STATUTORY INSTRUMENTS

2017 No. 485

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017

Made - - - - 28th March 2017

Coming into force in accordance with regulation 1

The Secretary of State makes this Order in exercise of the powers conferred by sections 11(2), 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 Engineering 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 any employer in respect of a levy period 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 section 12(1B) of the Act the levy proposals include proposals for securing that no liability to levy is imposed under the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2015(**3**) to any of the third levy period provided for in that 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 mentioned 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(**4**).

(**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 (Engineering Board) Order 1964 (S.I. 1964/1086) as the Engineering Industry Training Board. The Industrial Training (Engineering Construction Board) Order 1991 (S.I. 1991/1305) re-named the Board as the Engineering Construction Industry Training Board and replaced Schedule 1 of the Industrial Training (Engineering Board) Order 1964 with a new Schedule 1.

(**3**) S. I. 2015/677

(**4**) 1998 c.46. The Engineering 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).

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.

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2017 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 leviable establishment;

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

(c) "emoluments" means—

(i) all salaries, fees and wages;

(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; and

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

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

(e) "the engineering construction industry" means—

(i) the activities of the engineering construction industry as defined by Schedule 1 to the industrial training order; or

(ii) activities—

(aa) which fall within the description of activities in article 2(1) of the Employment Protection (Offshore Employment) Order 1976(**5**) (excluding the activities described in article 2(2) of that Order); and

(bb) which would fall within the activities of the engineering construction industry as defined by Schedule 1 to the industrial training order if they were carried out in Great Britain;

(f) "the industrial training order" means the Industrial Training (Engineering Board) Order 1964(**6**);

(g) "labour-only agreement" means any agreement or arrangement (other than contracts of service or apprenticeship) between an employer and any other person, the purpose of which is wholly or mainly the provision of services (including any incidental use of tools) of such a person or any other person to the employer in his trade or business;

(h) "leviable establishment" has the meaning given in article 5;

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

(j) "off site employee" means an employee (including a person engaged under a labour-only agreement) other than a site employee;

(**5**) S.I. 1976/766, as amended by S.I. 1977/588 and S.I. 1981/208.
(**6**) S.I. 1964/1086, as amended by S.I. 1991/1305.

(k) "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;

(l) "site employee" means an employee (including a person engaged under a labour-only agreement) the activities of whose employment take place wholly or mainly at a site where activities falling under paragraph 1(a)(i), (iii) or (iv) of Schedule 1 to the industrial training order are carried on.

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

(a) a leviable establishment starts to be engaged in the engineering 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 leviable establishment changes but the establishment continues to be engaged in the engineering construction industry from the new location.

Imposition of the levy

3.—(1) A levy shall be imposed on employers in the engineering 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 December 2017 (in this Order referred to as "the first levy period");

(b) the period commencing with 1st January 2018 and ending with 31st December 2018 (in this Order referred to as "the second levy period"); and

(c) the period commencing with 1st January 2019 and ending with 31st December 2019 (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 engineering 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 engineering 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.

Leviable establishments to be assessed

5.—(1) The Board must assess the amount of levy to be paid in respect of each leviable establishment of an employer.

(2) In this Order, "leviable establishment" means an establishment engaged wholly or mainly in the engineering 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 leviable establishment which started being engaged in the engineering 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 leviable establishment started being engaged in that industry and ending on the last day of the relevant base period.

(4) In this article, an employer is to be treated as the employer of all persons employed at or from a leviable establishment during the relevant base period where—

(a) the employer owns or otherwise has responsibility for the leviable establishment on the last day of the relevant levy period; or

(b) where a leviable establishment ceases to be engaged in the engineering construction industry before the last day of the relevant levy period, the employer owned or otherwise had responsibility for the leviable establishment immediately before it ceased to be engaged in that industry.

Treatment of leviable establishments as one establishment

6. The Board and an employer may agree that two or more leviable establishments of that employer be treated as one leviable 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 site employees for each leviable establishment is—

1.2% of

$$(A+B-C)$$

where

A is the total emoluments of all persons who are site employees employed by the employer at or from the leviable establishment under a contract of service or apprenticeship during the relevant base period received in connection with their employment at the leviable establishment;

B is the sum of all payments (including payments for the incidental use of tools) made or owed by the employer under labour-only agreements for services rendered during the relevant base period to the employer by site employees;

C is the sum of all payments (including payments for the incidental use of tools) received by or owed to the employer from any other employers in the engineering construction industry under labour-only agreements for services rendered during the relevant base period by the employer, or on the employer's behalf, by site employees.

(2) The amount of levy to be assessed in respect of off site employees for each leviable establishment is—

0.14% of

$$(D+E-F)$$

where