STATUTORY INSTRUMENTS

1985 No. 721

INDUSTRIAL TRAINING

The Industrial Training Levy (Hotel and Catering) Order 1985

Made - - - - -	*8th May* 1985
Laid before Parliament	*10th May* 1985
Coming into Operation	*31st May* 1985

Whereas proposals made by the Hotel and Catering Industry Training Board for the raising and collection of a levy have been submitted to, and approved by, the Manpower Services Commission under section 11(1) of the Industrial Training Act 1982(**a**) ("the 1982 Act") and have thereafter been submitted by the said Commission to the Secretary of State under that subsection;

And whereas in pursuance of section 11(3) of the 1982 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 hotel and catering industry, does not exceed an amount which the Secretary of State estimates is equal to one per cent. of the relevant emoluments being 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 nineteenth base period";

And whereas the Secretary of State is satisfied that the proposals published by the said Board in pursuance of section 13 of the 1982 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 sections 11(2), 12(3) and 12(4) of the 1982 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 (Hotel and Catering) Order 1985 and shall come into operation on 31st May 1985.

(**a**) 1982 c. 10.

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

(c) "the Board" means the Hotel and Catering Industry Training Board;

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

(e) "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;

(f) "employer" means a person who is an employer in the hotel and catering industry at any time in the nineteenth levy period;

(g) "establishment" (except in sub-paragraphs *(i)* and *(k)* of this paragraph) means an establishment comprising catering activities or a hotel and catering establishment;

(h) "establishment comprising catering activities" means an establishment in Great Britain at or from which persons were employed in the nineteenth base period in the supply of food or drink to persons for immediate consumption, but does not include:—

(i) a hotel and catering establishment; or

(ii) an establishment in which the employer supplied for immediate consumption light refreshments to persons employed at or from the same where the employer was not otherwise engaged at or from the establishment in any activities to which paragraph 1 of the Schedule to the industrial training order applies or in the manufacture of any chocolate or flour confectionery so supplied as light refreshments;

(i) "exemption certificate" means a certificate issued by the Board under section 14 of the 1982 Act;

(j) "hotel and catering establishment" means an establishment in Great Britain that was engaged in the nineteenth base period wholly or mainly in the hotel and catering industry;

(k) "hotel and catering industry" does not include any activities of an establishment which has 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 hotel and catering 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;

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

(l) "the industrial training order" means the Industrial Training (Hotel and Catering Board) Order 1966(**a**);

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

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

(o) "the nineteenth base period" means the period of twelve months that commenced on 6th April 1984;

(p) "the nineteenth levy period" means the period commencing with the day upon which this Order comes into operation and ending on 31st March 1986;

(q) "the supply of food or drink to persons for immediate consumption" means such a supply either by way of business or by a person carrying on a business to persons employed in the business;

(r) "the transfer orders" means:—

(i) the Industrial Training (Transfer of the Activities of Establishments) Order 1980(**b**);

(ii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1980(**c**);

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

(2) Any reference in this Order to a person who ceases to be an employer shall not be taken to apply where the cessation is of a temporary or seasonal nature, or where the location of the employer's business is changed but the business is continued wholly or mainly at or from the new location.

Imposition of the levy

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

(2) Subject to the provisions of this Article the levy on each employer shall be assessed by the Board in respect of the emoluments paid by him to all persons to whom paragraph (3) below applies employed by the employer in the nineteenth base period at relevant establishments of his (that is to say, any hotel and catering establishment or establishments, or any establishment or establishments comprising catering activities other than an establishment of an employer who is exempt from the levy by virtue of paragraph (4) of this Article) and the amount thereof shall be equal to 1 per cent. of the sum of the emoluments where such emoluments are £70,000 or more.

(3) This paragraph applies to:—

(a) in the case of a hotel and catering establishment, all persons employed;

(b) in the case of an establishment comprising catering activities, all

(**a**) S.I. 1966/1347, amended by S.I. 1969/1405.
(**b**) S.I. 1980/586.
(**c**) S.I. 1980/1753.

persons employed wholly or mainly in the supply of food or drink to persons for immediate consumption.

(4) 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 nineteenth base period in the hotel and catering industry at or from the establishment or establishments of the employer was less than £70,000;

(b) a charity.

(5) *(a)* Levy shall not be imposed on a person who ceases to be an employer in the hotel and catering industry prior to the commencement of the nineteenth levy period;

(b) the amount of the levy imposed on a person who ceases to be an employer in the hotel and catering industry during the nineteenth levy period shall be in the same proportion to the amount that would otherwise be due under the foregoing provisions of this Article as the number of days between the commencement of the said levy period and the date on which the person ceases to be an employer in the hotel and catering industry (both dates inclusive) bears to the number of days in the said levy period.

