1989 No. 336

INDUSTRIAL TRAINING

Industrial Training Levy (Catering Industry) Order (Northern Ireland) 1989

Made . . . . . *10th August 1989*

Coming into operation . . *21st September 1989*

Whereas proposals made by the Catering Industry Training Board(**a**) ("the Board") for the raising and collection of a levy have been submitted to, and approved by, the Department of Economic Development ("the Department") under Article 23(1) of the Industrial Training (Northern Ireland) Order 1984(**b**) ("the Order of 1984");

And whereas the Department estimates that the amount which will be payable by any employer in the catering industry by virtue of this Order does not exceed an amount which the Department estimates is equal to one per cent. of the relevant emoluments being the aggregate of the emoluments and payments intended to be disbursed as emoluments which have been paid or are payable by any such employer to or in respect of persons employed in the industry, in respect of the period specified, in the levy proposals as relevant, that is to say the period hereafter referred to in this Order as the "twenty-fourth base period" or, where an election is made, as the "alternative twenty-fourth base period";

And whereas in pursuance of Article 23(3) of the Order of 1984 the said proposals include provision for the exemption from the levy of employers who, in view of the small amount of the relevant emoluments, ought in the opinion of the Department to be exempted from it;

And whereas the Department is satisfied that remission proposals submitted to it by the Board in pursuance of Article 25(1) of the Order of 1984 provide for full remission of the remissible part of the levy in such cases as the Department considers appropriate;

And whereas the levy proposals include provision that the amount of the non-remissible part of the levy will exceed two-tenths of one per cent. of the relevant emoluments;

And whereas in pursuance of Article 23(6) of the Order of 1984 the Department is satisfied and the relevant organisations consider, after taking reasonable steps to ascertain the views of persons they represent, that the levy proposals are necessary to encourage adequate training in the industry;

(**a**) Established under the Catering Board Order
(**b**) S.I. 1984/1159 (N.I. 9)

And whereas Article 23(7)(*b*) of the Order of 1984 is applicable;

Now, therefore, the Department in exercise of the powers conferred on it by Articles 23(2), (3) and (4) and 24(2), (3) and (4) of the Order of 1984, and of every other power enabling it in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Industrial Training Levy (Catering Industry) Order (Northern Ireland) 1989 and shall come into operation on 21st September 1989.

(2) In this Order—

"assessment" means an assessment of an employer to the levy;

"business" means any activities of industry or commerce;

"Catering Board Order" means the Industrial Training (Catering Board) Order (Northern Ireland) 1966(**a**);

"catering establishment" means an establishment in Northern Ireland engaged wholly or mainly in the catering industry for a total of twenty-seven or more weeks in the twenty-fourth base period or, being an establishment that commenced to carry on business in the twenty-fourth base period, for a total number of weeks exceeding one half of the number of weeks in the part of the said period commencing with the day on which business was commenced and ending on the last day thereof, or, where an election is made, in any part of the alternative twenty-fourth base period;

"catering industry" means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the Catering Board Order, are specified in paragraph 1 of that Schedule as the activities of the catering industry but shall not include the supply for immediate consumption of light refreshments to persons employed at or from an establishment engaged mainly in activities not being activities specified in Part I of Schedule 1 to the Catering Board Order except where the employer—

(*a*) also supplies for immediate consumption other food and drink; or

(*b*) manufactures any chocolate or flour confectionery so supplied;

"election" means an election made in accordance with the provisions of Article 2(4), by an employer to pay the levy in respect of the relevant emoluments of the persons employed in the relevant establishment during the alternative twenty-fourth base period;

"emoluments" means all emoluments assessable to income tax under Schedule E (other than pensions and any income derived from gratuities or service charges)(**b**), being emoluments from which tax under that Schedule is deductible, whether or not tax in fact falls to be deducted from any particular payment thereof;

(**a**) S.R. & O. (N.I.) 1966 No. 32 as amended by S.R. & O. (N.I.) 1967 No. 236

(**b**) *See* section 19 Income and Corporation Taxes Act 1988 c. 1

"employer" means a person who is an employer in the catering industry at any time in the twenty-fourth levy period;

