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G-05/2021 – Revised circular relating to entry into force of the Regulations relating to entry restrictions for foreign nationals out of concern for public health

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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 20 February 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 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 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 of this circular)
- d) foreign nationals who have been granted a residence permit without deferred entry; see section 3 of the Act (see section 8 of this circular)

- e) foreign nationals who have been granted an entry visa under section 12 of the Immigration Act
- f) foreign nationals who have a visa and are covered by an exemption from the entry restrictions in the Act or the Regulations issued pursuant to the Act at the time of entry
- 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 of this circular)

'Residing in Norway' in this context refers to foreign nationals who are registered as resident in Norway. On entry they must be able to document residence in Norway. This may be done, for example, by referring to the Norwegian Tax Administration's data on one's registered place of residence.

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.

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

Section 2 c) of the Act provides an exemption 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'.

Please see the list (in Norwegian) of critical public functions at regjeringen.no:

- 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

Please also see the list (in Norwegian) of organisations with critical public functions and key personnel: [Liste over kritiske samfunnsfunksjoner - regjeringen.no](http://Liste%20over%20kritiske%20samfunnsfunksjoner%20-%20regjeringen.no)

This exemption applies only to foreign nationals whose entry is *strictly necessary*. The exemption must be viewed in connection with the purpose of the entry restrictions and the need expressed by the health authorities to sharply reduce the number of entries. The exemption from entry restrictions must therefore be *applied strictly*, with approvals limited to the minimum necessary to ensure the continuity of critical public functions.

The scope of this exemption is intended to be extremely narrow. The fact that a sector appears on the list of critical public functions does not mean that all employees in that sector are exempt from the entry restrictions.

It is emphasised that the following two criteria must be met:

- the work to be performed must be directly linked to the ability to ensure continuity in the critical public function
- the work cannot be postponed without causing unacceptable impairment of the ability to maintain continuity in the function.

Organisations with personnel in critical public functions will have to document that their employees are to be considered critical to the ability to ensure that critical public functions are maintained, in accordance with the above criteria. It will rarely be the case that all of an organisation's employees fulfil the terms of the exemption.

A form has been prepared for documenting that a foreign national meets the terms of the exemption. The form is available at regjeringen.no. However, use of this form is not required, as long as the documentation provided contains the necessary information. It is pointed out that even if foreign personnel are covered by the exemptions provided in the Act or Regulations relating to entry restrictions, entry is conditional on fulfilling the entry provisions of the Immigration Act. To be clear, a completed form does not guarantee entry; the foreign national's presence in the realm must be deemed "essential to maintain the proper operation of critical public functions or attend to fundamental needs of the population".

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.
- Foreign nationals travelling to be present at the birth of their own child, when the child's mother resides in Norway.
- Foreign nationals who are a judge, a party or representative of a party in a legal proceeding in Norway, or who are to give evidence in such a proceeding. The exemption also applies to arbitration cases.
- 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.

Allowance must be made for the ability of a foreign national to adapt to the rules currently in force. The 'special reasons' exemption may therefore be employed immediately after the entry into force of the tightened entry restrictions in situations such as when a foreign national has already begun travelling to Norway or when a foreign national lives in Norway with a residence permit or right of residence without being 'resident' (see section 2, first paragraph a, of the Act) and was abroad when the tightening of the set of rules which had permitted entry even for persons not registered as resident entered into force. Similar considerations may also be applicable in the event of any subsequent tightening of the entry restrictions.

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) [Repealed]
- b) [Repealed]
- c) [Repealed]
- d) [Repealed]
- 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) [Repealed]
- g) [Repealed]
- 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
- i) [Repealed]
- j) [Repealed]

The stipulations of these Regulations concerning EEA nationals apply correspondingly to Swiss nationals; see section 1, second paragraph, of the Regulations.

Regarding e), on family members

The exemption specified in section 1, first paragraph e, of the Regulations applies to all family members who are to settle in Norway and are 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, first paragraph 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 and is to settle in Norway.

