EXPLANATORY MEMORANDUM TO

THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION BOARD) ORDER 2006

2006 No.334

1. This explanatory memorandum has been prepared by The Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Merits Committee

2. Description

This instrument grants power to the Construction Industry Training Board (CITB) to impose a levy on employers in the Construction Industry and sets the rates of and exemptions from that levy.

3. Matters of special interest to the Committees

None

4. Legislative Background

The above Order is to be made in exercise of the powers conferred by section 11(2 and section 12(2),(3) and (4)) of the Industrial Training Act 1982 (ITA). The Order will impose a levy which exceeds 1% of payroll and hence is subject to affirmative resolution.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Skills and Vocational Education has made the following statement regarding Human Rights:

In my view the provisions of the Industrial Training Levy (Construction Board) Order 2006 are compatible with the Convention rights

7. Policy background

The purpose of Industrial Training Boards

Industrial Training Boards (ITBs) are set up under the ITA to ensure that the quantity and quality of training are adequate to meet the needs of the industries for which they are established.

There are currently 2 ITBs covering the construction and the engineering construction sectors and both are Non-Departmental Public Bodies. They provide a wide range of services and training initiatives, including setting occupational standards and developing vocational qualifications, delivering Apprenticeships and paying direct grants to employers who carry out training to approved standards.

Employers in these sectors have consistently supported statutory underpinning for their training arrangements. They argue that the nature of their industries mean that individual employers are unable or unwilling to accept the responsibility of training their own employees. They believe that a national pool of labour, collectively funded by all employers, is the only way the industries' skill needs can be met.

Levy Arrangements

The ITA contains provision for a levy on employers to finance an ITB's activities and to share the cost of training more evenly between companies in the industry. It is for the ITB to make proposals for the rate of levy for the industry it covers and for the Secretary of State to make an order giving effect to the proposals.

This Order gives effect to proposals submitted by the Construction ITB (CITB) for a levy to be collected in 2006.

Every employer whose main activity is included in the definition of the construction industry as set out in S.I. 1992/3048 is assessed to levy. Employers are legally required to pay the levy unless they are exempted by the CITB.

Exclusions

The ITA requires small firms to be excluded from the levy but does not set a minimum size threshold. In the Order employers whose combined payroll and net expenditure on sub-contract labour is less than £69,000 are exempt. The exemption is calculated by reference to an employer's payroll figure rather than the number of employees because the numbers employed in any year by any particular employer in this industry, which largely operates on a short-term contract basis with significant usage of labour–only subcontractors, fluctuate and are therefore difficult to calculate or audit, should that be needed.

There is no exemption for other classes of employer.

Costs to the public and/or the Exchequer

Levy rates are determined by the employer members of an ITB and are fixed in light of the Board's general policy and plans. They must cover the cost of the Board's plans for the year in question.

The CITB rates for 2006 are 0.5% of the total of an employer's payroll for direct employees and 1.5% of net payments for labour-only services for construction sites. There is no ceiling to the amount of levy paid by an employer. The proposals are expected to raise £145 - 150 million in the financial year-ended 31 December 2006.

For each Board the proposals involve a levy greater than 0.2% of an employer's payroll with no provision for exemption. Section 11 of the ITA says that in this case the Secretary of State may not make the Order unless he is satisfied that the proposals are necessary to encourage adequate training in the industry and that one of three conditions is satisfied.

The conditions are:-

(a) that organisations representing more than half the persons likely to pay the levy and organisations representing persons who together are likely to pay more than half the aggregate amount of the levy consider, after taking reasonable steps to consult their members, that the proposals are necessary to encourage adequate training in the industry.

(b) that the Order will be made less than two years after the making of a former levy Order giving effect to proposals in respect of which condition (a) was satisfied.

(c) that neither condition (a) or (b) applies, but the proposals are considered by the Secretary of State to be appropriate in the circumstances.

