

Lord Jay of Ewelme

Chair, Protocol on Ireland/Northern Ireland Sub-Committee
Home Office,
By email to hlprotocol@parliament.uk

5th June 2023

Dear Lord Jay,

Thank you for your continued interest in the ETA and our concerns regarding the impact on overseas tourism to Northern Ireland.

Since we last communicated, NITA have received a Senior Counsel opinion on the ETA legislation in regard to overseas tourists travelling to NI via the land border and this has confirmed our areas of concern which we have laid out below.

1. The main reason given for not granting the short duration exemption for tourists crossing the land border into Northern Ireland is that it would 'undermine the rationale for introducing the ETA scheme'.

We would ascertain that the Home Office themselves have undermined the ETA rationale as there are no immigration checks in place at the land border as per the requirements for maintaining the CTA and this therefore creates a different approach to security to the other UK borders.

The protection for tourists afforded to those arriving via a direct port of entry in the UK, will not be provided to those arriving into the UK via the land border, due to the legal obligation on carriers to inform and check that an ETA is in place prior to travel and immigration checks prior to leaving the port of entry, and therefore these tourists face a much higher risk of crossing the land border into the UK without an ETA and subject to criminal sanctions.

Our senior Counsel stated - 'it is hard to see how the rationale for the application of the ETA scheme to non-visa nationals is not undermined or even made redundant by the lack of checks within the CTA'.

2. Within in ETA rules, a crime is committed if a person 'knowingly' enters the UK without an ETA.

We understand that for those arriving via a direct port of entry, there is a legal obligation on carriers to inform travellers of the ETA requirement and to check that a traveller has an ETA in place prior to boarding. However, for those tourists arriving

into the RoI prior to travelling to NI via the land border, they will not be directly informed of the ETA requirement via their carrier. Immigration control in the RoI will not be checking for an ETA and there will be no checks at the land border.

If one of these tourists are stopped, either due to an accident or an intelligence-led check, how will it be determined whether they entered the UK 'knowingly' without an ETA?

The senior Counsel opinion also makes note that 'although the risk of criminal liability or sanctions is low, the risk cannot be eliminated, and it would take only one incident to undermine the attractive nature of travel to NI and therefore the viability of cross border tourism'.

We would ask the Minister of State to give consideration to provide an exemption on criminal sanctions for non-visa nationals crossing land-border.

3. The Minister of State in his letter to you, makes reference to the comparison of the UK ETA scheme with those in other countries such as United States/ Australia.

It should be noted that these schemes all operate through direct ports of entry with direct communication from carriers to inform travellers of travel requirements at time of booking.

As far as we are aware, the UK land border with RoI is unique in that it is part of the CTA and does not follow the same border controls as the other UK borders. We have stated previously that our issue is not with the ETA scheme and how it is applied at direct port of entries, but rather the intention to require non-visa nationals travelling from RoI to UK via the land border.

Since 2005, the land border has had no border controls in place and NI has been promoted as part of the Island of Ireland with seamless travel between the two jurisdictions. In most cases, tourists are not aware that they are entering the UK as it is an invisible border.

We would argue that having an exemption for non-visa national tourists will better secure the border and protect the NI economy. This gives a clear message to non-tourists that an ETA is required and ensures that we maintain the seamless travel for tourists who plan to include a trip to NI as part of the trip to Ireland.

Mitigations

As we continue to argue the case for an exemption, we are exploring how we can mitigate the impact of the ETA requirement, should a short-term duration exemption not be granted.

We have our first meeting with Home Office officials on 7th June to discuss what a communication plan for this would look like.

For your information, there are an estimated 7 million tourists travelling to Ireland each year from countries that would require an ETA to enter the UK. Of the 780K non-visa nationals that visit NI, 70% travel from ROI, meaning that 550K or 8% of tourists arriving via the Rol, will need to be communicated with.

