STATUTORY INSTRUMENTS

1977 No. 849

INDUSTRIAL TRAINING

The Industrial Training Levy (Engineering) Order 1977

Made - - -	*16th May* 1977
Laid before Parliament	*27th May* 1977
Coming into Operation	*24th June* 1977

Whereas proposals made by the Engineering Industry Training Board for the raising of 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 engineering 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 thirteenth 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 (other than levy payable by virtue of section 7(1B) of the 1964 Act as inserted by the 1973 Act) in such cases as he considers appropriate;

And whereas the Secretary of State is satisfied that the proposals made in pursuance of section 7(1B) of the 1964 Act, as inserted by the 1973 Act, are necessary as mentioned in paragraph (*a*) of that subsection and are shown, by evidence furnished by the Board, to be considered necessary as mentioned in paragraph (*b*) of that subsection;

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

Now, therefore, the Secretary of State in exercise of the powers conferred 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 (Engineering) Order 1977 and shall come into operation on 24th June 1977.

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 Industrial Training Act 1964;

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

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

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

(*f*) "charity" has the same meaning as in section 360 of the Income and Corporation Taxes Act 1970(**c**);

(*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 and any emoluments or payments intended to be disbursed as emoluments payable under any agreement (whether or not a contract of service) for the preparation of engineering drawings in connection with engineering construction activities;

(*h*) "employer" (except in Article 2(2) of this Order) means a person who is an employer in the engineering industry at any time in the thirteenth levy period;

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

(*j*) "the engineering 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 activities of the engineering industry or, in relation

(**a**) 1947 c. 48. (**b**) 1948 c. 45. (**c**) 1970 c. 10.

to an establishment whose activities have been transferred to the industry of the Board by one of the transfer orders, any activities so transferred;

(*k*) "engineering construction activities" 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 activities of the engineering industry by virtue of paragraph 1(iA) of that Schedule and any related or administrative activities of a kind to which paragraph 1(*l*) of that Schedule applies undertaken in relation to engineering construction activities;

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

(*m*) "foundry activities" means the production of iron or steel castings or of non-ferrous castings by casting in moulds made of sand, loam, metal, moulding composition or any other material or mixture of materials and, incidental and subsidiary to the main activity of the production of such castings, any processes to which the casting is subsequently subjected, such as fettling, cleaning, machining, heat treatment, welding, enamelling, plating and other surface finishing and the inspection and testing of castings; the melting, refining and casting of ferrous metal into ingots; the manufacture of refined iron and of chilled iron shot and grit; the production of patterns, moulds or models in wood, metal, plastic, plaster or any combination of those materials, where this activity is carried out for the purpose of the production of iron, steel or non-ferrous castings;

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

(*o*) "the industrial training order" means the Industrial Training (Engineering Board) Order 1964(**a**) as amended by the Industrial Training (Engineering Board) Order 1971(**b**) and the Industrial Training (Engineering Board) Order 1964 (Amendment) Order 1974(**c**);

(*p*) "the levy" means the levy imposed by the Board in respect of the thirteenth levy period;

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

(*r*) "site employee" means an employee wholly or mainly engaged in engineering construction activities on a site other than a site which is an engineering establishment of the employer;

(*s*) "the thirteenth base period" means the period of twelve months that commenced on 6th April 1976;

(*t*) "the thirteenth levy period" means the period commencing with the day upon which this Order comes into operation and ending on 31st August 1977;

(**a**) S.I. 1964/1086 (1964 II, p. 2402). (**b**) S.I. 1971/1530 (1971 III, p. 4309).
(**c**) S.I. 1974/1509 (1974 III, p. 5773).

(*u*) "the transfer orders" means—

(i) the Industrial Training (Transfer of the Activities of Establishments) Order 1974(**a**);

(ii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1974(**b**);

(iii) the Industrial Training (Transfer of the Activities of Establishments) Order 1975(**c**);

(iv) the Industrial Training (Transfer of the Activities of Establishments (No. 2) Order 1975(**d**);

(v) the Industrial Training (Transfer of the Activities of Establishments) Order 1976(**e**); and

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

(*v*) any other expression to which a meaning is assigned by the 1964 Act has that meaning.

(2) In reckoning the amount of emoluments for the purposes of this Order no regard shall be had to the emoluments of any person—

(*a*) undergoing a course of training as a seagoing officer or rating under an agreement in writing with an employer in the shipping industry, or with any organisation of employers in that industry or with any association of such organisations;

(*b*) employed by the London Transport Executive wholly in activities specified in paragraph 1(1) of the Schedule to the industrial training order, not being design or drawing or the training of employees or apprentices;

(*c*) engaged wholly in agriculture; or

(*d*) engaged wholly in the supply of food or drink for immediate consumption.

