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STATUTORY INSTRUMENTS

2022 No. 492

EMPLOYMENT AND TRAINING

The Industrial Training Levy (Construction Industry Training Board) Order 2022

Made - - - -	*28th April 2022*
Coming into force - -	*29th April 2022*

The Secretary of State makes this Order in exercise of the powers conferred by section 11(2) and section 12(3) and (4) of the Industrial Training Act 1982(**a**) ("the Act").

This Order is made to give effect to levy proposals submitted by the Construction Industry Training Board(**b**) pursuant to section 11(1) of the Act which, as required by section 11(3) of the Act, included proposals for the exemption of employers employing a small number of employees.

The levy proposals included proposals for securing that no exemption certificates(**c**) will be issued by the Board and the amount of levy payable by employers will exceed 0.2% of their relevant emoluments in respect of the base period for each levy period. Accordingly, this Order falls within section 11(4) and (5) of the Act.

In relation to the requirements set out in section 11(5) of the Act, the Secretary of State is satisfied that the levy proposals are necessary to encourage adequate training in the industry and the condition in section 11(6)(a) of the Act is met.

The Secretary of State estimates that the levy to be paid by at least some employers in the industry will exceed 1% of their relevant emoluments in respect of the base period for each levy period 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 has consulted the Scottish Ministers as required by section 88(2) of the Scotland Act 1998(**d**).

(**a**) 1982 c. 10 ("the 1982 Act"). Sections 11 and 12 were amended by paragraphs 10 and 11 of Schedule 4 to the Employment Act 1989 (c. 38) and by sections 24 and 25 of, and paragraphs 3 and 4 of Schedule 1 to, the Further Education and Training Act 2007 (c. 25). Section 12(4) was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

(**b**) The Board was established under the Industrial Training (Construction Board) Order 1964 (S.I. 1964/1079) as amended by S.I. 1992/3048.

(**c**) Within the meaning of section 14 of the 1982 Act.

(**d**) 1998 c. 46. The 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).

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In accordance with section 12(6) of the Act, a draft of this Order has been laid before, and approved by resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Industrial Training Levy (Construction Industry Training Board) Order 2022 and comes into force on the day after the day on which it is made.

(2) This Order extends to England and Wales and Scotland.

Interpretation

2.—(1) In this Order—

(a) "assessment" means an assessment of an employer to the levy in respect of a construction establishment;

(b) "base period" is to be construed in accordance with article 4;

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

(d) "construction establishment" has the meaning given in article 5(2);

(e) "the construction industry" means the activities of the construction industry as defined by Schedule 1 to the Industrial Training (Construction Board) Order 1964(**a**) read together with the Orders listed in the Schedule to this Order;

(f) "contract payment" has the meaning given in article 7(2);

(g) "emoluments" means—

(i) salaries, fees and wages excluding fees which are paid to a company director who is remunerated solely by fees;

(ii) any gratuity or other profit or incidental benefit of any kind obtained by an employee, if it is money or money's worth, other than pensions contributions;

(iii) anything else that constitutes, or is intended to constitute, earnings of the relevant employment;

(h) "employer" means an employer in the construction industry;

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

(j) "levy period" is to be construed in accordance with article 3(1);

(k) "the relevant base period" means the base period, in respect of a particular levy period, by reference to which the relevant emoluments are to be calculated;

(l) "the relevant levy period", in relation to a levy, means the particular levy period in respect of which the levy is imposed;

(m) "the relevant part of a contract payment" has the meaning given in article 7(3).

(2) In this Order, references to a construction establishment starting or ceasing to be engaged in the construction industry do not include instances where—

(a) a construction establishment starts to be engaged in the construction industry after, or ceases to be engaged in that industry because of, a suspension of activities of a temporary or seasonal nature; or

(b) the location of a construction establishment changes but the establishment continues to be engaged in the construction industry at or from the new location.

Imposition of the levy

3.—(1) A levy is to be imposed on employers in respect of each of the following levy periods—

(**a**) S.I. 1964/1079 as amended by S.I. 1992/3048.

