Draft 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

2007 No.

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Engineering Construction Industry Training Board) Order 2007

Made - - - -

Coming into force - -

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 ("the Board") 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. 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 Education 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)(b) is met.

The Secretary of State for Education 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 Education and Skills has consulted the Scottish Ministers as required by section 88(2) of the Scotland Act 1998(**2**).

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 Education and Skills makes the following Order:

(**1**) 1982 (c.10). Sections 11 and 12 were amended by paragraphs 10 and 11 respectively of Schedule 4 to the Employment Act 1989 (c.38).

(**2**) 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).

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2007 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 that began on 6th April 2006;

(c) "the Board" means the Engineering Construction Industry Training Board(**3**);

(d) "business" means any activities of industry or commerce;

(e) "emoluments" means—

(i) all salaries, fees and wages;

(ii) all gratuities or other profits or incidental benefits of any kind obtained by an employee other than pension contributions;

(iii) anything else that constitutes an emolument of the relevant employment;

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

(g) "the engineering construction industry" means any one or more of the activities which are specified in paragraph 1 of Schedule 1 to the industrial training order (but subject to paragraph 2 of that Schedule) as activities of the engineering construction industry;

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

(i) "labour-only agreement" means any agreement or arrangement, either written or oral, not being a contract of service or apprenticeship, made between an employer and any other person or persons, the purpose of which is wholly or mainly the provision of services (including any incidental use of tools) of such person or persons or of any other person or persons to the employer in his trade or business;

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

(k) "the levy period" means the period starting with the day on which this Order comes into force and ending on 31st December 2007;

(l) unless the context requires otherwise, "notice" means a notice in writing;

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

(n) "site employee" means an employee (including a person employed 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) of Schedule 1 to the industrial training order are carried on.

(2) Any reference in this Order to an establishment that starts to carry on business or that ceases to carry on business does not apply where the location of the establishment is changed but its business is continued wholly or mainly at or from the new location, or where the suspension of activities is of a temporary or seasonal nature.

(**3**) 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).

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

(3) For the purposes of this Order in the case of an establishment that is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, the person or persons carrying on the establishment on the last day of the levy period is to be treated as the employer of any person who was employed at any time in the base period at or from the establishment under a contract of service or of apprenticeship or under a labour-only agreement and that employer is to be assessed to levy in accordance with article 4.

(4) This Order applies to the activities of the engineering construction industry in so far as they are carried out in Great Britain or in so far as they are carried out in relation to employment to which the Employment Protection (Offshore Employment) Order 1976(**5**) applies.

Meaning of "leviable establishment"

3.—(1) For the purposes of this Order "leviable establishment" means—

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

(b) an establishment (not falling within sub-paragraph (a)) at or from which persons were employed during the necessary period in any activities such as are mentioned in paragraph 1(a)(ii) of Schedule 1 to the industrial training order (but subject to paragraph 2 of that Schedule).

(2) In this article "the necessary period" means—

(a) unless sub-paragraph (b) applies, 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 an establishment that started to carry on business in the base period, a period (which need not be continuous) falling within the base period 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 business began and ending on the last day of the base period.

Imposition of levy

4.—(1) The levy on an employer is assessed in accordance with this article.

(2) The Board must assess the levy separately in respect of each leviable establishment of an employer, but in agreement with the employer one assessment may be made in respect of any number of such establishments, in which case those establishments are to be treated for the purposes of that assessment as constituting one establishment.

(3) Subject to the exemptions in article 5 the amount to be assessed by way of levy in respect of each leviable establishment is the aggregate of—

1.5 per cent of (**A** + **B** – **C**) (disregarding any negative total) and

0.18 per cent of (**D** + **E** – **F**) (disregarding any negative total), where—

A is the total emoluments of all the persons who are site employees employed by the employer in the base period at or from the establishment

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 him 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

(**5**) S.I. 1976/766. The whole of the Industrial Training Act 1982 has been applied by the Employment Protection (Offshore Employment) Order 1976, to the extent and for the purposes specified in that Order, to or, as the case requires, in relation to person in employment to which that Order applies (article 3 of and Part I of the Schedule to the Order). Relevant amendments have been made to the Order by S.I. 1977/588 and 1981/208.