(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.

(4) In this Order an establishment shall be taken to be wholly or mainly engaged in engineering construction activities if it is so engaged during the thirteenth base period for a total of twenty-seven or more weeks, or, being an establishment that commenced to carry on business in the thirteenth 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.

(5) In this Order employees shall be taken to be wholly or mainly engaged in or in connection with engineering construction activities during any week in the thirteenth base period in which they are so engaged if but only if they are so engaged for more than half the total number of weeks in which they are employed by the employer during the thirteenth base period.

(**a**) S.I. 1974/1154 (1974 II, p. 4402).
(**b**) S.I. 1974/1495 (1974 III, p. 5739).
(**c**) S.I. 1975/434 (1975 I, p. 1371).
(**d**) S.I. 1975/1157 (1975 II, p. 4019).
(**e**) S.I. 1976/396 (1976 I, p. 1055).
(**f**) S.I. 1976/1635 (1976 III, p. 4103).

(6) The Interpretation Act 1889(a) 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) Subject to the provisions of Article 11 of this Order, the levy to be imposed by the Board on employers in respect of the thirteenth 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 relevant establishment, (that is to say, each engineering establishment other than an establishment of an employer who is exempt by virtue of the provisions of Article 4 or Article 5 of this Order, or, subject to the provisions of Article 6, one which is an establishment in respect of which an exemption certificate has been issued to the employer) but in agreement with the employer one assessment may be made in respect of any number of establishments, in which case such establishments shall be deemed for the purposes of that assessment to constitute one establishment.

(3) The levy assessed in respect of an establishment of an employer shall be an amount equal to 1 per cent. of the sum of the emoluments of all persons employed in the thirteenth base period at or from the establishment by the employer.

Exemption of charities

4. A charity shall be exempted from the levy.

Exemption of small employers

5. An employer shall be exempted from the levy in respect of any establishment of his where the number of all the persons employed by him at or from the establishments on 2nd April 1977, other than persons whose emoluments are to be disregarded under Article 2(2) above, does not exceed 60:

Provided that, the foregoing provision of this Article shall not operate—

(i) to exempt any employer engaged in the thirteenth base period wholly or partly in engineering construction activities in respect of—

(*a*) any portion of the levy attributable to the emoluments of any site employees of his where the sum of the emoluments of such employees employed by him from any engineering establishment or establishments of his in that period exceeds £50,000; or

(*b*) any portion of the levy attributable to the emoluments of any employees of his, other than site employees, who were wholly or mainly engaged in engineering construction activities where the sum of the emoluments of such employees employed by him at or from any engineering establishment or establishments of his in that period exceeds £50,000;

(ii) to exempt any employer in respect of any foundry establishment of his where the sum of the emoluments of all persons employed by him at or from the establishment in that period is not less than £25,000.

(a) 1889 c. 63.

Disapplication of Exemption certificate

6. Notwithstanding any exemption certificate issued by the Board an employer shall be liable for any portion of the levy attributable to the emoluments of any site employees of his in the thirteenth base period.

Assessment notices

7.—(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) The amount of any assessment payable under an assessment notice shall be rounded down 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

8.—(1) Subject to the following provisions of this Order, the amount of each assessment appearing in an assessment notice served by the Board (the date of which shall not be earlier than 31st August 1977) shall be due and payable by the employer to the Board—

(*a*) in the case of any amount payable in respect of any foundry establishment, in two equal instalments, and the said instalments shall be due respectively one month and seven months after the date of the notice; and

(*b*) in any other case, one month after the date of the notice.

(2) 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 10(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

9.—(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 10 of this Order and the appeal has not been entered in the Register of Appeals kept under the appropriate Regulations specified in paragraph (4) 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 in respect of any establishment to which that assessment relates.

Appeals

10.—(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) 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 establishment to which the relevant assessment relates is wholly in Scotland 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**).

(5) 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.

Cessation of business

11.—(1) The provisions of this Article shall apply in relation to an establishment that ceases to carry on business in the thirteenth levy period on or before 30th August 1977.

(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 3 of this Order as the number of days between the commencement of the thirteenth levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the said levy period.

(3) Article 8(1) of this Order shall have effect as if the words in parenthesis were omitted.

Evidence

12.—(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.

(**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).

(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 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.
16th May 1977.

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 Engineering 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 engineering industry for the purposes of encouraging adequate training in the industry.

The levy is to be imposed in respect of the thirteenth levy period commencing on the day upon which this Order comes into operation and ending on 31st August, 1977. 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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