Family members who are not planning to settle in Norway, but are only coming to visit, are governed by section 3, first paragraph q, of the Regulations; see additional discussion in section 7 of this circular.

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 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 provides exemptions for the following foreign nationals:

- a) [Repealed]
- b) a foreign national who is covered by the separation agreement between the EEA/EFTA States and the United Kingdom (see sections 19-33 to 19-35 of the Immigration Regulations), and who is resident in Norway or a family member as specified in section 19-33, second paragraph, of the Immigration Regulations who is to settle in Norway
- 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
- e) health personnel from Sweden or Finland who work in the health and care services in Norway
- f) children and pupils who commute from Sweden or Finland to day-care, primary/lower secondary school or upper secondary school, and persons who are to carry out necessary transport between home and the day-care centre or school

Regarding b), on foreign nationals covered by the separation agreement between the EEA/EFTA States and the United Kingdom

Exemption is made for British nationals and their family members who are entitled to a residence permit or permanent residence permit pursuant to the separation agreement between the EEA/EFTA States and the United Kingdom; see sections 19-33 and beyond of the Immigration Regulations. A condition requiring such foreign nationals to reside in Norway must be met; see section 2, first paragraph a, of the Act. Permission to enter is also granted to family members who are covered by the separation agreement and who are to settle in Norway.

A foreign national covered by these provisions may document it by presenting one of the following documents on entry into Norway:

- certificate of application under sections 19-33 to 19-35 of the Immigration Regulations

- certificate for job seeker
- registration certificate or proof of permanent residence issued under the registration scheme for EEA nationals
- residence card
- residence certificate from the National Population Register
- receipt for registration under the registration scheme for EEA nationals, dated prior to 1 January 2021

Foreigners without a document of this kind may document that they live or work in Norway and are covered by the separation agreement by presenting, for example, an employment contract, housing rental contract, housing purchase contract, student identity card or letter of admission to a place of study in Norway.

Family members who are covered by the separation agreement, but who are not yet resident or registered in Norway, may document their family relationship by such means as a marriage or birth certificate.

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, first paragraph 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 9 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 layovers contained in section 3, first paragraph 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, first paragraph 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.

Regarding e), on health personnel

Exemption is made for health personnel from Sweden or Finland who work in the health and care services in Norway; see section 2, first paragraph e, of the Regulations. The exemption covers health personnel resident in Sweden or Finland, whether they are Swedish or Finnish nationals or other foreign nationals residing in those countries. The exemption does not apply to other foreign nationals who only travel through Sweden or Finland en route to Norway. Health personnel from other countries may only enter Norway if they are considered essential to maintaining the proper operation of critical public functions or attending to fundamental needs of the population; see section 2, first paragraph c), of the Act as well as section 3 of this circular.

'Health personnel' refers also to personnel without authorisation under section 48 of the Act relating to health personnel. To qualify for the exemption, however, foreign nationals must have work that involves providing health-related services in the health and care services in Norway. An example would be a care assistant in a nursing home.

Qualifying foreign nationals must be able to document that they have an employment relationship in the health and care services in Norway. Employment contracts and access cards are examples of acceptable documentation.

7 Exemptions in other cases

Section 3 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 landing intermediately at an airport in Norway before departing
- 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
- 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) [Repealed]
- o) researchers and crew members participating in marine research expeditions with a Norwegian port of call
- p) [Repealed]
- q) a foreign national who has one of the following family relationships to a person resident in Norway:
 1. spouse, registered partner or cohabitant
 2. minor child or stepchild
 3. parent or stepparent to a minor child or stepchild
 4. [Repealed]
 5. [Repealed]
 6. [Repealed]
- r) [Repealed]
- s) [Repealed]
- t) [Repealed]
- u) [Repealed]
- v) a foreign national who has received a decision granting exemption from the entry restrictions under the Regulations relating to an application-based scheme for exemption from entry restrictions for foreign nationals out of concern for public health

Regarding b), airport layovers

This exemption applies to foreign nationals who stop intermediately at airports in Norway before departing. The exemption covers both international airport transit and transfer within the Schengen area.