"establishment comprising catering activities" means an establishment in Northern Ireland (not being a catering establishment) at or from which persons were employed in the twenty-fourth base period, or, where an election is made, the alternative twenty-fourth base period—

(*a*) in the supply in the course of any business of food or drink to persons for immediate consumption; or

(*b*) in the supply by any body or persons of food or drink to persons in their employment for immediate consumption;

"levy" means the levy imposed by the Board in respect of the twenty-fourth levy period;

"light refreshments" means tea, coffee or other non-alcoholic beverage supplied with or without chocolate confectionery or flour confectionery;

"notice" means a notice in writing;

"twenty-fourth base period" means the year that commenced on 6th April 1988 and the "alternative twenty-fourth base period" means the year commencing on 6th April 1989; and

"twenty-fourth levy period" means the year commencing on 1st September 1989.

(3) Any reference in this Order to an establishment that commences to carry on business or that ceases to carry on business shall not be taken to apply where the location of the establishment is changed but its business is continued wholly or mainly at or from the new location, or where the suspension of activities is of a temporary or seasonal nature.

Imposition and assessment of the levy for the twenty-fourth levy period

2.—(1) The levy to be imposed on employers shall be assessed in accordance with the provisions of this Article.

(2) The levy shall be assessed by the Board separately in respect of each catering establishment or each establishment comprising catering activities of an employer, but in agreement with the employer one assessment may be made in respect of any number of such establishments, in which case those establishments shall be deemed for the purposes of the assessment to constitute one establishment.

(3) Subject to the provisions of this Article, the levy—

(*a*) shall be assessed in respect of the relevant emoluments of the following persons employed by the employer at or from the establishment, that is to say—

(i) in the case of a catering establishment, all such persons;

(ii) in the case of an establishment comprising catering activities, all such persons employed wholly either in the supply in the course of any business of food or drink to persons for immediate consumption or in the supply by any body of persons of food or drink to persons in their employment; and

(*b*) shall be an amount equal to one per cent. of the sum of such relevant emoluments of such persons—

(i) in the twenty-fourth base period; or

(ii) where an election is made in accordance with the provisions of paragraph (4), in the alternative twenty-fourth base period;

and the part of the levy not to be eligible for remission shall be an amount equal to 0·5 per cent. of such emoluments.

(4) An election shall be made in writing and shall be in such form and made within such period as the Board may with the approval of the Department determine.

(5) There shall be exempt from the levy;

(*a*) an employer in relation to whom the relevant emoluments paid or payable to or in respect of all persons in his employment in the twenty-fourth base period are less than £10,000 or in the case of two or more catering establishments or establishments comprising catering activities where the relevant emoluments of all the persons employed in all such establishments are less than £10,000; or

(*b*) an employer who has made an election in accordance with the provisions of paragraph (4) in relation to whom the relevant emoluments paid or payable to or in respect of all persons in his employment in the alternative twenty-fourth base period are less than £10,000 or in the case of two or more catering establishments or establishments comprising catering activities where the relevant emoluments of all the persons employed in all such establishments are less than £10,000.

(6) The amount of the levy imposed in respect of a catering establishment or an establishment comprising catering activities that ceases to carry on business in the twenty-fourth levy period shall be in the same proportion to the amount that would otherwise be due under paragraph (3) as the number of days between the commencement of the said levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the said levy period.

Assessment notices

3.—(1) The Board shall serve an assessment notice on every employer assessed to the levy, but one notice may comprise two or more assessments.

(2) Where an election has been made, the Board may serve two or more assessment notices in respect of any establishment but—

(*a*) the interval between such assessment notices shall be not less than six months; and

(*b*) the amount of the assessment included in each such notice shall not exceed the portion of the levy which has accrued at the date of the notice, and each notice shall specify the period to which the assessment included therein relates.

(3) The amount of any assessment payable under an assessment notice shall be rounded down to the nearest £1.

(4) An assessment notice shall state the Board's address for the service of a notice of appeal or of an application for an extension of time for appealing.

(5) An assessment notice may be served on the person assessed to the levy either by delivering it to him personally or by leaving it, or sending it to him by post, at his last known address or place of business in the United Kingdom or, if that person is a corporation, by leaving it, or sending it by post to the corporation, at such address or place of business or at its registered or principal office.

