Draft Order laid before Parliament under section 12(6) of the Industrial Training Act 1982, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

EMPLOYMENT AND TRAINIING

The Industrial Training Levy (Engineering Construction Industry Training Board) Order 2012

Made - - - -
Coming into force on the day after the day on which it is made

This Order is made in exercise of the powers conferred by sections 11(2) and (2C), 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 employers will exceed 0.2 per cent 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 mentioned in section 11(6)(a) is met.

The Secretary of State estimates that the levy to be paid by employers in the industry exceeds one per cent 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, 29 of and paragraphs 3 and 4 of Schedule 1 to the Further Education and Training Act 2007 (c.25).

(**2**) The Board was established under the Industrial Training (Engineering Board) Order 1964 (S.I. 1964/1086) as the Engineering Industry Training Board. The Board was re-named as the Engineering Construction Industry Training Board by the Industrial Training (Engineering Construction Board) Order 1991 (S.I. 1991/1305).

(**3**) 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).

Accordingly the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2012 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;

(b) "the base period" means the period of twelve months commencing on 6th April 2011;

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

(d) "business day" means any day except Saturday, Sunday, Good Friday, Christmas Day or any day that is a bank holiday in England, Wales or Scotland under the Banking and Financial Dealings Act 1971(**4**);

(e) "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;

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

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

(g) "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 (excluding the activities described in article 2(2) of that Order); and

(bb) which would fall within the activities of the engineering industry as defined by that Schedule if they were carried out in Great Britain.

(h) "the industrial training order" means the Industrial Training (Engineering Board) Order 1964(**5**);

(i) "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;

(j) "leviable establishment" has the meaning given in article 4;

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

(l) "the levy period" means the period commencing on the day on which this Order comes into force and ending on 31st December 2012;

(**4**) 1971 (c.80).
(**5**) S.I.1964/1086, as amended by S.I. 1991/1305.

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

(n) "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 carry on business do not include instances where—

(a) a leviable establishment starts carrying on business after, or ceases carrying on business 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 its business at or 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 the levy period.

(2) Subject to article 8, a person is liable to pay an amount by way of levy in respect of the levy period if that person is an employer in the engineering construction industry at any time in the relevant 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.

Leviable establishments to be assessed

4.—(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 during 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 base period; or

(b) in the case of a leviable establishment which started carrying on business during the base period, a period (which need not be continuous)—

(i) falling within the base period; and

(ii) consisting of a total number of weeks exceeding one half of the number of weeks in the part of the base period starting on the day on which the leviable establishment started carrying on business and ending on the last day of the base period.

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

Treatment of leviable establishments as one establishment

5. 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

6.—(1) The amount of levy to be assessed in respect of site employees for each leviable establishment is—

1.5 per cent 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 base period;

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

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

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

0.18 per cent of (D + E – F)

where

D is the total emoluments of all persons who are off site employees employed by the employer at or from the establishment under a contract of service or apprenticeship during the base period;

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

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

(3) In paragraphs (1) and (2) the following are to be excluded from all calculations—

(a) all company directors remunerated solely by fees;

(b) all payments under labour-only agreements to the extent that any payment is —

(i) in respect of the provision of materials;

(ii) otherwise not in respect of the provision of services.

(4) If an amount calculated as a result of either paragraph (1) or (2) is negative, that amount should be treated as zero for the purposes of paragraph (5).

(5) The amount of levy to be assessed in respect of each leviable establishment is the aggregate of the amounts calculated as a result of paragraphs (1) and (2).

(6) Where a leviable establishment ceases to carry on business in the levy period, the amount of levy imposed in respect of the leviable establishment 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 business (both dates inclusive) bears to the number of days in the levy period.