

**EXPLANATORY MEMORANDUM TO
THE INDUSTRIAL TRAINING (FILM INDUSTRY TRAINING BOARD FOR
ENGLAND AND WALES) ORDER 2007**

2007 No. 3148

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 This Order will establish an Industrial Training Board for the film production industry in England and Wales.

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

3.1 None.

4. Legislative Background

4.1 The Industrial Training Act 1982 makes provision about Industrial Training Boards. It gives the Secretary of State the power to establish an Industrial Training Board to ensure the quality and quantity of training in particular activities of industry or commerce (section 1) and sets out the functions that the Board may exercise, including raising a levy on employers to meet its expenses in carrying out its functions which include its training activities.

4.2 This Order is made under section 1 of the Industrial Training Act 1982 Act and establishes an Industrial Training Board in relation to the activities of the film production industry. It is being made at the request of employers in the industry.

4.3 As a consequence of the Scotland Act 1998, the functions under section 1 are no longer exercisable by the Secretary of State in or as regards Scotland. Therefore, the Board is established only in relation to the film production industry in England and Wales.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Industrial Training Act 1982 allows for the establishment of an Industrial Training Board to ensure the supply of a properly trained workforce in a specific industry and to share the cost of training more evenly by raising a levy on employers.

7.2 A comprehensive review of the skills requirements of the film industry in 2002/03 concluded that large parts of the industry employ a highly casualised and largely freelance workforce. It highlighted that there is no standard industrial infrastructure and for some time the skills support available has been sporadic and fragmented. They noted that Industrial Training Boards have been particularly effective in project based industries where large parts of the workforce are self employed as this gives individual employers less opportunity to train

7.3 In 2004, Skillset, the Sector Skills Council for Audio Visual Industries¹ approached the Secretary of State on behalf of employers in the film industry, to request the establishment of an Industrial Training Board. It will have the power to raise a mandatory levy on employers, putting the Skills Investment Fund, the Film Production Industry's currently voluntary training levy onto a statutory footing.

7.4 As required by the Industrial Training Act 1982, the Secretary of State has consulted the main organisations and associations representing employers and employees in the film sector on the potential establishment of an Industrial Training Board for the film production industry. The consultation ran from March - May 2005 and included the BBC, Channel 4, the Producers Alliance for Cinema and Television (PACT), ITV Wales and the two main unions BECTU and Equity. 13 responses were received which is representative of an industry with a small number of organisations reflect the key interests. All were supportive.

7.5 Following devolution to Scotland in 1998, the Secretary of State only has the power to establish an Industrial Training Board in England and Wales. This Order therefore establishes an Industrial Training Board for the film production industry in England and Wales. It will be known as the Film Industry Training Board for England and Wales. Only the production of films intended for theatrical release will be covered (Schedule 1 to the Order sets out the activities within the Board's scope). The key employer federations have been closely involved, via Skillset, in determining the scope of the film production industry in England and Wales. The Order also makes provision in respect of the membership and proceedings of the Board.

7.6 It is expected that the Board will be a small strategic body and will be led by senior employers from within the sector. The Industrial Training Board and Skillset are expected to work closely together to provide an integrated approach to training and to minimise bureaucracy in the film production industry in England and Wales. If the Board proposes a levy that replicates the existing Skills Investment Fund it is expected that it will raise £1.2m from English and Welsh film productions annually

7.7 . When the Order comes into effect, Skillset will notify employers through their website, trade press adverts and direct contact with stakeholders via their employer federations and trade guilds.

¹ SSCs are employer led, independent organisations which provide employers with a unique forum to express the skills and productivity needs of their sector

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Roger Hart at the Department for Innovation, Universities and Skills Tel: 0114 2594585 or roger.hart@dius.gsi.gov.uk can answer any queries regarding the instrument.

