

EXPLANATORY MEMORANDUM TO
THE INDUSTRIAL TRAINING LEVY (CONSTRUCTION INDUSTRY TRAINING BOARD) ORDER 2022

2022 No. [XXXX]

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 2022 (“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 (“the Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The Parliamentary Under Secretary of State for Skills has made the following statement regarding Human Rights:

“In my view the provisions of the Industrial Training Levy (Construction Industry Training Board) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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”) 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 for which it is established.

- 7.2 There are currently two ITBs covering the construction and engineering construction industry, respectively. The two ITBs are Non-Departmental Public Bodies. The CITB, to which this order relates, was created in 1964 and 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 8.6% of the UK's gross domestic product, employing over 2.5 million people. However, there remains a serious and distinct market failure in the development and maintenance of skills in the construction industry: the trading conditions, incentives and culture do not lead to a sufficient level of investment in skills by employers.
- 7.5 The 2017 government review of the ITBs highlighted the fact that employers will often be reluctant to invest in skills (including apprenticeships), because they cannot be confident that they will get a return on that investment over the long term. The pandemic has also exacerbated long-term structural skills issues and increased skills challenges. It is essential, now more than ever, that employers have access to the support needed to upskill existing workers and adequately attract and train new talent, as industry seeks to fully recover from the impacts of the pandemic.

CITB Levy and consensus

- 7.6 The Act provides 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 the ITB covers and for the Secretary of State to make an order that gives effect to the proposals.
- 7.7 This Order gives effect to CITB's proposals for a levy to be imposed in each of the levy periods ending in 2022, 2023, 2024. Any person who is an employer in the construction industry at any time in a levy period is liable to pay the levy. 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 used under [The Industrial Training Levy \(Construction Industry Training Board\) Order 2018](#) (The "2018 Levy Order").
- 7.8 The amount of levy to be assessed is calculated by reference to the formula in the Order. The levy rate for direct employment will be 0.35%, and the levy rate for indirect employment will be 1.25%. These rates are a return to the rate in the 2018 Levy order, which was halved in the 2021 order in response to the pandemic. The exemption thresholds for small employers remain unchanged from the 2021 Order, to ensure these firms can access grants and support to train their workforce, without needing to contribute, at a ceiling of £119,999. For similar reasons, the reduction

threshold will continue to be applied to employers with a wage bill between £120,000 and £399,999. The reduction rate will remain at 50% of Levy liability.

- 7.9 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.
- 7.10 ITBs can take a range of “reasonable steps” to ascertain the views of employers. ITBs can ascertain the views of employers in one of four ways:
- By consulting the organisations which represent employers
 - 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
 - By consulting the employer organisations and obtaining a sample of the views of other employers who are not represented by organisations
 - By sampling the views of all employers
- 7.11 It is also estimated that under the CITB’s proposals, the levy to be paid by employers in the industry in respect of each levy period 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.
- 7.12 CITB was due to undertake the consensus process in Summer 2020, however this was postponed due to the impact of Covid-19 on the construction industry and a one-year (2021) levy was introduced. The industry was generally supportive of a one-year levy, with the intention to return to the normal process of consensus for future three-year levies. This enabled construction businesses to rightly focus on remaining viable during a period when the country was in lockdown.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 None

10. Consultation outcome

- 10.1 In 2020, CITB established a Levy Strategy Committee (LSC), a small group of industry representatives, to examine the current Levy arrangements (put in place by the 2018 and 2021 Levy Orders) and advise on how the Levy should operate in 2022, 2023 and 2024 by seeking industry’s views and taking into account the external environment and the evolving needs of industry. The LSC replaced the previous Levy Working Party (LWP) in November 2020.

- 10.2 The CITB carried out a formal industry-wide consultation exercise, commonly known as Consensus, between 14 June and 15 August 2021. It used option c) detailed in 7.10 above and consulted with relevant employer organisation and sampled the views of non-represented employers. The structured sample survey of 4001 non-represented employers was undertaken by an independent research agency.
- 10.3 The results show that 11 of the 14 employer organisations support the levy proposals. In total this represents 23.56% of all levy paying employers in the industry and 33.61% of all levy likely to be payable by all employers. In addition, the sample survey of non-represented employers indicates that 58.2% of non-federated employers support the levy proposals. Applying this sample percentage to the overall number of non-members represents 42.93% of all levy payers, that are likely to pay a further 29.58% of the forecast levy. The aggregation of figures for employer association support and non-member support is therefore 66.5% and in value terms is 63.2% of the total levy forecast.
- 10.4 CITB has demonstrated, therefore, that it has the support of the majority of employers (66.5%) who together are likely to be liable to pay more than half of the total levy (63.2%).

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 (www.citb.co.uk).

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is as follows:
- On business - The CITB forecasts that the 2022 levy order proposals are expected to raise £147.6m in 2022, £166.9m in 2023 and £187.7m in 2024 from the sector. The CITB annual report and accounts for 2020-21 showed that CITB raised £189.8m in levy income. The money raised by the Levy is used to benefit the industry. These benefits are comprised of direct returns to employers (provided through the payment of grants, college fees and other training funds 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 generates income through self-funded commercial activity which enables them to return more money to the industry than raised by the levy.
 - Charities are exempted from the levy.
- 12.2 The impact on the public sector is negligible as the levy is funded from the industry and CITB receives no grant in aid
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The economic impacts of the Order are summarised in paragraphs 12.4 to 12.6 below.
- 12.4 Based on information provided by the CITB, approximately 70,334 construction employers are currently in scope of the levy.
- 12.5 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 2020-21, 94.6m of the £189.8m raised was returned in direct funding to industry. The CITB also made grants of £66m to employers to support Apprenticeships, Qualification and Short-Duration training.

- 12.6 All employers registered with CITB, regardless of whether they are liable to pay levy, can claim grants towards training.

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, the approach taken is determined by the Act 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 2020- levy order set the exemption level at £119,999 and this threshold currently exempts around 40% of the employers in the industry. The 2020 levy order also included a taper to reduce the impact of levy for employers whose total emoluments fell between £120,000 and £399,999 by offering them a 50% levy reduction. This Order retains the exemption level to £119,999 and maintains the taper at £120,000 to £399,999. Circa 10,000 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 proposals made by the CITB to the Secretary of State following their consultations with the industry as described in 7.9 and 7.10 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 periods in 2022, 2023 and 2024. CITB will need to submit further proposals for the raising and collection of a levy beyond 2024 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 Zoe Forbes, Deputy Director of Sector Skills, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Burghart, Parliamentary Under Secretary of State for Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.