EXPLANATORY MEMORANDUM TO

THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2015

2015 No. 701

1. This explanatory memorandum has been prepared by The Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order will enable the Construction Industry Training Board (CITB) to raise and impose a levy on employers in the construction industry. This Order sets out the rate and exemptions from that levy.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 11 of the Industrial Training Act 1982 (ITA) enables an industrial training board to submit, to the Secretary of State, proposals for the raising and collection of a levy to be imposed for the purpose of meeting the board's expenses. That levy is to be imposed in accordance with an order made by the Secretary of State. This Order will give effect to levy proposals submitted to the Secretary of State by CITB.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for the Department for Business, Innovation and Skills and the Department for Education has made the following statement regarding Human Rights:

In my view the provisions of the Industrial Training Levy (Construction Industry Training Board) Order 2015 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 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 were established.

7.2 There are currently ITBs covering the construction, engineering construction, and film sectors. ITBs are Non-Departmental Public Bodies (NDPBs). The CITB, to which this order relates, provide a wide range of services and training initiatives including: setting occupational standards; developing vocational qualifications; delivering apprenticeships and paying direct grants to employers who carry out training to approved standards.

7.3 Employers in the construction sector (and also the engineering construction sector) 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

7.4 The ITA contains provision for a levy to be imposed on employers to finance an ITB's activities. 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.

7.5 This Order gives effect to proposals submitted by the CITB for levies to be collected by them in 2015, 2016 and 2017. Levy rates are decided by the employer members of the ITB in the light of the Board's policies and plans and they must cover the costs of the Board's plans for the years in question. The levy rates are set out in article 7 of this instrument for different categories of employees. People engaged under contracts for services are included as "employees" under the ITA. There is no ceiling to the amount of levy paid by an employer which is calculated by reference to the emoluments paid by them to their workers (broadly these are salaries, fees and wages). CITB have proposed to continue with the existing levy rates for the first two levy periods of this Order, but for the third levy period to introduce measures to simplify the method of assessing the amount of levy (detailed in 10.3 below).

7.6 The Order also sets out the employers on whom the levy can be imposed. This includes every employer whose main activity is included in the definition of the construction industry as set out in the ITB's founding legislation.

7.7 The CITB's proposals involve a levy greater than 0.2% of an employer's relevant emoluments. Consequently, to make this Order, the Secretary of State must be satisfied that the proposals are necessary to encourage adequate training in the industry and that one of three conditions is met. The first of these conditions is that the Secretary of State must be satisfied that the ITB has taken reasonable steps to obtain the views of employers who are likely to be liable to pay the levy. Also, that these employers agree that the proposals are necessary to encourage adequate training. These employers must be i) more than half in number of those likely to pay the levy and ii) likely to pay more than half in value of the total levy to be paid as a result of the order.

7.8 As a consequence of an amendment made to the ITA by the Further Education and Training Act 2007 (FETA), ITBs can take a range of "reasonable steps" to ascertain the views of employers. ITBs are now able to ascertain the views of employers in one of four ways:

a) By consulting the organisations which represent employers (as previously)
b) By consulting the employer organisations and also consulting all other employers who are likely to be liable to pay levy but are not represented by organisations
c) By consulting the employer organisations and obtaining a sample of the views of other employers who are not represented by organisations
d) By sampling the views of all employers

Consolidation

7.9 None

8. Consultation outcome

8.1 The CITB consulted formally on the levy proposals. They used option c) detailed above in 7.8 and have consulted with relevant employer organisations and sampled the views of non-represented employers. The results show that all 14 employer organisations, signifying 100% of represented employers, support the levy proposals. In total this represents 47% of all levy paying employers in the industry and 63% of all levy likely to be payable by all employers. In addition, a sample survey of non-represented employers indicates that 74% of non-federated employers support the levy. Applying this sample percentage to the total number of non members represents 39% of all levy payers that are likely to pay a further 16% of the forecast levy. The aggregation of the figures for employer association support and non member support is therefore 86% and in value terms is 79% of the total levy forecast.

8.2 CITB has demonstrated, therefore, that it has the support of the majority of employers (86 %) who together are likely to be liable to pay more than half of the total levy (79%).

9. Guidance

9.1 Guidance will be issued to employers by the CITB to explain how levy is assessed and how funding and grants can be claimed. General guidance is also available on-line from their website (www.citb.co.uk).

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows:

i) on business - The proposals are expected to raise £172m in 2015, £180m in 2016 and £184m in 2017 from the sector. The CITB annual report and accounts for 2013 showed that CITB raised £169.7m in levy and returned £210.9m in total benefits to the industry. Benefits to the industry comprises of direct returns to employers (provided through the payment of grants, college fees and other training allowances) plus indirect returns linked with the provision of trainee recruitment and selection, advice on training, the provision of schemes for recording achievements and the development of industry standards. CITB also generate income through self-funded commercial activity which enables them to return more money to the industry than raised by the levy.

10.2 The impact on the public sector is negligible as the levy is funded from the industry and CITB receives no grant in aid. Charities are exempted from the levy.

10.3 An impact assessment has been prepared for this instrument, due to changes to be implemented for the third period of this Order. The proposed levy rates and exemption thresholds for the first two levy periods (2015 and 2016) will remain unchanged from the previous (2012) Levy Order. However, the way in which levy liability on indirect employment arrangements is assessed and the levy rate will change for the third levy period (2017). Instead of using information about labour-only sub-contract (LOSC) payments to determine liability for indirect employment at a rate of 1.5%, CITB will use information about Net Construction industry Scheme (CIS) payments to determine liability for indirect employment at a rate of 1.25%. The exemption changes are described in 11.2 (below). The impact assessment is annexed to this document.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is determined by the ITA which requires levy proposals to include an exemption for small companies. The exemption level

is set according to an employer's total emoluments rather than by the number of employees. This reflects the nature of the industry where employers make extensive use of labour only subcontractors and may directly employ few people. The 2012 levy order set the exemption level at £80,000 and this threshold exempted more than 50% of the employers in the industry in 2013. The 2012 Order also introduced a taper to reduce the impact of levy for employers whose total emoluments fell between £80,000 and £99,999 by offering them a 50% levy reduction. This Order retains the exemption level at £80,000. This Order also maintains the taper at £80,000 to £99,999 for the first two levy periods (2015 and 2016), and then increases the taper to £80,000 to £399,999 for the third levy period (2017). Around 1,500 small firms currently benefit from the taper, this will increase to around 12,000 firms under the increased taper threshold.

11.3 Small firms who do not have to pay the levy are, however, eligible to claim grants towards the cost of training their employees.

11.4 The basis for the final decision on what action to take to assist small business is the proposals made by the CITB to the Secretary of State following their consultations with the industry as described in 7 and 8 above.

12. Monitoring & review

12.1 As an NDPB, CITB's performance is subject to annual review by BIS. The CITB will also be subject to Triennial Reviews to assess the effectiveness and value for money of the ITB model. The first Triennial Review of the CITB is still under consideration.

13. Contact

13.1 Bruce Barclay at the Department for Business, Innovation and Skills Tel: 0114 207 5009 or email: bruce.barclay@bis.gsi.gov.uk can answer any queries regarding the instrument.