There are a number of ways that a tourist could travel from Rol to NI:

- Trip organised by a tour operator to include Rol and NI destinations.
- Via Irish Rail / Translink cross border Enterprise rail service
- Taxi
- Adhoc trip via coach
- Rental car


It is not clear the legal obligation on these carriers to check/inform tourist of ETA requirement. Where does responsibility lie if a tourist is found not to have an ETA?

NOTE: this represents around 1% of total visitors to the UK who will require an ETA.

We greatly appreciate your assistance and support in this matter to date and I have attached an updated briefing for your information.

Do not hesitate to come back to me should you require further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne Stuart', with a stylized flourish at the end.

Dr Joanne Stuart OBE
CEO Northern Ireland Tourism Alliance

ETA Briefing June 2023

Overview

Plans by Westminster to introduce a new travel visa known as an Electronic Travel Authorisation – ETA for short – will be a requirement to all non-visa national visitors to Northern Ireland whether they arrive direct into a UK port of entry (Airport/Ferry Terminal) or via the land border.

NITA are **not challenging** the requirement for those travelling direct to NI via air/ferry, as they will be aware of the requirement before travelling due to the legal obligation on airlines to:

1. Inform travellers of the ETA requirement at time of booking
2. Check that travellers have an ETA at time of boarding
3. Immigration controls will be in place at the port of entry

However, we believe that the ETA requirement will either deter overseas visitors, arriving via the Republic of Ireland, from coming to Northern Ireland (due to administrative process and cost), or tourists will not be aware of the requirement as their direct port of entry is into RoI and therefore they will not be informed of the requirement for an ETA if they are intending to visit NI as part of their trip to Ireland. There is a commitment from the Home Office that there are no plans to have border control in force at the land border and therefore, unlike other tourists who arrive direct into NI, there is no opportunity for tourists to be made directly aware of the requirement before they cross the border.

Although it is argued that the likelihood of any tourist crossing the land border being subjected to immigration checks is minimal, it is a legal requirement to have an ETA before travelling to UK and there are criminal sanctions in the National and Borders Act for any eligible person being found to be 'knowingly' in the UK without an ETA. This means that tourists who do not have an ETA will be in legal jeopardy and open to a criminal charge.

This has been recognised by the Minister of State for Immigration, Robert Jenrick, who wrote to NITA, on 2nd May 2023, in response to our concerns, raised on 16th March, saying *'in terms of the implementation of the proposed 'duty to make arrangements for removal' in the Illegal Migration Bill, the Government is giving consideration to how our regulation making power may be applied in order to exempt persons who unknowingly enter the UK via the Irish land border.'* We have not received any further clarity on this.

There is also an implication on travel insurance. For example, if a tourist has an accident and requires medical attention or if a tourist is stopped as part of an intelligence led immigration check, and it is found that they do not have an ETA, their insurance would be invalidated.

Even if visitors are aware of the requirement, we believe that this could have a detrimental financial impact as circa 70% of visitors to NI travel to RoI and then cross the land border into NI.

Although we still do not know what the cost will be (estimates £10-£17), we do know that everybody will require an ETA (from birth upwards) and the guidance is that you should apply for your ETA up to 3 days before travelling. This will make NI a less attractive place to visit, particularly for short or spontaneous trips. Tourists and operators may decide that it's just cheaper and more convenient to drop Northern Ireland from their itinerary and stay in RoI for the duration of their visit. 25% of total tourism spend is at risk.

Legal Opinion

NITA commissioned a Counsel's Opinion in the matter of the issues caused by the implementation of the ETA and potential grounds of challenge.

In summary, there are several areas of concern as follows:

1. We have a case to ask for clear exemptions on criminal sanctions for non-visa nationals crossing land-border.
2. Although there will be no immigration checks on the land border, there is a need for a clear and unambiguous assurance that there will be no checks by border officials. We are aware that 'intelligence led' checks can be carried out.
3. The full impact assessment produced in response to ETA changes has not been published and this is something we should have sight of.
4. Within in ETA rules, a crime is committed if a person 'knowingly' enters the UK without an ETA. How will this be determined?

