STATUTORY INSTRUMENTS

1971 No. 1194

INDUSTRIAL TRAINING

The Industrial Training Levy (Distributive Board) Order 1971

Made - - -	*22nd July* 1971
Laid before Parliament	*2nd August* 1971
Coming into Operation	*5th August* 1971

The Secretary of State after approving proposals submitted by the Distributive Industry Training Board for the imposition of a further levy on employers in the distributive industry and in exercise of his powers under section 4 of the Industrial Training Act 1964(a) and of all other powers enabling him in that behalf hereby makes the following Order :—

Title and Commencement

1. This Order may be cited as the Industrial Training Levy (Distributive Board) Order 1971 and shall come into operation on 5th August 1971.

Interpretation

2.—(1) In this Order unless the context otherwise requires :—

(*a*) "an appeal tribunal" means an industrial tribunal established under section 12 of the Industrial Training Act 1964 ;

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

(*c*) "the Board" means the Distributive Industry Training Board ;

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

(*e*) "distributive establishment" means an establishment in Great Britain engaged in the third base period wholly or mainly in the distributive industry for a total of twenty-seven or more weeks or, being an establishment that commenced to carry on business in the third 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 ;

(*f*) "the distributive industry" 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 distributive industry ;

(a) 1964 c. 16.

(*g*) "emoluments" means all emoluments assessable to income tax under Schedule E (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;

(*h*) "employer" means a person who is an employer in the distributive industry at any time in the third levy period;

(*i*) "the industrial training order" means the Industrial Training (Distributive Board) Order 1970(**a**);

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

(*k*) "notice" means a notice in writing;

(*l*) "the third base period" means the period of twelve months that commenced on 6th April 1970;

(*m*) "the third levy period" means the period commencing with the day upon which this Order comes into operation and ending on 31st March 1972;

(*n*) other expressions have the same meanings as in the industrial training order.

(2) 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.

(3) In the case where a distributive establishment is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, a person employed at any time in the third base period at or from the establishment shall be deemed for the purposes of this Order to have been so employed by the employer carrying on the said establishment on the day upon which this Order comes into operation, and any reference in this Order to persons employed by the employer at or from a distributive establishment in the third base period shall be construed accordingly.

(4) The Interpretation Act 1889(**b**) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Imposition of the Levy

3.—(1) The levy to be imposed by the Board on employers in respect of the third levy period shall be assessed in accordance with the provisions of this Article.

(2) Subject to the provisions of this Article, the levy shall be assessed by the Board in respect of each employer and the amount thereof shall be equal to 0·7 per cent. of the sum (less £3,000) of the emoluments of all the persons employed by the employer at or from the distributive establishment or establishments of the employer in the third base period.

(3) Where the sum of the emoluments of the persons mentioned in the last foregoing paragraph is less than £6,000 the employer shall be exempt from the levy.

(**a**) S.I. 1970/1053 (1970 II, p. 3273). (**b**) 1889 c. 63.

(4) Where any persons whose emoluments are taken into account for the purposes of this Article were employed at or from an establishment that ceases to carry on business in the third levy period, the sum of the emoluments of those persons shall be reduced in the same proportion 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.

(5) For the purposes of this Article no regard shall be had to the emoluments of—

(*a*) any person who, being a registered pharmacist or a registered optician, is employed wholly or mainly in activities undertaken by him personally in the exercise of his profession ;

(*b*) any person employed as a member of the crew of an aircraft or as the master or member of the crew of a ship or any person ordinarily employed in or about a ship in port on work of a kind ordinarily done by a seaman on a ship while it is in port ;

(*c*) a registered dock worker employed on dock work ;

(*d*) any person wholly employed in agriculture ;

(*e*) any person wholly employed in the supply of food or drink to persons being a supply—

(i) for immediate consumption ;

(ii) of hot fried fish or hot chipped potatoes ; or

(iii) by means of an automatic vending machine at or in connection with an hotel, restaurant, café, snack bar, canteen, mess room or similar place of refreshment ; or

(*f*) any person employed in an establishment that is engaged in selling by retail any of the goods specified in the categories following:—

(i) bread, flour, flour confectionery and yeast ;

(ii) milk, ice cream and any commodity similar to ice cream ;

(iii) meat ;

(iv) bacon ;

(v) fish ;

(vi) horticultural produce ;

where the sale of goods comprised in any one or in any two of such categories constitutes the sole or main activity of the establishment.

