2006 No. 277

INDUSTRIAL TRAINING

The Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2006

Made - - - - -	*23rd June 2006*
Coming into operation	*31st August 2006*

This Order gives effect to levy proposals submitted by the Construction Industry Training Board(**a**) ("the Board"), to the Department for Employment and Learning(**b**) ("the Department") under Article 23(1) of the Industrial Training (Northern Ireland) Order 1984(**c**) ("the Order of 1984");

The levy to be paid by any employer in the construction industry does not exceed an amount which the Department estimates is equal to one per cent. of the relevant earnings, being the aggregate of the earnings and payments intended to be disbursed as earnings 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.

In relation to the requirement set out at Article 23(3) of the Order of 1984 the levy proposals provide for the exemption from the levy of employers who, in view of the small amount of the relevant earnings, ought in the opinion of the Department to be exempted from it;

In relation to the requirement set out at Article 25(6) (a) of the Order of 1984 the levy proposals include proposals that no remission be given to employers in the industry;

In relation to the requirement set out at Article 23(6) of the Order of 1984 the Department is satisfied and the relevant organisations consider, after taking reasonable steps to ascertain the views of the persons they represent, that the levy proposals are necessary to encourage adequate training in the industry;

The condition set out at Article 23(7)(b) of the Order of 1984 is applicable;

The Department makes the following Order 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:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2006 and shall come into operation on 31st August 2006.

(**a**) Established under the Construction Board Order

(**b**) Formerly known as the Department of Higher and Further Education, Training and Employment; renamed the Department for Employment and Learning by the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15

(**c**) 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

(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 forty-second base period, or being an establishment that commenced to carry out business in the forty-second 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 forty-second 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 earnings of persons employed at or from a construction establishment during the alternative forty-second 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;

"earnings" means earnings as defined in Section 62 of the Income Tax (Earnings and Pensions) Act 2003(**b**) which are chargeable to tax under Part 2 of that Act; 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 forty-second levy period;

"levy" means the levy imposed by the Board in respect of the forty-second levy period;

"notice" means a notice in writing;

"forty-second base period" means the year that commenced on 6th April 2005 and the "alternative forty-second base period" means the year commencing on 6th April 2006; and

"forty-second levy period" means the year commencing on 1st September 2006.

(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 forty-second 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 0.65 per cent. of the relevant earnings paid and payable to or in respect of all persons employed by the employer at or from that establishment—

(a) in the forty-second base period; or

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

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

(**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
(**b**) Income Tax (Earnings and Pensions) Act 2003 c. 1

(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 earnings paid or payable to or in respect of all persons in his employment in the forty-second base period are less than £15,000 or in the case of two or more construction establishments where the relevant earnings 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 earnings paid or payable to or in respect of all persons in his employment in the alternative forty-second base period are less than £15,000 or in the case of two or more construction establishments where the relevant earnings 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 forty-second 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 earnings for the purposes of this Article no regard shall be had to the earnings 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 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 in two instalments and the said instalments shall be due respectively on 1st October 2006 and 1st February 2007.

(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 instalment due one month after the date of the notice.

(3) An instalment 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 forty-second 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 forty-second 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) 2005(**a**).

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 for Employment and Learning on 23rd June 2006.

(L.S.) *H. A. Stevens*

A senior officer of the Department for Employment and Learning

(**a**) S.R. 2005 No. 150; relevant amending Regulations are S.R. 2005 No. 578

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 for Employment and Learning 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 forty-second levy period, commencing on 1st September 2006 and ending on 31st August 2007. The levy will be assessed by the Board and will be payable in two instalments. There will be a right of appeal against an assessment to an industrial tribunal.

The levy rate of 0.65% in respect of relevant earnings is the same as the rate operating during the preceding levy period which expires on 31st August 2006 (see Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2005 S.R. 2005 No. 294).

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 forty-second levy period where the relevant earnings are less than £15,000.

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