The opinion also makes note that 'although the risk of criminal liability or sanctions is low, the risk cannot be eliminated, and it would take only one incident to undermine the attractive nature of travel to NI and therefore the viability of cross border tourism'.

Next Steps

Although we are continuing to pursue an exemption from the ETA requirements in this unique situation, we are also working with Tourism Ireland and key stakeholders in the Republic of Ireland to explore potential mitigations should the ETA be implemented as currently planned.

Case for Providing an exemption for tourists entering NI via the land border

We believe that there continues to be a strong case for providing this exemption:

1. Tourism is one of the six areas of co-operation enshrined within the Good Friday Agreement, which introduced a new business model to promote NI overseas as part of the island of Ireland destination – this is different to all other regions of the UK which are promoted overseas by Visit Britain. A lot of tourists are not aware that NI is part of the UK.
2. The main gateway for overseas tourists visiting Northern Ireland is via the RoI. Over 70% of overseas (USA/EU/Rest of World) tourists arrive in Northern Ireland crossing the land border. As they arrive in the RoI first, they will not be aware (through their booking agent), that an ETA is required if they are intending to

travel to NI. This risks creating legal jeopardy.

3. The number of visits to NI by international tourists arriving via RoI was an estimated 550,000 in 2019/2020. This represents only 1.3% of all international visits to UK.
4. The land border between RoI and NI is 300 miles long crossing between both jurisdictions and has no immigration checks. In effect, it is an invisible border, which currently allows for seamless travel across the island of Ireland.
5. Although there is no border control on the land border, immigration checks will be intelligence led so a tourist could be stopped. If they have an accident or require medical attention their insurance will be invalid if they do not have an ETA
6. Tourists crossing the land border into NI are treated differently than tourists arriving via a UK direct port of entry.
 - a. Tourists arriving via direct port of entry are informed of the ETA requirement:
 - i. at time of booking (airlines flying into UK have a legal obligation to inform the traveller of the requirement)
 - ii. at time of boarding flight
 - iii. will be stopped at immigration control within the airport/ferry terminal

This means that it is highly unlikely that a tourist arriving via a UK direct port of entry would either be unaware of the requirement or leave the direct port of entry without an ETA

- b. This is different for tourists crossing the land border due to:
 - i. tourists are booking a flight to RoI and therefore will not automatically be informed of the need to have an ETA to enter UK (NI)
 - ii. tourists only require a passport to go through immigration control in RoI and again are not informed of the need to have an ETA to go to NI as part of their trip
 - iii. given that NI is promoted overseas as part of the Island of Ireland destination, a lot of tourists are not aware that it is part of the UK and therefore unless they are told at time of booking they will be unaware that the ETA requirement would apply.
 - iv. the Home Office have stated that there will be no immigration checks on the border and therefore a tourist can inadvertently enter NI without being aware of the need to have an ETA
 - v. immigration checks will be intelligence led so a tourist could be stopped. If they have an accident or require medical attention their insurance will be invalid as they will not have an ETA

Proposed Adapted Solution

Following engagement with Home Office officials we proposed an exemption from the ETA requirement for those visitors who travel to Northern Ireland (NI) via the Republic of Ireland (RoI). Ideally, we would like to see the requirement completely removed, however, based in research by Tourism Ireland a duration exemption for a period of 5-7 days stay in NI would mean around 90% of international visitors would not require an ETA.

This exemption should cover promotable visitors travelling to NI, via RoI, as part of their trip to the island of Ireland including those travelling as part of a tour group or

travelling independently.

Note: Promotable visitors are made up of holiday makers, those visiting family and friends, conference, trade/fair/exhibition visitors.

We believe this minor adaptation is in keeping with the spirit of the original legislation and the Good Friday Agreement and will allow seamless tourism on the island of Ireland to continue in the majority of cases. It will protect our tourism economy, ensure clarity in marketing and eliminate disruption for most visitors.