

EXPLANATORY MEMORANDUM TO
THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2021

2021 No. 421

1. Introduction

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

2. Purpose of the instrument

2.1 The Industrial Training Levy (Construction Industry Training Board) Order 2021 (“the Levy Order”) enables the Construction Industry Training Board (“CITB”) to raise and collect a levy on employers in the construction industry.

2.2 The levy funds the expenses of the CITB in carrying out its functions encouraging training in the industry under the Industrial Training Act 1982.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Order is made in exercise of the powers conferred by sections 11(2), 12(3) and (4) of the Industrial Training Act 1982 (“the Act”). Section 11 of the Act enables an industrial training board to submit proposals to the Secretary of State for the raising and collection of a levy to be imposed for the purpose of meeting the board’s expenses. The Order gives effect to levy proposals submitted to the Secretary of State by CITB.

7. Policy background

What is being done and why?

Industry Training Boards Background

- 7.1 Industrial Training Boards (“ITBs”) have operated in the UK since 1964. ITBs can be established under the Act for the purpose of making better provision for the training of persons over compulsory school age for employment with the aim of addressing skills shortages due to market failures within the industry.
- 7.2 The CITB was created in 1964. The CITB 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. There is a fundamental acceptance 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.
- 7.4 The construction industry contributes 8% of the UK’s gross domestic product, employing over 2.7 million people. The construction industry is a highly fragmented sector and heavily dependent on sub-contracting, it also has an aging workforce. The UK construction industry relies on foreign labourers with the ONS reporting that 7% of UK construction labourers are EU nationals, with this figure jumping to 28% in places like London. In London, the amount of EU nationals working in construction is 15% higher than all other industries.

CITB Levy and consensus

- 7.5 The Act refers to a process (in section 11(6)(a)) under which CITB seeks the industry’s approval for its proposed levy rates and the turnover thresholds below which a construction employer will not be levied. This process of obtaining industry approval for the levy proposals is known as the “Consensus Process” and is normally completed at least every three years.
- 7.6 After careful consideration the CITB took the decision to suspend the 2020 Consensus process. This significant decision reflected the inability of the Industry and the majority of Prescribed Organisations to effectively engage in a Consensus process for what would have been a three-year Levy Order, built on a strategic plan that was unlikely to remain viable given the continuing uncertainty caused by the coronavirus (COVID-19) pandemic and the potential for a significant recession. As a result of this, the CITB put forward proposals for a one-year order.
- 7.7 The result of CITB’s decision to suspend the Consensus process for 12 months is that the CITB put forward proposals under Section 11 (6)(b) of the Act.

The Levy Order

- 7.8 This Order gives effect to CITB’s proposals for a levy to be imposed for the levy period beginning with 22nd April 2021 and ending with 21st July 2021. 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 but specifically defined within the Order). CITB have proposed to continue with the method for assessing the amount of levy used under the Industrial Training Levy (Construction Industry Training Board) Order 2018 (2018 levy order).

- 7.9 In light of the prevailing economic conditions and skills needs of the industry created by Covid-19 in 2020, the CITB decided to delay the 2020-21 levy assessment to September and permit employers to pay the levy in instalments through to September 2021 (deferring collection of half of the 2020-21 levy to FY 2021-22). Those employers who take up the offer will pay 50% of the 2020 levy in 2021-22. Recognising that companies, who opted to pay half of the 20-21 levy in 21-22, would have to pay 1.5 times the levy amount in 21-22 (the 2021/22 levy plus 50% of the 2020 levy), the CITB is proposing a levy rate of 50% of the rate of the 2020 levy period f. In summary
- A 50% decrease the amount of levy arising from emoluments relating to people employed by the employer from 0.35% to 0.175%.
 - A 50% decrease to the liability for indirect employment from 1.25% to 0.625%.
 - Increasing the Small Business Levy Exemption Threshold from £79,999 to £119,999
 - Correspondingly the Small Business Levy Reduction Threshold would be applied to employers with a wage bill between £120,000 and £399,999, the range under the 2018 levy order is £80,000- £400,000. The reduction rate would remain at 50% of Levy liability.
- 7.10 For assessments payable in 2021, CITB will use information about PAYE payments to determine liability for direct employment. CITB will continue to use information about Net Construction Industry Scheme (CIS) payments to determine liability for indirect employment.
- 7.11 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.
- 7.12 The CITB's proposals involve a levy greater than 0.2% of an employer's relevant emoluments. Consequently, to make this Order under section 11(6)(b) of the Act, the Secretary of State must be satisfied that the proposals are necessary to encourage adequate training in the industry and that: i) the Order will be made after the making of a levy order in respect of which the Secretary of State was satisfied that industry approval was obtained through the 'Consensus Process' above; ii) the Order will be made between the third anniversary and the fourth anniversary of the making of the earlier levy order; iii) the proposals relating to the earlier levy order included proposals that no exemption certificates should be issued. These conditions have been met.
- 7.13 The Secretary of State estimates that the levy to be paid by employers in the industry does not exceed 1% of their relevant emoluments and accordingly this Order falls within section 11(7)(a) of the Act, and is therefore subject to the negative procedure.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 None.

