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JUSTIS- OG BEREDSKAPSDEPARTEMENT

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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.

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