DET KONGELIGE
JUSTIS- OG BEREDSKAPSDEPARTEMENT

Rundskriv

National Police Directorate
Directorate of Immigration
Immigration Appeals Board

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G-36/2021 – Revised circular relating to entry into force of the Regulations relating to entry restrictions for foreign nationals out of concern for public health

Contents

1 Introduction

The Ministry of Justice and Public Security refers to the Interim Act of 19 June 2020 No. 83 relating to entry restrictions for foreign nationals out of concern for public health and the Regulations of 29 June 2020 No. 1423 relating to entry restrictions for foreign nationals out of concern for public health (last amended on 24 November 2021, with amendments entering into force on 26 November 2021). The Act and the Regulations replace the Regulations of 15 March 2020 No. 293 relating to rejection etc. of foreign nationals out of concern for public health.

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The Act and the Regulations must be seen in connection with the Regulations of 27 March 2020 No. 470 relating to infection control measures etc. in connection with the coronavirus outbreak (COVID-19 Regulations), which regulate duties related to quarantine, testing and registration among other matters.

The effect of infection control measures that have been introduced must be continuously assessed and balanced against important societal and business interests affected by the measures. This circular may be subject to rapid amendments and adjustments.

2 Main rules regarding entry restrictions and rejection

In general, under the Interim Act relating to entry restrictions for foreign nationals out of concern for public health all foreign nationals not covered by exemptions specified in the Act or in regulations issued pursuant to the Act will be rejected without further consideration of the risk of infection posed by each individual. Foreign nationals who have been rejected shall depart the realm without undue delay.

With effect from 26 November 2021, entry becomes available to all foreign nationals with right of entry under the general rules provided by the Immigration Act. This follows from section 1 of the Regulations relating to entry restrictions for foreign nationals out of concern for public health. To be clear, grounds for rejection of foreign nationals will remain in force under the Interim Act relating to entry restrictions for those who do not comply with the rules on entry quarantine, entry registration and testing stemming from the COVID-19 Regulations; see sections 3 and 4 of this circular.

It is pointed out for clarity that the conditions for entry established by the Immigration Act must be fulfilled. As an example, foreign nationals for whom a visa is mandatory will still face a visa requirement even though practical challenges now exist in submitting a visa application. Also applicable are provisions of the Immigration Act that address when a residence permit is required.

3 Rejection upon violation of testing or registration requirements under the COVID-19 Regulations

Under section 4c, first paragraph, of the Regulations, a foreign national who does not comply with the requirements flowing from *section 4a of the COVID-19 Regulations (requirement of a completed test prior to arrival to Norway)*, section 4d of the COVID-19 Regulations (requirement of testing after arrival to Norway) or section 5b of the COVID-19 Regulations (registration duty upon entry) may be rejected.

The COVID-19 Regulations establish a requirement to submit a certificate showing a negative test result for SARS-CoV-2; see section 4a, first paragraph, of the COVID-19 Regulations. A foreign national who comes to Norway without such a certificate may be rejected, unless he or she is covered by any of the exceptions discussed below. Section 4a of the COVID-19 Regulations stipulates the following requirements for the test:

- Approved test methods are PCR testing or antigen rapid testing.

- The test is to be taken within the 24 hours prior to arrival in Norway.[1] For persons arriving by airplane, the test may be taken within the 24 hours prior to the scheduled departure time of the first leg of air travel. The air travel may be a direct flight to Norway or a single coordinated air journey to Norway with intermediate stops at other airports.
- The certificate must be in Norwegian, Swedish, Danish, English, French or German.

The certificate must contain information about test result, test method and time of testing, as well as identifying information about the person.

A foreign national is not to be rejected if special reasons weigh against such rejection. This exemption is intended as a type of relief valve to be employed in cases where rejection would be a highly unreasonable or disproportionate response given such factors as compelling humanitarian considerations or unforeseen practical obstacles that have made it unduly hard to comply with the duty. It may also be appropriate to waive rejection in cases that are not considered punishable under section 24 of the COVID-19 Regulations because the person in question had 'reasonable grounds' for committing the violation.

