

(*c*) "the Board" means the Construction Industry Training Board;

(*d*) "business" means any activities of industry or commerce;

(*e*) "construction establishment" means an establishment in Great Britain engaged wholly or mainly in the construction industry for a total of twenty-seven or more weeks in the period of twelve months that commenced on 6th April 1977 or, being an establishment that commenced to carry on business in the said 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;

(*f*) "the construction industry" does not include any activities of an establishment which have been transferred from the industry of the Board to the industry of another industrial training board by one of the transfer orders, but save as aforesaid means any one or more of the activities which, subject to the provisions of paragraph 2 of the Schedule to the industrial training order, are specified in paragraph 1 of that Schedule as the activities of the construction industry or, in relation to an establishment whose activities have been transferred to the industry of the Board by one of the transfer orders, any activities so transferred;

(*g*) "employer" means a person who is an employer in the construction industry at any time in the fourteenth levy period:

(*h*) "the fourteenth levy period" means the period commencing with the day upon which this Order comes into operation and ending on 31st March 1979;

(*i*) "the industrial training order" means the Industrial Training (Construction Board) Order 1964(**a**), as amended by the Industrial Training (Construction Board) Order 1973(**b**), and the Industrial Training (Construction Board) Order 1964 (Amendment) Order 1974(**c**);

(*j*) "the levy" means the levy imposed by the Board in respect of the fourteenth levy period;

(*k*) "notice" means a notice in writing;

(*l*) "the transfer orders" mean—

(i) the Industrial Training (Transfer of the Activities of Establishments) Order 1975(**d**),

(ii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1975(**e**),

(iii) the Industrial Training (Transfer of the Activities of Establishments) Order 1976(**f**),

(**a**) S.I. 1964/1079.
(**b**) S.I. 1973/160.
(**c**) S.I. 1974/2081.
(**d**) S.I. 1975/434.
(**e**) S.I. 1975/1157.
(**f**) S.I. 1976/396.

(iv) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1976(**a**),

(v) the Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1976(**b**),

(vi) the Industrial Training (Transfer of the Activities of Establishments) Order 1977(**c**),

(vii) the Industrial Training (Transfer of the Activities of Establishments) Order 1978(**d**), and

(viii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1978(**e**).

(2) 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.

(3) The Interpretation Act 1889(**f**) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Imposition of the levy

3.—(1) The levy to be imposed by the Board on employers in respect of the fourteenth levy period shall be assessed in accordance with the provisions of this Article and of the Schedule to this Order.

(2) The levy shall be assessed by the Board separately in respect of each construction establishment 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.

Assessment notices

4.—(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) An assessment notice shall state the amount of the levy payable by the person assessed to the levy, and that amount shall be equal to the total amount of the levy assessed by the Board under the provisions of this Order in respect of each establishment included in the notice.

(3) 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.

(4) 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.

(**a**) S.I. 1976/1635.
(**b**) S.I. 1976/2110.
(**c**) S.I. 1977/1951.
(**d**) S.I. 1978/448.
(**e**) S.I. 1978/1225.
(**f**) 1889 c. 63.

Payment of the levy

5.—(1) Subject to the provisions of this Article and of Articles 6 and 7 the amount of the levy payable under an assessment notice served by the Board shall be due and payable to the Board one month after the date of the assessment notice.

(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 7(1) of this Order and any further period or periods of time that the Board or an appeal tribunal may have allowed for appealing under paragraph (2) or (3) of that Article or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

6.—(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 7 of this Order and the appeal has not been entered in the Register of Appeals kept under the appropriate Regulations specified in paragraph (5) of that Article.

(2) The withdrawal of an assessment shall be without prejudice—

(*a*) to the power of the Board to serve a further assessment notice in respect of any establishment to which that assessment related; or

(*b*) to any other assessment included in the original assessment notice, and such notice shall thereupon have effect as if any assessment withdrawn by the Board had not been included therein.

Appeals

7.—(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 by notice may for good cause allow a person assessed to the levy to appeal to an appeal tribunal against an assessment at any time within the period of four months from the date of the service of the assessment notice or within such further period or periods as the Board may allow before such time as may then be limited for appealing has expired.

(3) If the Board shall not allow an application for extension of time for appealing, an appeal tribunal shall upon application made to the tribunal by the person assessed to the levy have the like powers as the Board under the last foregoing paragraph.

(4) In the case of an establishment that ceases to carry on business in the fourteenth 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) of this Article there were substituted the period of six months from the date of the cessation of business.