Formal consultation on the proposals took place in the summer of 2005 and they were supported by the industry's main employer organisations, who represent over 50% of leviable employers. Those employers are together likely to pay 67.8% of the total levy. Condition (a) above has therefore been satisfied.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum

9. Contact

Simon Perryman at the Department for Education and Skills Tel: 0114-259-3913 or e-mail: simon.perryman@dfes.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION BOARD) ORDER 2006

Declaration :

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the responsible Minister

***Phil Hope*……**

Date …*12th February 2006*……

Contact point for CITB :

Sue Vernon
Department for Education and Skills
Employers – Delivery
Sponsorship & SSC Policy Unit
Area E4d
Moorfoot
Sheffield
S1 4PQ

Tel : 0114 259 4001
GTN : 24001

Date :

Department : Education and Skills

REGULATORY IMPACT ASSESSMENT

THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION BOARD) ORDER 2006

The Issue and Objective

1. The measure gives effect to one of the provisions of the Industrial Training Act 1982, which empowers the Secretary of State to set up industrial training boards (ITBs) to ensure that the quantity and quality of training are adequate to meet the needs of the industry for which they are established. It enables the Construction Industry Training Board (CITB) to impose a levy on employers, other than the smallest, whose activities fall within its scope (as currently defined in the Industrial Training (Construction Board) Order 1964 (Amendment) Order 1992).

2. The context of this legislation is unusual in that it is to all intents and purposes self-imposed, and this should be taken into account in any judgement of the way in which it impacts on employers in the construction industry. Against the tide of Government policy of transforming ITBs from statutory to non-statutory organisations, two industries (of which this is one) have, through their representative organisations, persuaded the government to retain their statutory basis, including the power to impose a levy. This is to address particular industry characteristics which are outlined in paragraph 15. In practice, this means that each year the construction industry, after a process of consultation (as required by the Industrial Training Act), submits, through the ITB, its proposals for the following year's levy arrangements. The industry has had a levy/grant arrangement for over 30 years.

3. The Industrial Training Act 1982 also empowers ITBs to make grants to those employers whose training courses are approved by the Board. An employer who provides no training will have to pay a levy but will get no grant from the Board; an employer who does approved training will pay the levy but may receive grants towards the cost of training. In this way an employer will have an incentive to see that employees receive training and in particular to see that the quality of training is of a standard approved by the Board.

4. In addition to the payment of direct grants, the CITB funds and manages a range of training initiatives, e.g. apprenticeship schemes and a new entrant training policy. The construction industry is characterised by considerable movement of labour between employers and projects and a high degree of labour-only subcontracting. These initiatives are designed to benefit the industry collectively by providing a pool of skilled labour from which all employers benefit. The Board also provides a training consultancy service to the industry and develops standards of competence and associated national vocational qualifications and training specifications.

5. It is for the Board to make proposals for the particular levy arrangements and rates for the industry. Levy proposals are submitted annually by the CITB and are subject to Ministerial and Parliamentary approval. This RIA concerns the levy arrangements for 2006.

6. The measure is designed to:

- share the cost of training between firms;

- secure an adequate supply of properly trained workers at all levels in the industry;

- meet the administrative expenses of the Board.

Risk Assessment

(i) The problem and harm

7. The statutory Industrial Training Boards (ITBs) set up by the Industrial Training Act 1964 were progressively wound-up between 1981 and 1992 and replaced by new employer-led organisations outwith a statutory framework.

8. However, employers in the construction industry have consistently put forward a strong case for the continuation of statutory training arrangements for their sector.

9. Ministers have acknowledged that insisting on non-statutory arrangements is unrealistic and have agreed to retain a statutory ITB subject to review at least every five years. The ITB is governed by the Industrial Training Act 1982, which includes the power to raise a levy, imposed by an order which gives effect to proposals submitted annually by the Board and requiring the approval of both Houses. The smallest employers are exempted from the levy.

(ii) The risk

10. The industry argues that without collectively funded training, paid for by a statutory levy on all employers and administered by the ITB, there is a serious risk that insufficient training will be carried out to meet the industry's skill needs. This could result in skill shortages, wage inflation and a less competitive construction industry.

