



## **Submission to the House of Lords Justice and Home Affairs Committee inquiry on Electronic Border Management Systems**

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1. We welcome the opportunity to submit evidence to the inquiry on Electronic Border Management Systems being carried out by the committee.
2. The NI Tourism Alliance is the voice of tourism in Northern Ireland representing all the diverse sectors that make up the tourism economy. A list of our members is available at [Members Directory | Northern Ireland Tourism Alliance \(nitourismalliance.com\)](https://nitourismalliance.com). We have kept our submission as concise as possible and we are happy to provide further information, either orally or in writing, to the committee as required.
3. Our concerns are regarding the impact of the ETA on travel within the Common Travel Area (CTA) and in particular the implication this would have for international tourists who travel to Northern Ireland (NI) via the land border. The additional administrative burdens and legal ambiguities, and punitive penalties outlined in the Illegal Immigration Bill, we fear, will lead to Northern Ireland being struck off the itinerary of many all-island tour operators.
4. NITA are also concerned about the legal jeopardy that tourists could unwittingly find themselves in. Since the Good Friday Agreement (GFA), Northern Ireland has been promoted as part of the Island of Ireland destination with seamless travel across the island. Over a £1bn has been spent developing the island of Ireland destination and a lot of tourists are not even aware that they are crossing into the UK when they travel to Northern Ireland. Therefore, a tourist could inadvertently enter NI without being aware of the need to have an ETA. This will put them in legal jeopardy and open to a criminal charge and deportation as per the Nationalities and Borders Act and the Illegal Immigration Bill 262. This is different to the rest of the UK, where all tourists will be arriving at a direct port of entry and their ETA will be checked prior to travelling by the carrier as they have a legal obligation to do so. Therefore, it is highly unlikely that any tourist will arrive directly into the UK without an ETA and be open to criminal sanctions.
5. NITA has been lobbying for an exemption for non-visa nationals crossing the land border for the last two years and following engagement with the Minister for Immigration at the time, Robert Jenrick, and Home Office officials, NITA submitted a proposed solution of a short- term duration exemption in January 2023.

6. NITA would like to see a complete exemption for tourists arriving into Northern Ireland via the land border, however, following discussions with the Home Office, NITA put forward a compromise solution of a time-bound exemption of 5-7 days which would cover around 90% of these tourists. This exemption would cover promotable visitors (holiday makers, those visiting family and friends, conference, trade/fair/exhibition) travelling to Northern Ireland, via Republic of Ireland, as part of their trip to the island of Ireland whether travelling as part of a tour group or travelling independently.
7. This proposal was rejected. The Home Office argued that it would undermine their rationale for the ETA and that UK border security must be uniform across all borders. This was reiterated by Minister of State Tom Pursglove in his evidence to the committee on 26<sup>th</sup> March, in fact he stated that to grant this exemption 'would blow a hole in the rationale for the ETA'.
8. NITA finds this argument flawed. It is crucial to recognise that the land border between Northern Ireland and the Republic of Ireland is unique and is already dealt with differently to other UK borders –
  - i. It is the only land border within the UK.
  - ii. There are no immigration checks due to the Common Travel Area (CTA) and no plans to introduce such checks.
  - iii. Unlike those tourists who arrive in the UK via a direct port of entry, tourists who travel via Republic of Ireland will not be aware (through their booking agent), that an ETA is required if they are intending to travel to NI.
  - iv. As a result of the GFA, Northern Ireland has been promoted overseas by Tourism Ireland unlike other regions of the UK which are promoted by Visit Britain.
  - v. There is no legal obligation on carriers to inform non-visa national tourists arriving in Republic of Ireland that they require an ETA to travel to Northern Ireland.
9. Considering the relatively small number of tourists crossing this land border compared to the total visitors to the UK (1.8%), the absence of immigration checks, and the unlikelihood of "persons of interest" applying for an ETA (due to the lack of checks at the land border), a short-term exemption for tourists seems entirely reasonable.
10. The Home Office have granted an exemption for non-visa nationals residing in the Republic of Ireland and we believe this should be extended to non-visa nationals arriving into Republic of Ireland. A similar approach could be taken in regard to documentation as is in place for the non-visa national residents, in the case that a tourist was stopped. For example, this could include travel documentation (arrive/departure).

11. This approach would preserve the Good Friday Agreement's collaborative spirit across the island of Ireland, safeguard the financial contribution of overseas tourism to Northern Ireland, all without compromising the ETA policy.
12. To be clear, NITA are not calling for an exemption for those non-visa nationals who travel direct to Northern Ireland via a direct port of entry (i.e., airport). These tourists will be aware of the need for an ETA at time of booking with their agent/airline and will have their ETA checked at time of boarding.

### **Impact on Tourism in Northern Ireland**

13. Over 70% of Northern Ireland's international visitors arrive via the Republic of Ireland and travel across the land border into Northern Ireland as part of their trip to the island of Ireland. Over 85% of flights operated by airports in Northern Ireland are to GB and outbound holiday destinations. There are no international flights outside of Europe for inbound tourism and hence the significant number of international visitors arriving in the Republic of Ireland as their first port of entry. With the investment in road and train infrastructure it is a 90-minute drive from Dublin to Belfast.
14. To put this into the context of visitor numbers and financial impact, in 2019, there were 783k overnight trips by international visitors to Northern Ireland. (Note: EU and USA make up 64% of international overnight trips.) This means that 550K (70%) of these visitors crossed the land-border. We estimate that when day trip visitors are included a total of 1million international visitors travel across the land border for leisure and business. This equates to just 3% of the total number of visitors to the UK, based on the 30million number stated by the Minister of State for Legal Immigration in his evidence to the committee on 26<sup>th</sup> March 2024. We estimate that this generates £350m in visitor spend direct into the Northern Ireland economy.
15. In the current constrained economic environment, reduced public spending budgets and the impact of the cost-of-living crisis on disposable income for those in our home markets, attracting international tourists is even more important to sustain and grow our industry, create jobs and grow the economy.