ESTABLISHMENT OF INDUSTRY TRAINING BOARD IN THE FILM INDUSTRY USING POWERS IN THE INDUSTRY TRAINING ACT 1982**PURPOSE AND INTENDED EFFECTS****Objectives**

1. The measure gives effect to one of the provisions of the Industrial Training Act 1982, which empowers the Secretary of State to set up industrial training boards (ITBs) to ensure that the quantity and quality of training are adequate to meet the needs of the industry for which they are established.
2. The overall objective is to establish a new ITB in the film industry as a collective approach to investment in the skills of the England and Wales workforce. Without this action, there is a danger that the England and Wales film industry will fail to capitalise upon its competitive advantages as we enter the digital age, simply because of insufficient investment in training and skills development.
3. To secure such industry investment the Film ITB, acting on behalf of the film industry, would seek to raise a statutory skills levy to replace the existing voluntary levy, the Skills Investment Fund (SIF). Skillset, the Sector Skills Council for the Audio Visual Industries, and its film industry partners are supportive of an ITB, as demonstrated by the support of the voluntary levy since 1999.
4. The voluntary SIF levy is charged as a percentage of a film's production budget, and it is for the Film ITB to make proposals for the particular levy arrangements and rates for the industry, based on its assessment of the skills needs of the sector. Any statutory levy must have the potential to deliver a significant increase in employer investment in training in the sector, which would enable skills gaps to be properly addressed.
5. By working with Skillset, a Film ITB will play an integral part in delivering against the priorities of the Sector Skills Agreement, which have been agreed with industry and other key stakeholders, and endorsed by the Leitch Review as the best means to achieve economically relevant education and skills development. Part of Skillset's SSA is the film skills strategy *A Bigger Future*, a complete training and education strategy for the UK film industry, and outlined further in paragraph 9. Working alongside Skillset to deliver this strategy, a Film ITB will add value in both the volume of training undertaken and the quality and impact on the performance of individuals and employers – a key focus of the Sector Skills Agreement.

Background

6. In 1998 the Government's Film Policy Review, *A Bigger Picture*, highlighted the freelance nature of the workforce and the transitory nature of film production companies as a significant challenge to the creation of a cohesive, industry-funded training strategy for the industry. These characteristics meant that there had been a lack of investment in skills for a long time. The Review identified significant skills gaps and shortages. It argued that if the UK film industry was to remain globally competitive a collective approach to investment in skills was required.
7. The Review recommended that a voluntary levy be established to fund these skills needs, and the Department for Culture Media & Sport (DCMS) asked Skillset to manage this levy. The industry's trade associations, employer representatives and Trade Union - The Producers' Alliance for Cinema and Television (PACT), the Motion Picture Association of America (MPA), and the Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) representing the Federation of Entertainment Unions (FEU) – along with the major broadcasters, all pledged their support. As a result, the Skills Investment Fund (SIF) launched in October 1999, and enabled Skillset to meet urgent skills needs identified by the Review, funded by voluntary contributions of 0.5% from film productions' budgets (with a maximum contribution of £39,500 per film). There was agreement between Skillset and these industry partners that if voluntary arrangements did not prove to be successful after two years then the industry would explore the possibility of establishing statutory arrangements.
8. Under the voluntary arrangements, compliance rates have consistently been of the order of 60% and the industry has, to date, invested over £4.5m in skills development through the SIF. However, with 40% of film productions not paying a levy contribution, investment levels in the SIF remain insufficient to meet all the training needs identified by Skillset and industry.

9. Skillset has developed a comprehensive 5-year training and education strategy, *A Bigger Future*, in partnership with the UK Film Council and the UK film industry. The strategy is focused on ensuring that the UK film industry is able to compete successfully in the European and global marketplace on the basis of world-beating skills.

The strategy's main aims are to:

- deliver a film-specific careers advice service for all sectors of the industry, for both new entrants and the existing workforce, and with the backing of the key industry guilds, trade associations, employers and trade unions;
- provide world class, film specific business education and training to new entrants and existing professionals across further, higher and post-graduate education;
- develop new entrant courses delivering the skills and numbers of new entrants the industry needs;
- provide courses for existing professionals to update their skills in priority areas of need, removing the barriers to skills development;
- promote a culture of learning, skills development and continuous improvement in the industry, while developing standards of competence and associated national vocational qualifications and training specifications.

These initiatives are designed to benefit the industry collectively by providing a pool of skilled labour from which all employers benefit.

