STATUTORY INSTRUMENTS

1981 No. 707

INDUSTRIAL TRAINING

The Industrial Training Levy (Food, Drink and Tobacco) Order 1981

Made - - - -	1*st May* 1981
Laid before Parliament	15*th May* 1981
Coming into Operation	5*th June* 1981

Whereas proposals made by the Food, Drink and Tobacco 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") and have thereafter been submitted by the said Commission to the Secretary of State under section 7(1C) of the 1964 Act;

And whereas in pursuance of section 7(1A)(*a*) of the 1964 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 food, drink and tobacco 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 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 by section 4 of the 1964 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 (Food, Drink and Tobacco) Order 1981 and shall come into operation on 5th June 1981.

(a) 1964 c. 16; the Industrial Training Act 1964 was amended by the Employment and Training Act 1973 (c. 50), section 6 and Part I of Schedule 2. The relevant provisions of the Industrial Training Act 1964, as amended, are reproduced in the Employment and Training Act 1973, Part II of Schedule 2.

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 by regulations made under section 12 of the Industrial Training Act 1964, being regulations which, by virtue of section 128(2) of the Employment Protection (Consolidation) Act 1978**(c)**, continue to have effect as if made under section 128(1) of that Act;

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

(*d*) "the Board" means the Food, Drink and Tobacco 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**(d)**;

(*g*) "employer" means a person who is an employer in the food, drink and tobacco industry at any time in the thirteenth levy period;

(*h*) "an exemption certificate" means a certificate issued by the Board under section 4B of the 1964 Act;

(*i*) "food, drink and tobacco establishment" means an establishment in Great Britain engaged in the thirteenth base period wholly or mainly in the food, drink and tobacco 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 food, drink and tobacco 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 food, drink and tobacco 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;

(*k*) "the industrial training order" means the Industrial Training (Food, Drink and Tobacco Board) Order 1968**(e)**;

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

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

(*n*) "the thirteenth base period" means the period of twelve months that commenced on 6th April 1980;

(*o*) "the thirteenth levy period" means the period commencing with the day upon which this Order comes into operation and ending on 5th April 1982;

(*p*) "the transfer orders" means—

(i) the Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1976**(f)**;

(a) 1947 c. 48. **(b)** 1948 c. 45. **(c)** 1978 c. 44.
(d) 1970 c. 10. **(e)** S.I. 1968/1033, amended by S.I. 1971/648.
(f) S.I. 1976/2110.

(ii) the Industrial Training (Transfer of the Activities of Establishments) Order 1977(**a**); and

(iii) the Industrial Training (Transfer of the Activities of Establishments) Order 1980(**b**).

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

(2) In the following provisions of this Order any reference to emoluments is a reference to such emoluments as are 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.

(3) In reckoning the amount of emoluments for the purposes of this Order no regard shall be had to the emoluments of any person employed as follows:—

(*a*) by a local authority;

(*b*) by a milk marketing board in the provision of—

(i) services of artificial insemination for livestock at a centre providing such services; or

(ii) any services in respect of milk recording;

(*c*) wholly in agriculture;

(*d*) as a member of the crew of an aircraft, as the master, or a member of the crew, of a ship, or, in the case of a person employed as a seaman, 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;

(*e*) wholly as a registered dock worker in dock work; or

(*f*) wholly in the supply (including any preparation thereof by the person engaged in such 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.

(4) Any reference in this Order to persons employed at or from a food, drink and tobacco establishment shall in any case where the employer is a company be construed as including a reference to any director of the company (or any person occupying the position of director by whatever name he was called) who was, at the material time, in receipt of a salary from the company.

(5) 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.

Imposition of the levy

3.—(1) 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.

(**a**) S.I. 1977/1951. (**b**) S.I. 1980/586.

(2) The levy shall be assessed by the Board separately in respect of each relevant establishment (that is to say, each food, drink and tobacco establishment other than one which is exempted by an exemption certificate or one which is an establishment of an employer who is exempted by virtue of paragraph (5) of this Article), but in agreement with the employer one assessment may be made in respect of any number of relevant establishments, in which case those establishments shall be deemed for the purpose of that assessment to constitute one establishment.

(3) Subject to the provisions of this Order, the levy assessed in respect of a food, drink and tobacco establishment of an employer shall be an amount equal to 0·7 per cent. of the sum of the emoluments of all the persons employed by the employer at or from that establishment in the thirteenth base period.

(4) The amount of the levy imposed in respect of a food, drink and tobacco establishment that ceases to carry on business in the thirteenth levy period shall be in the same proportion to the amount that would otherwise be due under paragraph (3) of this Article 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) There shall be exempt from the levy—

(*a*) an employer in whose case the sum of the emoluments of all the persons employed by him in the thirteenth base period at or from the food, drink and tobacco establishment or establishments of the employer (including any persons employed in that period at or from a food, drink or tobacco establishment by an associated company of the employer) is less than £162,000;

(*b*) a charity.

Assessment notices

4.—(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

5.—(1) Subject to the provisions of this Article and of Articles 6 and 7, the amount of each assessment appearing in an assessment notice served by the Board shall be due and payable to the Board one month after the date of a further notice requiring payment of that amount, which notice shall be served by the Board on the persons assessed to the levy in the same manner as an assessment 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 in respect of any establishment to which that assessment related.

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 establishment that ceases to carry on business in the thirteenth levy period on any day after the date of the service of the relevant 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)** 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**(b)**.

(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.

(a) S.I. 1965/1101, amended by S.I. 1967/301.
(b) S.I. 1965/1157, amended by S.I. 1967/302.

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.
1st May 1981.

Peter Morrison,
Joint Parliamentary Under Secretary of State,
Department of Employment.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which comes into operation on 5th June 1981, gives effect to proposals of the Food, Drink and Tobacco 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 Food, Drink and Tobacco Industry for the purpose of encouraging adequate training in the industry.

The levy is to be imposed in respect of the thirteenth levy period commencing with the date upon which this Order comes into operation and ending on 5th April 1982. 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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