STATUTORY INSTRUMENTS

2004 No. 368

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Board) Order 2004

Made - - - -	*12th February 2004*
Coming into force - -	*19th February 2004*

Whereas the Construction Industry Training Board has submitted proposals for the raising and collection of a levy under section 11(1) of the Industrial Training Act 1982**(a)** ("the 1982 Act");

And whereas in pursuance of section 11(3) of the 1982 Act the 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 certain of the proposals are made in pursuance of section 11(4)(b) of the 1982 Act and the Secretary of State is satisfied that those proposals fall within section 11(5)(b) of that Act and that they are necessary as mentioned in the said section 11(5), and that the condition mentioned in section 11(6)(a) of the 1982 Act is satisfied in the case of those proposals;

And whereas the Secretary of State estimates that the amount which will be payable by virtue of the following Order by certain employers in the construction industry will exceed an amount which he estimates as equal to one per cent. of relevant emoluments, but considers such amount appropriate in the circumstances, and the following Order therefore falls within section 11(7)(b) of the 1982 Act;

And whereas the Secretary of State has consulted the Scottish Ministers pursuant to section 88(2) of the Scotland Act 1998**(b)**;

And whereas a draft of the following Order was laid before Parliament in accordance with section 12(6) of the 1982 Act and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 11(2), 12(2), (3) and (4) of the 1982 Act, hereby makes the following Order:

(a) 1982 c.10; sections 11 and 12 were amended by section 22(4)of, and paragraphs 10 and 11 respectively of Schedule 4 to, the Employment Act 1989 (c.38).

(b) 1998 c.46; the Construction Industry Training Board has been specified as a cross border public authority for the purposes of section 88 - see the Scotland Act 1988 (Cross-Border Public Authorities) (Specification) Order 1999 S.I. 1999/1319.

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Construction Board) Order 2004 and shall come into force on the seventh day after the day on which it is made.

Interpretation

2.—(1) In this Order—

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

(b) "the base period" means the period of twelve months which commenced on 6th April 2002;

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

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

(e) "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;

(f) "emoluments" means all salaries, fees, wages, perquisites and profits whatsoever, except for pensions;

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

(h) "the industrial training order" means the Industrial Training (Construction Board) Order 1964**(a)**;

(i) "a labour-only agreement" means any agreement or arrangement, either written or oral, not being a contract of service or of apprenticeship or for provision of professional services, between an employer and any other person or persons, the purpose of which is wholly or mainly the provision of services of such person or persons or of any other person or persons to the employer in his trade or business;

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

(k) "the levy period" means the period commencing with the day on which this Order comes into force and ending on 31st March 2004;

(l) "notice" means a notice in writing;

(m) "the transfer orders" means the orders specified in the Schedule.

(2) Any references 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) For the purposes of this Order 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 force shall be treated as the employer of any person who was employed at any time in the base period at or from the establishment under a contract of service or of apprenticeship or under a labour-only agreement and that employer shall be assessed to levy in accordance with article 4 of this Order.

(a) S.I. 1964/1079; a relevant amending instrument is S.I. 1992/3048.

Meaning of "construction establishment"

3.—(1) For the purposes of this Order "construction establishment" means an establishment engaged wholly or mainly in the construction industry during the necessary period.

(2) In this article "the necessary period" means—

(a) unless sub-paragraph (b) applies, a period (which need not be continuous) consisting of a total of 27 or more weeks falling within the base period; or

(b) in the case of an establishment that started to carry on business in the base period, a period (which need not be continuous) falling within the base period consisting of a total number of weeks exceeding one half of the number of weeks in the part of the base period starting on the day on which business was commenced and ending on the last day of the base period.

Imposition of the levy

4.—(1) The levy to be imposed by the Board on employers in respect of the levy period 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 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 treated for the purposes of that assessment as constituting one establishment.

(3) Subject to the exemptions in article 5 the amount to be assessed by way of levy in respect of a construction establishment (being an establishment carrying on business in the levy period) shall be A + B - C (and if A + B is less than C no levy shall be assessed) where—

A is an amount (rounded down where necessary to the nearest £1) equal to 0.5 per cent. 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 by the employer in respect of the base period;

B is the sum which (rounded down where necessary to the nearest £1) represents 1.5 per cent. of all payments (other than payments which are not in respect of the provision of services) made to any persons during the base period under labour-only agreements in respect of work carried out at or from the establishment; and

C is the sum which (rounded down where necessary to the nearest £1) represents 1.5 per cent. of all payments (other than payments which are not in respect of the provision of services) received by the employer during the base period from any other employers in the construction industry under labour-only agreements in respect of work carried out at or from the establishment.