10. Published in 2003, the strategy was underpinned by a commitment from the UK Film Council to fund an initial 3 years of the strategy through the National Lottery to match the industry investment from the voluntary levy. As a result of the strategy's achievements to date, the commitment from UKFC has now been extended to 2009. However, it is clear that the need to invest in skills must be an ongoing activity if the England and Wales film industry is to remain competitive, and that a sustainable level of funding is vital to plan for the long-term skills development of the industry.

11. The Film ITB would work alongside Skillset to deliver the strategy and address the skills gaps identified by industry. Skillset has in place an extensive research programme which provides information on the skills needs and make-up of the workforce. The film industry is characterised by employment on a highly casualised and freelance basis between projects, with an ageing workforce who need to pass on their skills to a younger generation. Skillset's research intelligence and forecasting will enable the Film ITB to respond to emerging skills gaps and shortages and to plan ongoing investment priorities more effectively.

Risk Assessment

12. There are three options:

- Do nothing, i.e. retain the current voluntary arrangements under the SIF levy
- Update and re-launch the voluntary levy
- Take action to establish an ITB and statutory levy

Factors for and against doing nothing

For

13. Maintaining the current voluntary levy would allow the existing arrangements to continue across England and Wales, as well as the rest of the UK. A 60% compliance rate may be seen by some as reasonable in the film production sector which is not subject to sector-specific regulation.

Against

14. With a compliance rate of 60%, the voluntary levy does not yield a level of investment sufficient to ensure that the skills needs of the sector are met. Training across areas such as new technologies, business skills and health and safety are essential to maintaining the skills and competitiveness of the England and Wales workforce in a global film industry. A 40% non-compliance rate means that a significant number of film productions benefiting from the skills of the England and Wales workforce are not contributing to the fund, and

despite the best efforts of Skillset and its industry partners, the compliance rate has stubbornly refused to rise. Without National Lottery commitment to the industry's film skills strategy, and no other funding in place, beyond 2009, a voluntary levy would not offer a sustainable source of funding sufficient to continue the work of the skills strategy. There is a serious risk that the work done over the 5 years of the strategy will be wasted completely.

15. There is increasing frustration among those employers who do pay that the non-compliance rate remains so high. If not tackled this disillusionment could lead to regular payers declining to contribute, and consequently a significant decline in funding, and therefore the level of training initiatives that can be supported by the levy.

16. A voluntary system alone would not deliver all the objectives set out within the industry's skills strategy. Moreover, the amount yielded remains dependent on the goodwill of individual employers and production companies. There is a serious risk that the funds available for investment will be insufficient to meet the identified skill needs. This would result in skill shortages, wage inflation and a less competitive film industry with fewer big-budget international productions choosing England and Wales as a production base – despite the existence of a tax relief specifically designed to ensure that large-budget, culturally British films are attracted to shoot here, and not overseas.

17. This, in turn, would lead to a loss of inward investment into the England and Wales economy. The UK film industry contributes on average £3.1 billion to UK GDP, directly employing 31,000 people and supporting a total of 97,500 jobs². Because of the transferable nature of the skills that are used within the film industry, there would also be a damaging impact on other creative industries, most notably the broadcasting and digital media sectors.

Factors for and against an updated re-launched voluntary SIF levy

For

18. In planning a new voluntary model, Skillset would consult with employers in the industry with the aim of securing a higher compliance rate. For example, the level of contribution from individual productions could be raised to better provide for the needs of the sector, and thus if the compliance rate stayed the same, more could be collected to fund the range of skills needed by industry.

19. Additionally, a staged level of contributions, starting lower and based on budget levels, could be introduced, in which case some productions might be more able to contribute.

Against

20. However, the overall level of collectively-funded training and skills development under a voluntary levy would not be sufficient if there were a staged level of contributions.

21. The 40% of productions not currently paying may be even less likely to pay if the percentage of the levy paid in relation to the budget was raised. In addition, the current contributors could decide to stop paying at any time.

22. Employers would not have to pay the voluntary levy, and the particular employment patterns in the film production sector, i.e. the itinerant nature of the workforce and transitory nature of film production companies, mean that employers individually are not prepared or are unable to undertake adequate training.

Factors for and against establishing an ITB and statutory levy

For

23. There is strong support from the film industry for an equitable and transparent levy under which both indigenous and incoming British films would make a statutory levy payment.