(5) An appeal or an application to an appeal tribunal under this Article shall be made in accordance with the Industrial Tribunals (England and Wales) Regulations 1965(a) as amended by the Industrial Tribunals (England and Wales) (Amendment) Regulations 1967(b) except where the establishment to which the relevant assessment relates is wholly in Scotland, when the appeal or application shall be made in accordance with the Industrial Tribunals (Scotland) Regulations 1965(c) as amended by the Industrial Tribunals (Scotland) (Amendment) Regulations 1967(d).

(6) The powers of an appeal tribunal under paragraph (3) of this Article may be exercised by the President of the Industrial Tribunals (England and Wales) or by the President of the Industrial Tribunals (Scotland) as the case may be.

Evidence

8.—(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, officer or servant 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 the foregoing paragraph of this Article shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Signed by order of the Secretary of State.
9th October 1978.

John Golding,
Joint Parliamentary Under Secretary of State,
Department of Employment.

(a) S.I. 1965/1101.
(b) S.I. 1967/301.
(c) S.I. 1965/1157.
(d) S.I. 1967/302.

Article 3

SCHEDULE

Interpretation

1. In this Schedule unless the context otherwise requires—

(*a*) "agriculture" has the same meaning as in section 109(3) of the Agriculture Act 1947(**a**) or, in relation to Scotland, as in section 86(3) of the Agriculture (Scotland) Act 1948(**b**);

(*b*) "average number" in relation to any category and description of persons employed at or from a construction establishment of an employer means the number that is equal to the average of the numbers of the persons of that category and description specified in the first and second columns of the Appendix to this Schedule employed, or treated as employed under the provisions of paragraph 2(d) of this Schedule, at or from the establishment by the employer on the relevant dates or, in the case of an establishment that commenced to carry on business after the first of the relevant dates but before the second, the number of persons of that category and description specified as aforesaid and employed by the employer at or from the establishment on the second of the relevant dates;

(*c*) "charity" has the same meaning as in section 360 of the Income and Corporation Taxes Act 1970(**c**);

(*d*) "clerical or miscellaneous worker" includes—

(i) a clerk and other office staff, including those working in sales, computers and stores, and supervisors of these staff;

(ii) a storeman;

(iii) a transport worker (but not a motor mechanic);

(iv) an operative or conversion fitter (excluding a gas fitter, a plumber or a heating and ventilating fitter), engaged in the conversion of appliances to natural gas or in the preliminary work;

(v) any other person (including a foreman, ganger and chargehand) mainly employed as a manual worker not comprised in any other category and description of worker specified in this Schedule and the Appendix thereto;

(*e*) "craftsman (building)" means—

(i) a bricklayer, including a specialist bricklayer;

(ii) a carpenter joiner, including a carpenter, a joiner, a formwork carpenter, a joiner bench hand, a woodworking machinist or woodworking operative and a setter out;

(iii) a mason, including a monumental mason, a stone carver and a stone polisher;

(iv) a painter, including a painter and decorator, an industrial painter, a french polisher and a signwriter;

(v) a pavior street mason and a tar pavior;

(vi) a plasterer, including a solid or fibrous plasterer, a moulder and a dry-lining or partition operative;

(vii) a roof slater and tiler, including a roofer, a felter, a slater, a metal roofer (but not an iron roofer) and a PVC roofer;

(viii) any other person (including a foreman, ganger and chargehand) mainly employed as a manual worker, otherwise than as a labourer or general operative, in any of the trades specified in this subparagraph;

(**a**) 1947 c. 48. (**b**) 1948 c. 45. (**c**) 1970 c. 10.

(*f*) "craftsman (mechanical engineering services)" means—

(i) a gas fitter;

(ii) a heating and ventilating fitter, including a heating fitter;

(iii) an oil burner mechanic;

(iv) a pipe fitter;

(v) a plumber, including a chemical plumber, a plumber welder and a hot water fitter;

(vi) a refrigeration mechanic;

(vii) a welder, including an oxy-acetylene, metallic-arc or shielded-arc welder;

(viii) any other person (including a foreman, ganger and chargehand) mainly employed as a manual worker, otherwise than as a labourer or general operative, in any of the trades specified in this sub-paragraph;

(*g*) "craftsman (electrical engineering services)" means—

(i) an electrician, including a cable jointer;

(ii) any other person (including a foreman, ganger or chargehand) mainly employed as a manual worker, otherwise than as a labourer or general operative, in any of the trades specified in this sub-paragraph;

