STATUTORY INSTRUMENTS

2006 No. 335

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Engineering Construction Board) Order 2006

Made - - - -	*12th February 2006*
Coming into force - -	*19th February 2006*

This Order is made in exercise of the powers conferred by section 11(2) and section 12(3) and (4) of the Industrial Training Act 1982(**a**) ("the Act").

The Order gives effect to levy proposals submitted by the Engineering Construction Industry Training Board pursuant to section 11(1) of the Act.

A draft of the Order was laid before Parliament in accordance with section 12(6) of the Act and approved by resolution of each House of Parliament.

The Secretary of State consulted Scottish Ministers pursuant to section 88(2) of the Scotland Act 1998(**b**).

In relation to the requirement set out at section 11(3) of the Act the levy proposals provide for the exemption of small employers.

The levy proposal include proposals for securing that no exemption certificates shall be issued by the board and accordingly no proposals have been published under section 13(5) of the Act.

In relation to the requirements set out at section 11(5) of the Act the Secretary of State is satisfied that the proposals are necessary to encourage adequate training in the industry and the condition set out at section 11(6)(a) is met.

The levy to be paid by employers in the industry exceeds one per cent of their relevant emoluments (that is their payroll) and accordingly this levy order falls within section 11(7)(b) of the Act; the Secretary of State is satisfied that the amount to be paid by employers in the industry is appropriate in the circumstances.

Accordingly the Secretary of State for Education and Skills makes the following Order:

(**a**) 1982 c.10; sections 11 and 12 were amended by section 22(4) of, and paragraphs 10 and 11 respectively of Schedule 4 to, the Employment Act 1989 (c.38).

(**b**) 1998 c.46; the Engineering Construction Industry Training Board has been specified as a cross-border public authority for the purposes of section 88; see the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999; S.I. 1999/1319.

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Engineering Construction Board) Order 2006 and shall come into force on the seventh day after the day on which it is made.

Interpretation

2.—(1) In this Order—

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

(b) "the base period" means the period of twelve months that commenced on 6th April 2005;

(c) "the Board" means the Engineering Construction Industry Training Board(**a**);

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

(e) "emoluments" means all salaries, fees, wages, perquisites and profits whatsoever, except for pension contributions;

(f) "employer" means a person who is an employer in the engineering construction industry at any time in the levy period;

(g) "the engineering construction industry" means any one or more of the activities which are specified in paragraph 1 of Schedule 1 to the industrial training order (but subject to paragraph 2 of that Schedule) as activities of the engineering construction industry;

(h) "the industrial training order" means the Industrial Training (Engineering Board) Order 1964(**b**);

(i) "labour-only agreement" means any agreement or arrangement, either written or oral, not being a contract of service or apprenticeship, made between an employer and any other person or persons, the purpose of which is wholly or mainly the provision of services (including any incidental use of tools) of such person or persons or of any other person or persons to the employer in his trade or business;

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

(k) "the levy period" means the period commencing with the day on which this Order comes into force and ending on 31st December 2006;

(l) "notice" means a notice in writing;

(m) "off site employee" means an employee (including a person employed under a labour-only agreement) other than a site employee;

(n) "site employee" means an employee (including a person employed under a labour-only agreement) the activities of whose employment take place wholly or mainly at a site where activities falling under paragraph 1(a) of Schedule 1 to the industrial training order are carried on;

(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) For the purposes of this Order in the case of an establishment that is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, the person or persons carrying on the establishment on the last day of the levy period shall be treated as the employer of any person who was employed at any time in the base period at or from the establishment under a contract of service or of apprenticeship or under a labour-only agreement and that employer shall be assessed to levy in accordance with article 4.

(**a**) The Board was re-named by S.I. 1991/1305.
(**b**) S.I. 1964/1086, amended by S.I. 1991/1305.

(4) This Order applies to the activities of the engineering construction industry in so far as they are carried out in Great Britain or in so far as they are carried out in relation to employment to which the Employment Protection (Offshore Employment) Order 1976(**a**) applies.

