

EXPLANATORY MEMORANDUM TO
THE INDUSTRIAL TRAINING LEVY (REASONABLE STEPS) REGULATIONS 2008

2008 No. 1639

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

2. Description

2.1 These regulations specify what constitute “reasonable steps” for an industrial training board (ITB) to take to ascertain the degree of support for its levy proposals amongst persons likely to be liable to make payments as a result of those proposals.

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

3.1 None

4. Legislative Background

4.1 Section 11 of the Industrial Training Act 1982 (ITA) enables an ITB 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 Secretary of State would then make an order for the levy to become effective.

4.2 In certain circumstances, before such an order may be made, the Secretary of State must be satisfied that the ITB has taken reasonable steps to ascertain the views of persons who the Secretary of State thinks are likely to be liable to make levy payments as a consequence of the levy proposals. He must also be satisfied that a sufficient class of persons considers that the proposals are necessary to encourage adequate training in the industry. These 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 aggregate amount of levy likely to be paid as a consequence of the order. New requirements were introduced by the Further Education and Training Act 2007 (FETA) (which amended section 11 of the ITA) as to the methods of establishing this support. Prior to this amendment the Secretary of State needed to be satisfied that the proposals had support from organisations representative of more than half the number of persons who are likely to be liable to make levy payments which amount to more than half the total amount of levy payable.

4.3 This is the first set of regulations to be made under a new regulation-making power inserted into the ITA by the FETA. This power allows the Secretary of State to specify what constitutes “reasonable steps” for the purposes of ascertaining the level of support. They can include provisions for ITBs to take a sample of the views of persons who are likely to be liable to make levy payments, or prescribe organisations whose views may be sought by ITBs and for treating a person who is represented by such an organisation as having the same view on the levy proposals as the organisation, or for consulting all those prospective levy payers not represented there a representative organisation has also been consulted.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 What are the Industrial Training Boards and what is their purpose?

ITBs are set up to ensure that the quantity and quality of training are adequate to meet the needs of the industries for which they are established.

There are currently ITBs covering the construction and the engineering construction sectors and both are Non-Departmental Public Bodies. They provide a wide range of services and training initiatives, including setting occupational standards and developing vocational qualifications, delivering apprenticeships and paying direct grants to employers who carry out training to approved standards. An order to establish an ITB covering the film industry came into force on 7 December 2007. Its Chair was appointed on 1 March 2008 and recruitment of its Board Members is ongoing.

7.2. Levy arrangements

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. Levy orders in respect of the construction industry and engineering construction industry have been made on an annual basis for many years. No levy orders have been made as yet in respect of the film industry.

7.3 The purpose of the changes to the Industrial Training Act 1982

When originally established in the 1960s, the majority of employers in industries covered by ITBs were members of employer federations. It was therefore relatively straightforward to demonstrate that such "representative organisations" represented more than half the employers in an industry who together were likely to pay over half of the levy (the old requirement before the Secretary of State could make an order).

In recent years the membership of such organisations has declined. There was therefore a danger that, even where there is widespread support for an ITB's levy proposals, the restriction on consulting only representative organisations could result in an ITB being unable to demonstrate the necessary level of support for its proposals. It was therefore decided to amend the ITA to enable ITBs to use a range of methods, including consulting with representative organisations and taking the views of persons to be affected (including samples), to demonstrate industry support for their proposals.

7.4 Prescribed organisations

The regulations provide that organisations are “prescribed organisations” if they represent people who are likely to be liable to make levy payments.

7.5 Reasonable Steps

The following steps are “reasonable steps” for ITBs to take:

- Consulting prescribed organisations to obtain their views on the levy proposals.
- Where an ITB has consulted prescribed organisations, to treat the employers who are represented by it as having the same view about the proposals as the organisation which represents them.
- Where an ITB has consulted prescribed organisations, obtaining a sample of the views of employers in the relevant industry who are not represented by prescribed organisations and who are likely to be liable to make levy payments.
- Obtaining a sample of the views of all employers who are likely to be liable to make levy payments.
- Where an ITB has consulted prescribed organisations but has not obtained a sample of the views of employers in the relevant industry who are not represented by prescribed organisations and are likely to be liable to make levy payments, to endeavour to obtain the views of all such unrepresented persons.

7.6 Samples

The size of some industries covered by an ITB is such that to insist that it consults with all the employers in its industry would place an onerous and unnecessary administrative and financial burden on it. An ITB may choose to establish the views of the employers in its industry who are likely to be liable to pay levy by means of a representative sample.

Where an ITB chooses to sample the views of employers in its industry, the survey must be carried out by an independent research company that is neither funded wholly or mainly from public funds nor is it connected to the ITB for which it is carrying out the survey.

7.7 Consultation

As part of the preparation for the FETA bill consultations were carried out with the Construction Industry Training Board-ConstructionSkills (CITB-CS), the Engineering Construction Industry Training Board (ECITB), CITB-CS employer federations on behalf of their members and Skillset on behalf of the then emerging Film ITB for England and Wales.