24. The creation of a statutory levy would put the current voluntary arrangements on a stable footing for the long-term. The funds raised would allow a carefully targeted series of interventions to be rolled out over a

² Data collected from a 2005 report jointly commissioned by Pinewood Shepperton plc and the UK Film Council from Oxford Economic Forecasting.

number of years in response to identified skills needs in the industry, enabling a Film ITB to continue to organise and fund the range of training services that have been developed on the industry's behalf by Skillset.

25. All productions deemed in scope by the Board would be required to pay, therefore allowing a greater investment in the skills needs of the industry with the cost shared between employers. The emergence of a genuinely collective approach to support for training and skills development by employers would enable the industry to capitalise upon its competitive advantages at a point where digital technology is opening up many new opportunities for the industry.

26. With a level of levy income secured, the Film ITB would be able to secure increased matched funding from other sources to complement its planned investment from industry. Since the launch of the film skills strategy in March 2004, Skillset and its training partners in the film industry have been able to secure other funding of up to £21m to further develop the skills needs of industry. A Film ITB will work alongside Skillset to maximise the level of additional funding to support industry-identified needs.

27. A statutory levy will also allow the ITB to formalise arrangements with industry partners to collect information and register those companies deemed in-scope to pay.

Against

28. Such a levy will entail setting up different arrangements for the nations of the UK – statutory and voluntary – which may cause some confusion. The element of regulation might damage some of the partnerships with industry that have been developed to date. It may discourage a few productions from shooting in the UK.

PUBLIC BENEFIT

29. The skills of individuals in the England and Wales film industry are instrumental in making entertaining and creative British films which are enjoyed all over the world.

Business Sectors Affected

30. Employers in the film industry only. An Oxford Economic Forecasting Report of 2005 estimates that the UK film industry directly employs 31,000 people.

Equity and Fairness

31. A statutory levy will be fairer to all businesses in the industry, because it will not be possible for companies to opt out from paying the levy and yet still benefit from the development of skills within the industry.

32. It will be employer-led and employer-funded in accordance with employers' wishes.

COSTS

33. In light of the relatively modest amount of money likely to be collected by the statutory levy (about £1.2m a year), it is important that it is not swallowed up in the cost of running the ITB and taking non-payers to court. It is intended to subcontract the collection and administration of levy to an organisation which already has appropriate systems in place, additional administration costs will therefore be minimised.

Compliance Costs

34. There will be no increase in compliance costs for productions which already contribute to the SIF. They will be asked to supply information about their production costs as they are now. For productions which do not currently contribute there will be a small compliance cost in supplying the required information but this is readily available from normal budgetary information. This does not include the cost of the actual levy assessment.

35. These costs should be measured against the benefits of the training schemes, initiatives and other services that will be provided by the Film ITB.

Other Costs

36. If it was agreed to set up an ITB for the sector, the bulk of the costs to government are likely to fall to DIUS. Based on knowledge of the current annual running costs for the two existing ITBs it is estimated that an ITB for the film sector would cost the Department in the order of £10,000 per year.

SMALL FIRMS TEST

37. As the levy contribution would continue to be a percentage of the production budget it will not unfairly penalise small firms. The UK film production sector is characterised by the presence of a large number of micro-sized enterprises which do not have the resources to make any investment in training. In accordance with Section 11 (3) of the Industrial Training Act 1982 the board will submit proposals to exempt employers with few employees from liability to pay levy. The principle representative of small firms on the ITB will be PACT.

COMPETITION ASSESSMENT

38. A statutory approach ensures parity, with all employers in the industry sharing the cost of training. Such a collective approach on skills issues would benefit all in the film industry.

ENFORCEMENT AND SANCTIONS

39. The ITB will be obliged to take non-payers to court to retrieve outstanding debts.

MONITORING AND REVIEW

40. A new ITB would be a statutory body governed by the Industrial Training Act 1982 (as amended). Its primary purpose is to initiate, improve and facilitate training in the film industry. It will be a Non-Departmental Public Body (NDPB) sponsored by DIUS and as such will be required to meet all the requirements of NDPB status. As an NDPB it will be subject to periodic review of its performance and the continuing need for its existence. A key element of such reviews is full consultation with employers in the sector.

