Draft Order laid before Parliament under section 12(6) of the Industrial Training Act 1982, for approval by each House of Parliament. This replaces a previous Draft Order laid on 18thDecember 2003 and is being issued free of charge to all known recipients of that Order.

DRAFT STATUTORY INSTRUMENTS

2004 No.

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Engineering Construction Board) Order 2004

Made - - - -

Coming into force - -

Whereas the Engineering Construction Industry Training Board has submitted proposals for the raising and collection of a levy under section 11(1) of the Industrial Training Act 1982 (**1**) ("the 1982 Act");

And whereas in pursuance of section 11(3) of the 1982 Act the proposals include provision for the exemption from the levy of employers who, in view of the small number of their employees, ought in the opinion of the Secretary of State to be exempted from it;

And whereas certain of the proposals are made in pursuance of section 11(4)(b) of the 1982 Act and the Secretary of State is satisfied that those proposals fall within section 11(5)(b) of that Act and that they are necessary as mentioned in the said section 11(5), and that the condition mentioned in section 11(6)(b)(i) of the 1982 Act is satisfied in the case of those relevant proposals;

And whereas the Secretary of State estimates that the amount which will be payable by virtue of the following Order by certain employers in the engineering construction industry will exceed an amount which he estimates as equal to one per cent. of relevant emoluments, but considers such amount appropriate in the circumstances, and the following Order therefore falls within section 11(7)(b) of the 1982 Act;

And whereas the Secretary of State has consulted the Scottish Ministers pursuant to section 88(2) of the Scotland Act 1998(**2**);

And whereas a draft of the following Order was laid before Parliament in accordance with section 12(6) of the 1982 Act and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 11(2), 12(2)(3) and (4) of the 1982 Act, hereby makes the following Order:

(**1**) 1982 c. 10; sections 11 and 12 were amended by the Employment Act 1989 (c. 38), Schedule 4, paragraphs 10 and 11 respectively.

(**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; see 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 Board) Order 2004 and shall come into force on the seventh 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 commenced on 6 April 2003;

(c) "the Board" means the Engineering Construction Industry Training Board (**3**), formerly known as the Engineering Industry Training Board;

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

(e) "emoluments" means all salaries, fees, wages, perquisites and profits whatsoever, except for pensions;

(f) "employer" (except in article 4(4)(a)(i) below) 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 the Schedule 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 commencing with the day on which this Order comes into force and ending on 31st August 2004;

(l) "notice" means a notice in writing;

(m) "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, head office staff are excluded;

(2) Any reference in this Order to an establishment that commences to carry on business or that ceases to carry on business shall not be taken to 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) 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 day upon which this Order comes into force shall be treated as the employer of any person who was employed at any time in the base period at or from

(**3**) The Board was re-named by S.I. 1991/1305.
(**4**) S.I. 1964/1086, amended by S.I. 1991/1305.

the establishment under a contract of service or of apprenticeship or under a labour-only agreement and that employer shall be assessed to levy in accordance with article 4 below.

(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(c) of the Schedule to the industrial training order (related and administrative etc. activities) (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 was commenced and ending on the last day of the base period.

Imposition of levy

4.—(1) The levy to be imposed by the Board on employers in respect of the levy period shall be assessed in accordance with the provisions of this article.

(2) The levy shall be assessed by the Board 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 shall be treated for the purposes of that assessment as constituting one establishment.

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

A + B - C (and if A + B is less than C no levy shall be assessed)

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; and

C is the sum of all payments (including payments for the incidental use of tools) received by the employer during the base period under labour-only agreements for services rendered by him or on his behalf by site employees.

(4) For the purposes of paragraph (3)—

(**5**) S.I. 1976/766; the whole of the Industrial Training Act 1982 has been applied by the Employment Protection (Offshore Employment) Order 1976 for such purposes as are relevant to or in relation to persons in employment to which that Order applies (article 3 and Part I of the Schedule, paragraph 1); relevant amending instruments are S.I. 1977/588 and 1981/208.