

**EXPLANATORY MEMORANDUM TO
THE INDUSTRIAL TRAINING LEVY (ENGINEERING CONSTRUCTION
INDUSTRY TRAINING BOARD) ORDER 2015**

2015 No. 677

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

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

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 Section 11 of the Industrial Training Act 1982 (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. That levy is to be imposed in accordance with an order made by the Secretary of State. This Order gives effect to levy proposals submitted to the Secretary of State by ECITB.

5. **Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

6. **European Convention on Human Rights**

The Minister of State for the Department for Business, Innovation and Skills and the Department for Education has made the following statement regarding Human Rights:

In my view the provisions of the Industrial Training Levy (Engineering Construction Industry Training Board) Order 2015 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. ITBs are Non-Departmental Public Bodies. The ECITB, to which this order relates, provide a wide range of services and training initiatives including: setting occupational standards; developing vocational qualifications; delivering apprenticeships and paying direct grants to employers who carry out training to approved standards.

7.3 Employers in the engineering construction sector (and also in the construction sector) have consistently supported statutory underpinning for their training arrangements for many years. They argue that the nature of their industries mean that individual employers are unable or unwilling to accept the responsibility of training their own employees. They believe that a national pool of labour, collectively funded by all employers, is the only way the industries' skill needs can be met.

Levy Arrangements

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 ECITB for levies to be collected by them in 2016, 2017 and 2018. Levy rates are decided by the employer members of the ITB in the light of the Board's policies and plans and they must cover the costs of the Board's plans for the years in question. The levy rates are set out in article 7 of this instrument for different categories of employees. There are different levy rates to be applied in respect of "site" and "off-site" (head office) employees. People engaged under contracts for services are included as "employees" under the ITA. 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). The proposed levy rates and exemption thresholds remain unchanged from the previous (2014) Order.

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 engineering construction industry as set out in the Industrial Training (Engineering Board) Order 1964 (S.I. 1964/1086) as amended by the Industrial Training (Engineering Construction Board) Order 1991(S.I. 1991/1305).

7.7 In deciding whether workers should be classed as “site” or “off-site” employees for the purposes of levy assessment, the key consideration is whether they work wholly or mainly at a place where certain activities (which are defined in the Board’s founding legislation) are carried on. For example, the activities of fabrication, assembly, construction, erection or installation of any chemical, electrical or mechanical apparatus, machinery or plant of a chemical works etc. If this is the case, they would be classed as “site” employees. People engaged in occupations such as planning or design could also be classed as “site” employees if they work wholly or mainly at a site where such activities take place. All other employees are classed as “off-site” employees for the purposes of this order.

7.8 ECITB’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 first of these conditions is that the Secretary of State must be satisfied that the ITB has taken reasonable steps to obtain the views of employers who are likely to be liable to pay the levy. Also, that 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.

7.9 As a consequence of amendments made to the ITA by the Further Education and Training Act 2007 (FETA), 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 (as previously)
- 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

7.10 ECITB sought the views of employers by using the method at (b) above.

Consolidation

7.11 None

8. Consultation outcome

8.1 The ECITB consulted with employer organisations and all other employers between June and October 2014. The results show that 69% of

levy payers are in favour of the proposals and together they will be likely to pay 77% of the value of the forecast levy.

9. Guidance

9.1 ECITB will issue guidance to employers explaining how levy is assessed and how funding and grants can be claimed. Guidance is also available on-line from their website (www.ecitb.org.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 £30m per year in 2016, 2017 and 2018 from the sector. In 2013, the ECITB raised £26m in levy and returned £28m to the industry. Returns 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. ECITB also generate some income through self-funded commercial activity which enables them to return more money to the industry than they raise in levy.

10.2 The impact on the public sector is negligible as the levy is funded from the industry and ECITB receives no grant in aid. Charities are exempted from the levy.

10.3 As the proposed levy rates remain unchanged from previous Levy Orders (2009, 2012, 2013, and 2014) an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 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 labour only subcontractors and may directly employ few people. This Order provides an exemption for an employer whose payments to site employees are less than £275,000. This equates to an employer who employs 15-20 people. The corresponding exemption level for off-site employees is £1m. In 2013, approximately 50% of establishments were exempted from paying the levy because they fell below the exclusion thresholds. Small firms are, however, eligible to claim grants towards the cost of training their employees.

11.3 The basis for the final decision on what action to take to assist small business is the proposals made by ECITB to the Secretary of State following their consultations with the industry as described in 7 and 8 above.

12. Monitoring & review

12.1 As an NDPB, ECITB's performance is subject to annual review by BIS. The ECITB will also be subject to Triennial Reviews to assess the effectiveness and value for money of the ITB model. The first Triennial Review of the ECITB is still under consideration.

13. Contact

13.1 Bruce Barclay at the Department for Business, Innovation and Skills
Tel: 0114 207 5009 or email: andrew.duncan@bis.gsi.gov.uk can answer any queries regarding the instrument.