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.

Regarding i), on aviation personnel licence

This exemption applies to all who have a valid aviation personnel licence, as long as they are travelling into Norway in connection with their duties, or are en route to or from service.

Regarding q), on family relationships

This provision deals with permission to enter for persons with family in Norway. It applies regardless of whether the person resides in Norway, is a Norwegian national or a foreign national residing here. It is pointed out for clarity that foreign nationals who are exempt from the requirement of having a residence permit pursuant to sections 1-4 and 1-5 of the Immigration Regulations diplomats (etc. and their spouses, cohabitants and children) are to be regarded as persons 'resident in Norway' in this context.

The provision applies to all forms of stay or visit under the immigration rules pertaining to the family members in question. It thus applies to foreign nationals who have applied for or plan to apply for a residence permit to settle in Norway as well as to those who will only be visiting, with or without a visa. In any case the ordinary rules contained in the Immigration Act and the Immigration Regulations must always be fulfilled for the foreign nationals to be able to enter Norway.

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'.

It is pointed out that stepfamily relationships include those established by marriage, partnership and cohabitation.

To substantiate that he or she is a family member covered by the exemption, the foreign national may present a document such as a marriage or birth certificate.

As mentioned above, the exemption does not entail any change to Norway's ordinary entry and visa rules. This means that a family member requiring a visa who does not already have a valid visa must apply for, and be issued, a visa before travelling to Norway. Documentation of one's family relationship is submitted at the same time as the visa application. Foreign nationals who already have a valid visa, and foreign nationals not needing a visa (visa-free), submit documentation on arrival in Norway.

The exemption also permits family members covered by section 3, first paragraph q, to enter Norway and submit a family immigration application from Norway, consistent with the regulations and guidelines in force before the COVID-19 outbreak. Under the exemption, entry visas may also be issued to family members who are covered by section 3, first paragraph q, and who intend to stay in Norway until a residence permit has been granted; see section 12 of the Immigration Act.

Regarding v), on the application-based scheme

This exemption covers people travelling for work who have been granted an exemption from the entry restrictions in a decision taken by the Norwegian Maritime Authority upon application by an enterprise; see section 2, first paragraph, of the Regulations of 19 February 2021 No. 470 relating to an application-based scheme for exemption from entry restrictions for foreign nationals out of concern for public health. It is emphasised that even if a foreign national is granted an exemption from the entry restrictions in response to such application, the foreign national is only permitted to enter if he or she meets the other conditions specified in the Interim Act relating to entry restrictions as well as the general conditions establishing a right to enter and stay specified in the Immigration Act. Exemption from entry restrictions does not provide exemption from quarantine duty or other infection control rules; see also section 2, third paragraph, of the Regulations relating to a scheme for exemption from entry restrictions.

It follows from section 2, fifth paragraph, of the Regulations relating to a scheme for exemption from entry restrictions that if exception is granted on the basis of incorrect assumptions or as a result of incorrect information, the foreign national in question may be rejected under section 2, third paragraph, of the Interim Act relating to entry restrictions for foreign nationals out of concern for public health. The case processing rules provided in sections 5 and 6 of the Act apply correspondingly, as does section 8 in respect of coercive measures. However, the section 7 of the Act (on expulsion) and section 9 of the Act (on penalties) do not apply. Section 4, first paragraph, of the Act, which pertains to liability of foreign nationals for expenses related to their own removal (see section 91 of the Immigration Act), is applicable if a foreign national is blameworthy for the circumstances that resulted in his or her rejection.

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).