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(a) the period beginning with the day on which this Order comes into force and ending with 25th May 2022 (in this Order referred to as "the first levy period");

(b) the period beginning with 1st January 2023 and ending with 31st March 2023 (in this Order referred to as "the second levy period"); and

(c) the period beginning with 1st January 2024 and ending with 31st March 2024 (in this Order referred to as "the third levy period").

(2) Subject to article 9, a person is liable to pay an amount by way of levy in respect of a levy period if that person is an employer at any time in that period.

Base periods

4.—(1) The base period for the first levy period is the period of twelve months beginning with 6th April 2020.

(2) The base period for the second levy period is the period of twelve months beginning with 6th April 2021.

(3) The base period for the third levy period is the period of twelve months beginning with 6th April 2022.

Construction establishments to be assessed

5.—(1) The Board must assess the amount of levy to be paid in respect of each construction establishment of an employer in respect of each levy period.

(2) In this Order, "construction establishment" means any particular establishment of the employer engaged wholly or mainly in the construction industry for the necessary period.

(3) For the purposes of paragraph (2), "the necessary period" means—

(a) a period (which need not be continuous) consisting of a total of 27 or more weeks falling within the relevant base period; or

(b) in the case of a construction establishment which started being engaged in the construction industry during the relevant base period, a period (which need not be continuous)—

(i) falling within the relevant base period; and

(ii) consisting of a total number of weeks exceeding one half of the number of weeks in the part of the relevant base period beginning with the day on which the construction establishment started being engaged in that industry and ending with the last day of the relevant base period.

(4) An employer who on the first day of the levy period owns or otherwise has responsibility for a construction establishment is to be treated as the employer of all persons employed at or from that establishment during the relevant base period.

Treatment of construction establishments as one establishment

6. The Board and an employer may agree that two or more construction establishments of that employer be treated as one construction establishment for the purposes of assessment of the amount of levy payable.

Assessment of the amount of levy

7.—(1) The amount of levy to be assessed in respect of each construction establishment for each levy period is—

$$A + B$$

where

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A is an amount equal to 0.35% of all emoluments (other than the relevant part of all contract payments) which have been paid or are payable by the employer to, or in respect of, persons employed by the employer at or from the construction establishment during the relevant base period; and

B is an amount equal to 1.25% of the relevant part of all contract payments made by the employer to, or in respect of, persons employed by the employer at or from the construction establishment during the relevant base period.

(2) "Contract payment" has the meaning given to it by section 60 of the Finance Act 2004(**a**).

(3) The relevant part of a contract payment is the part of the contract payment in respect of which the relevant percentage is applied for the purpose of section 61 of the Finance Act 2004.

(4) Where an amount described as "A" or "B" is not a whole number of pounds, the amount must be rounded down to the nearest £1.

(5) Where a construction establishment ceases to be engaged in the construction industry during a levy period, the amount of levy imposed in respect of the construction establishment for that period is to be in the same proportion to the amount that would otherwise be due under this article as the number of days between the commencement of the levy period and the date of the cessation of engagement (both dates inclusive) bears to the number of days in the levy period.

Total amount of levy

8.—(1) Subject to paragraph (2), the total amount of levy to be paid by an employer in respect of the relevant levy period is the aggregate amount of levy assessed as payable for all construction establishments of the employer for that period.

(2) The total amount of levy to be paid by an employer under paragraph (1) is to be reduced by 50% if the aggregate amount of—

(a) all emoluments (other than the relevant part of all contract payments) which have been paid or are payable by the employer to, or in respect of, all the persons employed by the employer at or from the construction establishments during the relevant base period; and

(b) the relevant part of all contract payments made by the employer at or from the construction establishments during the relevant base period,

is £120,000 or more and less than £400,000.