Options

11. There are two options:

    Option 1 - reject the levy proposals. This would mean that the Board would have no levy income for the financial year ended December 2006 and the only money available for operating purposes would be its reserves, which would soon be exhausted.

    Option 2 - approve the levy proposals and enable the Board to raise the income it requires to continue to provide incentives by way of grants for employers who train. Also to deliver the training services required by the industry.

Issues of Equity or Fairness

12. The context of this legislation is unusual in that it is to all extents and purposes self-imposed by the employers in the construction industry.

13. It runs contrary to the current position of non-statutory training arrangements in most industry sectors but is nevertheless employer-led and employer-funded in accordance with employers' wishes.

Identify the Benefits

14. The options have the following benefits:

Option 1 - employers would not have to pay the training levy but, according to the industry, the particular employment patterns in the sector i.e. the itinerant nature of the workforce and extensive use of labour-only subcontractors, mean that employers individually are not prepared or are unable to undertake adequate (either qualitative or quantitative) training.

Option 2 - with its operating income secured the Board would be able to continue to organise, manage and fund the range of training services that have been developed on the industry's behalf. The cost would be shared between firms.

Quantifying and Valuing the Benefits

15. The monetary benefit for each option is:

Option 1 - zero

Option 2 - The Board calculates that for every £1 raised in levy £1.79 is returned to the industry. This is given in the form of grant, training allowances, college fees, trainee recruitment, trainee advice and the development of industry standards. There is also the availability of a skilled pool of labour from which all employers benefit.

16. The costs of the options are:

Option 1 - cannot be quantified or costed

Option 2 - £150m raised in levy from the industry

Business Sectors Affected

17. Employers in the construction sector as defined in Industrial Training (Construction Board) Order 1964 (Amendment) Order 1992.

18. CITB estimates that the number of companies in scope is between 70,000 and 75,000. The number of employers registered with the CITB is 72,700. Employers are not required to register with the CITB; rather it is for the CITB to identify them. Around 46,000 (63%) of

registered in-scope employers are not expected to be liable to pay the levy. Of this figure 29,000 (41%) are small firms whose payroll is below the threshold 4000 (6%) are employers whose receipts for Labour only services are greater than their payments (offset to prevent double charging of levy) and 13,000 (19%) employers will not be assessed to levy for other reasons such as first year of registration or cessation of business.

Compliance costs for a "Typical" Business

19. The compliance cost for business is:

- the cost of training not previously carried out but which has been encouraged by

  imposition of the levy;

- the cost of completion of the annual levy assessment return;

- the amount of the individual levy assessment;

- the cost of processing the levy bill;

- the cost of completing Grant claims;

Less

- the benefits of training grants and initiatives and other Board services.

Note: The purpose of the Industrial Training Act is to encourage adequate training in any given industry. The cost of training itself cannot be quantified in the examples which follow. It is not possible to estimate the extent to which the imposition of a levy/grant mechanism induces employers to incur additional training costs to those which they might or might not already be incurring, particularly as many employers will have operated under these arrangements for a number of years.

20. All costs are non-recurring. All firms are required to complete an assessment return in order that their levy liability can be calculated. For the purposes of the total compliance cost table at paragraph 24, it is estimated that this is a negligible direct cost amounting to no more than one hour per year at £30 per hour for 30,000 of the registered employers and half an hour per year for the other 20,000 who submit a return. It is also estimated that the cost of claiming grants is half an hour per annum per new entrant trainee (based on one claim per quarter) and half an hour per other grant claim at a cost of £30 per hour.

21. Compliance costs vary from company to company as a levy bill is based on the size of a firm's payroll and use of labour-only workers.

22. Furthermore, while it is possible to identify the value of grants paid directly to particular firms, it is impossible to quantify fully the extent to which individual firms benefit from industry-wide initiatives or other Board services such as R&D and consultancy advice.

23. A range of examples (based on 2004) has been provided in order to demonstrate the costs and benefits of training services provided and grants awarded:

Example 1: A large building and civil engineering contractor with 410 employees. This employer operates its own managing agency for the recruitment and training of new entrant trainees (756 in 2004). The company's levy represents 0.62% of total payroll. 2,601 grant claims were submitted in 2004 at an average value of £104. The claims were mainly in respect of NVQ achievements, on-site assessment and training, health and safety, plant and short duration courses.