The draft regulations have been shared with the ITBs and the devolved administrations in Scotland and Wales. All have expressed support for them.

8. Impact

8.1 An Impact Assessment was prepared for FETA the section of that IA covering the amendments to the ITA is attached

9. Contact

Tim Down at the Department for Innovation, Universities and Skills Tel: 0114-259-3235 or e-mail: tim.down@dius.gsi.gov.uk can answer any queries regarding the instrument.

EXTRACT FROM THE REGULATORY IMPACT ASSESSMENT WHICH ACCOMPANIED
THE FURTHER AND EDUCATION TRAINING BILL 2006

d) Amendments to the Industrial Training Act (1982)

i) *The Bill will amend the Industrial Training Act (1982) in order provide greater flexibilities for the Industrial Training Boards (ITBs) to demonstrate consensus for their levy proposals and to require ITBs to submit levy proposals for a three year period instead of annually.*

Background

Consensus for levy proposals - The ITA requires the ITBs to demonstrate to the Secretary of State that they have the support of more than 50% of employers in their industry and that these employers will collectively pay more than 50% of the levy. The Industrial Training Act requires that they demonstrate support by canvassing the views of employers via the relevant employer federations. The ITBs' ability to demonstrate support has been dropping at a steady rate for a number of years, not because employers are against the levy but because the number of employers choosing not to join federations has risen at a greater rate than those joining federations. This leaves the federations with a smaller and smaller proportion of the total vote which is currently only just above the critical 50% level.

3 year levy proposals - The ITBs currently submit levy proposals annually as this has always been usual procedure. As levy rates have stayed the same for a number of years we are amending the ITA to require the ITBs to submit levy proposals for a three year period. This reflects the need for a more strategic relationship with the ITBs, allows them to take a longer term view of their finances and reduces the bureaucratic burden especially on Parliamentary time.

Rationale for government intervention

Consensus for levy proposals - The legislation was drafted at a time when employers chose to join federations. This is no longer the case. However it does not mean that employers are not in favour of raising a levy in their industries. It is because the method which the IT Act requires them to use to demonstrate their support no longer fits with the organisational landscape of the skills and employment system in the 21st century. The legislative change will widen the consultation basis and allow the ITBs to seek the views of employers who are not members of employer federations or trade associations.

3 year levy proposals – Taking levy proposals to Parliament annually is very bureaucratic and time consuming especially as the levy rates have remained unchanged for a number of years. The legislative change will reduce the amount of Parliamentary time taken processing annual orders and reflects a more strategic approach to the levy process.

Public consultation

With Engineering Construction Industry Training Board (ECITB), Construction Industry Training Board-ConstructionSkills (CITB-CS), CITB-CS employer federations on behalf of their members and Skillset on behalf of the emerging Film ITB.

Options

The Status Quo -

Consensus for levy proposals - If we do nothing it is unlikely that the two current ITBs will be able demonstrate consensus for a levy after 2009. Although employers might not have to pay the levy, their sector may suffer skills shortages in the longer term through a lack of investment in training.

3 year levy proposals – While the ITBs are still able to raise a levy, Parliament will continue to deal with annual levy orders.

The legislative options –

Consensus for levy proposals - The intention is to amend the legislation to widen the basis on which the ITBs demonstrate consensus which will in effect maintain the current status quo. The policy and its effect on the particular industries will not change, the ITBs remit to ensure an adequate supply of trained employees remains the same and the same proportion of employers will continue to pay the levy at the same rate. There will be no increased cost in terms of levy payable, processing levy payments or claiming grants.

The ITBs have indicated that under the amended proposals they would prefer to consult more widely by using other ‘representative organisations’ in much the same way as employer federations. If employers are members of other ‘representative organisations’ under the new proposals they will have the opportunity to debate and vote on the levy proposals, whereas previously they were only able to discuss the proposals. In this scenario employers who pay the levy are unlikely to notice any change at all to the process.

However we are seeking as much flexibility as possible in demonstrating consensus and there is provision for an ITB to choose to consult some employers direct. This is likely to be in the form of a sample of employers which reduces the actual numbers involved and will probably involve completing a short questionnaire of approximately 5 minutes.

3 year levy proposals – Under a 3 year levy the requirement and accountability of an ITB in the collection and distribution of levy funds will remain the same and the ITBs will continue to be subject to rigorous scrutiny as NDPBs. The key change will be to reduce the amount of Parliamentary time taken to process annual orders.

Completion of a full RIA

The amendments to the Act do not alter the policy or affect outcome in terms of levy collection or grants payable. They are needed to alter a requirement of the Act which is no longer relevant in the current employment landscape and will in effect maintain the status quo. It is unlikely that employers who pay the levy will notice any change or be asked to spend any more of their time in contributing to the process.

The three year levy will lead to a reduction in the amount of bureaucracy involved as ITBs will only be required to consult employers every 3 years rather than annually.