Exemptions

9.—(1) An employer is exempt from payment of the levy in respect of the relevant levy period if the aggregate amount of—

(a) all emoluments (other than the relevant part of all contract payments) which have been paid or are payable by the employer to, or in respect of, all the persons employed by the employer at or from the construction establishments during the relevant base period; and

(b) the relevant part of all contract payments made by the employer at or from the construction establishments during the relevant base period,

is less than £120,000.

(2) A body of persons or trust established for charitable purposes only is exempt from the levy.

Assessment notices

10.—(1) The Board must serve an assessment notice on every employer assessed to the levy.

(2) An assessment notice may comprise two or more assessments.

(**a**) 2004 c.12. Chapter 3 of Part 3 of the Finance Act 2004 makes provision for the Construction Industry Scheme under which certain payments under construction contracts are made under deduction of sums on account of tax. Section 60 was amended by paragraph 20 of Schedule 1 to the Finance Act 2020 (c.14).

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(3) An assessment notice must state—

(a) the relevant levy period to which the assessment notice relates;

(b) the total amount of levy payable by the employer under the assessment notice in respect of the relevant levy period;

(c) where the assessment notice comprises two or more assessments, the total amount of levy payable by the employer in respect of each assessment;

(d) whether each assessment is based on—

(i) information submitted by the employer to the Board; or

(ii) a reasonable estimate by the Board of the employer's liability to levy; and

(e) the methods of payment of the levy which the Board will accept.

(4) The Board may—

(a) withdraw any assessment contained in an assessment notice in accordance with article 11; or

(b) amend any assessment contained in an assessment notice in accordance with article 12.

Withdrawal of assessments

11.—(1) In order to withdraw an assessment, the Board must serve a withdrawal notice on the relevant employer.

(2) A withdrawal notice must make clear which assessment is withdrawn.

(3) Where an assessment is withdrawn, the assessment notice has effect as if the assessment withdrawn by the Board had not been included in that assessment notice.

Amendment of assessments

12.—(1) In order to amend an assessment, the Board must serve an amended assessment notice on the relevant employer.

(2) An amended assessment notice must—

(a) comply with the requirements for an assessment notice specified in article 10(3); and

(b) make clear which assessment is amended.

Service of notices

13. A notice under article 10, 11 or 12 must be served on an employer assessed to the levy by—

(a) delivering the notice to the employer personally;

(b) delivering the notice to the employer's last known address, place of business or registered office;

(c) sending the notice by post to the employer's last known address, place of business or registered office; or

(d) where the employer has notified the Board of an e-mail address at which the employer is content to accept service, sending an electronic copy of the notice to that e-mail address.

Time at which payment becomes due and recoverable

14.—(1) The amount of levy payable under an assessment notice is due and payable by the employer one month after service of the assessment notice, unless paragraph (2) or (3) applies.

(2) Where the Board has withdrawn an assessment under article 11, the amount of levy in respect of that assessment is no longer due and payable.

(3) Where the Board has amended an assessment in accordance with article 12—

(a) if the amount of levy in respect of that assessment has been increased—

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(i) the amount of the assessment prior to amendment remains due and payable one month after service of the assessment notice; and

(ii) the additional amount of the assessment is due and payable one month after service of the amended assessment notice;

(b) if the assessment has been reduced, the amended amount of the assessment is due and payable one month after service of the assessment notice.

(4) Any amount payable by an employer by way of the levy—

(a) is not recoverable by the Board during any period in which that employer has pending either—

(i) an appeal against the levy(**a**); or

(ii) a request to allow more time to appeal;

(b) is otherwise recoverable once it becomes due.

Time to appeal

15. For the purposes of section 12(4) of the Industrial Training Act 1982(**b**), the period of time within which an employer assessed to the levy may appeal to an employment tribunal against the assessment is—

(a) one month beginning with the date of service of the assessment notice;

(b) where the Board has served an amended assessment notice under article 12, one month beginning with the date of service of the amended assessment notice;

(c) such further time as the Board may allow; or

(d) such further time as an employment tribunal may allow where the Board has not allowed an extension of time for appealing.