	£	£
Completion of Levy Return	30	
Processing Levy assessment	30	
Completing NET attendance grant claims (756 trainees x £15)	11,340	
Completing other grant claims (2,601 claims x £15)	39,015	
Levy payment	101,607	
	152,022	
Less: NET attendance grants and allowances directly attributable		641,997
Other grants directly attributable		271,011
Estimated College Fees not directly attributable		-
		913,008
NET COST/(BENEFIT)		(760,986)

Example 2: A large general building contractor with 581 employees, including 12 trainees. The company's levy represents 0.72% of total payroll. 395 grant claims were submitted in 2004 (average value £160), largely in respect of on-site assessment and training, short duration courses and NVQ achievements.

	£	£
Completion of Levy Return	30	
Processing Levy assessment	30	
Completing NET attendance grant claims (12 trainees x £15)	180	
Completing other grant claims (395 claims x £15)	5,925	
Levy payment	150,234	
	156,399	
Less: NET attendance grants and allowances directly attributable		35,564
Other grants directly attributable		63,290
Estimated College Fees not directly attributable		30,359
		129,213

NET COST/(BENEFIT)	27,186

Example 3: A medium sized general builder with 49 employees, including 10 trainees. Levy represents 0.62% of total payroll and the company made 39 grant claims in 2004 (average value £70) for NVQ achievements.

	£	£
Completion of Levy Return	30	
Processing Levy assessment	30	
Completing NET attendance grant claims (10 trainees x £15)	150	
Completing other grant claims (39 claims x £15)	585	
Levy payment	5,727	
	6,522	
Less: NET attendance grants and allowances directly attributable		7,741
Other grants directly attributable		2,717
Estimated College Fees not directly attributable		6,616
		17,074
NET COST/(BENEFIT)		(10,552)

Example 4: A small house builder (2 employees) which employs a significant amount of labour-only sub-contractors. As a result of this, and the levy rate differential between direct and indirect employment, the firm's levy represents 1.46% of total payroll. No grant claims were made in 2004.

	£	£
Completion of Levy Return	30	
Processing Levy assessment	30	
Completing Grant claims	Nil	
Levy payment	7,726	
	7,786	
Less Grants and allowances directly attributable		Nil
NET COST/(BENEFIT)		7,786

Example 5: A micro glazing firm with 4 employees and no labour-only sub-contractors. The total payroll is below the small firms' exclusion level of £68,000 and thus no levy is payable. The firm made 15 grant claims in 2004 (average value £582) for NVQ achievements and for producing and delivering a training and development plan.

	£	£
Completion of Levy Return	15	
Processing Levy assessment	Nil	
Completing other grant claims (15 claims x £15)	225	
Levy payment	-	
	240	
Less: Other grants directly attributable		8,743
		8,743

NET COST/(BENEFIT)			(8,503)

Total Compliance Costs

Total compliance costs are estimated as follows:		£'000	£'000
Completion of Levy Return (30,000 x £30; 20,000 x £15)		1,200	
Processing Levy assessment (say 24,000 x £30)		720	
Completing NET attendance grant claims (39,000 trainees x £15)		585	
Completing other grant claims (190,000 claims x £15)		2,850	
Levy payment		123,000	
		128,355	
Less	Grants		97,002
	Allowances and Expenses		5,026
	College Fees		23,404
			125,432
NET COST/(BENEFIT)			2,923

Less the benefits of industry-wide initiatives and other Board services including training centres, recruitment of trainees, development of standards, careers and training advice etc.

Note: CITB generates income direct from LSCs/LECs/ELWa (£46m)

Consultation with Small Business: "The Litmus Test"

24. In consultation with industry (see paragraphs 2 and 30), provision has been made for the exemption of employers with combined payroll and net labour-only payments of £69,000 or less.

