STATUTORY RULES OF NORTHERN IRELAND

2000 No. 240

INDUSTRIAL TRAINING

Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2000

Made . . . . . 18th July 2000

Coming into operation . . 31st August 2000

Whereas proposals made by the Construction Industry Training Board(**a**) ("the Board") for the raising and collection of a levy have been submitted to, and approved by, the Department of Higher and Further Education, Training and Employment ("the Department") under Article 23(1) of the Industrial Training (Northern Ireland) Order 1984(**b**) ("the Order of 1984");

And whereas the Department estimates that the amount which will be payable by any employer in the construction industry by virtue of this Order does not exceed an amount which the Department estimates is equal to one per cent. of the relevant emoluments being 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 levy proposals as relevant, that is to say the period hereafter referred to in this Order as the "thirty-sixth base period" or, where an election is made, as the alternative "thirty-sixth base period";

And whereas in pursuance of Article 23(3) of the Order of 1984 the said proposals include provision for the exemption from the levy of employers who, in view of the small amount of the relevant emoluments, ought in the opinion of the Department to be exempted from it;

And whereas in pursuance of Article 25(6)(*a*) of the Order of 1984 the levy proposals include proposals that no remission be given to employers in the industry;

And whereas the levy proposals include provision that the amount of the non-remissible part of the levy will exceed two-tenths of one per cent. of the relevant emoluments;

And whereas in pursuance of Article 23(6) of the Order of 1984 the Department is satisfied and the relevant organisations consider, after taking

(**a**) Established under the Construction Industry Training Board Order
(**b**) S.I. 1984/1159 (N.I.9); functions under the Industrial Training (Northern Ireland) Order 1984 were transferred to the Department of Higher and Further Education, Training and Employment by S.R. 1999 No 481 Article 4(b) and Schedule 2 Part II.

reasonable steps to ascertain the views of the persons they represent, that the levy proposals are necessary to encourage adequate training in the industry;

And whereas Article 23(7) (b) of the Order of 1984 is applicable;

Now, therefore, the Department in exercise of the powers conferred by Articles 23(2) and (3) and 24 (3) and (4) of the Order of 1984, and now vested in it, and of every other power 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 (Construction Industry) Order (Northern Ireland) 2000 and shall come into operation on 31st August 2000.

(2) In this Order—

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

"business" means any activities of industry or commerce;

"Construction Board Order" means the Industrial Training (Construction Board) Order (Northern Ireland) 1964(**a**);

"construction establishment" means an establishment in Northern Ireland engaged wholly or mainly in the construction industry for a total of twenty-seven or more weeks in the thirty-sixth base period, or being an establishment that commenced to carry out business in the thirty-sixth 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 thirty-sixth base period;

"election" means an election made in accordance with the provisions of Article 2(4), by an employer to pay the levy in respect of the relevant emoluments of persons employed at or from a construction establishment during the alternative thirty-sixth base period;

"construction industry" means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the Construction Board Order are specified in paragraph 1 of that Schedule as the activities of the construction industry;

"emoluments" means all emoluments assessable to income tax under Schedule E of the Income & Corporation Taxes Act 1988 (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; and all other payments made under a contract for service or otherwise than under a contract;

"employer" means a person who is an employer in the construction industry at any time in the thirty-sixth levy period;

(**a**) S.R. & O. (N.I.) 1964 No. 145 as amended by S.R. & O. (N.I.) 1967 No. 236, S.R. 1994 No. 312 and S.R. 1997 No. 45

"levy" means the levy imposed by the Board in respect of the thirty-sixth levy period;

"notice" means a notice in writing;

"thirty-sixth base period" means the year that commenced on 6th April 1999 and the "alternative thirty-sixth base period" means the year commencing on 6th April 2000; and

"thirty-sixth levy period" means the year commencing on 1st September 2000.

(3) 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 thirty-sixth 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 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.

(3) Subject to the provisions of this Article, the amount of the levy imposed on an employer in respect of a construction establishment shall be equal to 0.7 per cent. of the relevant emoluments paid and payable to or in respect of all persons employed by the employer at or from that establishment—

(*a*) in the thirty-sixth base period; or

(*b*) where an election is made in accordance with the provisions of paragraph (4) in the alternative thirty-sixth base period,

and no remission of the levy shall be given to an employer.

(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) There shall be exempt from the levy:

(*a*) an employer in relation to whom the relevant emoluments paid or payable to or inrespect of all persons in his employment in the thirty-sixth base period are less than £15,000 or in the case of two or more construction establishments where the relevant emoluments of all the persons employed in all such establishments are less than £15,000; or

(*b*) an employer who has made an election in accordance with the provisions of paragraph (4) in relation to whom the relevant emoluments paid or payable to or in respect of all persons in his employment in the alternative thirty-sixth base period are less than £15,000 or in the case of two or more construction establishments

where the relevant emoluments of all the persons employed in all such establishments are less than £15,000.

(6) The amount of the levy imposed in respect of a construction establishment that ceases to carry on business in the thirty-sixth 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.

(7) In reckoning the amount of the relevant emoluments for the purposes of this Article no regard shall be had to the emoluments of any person engaged wholly in the supply of food or drink for immediate consumption.

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 four 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 principle 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 in two installments and the said installments shall be due respectively on 1st October 2000 and 1st February 2001.

(2) Where an election has been made the amount of the assessment appearing in each assessment notice shall be payable to the Board in one installment due one month after the date of the notice.

(3) An installment 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 of time that the Board or an industrial 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 thirty-sixth 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 industrial tribunal against the assessment within one month from the date of the service of the assessment notice or within any further period of time that may be allowed by the Board or an industrial tribunal under the following provisions of the Article.

(2) The Board for good cause may, by notice, extend the time within which an appeal may be made by such further period as the Board may allow in any case where an application for such extension is made within a 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 industrial 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 thirty-sixth 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 this 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 application to an industrial tribunal under this Article shall be made in accordance with the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 1996(**a**).

(**a**) S.R. 1996 No. 173

Evidence

7. 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.

Sealed with the Official Seal of the Department of Higher and Further Education, Training and Employment on 18th July 2000.

(L.S.) *T. Scott*

A senior officer of the Department of Higher and Further Education, Training and Employment

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order gives effect to proposals submitted by the Construction Industry Training Board to the Department of Higher and Further Education, Training and Employment for the imposition of a further levy upon employers in the construction industry for the purpose of raising money towards the expenses of the Board.

The levy is to be imposed in respect of the thirty-sixth levy period, commencing on 1st September 2000 and ending on 31st August 2001. The levy will be assessed by the Board and will be payable in two installments. There will be a right of appeal against an assessment to an industrial tribunal.

The levy rate of 0.7% in respect of relevant emoluments remains the same as the rate operating during the preceding levy period which expires on 31st August 2000 (see Industrial Training Levy (Construction Industry) Order (Northern Ireland) 1999 S.R. 1996 No. 314).

As in the previous levy period there will be no remission of levy given to employers in the industry.

An employer will be exempt from levy in the thirty-sixth levy period where the relevant emoluments are less than £15,000.

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