

Rundskriv

National Police Directorate
Directorate of Immigration
Immigration Appeals Board

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G-14/2020 – Circular relating to entry into force of the Regulations relating to entry restrictions for foreign nationals out of concern for public health

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 relating to entry restrictions for foreign nationals out of concern for public health. 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. The Act and the Regulations enter into force on 1 July 2020.

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 regulates the duty of quarantine 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

Under the Interim Act of 19 June 2020 No. 83 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.

It is pointed out for clarity that even if the foreign national is covered by one of the exemptions specified in the Act or the Regulations relating to entry restrictions, 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.

The Act does not bar entry into Norway of Norwegian nationals and nationals of other Nordic countries who reside in Norway.

Section 2 of the Act establishes additional exemptions for:

- a) foreign nationals residing in Norway with a residence permit or right of residency under the Immigration Act
- b) foreign nationals who seek protection (asylum) in the realm or otherwise invoke a right to international protection due to risk of persecution etc.; see section 73 of the Immigration Act
- c) foreign nationals whose presence in the realm is essential to maintain the proper operation of critical public functions or attend to fundamental needs of the population (see section 3 below)
- d) foreign nationals who have been granted a residence permit without deferred entry; see section 3 of the Act (see section 8 below)
- e) foreign nationals who have been granted an entry visa under section 12 of the Immigration Act
- f) foreign nationals who have been granted a visa under section 10 of the Immigration Act by the Norwegian decision-making authority subsequent to 15 March 2020
- g) cases in which special reasons indicate a right to enter, such as specific care responsibilities for persons in Norway or other compelling welfare considerations (see section 4 below)

3 A closer look at exemptions relating to the proper operation of critical public functions

Section 2 c) of the Act provides exemptions for foreign nationals whose presence in the realm is 'essential to maintain the proper operation of critical public functions or attend to fundamental needs of the population'. This may include foreign nationals invited by the Norwegian authorities for special purposes. Such foreign nationals could, for example, have special expertise in addressing virus outbreaks or other skills required by the health service or other critical public functions.

Reference is made to the following list of critical public functions prepared by the Directorate for Civil Protection:

- Administration and crisis management
- Defence
- Law and order
- Health and care services, including pharmacy and maintenance
- Rescue service
- Digital security in the civilian sector
- Nature and the environment

- Security of supply
- Water and wastewater
- Financial services
- Power supply
- Electronic communications
- Transport
- Satellite-based services

For more information, please see (in Norwegian):

<https://www.regjeringen.no/no/tema/samfunnssikkerhet-og-beredskap/innsikt/liste-over-kritiske-samfunnsfunksjoner/id2695609/>

4 A closer look at exemptions for special reasons

Under section 2, second paragraph, of the Act, a foreign national may be granted the right to enter if 'special reasons so indicate, such as specific care responsibilities for persons in Norway or other compelling welfare considerations'. This applies to such cases as:

- Minor children and foster children of Norwegian or foreign nationals who live or work in Norway
- Foreign nationals who have a special care responsibility for persons who live in Norway, including minor children or foster children or others with special care needs.
- Foreign nationals who, due to compelling welfare considerations, need to enter Norway, and the visit cannot wait; an example would be a foreign national who seeks to visit a dying or severely ill close family member in Norway (spouse/cohabitant, sibling or family member in ascending or descending line).
- Foreign national ship passengers who began sailing before 16 March at 8 a.m. and need entry to Norway in order to return to their home country. Clarification is required as to how onward transport out of Norway is to occur in a sound manner that does not violate the COVID-19 Regulations.
- Foreign nationals who are a party to a legal proceeding in Norway, or who are to give evidence in such a proceeding.
- Foreign nationals who have a valid fishing licence for boat fishing in the Tana watercourse; see section 2, first paragraph 1) and 3) and second paragraph a) and c) of the Regulations relating to fishing in the Tana watercourse's border river area. Foreign nationals who set out from the Finnish bank of the river may fish on the Norwegian side of the river but may not go ashore in Norway.

It is pointed out that the list above is not exhaustive in relating examples of what may be regarded as 'special reasons'. The Directorate of Immigration may issue further guidelines.

