Draft Order laid before Parliament under section 12(6) of the Industrial Training Act 1982 for approval by each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

1999 No.

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Board) Order 1999

Made - - - -	*1999*
Coming into force - -	*1999*

Whereas the 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 said 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 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 the said Act ("the relevant proposals") and that they are necessary as mentioned in the said section 11(5), and that the condition mentioned in section 11(6)(a) of the 1982 Act is satisfied in the case of the relevant proposals;

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

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) and 12(3) and (4) of the 1982 Act and of all other powers enabling him in that behalf, hereby makes the following Order:–

Citation and commencement

1. This Order may be cited as the Industrial Training Levy (Construction Board) Order 1999 and shall come into force on the seventh day after the day on which it is made.

(**1**) 1982 c. 10; sections 11 and 12 were amended by section 22(4) of and paragraphs 10 and 11, respectively of Schedule 4 to the Employment Act 1989 (c. 38).

Interpretation

2.—(1) In this Order unless the context otherwise requires:–

(a) "agriculture" has the same meaning as in section 109(3) of the Agriculture Act 1947(**2**) or, in relation to Scotland, as in section 85(1) of the Agricultural Holdings (Scotland) Act 1991(**3**);

(b) "assessment" means an assessment of an employer to the levy;

(c) "the Board" means the Construction Industry Training Board;

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

(e) "charity" has the same meaning as in section 506 of the Income and Corporation Taxes Act 1988(**4**);

(f) "construction establishment" means an establishment in Great Britain engaged wholly or mainly in the construction industry for a total of twenty-seven or more weeks in the period of twelve months that commenced on 6th April 1997 or, being an establishment that commenced to carry on business in the said period, for a total number of weeks exceeding one half of the number of weeks in the part of the said period commencing with the day on which business was commenced and ending on the last day thereof;

(g) "the construction industry" does not include any activities of an establishment which have been transferred from the industry of the Board to the industry of another industrial training board by one of the transfer orders, but save as aforesaid means any one or more of the activities which, subject to the provisions of paragraph 2 of the Schedule to the industrial training order, are specified in paragraph 1 of that Schedule as the activities of the construction industry or, in relation to an establishment whose activities have been transferred to the industry of the Board by one of the transfer orders, any activities so transferred;

(h) "emoluments" means all emoluments assessable to income tax under Schedule E of the Income and Corporation Taxes Act 1988 (other than pensions), being emoluments from which tax under that Schedule is deductible, whether or not tax in fact falls to be deducted from any particular payment thereof;

(i) "employer" means a person who is an employer in the construction industry at any time in the thirty-fourth levy period;

(j) "the industrial training order" means the Industrial Training (Construction Board) Order 1964(**5**);

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

(l) "the levy" means the levy imposed by the Board in respect of the thirty-fourth levy period;

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

(n) "the thirty-fourth levy period" means the period commencing with the day upon which this Order comes into force and ending on 31st March 1999;

(o) "the transfer orders" means–

(**2**) 1947 c. 48.
(**3**) 1991 c. 55.
(**4**) 1988 c. 1.
(**5**) S.I.1964/1079; relevant amending instrument is S.I. 1992/3048.

(i) the Industrial Training (Transfer of the Activities of Establishments) Order 1975(**6**);

(ii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1975(**7**);

(iii) the Industrial Training (Transfer of the Activities of Establishments) Order 1976(**8**);

(iv) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1976(**9**);

(v) the Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1976(**10**);

(vi) the Industrial Training (Transfer of the Activities of Establishments) Order (**11**);

(vii) the Industrial Training (Transfer of the Activities of Establishments) Order(**12**);

(viii) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1978(**13**);

(ix) the Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1978(**14**);

(x) the Industrial Training (Transfer of the Activities of Establishments) Order(**15**);

(xi) the Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1980(**16**);

(xii) the Industrial Training (Transfer of the Activities of Establishments) Order 1981(**17**);

(xiii) the Industrial Training (Transfer of the Activities of Establishments) Order(**18**);

(xiv) the Industrial Training (Transfer of the Activities of Establishments) Order 1990(**19**).

(2) For the purposes of this Order the following provisions shall have effect–

(a) no regard shall be had to any person employed wholly in the supply of food or drink for immediate consumption or in agriculture or who was normally working for an aggregate of less than 8 hours weekly;

(b) no regard shall be had to a company director remunerated solely by fees but, save as aforesaid, the provisions of this Order shall apply to a company director (including a person occupying the position of director by whatever name he is called) as they apply to other persons;

(c) in the case of a construction 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 period of twelve months that commenced on 6th April 1997 at or from 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 3 of this Order.

(**6**) S.I. 1975/434.
(**7**) S.I. 1975/1157.
(**8**) S.I. 1976/396.
(**9**) S.I. 1976/1635.
(**10**) S.I. 1976/2110.
(**11**) S.I. 1977/1951.
(**12**) S.I. 1978/448.
(**13**) S.I. 1978/1225.
(**14**) S.I. 1978/1643.
(**15**) S.I. 1979/793.
(**16**) S.I. 1980/1753.
(**17**) S.I. 1981/1041.
(**18**) S.I. 1985/1662.
(**19**) S.I. 1990/928.

(3) 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.

Imposition of the levy

3.—(1) The levy to be imposed by the Board on employers in respect of the thirty-fourth 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 construction 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 deemed for the purposes of that assessment to constitute one establishment.

(3) Subject to the exemptions in articles 4 and 5(1) below, the amount to be assessed by way of levy in respect of a construction establishment (being an establishment carrying on business in the thirty-fourth levy period) shall be–

(a) 0.38 per cent. of the aggregate of the emoluments plus the sum by which 2.28 per cent. of labour-only payments exceeds 2.28 per cent. of labour-only receipts; or

(b) 0.38 per cent. of the aggregate of the emoluments less the sum by which 2.28 per cent. of labour-only receipts exceeds 2.28 per cent. of labour-only payments.

(4) For the purposes of paragraph (3) above–

(a) "2.28 per cent. of labour-only payments" means the sum which (rounded down where necessary to the nearest £1) represents 2.28 per cent. of all payments (other than the payments which are not in respect of the provision for services) made to any persons by the employer during the period of 12 months that commenced on 6th April 1997 under labour-only agreements in respect of work carried out at or from the establishment;

(b) "2.28 per cent. of labour-only receipts" means the sum which (rounded down where necessary to the nearest £1) represents 2.28 per cent. of all payments (other than the payments which are not in respect of the provision for services) received by the employer during the period of 12 months that commenced on 6th April 1997 from any other employers in the construction industry under labour-only agreements in respect of work carried out at or from the establishment;

(c) "0.38 per cent. of the aggregate of the emoluments" means an amount equal to 0.38 per cent. of the aggregate of the emoluments and payments intended to be disbursed as emoluments which have been paid or are payable by the employer to or in respect of persons employed in the industry in respect of the period of 12 months which commenced on 6th April 1997.

Exemption of charities

4. A charity shall be exempt from the levy.

Exemption of small employers

5.—(1) There shall be exempt from the levy an employer in whose case the aggregate amount of–

(a) the sum of the emoluments of all the persons employed at or from the construction establishment or establishments of the employer in the period of 12 months that commenced on 6th April 1997; and

(b) all such sums (if any) as were paid in the said period by the employer to any person under a labour-only agreement at or from the said establishment or establishments,