STATUTORY INSTRUMENTS

2018 No. 432

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Industry Training Board) Order 2018

Made - - - - 27th March 2018

Coming into force in accordance with article 1

The Secretary of State makes this Order in exercise of the powers conferred by section 11(2) and section 12(3) and (4) of the Industrial Training Act 1982(**1**) ("the Act").

This Order is made to give effect to levy proposals submitted by the Construction Industry Training Board(**2**) pursuant to section 11(1) of the Act which, as required by section 11(3) of the Act, include proposals for the exemption of employers employing a small number of employees.

The levy proposals include proposals for securing that no exemption certificates shall be issued by the Board and the amount of levy payable by employers will exceed 0.2% of their relevant emoluments in respect of the base period for each levy period. Accordingly, section 11(5) of the Act applies to this Order.

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

The Secretary of State estimates that the levy to be paid by employers in the industry exceeds 1% of their relevant emoluments and accordingly this Order falls within section 11(7)(b) of the Act; the Secretary of State considers that the amount to be paid by employers in the industry is appropriate in the circumstances.

The Secretary of State has consulted the Scottish Ministers as required by section 88(2) of the Scotland Act 1998(**3**).

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

(**1**) 1982 c.10. Sections 11 and 12 were amended by paragraphs 10 and 11 of Schedule 4 to the Employment Act 1989 (c.38) and by sections 24, 25 and 29 of and paragraphs 3 and 4 of Schedule 1 to the Further Education and Training Act 2007 (c.25). Section 12(4) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2).

(**2**) The Board was established under the Industrial Training (Construction Board) Order 1964 (S.I. 1964/1079).

(**3**) 1998 c.46. The Construction Industry Training Board has been specified as a cross-border public authority for the purposes of section 88 of the Scotland Act 1998 by 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 (Construction Industry Training Board) Order 2018 and comes into force on the 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 in respect of a construction establishment;

(b) "the Board" means the Construction Industry Training Board;

(c) "construction establishment" has the meaning given in article 5;

(d) "the construction industry" means the activities of the construction industry as defined by Schedule 1 to the Industrial Training (Construction Board) Order 1964(**4**) read together with the orders listed in the Schedule to this Order;

(e) "contract payment" has the meaning given in article 7(2);

(f) "emoluments" means—

(i) salaries, fees and wages excluding fees which are paid to a company director who is remunerated solely by fees;

(ii) any gratuity or other profit or incidental benefit of any kind obtained by an employee, if it is money or money's worth, other than pensions contributions;

(iii) anything else that constitutes, or is intended to constitute, earnings of the relevant employment;

(g) "employer" has the meaning given in article 3;

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

(i) "the relevant base period" means the particular base period defined in article 4 in respect of a particular levy period defined in article 3 by reference to which the relevant emoluments are to be calculated;

(j) "the relevant levy period" means, in relation to a levy imposed on employers in the construction industry under article 3(1), the levy period in respect of which the levy is imposed;

(k) "the relevant part of a contract payment" has the meaning given in article 7(3).

(2) In this Order, references to a construction establishment starting or ceasing to be engaged in the construction industry do not include instances where—

(a) a construction establishment starts to be engaged in the construction industry after, or ceases to be engaged in that industry because of, a suspension of activities of a temporary or seasonal nature; or

(b) the location of a construction establishment changes but the establishment continues to be engaged in the construction industry at or from the new location.

Imposition of the levy

3.—(1) A levy shall be imposed on employers in the construction industry in respect of each of the following levy periods—

(a) the period commencing with the day on which this Order comes into force and ending with 31st March 2018 (in this Order referred to as "the first levy period");

(**4**) S.I. 1964/1079; a relevant amending instrument is S.I. 1992/3048.

(b) the period commencing with 1st January 2019 and ending with 31st March 2019 (in this Order referred to as "the second levy period"); and

(c) the period commencing with 1st January 2020 and ending with 31st March 2020 (in this Order referred to as "the third levy period").

