



DET KONGELIGE
JUSTIS- OG BEREDSKAPSDEPARTEMENT

Rundskriv

National Police Directorate
Directorate of Immigration
Immigration Appeals Board

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G-01/2022 – Revised 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 No. 1423 relating to entry restrictions for foreign nationals out of concern for public health (last amended on 21 February 2022). 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).

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.

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.

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 Relationship to the COVID-19 Regulations

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. With effect from 26 January 2022, section 4 of the COVID-19 Regulations was repealed, so an entry quarantine requirement is no longer needed. The rejection provision in section 2, third paragraph, second sentence, of the Act relating to entry restrictions is therefore not relevant at this time.

With effect from 12 February 2022, the requirement in the COVID-19 Regulations of a negative test result prior to arrival and registration was repealed. Accordingly, there is no longer a basis for rejecting foreign nationals who do not comply with these rules. Section 4c of the Regulations relating to entry restrictions is therefore repealed.

As a consequence of the above, no foreign nationals at the present time may be refused entry or rejected pursuant to the body of rules relating to entry restrictions.

The Ministry points out that 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.

4 Rules on administrative procedures

Please note that that even though no foreign nationals at this time may be refused entry or be rejected pursuant to the rules relating to entry restrictions, the rules on administrative procedures will still be relevant in the processing of appeals cases.

According to section 5, first paragraph, of the Act relating to entry restrictions, 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 Act relating to entry restrictions. 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 Act relating to entry restrictions 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 Act relating to entry restrictions, 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.

5 Liability for expenses etc.

According to section 4 of the Act relating to entry restrictions, 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).

6 Expulsion and penalty

Section 7 of the Act relating to entry restrictions 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.

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.

In principle, expulsion or penalty may also be deemed applicable some period of time after the occurrence of a violation of the Act relating to entry restrictions. At the present time this is considered a problem of little practical significance.

With regards,

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