



Baroness Williams of Trafford
Minister of State
Home Office
2 Marsham Street
London
SW1P 4DF

14 January 2022

Dear Susan,

NATIONALITY AND BORDERS BILL

In its December 2020 *Review of investigative and scrutiny Committees*, which first proposed the establishment of the Sub-Committee on the Protocol on Ireland/Northern Ireland, the Liaison Committee identified the six core tasks of the Protocol Committee, one of which was **“Scrutiny of the implications of relevant domestic UK legislation and policy for Northern Ireland”**. In our *Introductory report* of July 2021, we set out our intention to consider the implications of relevant domestic legislation for Northern Ireland in this context at the time of a Government Bill receiving Second Reading in the House of Lords. We therefore considered the Nationality and Borders Bill at our meeting on 12 January 2022, in particular the possible implications of the Electronic Travel Authorisation (ETA) requirements for the Ireland/Northern Ireland border.

We note that, under clause 71, much of the detail of how the ETA scheme will work in practice will be set out later in the Immigration Rules. What requirements does the Government intend to put in place in the Immigration Rules in relation to:

- specifying who will be required to have a valid ETA, and any exceptions to this;
- the form or manner in which an application for an ETA may be made, granted or refused;
- any conditions that must be met before an ETA application can be granted;
- the grounds on which an ETA application must or may be refused;
- the validity of an ETA (length of time and/or number of journeys); and
- the form, manner, or grounds for varying or cancelling an ETA?

In addition to the matters to be set out in the Immigration Rules, how much does the Government intend to charge for an ETA, and how long does it expect the turnaround time will be for processing an application and issuing an ETA? If all of these matters have not yet been decided, when does the Government expect to make a decision?

In determining all these arrangements for the ETA scheme, what consideration has the Government given to the particular nature of the Ireland/Northern Ireland border? For instance, as Kevin Foster MP, Parliamentary Under-Secretary of State for Immigration and Future Borders, acknowledged while giving evidence to the House of Commons Northern

Ireland Affairs Committee, “there are some roads [...] that weave across the border”.¹ The Irish Government has assessed that of the tens of thousands of people that cross the land border daily, many will be non-Irish EU/EEA nationals living in Ireland.² Can the Government confirm whether holders of a frontier worker permit would be exempt from the requirement for a valid ETA? Will there be any other exemptions or special arrangements for people crossing the land border frequently from Ireland?

Can you also explain how the reciprocal arrangements currently operate for British and Irish citizens resident in Northern Ireland and travelling to the EU, whether direct to the EU mainland, or across the land border into Ireland, and via onward travel to other EU Member States? In particular, what documentary requirements and checks are in place for Northern Ireland residents entering the Schengen Area, including via airports in Ireland? Can you also explain how these arrangements will change when the EU’s European Travel Information and Authorisation System (ETIAS) becomes operational? What discussions have you had with the Commission and Member State Governments about these arrangements, and when do you expect the ETIAS scheme to become operational?

We note that clause 39 would make it an offence for a person knowingly to arrive in the UK without an ETA where one was required. How will it be determined whether a person arriving in Northern Ireland from Ireland without a required ETA “knowingly” did so? How does the Government intend to publicise the new ETA requirements to non-British and non-Irish citizens travelling from Ireland to Northern Ireland, particularly across the land border?

On the subject of enforcement, we note that Mr Foster told the Northern Ireland Affairs Committee that enforcement will be similar to what is already done to enforce visa requirements.³ Can you confirm Mr Foster’s statement that there will “absolutely not” be checks at the land border of whether non-visa nationals had valid ETAs? Can you explain what Mr Foster meant when he said that, instead, if the authorities “have a reason to believe someone is in the UK without appropriate permission”, they would “seek to encounter them ... as part of general targeted intelligence enforcement work”? Will there be any changes to documentary checks at ports and airports? Can you ensure that the ETA regulations are compatible with the continued operation of the Common Travel Area both North-South and West-East and assure us that this is and will continue to be the case?

Furthermore, it is likely that the number of people crossing the Ireland/Northern Ireland border who may be required to have an ETA will be much higher than the number of those currently crossing who are required to have a visa to enter the UK. Has the Government made any estimate of the numbers of people crossing the border who will be affected? Does the Government intend to devote a proportionately higher level of resource to enforcement in future?

Mr Foster also said that the Government is “proportionate” in enforcing immigration controls.⁴ What would this mean in practice for individuals found to have crossed the Ireland/Northern Ireland border without a required ETA? Would they be at risk of

¹ House of Commons Northern Ireland Affairs Committee, [Oral Evidence: UK Immigration Policy and the Common Travel Area](#), 8 December 2021, HC 795 of session 2021–2, Q18.

² Dáil Éireann, [‘Written Question 359’](#), 14 December 2021.

³ House of Commons Northern Ireland Affairs Committee, [Oral Evidence: UK Immigration Policy and the Common Travel Area](#), 8 December 2021, HC 795 of session 2021–2, Q20.

⁴ *Ibid*, Q27.

deportation to Ireland or to their country of citizenship? What would be the impact on their ability to apply successfully for an ETA in the future?

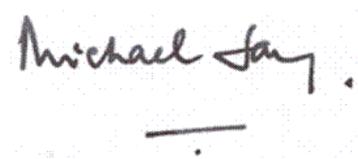
We note that clause 72 of the Bill would extend the existing carriers' liability scheme so that ship or aircraft owners could be subject to a £2,000 charge for carrying a passenger to the UK without an ETA where one was required. However, we also note evidence from the Home Office to the Northern Ireland Affairs Committee that carriers' liability charges are not currently imposed on journeys from Ireland to the UK.⁵ Can the Government confirm whether this practice of not imposing carriers' liability charges for these journeys will continue?

We note that the Irish Government has expressed concerns about the Bill, including about the potential impact of ETA requirements on supply chains and tourism on the island of Ireland.⁶ What assessment has the Government made of these possible impacts? What representations has the Government received from the Irish Government about the Bill, and what is your response?

In order to inform the Committee stage deliberations on the Bill, we would be grateful for a response to this letter by 27 January 2022.

I am copying this letter to Baroness Taylor of Bolton, Chair of the Constitution Committee, Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee, Les Saunders and Donald Harris, Cabinet Office, Andrew Englefield, Scrutiny Coordinator, Home Office, Mervyn Storey MLA, Chair of the Northern Ireland Assembly Committee for Justice, and Sinead McLaughlin MLA, Chair of the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Jay". Below the signature is a horizontal line and a small dot, which are part of the signature's flourish.

Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee

⁵ *ibid*, QQ36–7.

⁶ Dáil Éireann, [‘Questions on Promised Legislation’](#), 9 December 2021 and Dáil Éireann, [‘Written Question 359’](#), 14 December 2021.