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 (Engineering Construction Industry Training Board) Order 2009

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 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 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 for Innovation, Universities and Skills 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 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.

(**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 for Innovation, Universities and Skills makes the following Order:

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Engineering 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) "assessment" means an assessment of an employer to the levy;

(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;

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

(d) "employer" means a person who is an employer in the engineering construction industry at any time in the relevant levy period;

(e) "the engineering construction industry" means the activities of the engineering construction industry as defined by Schedule 1 to the industrial training order;

(f) "the industrial training order" means the Industrial Training (Engineering Board) Order 1964(**4**);

(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 6;

(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;

(k) "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;

(l) "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 leviable establishment during a particular levy period;

(m) "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.

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

(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. The levy shall be imposed on employers in the engineering 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 December 2009 (in this order referred to as "the first levy period");

(b) the period commencing on 1st March 2010 and ending on 31st December 2010 (in this order referred to as "the second levy period"); and

(c) the period commencing on 1st March 2011 and ending on 31st December 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 2008.

(2) The base period for the second levy period is the twelve months commencing on 6 April 2009.

(3) The base period for the third levy period is the twelve months commencing on 6 April 2010.

Leviable establishments to be assessed

6.—(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—

(a) an establishment engaged wholly or mainly in the engineering construction industry during the necessary period;

(b) any other establishment at or from which persons were employed in any activities falling within paragraph 1(a)(ii) of Schedule 1 to the industrial training order.

(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 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 base period starting on the day on which the leviable establishment started carrying on business and ending on the last day of the relevant base period.

(4) The person who on the last day of the relevant 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 relevant base period.

Treatment of leviable establishments as one establishment

7. 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

8.—(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 relevant base period;

B is the sum of all payments (including payments for the incidental use of tools) made by the employer during the relevant 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 relevant 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 relevant base period;

E is the sum of all payments (including payments for the incidental use of tools) made by the employer during the relevant 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 relevant 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 persons who are employed at or from a leviable establishment of the type described in article 6(2)(b) but who are not employed wholly or mainly in any of the activities falling within paragraph 1(a)(ii) of Schedule 1 to the industrial training order.

(c) all payments under labour-only agreements which are—

(i) in respect of the provision of materials;