41. The Film ITB would set its own targets to meet the needs of its sector.

CONSULTATION

Within government

42. There has been considerable consultation across government about establishing a new ITB in the film industry. This has included discussions with: DCMS – the sponsoring department for both film and for Skillset; the UK Film Council; and the SIF Review Group which has fed into, and is now complemented by, Skillset's Film Skills Strategy Committee. They have been consulted at all stages. DCMS Ministers and officials support the proposal to establish a new ITB.

43. The Sector Skills Development Agency has also been kept informed of developments at all stages. They already have experience of integrating two Industry Training Boards into the Skills for Business Network. They believe that a Film ITB would have a very positive effect on the sector's skill needs.

44. The Devolved Administration in Wales has been consulted on the proposals arrangements and support them. The proposals do not affect Northern Ireland and Scotland where the existing voluntary arrangements will continue

Industry & Public Consultation

45. The informal consultation was led by Skillset. This was trailed at various events, announced in a Press Release and publicised on the Skillset website. Skillset produced a letter outlining the case for establishing an ITB with statutory levy raising powers. This letter was sent to a very wide range of the employers likely to be affected by the proposals. It was also made accessible to a wider audience through publication on the Skillset website and via the newsletters of industry bodies including PACT and Industry Guilds.

46. The consultation elicited 33 written responses; 90% were in favour of a statutory levy, 4% were unsure and 6% were opposed. The number of responses may appear low but represent the great majority of working producers in the film industry.

47. The second stage was a formal consultation by the Secretary of State required under the terms of the Industrial Training Act. This ran from 8 March, 2005 to 31 May, 2005. The Secretary of State wrote to 13 key organisations in the film industry and the consultation was on the Department's e-consultation website. All 13 organisations responded.

48. Responses were received from the Producers Alliance for Cinema and Television (PACT), the main employer organisation representing independent film producers. Other views from employers were obtained via Skillset's Film Skills Strategy Committee (which is dominated by film producers) and the Scottish and Welsh Industry Panels (both of which comprise the major, active film producers in Scotland and Wales). The BBC and Channel 4, major producers of films in Great Britain, and ITV Wales also replied. The two main unions representing the work-force in the industry, BECTU and Equity, both responded. Responses were also received from the UK Film Council; United International Pictures (UIP), the major film distribution organisation which is co-owned by Paramount Pictures and Universal Pictures; Skillset, the Sector Skills Council for the Audio Visual Industries and the Sector Skills Development Agency (SSDA) for the Skills for Business network.

49. All responses were supportive of the establishment of an ITB. PACT noted that the timing of the ITB's establishment should depend on the industry meeting financial targets (since agreed) and a clarification of the liability for payment of the levy. There was unanimous support for a levy model based on a percentage of overall production costs, with some differences of view on minimum and maximum levels of payment. Respondents also agreed that the employment grades listed under the film production sector should fall within the ITB's remit of developing training to meet the industry's skills requirements. There were a number of suggestions for additions to that list, covering performer and special effects grades, which have been added.

SUMMARY AND RECOMMENDATION

50. In 2002 the film industry decided to look at whether the manifesto commitment to government support for statutory frameworks would best secure the industry's Skills Investment Fund (SIF). Support for the SIF, a voluntary levy on film production, has been around 60% but it was thought that this support could be eroded because those contributing to SIF were objecting to supporting non payers.

51. Skillset led an industry wide consultation which showed an overwhelming majority in favour of moving to a statutory framework and that this would be a positive step forward for the industry. The total levy sum expected to be raised is £1.2 million per year. Skillset, along with its industry partners and the DCMS, formally asked DfES officials to put the case to Ministers for establishing an Industrial Training Board (ITB) for the film industry.

52. The **Secretary of State** agreed in September, 2004 that the then Department for Education and Skills should establish an ITB with powers to raise a statutory training levy for the film industry. Following consultations with industry organisations, the Minister for Skills, Phil Hope agreed on 1 August, 2005 to continue the process of establishing the ITB.

53. The conclusion is also sensitive to the belief that employers are best-placed to decide which training arrangements best suit their needs. As required by the governing legislation for ITBs, they have been consulted on and support the establishment of a Film ITB.

DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Contact point

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