25. Around 45,900 (63%) of registered in-scope employers are expected to fall below the exclusion threshold and thus not be liable to pay the levy.

Other Costs

26. No other costs have been identified. Neither option has a cost for the Department or the Government.

Results of Consultations

27. The estimates are based wherever possible on statistical information published by the CITB. Where this was not available assumptions have been obtained from the Board.

28. The CITB and its statutory levy system have been retained at the express wish of employers in the sector and their representative organisations. The levy provisions contained within this Order were proposed by the Board and have the support of the industry as required by the Industrial Training Act 1982. Evidence of that support has been obtained from the representative employer organisations.

Summary and Recommendations

29. On the basis of expected costs and benefits, option 2 is the preferred option.

30. The conclusion is also sensitive to the belief that employers are best-placed to decide which training arrangements best suit their needs. As required by the governing legislation for Industrial Training Boards, they have been consulted on and support the levy proposals in question.

Enforcement, Sanctions, Monitoring and Review

31. As a Non-Departmental Public Body the CITB is subject to a periodic review of its performance and the continuing need for its existence. A key element of such reviews is full consultation with employers in the sector. The last review was completed in October 2003 and the industry confirmed its support for the Board.

32. An ITB's levy proposals are submitted to Ministers on an annual basis. This Order gives effect solely to the Board's 2006 levy.

How does Government satisfy itself that CITB-ConstructionSkills represents good value for money?

- The Sector Skills Council contract with SSDA and the Sector Skills Agreement, agreed with a wide range of stakeholders across the sector.
- Through CITB-ConstructionSkills' Board, Training Committee and Grants Scheme Working Party (comprised of employer, employee, and education sector representatives from the industry) agreeing, monitoring and reviewing performance targets via the organisation's Scorecard.
- The Quinquennial Review process (conducted most recently in 2003).
- Consensus – CITB-ConstructionSkills is required to demonstrate the support of over 50% of registered levy-paying employers for its plans each year. This is achieved through formal consultation with employer bodies in the sector and this year was confirmed to the Board on 13 October 2005.
- The Employer Tracking Survey – see below
- Government Observers attend CITB-ConstructionSkills Board and other committee meetings

How can CITB-ConstructionSkills demonstrate the value added by its levy/grant system?

The Levy/Grant system is an integral part of CITB-ConstructionSkills' plans for delivering against the priorities agreed with industry and other key stakeholders, both in funding terms and in providing grant incentives in support of these priorities. Added value should not be measured purely on the basis of the volume of training undertaken, but by its quality and impact on the performance of individuals and employers. This is a key focus of the Sector Skills Agreement.

1. Sector Skills Agreement

The priorities are encapsulated within the ConstructionSkills Sector Skills Agreement (SSA), and progress towards its delivery (in conjunction with partners, government, employers and training providers) will continue to demonstrate the value returned to industry for their 'investment'.

The focus for CITB-ConstructionSkills spans four areas, each with its own challenges:

Shaping Up Industry's Performance

- Securing a significant increase in the number of companies investing in the planned training and development of their workforce
- Developing the leadership and management skills needed to deliver to clients on quality, time and cost
- Identifying and delivering the skills needed for the future growth of the industry – including new working practices, processes, technologies and materials.

Brushing Up the Industry's Existing Skills

- Delivering a major development in the capacity and capability of the On-site Assessment and Training programme

- Ensuring the specialist sector has access to the training and development it needs
- Addressing the challenges posed by the increasing use of migrant labour.

Stepping Up the Quality of Qualified New Entrants

- Increasing apprentice completions and widening opportunities for work-based practice
- Encouraging more women and ethnic minorities to join and stay in construction
- Ensuring there are enough graduates with the right skills, knowledge and understanding.

Infrastructure in Support of These Priorities

- Establishing a 'Capacity, Productivity and Skills Observatory', to provide industry forecasting capability to enable informed forward planning and well-considered agreed solutions
- Developing a Sector Qualifications Strategy, that will ensure a well-planned and structured approach to the development of qualifications and progression pathways, and which meets sector and learner needs and addresses new skill areas as they emerge
- Exploring different approaches to the delivery of training which meet demand in terms of quantity, delivery models and timing.