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 have been granted a residence permit, but who are not yet resident in Norway, may be rejected if they come to the Norwegian border in contravention of the entry restrictions in force at any given time; see section 2, third paragraph, of the Act and section 4b of the Regulations. This is the case even if a foreign national was covered by an exemption from the entry restrictions when the residence permit application was granted (see section 4 of the Regulations) and the permit was granted without deferred entry (section 2, first paragraph d), of the Act). Foreign

nationals who have received a residence permit to work or study in Norway, and who are not already resident here, may not enter Norway until further notice unless they are covered by exemptions from the entry restrictions stipulated in section 2 of the Act or section 3 of the Regulations.

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) [Repealed]
- c) [Repealed]
- d) a foreign national with an entry permit granted under section 35 of the Immigration Act
- e) [Repealed]
- f) [Repealed]

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 Requirement of negative test result for SARS-CoV-2 on entry into Norway

Section 4a of the Regulations stipulates a requirement to submit certification showing a negative test result for SARS-CoV-2 for all travellers from areas that give rise to quarantine duty; see section 4, first paragraph a, of the COVID-19 Regulations. Foreign nationals who come to Norway without such certification may be rejected.

In accordance with section 4a of the COVID-19 Regulations, the following test requirements are established with effect from 24 January 2021 at 24:00:

- 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. 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 certification must be in Norwegian, Swedish, Danish, English, French or German.

Exemptions from the requirement of a negative test result are to be granted for the following groups:

- a) foreign nationals who reside in Norway with a residence permit or right of residence under the Immigration Act; see section 2, first paragraph a), of the Interim Act
- b) foreign nationals who are essential to maintain the proper operation of critical public functions or attend to fundamental needs of the population
- c) foreign nationals who are in transit

- d) foreign nationals who regularly arrive in Norway from Sweden or Finland to work or study
- e) foreign nationals who seek protection in the realm (asylum) or otherwise invoke a right to international protection due to risk of persecution etc.; see section 2, first paragraph b), of the Interim Act
- f) foreign nationals with an entry permit granted under section 35 of the Immigration Act; see section 4, first paragraph d
- g) foreign nationals with a residence permit in Norway granted under the Immigration Act's provisions on family immigration (see section 4, first paragraph a) or a family member of an EEA national who is to establish residence in Norway (see section 1, first paragraph e), if the sponsor is exempt from the requirement of a negative test result for SARS -CoV-2 on entry to Norway
- h) foreign nationals as specified in sections 1-4 or 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; dual-accredited diplomats and diplomatic couriers; see section 3, first paragraph f
- i) spouses, cohabitants or children of posted foreign service officers at a Norwegian foreign service mission as provided in section 3, first paragraph k
- j) foreign nationals invited by the Norwegian authorities to participate in international negotiations and similar activities, and foreign nationals who are part of delegations coming to Norway in accordance with Norway's international commitments; see section 3, first paragraph m
- k) [Repealed]
- l) foreign nationals who perform commercial transport of goods and passengers for payment, or are en route to or from such an assignment; see section 3, first paragraph d
- m) holders of a valid aviation personnel licence as specified in section 3, first paragraph i
- n) seamen as specified in section 3, first paragraph j
- o) foreign nationals who can document by an approved laboratory method that they have had COVID-19 and recovered in the last six months; see section 4 of the COVID-19 Regulations
- p) foreign nationals who are resident in Svalbard
- q) children under the age of 12

A foreign national is not to be rejected if special reasons weigh against such rejection; see section 4a, fifth paragraph, of the Regulations.

A closer look at requirements for the test

A test by approved testing method must be taken shortly before departure to Norway. The test may not be more than 24 hours old when the foreign national arrives in Norway. For persons arriving by airplane, the test may be taken within the 24 hours prior to the airplane's scheduled departure time. If the air journey includes intermediate stops, the test must be taken within the 24 hours prior to the *first* departure, assuming that the trip may be considered a single coordinated air journey. It is pointed out for clarity that it is the time of test-taking that is decisive for the 24-hour requirement, not the time when the result is obtained.