5 Exemptions for foreign nationals covered by the EEA Agreement or the EFTA Convention etc.

Section 1 of the Regulations provides exemptions for the following foreign nationals:

- a) An EEA national who is a cross-border worker or engaged as an employee; see section 112, first paragraph (a) of the Immigration Act.
- b) An EEA national who is self-employed; see section 112, first paragraph (a) of the Immigration Act.
- c) A service provider in an EEA country; see section 110, fourth paragraph, or section 112, first paragraph (b), of the Immigration Act.
- d) An EEA national who is enrolled at an approved educational institution; see section 112, first paragraph (d) of the Immigration Act.
- e) A family member of an EEA national (see section 110 of the Immigration Act), or an EEA national with corresponding family ties to a Norwegian national, who is to establish residence in Norway.
- f) An EEA national with family ties as specified in section 1 e, who is to visit a family member residing in Norway or travel with a Norwegian family member. Exemption is to be granted from the provision in section 110, third paragraph (c), of the Immigration Act stating that a relative in direct line of descent must be under the age of 21.
- g) An EEA national who owns real property in Norway and the owner's household members, who are to visit the property
- h) An EEA national or a national of Andorra, Monaco, San Marino and Vatican City State and his or her family members, who needs to travel through Norway to get home.

EEA nationals and their family members who reside or work in Norway do not include, in this context, EEA nationals or family members who live or work in Svalbard.

The stipulations of these Regulations concerning EEA nationals apply correspondingly to Swiss nationals; see section 1, second paragraph, of the Regulations; for nationals of the United Kingdom, see section 2 of the Act relating to a transitional period in connection with the United Kingdom's exit from the European Union.

Regarding a), b) and c), on work etc.

The exemptions apply to workers and service providers who have begun or are to begin a work assignment, and to self-employed persons who have established or are to establish business activity in Norway.

EEA nationals who work in Norway also include commuters. However, it is emphasised that only certain defined groups are exempt from the duty of quarantine.

Regarding e), f) and g), on family members etc.

The exemption specified in section 1 e of the Regulations applies to all family members covered by section 110 of the Immigration Act, including family members of a Norwegian national returning to Norway after having exercised the right to freedom of movement in accordance with the EEA Agreement or the EFTA Convention; see section 110, second paragraph, of the Immigration Act. Section 1 e also applies to family members of a Norwegian national who have not exercised the right to freedom of movement, if the family member in question is himself or herself an EEA national.

The term "cohabitant" refers to a permanent, established cohabitation relationship of at least two years or a relationship in which the parties jointly have or are expecting a child

and intend to live together. This corresponds to the Immigration Act's definition of "cohabitant".

For EEA nationals who are to visit family in Norway, exemption is to be made from the stipulation in section 110, third paragraph, of the Immigration Act that a relative in direct line of descent must be under the age of 21. Documentation of dependence shall not be required upon entry; see section 110, third paragraph (c) and (d), of the Immigration Act and section 19-7 of the Immigration Regulations. It is emphasised that the provisions of Chapter 13 of the Immigration Act do apply to family members' right of residence.

An EEA national is entitled to enter to visit a Norwegian family member who is resident here, and is also entitled to enter if travelling here together with a Norwegian family member.

The exemption for EEA nationals who own real property in Norway applies to both the owner and the owner's household members. A 'household member' in this context refers to a person who lives permanently at the same address as the owner.

Regarding h), on EEA nationals etc. who need to travel through Norway

The exemption for EEA nationals and nationals of Andorra, Monaco, San Marino and Vatican City State and their family members who need to travel through Norway to get home applies to all transport, but must be seen in connection with the duty of quarantine set forth in section 7 of the COVID-19 Regulations. The exemption also applies when a foreign national arrives in Norway and there is a reasonable explanation for why he or she does not have a ticket to travel onwards the same day – for example, that he or she has not yet managed to obtain a ticket. The foreign national is required to show clearly that he or she will do what is necessary to travel onwards as soon as possible, and to comply with the duty of quarantine while temporarily staying in Norway.

