

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (ELECTRONIC TRAVEL AUTHORISATIONS)
(CONSEQUENTIAL AMENDMENT) REGULATIONS 2023

2023 No. 305

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 To strengthen the security of the UK border, the Government is introducing an Electronic Travel Authorisation (ETA) scheme for those non-UK or Irish citizen passengers visiting the UK or transiting through the UK who do not currently need a visa for short stays or do not have any other immigration status before travelling. The ETA requirement will also apply to creative workers coming to the UK under the creative worker concession for a maximum of 3 months with a valid Certificate of Sponsorship. The Immigration (Provision of Physical Data) Regulations 2006 set out the legal basis for taking biometric information as part of certain types of immigration application and these Regulations amend the Immigration (Provision of Physical Data) Regulations 2006 to allow the collection of biometric information (in the form of a facial photograph in the first instance and in the future fingerprints) from those applying for an ETA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is all of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Regulations are being made to amend the Immigration (Provision of Physical Data) Regulations 2006 to make it a legal requirement that for applicants under the UK's ETA scheme to submit biometrics in accordance with the 2006 Regulations.
- 6.2 As a consequence of the coming into force of section 75(6) of the Nationality and Borders Act 2022, these Regulations make an amendment to the Immigration (Provision of Physical Data) Regulations 2006 (S.I. 2006/1743) to add an application

for an ETA to the types of immigration application for which compulsory biometric information may be required.

7. Policy background

What is being done and why?

- 7.1 Provision of physical data (biometrics) as part of an ETA application
- 7.2 The Government's main priority is keeping the UK safe. The UK is therefore launching an Electronic Travel Authorisation (ETA) scheme to strengthen the security of our border. The ETA scheme will apply to all those passengers visiting the UK or transiting through the UK who do not currently need a visa for short stays and do not have any other immigration status before travelling. At present, non-visa nationals (including EEA citizens) coming to the UK for up to six months as visitors (and in limited other categories) can travel to the UK solely on the basis of their nationality, evidenced by their passport or other travel document. This information is sent to the Government by the majority of carriers as Advance Passenger Information shortly before the individual embarks on their journey. This means that UK border control and law enforcement authorities have less information and time to assess the risk posed by most non-visa nationals in advance of their arrival in the UK. The ETA scheme will close the 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.
- 7.3 As part of their application for an ETA applicants will be required to provide their biometrics. These Regulations amend The Immigration (Provision of Physical Data) Regulations 2006 to give the Secretary of State the power to require all those applying for an ETA to provide their biometrics, initially in the form of facial images, but later fingerprints when the infrastructure allows. The requirement to provide fingerprints, when introduced, will only apply to individuals who are aged 5 and over and who are physically capable of doing so.
- 7.4 These Regulations are intended to support the development of a border and immigration system which is digital by default for all applicants. The long-term aim is that all foreign nationals coming to the UK will provide both their face and fingerprint biometrics under a single global immigration system, in advance of travel. As part of the ETA application process, applicants will be required to submit their biometrics.
- 7.5 These Regulations are intended to improve our levels of assurance about the identities of all people seeking to travel through or come to the UK. Biometrics, in the form of fingerprints and facial photographs, underpin our immigration system to ensure we have appropriate levels of identity assurance on foreign nationals who are subject to immigration control.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no plans to consolidate.

10. Consultation outcome

- 10.1 There has not been a public consultation regarding the collection of biometrics as part of an ETA application. However, The Home Office has consulted on the implementation of the ETA scheme as part of a wider New Plan for Immigration consultation on the New Plan for Immigration (NPI) policy statement published in March 2021.
- 10.2 As part of this wider consultation stakeholders and members of the public were invited to participate via an online questionnaire; focus groups; and, targeted engagement sessions with invited stakeholders
- 10.3 The NPI consultation covered a range of propositions which was structured into seven ‘pillars’ or chapters. ETAs were covered under chapter seven which focused on ‘Disrupting Criminal Networks Behind People Smuggling’.
- 10.4 The full consultation summary is available at: [NEW PLAN FOR IMMIGRATION - Consultation on the New Plan for Immigration: Government Response \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/new-plan-for-immigration-government-response). During the passage of the Nationality and Borders Act 2022 the government committed to set out further details of reforms in these areas including around operational processes surrounding how the ETA scheme will operate.

11. Guidance

- 11.1 We will publish guidance and continue to liaise with our corporate partnership group and organisations representing foreign nationals through stakeholder events and communications and publications on the Gov.uk website.

12. Impact

- 12.1 The direct impact on business, charities or voluntary bodies is likely to be small, however any impacts are set out in the Impact Assessment noted in paragraph 12.3 below.
- 12.2 The main impact on the public sector is an increase in processing costs for the Home Office that results from the changes. The impacts on the public sector are also set out in the Impact Assessment noted in paragraph 12.3 below.
- 12.3 A full Impact Assessment has been produced but is not published alongside this instrument.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is the Home Office will monitor the impact of the Regulations against its delivery targets and the impact of the policy.

15. Contact

- 15.1 Robert Venga, at the Home Office; telephone 020 7035 4848 or email: Robert.Venga@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

- 15.2 Nigel Farminer, Deputy Director, Passenger Policy and Border Transformation Unit, Migration and Borders Group at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Robert Jenrick (Minister of State for Immigration) at the Home Office can confirm that this Explanatory Memorandum meets the required standard.