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STATUTORY INSTRUMENTS

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**2008 No. 1639**

**EMPLOYMENT AND TRAINING**

The Industrial Training Levy  
(Reasonable Steps) Regulations 2008

<i>Made</i>	- - - -	<i>21st June 2008</i>
<i>Laid before Parliament</i>		<i>27th June 2008</i>
<i>Coming into force</i>	- -	<i>21st July 2008</i>

The Secretary of State for Innovation, Universities and Skills makes the following Regulations in exercise of the powers conferred by section 11(6B) and (6C) of the Industrial Training Act 1982<sup>(1)</sup>. In accordance with section 88(2) of the Scotland Act 1998<sup>(2)</sup> the Secretary of State has consulted the Scottish Ministers.

**Citation and commencement**

1. These Regulations may be cited as the Industrial Training Levy (Reasonable Steps) Regulations 2008 and come into force on 21st July 2008.

**Interpretation**

2. In these Regulations—

“1982 Act” means the Industrial Training Act 1982;

“board” means an industrial training board;

“independent research company” means a body carrying out research that—

(i) is not funded wholly or mainly out of public funds; and

(ii) does not have a proprietor, directors or shadow directors who are also members of the board appointing it to carry out the sample;

“levy proposals” means levy proposals which a board intends to submit to the Secretary of State under section 11(1) of the 1982 Act;

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(1) 1982 c.10 Sections 11 and 12 were amended by paragraphs 10 and 11 respectively of Schedule 4 to the Employment Act 1989 (c.38). Section 11 was also amended by sections 24 and 25 of the Further Education and Training Act 2007 (c. 25).

(2) 1998 c.46 These regulations relate to Scotland only so far as they are relevant to two industrial training boards which have been specified as cross-border public authorities 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). Those two authorities are: the Construction Industry Training Board and the Engineering Construction Industry Training Board.

“necessary” means necessary to encourage adequate training in the industry to which the levy proposals relate;

“prescribed organisation” means an organisation of the description specified in regulation 4;

“public funds” means moneys provided by Parliament;

“relevant person” means a person who is likely to be liable to make payments by way of levy in consequence of the levy proposals;

“shadow director” means a person in accordance with whose directions or instructions the directors are accustomed to act, but a person is not to be regarded as a shadow director by reason only that the directors act on advice given by that person in a professional capacity; and

“unrepresented person” means a relevant person who is not represented by a prescribed organisation.

### **Reasonable steps to ascertain views**

**3.** Any of the following combinations of steps in the Schedule constitutes “reasonable steps” for the purposes of section 11(6)(a) of the 1982 Act—

- (a) the steps in paragraphs 1 and 2;
- (b) the steps in—
  - (i) paragraphs 1 and 2; and
  - (ii) paragraph 3;
- (c) the steps in—
  - (i) paragraphs 1 and 2; and
  - (ii) paragraphs 4(b) and paragraph 5;
- (d) the steps in paragraphs 4(a) and 5.

### **Prescribed organisations**

**4.** An organisation is of a description prescribed for the purposes of section 11(6C)(b) of the 1982 Act if it represents relevant persons.

21st June 2008

*David Lammy*  
Parliamentary Under Secretary of State  
Department for Innovation, Universities and  
Skills

## SCHEDULE

Regulation 3

### REASONABLE STEPS

#### PART 1

##### ASCERTAINING VIEWS BY MEANS OF CONSULTATION

###### **Consultation of prescribed organisations**

1. It is a reasonable step for a board to consult prescribed organisations.

###### **Relevant persons represented by prescribed organisations treated as having the same view as the organisation**

- 2.—(1) Subject to sub-paragraph (2), where a board—

- (a) has consulted a prescribed organisation in relation to levy proposals; and
- (b) that organisation has formed a view as to whether the proposals are necessary,

the board may treat relevant persons represented by that organisation as having the same view about the proposals as the organisation.

(2) Sub-paragraph (1) does not apply where a prescribed organisation consulted by a board has not taken reasonably practicable steps to ascertain the views of relevant persons that it represents prior to forming its view on the levy proposals.

###### **Consultation of unrepresented persons**

3. Where a board—

- (a) has consulted prescribed organisations in accordance with paragraph 1;
- (b) is not relying on a sample obtained in accordance with Part 2; and
- (c) considers it necessary to ascertain the views of further relevant persons,

it is a reasonable step for the board to endeavour to obtain the views of all unrepresented persons.

#### PART 2

##### ASCERTAINING VIEWS BY MEANS OF A SAMPLE

###### **Persons whose views may be sampled**

4. It is a reasonable step for a board to obtain by way of a sample the views of

- (a) all relevant persons; or
- (b) all unrepresented persons, where a board has consulted prescribed organisations in accordance with paragraph 1,

provided that sample complies with paragraph 5.

###### **Samples**

5. A sample must be—

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) obtained by an independent research company;
  - (b) designed to ascertain—
    - (i) the number, expressed as a percentage, of relevant persons or unrepresented persons, as the case may be, who consider that the proposals are necessary; and
    - (ii) the value, expressed as a percentage, of the total amount of levy likely to be payable in consequence of the levy proposals by relevant persons or unrepresented persons, as the case may be, who consider that the proposals are necessary; and
  - (c) of a size sufficient to enable any conclusions reached to be stated with at least a 95% level of confidence.
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#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are the first to be made under section 11(6B) and (6C) of the Industrial Training Act 1982 (the “1982 Act”).

Section 11(6)(a) of the 1982 Act requires the Secretary of State to be satisfied that an industrial training board (“board”) has taken reasonable steps to ascertain the view of persons the Secretary of State considers likely to be liable to make payments in consequence of levy proposals submitted by that board. Section 11(6B) and (6C) enable the Secretary of State to make regulations providing what constitutes reasonable steps for the purposes of section 11(6)(a) of the 1982 Act.

Regulation 3 and the Schedule to the Regulations set out what constitute “reasonable steps” for a board to take in order to ascertain the views of those who are likely to be liable to pay a levy in consequence of levy proposals.

Regulation 4 prescribes organisations for the purposes of section 11(6C)(b) of the 1982 Act.