

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

40th Report of Session 2022–23

Statement of Changes to the Immigration Rules and Immigration (Electronic Travel Authorisations) (Consequential Amendment) Regulations 2023 (linked): Oral Evidence

Includes information paragraph on:

Competition Act 1998 (Motor Vehicle Agreements Block Exemption) Order 2023

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 12 May 2022, are set out on the website but are, in summary:

To report on draft instruments published under paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018; to report on draft instruments and memoranda laid before Parliament under sections 8 and 23(1) of the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

[Lord De Mauley](#)

[Baroness Harris of Richmond](#)

[Lord Hunt of Wirral](#) (Chair)

[Lord Hutton of Furness](#)

[Baroness Lea of Lymm](#)

[Lord Powell of Bayswater](#)

[Baroness Randerson](#)

[Baroness Ritchie of Downpatrick](#)

[Lord Rowlands](#)

[Lord Russell of Liverpool](#)

[Lord Thomas of Cwmgiedd](#)

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Chris Smith (Adviser), Jane White (Adviser) and Riona Millar (Committee Operations Officer).

Further Information

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://statutoryinstruments.parliament.uk/>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Fortieth Report

STATEMENT OF CHANGES TO THE IMMIGRATION RULES (HC 1160) AND IMMIGRATION (ELECTRONIC TRAVEL AUTHORISATIONS) (CONSEQUENTIAL AMENDMENT) REGULATIONS 2023 (SI 2023/305) (LINKED): ORAL EVIDENCE

Oral evidence session with Lord Murray of Blidworth, Parliamentary Under Secretary of State for Migration and Borders, Home Office, Thursday 11 May 2023

These two instruments introduce the Electronic Travel Authorisation (ETA) scheme and, within it, the use of biometric information. Under ETA, all non-British or Irish passengers visiting or transiting through the UK who do not currently need a visa will be required to obtain an ETA in advance. We published a Report on the instruments in March, which criticised the Home Office for providing inadequate explanatory information and identified aspects of the policy that gave rise to further questions.

*Lord Murray of Blidworth, Parliamentary Under Secretary of State for Migration and Borders at the Home Office, attended an oral evidence session on the instruments on 11 May 2023. Lord Murray provided some helpful clarifications on the operation of ETAs at the Republic of Ireland/Northern Ireland border and on the introduction of fingerprint technology, but these aspects of the policy are evidently still ‘work in progress’. **We look forward to further information in due course.***

*The point remains that such additional information as Lord Murray made available should have been included in the original Explanatory Memorandums (EMs) to inform the scrutiny process. **We are concerned that the Home Office has too narrow a view of the role of the EM.***

Background

1. The Home Office laid these two instruments in March 2023. They introduce the Electronic Travel Authorisation (ETA) scheme, under which all non-British or Irish passengers visiting or transiting through the UK who do not currently need a visa will be required to obtain permission in advance and submit biometric information. The Government state that ETA will close a current “gap” in advance permissions and “enhance the Government’s ability to screen arrivals and prevent the travel of those who pose a threat to the UK”. ETA has similarities to the EU’s European Travel Information and Authorisation System.¹
2. We published our formal view of the instruments in our 35th Report, drawing them to the special attention of the House on the grounds of policy interest and insufficient information.² In our Report, we raised the following issues:
 - The instruments were submitted without an impact assessment (IA), any impact information or an explanation for its absence. The likely

1 European Union, ‘New requirements to travel to Europe’: https://travel-europe.europa.eu/etias_en [accessed 15 May 2023].

2 Secondary Legislation Scrutiny Committee, *35th Report*, Session 2022–23 (HL Paper 177).

cost of the ETA is a key part of assessing the scheme's effect, but it was not mentioned.

