STATUTORY RULES OF NORTHERN IRELAND

2004 No. 268

INDUSTRIAL TRAINING

Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2004

Made - - - -	*24th June 2004*
Coming into operation	*31st August 2004*

Whereas proposals made by the Construction Industry Training Board(**1**) ("the Board") for the raising and collection of a levy have been submitted to, and approved by, the Department for Employment and Learning(**2**) ("the Department") under Article 23(1) of the Industrial Training (Northern Ireland) Order 1984(**3**) ("the Order of 1984");

And whereas the Department estimates that the amount which will be payable by any employer in the construction industry by virtue of this Order does not exceed an amount which the Department estimates is equal to one per cent. of the relevant earnings being the aggregate of the earnings and payments intended to be disbursed as earnings which have been paid or are payable by any such employer to or in respect of persons employed in the industry, in respect of the period specified, in the levy proposals as relevant, that is to say the period hereafter referred to in this Order as the "fortieth base period" or, where an election is made, as the "alternative fortieth base period";

And whereas in pursuance of Article 23(3) of the Order of 1984 the said proposals include provision for the exemption from the levy of employers who, in view of the small amount of the relevant earnings, ought in the opinion of the Department to be exempted from it;

And whereas in pursuance of Article 25(6)(a) of the Order of 1984 the levy proposals include proposals that no remission be given to employers in the industry;

And whereas the levy proposals include provision that the amount of the non-remissible part of the levy will exceed two-tenths of one per cent. of the relevant earnings;

And whereas in pursuance of Article 23(6) of the Order of 1984 the Department is satisfied and the relevant organisations consider, after taking reasonable steps to ascertain the views of the persons they represent, that the levy proposals are necessary to encourage adequate training in the industry;

And whereas Article 23(7)(b) of the Order of 1984 is applicable;

Now, therefore, the Department in exercise of the powers conferred by Articles 23(2) and (3) and 24(3) and (4) of the Order of 1984, and now vested in it, and of every other power enabling it in that behalf, hereby makes the following Order: –

(**1**) Established under the Construction Board Order

(**2**) Formerly known as the Department of Higher and Further Education, Training and Employment; renamed the Department for Employment and Learning by the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15

(**3**) S.I.1984/1159 (N.I. 9); functions under the Industrial Training (Northern Ireland) Order 1984 were transferred to the Department of Higher and Further Education, Training and Employment by S.R. 1999 No. 481 Article 4(b) and Schedule 2 Part II

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Industrial Training Levy (Construction Industry) Order (Northern Ireland) 2004 and shall come into operation on 31st August 2004.

(2) In this Order –

"assessment" means an assessment of an employer to the levy;

"business" means any activities of industry or commerce;

"Construction Board Order" means the Industrial Training (Construction Board) Order (Northern Ireland) 1964(**4**);

"construction establishment" means an establishment in Northern Ireland engaged wholly or mainly in the construction industry for a total of twenty-seven or more weeks in the fortieth base period, or being an establishment that commenced to carry out business in the fortieth base 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; or where an election is made, in any part of the alternative fortieth base period;

"election" means an election made in accordance with the provisions of Article 2(4), by an employer to pay the levy in respect of the relevant earnings of persons employed at or from a construction establishment during the alternative fortieth base period;

"construction industry" means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the Construction Board Order are specified in paragraph 1 of that Schedule as the activities of the construction industry;

"earnings" means earnings as defined in Section 62 of the Income Tax (Earnings and Pensions) Act 2003(**5**) which are chargeable to tax under Part 2 of that Act; and all other payments made under a contract for service or otherwise than under a contract;

"employer" means a person who is an employer in the construction industry at any time in the fortieth levy period;

"levy" means the levy imposed by the Board in respect of the fortieth levy period;

"notice" means a notice in writing;

"fortieth base period" means the year that commenced on 6th April 2003 and the "alternative fortieth base period" means the year commencing on 6th April 2004; and

"fortieth levy period" means the year commencing on 1st September 2004.

(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 and assessment of the levy for the fortieth levy period

2.—(1) The levy to be imposed on employers 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

(**4**) S.R. & O. (N.I.) 1964 No. 145 as amended by S.R. & O. (N.I.) 1967 No. 236, S.R. 1994 No. 312 and S.R. 1997 No. 45
(**5**) Income Tax (Earnings and Pensions) Act 2003 c. 1

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 amount of the levy imposed on an employer in respect of a construction establishment shall be equal to 0.7 per cent. of the relevant earnings paid and payable to or in respect of all persons employed by the employer at or from that establishment –

(a) in the fortieth base period; or

(b) where an election is made in accordance with the provisions of paragraph (4) in the alternative fortieth base period,

and no remission of the levy shall be given to an employer.

(4) An election shall be made in writing and shall be in such form and made within such period as the Board may with the approval of the Department determine.

(5) There shall be exempt from the levy –

(a) an employer in relation to whom the relevant earnings paid or payable to or in respect of all persons in his employment in the fortieth base period are less than £15,000 or in the case of two or more construction establishments where the relevant earnings of all the persons employed in all such establishments are less than £15,000; or

(b) an employer who has made an election in accordance with the provisions of paragraph (4) in relation to whom the relevant earnings paid or payable to or in respect of all persons in his employment in the alternative fortieth base period are less than £15,000 or in the case of two or more construction establishments where the relevant earnings of all the persons employed in all such establishments are less than £15,000.

(6) The amount of the levy imposed in respect of a construction establishment that ceases to carry on business in the fortieth levy period shall be in the same proportion to the amount that would otherwise be due under paragraph (3) as the number of days between the commencement of the said levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the said levy period.

(7) In reckoning the amount of the relevant earnings for the purposes of this Article no regard shall be had to the earnings of any person engaged wholly in the supply of food or drink for immediate consumption.

Assessment notices

3.—(1) The Board shall serve an assessment notice on every employer assessed to the levy but one notice may comprise two or more assessments.

(2) Where an election has been made, the Board may serve two or more assessment notices in respect of any establishment but –

(a) the interval between such assessment notices shall be not less than four months; and

(b) the amount of the assessment included in each such notice shall not exceed the portion of the levy which has accrued at the date of the notice, and each notice shall specify the period to which the assessment included therein relates.

(3) The amount of any assessment payable under an assessment notice shall be rounded down to the nearest £1.

(4) An assessment notice shall state the Board's address for the service of a notice of appeal or of an application for an extension of time for appealing.

(5) An assessment notice may be served on the person assessed to the levy either by delivering it to him personally or by leaving it, or sending it to him by post, at his last known address or place of business in the United Kingdom, or, if that person is a corporation, by leaving it, or sending it by post to the corporation, at such address or place of business or at its registered or principal office.