Certificate of payment

16.—(1) An employer may request a certificate as evidence that the employer has paid all sums due under—

(a) an assessment notice; or

(b) an amended assessment notice.

(2) The Board must issue a certificate to an employer when—

(a) the Board has received a request for a certificate from an employer; and

(b) all sums due under the relevant notice have been paid by that employer.

(3) The certificate must state—

(a) the total amount of levy paid by the employer; and

(b) that no further sums are due from the employer in respect of the relevant notice.

Alex Burghart
Parliamentary Under Secretary of State
Department for Education

28th April 2022

(**a**) Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (S.I. 2013/1237) (as applied by paragraph 104 of that Schedule) sets out the rules of procedure that apply in relation to appeals against an assessment to levy. There are amendments to that Schedule but none is relevant.

(**b**) Section 12(4) was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

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SCHEDULE

Article 2(1)

TRANSFER ORDERS

The Industrial Training (Transfer of the Activities of Establishments) Order 1975(**a**)

The Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1975(**b**)

The Industrial Training (Transfer of the Activities of Establishments) Order 1976(**c**)

The Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1976(**d**)

The Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1976(**e**)

The Industrial Training (Transfer of the Activities of Establishments) Order 1977(**f**)

The Industrial Training (Transfer of the Activities of Establishments) Order 1978(**g**)

The Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1978(**h**)

The Industrial Training (Transfer of the Activities of Establishments) (No. 3) Order 1978(**i**)

The Industrial Training (Transfer of the Activities of Establishments) Order 1979(**j**)

The Industrial Training (Transfer of the Activities of Establishments) (No. 2) Order 1980(**k**)

The Industrial Training (Transfer of the Activities of Establishments) Order 1981(**l**)

The Industrial Training (Transfer of the Activities of Establishments) Order 1985(**m**)

The Industrial Training (Transfer of the Activities of Establishment) Order 1990(**n**)

(**a**) S.I. 1975/434.
(**b**) S.I. 1975/1157.
(**c**) S.I. 1976/396.
(**d**) S.I. 1976/1635.
(**e**) S.I. 1976/2110.
(**f**) S.I. 1977/1951.
(**g**) S.I. 1978/448.
(**h**) S.I. 1978/1225.
(**i**) S.I. 1978/1643.
(**j**) S.I. 1979/793.
(**k**) S.I. 1980/1753.
(**l**) S.I. 1981/1041.
(**m**) S.I. 1985/1662.
(**n**) S.I. 1990/928.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to levy proposals of the Construction Industry Training Board ("the Board") which were submitted to the Secretary of State for Education under section 11 of the Industrial Training Act 1982 (c. 10) ("the Act").

The levy proposals were for the imposition of a levy on employers engaged wholly or mainly in the construction industry for the purpose of raising money towards the Board's expenses.

The Board must calculate the amount of levy due in respect of each construction establishment of an employer in accordance with article 7. This calculation is carried out with reference to the base periods in article 4. The total amount of levy payable by the employer is the aggregate amount of levy for all of the employer's construction establishments. If in accordance with article 7 the aggregate amount of the relevant part of all contract payments, and emoluments (other than the relevant part of all contract payments), is £120,000 or more but less than £400,000 in any relevant levy period then a 50% reduction will apply for that period (article 8). If the aggregate amount is less than £120,000, then the employer will be exempt from paying the levy for the relevant levy period (article 9).

An employer assessed to the levy will receive a written assessment notice from the Board setting out the amount of levy payable by that employer (article 10). Payment of the levy must usually be made within one month of service of the assessment notice by the Board (article 14). An assessment notice may be withdrawn by the Board and the Board may also serve amended assessment notices (articles 11 and 12).

An employer assessed to levy may appeal against that assessment. An appeal must normally be made within one month of the date of service of the relevant assessment notice by the Board (article 15).

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Education, Sanctuary Buildings, 20 Smith Street, Westminster, London SW1P 3BT and is annexed to the Explanatory Memorandum which is available alongside the instrument on the www.legislation.gov.uk website.