

EXPLANATORY MEMORANDUM TO
THE CAPITAL ALLOWANCES (ENERGY-SAVING PLANT AND MACHINERY)
ORDER 2018

2018 No. 268

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument revokes the Capital Allowances (Energy-saving Plant and Machinery) Order 2001 (S.I. 2001/2541; "the 2001 Order") and amendments made to the 2001 Order (by instruments listed at paragraph 7.7), and replaces them with a single consolidated instrument.
- 2.2 This instrument specifies plant or machinery falling within the revised lists of qualifying technologies and products issued by the Secretary of State for Business, Energy and Industrial Strategy on 26 February 2018 for the purposes of 100 per cent first-year capital allowances for expenditure on energy-saving technologies ("the FYA scheme"). It also specifies cases that require a certificate of energy efficiency, cases in which energy-saving components of plant or machinery qualify for the allowance and classes of energy-saving plant or machinery against which energy services providers can claim the allowance.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Sections 45A to 45C of the Capital Allowances Act 2001 ("the Act") contain the main rules governing the FYA scheme.
- 4.2 Section 45A(1) sets out the key conditions to be met before expenditure on energy-saving plant or machinery can qualify for first-year allowances. Section 45A(2) sets out what is meant by energy-saving plant or machinery. It is plant or machinery which, at the time the expenditure is incurred or the contract for provision is entered into, satisfies the conditions set out section 45A(3). The conditions are that the plant or machinery must be of a description specified in a Treasury order, and must satisfy the relevant energy-saving criteria specified by the Treasury order. Section 45A(4)

allows the Treasury order to identify qualifying plant or machinery by reference to lists of technologies or products issued by the Secretary of State.

- 4.3 Section 45B(1) allows the Treasury order to prevent the making of the 100 percent first-year allowance in specific cases unless a certificate of energy efficiency is in force. Section 45B(2) sets out what is meant by a certificate of energy efficiency.
- 4.4 Section 45C deals with cases in which the plant and machinery that can qualify for the allowance is part of a larger item of plant and machinery that does not qualify for the allowance. Subsections (1), (2) and (3) limit the expenditure on the larger item plant or machinery that can qualify for the 100 per cent first-year allowance to an amount specified by the Treasury order for the particular component, or if there is more than one component, the total of the amounts specified for each component.
- 4.5 Section 180A of the Act contains the rules which treat plant or machinery installed and operated under energy services agreements as belonging to the energy service provider for the purposes of capital allowances. Section 180A(2) prevents the energy service provider from making a claim under the FYA scheme if the person to whom the energy services are being provided (“the client”) would not have been entitled to claim the allowance if the client had incurred the expenditure. But this does not apply if the plant or machinery is of a class specified by the Treasury.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

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

What is being done and why

- 7.1 The FYA scheme is one of a range of measures to encourage the reduction in the UK’s carbon emissions. The scheme enables a business to claim accelerated tax relief on its spending on qualifying energy-saving technologies. The cash-flow benefit of accelerated tax relief can encourage businesses to invest in energy-saving equipment that can reduce their energy use, their energy bills and their payments under the Climate Change Levy. The scheme is dynamic with the detailed energy saving criteria and qualifying technologies being reviewed annually.
- 7.2 Article 3 of this instrument gives statutory effect, for the purposes of the FYA scheme, to the ‘Energy Technology Criteria List February 2018’ and the ‘Energy Technology Product List February 2018’ issued on behalf of the Secretary of State on 26 February 2018. The lists are available on the Department for Business, Energy and Industry Strategy’s website at <https://www.gov.uk/guidance/energy-technology-list>. Copies are available from Andrew Gilheany, Andrew.gilheany@beis.gov.uk, BEIS Energy Technology List Team, 1 Victoria St, Westminster, London SW1H 0ET.
- 7.3 The ETPL is updated to consolidate in year amendments. The updates extend the product category of the Energy Technology List to add evaporative air coolers, saturated steam to electricity conversion and white LED lighting modules for backlit

illuminated signs. It also updates the qualifying criteria for nine existing sub-technologies. These changes mainly reflect minor technological advances and changes in standards, to ensure that the scheme remains focused and supports only the most efficient products.

- 7.4 Article 4 provides that a relevant certificate of energy efficiency is required for expenditure on the ‘combined heat and power’ technology class, as specified in the Energy Technology Criteria List, to qualify for the allowance.
- 7.5 Article 5 specifies which energy-saving components of plant or machinery qualify for the allowance with reference to the Energy Technology Criteria List and the Energy Technology Product List.
- 7.6 Article 6 specifies the ‘combined heat and power’ technology class, as specified in the Energy Technology Criteria List, for the purposes of section 180A(2) of the Act (energy service providers).
- 7.7 Article 7 revokes the 2001 Order and amendments made to that Order by the Capital Allowances (Energy-saving Plant and Machinery) (Amendment) Orders of 2002 to 2016 (S.I. 2002/1818, 2003/1744, 2004/2093, 2005/2424, 2006/2233, 2007/2165, 2008/1916, 2009/1863, 2010/2286, 2011/2221, 2012/1832, 2013/1763, 2014/1868, 2015/1508, 2016/927).

Consolidation

- 7.8 This instrument is a consolidation, revoking and replacing the 2001 Order and the instruments which previously amended that Order with a single instrument.

8. Consultation outcome

- 8.1 Although no formal consultation has taken place, a series of informal discussions are held annually with industry to establish market trends and developments. The technologies, and the products included in the qualifying lists are reviewed every year by the Secretary of State. This ensures that they are still relevant, and the wording of the qualifying criteria is discussed with suppliers to ensure that it is practicable.

9. Guidance

- 9.1 Relevant guidance will be updated as appropriate as part of the normal process of review.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 22 November 2017 alongside the Budget Announcement and is available on the website at <https://www.gov.uk/government/publications/annual-update-to-the-energy-technology-list-for-first-year-capital-allowances>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 No mitigation is needed because the Order provides 100% tax relief for expenditure incurred.

12. Monitoring & review

12.1 The measure will be kept under review through communication with affected taxpayer groups.

13. Contact

13.1 Tunde Ojetola at HM Revenue and Customs. Telephone: 03000 585 916 or email: tunde.ojetola@hmrc.gsi.gov.uk can answer any queries regarding the instrument.