2. CITB-ConstructionSkills Scorecard

Developed, agreed and reviewed in consultation with representative stakeholder groups, the annual Scorecard measures CITB-ConstructionSkills' performance against key industry, effectiveness and efficiency measures. These targets represent an important part of the organisation's direct contribution to addressing the above priority areas, and as such their achievement demonstrates a direct return of value to industry.

Effectiveness measures such as 'Non-Levy Income per Staff Member' and the 'Employer Satisfaction Survey' (see below), and Efficiency measures such as 'Operating Costs as a Percentage of Total Costs', further demonstrate the level of additional value (in funding terms) secured for industry's benefit, and the continued reduction in operating costs to maximise return to industry.

3. Influencing a Training Culture

Around half the employers claiming grant are classed as "micro" (fewer than 10 employees) and they claim more than 20% of total grant spend.

There is evidence that such businesses create significant new job opportunities (because this is where most apprenticeships arise). However, they are less likely to have a formal training plan and budget and rely on the financial support and training advice offered by CITB-ConstructionSkills. Growth in the uptake of the training plan grant option – which rewards the development and delivery of a training plan – is a Scorecard target and is often a first step towards the achievement of Investors in People status.

In the 2003/2004 Grant year (the latest for which figures are available), 1,800 employers claimed support for 636,000 training days for 130,000 workers, an average of five days per capita.

In 2004, nearly 40% of 39,100 grant-aided new entrant trainees were employed in micro-businesses. These employers are vital in offering opportunities and are particularly sensitive to the time and financial resource implications of doing so.

In addition to grant, a significant element of support for the recruitment of new entrants to the industry is delivered by CITB-ConstructionSkills' Modern Apprenticeship Officers, who support employers in recruiting apprentices and monitor their progress during training.

4. Value of Training Influence

In 2004, grant expenditure and direct financial support for training provided by CITB-ConstructionSkills was £125.4m. This represents £658m (1.7m days) of training influence based on a training day cost of £380. In addition, £73m of indirect financial support was given towards recruitment and training for the industry.

5. Quality Assurance

To ensure that training is of an appropriate standard CITB-ConstructionSkills has a dedicated quality assurance team.

6. Employer Satisfaction Survey

Independent research into the added value of the levy/grant system is undertaken on an annual basis. Responses from the most recent survey have found:

- 63% of employers believed that the amount of training would decrease in the absence of a statutory training body.
- 62% of employers felt that the availability of skilled labour would suffer in the absence of a statutory training body such as CITB, whilst 60% felt that progress towards a qualified workforce would be hindered.
- 62% of employers believed the levy/grant system is important in maintaining the level and quality of training in the construction industry.
- 64% of employers said that the availability of CITB-ConstructionSkills' grant was a positive factor in enabling them to undertake management and supervisory training.
- 78% of employers said that the availability of CITB-ConstructionSkills' grant was a positive factor in enabling them to undertake new entrant or youth training.
- 72% of employers were very likely or fairly likely to recommend CITB-

ConstructionSkills' services to a colleague.

- When specifically asked whether the statutory levy/grant system should continue, 74% of all employers said that it should.

- 67% of employers who paid a levy but were not members of any trade association supported the continuation of a statutory levy/grant system.

7. National Construction College

By providing youth and adult learners with training across the widest spectrum of construction disciplines beyond what is available through alternative routes, NCC meets the skills needs of industry in areas that might otherwise be left without provision. Including commercially unviable areas such as heavy plant and steeplejack training, NCC activities range from engaging employers and employees to promote the value of staff development and lifelong learning, to recruiting, training and qualifying the widest diversity of workforce.

8. Financial Return to Industry for Each £1 of Levy Paid

CITB-ConstructionSkills returns £1.79 to industry for each £1 of Levy paid. Through maximising support for Levy, minimising support to operations from Levy, maximising grant and driving efficiency, CITB-ConstructionSkills is working towards achieving a return of £3 for each £1 of Levy paid by 2010.