

EXPLANATORY MEMORANDUM TO
THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order will enable the Construction Industry Training Board (CITB) to raise and impose a levy on employers in the construction industry. This Order sets out the rate and exemptions from that levy.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments]

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 Section 11 of the Industrial Training Act 1982 (the ITA) enables an industrial training board to submit, to the Secretary of State, proposals for the raising and collection of a levy to be imposed for the purpose of meeting the board's expenses. The levy is to be imposed in accordance with an order made by the Secretary of State. The Order will give effect to levy proposals submitted to the Secretary of State by CITB.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales and Scotland.
5.2 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

- 6.1 The Minister of State for Skills and Apprenticeships has made the following statement regarding Human Rights:

“In my view the provisions of the Industrial Training Levy (Construction Industry Training Board) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Industrial Training Boards (ITBs) are set up under the ITA to ensure that the quantity and quality of training are adequate to meet the needs of the industries for which they were established.
- 7.2 There are currently ITBs covering the construction, engineering construction, and film sectors. The three ITBs are Non-Departmental Public Bodies. The CITB, to which this order relates, provides a wide range of services and training initiatives including: setting occupational standards; delivering apprenticeships, funding strategic industry initiatives and paying direct grants to employers who carry out training to approved standards.
- 7.3 Employers in the construction sector have consistently supported statutory underpinning for their training arrangements. They believe that incentivising employers in the industry to train their direct and subcontracted workforce helps to develop a national pool of labour, collectively funded by all employers, and is the only way the industries' skill needs can be met. There remains a serious and distinct market failure for skills in the construction industry. There is a prevalence of SME employers, approximately 99% of all registered businesses, and project based work. Workers are also often not directly employed, and even where they are, there is a risk that they will be poached by a competitor who is not investing in skills, or that they will have to be laid off if there is an economic downturn. Training is often left to small employers and individuals, who can find it hard to fund and access training. These findings have recently been re-confirmed in Mark Farmer's report for the Construction Leadership Council "Modernise or Die", and government's review of Industry Training Boards.
- 7.4 The ITA contains provision for a levy to be imposed on employers to finance an ITB's activities. It is for the ITB to make proposals for the rate of levy for the industry it covers and for the Secretary of State to make an order giving effect to the proposals.
- 7.5 This Order gives effect to proposals submitted by the CITB for levies to be collected by them relating to levy periods in 2018, 2019 and 2020. Levy rates are developed by the employer members of the ITB through a 'Levy Working Party' in the light of CITB's policies and plans. The levy rates are set out in article 7 of this instrument for different categories of employees. There is no ceiling to the amount of levy paid by an employer which is calculated by reference to the emoluments paid by them to their workers (broadly these are salaries, fees and wages). CITB have proposed to continue with the method for assessing the amount of levy established for the third levy period under the Industrial Training Levy (Construction Industry Training Board) Order 2015 (2015 levy order), but recognising the prevailing economic conditions and skills needs of the sector is proposing to decrease the amount of levy arising from emoluments relating to people employed by the employer from 0.5% to 0.35%. The liability for indirect employment will remain at a rate of 1.25% and CITB will continue to use information about Net Construction Industry Scheme (CIS) payments to determine this liability
- 7.6 The Order also sets out the employers on whom the levy can be imposed. This includes every employer whose main activity is included in the definition of the construction industry as set out in the ITB's founding legislation.

