STATUTORY INSTRUMENTS

1990 No. 101

INDUSTRIAL TRAINING

The Industrial Training Levy (Plastics Processing) Order 1990

Made - - - -	*23rd January 1990*
Laid before Parliament	*6th February 1990*
Coming into force	*28th February 1990*

Whereas the Plastics Processing Industry Training Board has submitted to the Secretary of State under section 11(1) of the Industrial Training Act 1982(**a**) ("the 1982 Act") proposals for the raising and collection of a levy;

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 plastics processing 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 twenty-third base period";

And whereas the Secretary of State is satisfied that 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 (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 (Plastics Processing) Order 1990 and shall come into force on 28th February 1990.

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(**b**) or, in relation to Scotland, as in section 86(3) of the Agriculture (Scotland) Act 1948(**c**);

(**a**) 1982 c.10; sections 11 and 12 were amended by the Employment Act 1989 (c.38), section 22(4) and Schedule 4, paragraphs 10 and 11 respectively.
(**b**) 1947 c.48.
(**c**) 1948 c.45.

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

(c) "the Board" means the Plastics Processing Industry Training Board;

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

(e) "charity" has the same meaning as in section 506 of the Income and Corporation Taxes Act 1988(**a**);

(f) "emoluments" means all emoluments assessable to income tax under Schedule E of the Income and Corporation Taxes Act 1988 (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;

(g) "employer" means a person who is an employer in the plastics processing industry at any time in the twenty-third levy period;

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

(i) "the twenty-third base period" means the period of twelve months that commenced on 6th April 1989;

(j) "the twenty-third levy period" means the period commencing with the day upon which this Order comes into force and ending on 30th June 1990;

(k) "the industrial training order" means the Industrial Training (Rubber and Plastics Processing Board) Order 1967(**b**), as amended by the Industrial Training (Plastics Processing Board) Order 1982(**c**);

(l) "the levy" means the levy imposed by the Board in respect of the twenty-third levy period;

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

(n) "plastics processing establishment" means an establishment in Great Britain engaged in the twenty-third base period wholly or mainly in the plastics processing industry for a total of twenty-seven or more weeks or, being an establishment that commenced to carry on business in the twenty-third 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 plastics processing 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 Schedule 1 to the industrial training order, are specified in paragraph 1 of that Schedule as the activities of the plastics processing industry or, in relation to activities which have been transferred to the industry of the Board by one of the transfer orders, any activities so transferred;

(p) "the transfer orders" means–

(i) the Industrial Training (Transfer of the Activities of Establishments) Order 1975(**d**),

(ii) the Industrial Training (Transfer of the Activities of Establishments) Order 1976(**e**),

(iii) the Industrial Training (Transfer of the Activities of Establishments) Order 1978(**f**),

(iv) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1978(**g**),

(v) the Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1978(**h**),

(vi) the Industrial Training (Transfer of the Activities of Establishments) Order 1979(**i**) and

(vii) the Industrial Training (Transfer of the Activities of Establishments) Order 1980(**j**).

(**a**) 1988 c.1.
(**b**) S.I. 1967/1062.
(**c**) S.I. 1982/923.
(**d**) S.I. 1975/434.
(**e**) S.I. 1976/396.
(**f**) S.I. 1978/448.
(**g**) S.I. 1978/1225.
(**h**) S.I. 1978/1643.
(**i**) S.I. 1979/793.
(**j**) S.I. 1980/586.

(2) Any reference in this Order to a person employed at or from a plastics processing 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 is called) who is required to devote substantially the whole of his time to the service of the company.

(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.

Imposition of the levy

3.—(1) The levy to be imposed by the Board on employers in respect of the twenty-third 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 plastics processing establishment other than 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 Article and of Article 4 below, the levy assessed in respect of a plastics processing establishment of an employer shall be an amount equal to 0.93 per cent. of the sum of the emoluments of all the persons employed by the employer at or from that establishment in the twenty-third base period.

(4) The amount of the levy imposed in respect of a plastics processing establishment that ceases to carry on business in the twenty-third 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 number of all the persons employed by him on 5th April 1990 at or from the plastics processing establishment or establishments of the employer was less than twenty-six;

(b) a charity.

(6) For the purposes of this Article no regard shall be had to any person wholly engaged in agriculture or in the supply of food or drink for immediate consumption.

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 0.18 per cent. of the sum of the emoluments upon which the levy is to be assessed under Article 3(3) 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 this Article and to 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 on 1st July 1990.

(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 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.

(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

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 an establishment that ceases to carry on business in the twenty-third 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 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

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

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 the facts stated therein.

Signed by order of the Secretary of State.

Patrick Nicholls
Parliamentary Under Secretary of State,
Department of Employment

23rd January 1990

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to proposals submitted by the Plastics Processing Industry Training Board to the Secretary of State. The proposals are for the imposition of a levy on employers in the plastics processing industry for the purposes of raising money towards meeting the expenses of the Board.

A levy is to be imposed in respect of the twenty-third levy period commencing on the day upon which this Order comes into force and ending on 30th June 1990. The levy will be assessed by the Board and there will be a right of appeal against an assessment to an industrial tribunal.