Payment of the levy

4.—(1) Subject to the provisions of this Article and Articles 5 and 6 the amount of each assessment appearing in an assessment notice served by the Board shall be due and payable to the Board on 1st November 1989.

(2) Where an election has been made the amount of the assessment appearing in each assessment notice shall be payable to the Board one month after the date of the notice.

(3) The amount of an assessment shall not be recoverable by the Board until there has expired the time allowed for appealing against the assessment by Article 6(1) and any further period of time that the Board or an industrial tribunal may have allowed for appealing under Article 6(2) or (3) or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

5.—(1) The Board may, by a notice served on the person assessed to the levy in the same manner as an assessment notice, withdraw an assessment if that person has appealed against that assessment under the provisions of Article 6 and the appeal has not been entered in the Register of Appeals kept under the regulations specified in Article 6(5).

(2) The withdrawal of an assessment shall be without prejudice to the power of the Board to serve a further assessment notice in respect of any establishment to which that assessment related and where the withdrawal is made by reason of the fact that an establishment has ceased to carry on business in the twenty-fourth levy period, the said notice may provide that the whole amount payable thereunder shall be due one month after the date of the notice.

Appeals

6.—(1) A person assessed to the levy may appeal to an industrial tribunal against the assessment within one month from the date of the service of the assessment notice or within any further period of time that may be allowed by the Board or an industrial tribunal under the following provisions of this Article.

(2) The Board for good cause may, by notice, extend the time within which an appeal may be made by such further period as the Board may allow in any case where an application for such extension is made within the period of four months from the date of the service of the relevant notice of assessment or, where an extension has already been granted, before the period of such extension has expired.

(3) If the Board shall not allow an application for extension of time for appealing an industrial tribunal shall upon application to the tribunal by the person assessed to the levy within the period of fourteen days from the date of receipt of the decision of the Board refusing such an application have the like powers as the Board under paragraph (2).

(4) In the case of a catering establishment or an establishment comprising catering activities that ceases to carry on business in the twenty-fourth levy period on any day after the date of the service of the relevant assessment notice the foregoing provision of this Article shall have effect as if for the period of four months from the date of the service of the assessment notice mentioned in paragraph (2) there were substituted the period of six months from the date of the cessation of business.

(5) An application to an industrial tribunal under this Article shall be made in accordance with the Industrial Tribunals Regulations (Northern Ireland) 1965(**a**).

Evidence

7.—(1) Upon the discharge by a person assessed to the levy of his liability under an assessment the Board shall if so requested issue to him a certificate to that effect.

(2) For the purposes of proceedings or of any action taken under the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971(**b**), the production of a document purporting to be certified by the Secretary of the Board or any other person, being a member or officer of the Board authorised by the Board to act in that behalf, to be a true copy of an assessment or other notice issued by the Board or purporting to be a certificate such as is mentioned in paragraph (1) shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Sealed with the Official Seal of the Department of Economic Development on 10th August 1989.

(L.S.) *D. J. Alexander*
Assistant Secretary

(**a**) S.R. & O. (N.I.) 1965 No. 112 as amended by S.R. & O. (N.I.) 1966 No. 261 and S.R. & O. (N.I.) 1967 No. 109
(**b**) 1971 c. 30 (N.I.)

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order gives effect to proposals submitted by the Catering Industry Training Board to the Department of Economic Development for the imposition of a further levy upon employers in the catering industry for the purpose of raising money towards the expenses of the Board.

The levy is to be imposed in respect of the twenty-fourth levy period commencing on 1st September 1989 and ending on 31st August 1990. The levy will be assessed by the Board and there will be a right of appeal against an assessment to an industral tribunal.

The levy rate and that part of the levy which is not eligible for remission, at 1% and 0.5% respectively of relevant emoluments, are unchanged from those operating during the preceding levy period which expires on 31st August 1989 (see Industrial Training Levy (Catering Industry) Order (Northern Ireland) 1988 S.R. 1988 No. 200).

The amount of relevant emoluments in the twenty-fourth levy period at which an employer will be exempt from levy is unchanged at £10,000.