STATUTORY INSTRUMENTS

1978 No. 363

INDUSTRIAL TRAINING

The Industrial Training Levy (Distributive Board) Order 1978

Made - - -	*6th March* 1978
Laid before Parliament	*15th March* 1978
Coming into Operation	*12th April* 1978

Whereas proposals made by the Distributive Industry Training Board for the raising and collection of a levy have been submitted to, and approved by, the Manpower Services Commission under section 7 of the Industrial Training Act 1964(**a**) ("the 1964 Act"), as amended by section 6 of and Schedule 2 to the Employment and Training Act 1973(**b**) ("the 1973 Act") and have thereafter been submitted by the said Commission to the Secretary of State under section 7 (1C) of the 1964 Act as inserted by the 1973 Act;

And whereas in pursuance of section 7(1A)(*a*) of the 1964 Act as inserted by the 1973 Act the said proposals include provision for the exemption from the levy of employers who, in view of the small number of their employees, ought in the opinion of the Secretary of State to be exempted from it;

And whereas the Secretary of State estimates that the amount which, disregarding any exemptions, will be payable by virtue of this Order by any employer in the distributive industry, does not exceed an amount which the Secretary of State estimates is equal to one per cent. of 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 said proposals as relevant, that is to say the period hereafter referred to in this order as "the tenth base period";

And whereas the Secretary of State is satisfied that proposals published by the said Board in pursuance of section 4A of the 1964 Act, as inserted by the 1973 Act, provide for exemption certificates relating to the levy in such cases as he considers appropriate;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by section 4 of the 1964 Act, as amended by section 6 of and Schedule 2 to the 1973 Act, and of all other powers enabling him in that behalf hereby makes the following Order:—

Citation and Commencement

1. This Order may be cited as the Industrial Training Levy (Distributive Board) Order 1978 and shall come into operation on 12th April 1978.

(**a**) 1964 c. 16. (**b**) 1973 c. 50.

Interpretation

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

(*a*) "agriculture" has the same meaning as in section 109(3) of the Agriculture Act 1947(**a**) or, in relation to Scotland, as in section 86(3) of the Agriculture (Scotland) Act 1948(**b**);

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

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

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

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

(*f*) "distributive establishment" means an establishment in Great Britain engaged in the tenth 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 tenth 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;

(*g*) "the distributive industry" does not include any activities of an establishment which have been transferred from the industry of the Board to the industry of another industrial training board by one of the transfer orders but save as aforesaid 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 or, in relation to an establishment whose activities have been transferred to the industry of the Board by one of the transfer orders, any activities so transferred;

(*h*) "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;

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

(*j*) "exemption certificate" means a certificate issued by the Board under section 4B of the 1964 Act, as inserted by the 1973 Act;

(*k*) "the industrial training order" means the Industrial Training (Distributive Board) Order 1968(**c**) as amended by the Industrial Training (Distributive Board) Order 1970(**d**), and the Industrial Training (Distributive Board) Order 1970 (Amendment) Order 1971(**e**);

(*l*) "the levy" means the levy imposed by the Board in respect of the tenth levy period;

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

(*n*) "the tenth base period" means the period of twelve months that commenced on 6th April 1977;

(*o*) "the tenth levy period" means the period commencing with the day upon which this Order comes into operation and ending on 31st March 1979;

(**a**) 1947 c. 48. (**b**) 1948 c. 45. (**c**) S.I. 1968/1032.
(**d**) S.I. 1970/1053. (**e**) S.I. 1971/1876.

(*p*) "the transfer orders" means—

(i) the Industrial Training (Transfer of the Activities of Establishments) Order 1976(**a**), and

(ii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) (Order) 1976(**b**);

(*q*) 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) The Interpretation Act 1889(**c**) 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 tenth 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 £7,000) of the emoluments of all the persons employed by the employer in the tenth base period at relevant establishments of his (that is to say, any distributive establishment or establishments, other than any establishment in respect of which an exemption certificate has been issued to the employer, or one which is an establishment of an employer who is exempt from the levy by virtue of paragraph (5) of this Article).

(3) 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 tenth 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.

(4) 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 as a seaman who is employed in or about a ship in port by the owner or charterer thereof 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;

(**a**) S.I. 1976/396. (**b**) S.I. 1976/1635. (**c**) 1889 c. 63.

(*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, cafe, snack bar, canteen, mess room or similar place of refreshment; or

(*f*) any person engaged wholly or mainly in the work of a consultant or valuer in connection with antiques and works of fine art.

(5) There shall be exempt from the levy an employer in whose case—

(*a*) the number of all the persons employed by him on 5th April 1978 at or from the distributive establishment or establishments of the employer was less than ten; or

(*b*) the sum of the emoluments of all the persons employed by him at or from the distributive establishment or establishments of the employer in the tenth base period was less than £17,000.

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 due and payable to the Board one month after the date of the notice.

(2) The amount 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 tenth 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

(**a**) S.I. 1965/1101. (**b**) S.I. 1967/301. (**c**) S.I. 1965/1157.
(**d**) S.I. 1967/302.

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.
6th March 1978.

John Golding,
Joint Parliamentary Under Secretary of State,
Department of Employment.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order gives effect to proposals of the Distributive Industry Training Board which were submitted to and approved by the Manpower Services Commission, and thereafter submitted by the Manpower Services Commission to the Secretary of State. The proposals are for the imposition of a levy on employers in the distributive industry for the purpose of encouraging adequate training in the industry.

A levy is to be imposed in respect of the tenth levy period commencing on the day upon which this Order comes into operation and ending on 31st March 1979. The levy will be assessed by the Board and there will be a right of appeal against an assessment to an industrial tribunal.

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