Meaning of "leviable establishment"

3.—(1) For the purposes of this Order "leviable establishment" means—

(a) an establishment engaged during the necessary period wholly or mainly in the engineering construction industry; and

(b) an establishment (not falling within sub-paragraph (a)) at or from which persons were employed during the necessary period in any activities such as are mentioned in paragraph 1(a)(ii) of the Schedule to the industrial training order (but subject to paragraph 2 of that Schedule).

(2) In this article "the necessary period" means—

(a) unless sub-paragraph(b) applies, a period (which need not be continuous) consisting of a total of 27 or more weeks falling within the base period; or

(b) in the case of an establishment that started to carry on business in the base period, a period (which need not be continuous) falling within the base period consisting of a total number of weeks exceeding one half of the number of weeks in the part of the base period starting on the day on which business was commenced and ending on the last day of the base period.

Imposition of levy

4.—(1) The levy to be imposed by the Board on employers in respect of the levy period 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 leviable 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 treated for the purposes of that assessment as constituting one establishment.

(3) Subject to the exemptions in article 5 the amount to be assessed by way of levy in respect of each leviable establishment shall be the aggregate of—

1.5 per cent of (A + B – C) (disregarding any negative total) and

0.18 per cent of (D + E – F) (disregarding any negative total), where—

A is the total emoluments of all the persons who are site employees employed by the employer in the base period at or from the establishment,

B is the sum of all payments (including payments for the incidental use of tools) made by the employer during the base period under labour-only agreements for services rendered to him by site employees,

C is the sum of all payments (including payments for the incidental use of tools) received by the employer during the base period from any other employers in the engineering construction industry under labour-only agreements for services rendered by him or on his behalf by site employees,

D is the total emoluments of all the persons who are off site employees employed by the employer in the base period at or from the establishment,

---

(**a**) S.I. 1976/766; the whole of the Industrial Training Act 1964 has been applied by the Employment Protection (Offshore Employment) Order 1976 for such purposes as are relevant to or in relation to person in employment to which that Order applies (article 3 and Part I of the Schedule, paragraph 1); relevant amending instruments are S.I. 1977/588 and 1981/208.

E is the sum of all payments (including payments for the incidental use of tools) made by the employer during the base period under labour-only agreements for services rendered to him by off site employees,

F is the sum of all payments (including payments for the incidental use of tools) received by the employer during the base period under labour-only agreements for services rendered by him or on his behalf by off site employees.

(4) For the purposes of paragraph (3)—

(a) in the case of an establishment mentioned in article 3(1)(b), there shall be left out of account all persons who are not employed at or from the establishment wholly or mainly in any of the activities such as are mentioned in paragraph 1(a)(ii) of Schedule 1 to the industrial training order; and

(b) a company director remunerated solely by fees shall be left out of account but otherwise a company director (including a person occupying a position of director by whatever title he is called) shall be treated as employed.

Exemptions from the levy

5.—(1) An employer in whose case the aggregate of—

(a) the total emoluments of all the persons who are site employees employed by the employer at or from the leviable establishments of the employer in the base period; and

(b) the sum of all payments (including payments for the incidental use of tools) made by the employer during the base period under labour-only agreements for services rendered to him by site employees,

was less than £275,000, shall be exempt from that part of the levy which is 1.5 per cent of (A + B – C) referred to in article 4(3).

(2) An employer in whose case the aggregate of—

(a) the total emoluments of all the persons who are off site employees employed by the employer at or from leviable establishments of the employer in the base period; and

(b) the sum of all payments (including payments for the incidental use of tools) made by the employer during the base period under labour-only agreements for services rendered to him by off site employees,

was less than £1,000,000, shall be exempt from the part of the levy which is 0.18 per cent of (D + E – F) referred to in article 4(3).

(3) A charity within the meaning of section 506 of the Income and Corporation Taxes Act 1988(**a**) shall be exempt from the levy.

Assessment notices

6.—(1) The Board must serve an assessment notice on every employer assessed to the levy, but one notice may comprise two or more assessments.