(4) For the purposes of paragraph (3)—

(a) a person employed wholly in the supply of food or drink for immediate consumption or in agriculture (within the meaning of section 109(3) of the Agriculture Act 1947 **(a)** or, as the case may be, section 85(1) of the Agricultural Holdings (Scotland) Act 1991**(b)**) shall be left out of account;

(b) a person who was normally working for an aggregate of less than 8 hours weekly shall be left out of account; and

(c) a company director remunerated solely by fees shall be left out of account but otherwise a company director (including a person occupying a position of director by whatever name he is called) shall be treated as employed.

(a) 1947 c.48.
(b) 1991 c.55.

Exemptions from levy

5.—(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 at or from the construction establishments of the employer in the base period; and

(b) all sums (if any) paid in the base period by the employer to any person under labour-only agreements at those establishments

was less than £61,000.

(2) A charity within the meaning of section 506 of the Income and Corporation Taxes Act 1988(**a**) shall be exempt from the levy.

Assessment notices

6.—(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 —

(a) by delivering it to him personally; or

(b) by leaving it at or posting it to his last known address, place of business or registered office in the United Kingdom; or

(c) where the person maintains an e-mail address, by sending an electronic copy of the assessment notice to that e-mail address.

Payment of the levy

7.—(1) Subject to the provisions of this article and of articles 8 and 9 below, 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 9(1) and any further periods of time that the Board or an employment tribunal may have allowed for appealing under article 9(2) or (3) or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

8.—(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 9 below and the appeal has not been entered in the Register of Appeals kept under the appropriate regulations specified in article 9(4).

(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.

(**a**) 1988 c. 1.

Appeals

9.—(1) A person assessed to the levy may appeal to an employment 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 employment 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 employment 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 employment tribunal shall upon application made to the tribunal by the person assessed to the levy have the like powers as the Board under paragraph (2) above.

(4) An appeal or an application to an employment tribunal under this article shall be made in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001**(a)** except where the establishment to which the relevant assessment relates is wholly or mainly in Scotland, when the appeal or application shall be made in accordance with the Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001**(b)**.

(5) The powers of an employment tribunal under paragraph (3) may be exercised by the President of the Employment Tribunals (England and Wales) or by the President of the Employment Tribunals (Scotland) as the case may be.

Cessation of business

10. The amount of the levy imposed in respect of a construction establishment that ceases to carry on business in the levy period shall be in the same proportion to the amount that would otherwise be due in accordance with the foregoing provisions of this Order as the number of days between the commencement of the levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the levy period.

Evidence

11.—(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 paragraph (1) above, shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Ivan Lewis
Parliamentary Under Secretary of State
Department for Education and Skills

12th February 2004

(a) S.I. 2001/1171.
(b) S.I. 2001/1170.

SCHEDULE 1

Regulation 2(1)(m)

TRANSFER ORDERS

The Industrial Training (Transfer of the Activities of Establishments) Order 1975**(a)**,

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1975**(b)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1976**(c)**,

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1976**(d)**,

The Industrial Training (Transfer of the Activities of Establishments) (No 3) Order 1976**(e)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1977**(f)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1978**(g)**,

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1978**(h)**,

The Industrial Training (Transfer of the Activities of Establishments) (No 3) Order 1978**(i)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1979**(j)**,

The Industrial Training (Transfer of the Activities of Establishments) (No 2) Order 1980**(k)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1981**(l)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1985**(m)**,

The Industrial Training (Transfer of the Activities of Establishments) Order 1990**(n)**.

(a) S.I. 1975/434.
(b) S.I. 1975/1157.
(c) S.I. 1976/396.
(d) S.I. 1976/1635.
(e) S.I. 1976/2110.
(f) S.I. 1977/1951.
(g) S.I. 1978/448.
(h) S.I. 1978/1225.
(i) S.I. 1978/1643.
(j) S.I. 1979/793.
(k) S.I. 1980/1753.
(l) S.I. 1981/1041.
(m) S.I. 1985/1662.
(n) S.I. 1990/928.

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 the Secretary of State. The proposals are for the imposition of a levy on employers in the construction industry for the purpose of raising money towards meeting the expenses of the Board.

A levy is to be imposed on employers limited to 0.5 per cent of payroll in respect of employees employed by them under contracts of service or apprenticeship and 1.5 per cent. of payments made by the employers to persons under labour-only agreements.

This levy is in respect of the levy period commencing with the date on which this Order comes into force and ending on 31st March 2004.

The levy will be assessed by the Board, and there is a right of appeal against an assessment to an employment tribunal.

A full regulatory impact assessment of the effect that this Order will have on the costs of business is available from the Department for Education and Skills, Library and Information Service, Moorfoot, Sheffield S1 4PQ or Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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