In section 4c, second paragraph, additional exceptions are made for:

a) foreign nationals who reside in Norway with a residence permit or right of residence under the Immigration Act
b) foreign nationals who seek protection in the realm (asylum) or otherwise invoke a right to international protection due to risk of persecution etc.
c) foreign nationals with an entry permit granted under section 35 of the Immigration Act
d) children under the age of 16
e) foreign nationals who are to carry out agreed or formalised parent-child contact or divided residence for children
f) [repealed]
g) [repealed]
h) foreign nationals who are essential to maintain the proper operation of critical public functions or attend to the fundamental needs of the population

Please note that some foreign nationals are exempt from the testing and registration obligations, and accordingly may not be rejected for not being tested or registered. For details, see the abovementioned provisions of the COVID-19 Regulations.

Under section 4c, third paragraph, the rules on case processing, coercive measures, expulsion and penalties etc. provided under the Interim Act relating to entry restrictions will apply in cases of rejection as stated in the first paragraph.

4 Relationship to quarantine regulations and rejection upon violation of entry restrictions

[1] The 24-hour requirement applies to *taking* the test, not when the *result* becomes available.

In themselves, the exemptions to entry restrictions do not constitute exemption from the rules relating to quarantine and isolation in force at any given time. Appendix A of the COVID-19 Regulations provides an overview of which countries and areas give rise to quarantine duty upon arrival in Norway.

A legislative amendment that entered into force on 22 January 2021 introduced statutory authority – in section 2, third paragraph, second sentence, of the Interim Act relating to entry restrictions – to reject foreign nationals for clear and serious violations of the entry quarantine rules contained in the COVID-19 Regulations. A description of the rule and the reasons for it are given in Prop. 61 L (2020–2021) *Amendments to the Interim Act relating to entry restrictions for foreign nationals out of concern for public health (requirement of negative COVID-19 test result for right of entry and rejection in connection with violation of entry quarantine rules)*. Under this provision a rejection – as with expulsion in the case of a violation of entry restrictions – may be implemented in accordance with the simplified administrative procedures described in section 6 of this circular.

Rejection under section 2, third paragraph, second sentence, of the Interim Act may only occur if there are 'specific grounds indicating a clear likelihood' that the foreign national in question 'intentionally has committed or will commit a serious violation of the requirement to carry out entry quarantine'. It is pointed out that multiple violations that would be deemed less serious if viewed individually may be considered serious when viewed in combination. The provision provides an exemption for foreign nationals specified in section 2, first paragraph a) and b), i.e. foreign nationals who are legally resident in Norway or are seeking protection. Since the provision only applies to serious, intentional violations, the potential also exists in principle to reject persons who have some connection to Norway, especially when it is obvious at the border that the person in question does not intend to comply with key entry quarantine rules. However, the rule is formulated as a 'may' provision, and the threshold must be set higher for rejecting foreign nationals with a residence permit, family in Norway or both than those who do not. In cases where a violation of quarantine rules is discovered after entry, and the foreign national has a residence permit or family in Norway, the Ministry assumes that rejection using this provision would be less likely. Nor is the statutory authority considered relevant when information about a rule violation emerges after expiration of the entry quarantine period.

Foreign nationals covered by the EEA body of rules are among the persons subject to this rejection rule. For these foreign nationals, however, a rejection or expulsion decision must be based on a higher degree of determination that they pose a *future* danger to interests, a factor which must be taken into account in the assessment. Also to be considered is the requirement of proportionality, as expressed in section 122, fourth paragraph, of the Immigration Act, among other places. A higher threshold for rejection is also to be employed in EEA cases when they concern persons with an established connection to Norway, including family ties. Foreign nationals who live in Norway with a right of residence are exempted; see reference to section 2, first paragraph a).