- 7.7 The CITB's proposals involve a levy greater than 0.2% of an employer's relevant emoluments. Consequently, to make this Order, the Secretary of State must be satisfied that the proposals are necessary to encourage adequate training in the industry and that one of three conditions is met. The condition that is relevant to the Order is that the Secretary of State must be satisfied that: i) the ITB has taken reasonable steps to obtain the views of employers who are likely to be liable to pay the levy; and ii) these employers agree that the proposals are necessary to encourage adequate training. These employers must be i) more than half in number of those likely to pay the levy and ii) likely to pay more than half in value of the total levy to be paid as a result of the order.
- 7.8 ITBs can take a range of "reasonable steps" to ascertain the views of employers. ITBs are able to ascertain the views of employers in one of four ways:
- a) By consulting the organisations which represent employers
 - b) By consulting the employer organisations and also consulting all other employers who are likely to be liable to pay levy but are not represented by organisations
 - c) By consulting the employer organisations and obtaining a sample of the views of other employers who are not represented by organisations
 - d) By sampling the views of all employers
- 7.9 It is also estimated that under the CITB's proposals, the levy to be paid by employers in the industry exceeds 1% of their relevant emoluments and consequently, the Secretary of State must consider the amount to be paid by employers in the industry appropriate in the circumstances.

Consolidation

- 7.10 None.

8. Consultation outcome

- 8.1 The CITB consulted formally on the levy proposals. They used option c) detailed above in 7.8 and have consulted with relevant employer organisations and sampled the views of non-represented employers. The results show that 10 of the 14 employer organisations support the levy proposals. In total this represents 23.89% of all levy paying employers in the industry and 33.49% of all levy likely to be payable by all employers. In addition, a sample survey of non-represented employers indicates that 72.4% of non-federated employers support the levy. Applying this sample percentage to the total number of non-members represents 53.05% of all levy payers that are likely to pay a further 36.24% of the forecast levy. The aggregation of the figures for employer association support and non-member support is therefore 76.94% and in value terms is 69.73% of the total levy forecast.
- 8.2 CITB has demonstrated, therefore, that it has the support of the majority of employers (76.94%) who together are likely to be liable to pay more than half of the total levy (69.73%).

9. Guidance

- 9.1 Guidance will be issued to employers by the CITB to explain how levy is assessed and how funding and grants can be claimed. General guidance is also available on-line from their website (www.citb.co.uk).

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is as follows:
- i) on business - The proposals are expected to raise £193.1m in 2018, £196.9m in 2019 and £208.1m in 2020 from the sector. The CITB annual report and accounts for 2016 showed that CITB raised £198.2m in levy and returned £205.7m in total benefits to the industry. Benefits to the industry comprise of direct returns to employers (provided through the payment of grants, college fees and other training allowances) plus indirect returns linked with the provision of trainee recruitment and selection, advice on training, the provision of schemes for recording achievements and the development of industry standards. CITB also generate income through self-funded commercial activity which enables them to return more money to the industry than raised by the levy;
 - ii) Charities are exempted from the levy.
- 10.2 The impact on the public sector is negligible as the levy is funded from the industry and CITB receives no grant in aid.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small business.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is determined by the ITA which requires levy proposals to include an exemption for small companies. The exemption level is set according to an employer's total emoluments rather than by the number of employees. This reflects the nature of the industry where employers make extensive use of subcontractors and may directly employ few people. The 2015 levy order set the exemption level at £80,000 and this threshold currently exempts around 40% of the employers in the industry. The 2015 levy order also introduced an increased taper to reduce the impact of levy for employers whose total emoluments fell between £80,000 and £399,999 by offering them a 50% levy reduction. This Order retains the exemption level at £80,000 and maintains the taper at £80,000 to £399,999. Around 15,000 small firms currently benefit from the taper.
- 11.3 Small firms who do not have to pay the levy are, however, eligible to claim grants towards the cost of training their employees.
- 11.4 The basis for the final decision on what action to take to assist small business is the proposals made by the CITB to the Secretary of State following their consultations with the industry as described in 7 and 8 above.

12. Monitoring & review

- 12.1 There are no plans to review this Order. This Order gives effect only for levies to be collected in relation to levy periods in 2018, 2019 and 2020. CITB will need to submit further proposals for the raising and collection of a levy beyond 2020 following industry consultation and approval by the Secretary of State.

13. Contact

- 13.1 Samuel Rooney at the Department for Education Telephone: 07391 738197 or email: sam.rooney@education.gov.uk can answer any queries regarding the instrument.