

CAJ briefing note: Electronic Travel Authorisation (ETA) September 2023

1. Overview

[Section 75 of the Nationality and Borders Act 2022](#) amends the Immigration Act 1971 to introduce Electronic Travel Authorisations (ETA). This provides for a pre-entry clearance system, which requires anyone who does not need a visa, entry clearance or other specified immigration status, to obtain advanced permission before travelling to the UK. This includes on journeys within the Common Travel Area. ETA is a pre-entry clearance system, which gives you advanced permission to travel to the UK. It is not a visa for the UK and does not give you permission to live or work in the UK. ETA will be required for people who don't need a visa for the UK, when they travel to the UK as visitors, on a Creative Worker visa concession and to transit through the UK.

This system will not apply to British or Irish citizens, British Overseas Territory Citizens or those who have already been granted leave to enter or remain in the UK (such as status under the EU Settlement Scheme). The system will mainly impact non-visa nationals, including EU nationals, who can presently enter the UK 'visa free' for set periods. The ETA system will apply to specific nationalities as it is rolled out.

ETA will require an application online or via an app, it costs £10 and, if granted, lasts for two years. You can use ETA to enter the UK multiple times. There are no age limitations on ETA requirements and children are required to obtain them. Further details on applying for ETA are available [here](#). Detailed provisions relating to the ETA requirements are set out under Appendix: Electronic Travel Authorisations of the [Immigration Rules](#).

Knowingly entering the UK without an ETA is a [criminal offence](#), including crossing the border into NI.

2. Rollout of ETA

ETA requirements will apply to nationals of Qatar who are travelling to the UK on or after the **15 November 2023**. ETA requirements will apply to nationals of Bahrain, Jordan, Kuwait, Oman, Saudi Arabia and the United Arab Emirates who are travelling to the UK on or after **22 February 2024**. Other nationalities will not need to apply for an ETA yet, but may be added to the scheme at later dates.

3. Impact in Northern Ireland (NI)

ETA proposals raised significant concerns on the island of Ireland, due to the potential impact of the scheme on cross border mobility for non-visa nationals. The system was criticised as having the potential to detrimentally impact on the lives of non-visa nationals resident in Republic of Ireland who live fluid cross border lives and need to regularly enter NI. The UK government was criticised for applying the scheme on the land border without considering the unique impacts.

The scheme was also criticised for conflicting with commitments in the Protocol on Ireland/Northern Ireland/Windsor Framework. The NI Human Rights Commission (NIHRC) and Equality Commission for NI (ECNI) recommended that all journeys into NI, that originate from ROI, should be exempt from ETA requirements and [raised concerns](#) that the proposed ETA requirement could lead to a breach of the no-diminution commitment under Article 2 of the Protocol. Concerns about the impact of ETA on the island of Ireland were [raised](#) by the Irish government and by NI politicians in the [House of Commons](#) and the [House of Lords](#).

4. Exemption for Irish Residents

In response to the concerns raised about the impact of ETA on the island of Ireland, the UK government [announced](#) an exemption for non-visa nationals who are lawfully resident in the Republic of Ireland. A non-visa national who is lawfully resident in the Republic of Ireland, and who is travelling to the UK from within the CTA, does not need to obtain an ETA. This exemption applies only for travel within the CTA, and non-visa nationals who are lawfully resident in Ireland will be required to obtain an ETA to enter the UK from outside the CTA. Guidance to this exemption is available [here](#) and Detailed Provisions are set out in [Immigration Rules- Appendix Electronic Travel Authorisation](#).

As the exemption guidance states, a person is lawfully resident in Ireland if they are: “Resident in, and entitled to reside in, Ireland under any relevant legislation or rules which apply in Ireland at the time of the ETA application, but a person is not lawfully resident if they may not leave or attempt to leave Ireland without the consent of an Irish Minister.”

There is no legislative basis under UK law for immigration checks within the Common Travel Area. However, the Home Office has stated that if a non-visa national is relying on the Irish resident exemption and is subject to examination, they may be required to provide evidence of their residence. Children under 16 will not be required to provide evidence, but may be questioned.

The UK Home Office has provided a list of documents that can be used to as evidence of lawful residence in the Republic of Ireland. These documents must be an original, issued by the Irish government and valid at the time of travel:

- Irish driving licence
- Irish learner permit
- medical card
- GP visit card
- European Health Insurance Card
- Irish Residence Permit
- Permanent Residence Certificate
- Temporary Residence Certificate
- National Age Card

Where a person cannot provide evidence of their lawful residence in the Republic of Ireland, Home Office guidance states that it is unlikely Home Office officials will be satisfied that the Irish resident exemption applies. However, “officials must take into account all relevant information provided before making a decision”. This appears to permit some discretion.

However, the Home Office has indicated that this should not be relied upon, and that non-visa nationals who wish to avail of the Irish resident exemption should travel with the required documents.

It is important to remember that ETA only applies to people who do not need a visa to enter the UK as a visitor. ETA and the Irish resident exemption do not apply to a person who is lawfully resident in the Republic of Ireland, who requires a visa to enter the UK. Lawful residents of the Republic of Ireland, who require a visa to visit the UK, will still need to obtain the required visa. Further information on this is available [here](#) and you can find out if a person requires a visa to visit the UK [here](#).

5. Ongoing concerns

The enforcement of ETA within the Common Travel Area remains an area of concern. The Home Office has [committed](#) to 'no immigration controls whatsoever' on the land border, and to no 'routine' checks on other CTA routes. The Home Office has stated that they have no intention to change this as result of ETA. However, the guidance clearly envisages people being stopped and checked for ETA and being required to provide evidence to avail of the Irish resident exemption. Ad hoc type checks on CTA routes have proven a fertile ground for racial profiling and broader discrimination, any expansion of these checks as a result of ETA, risks exacerbating racial profiling and discriminatory practices.

The advice on evidencing the Irish resident exemption provided by the UK government provides a limited list of documents and indicates that people will be required to provide an in date, original version of these documents if checked. The reality of cross border life means that many legal residents of the Republic of Ireland will cross the border without any documents. The guidance appears to permit some discretion when a person is unable to provide a listed document, but it is vaguely worded. It is essential that this is clarified and that discretion is permitted, ensuring that people can evidence the Irish resident exemption in a flexible way, which reflects the reality of cross border life.

ETA requirements still apply for non-visa nationals who are not lawfully resident in the Republic of Ireland. This will significantly affect tourism, as it requires non-visa national visitors to the Republic of Ireland to obtain an ETA before travelling into Northern Ireland. An example of this would be that an American tourist who can enter Ireland and UK visa free, and who travels to Dublin, will have to apply for ETA in order to travel to Belfast on a day trip. Tourism bodies have raised significant concerns about this, stating that the scheme puts 25% of all tourism spend in Northern Ireland at risk, given some 70% of visitors arrive via Dublin. This differentiation also risks exacerbating racial profiling and discrimination in checks within the Common Travel Area.

CAJ, September 2023

Committee on the Administration of Justice (CAJ)
1st Floor, Community House, Citylink Business Park
6A Albert Street, Belfast, BT12 4HQ

Tel: (028) 9031 6000

Email: info@caj.org.uk

Website: www.caj.org.uk