5 Relationship to the Immigration Act's rules on rejection

The Ministry points out that the Interim Act and the Regulations relating to entry restrictions are supplements to the Immigration Act's rules on rejection. Foreign

nationals may still be rejected pursuant to the rules of the Immigration Act, including on public health grounds under section 17, first paragraph (l) and section 121 (see also section 123), provided that the conditions are in place and ordinary procedural rules are followed.

Rejection under the Immigration Act may not take place solely by reference to the general situation relating to the COVID-19 outbreak. In such cases, an individual assessment must be made with focus on specific circumstances of the foreign national who is being considered for rejection. The Ministry accepts that there may be grounds for rejecting foreign nationals who pose a special infection risk, for example due to behaviour contravening official advice and guidelines. For more detailed discussion of rejection out of concern for public health, please see section 4.1.1 of Prop. 5 L (2020–2021).

Rejection under the Immigration Act due to criminal acts may also, depending on the circumstances, be relevant for foreign nationals who fail to comply with rules introduced in connection with the pandemic. Of special note are intentional or grossly negligent violations of the COVID-19 Regulations that are punishable under section 24 of those Regulations; see also section 8-1 of the Act relating to control of communicable diseases. Fines or imprisonment for up to 6 months may be imposed, except in the case of violations of sections 4d and 5b, which are punishable only by fines. Pursuant to section 17, first paragraph (g), of the Immigration Act (see also section 66, first paragraph (b)), a foreign national may be rejected, first and foremost, if he or she *has been punished* for violations of COVID-19 Regulations carrying a penalty that may include imprisonment. In addition, one may be rejected 'where other circumstances give reason to fear that the foreign national, here in the realm or in another Schengen country, has committed or will commit a criminal act punishable by imprisonment'. A finding that a violation carrying such a sentencing framework has occurred may thus lead to rejection, even if no criminal case is opened. A well-founded suspicion that a violation of these rules will occur in future may also form grounds for rejection.

Persons covered by the EEA's body of rules (see chapter 13 of the Immigration Act) may also, depending on the circumstances, be rejected as a consequence of offences that provide grounds for expulsion, such as criminal acts, or out of concern for public health. Under section 122 of the Immigration Act (see also section 121), relevant persons may be rejected in the interests of public order or security if 'the personal circumstances of the foreign national present, or must be assumed to present, a real, immediate and sufficiently serious threat to fundamental societal interests'. For members of this group, a stricter application of proportionality is required; also required is a higher degree of determination that they pose a future threat, typically substantiated through conduct already exhibited; see also section 19-29 of the Immigration Regulations. EEA nationals may also be rejected pursuant to section 121, first paragraph (c); see section 123, 'when this is necessary in the interests of public health and the authorities have implemented protective measures in relation to their own nationals'.

6 Rules on administrative procedures

According to section 5, first paragraph, of the Act, neither Chapter IV of the Public Administration Act (concerning case preparation for individual decisions) nor Chapter V

(concerning the formulation of decisions) is applicable to rejection decisions. Those rules will, however, apply to expulsion decisions made under section 7 of the Act.

Section 5-4 of the Immigration Regulations, concerning guidance and information, does not apply in rejection cases under the Interim Act. The procedural rules contained in Chapter 11 of the Immigration Act and Chapter 17 of the Immigration Regulations apply only insofar as they are consistent with simplified and expeditious processing of rejection decisions.

Section 5, second paragraph, of the Interim Act states that the rules on free legal advice contained in section 92, first paragraph, of the Immigration Act do not apply to rejection decisions under the Interim Act. However, the rules on free legal advice will apply to expulsion cases made under section 7.

According to section 6 of the Interim Act, decisions relating to rejection shall be written. The grounds given may be brief and standardised but shall state the rules on which the decision is based, and information on the right of appeal shall be provided. Oral decisions may be allowed if a determination is urgent or if providing a written decision is impracticable for other reasons. In such cases, the decision-making body shall confirm in writing the decision and its grounds if the party so requests.