10. Consultation outcome

- 10.1 In June 2019, the CITB established a Levy Working Party (LWP), a small group of industry representatives, to examine the current Levy arrangements (put in place by the 2018 Levy Order) and advise on how the Levy should operate in 2021, 2022 and 2023 by seeking industry's views and taking into account the external environment and the evolving needs of industry. In October 2019 the CITB identified two initial Levy Proposals for a three-year period: the first, holding the Levy rates and the Small Business Exemption Threshold unchanged, the second holding the Levy rates but increasing the Small Business Exemption threshold to £100k.
- 10.2 These initial options were then tested through industry consultation that took place between 16th March and 17th May 2020. The outcome was that 85% of employers consulted supported the option to increase the Small Business Exemption Threshold.
- 10.3 In May 2020, the independent panel within CITB reconvened to review the Levy Proposals against both the results of that initial consultation and the radically changed environment. Following the review, it was recommended, Levy Proposals for a single year which acknowledged the decision to reduce the Levy rates by 50% and increase the Small Business Exemption threshold further to £120k.
- 10.4 Whilst industry feedback had supported the decision to withdraw from the statutory Consensus process, the CITB committed to re-testing these revised Levy Proposals with Industry at the request of the Minister for Apprenticeships and Skills. In place of the formal consultation, in July 2020 the CITB engaged with 14 construction prescribed organisations on the levy proposals. 13 of the 14 organisations were supportive of the 50 per cent reduction in levy rate and the amendments to the small business reduction and exemption thresholds. The remaining organisation was neutral. Engagement also took place between the CITB and Senior Industry Leaders and there were no dissenting voices on either the proposed levy rates for the new order or to amend the reduction and exemption thresholds.

11. Guidance

11.1 CITB provides guidance to employers explaining how the levy is assessed and how funding and grants can be claimed. This guidance is available online from CITB's website and will be amended to reflect the 2021-22 Order (www.citb.co.uk).

12. Impact

12.1 The CITB forecasts that the 2021-22 levy order proposals, coupled with remaining 2020-21 levy payments, are expected to raise £150m from the sector. The CITB annual report and accounts for 2019-20 showed that CITB raised £188.2m in levy income. The money raised by the Levy is used to benefit the industry. These benefits 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

- 12.2 An Impact Assessment in respect of the Order is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. The economic impacts of the Order are summarised in paragraphs 12.4 to 12.7 below.
- 12.3 Based on information provided by the CITB, approximately 70,783 construction employers are currently in scope of the levy.
- 12.4 The money raised by the levy is used to fund the CITB's functions to support the construction industry to make sure it has the skilled workforce it requires. The CITB also use levy funds to deliver a range of functions to support skills development, including technical, management and professional training as well as support for apprenticeships and graduates entering industry. In 2019, CITB made grants of £94.8m to employers to support Apprenticeships, Qualification and Short-Duration training.
- 12.5 The impact on the public sector is negligible as the levy is funded from the industry and CITB receives no grant in aid
- 12.6 Charities are exempted from the levy.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 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 2018 levy order set the exemption level at £79,999 and this threshold currently exempts around 40% of the employers in the industry. The 2018 levy order also included 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 increases the exemption level to £119,999 and decreases the taper. Small businesses with a wage bill of £120,000 to £399,999 will now benefit from the taper. Circa 15,000 small businesses out of the 70,000 assessable employers will benefit from this levy reduction.
- 13.3 Small firms who do not have to pay the levy are, however, eligible to claim grants towards the cost of training their employees.
- 13.4 The basis for the final decision on what action to take to assist small business is the proposal made by the CITB to the Secretary of State following its consultations with the industry as described in paragraph 10 above.

14. Monitoring & review

- 14.1 The Order does not include a statutory review clause as it gives effect only for CITB levies to be collected in relation to levy period 2021-22. CITB will need to submit

further proposals for the raising and collection of a levy beyond 2022 following industry consultation and approval by the Secretary of State.

15. Contact

- 15.1 Alex Birtwistle/Larissa Cesar at the Department for Education Telephone: 07780 903484/07770 544937 or email: Jobshare.Birtwistle-Cesar@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Roger Cotes, Deputy Director of Further Education Improvement and Oversight, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Gillian Keegan, Parliamentary Under Secretary of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.