(2) Subject to article 9, a person is liable to pay an amount by way of levy in respect of a levy period if that person is an employer in the construction industry at any time in that period.

(3) In this Order (other than in this article), references to an "employer" are references to a person who is an employer in the construction industry.

Base periods

4.—(1) The base period for the first levy period is the twelve months commencing with 6th April 2016.

(2) The base period for the second levy period is the twelve months commencing with 6th April 2017.

(3) The base period for the third levy period is the twelve months commencing with 6th April 2018.

Construction establishments to be assessed

5.—(1) The Board must assess the amount of levy to be paid in respect of each construction establishment of an employer in respect of each levy period referred to in article 3(1).

(2) In this Order, "construction establishment" means any particular establishment of the employer engaged wholly or mainly in the construction industry for the necessary period.

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

(a) a period (which need not be continuous) consisting of a total of 27 or more weeks falling within the relevant base period; or

(b) in the case of a construction establishment which started being engaged in the construction industry during the relevant base period, a period (which need not be continuous)—

(i) falling within the relevant base period; and

(ii) consisting of a total number of weeks exceeding one half of the number of weeks in the part of the relevant base period starting on the day on which the construction establishment started being engaged in that industry and ending on the last day of the relevant base period.

(4) The person who on the first day of the relevant levy period owns or otherwise has responsibility for a construction establishment is to be treated as the employer of all persons employed at or from that establishment during the relevant base period.

Treatment of construction establishments as one establishment

6. The Board and an employer may agree that two or more construction establishments of that employer be treated as one construction establishment for the purposes of assessment of the amount of levy payable.

Assessment of amount of levy

7.—(1) The amount of levy to be assessed in respect of each construction establishment is—

$$A + B$$

where

A is an amount equal to 0.35% of all emoluments which have been paid or are payable by the employer to or in respect of persons employed by the employer at or from the establishment in the relevant base period; and

B is an amount equal to 1.25% of the relevant part of all contract payments made by the employer to or in respect of persons employed by the employer at or from the establishment in the relevant base period.

(2) "Contract payment" has the meaning given to it by section 60 of the Finance Act 2004(**5**).

(3) The relevant part of a contract payment is the part of the contract payment in respect of which the relevant percentage is applied for the purpose of section 61 of the Finance Act 2004.

(4) Where an amount described as "A" or "B" is not a whole number of pounds, the amount shall be rounded down to the nearest £1.

(5) Where a construction establishment ceases to be engaged in the construction industry during a levy period, the amount of levy imposed in respect of the construction establishment for that period is to be in the same proportion to the amount that would otherwise be due under this article as the number of days between the commencement of the levy period and the date of the cessation of engagement (both dates inclusive) bears to the number of days in the levy period.

Total amount of levy

8.—(1) Subject to paragraph (2), the total amount of levy to be paid by an employer in respect of the relevant levy period is the aggregate amount of levy assessed as payable for all construction establishments of the employer.

(2) The total amount of levy to be paid by an employer under paragraph (1) shall be reduced by 50% if the aggregate amount of—

(a) all emoluments which have been paid or are payable by the employer to or in respect of all the persons employed by the employer at or from the establishments in the relevant base period; and

(b) the relevant part of all contract payments made by the employer at or from the establishments of the employer in the relevant base period;

is £80,000 or more and less than £400,000.

Exemptions

9.—(1) An employer is exempt from payment of the levy in respect of the relevant levy period if the aggregate amount of—

(a) all emoluments which have been paid or are payable by the employer to or in respect of all the persons employed by the employer at or from the construction establishments in the relevant base period; and

(b) the relevant part of all contract payments made by the employer at or from the construction establishments in the relevant base period;

is less than £80,000.

(2) Any body of persons or trust established for charitable purposes only is exempt from the levy.

Assessment notices

10.—(1) The Board must serve an assessment notice on every employer assessed to the levy.

(**5**) 2004 c.12. Chapter 3 of Part 3 of the Finance Act 2004 makes provision for the Construction Industry Scheme under which certain payments under construction contracts are made under deduction of sums on account of tax.