(*h*) "craftsman (miscellaneous)" means—

(i) a plant mechanic, a plant maintenance mechanic, a contractors' plant mechanic and a motor mechanic;

(ii) a thermal insulation operative or ductwork erector;

(iii) a floor, wall or ceiling tiler, including a composition floor layer, a mastic asphalter, a mosaic worker, a parquet floorer, a terrazo worker and a metal fixer (ceiling systems);

(iv) a glazier, including a patent glazier, a leaded light worker, a glass production worker or a glass production process worker;

(v) a scaffolder;

(vi) any other person (including a foreman, ganger and chargehand) mainly employed as a manual worker, otherwise than as a labourer or general operative, in any of the trades specified in this sub-paragraph or in any other trade not specified in this Schedule;

(*i*) "a labour-only agreement' means any arrangement, not being a contract of service or of apprenticeship, made between an employer and any other person or persons whereby the services (including any incidental use of tools) of such person or persons, or of any other person or persons were rendered to the employer in his trade or business;

(*j*) "the relevant dates" means 6th October 1977 and 6th April 1978;

(*k*) "skilled building and civil engineering worker" means—

(i) a concretor, including a bar bender and fixer, a concrete spreader or finisher, a concrete equipment operator, a pre-cast concrete erector and fixer, a concrete form work erector and a pre-stressing or pre-tensioning operative;

(ii) a diver, including a surface, demand or helmet diver and a life linesman;

(iii) an excavation operative, including a heading driver, a manhole builder, a pipe layer, a pipe jointer and a timberman;

(iv) a mechanical plant operator, including a mechanical equipment, compressor, air tool or paving machine operator, a mixerman, a potman, a banksman, a slinger, a plant driver, a dumper driver, a

crane driver, an excavation plant operator, an earthmoving plant operator, a pumpman, an oiler and a greaser;

(v) a piling or well drilling operative, including a borer driver, vibrator or specialist piling operative, a well or rock driller and a shaft sinker;

(vi) a tunnel miner, including a soft-heading miner;

(vii) a blacksmith, including a marker-out;

(viii) a steel erector, including a sheeter or an iron roofer;

(ix) a steeplejack;

(x) a repetitive process factory worker;

(xi) a labourer or general operative mainly employed in any of the trades specified in this sub-paragraph or in sub-paragraph (*e*), (*f*), (*g*) or (*h*) of this paragraph who was entitled to extra payment for skill or responsibility under a Working Rule Agreement;

(xii) any other person (including a foreman, ganger or chargehand) mainly employed as a manual worker, otherwise than as a labourer or general operative, in any of the trades mentioned in this sub-paragraph;

(*l*) "a person employed in a managerial, administrative, professional or technical capacity" includes—

(i) a manager, including a contracts, site, area, sales or office manager;

(ii) an accountant or company secretary;

(iii) an estimator, surveyor or buyer;

(iv) an engineer or architect;

(v) a technical, planning or laboratory assistant, a draughtsman, a tracer or a design detailer;

(vi) a work study officer;

(vii) a personnel officer, a training officer or an instructor;

(viii) a person occupying the position of foreman or of works supervisor being a person who is not mainly employed as a manual worker whether in handling materials or otherwise;

(*m*) "trainee" means a person (including an apprentice) who is learning a managerial, administrative, professional, technical or manual skill and whose employer has undertaken to provide training for him in that skill for a specified period of not less than twelve months;

(*n*) "Working Rule Agreements" means any agreement as to pay, being an agreement between—

(i) parties who are or represent employers or organisations of employers or associations of such organisations; and

(ii) parties who are or represent organisations of employees or associations of such organisations;

but includes also any award modifying or supplementing such an agreement.

2. For the purposes of this Schedule, except, in relation to (*d*) below, for the purposes of paragraph 4 below, the following provisions shall have effect—

(*a*) the following persons employed on demolition, namely—

(i) a labourer or general operative when using a compressed air drill, a pneumatic punching machine or a spade;

(ii) a cleaner, a sorter, an improver, a mattockman, a topman, a burner topman, a burner groundman, a shorer (timber) and a shorer's mate;

shall (notwithstanding 1(*k*)(xi) or any other provision in this Schedule) be

treated as a labourer or general operative who is not entitled to extra payment for skill or responsibility under a Working Rule Agreement;