(2) An assessment notice must state the amount of the levy payable by the employer assessed to the levy, and that amount shall be equal to the total amount of the levy assessed by the Board under the provisions of this Order in respect of each establishment included in the notice.

(3) An assessment notice must 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 employer assessed to the levy—

(a) by delivering it to him personally; or

(**a**) 1998 c. 1.

(b) by leaving it at or posting it to his last known address, place of business or registered office in the United Kingdom; or

(c) where the employer maintains an e-mail address, by sending an electronic copy of the assessment notice to that e-mail address.

Payment of the levy

7.—(1) Subject to the following provisions of this Order, the amount of each assessment appearing in an assessment notice served by the Board shall be due and payable by the employer 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 for appealing against the assessment allowed by article 9(1) and any further period or periods of time that the Board or an employment tribunal may have allowed for appealing under article 9(2) or (3) or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

8.—(1) The Board may, by a notice served on the employer assessed to the levy in the same manner as an assessment notice, withdraw an assessment.

(2) The withdrawal of an assessment shall be without prejudice—

(a) to the power of the Board to serve a further assessment notice in respect of any establishment to which that assessment related; or

(b) to any other assessment included in the original assessment notice, and such notice shall thereupon have effect as if any assessment withdrawn by the Board had not been included therein.

Appeals

9.—(1) An employer assessed to the levy may appeal to an employment 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 employment tribunal under the following provisions of this article.

(2) The Board by notice may for good cause allow an employer assessed to the levy to appeal to an employment 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 does not allow an application for extension of time for appealing, an employment tribunal shall, upon application made to the tribunal by the person assessed to the levy, have the like powers as the Board under paragraph (2).

(4) An appeal or an application to an employment tribunal under this article shall be made in accordance with the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(**a**).

(5) The powers of an employment tribunal under paragraph (3) may be exercised by the President of the Employment Tribunals (England and Wales) or by the President of the Employment Tribunals (Scotland).

Cessation of business

10.—(1) The provisions of this article shall apply in relation to an establishment that ceases to carry on business in the levy period.

(**a**) S.I. 2004/1861.

(2) The amount of the levy imposed in respect of the establishment shall be in the same proportion to the amount that would otherwise be due under the provisions of article 4 as the number of days between the commencement of the levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the levy period.

Evidence

11.—(1) Upon the discharge by an employer assessed to the levy of his liability under an assessment the Board must 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 or any other person, being a member, officer or servant of the Board authorised to act in that behalf, 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 paragraph (1) shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Phil Hope
Parliamentary Under Secretary of State
Department for Education and Skills

12th February 2006

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to proposals of the Engineering Construction Industry Training Board which were submitted to the Secretary of State. The proposals are for the imposition of a levy on employers in the engineering construction industry for the purpose of raising money towards meeting the expenses of the Board. The Order also imposes a levy on employers who are not mainly engaged in engineering construction activities but are engaged in activities of a kind to which paragraph 1(a)(ii) of Schedule 1 to the Industrial Training (Engineering Board) Order 1964 (as amended by the Industrial Training (Engineering Construction Board) Order 1991) applies; and for those employers the levy will be imposed only in respect of such activities.

The levy is to be imposed in respect of the levy period commencing on the day on which this Order comes into force and ending on 31 December 2006.

The levy will be assessed by the Board in accordance with article 4 and there is a right of appeal against an assessment to an employment tribunal.

An employer assessed to levy receives written notice from the Board and is liable to make payment one month later. An assessment can be withdrawn by the Board (if, for example, some error of calculation comes to light). Small employers have the benefit of exemptions. Employers who cease business during the levy period are assessed proportionately.

A full regulatory impact assessment of the effect that this Order will have on the costs of business is available from the Department for Education and Skills, Library and information Service, Moorfoot, Sheffield, S1 4PQ or Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

STATUTORY INSTRUMENTS

2006 No. 335

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Engineering Construction Board) Order 2006

ISBN 0-11-074035-1

£3.00

© Crown copyright 2006

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0159 2/2006 160159T 19585

9 780110 740355