Assessment Notices

4.—(1) The Board shall serve an assessment notice on every employer assessed to the levy.

(2) The amount of an assessment shall be rounded down, where necessary, to the nearest £1.

(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 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

5.—(1) Subject to the provisions of this Article and of Articles 6 and 7, the amount of the assessment payable under an assessment notice served by the Board shall be payable to the Board in two instalments equal to one-fifth and four-fifths of the said amount respectively, and the said instalments shall be due respectively one month and four months after the date of the notice.

(2) The amount of an instalment mentioned in the last foregoing paragraph may be rounded up or down by the Board to a convenient figure, but so that the aggregate amount of both instalments shall be equal to the amount of the assessment.

(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 7(1) of this Order and any further period or periods of time that the Board or an appeal tribunal may have allowed for appealing under paragraph (2) or (3) of that Article or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of Assessment

6.—(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 7 of this Order and the appeal has not been entered in the Register of Appeals kept under the appropriate Regulations specified in paragraph (5) of that Article.

(2) The withdrawal of an assessment shall be without prejudice to the power of the Board to serve a further assessment notice on the employer.

Appeals

7.—(1) A person assessed to the levy may appeal to an appeal 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 appeal 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 appeal tribunal against the 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 appeal tribunal shall upon application made to the tribunal by the person assessed to the levy have the like powers as the Board under the last foregoing paragraph.

(4) In the case of an assessment that has reference to an establishment that ceases to carry on business in the third levy period on any day after the date of the service of the assessment notice, the foregoing provisions of this Article shall have effect as if for the period of four months from the date of the service of the assessment notice mentioned in paragraph (2) of this Article there were substituted the period of six months from the date of the cessation of business.

(5) An appeal or an application to an appeal tribunal under this Article shall be made in accordance with the Industrial Tribunals (England and Wales) Regulations 1965(**a**) as amended by the Industrial Tribunals (England and Wales) (Amendment) Regulations 1967(**b**) except where the assessment has reference to persons employed at or from one or more establishments that are wholly in Scotland and to no other persons, in which case the appeal or application shall be made in accordance with the Industrial Tribunals (Scotland) Regulations 1965(**c**) as amended by the Industrial Tribunals (Scotland) (Amendment) Regulations 1967(**d**).

(6) The powers of an appeal tribunal under paragraph (3) of this Article may be exercised by the President of the Industrial Tribunals (England and Wales) or by the President of the Industrial Tribunals (Scotland) as the case may be.

Evidence

8.—(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 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 the foregoing paragraph of this Article shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Signed by order of the Secretary of State.
22nd July 1971.

Paul Bryan,
Minister of State,
Department of Employment.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order gives effect to proposals submitted by the Distributive Industry Training Board to the Secretary of State for Employment for the imposition of a further levy on employers in the distributive industry for the purpose of raising money towards the expenses of the Board.

The levy is to be imposed in respect of the third levy period commencing with the date upon which this Order comes into operation and ending on 31st March 1972. The levy will be assessed by the Board and there will be a right of appeal against an assessment to an industrial tribunal.

(**a**) S.I. 1965/1101 (1965 II, p. 2805).
(**b**) S.I. 1967/301 (1967 I, p. 1040).
(**c**) S.I. 1965/1157 (1965 II, p. 3266).
(**d**) S.I. 1967/302 (1967 I, p. 1050).