

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

2009 No.

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Industry Training Board) Order 2009

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

The Secretary of State for Innovation, Universities and Skills 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 for Innovation, Universities and Skills 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 for Innovation, Universities and Skills 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 for Innovation, Universities and Skills 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 for Innovation, Universities and Skills makes the following Order:

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- (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 2009 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

- (a) “agriculture” means agriculture within the meaning, as the case may be, of—
 - (i) section 109(3) of the Agriculture Act 1947⁽⁴⁾; or
 - (ii) section 85(1) of the Agricultural Holdings (Scotland) Act 1991⁽⁵⁾;
- (b) “assessment” means an assessment of an employer to the levy;
- (c) “the Board” means the Construction Industry Training Board;
- (d) “construction establishment” has the meaning given in article 6;
- (e) “the construction industry” means the activities of the construction industry as defined by Schedule 1 to the Industrial Training (Construction Board) Order 1964⁽⁶⁾ read together with the orders listed in the Schedule to this Order;
- (f) “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;
- (g) “employer” means a person who is an employer in the construction industry at any time in the relevant levy period;
- (h) “labour-only agreement” means any agreement or arrangement (other than contracts of service or contracts of apprenticeship) 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 in his trade or business;
- (i) “the levy” means the levy imposed by the Board in respect of a levy period;
- (j) “the relevant base period” means the particular base period defined in article 5 in respect of a particular levy period defined in article 4 by reference to which the relevant emoluments are to be calculated;
- (k) “the relevant levy period” means the particular levy period defined in article 4 by reference to which levy is to be established in respect of a construction establishment during a particular levy period.

(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.

⁽⁴⁾ 1947 (c.48).

⁽⁵⁾ 1991 (c.55).

⁽⁶⁾ S.I. 1964/1079; a relevant amending instrument is S.I. 1992/3048.

Imposition of the levy

3. The levy shall be imposed on employers in the construction industry.

Levy periods

4. An employer's liability to levy is to be established by reference to the following levy periods—
- (a) the period commencing on the day on which this Order comes into force and ending on 31st March 2009 (in this Order referred to as “the first levy period”);
 - (b) the period commencing on 1st January 2010 and ending on 31st March 2010 (in this Order referred to as “the second levy period”); and
 - (c) the period commencing on 1st January 2011 and ending on 31st March 2011 (in this Order referred to as “the third levy period”).

Base periods

- 5.—(1) The base period for the first levy period is the twelve months commencing on 6 April 2007.
- (2) The base period for the second levy period is the twelve months commencing on 6 April 2008.
- (3) The base period for the third levy period is the twelve months commencing on 6 April 2009.

Construction establishments to be assessed

- 6.—(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

7. 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

- 8.—(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) In paragraph (2) the following persons are to be excluded from all calculations—

- (a) a person whose usual working pattern consists of an aggregate of less than 8 hours of working time per week;
- (b) a company director remunerated solely by fees;
- (c) a person employed wholly in agriculture; and
- (d) a person employed wholly in the supply of food or drink.

(4) 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

9. The total amount of levy to be paid by an employer is the aggregate amount of levy for all construction establishments of the employer.

Exemptions

10.—(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 at or from the construction establishments of 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) The persons listed in article 8(3) as those to be excluded from all calculations in article 8(2) are also to be excluded from all calculations in paragraph (1) of this article.

(3) A charity or charitable company within the meaning of section 506 of the Income and Corporation Taxes Act 1988⁽⁷⁾ is exempt from the levy.

(7) 1988 (c.1). Section 506 was amended by paragraph 95 of Part 1 of Schedule 1 to the Income Tax Act 2007 (c.3).