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 (Engineering Construction Board) Order 1999

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

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 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 engineering 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), 12(3) and (4) of the 1982 Act and of all other powers enabling him in that behalf, 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.

Citation and commencement

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

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 Engineering Construction Industry Training Board(**4**), formerly known as the Engineering 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(**5**);

(f) "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;

(g) "employer" (except in article 2(2) of this Order) means a person who is an employer in the engineering construction industry at any time in the thirty-fifth levy period;

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

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

(j) "engineering construction activities" means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the industrial training order, are activities of the engineering construction industry by virtue of paragraph 1(a) of that Schedule and any related or administrative activities of a kind to which paragraph 1(c) of that Schedule applies undertaken in relation thereto;

(k) "establishment" means an engineering construction establishment or an establishment comprising engineering construction activities;

(l) "establishment comprising engineering construction activities" means an establishment at or from which persons were employed in the thirty-fifth base period in engineering construction activities for a total of twenty-seven or more weeks, or being an establishment that commenced to carry on business in the said base period, for a total number of weeks exceeding one half of the number of weeks in the part of the said base period commencing

(**2**) 1947 c. 48.
(**3**) 1991 c. 55.
(**4**) The Board was re-named by S.I.1991/1305.
(**5**) 1988 c. 1.

with the day on which business was commenced and ending on the last day thereof, but does not include an engineering construction establishment;

(m) "the industrial training order" means the Industrial Training (Engineering Board) Order 1964(**6**);

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

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

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

(q) "site employee" means an employee 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;

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

(s) "the thirty-fifth base period" means the period of twelve months that commenced on 6th April 1998.

(2) In reckoning the amount of emoluments for the purpose of this Order no regard shall be had to the emoluments of any person–

(a) undergoing a course of training as a seagoing officer or rating under an agreement in writing with an employer in the shipping industry, or with any organisation of employers in that industry or with any association of such organisations;

(b) engaged wholly in agriculture; or

(c) engaged wholly in the supply of food or drink for immediate consumption;

(d) holding office as a company director and having no contract of service.

(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.

(4) 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 period of twelve months that commenced on 6th April 1998 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.

(5) 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 for such purposes as are relevant to or in relation to employment to which the Employment Protection (Offshore Employment) Order 1976(**7**) applies.

(**6**) S.I. 1964/1086, amended by S.I. 1991/1305.
(**7**) 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 1 of the Schedule, paragraph 1); relevant amending instruments are S.I. 1977/588, 1981/208.

Imposition of levy

3.—(1) The levy to be imposed by the Board on employers in respect of the thirty-fifth 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 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 provisions of this article the levy on each employer shall be assessed by the Board in respect of the emoluments and labour-only payments paid by him to all persons to whom paragraph (4) below applies employed by the employer in the thirty-fifth base period at relevant establishments of his (that is to say, any engineering construction establishment or establishments, or any establishment or establishments comprising engineering construction activities other than an establishment or establishments of an employer who is exempt from the levy by virtue of articles 4 and 5 of this Order), and the amount of the levy shall be as specified in paragraph (5) of this article.

(4) This paragraph applies to–

(a) in the case of an engineering construction establishment, all persons employed;

(b) in the case of an establishment comprising engineering construction activities, all persons employed wholly or mainly in engineering construction activities.

(5) The levy assessed in respect of any establishment to which paragraph (3) of this article applies shall be the aggregate of–

(a) an amount equal to 1.5 per cent. of the sum of the emoluments of all site employees (excluding those employed under a labour-only agreement) employed in the thirty-fifth base period at or from the establishment by the employer where that sum exceeds £75,000; and

(b) an amount equal to the sum (if any) by which 1.5 per cent. of the labour-only payments for site employees exceeds 1.5 per cent. of the labour-only receipts for those employees; and

(c) an amount equal to 0.18 per cent. of the sum of the emoluments of all employees (other than site employees and those employed under a labour-only agreement) employed in the thirty-fifth base period at or from the establishment by the employer; and

(d) an amount equal to the sum (if any) by which 0.18 per cent. of the labour-only payments for off-site employees (that is to say of all employees other than site employees) exceeds 0.18 per cent. of the labour-only receipts for those employees.

(6) In paragraph (5) of this article–

(a) "labour-only payments" means the sum which (rounded down where necessary to the nearest £1) represents all payments (including payments for the incidental use of tools) made by the employer during the thirty-fifth base period under the labour-only agreements for services rendered to him in his trade or business carried out at or from the establishment;

(b) "labour-only receipts" means the sum which (rounded down where necessary to the nearest £1) represents all payments (including payments for the incidental use of tools) received by the employer during the thirty-fifth base period from any other employers in the engineering construction industry under the labour-only agreements for services rendered by him or on his behalf in his trade or business carried out at or from the establishment.

Exemption of charities

4. A charity shall be exempt from the levy.