The certification must contain information about the test result, test method and time of test as well as personally identifiable information.

Regarding a), on foreign nationals who reside in Norway with a residence permit or right of residence under the Immigration Act

This exemption encompasses foreign nationals who are already resident in Norway with a residence permit, including British nationals and their family members who are resident in Norway and who from 1 January 2021 are entitled, under sections 19-33 and beyond, to continued residence on the same conditions.

For foreign nationals who travel to Norway after having a resident permit application approved, the requirement of a negative test result is not applicable to foreign nationals specified in g).

‘Reside in Norway’ in the context above refers to persons who are registered as resident in Norway. On entry they must be able to document residence in Norway. This may be done, for example, by referring to the Norwegian Tax Administration’s data on one’s registered place of residence.

Regarding b), on foreign nationals who are essential to maintain the proper operation of critical public functions or attend to fundamental needs of the population etc.

Personnel in critical public functions must document that their assignment qualifies for the exemption provision. The employer or client must provide documentation that the person in question has a critical public function. Please see discussion of the critical public functions in section 3 of this circular.

Regarding d), on commuters from Sweden and Finland

It is pointed out for clarity that this exemption applies to foreign nationals who live in Sweden or Finland and who commute to Norway; it does not apply to foreign nationals who only travel through Sweden or Finland en route to Norway.

Regarding g), on family members

This exemption only encompasses family members who are to move to Norway, not visitors. Family of EEA nationals is to be understood in the same way as in section 1, first paragraph e, of the Regulations; see further discussion in section 5 of this circular.

Regarding o), on foreign nationals who have had COVID-19

One’s having had the illness must be documented with certification stating the test result and test method used, as well as personally identifiable information and the date the test was taken. At present, the only recommended laboratory method for SARS-CoV-2 testing is RT-PCR. It is pointed out for clarity that the original positive test result is sufficient documentation, and no new test is required after one is free of symptoms. The test must be a minimum of 14 days old. Having recovered from ‘probable COVID-19’ does not provide exemption from the test requirement. The certification must be in Norwegian, Swedish, Danish, English, French or German.

Regarding p), on residents in Svalbard

'Residents' in this context refers to persons who are validly listed in the population register in Svalbard. This may be documented by means of a printout from the register or, for persons resident in Barentsburg, a confirmation of employment relationship.

A closer look at exemptions based on special reasons

Even when a foreign national is unable to submit the necessary certification of a negative COVID-19 test result, he or she is not to be rejected if special reasons so indicate. This provision will be relevant if, for example, the foreign national's purpose in travelling is considered extremely important and obtaining the required certification has not been practically possible.

The Ministry assumes that this exemption may be particularly applicable in the period immediately after section 4a of the Regulations and its subsequent amendments have entered into force, in situations where it has not been practically possible for a foreign national to obtain certification in time for an already planned trip. The ability of travellers to adapt to applicable rules must be taken into account.

10 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 4b of the COVID-19 Regulations (testing requirement after staying in a country with an especially high incidence of mutated virus variants), section 4d of the COVID-19 Regulations (testing requirement for those who have stayed in an area that gives rise to quarantine duty) or section 5b of the COVID-19 Regulations (registration duty upon entry) may be rejected.

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 12.

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.

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.

11 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 from the entry restrictions.

With regard to documenting a negative test result for SARS-CoV-2 and documenting having had COVID-19, please see section 9 in this circular.

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

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.

The general rule is that everyone who is to undergo entry quarantine is to carry it out at a quarantine hotel; see section 5, first paragraph, of the COVID-19 Regulations. Exemptions from the duty of staying at a quarantine hotel are given in the provision's second paragraph. For a more detailed description of whom the exemptions cover and of the documentation requirement, please see revised circular G-33/2020 on quarantine hotels.

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 14 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).

13 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 4b, 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'.

14 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.

15 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.

16 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).

17 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 13 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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The document is approved and distributed without signature