### **Deemed Leave - Article 4**

16. The discussion between Lords Dubbs and Tony Smith at the committee session of 5<sup>th</sup> March 2024, raised the question of 'deemed leave' set out in Article 4 of the 1972 Order. The response to Lord Dubb's question highlighted the confusion that exists. On one hand Article 4 provides, non-visa nationals who entered the Republic of Ireland legally, permission to enter the UK (for up to six months), but on the other hand you would not have permission to travel to the UK if you do not have an ETA and therefore fall foul of the Illegal Immigration Bill Clause 2.
17. We have raised this with the previous Minister of State for Immigration but have not received clarification on how this will work. Below is a response from the House of

Commons Research Library to a question raised by the former Shadow Secretary of State for Northern Ireland, Peter Kyle, in relation to the impact of the Illegal Migration Bill on the 1972 Order.

18. **Question** – *Would non-visa nationals, i.e., an American tourist who arrives in Dublin and then travels to Belfast without an ETA, be vulnerable to the clauses in the Illegal Migration Bill which allow detention, removal and disbarment from future UK entry, settlement and citizenship?*
19. **Response** - *People become liable for detention, removal and disbarment from future UK entry etc under the Illegal Migration Bill if they meet all four conditions in clause 2 of the Bill. The first of those four conditions is met if the person is required to have an ETA but arrives without one. Assuming ETAs are rolled out to all non-visa nationals other than citizens and legal residents of Ireland, as is the Government's intention, an American tourist would fall foul of that condition.*
20. *But the fourth condition is that "the person requires leave to enter or remain in the United Kingdom but does not have it". Non- visa nationals who enter the UK via the Republic of Ireland do have leave to remain, under Article 4 of the Immigration (Control of Entry through Republic of Ireland) Order 1972 (as amended). [Home Office guidance on the Common Travel Area](#) refers to this as "Article 4 deemed leave" (see pages 56-59). It is essentially an automatic six-month visa, which takes effect in much the same way as for an American tourist who flies to the UK and enters through a passport egate.*
21. *Someone who has leave does not fulfil the fourth condition and would not therefore be subject to the Illegal Migration Bill – at least for so long as their Article 4 deemed leave lasts. If it expires before they depart the UK, all four conditions would then be fulfilled and the American tourist would at that point be subject to detention etc. In addition, [section 40 of the Nationality and Borders Act 2022](#) separately makes it a criminal offence to knowingly arrive in the UK without an ETA if one is required. Having Article 4 deemed leave is irrelevant to the commission of this offence.*
22. *The immigration minister has confirmed that "individuals who enter the UK illegally via the Irish border into Northern Ireland or via any route within the Common Travel Area will be removed to their home country (if it is safe to do so) or to a safe third country.*
23. *Within the ETA rules, as stated above, a crime is committed if a person 'knowingly' enters the UK without an ETA. There is no clarity on how this will be determined and what is the threshold. Although it is argued by the Home Office 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 meaning that tourists who do not have an ETA will be in legal jeopardy and open to a criminal charge.*
24. *This has been recognised by the Minister of State for Immigration, Robert Jenrick, in his letter to NITA, on 2<sup>nd</sup> May 2023, in response to our concerns, raised on 16<sup>th</sup> 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.

25. The British Irish Parliamentary Assembly in the report from the Sovereign Affairs committee recognised the challenges that the ETA will cause on cross-border travel and support for our position was included in their report published in October 2023 - [Amended-Report-BIPA-COM-A-Protecting-the-CTA-post-Brexit.pdf \(britishirish.org\)](#).
26. NITA has continued to make the case for an exemption, through our local MP's (**we have support of all the Northern Ireland political parties**), the Irish Government and UK Government and although the policy has been set, we believe that there is still time and justification to have an exemption. Since the restoration of the Northern Ireland institutions, we have met with the Economy Minister Conor Murphy who will be engaging with the Home Office regarding the exemption for those non-visa nationals travelling across the land border.

#### **Communication of ETA Requirement**

27. To try and mitigate the impact of the ETA in the situation that an exemption is not secured, NITA, along with the Department for the Economy, Tourism Ireland, Tourism NI and ITOA (Irish Tour Operators Association) are currently engaging with Home Office officials in regard to the communications requirements to ensure that visitors who cross the land-border are aware of the ETA requirement.
28. The Home Office would like to see transport operators and other tourism organisations, based in the Republic of Ireland, to inform visitors of the requirement, although there is no legal obligation for them to check that the visitor has an ETA before travelling. There is concern from local stakeholders that if the messaging is not correct, we could end up discouraging visitors to visit Northern Ireland.
29. NITA are a member of the Home Office Future Border & Immigration System (FSIB) All Advisory Group and have been sharing all the information available and details of online webinars with our members. However, industry requires clarity on timelines for implementation as soon as possible as bookings are being made into 2025 and beyond. It was only through the evidence session with Tom Pursglove that I learnt of the intention to have a further two phases of roll-out Autumn 2024 (Rest of World) and early 2025 (EU).
30. As a result of Northern Ireland being promoted as part of the Island of Ireland destination for the last 25 years, a lot of international visitors are not aware that Northern Ireland is part of the UK. This means that the global communications campaign being run by the Home Office will not resonate with those potential visitors.