(6) For the purposes of this Article, no regard shall be had to the emoluments of any person employed as follows:—

(a) wholly in the supply (except at or in connection with an hotel, restaurant, café, snack bar, canteen, mess room or similar place of refreshment) of:—

(i) ice-cream, chocolate confectionery, sugar confectionery or soft drink;

(ii) shellfish or eels; or

(iii) food or drink by means of an automatic vending machine;

(b) wholly in agriculture;

(c) otherwise than wholly in the supply of food or drink to persons for immediate consumption, where the employment is at or from an establishment engaged mainly in any activities of an industry specified in column 1 of the Schedule to this Order by virtue of the relevant industrial training order specified in column 2 of that Schedule or in any activities of two or more such industries;

(d) as a member of the crew of an aircraft, or as the master or a member of the crew of a ship or, in the case of a person ordinarily 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) by a local authority in any activities mentioned in sub-paragraph *(d)* or *(e)* of paragraph 1 of the Schedule to the industrial training order, not being activities mentioned in head (ii) or head (iv) of paragraph (3)*(l)* of that Schedule; or

(f) in any activities mentioned in sub-paragraph *(b)*, *(c)* (ii), *(d)* or *(e)* of paragraph 1 of the Schedule to the industrial training order when carried out by:—

(i) a harbour authority while acting in that capacity;

(ii) The Electricity Council, the Central Electricity Generating Board or an Area Electricity Board;

(iii) the North of Scotland Hydro-Electric Board or the South of Scotland Electricity Board;

(iv) the British Gas Corporation;

(v) statutory water undertakers within the meaning of the Water Act 1973(**a**) or water authorities within the meaning of the Water (Scotland) Act 1980(**b**) or water development boards within the meaning of the Water (Scotland) Act 1980, being the activities of such undertakers, authorities or boards in the exercise of their powers or duties as such;

(vi) the British Airports Authority;

(vii) British Airways Plc or a subsidiary of British Airways Plc;

(viii) a marketing board; or

(ix) the United Kingdom Atomic Energy Authority.

Exemption Certificates

4. Exemption Certificates issued by the Board shall not exempt any employer in the industry from that portion of the levy which equals 0.05 per cent. of the sum of the emoluments upon which the levy falls to be assessed under article 3(2) above.

Assessment notices

5.— (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) 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.

(3) 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

6.— (1) Subject to the provisions of this article and of articles 7 and 8, the amount of the levy payable under an assessment notice served by the Board shall be due and payable to the Board in two instalments:—

(i) the first instalment, being that portion of the levy from which, in

(**a**) 1973 c. 37.
(**b**) 1980 c. 45.

accordance with Article 4 above, exemption certificates are not to exempt any employer in the industry, on 1st June 1985, and

(ii) the second instalment, being the remainder of the levy, on 1st January 1986.

(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 8(1) of this Order and any further period or periods of time that the Board or an industrial 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

7.— (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 8 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, and such withdrawal may be extended by the Board to any other assessment appearing in the assessment notice.

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

(a) to the power of the Board to serve a further assessment notice and, where the withdrawal is made by reason of the fact that a person has ceased to be an employer in the hotel and catering industry in the nineteenth levy period, the said notice may provide that the whole amount payable thereunder shall be due one month after the date of the notice; or

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

Appeals

8.— (1) A person assessed to the levy may appeal to an industrial 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 industrial 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 industrial 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 industrial 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 a person who ceases to be an employer in the hotel and catering industry in the nineteenth 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 on which the person ceased to be an employer.

(5) An appeal or an application to an industrial 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 industrial 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

9.— (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.

Peter Morrison,
Minister of State,
Department of Employment.

8th May 1985.

(**a**) S.I. 1965/1101; relevant amending instruments are S.I. 1967/301, 1977/1473.
(**b**) S.I. 1965/1157; relevant amending instruments are S.I. 1967/302, 1977/1474.

SCHEDULE Article 3

THE INDUSTRIES REFERRED TO IN ARTICLE 3(6)*(c)* OF THIS ORDER

Column 1	Column 2
The construction industry	The Industrial Training (Construction Board) Order 1964(**a**)
The engineering industry	The Industrial Training (Engineering Board) Order 1964(**b**)
The agricultural, horticultural and forestry industry	The Industrial Training (Agricultural, Horticultural and Forestry Board) Order 1966(**c**)
The road transport industry	The Industrial Training (Road Transport Board) Order 1966(**d**)
The offshore petroleum industry	The Industrial Training (Petroleum Board) Order 1967(**e**)
The clothing and allied products industry	The Industrial Training (Clothing and Allied Products Board) Order 1969(**f**)
The plastics processing industry	The Industrial Training (Rubber and Plastics Processing Board) Order 1967(**g**)

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which comes into operation on 31st May 1985, gives effect to proposals of the Hotel and Catering 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 hotel and catering industry for the purpose of raising money towards meeting the expenses of the Board.

The levy is to be imposed in respect of the nineteenth levy period commencing with the day upon which this Order comes into operation and ending on 31st March 1986. 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. 1964/1079, amended by S.I. 1980/1274, 1982/922.
(**b**) S.I. 1964/1086, amended by S.I. 1980/1273.
(**c**) S.I. 1966/969, amended by S.I. 1970/1886.
(**d**) S.I. 1966/1112, amended by S.I. 1982/664.
(**e**) S.I. 1967/648, amended by S.I. 1982/921.
(**f**) S.I. 1960/1375, amended by S.I. 1982/920.
(**g**) S.I. 1967/1062, amended by S.I. 1982/923.

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