6 Exemptions on entering from certain countries and areas

Section 2 of the Regulations provide exemptions for the following foreign nationals:

- a) a foreign national residing in a country or area specified in section 5a of the COVID-19 Regulations, and who fulfils the conditions for exemption from the duty of quarantine
- b) a foreign national who, in connection with work or a work assignment, crosses the border from a country or area specified in section 6, first paragraph, of the COVID-19 Regulations or is covered by the exemption described in section 6, eighth paragraph
- c) a foreign national who has a need to travel through the Norwegian mainland on the way to or from work or residence in Svalbard
- d) a foreign national who is resident in Svalbard

Regarding a), on foreign nationals residing in certain specified areas

Under this provision, foreign nationals who are residents of countries or areas specified in section 5a of the COVID-19 Regulations and who arrive in Norway are entitled to enter. Foreign nationals who reside in these areas may travel through areas which

would otherwise subject them to the duty of quarantine, if they fulfil the following conditions set forth in section 5a, second paragraph, of the Covid-19 Regulations:

- a) They are travelling in their own vehicle en route to or from Norway.
- b) They are en route to or from an area specified in the first paragraph.
- c) They do not stay overnight in the area.
- d) They fulfil distancing and other infection control requirements during the trip.

In accordance with section 9 below, individual foreign nationals must be able to substantiate as necessary that they fall under an exemption from entry restrictions. A low threshold may be set for such substantiation so that, in cases where the foreign national lacks documentation, his or her explanation may be deemed adequate if it appears credible.

Regarding b), on travel in connection with work or a work assignment

Under this provision, foreign nationals who cross the Norwegian border from areas where the duty of quarantine is applicable shall not be rejected if they are travelling between home and place of work; see section 6, first paragraph, of the COVID-19 Regulations. The provision's second paragraph specifies that the exemption does not apply to persons in transit from other countries.

Provision b) also applies to foreign nationals 'who reside in and come from the Schengen and EEA areas to Norway to perform work or a work assignment', and who are not covered by section 5a of the COVID-19 Regulations; see section 6, eighth paragraph, of the COVID-19 Regulations.

The exemptions contained in b) also apply to business travellers.

Regarding c) and d), in respect of Svalbard

An exemption has been made for foreign nationals who have a need to travel through the Norwegian mainland on the way to or from work or residence in Svalbard; see section 2 c of the Regulations. This is to ensure that foreign nationals who live or work in Svalbard will be able to pass through the Norwegian mainland when they are travelling between a foreign country and Svalbard. However, the exemption for foreign nationals on the way *to* work or residence in Svalbard must also be viewed in connection with section 10 of the COVID-19 Regulations, under which everyone arriving from abroad must undergo quarantine on the Norwegian mainland before onward travel to Svalbard can take place. It is pointed out for emphasis that this requirement continues to apply.

Departure from Svalbard to a foreign country via the Norwegian mainland for persons other than those who have work or residence in Svalbard may be covered by the exemption for airport transit contained in section 3 b of the Regulations. Reference is also made to the paragraph above, stating that EEA nationals and their family members who need to travel through Norway to get home shall not be rejected (see section 1 h of the Regulations). It is noted that this exemption covers all transport.

An exemption has also been provided for foreign nationals residing in Svalbard; see section 2 d of the Regulations. This is to enable foreign nationals who are resident in Svalbard, and who otherwise qualify to travel into Norway, to do so now, conditional on

fulfilment of the Immigration Act's provisions regarding entry. It is emphasised that the exemption applies both to residents travelling from Svalbard to the Norwegian mainland and to residents of Svalbard travelling to Norway from abroad. With regard to the latter, it is noted for emphasis that quarantine must be undergone before onward travel to Svalbard may take place; see above.

"Residents" in this context refers to persons validly registered into the population register for Svalbard. Such status may be documented by printout from the register. For persons residing in Barentsburg, the documentation requirement is satisfied by confirmation of one's employment relationship.

It is additionally pointed out for clarity that the Act and the Regulations do not apply to Svalbard.

7 Exemptions in other cases

Section 3¹ of the Regulations provides exemptions for the following foreign nationals:

- a) a foreign national who is to carry out agreed or formalised parent-child contact or divided residence for children
- b) a foreign national who will only be staying in airport transit before departing Norway
- c) members of the Sami community in the exercise of reindeer herding
- d) a foreign national who performs commercial transport of goods and passengers for payment, or is en route to or from such an assignment
- e) journalists and other personnel on assignment for a foreign media institution
- f) a foreign national as specified in sections 1-4 and 1-5 of the Immigration Regulations, and who can present a diplomatic or service passport, or possibly a national passport in combination with a Norwegian ID card issued by the Ministry of Foreign Affairs, or in combination with a Schengen residence card for embassy personnel; the same applies to dual-accredited diplomats and diplomatic couriers
- g) military personnel as specified in section 1-7, second and third paragraphs, of the Immigration Regulations and their spouse, cohabitant or children who have been reported to and accepted by the Ministry of Defence, as well as members of a civilian component and civilian personnel working for military staffs or headquarters in Norway (including NATO departments in Norway) and their spouse, cohabitant or children
- h) a foreign national who works on mobile or fixed installations; see sections 1-10 and 1-11 of the Immigration Regulations
- i) a holder of a valid aviation personnel licence (see section 2-9 of the Immigration Regulations) en route to or from active service
- j) seamen, en route to or from active service, with an identity card as specified in section 2-8 of the Immigration Regulations or a Philippine Seafarer's Identification and Record Book or a Philippine national passport as specified in section 3-1 (j) of the Immigration Regulations
- k) a spouse, cohabitant or child of a posted foreign service officer at a Norwegian foreign service mission

