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 TRAINING

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

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

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 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 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.

Accordingly the Secretary of State makes the following Order:

(**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 (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 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 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) "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;

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

(g) "labour-only agreement" means any agreement or arrangement (other than a contract of service, a contract of apprenticeship or a contract which requires substantial use of plant or specialist equipment or both) between an employer and any other person, the purpose of which is wholly or mainly the provision of services (not including professional services) of such a person or any other person to the employer;

(h) "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.

(2) In this Order, references to a construction establishment starting or ceasing to carry on business do not include instances where—

(a) a construction 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 construction 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 construction industry in respect of each of the following levy periods—

(**4**) S.I. 1964/079; a relevant amending instrument is S.I. 1992/3048.

(a) the period commencing on the day on which this Order comes into force and ending on 31st March 2012 (in this Order referred to as "the first levy period");

(b) the period commencing on 1st January 2013 and ending on 31st March 2013 (in this Order referred to as "the second levy period"); and

(c) the period commencing on 1st January 2014 and ending on 31st March 2014 (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 on 6 April 2010.

(2) The base period for the second levy period is the twelve months commencing on 6 April 2011.

(3) The base period for the third levy period is the twelve months commencing on 6 April 2012.

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.

(2) In this Order, "construction establishment" means any particular establishment of the employer engaged wholly or mainly in the 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 relevant base period; or

(b) in the case of a construction establishment which started carrying on business 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 carrying on business 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 - C

where

A is an amount equal to 0.5% of all emoluments which have been paid or are payable by the employer to or in respect of persons employed by the employer in the relevant base period;

B is an amount equal to 1.5% of all payments (excluding payments in respect of the provision of materials and any other payments which are not in respect of the provision of services) made to persons during the relevant base period under labour-only agreements in respect of work carried out at or from the establishment; and

C is an amount equal to 1.5% of all payments (excluding payments in respect of the provision of materials and any other payments which are not in respect of the provision of services) received by the employer during the relevant base period from any other employers in the construction industry under labour-only agreements in respect of work carried out at or from the establishment.

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

(3) Where a construction establishment ceases to carry on business during a levy period, the amount of levy imposed in respect of the construction 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.

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 per cent in respect of the relevant levy period if the aggregate amount of—

(a) all emoluments of all the persons employed by the employer in the relevant base period; and

(b) all sums (if any) paid in the relevant base period by the employer to any person under labour-only agreements in respect of work carried out at or from those establishments;

(c) is £80,000 or more and less than £100,000.

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 of all the persons employed by the employer in the relevant base period; and

(b) all sums (if any) paid in the relevant base period by the employer to any person under labour-only agreements in respect of work carried out at or from those establishments;

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.

(2) An assessment notice may comprise two or more assessments.