

EXPLANATORY MEMORANDUM TO
THE STATISTICS OF TRADE (CUSTOMS AND EXCISE) (MODIFICATION)
REGULATIONS 2021

2021 No. 1374

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument will ensure compliance with European Union (EU) rules which apply under the terms of the Northern Ireland Protocol which set out how much trade by value must be captured by the Intrastat reporting system. Intrastat is the statistical survey covering international trade in goods between member states of the EU. This instrument decreases (from £1,500,000 to £500,000) the threshold at or below which a Value Added Tax (VAT)-registered business in the United Kingdom (UK) is exempt from providing information on goods imported (referred to as arrivals) into Northern Ireland (NI) from the EU on a specific return referred to as an Intrastat Arrivals declaration.

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 the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 However, this instrument only applies to goods received in NI from member states of the EU.

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 Intrastat survey was introduced to collect data on movements of goods between the UK and EU member states. The data is published as part of the UK's overseas trade statistics and forms a key component of the UK's balance of payments, published by the Office for National Statistics.
- 6.2 The survey is governed by EU legislation that is applicable in NI under the terms of Article 5.4 of the Northern Ireland Protocol, which sets out the requirements of the system.

- 6.3 The EU provisions applicable are Regulation (EU) 2019/2152 of the European Parliament and Council and Commission Implementing Regulation (EU) 2020/1197. Council Regulation (EU) 2019/2152 requires the UK to review and publish Intrastat exemption thresholds on an annual basis. Only businesses that exceed those set thresholds are required to submit monthly Intrastat returns.
- 6.4 The Statistics of Trade (Customs and Excise) Regulations 1992 (SI 1992/2790) set the Intrastat thresholds in domestic legislation in accordance with the EU legislation. Regulation 3(2) of the Statistics of Trade (Customs and Excise) Regulations 1992 sets the threshold at or below which a business is exempt from providing any Intrastat information. This change only amends Regulation 3(2) as it applies to trade received into NI from the EU.

7. Policy background

What is being done and why?

- 7.1 From 1 January 2022 Intrastat will be modified as it applies in NI.
- 7.2 The effect of this revision is to ensure that the Intrastat system captures the correct number of businesses required to submit Intrastat arrivals declarations for goods received in NI from an EU member state as required by Commission Regulation (EU) 2019/2152.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 Before the 31 December 2020, Intrastat was the system for collecting trade in goods statistics between the UK and EU member states. During 2021 Intrastat was used to collect statistics on trade between NI and EU member states and import trade received in Great Britain from EU member states to mitigate the delay in data collection as a result of staged customs controls.
- 7.4 To ensure the collection of data from the correct number of businesses during the transition period and during the year following the end of the period, the exemption thresholds remained unchanged.
- 7.5 The applicable EU legislation providing for use of the Intrastat system during the transition period is Council Regulation (EC) No 638/2004 of the European Parliament and Council and Commission Regulation (EC) No 1982/2004. Following the end of the transition period that legislation applies to collecting trade in goods statistics for goods moving between NI and EU member states under the terms of the Northern Ireland Protocol. The collection of arrivals data into Great Britain during 2021 was provided for by Council Regulation (EC) No 638/2004, Commission Regulation (EC) No 1982/2004, and the Statistics of Trade (Customs and Excise) Regulations as amended by the Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/47).

Why is it being changed?

- 7.6 In NI Regulation (EC) No 638/2004 will be replaced by Council Regulation (EU) 2019/2152 and Commission Regulation (EU) 2020/1197 from 1 January 2022.
- 7.7 This means that HMRC needs to ensure that the exemption thresholds are set to collect trade in goods data for trade between NI and EU member states from the

correct number of businesses. As the overall volume of trade being monitored by the Intrastat system has reduced, the exemption threshold levels need to be revised down to ensure the correct percentage of businesses have to declare, in accordance with EU Regulation 2019/2152.

What will it now do?

- 7.8 This Instrument revises the Intrastat arrivals exemption threshold from £1,500,000 to £500,000 for arrivals into NI. This revision is required to ensure compliance with EU legislation, and that the data collected will meet the quality standards set for published statistics and meet the requirements of users of statistical data.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the UK from the EU because it is being made under section 8C(1) of the European Union (Withdrawal) Act 2018 and relates to the Northern Ireland Protocol in the Withdrawal Agreement. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Once the impact of full customs controls and simplifications arising from customs and border policy changes are fully understood, HMRC intend to review the application of the Statistics of Trade (Customs and Excise) Regulations 1992 and consolidate with this legislation.

10. Consultation outcome

- 10.1 No consultation has been carried out in conjunction with this revision as it is legally required to maintain the collection of the Intrastat arrivals trade in goods statistics at an appropriate level to ensure the quality of trade data available to key users of the data. This measure is expected to have a negligible impact on the UK VAT-registered businesses which exceed the Intrastat exemption thresholds set for 2022 and which will therefore be required to submit Intrastat declarations.

11. Guidance

- 11.1 Guidance on the www.gov.uk/intrastat website for Intrastat will be amended on 1 January 2022.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
12.2 There is no, or no significant, impact on the public sector.
12.3 A full Impact Assessment for this measure has not been produced as there is negligible impact for the businesses affected.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
13.2 To minimise the impact on small businesses (employing up to 50 people), the requirement to submit Intrastat declarations does not apply to businesses with an

annual value of trade between NI and EU member states below the set Intrastat exemption thresholds.

- 13.3 The basis for the final decision on what action to take to assist small businesses is that most small businesses will already be exempt from providing Intrastat information.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the changes set out in this instrument will be monitored as part of HMRC's normal compliance activity.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Mark Gammon at HMRC Telephone: 03000 593340 or email: mark.gammon@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrea Prophet, Deputy Director for Trade Statistics and Customs Analysis, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

- 1.1 The Financial Secretary to the Treasury, the Rt Hon Lucy Frazer QC MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Statistics of Trade (Customs and Excise) (Modification) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: it does not meet criteria for an affirmative procedure in the European Union (Withdrawal) Act 2018. This instrument only contains a minor modification to UK secondary legislation that ensures that the law continues to operate effectively following the end of the transition period as the substantive rules will remain largely the same.

2. Appropriateness statement

- 2.1 The Financial Secretary to the Treasury, the Rt Hon Lucy Frazer QC MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Statistics of Trade (Customs and Excise) (Modification) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because: this instrument goes no further than making an appropriate modification to UK secondary legislation to ensure that EU law applicable under the terms of the Northern Ireland Protocol operates effectively.

3. Good reasons

- 3.1 The Financial Secretary to the Treasury, the Rt Hon Lucy Frazer QC MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: that if this instrument was not made the existing legislation would not be able to operate effectively as the correct number of businesses required to submit Intrastat arrivals declarations to ensure adequate data coverage and quality, would not be met.

4. Equalities

- 4.1 The Financial Secretary to the Treasury, the Rt Hon Lucy Frazer QC MP has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Financial Secretary to the Treasury, the Rt Hon Lucy Frazer QC MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lucy Frazer have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

5. Explanations

- 5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.