- There were unresolved questions about how ETA would work on the Republic of Ireland/Northern Ireland land border.
 - It was unclear how the proposed fingerprint biometric information, to be required as part of ETAs in the future, would operate and whether it is appropriate to legislate for it now.
3. Having made clear in our recent Report on IAs³ the importance we attach to proper impact information being provided, we asked for oral evidence from the Home Office on why it had been omitted in this case. Accordingly, Lord Murray of Blidworth, Parliamentary Under Secretary of State for Migration and Borders at the Home Office, attended an evidence session on 11 May 2023. We also asked Lord Murray more general questions about the Home Office's processes for preparing and clearing SIs and their explanatory material. A transcript of the session is available on our website.⁴

Absence of impact information

4. In the Explanatory Memorandums (EMs) to the instruments, the Home Office said, without giving reasons, that it had prepared an IA but that this would not be published. In subsequent correspondence, the Home Office said that not publishing was because a fee for ETA applications had not yet been agreed, and that "it would be far more beneficial to publish an IA which reflects the final policy".
5. Our original Report agreed that the level of fees would be an important factor in determining the impact of the ETA. However, we concluded that it would have been helpful to provide this rationale in the EM, and that the EM could and should have provided summary impact information not just relevant to, or affected by, fees.
6. In the evidence session, Lord Murray accepted the importance of transparency, scrutiny and of publishing IAs. He agreed that the absence of impact information should have been explained in the EM. However, he reiterated that any IA on ETAs would be "less useful" without fee information. Lord Murray said that it was the Home Office's intention to publish an IA for the introduction of ETA once the fee is agreed with HM Treasury, which he hoped would be "shortly".
7. Our view in this area has not changed. The likely cost of the ETA is a key part of assessing the effects of the scheme but no indicative levels (for example, broadly the same as the EU equivalent) were given. **As the Home Office had produced an IA, even in the absence of fee information, the assessment (or a summary of it) should have been provided when the instruments were laid, to inform the scrutiny process.** We look forward to the full IA being published in due course.

3 Secondary Legislation Scrutiny Committee, *Losing Impact: why the Government's impact assessment system is failing Parliament and the public*, 12th Report, Session 2022–23 (HL Paper 62).

4 Oral evidence taken before the Secondary Legislation Scrutiny Committee, on Electronic Travel Authorisations, 11 May 2023 (Session 2022–23), [QQ 1–15](#).

Republic of Ireland/Northern Ireland border

8. The EMs did not contain any explanation of the operation of ETAs at the Republic of Ireland/Northern Ireland (NI) border. Our further questioning revealed that those who are required to have an ETA to enter the UK will need to have one to cross the land border from the Republic to NI. However, there will be no immigration controls on that border and no routine controls on travel from NI to the rest of the UK.
9. Our original Report questioned the usefulness of a requirement to have an ETA for a journey that would be subject to no checks. We expressed concern that free movement across the border and between NI and mainland UK could undermine the policy intention of preventing the travel of those who pose a threat to the UK. We also noted that the need for an ETA could deter tourism in NI for those initially arriving in the Republic.
10. In the evidence session, Lord Murray agreed that the system presented “risks” but that the chosen approach balanced these with other desirable goals (presumably, including free movement across the Irish border and within the UK). He noted that the same issues already arise in relation to those subject to visa requirements. Lord Murray also stated that the Government were working with tourism bodies on both sides of the border and would make further guidance available on the operation of ETA at the Irish border “shortly”. Lord Murray said that while tourists would not be exempted from ETA, he believed there should not be undue impact on tourism because the ETA process will be “incredibly simple, straightforward and inexpensive”. **This is useful information that should have been included in the EM.**
11. We recognise that the imperative of free movement across the Irish border presents difficulties for any immigration system and appreciate that a balance must be struck. We agree that a simple and inexpensive system could reduce the effect on tourism but continue to have concerns about the possible impacts. **We welcome the Government working with interested parties and look forward to seeing the further guidance in due course.**

