

Rundskriv

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Immigration Appeals Board

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G-35/2021 – 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 24 September 2021, with amendments entering into force on 25 September 2021 at 16:00). 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)

With particular regard to foreign nationals who reside in Norway with a residence permit or right of residence

The exemption contained in a) above covers both EEA nationals and third-country nationals. In practice, the provision will only be relevant for third-country nationals, as EEA nationals will be covered by other exemptions, see Section 1 of the Regulations.

In this context, 'residing in Norway' or 'resides in Norway' (see section 2, first paragraph a, of the Act) refers to a foreign national with a fixed address in Norway, meaning that the foreign national has his or her primary residence here. The foreign national must have a residence permit or right of residence in Norway at the time of entry.

The exemption does not allow entry for the purpose of moving to Norway due to work or study. Nor does the exemption extend to foreign nationals who work in Norway but do not have their primary residence here.

Upon entry, a foreign national must be able to document being registered as a resident in Norway or having a fixed address in Norway. A foreign national who cannot document that he or she is registered in the National Population Register as a resident must submit other documentation showing that he or she has a fixed address in Norway, such as documentation of owning or renting a home in Norway. Examples of documentation showing home ownership include information from the property register, a copy of one's tax return/tax assessment or documentation of payment of municipal fees/shared costs or property tax. One way to obtain information from the property register is to download it from the Norwegian Mapping Authority's website by logging in to Altinn. For more information, see <https://seeiendom.kartverket.no>.

A housing rental can be documented with a rental contract that shows the foreign national had residency in Norway at the time of departure and has residency at time of entry. The clear general rule requires a contract that was current at the time of departure. If the foreign national has terminated his or her housing rental and entered into a new rental agreement prior to entry, supplementary documentation substantiating that the foreign national is in fact a resident in Norway is required. Such supplementary documentation will be an employment contract or confirmation of enrolment in school or higher education (letter of admission or student identity card).

A holiday property, whether owned or rented, is not considered a fixed address.

Foreign nationals who are not registered as residents in the National Population Register must also be able to substantiate that they are returning after a trip abroad/temporary stay abroad, for example by presenting the airline ticket from their departure from Norway.

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, first paragraph 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](https://regjeringen.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'.

Application-based scheme for the fruit and vegetable sector

For foreign workers in the fruit and vegetable sector, a special application-based scheme is in effect. It stems from the Regulations relating to applications for exemption from the entry restrictions for foreign nationals who are essential to maintain the proper operation of the fruit and vegetable sector, which came into force on 26 March 2021.

Fruit and vegetable sector enterprises, defined as those producing potatoes, vegetables, fruits and berries, may apply to the Norwegian Agriculture Agency for a foreign national to be granted an exemption from section 2, first paragraph c), of the Act relating to entry restrictions. If the Agency approves the application, the foreign national will have the right to enter, assuming other terms of the entry restriction rules and the Immigration Act are met; see section 2, fourth paragraph, of the aforementioned Regulations. Such a decision does not provide exemption from the duty of quarantine etc.

A decision issued by the Norwegian Agriculture Agency is valid for entry for up to 30 days from the approval date. Foreign nationals covered by the exemption must when required be able to present the decision of the Norwegian Agriculture Agency upon entry, either in paper form or digitally. The authenticity of the approval decision is to be checked during border control.

This application-based scheme is the only way workers in the fruit and vegetable sector can gain exemption from entry restrictions under section 2, first paragraph c), of the Act relating to entry restrictions. A foreign national who invokes this exemption to work in the fruit and vegetable sector without being able to show an approval decision shall not be granted entry.

Foreign nationals who have been granted a residence permit without deferred entry as a seasonal worker in the fruit and vegetable sector between 29 January and 26 March 2021 may be granted exemption from the entry restrictions without a decision having been issued by the Norwegian Agriculture Agency, provided that other terms are met. However, these persons, too, may submit an application to the Norwegian Agriculture Agency in order to establish, prior to entry, that they are covered by the exemption in section 2, first paragraph c), of the Act.

Under section 2, fifth paragraph, of the Regulations relating to applications for exemption from the entry restrictions for foreign nationals who are essential to maintain the proper operation of the fruit and vegetable sector, a foreign national may