(*b*) no regard shall be had to any person employed wholly in the supply of food or drink for immediate consumption or in agriculture, or who was normally working for an aggregate of less than 8 hours weekly;

(*c*) no regard shall be had to a company director remunerated solely by fees but, save as aforesaid, the provisions of this Schedule shall apply to a company director (including a person occupying the position of director by whatever name he is called) as they apply to other persons and accordingly such a person shall be taken to be comprised in the category appropriate to the work in which he was mainly engaged;

(*d*) in the case of a construction establishment that is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, the person or persons carrying on the establishment on the day upon which this Order comes into operation shall be treated as the employer of any person who was employed on either or both of the relevant dates, or at any time in the period of twelve months that commenced on 6th April 1977 at or from the establishment under a contract of service or of apprenticeship or under a labour-only agreement, by the person then carrying on the establishment.

Basic assessment rules

3.—(1) Subject to the limit in paragraph 4 and to the exceptions in paragraphs 5 and 6 below the amount to be assessed by way of levy in respect of a construction establishment (being an establishment carrying on business in the fourteenth levy period) shall be the amount if any by which the total of the sums described under (*a*) and (*b*) of sub-paragraph (2) below exceeds the total of the sums described under (*c*) and (*d*) of that sub-paragraph.

(2) The sums described under (*a*), (*b*), (*c*) and (*d*) respectively are as follows:—

(*a*) the sum of the amounts (rounded down in each case where necessary to the nearest £1) produced by multiplying the appropriate amount in the third column of the Appendix to this Schedule by the average number of persons employed by the employer at or from the establishment under contracts of service or apprenticeship in each relevant category and description of employment;

(*b*) the sum which (rounded down where necessary to the nearest £1) represents 1.1% of any payments made to any persons by the employer during the period of 12 months that commenced on 6th April 1977 under labour-only agreements in respect of work carried out at or from the establishment;

(*c*) the sum which (rounded down where necessary to the nearest £1) represents 1.1% of any payments received by the employer during the period of 12 months that commenced on 6th April 1977 from any other employers in the construction industry under labour-only agreements in respect of work carried out at or from the establishment;

(*d*) £20.

Maximum amount of levy

4. The amount of levy payable by an employer shall not exceed an amount equal to 1% of the aggregate of the emoluments and payments intended to be disbursed as emoluments which have been paid or are payable by the employer to or in respect of persons employed in the industry in respect of the period of twelve months which commenced on 6th April 1977.

Exemption of charities

5. A charity shall be exempt from the levy.

Exemption of small employers

6.—(1) There shall be exempt from the levy an employer in whose case the aggregate amount of—

(*a*) the sum of the emoluments of all the persons employed by the employer at or from the construction estblishment or establishments of the employer in the period of 12 months that commenced on 6th April 1977; and

(*b*) all such sums (if any) as were paid in the said period by the employer to any person under a labour-only agreement at or from the said establishment or establishments;

was less than £15,000.

(2) For the purpose of sub-paragraph (1)(*a*) above "emoluments" means all emoluments assessable to income tax under Schedule E (other than pensions), 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.

Cessation of business

7. The amount of the levy imposed in respect of a construction establishment that ceases to carry on business in the fourteenth levy period shall be in the same proportion to the amount that would otherwise be due in accordance with the foregoing provisions of this Schedule 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.

APPENDIX

Category	Description	Amount Per Capita
1.	A person employed in a managerial administrative professional or technical capacity	£22
2.	A clerical or miscellaneous worker	Nil
3.	A craftsman (building and miscellaneous)	£23
4.	A craftsman (mechanical engineering services)	£35
5.	A craftsman (electrical engineering services)	£33
6.	A skilled building and civil engineering worker	£11
7.	A labourer or general operative not entitled to extra payment for skill or responsibility under a Working Rule Agreement	£5
8.	A craftsman (miscellaneous)	£20
9.	A trainee in any of the categories 1–6 and 8 above	Nil

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order gives effect to proposals of the Construction Industry Training Board which were submitted to and approved by the Manpower Services Commission, and thereafter submitted by the Manpower Services Commission to the Secretary of State. The proposals are for the imposition of a levy on employers in the construction industry for the purpose of encouraging adequate training in the industry.

The levy is to be imposed in respect of the fourteenth levy period commencing with the date on which this Order comes into operation and ending on 31st March 1979. The levy will be assessed by the Board, and there will be a right of appeal against an assessment to an industrial tribunal.

SI 1978/1471
ISBN 0-11-084471-8