Introduction of fingerprint biometric information

12. **SI 2023/305** would allow the Government to collect and use biometric fingerprint information as part of the ETA system, although responses to our questions suggested the relevant technology has not yet been developed. Our original Report questioned whether it was appropriate to introduce enabling legislation in this area at this stage and requested further information on the costs and benefits of this aspect of ETAs.
13. In the evidence session, Lord Murray said that the technology to collect fingerprints on a remote basis is “nearly there” and will be available in the “medium term”. He stated that legislating now, prior to the adoption of the technology, was appropriate because the same legislative framework is required regardless of the system adopted. Lord Murray anticipated that further information on the provisions would be published before introduction of the measures but that the UK’s approach to fingerprint biometrics would be “smoother” than that in the EU’s similar scheme.
14. We note that many countries already collect fingerprint information as part of their immigration systems. We look forward to further information on the UK’s approach, including on its costs and benefits, being made available

in due course. **We welcome the intent to create a system that operates smoothly; the House may wish to monitor progress following implementation.**

Conclusion

15. The session provided some useful clarifications, particularly that ETAs would be “simple and inexpensive”, that the aim was to produce a smooth fingerprinting system and the assurances to publish further information. **However, these remain intentions and the House may wish to ensure the Home Office meets these commitments as work on ETAs progresses.**
16. The additional information provided by Lord Murray at the evidence session and in earlier correspondence should have been included in the original EMs. The session also did not change our view that at least some impact information should have been provided when the instruments were laid, to inform the scrutiny process. Lord Murray said that an EM was “describe to a layman the purpose of the regulation”. However, an EM should not just explain *what* the policy is. It should also make the case for *why* the policy has been chosen—very often requiring information on the costs and benefits. **We are concerned that the Home Office has too narrow a view of the role of the EM.**

INSTRUMENTS OF INTEREST

Competition Act 1998 (Motor Vehicle Agreements Block Exemption) Order 2023 (SI 2023/501)

17. This block exemption Order has been made under section 6 of the Competition Act 1998 (“the Act”), following a recommendation by the Competition and Markets Authority (CMA). The instrument ensures that certain ‘vertical agreements’ in the motor vehicle aftermarket sector continue to be exempt from the prohibition in Chapter I of Part 1 of the Act which bans agreements between businesses that prevent, restrict, or distort competition, if certain conditions are met. The exemption will expire on 31 May 2029. According to the Department for Business and Trade (DBT), ‘vertical agreements’ are agreements between businesses which operate at different levels of the production or distribution chain, and which set the conditions under which the parties may purchase or sell spare parts for motor vehicles or provide repair and maintenance services.
18. The Order replaces a similar block exemption under retained EU law which will expire on 31 May 2023. While the Order provides continuity and legal certainty for businesses, the exemption diverges in some areas from the current rules under retained EU law. The differences include updated definitions and a new obligation on the parties to provide the CMA with information. The Order also introduces a new exclusion under which agreements which restrict access to repair and maintenance information, tools and training will not benefit automatically from the block exemption. Such agreements will instead be assessed against the Chapter 1 prohibition. DBT says that this exclusion is necessary to ensure a level playing field for independent operators and authorised repairers and distributors, adding that without the exclusion, the market position of independent operators could decline, leading to reduced choice of spare parts and repair and maintenance services and, ultimately, higher prices.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to annulment

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|-------------|---|
| SI 2023/484 | Public Procurement (International Trade Agreements) (Amendment) Regulations 2023 |
| SI 2023/497 | Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023 |
| SI 2023/501 | Competition Act 1998 (Motor Vehicle Agreements Block Exemption) Order 2023 |

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 16 May 2023 and included in this report, Members declared no interests.

Attendance:

The meeting was attended by Lord De Mauley, Baroness Harris of Richmond, Lord Hunt of Wirral, Lord Hutton of Furness, Baroness Lea of Lymm, Lord Powell of Bayswater, Baroness Randerson, Baroness Ritchie of Downpatrick, and Lord Rowlands.