Decisions relating to rejection are taken by the Directorate of Immigration or the police. Such a decision may be appealed to the Directorate of Immigration, or to the Immigration Appeals Board if the Directorate of Immigration has made the initial decision. The rules contained in Chapter VI of the Public Administration Act are applicable. Section 42 of the Public Administration Act, concerning deferred implementation, does not apply.

7 Immigration control and use of coercive measures

Under section 21 of the Immigration Act the police may request, in connection with the control of foreign nationals' entry and stay in the realm, proof of identity and information necessary to clarify their identity and the lawfulness of their stay in the realm.

Under section 8 of the Act, coercive measures may be employed on the basis of provisions in Chapter 12 of the Immigration Act. This means, among other things, that decisions on arrest and detention may be taken in accordance with the same provisions and conditions of the Immigration Act that apply to rejection cases in general.

In a case, for example, when someone is stopped by the police under section 21a of the Immigration Act and is most likely to be rejected under the Interim Act and the Regulations relating to entry restrictions, then section 106, first paragraph (i), of the Immigration Act may provide grounds for arrest. If the police believe it is necessary to hold the foreign national for more than 24 hours (see section 106b, third paragraph, final sentence, of the Immigration Act), the most relevant legal basis for assessing this will likely be section 106, first paragraph b), of the Immigration Act, concerning risk that implementation of an administrative decision will be evaded.

8 Liability for expenses etc.

According to section 4 of the Interim Act, foreign nationals directed out of the realm under the Interim Act are correspondingly subject to section 91 of the Immigration Act, which obliges foreign nationals to cover the cost of their own exit. A foreign national may therefore also be rejected upon subsequent entry if he or she has not paid expenses previously incurred by the public authorities; see section 17, first paragraph (k), of the Immigration Act.

Additionally, the transport carrier's liability under section 91, third paragraph, of the Immigration Act applies correspondingly in the case of rejection decisions taken under the Interim Act relating to entry restrictions for foreign nationals out of concern for public health; see section 4, second paragraph, of the Act. Transport carrier liability does not apply in connection with crossing of the internal Schengen border, even if internal border controls have been established. For more detailed information, see Prop. 124 L (2019–2020).

9 Expulsion and penalty

Section 7 of the Act authorises expulsion for gross or repeated breaches of entry restrictions specified in the Act, for failure to implement a decision imposing a duty to leave the realm, and for materially inaccurate or manifestly misleading information given in connection with entry controls or subsequent processing of the question of permitting entry. As indicated in Prop. 124 L (2019–2020), it is not foreseen that the expulsion provision will be extensively used; but the ability to crack down on serious, repetitive violations is deemed important when an overall assessment has indicated a need to ensure respect for the regulations.

The Act does not contain specific statutory authority for expulsion due to violations of the entry quarantine rules etc. contained in the COVID-19 Regulations. Any expulsion on those grounds must therefore occur in accordance with rules provided under the Immigration Act. Depending on circumstances, the most practical basis may be section 66, first paragraph (c), of the Immigration Act. According to this provision, a foreign national without a residence permit may be expelled when a penalty has been imposed for an offense punishable by imprisonment. Foreign nationals covered by the EEA body of rules may be expelled, depending on circumstances, as a consequence of criminal acts or out of concern for public health; see section 5 of this circular, final paragraph.

Section 9 of the Act makes it punishable to violate entry restrictions specified in the Act or to provide materially incorrect or manifestly misleading information in connection with entry controls or subsequent processing of the question of permitting entry. The criterion of guilt in both cases is intent. The penalty is a fine or imprisonment for up to six months, or both. As indicated in Prop. 124 L (2019–2020), it is assumed that the penalty provision will not frequently be used; but the ability to impose a penalty in

response to the most serious cases is deemed important as a means of preserving respect for the regulations and the objectives behind them.

With regards,

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