¹ [Corrected to section 3]

- l) employees of international organisations or employees in organisations that perform international humanitarian efforts, and who are on assignment or en route to or from such assignment
- m) a foreign national invited by the Norwegian authorities to participate in international negotiations and similar activities, and a foreign national who is part of a delegation coming to Norway in accordance with Norway's international commitments
- n) passengers and crew on approved coastal cruises; see section 10b of the Regulations of 27 March 2020 No. 470 relating to infection control measures etc. in connection with the coronavirus outbreak
- o) researchers and crew members participating in marine research expeditions with a Norwegian port of call
- p) foreign nationals with technical qualifications who are exempt from the requirement of a residence permit under section 1-1, first paragraph (b), of the Immigration Regulations.

Regarding b), on airport transit

This exemption applies to foreign nationals transiting through international transit areas of an airport.

Regarding g), on military staff personnel etc.

Foreign nationals covered by this exemption must present an ID card/authorisation that establishes employment (civilian or military) in the armed forces of a sending state or in NATO. Family members who are covered will normally have a diplomatic passport, service passport, ID card or similar documentation of their connection to the primary person. An ordinary passport in conjunction with a NATO Travel Order will also satisfy the documentation requirement.

8 Exemptions from entry restrictions for foreign nationals with a residence permit in Norway

In making a residence-permit decision the immigration authorities shall determine whether permission to enter is to be deferred until further notice; see section 3 of the Act. An entry visa shall be granted without deferment if the foreign national has been granted a permit on the basis of the provisions specified in section 4 of the Regulations (see below) or the immigration authorities find that the foreign national is covered by other exemptions from entry restrictions provided in the Act or the Regulations (see above).

If the decision expressly states that the foreign national is covered by exemptions specified in the Act or Regulations, this is to be recognised during entry control procedures as well, and the foreign national shall not be rejected.

Administrative decisions taken under section 3 of the Act, which concerns deferment of entry for foreign nationals granted a residence permit, may not be appealed. Although entry may be refused at the time of decision, subsequent events may bring about a situation in which entry shall be permitted. In that case the immigration authorities must, upon request submitted by the foreign national, conduct a new assessment before the foreign national travels to Norway.

Foreign nationals who come to the Norwegian border in contravention of entry restrictions established under section 3, first paragraph, of the Act shall as a general rule be rejected. The same applies to foreign nationals who until further notice are not granted an entry visa under section 3, second paragraph, of the Act.

Section 4 of the Regulations provides exemptions for the following foreign nationals:

- a) a foreign national with a residence permit in Norway granted under the Immigration Act's provisions on family immigration, and for whom the sponsor is a Norwegian national or a foreign national resident in Norway or is otherwise entitled to entry under the Act or under the Regulations
- b) a foreign national with a residence permit in connection with work; see sections 23, 24 or 25 of the Immigration Act
- c) a foreign national with a residence permit for students etc.; see section 6-19 of the Immigration Regulations
- d) a foreign national with an entry permit granted under section 35 of the Immigration Act.

It is emphasised that the general conditions pertaining to a residence permit, including return conditions, shall be assessed in the normal way. In the case of family immigrants, entitlement to enter is valid only insofar as the sponsor also is entitled to entry into Norway.

9 A closer look at documentation requirements

Individual foreign nationals must be able to substantiate when necessary that they are covered by one of the exemptions.

10 Relationship to quarantine regulations

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.

11 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.

12 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.

13 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.

14 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).

15 Expulsion and penalty

Section 7 of the Act authorises expulsion for gross or repeated breaches of entry restrictions specified in the Act, 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.

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,

Nina E. D. Mørk (by authority)
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Dokumentet er godkjent og sendes uten signatur