

Translation

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**Residence Act (30 June 2004)**

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**Summary of contents**

**Chapter 1**

**General provisions**

Purpose of the Act; scope	Section 1
Definitions	Section 2

**Chapter 2**

**Entry into and residence in the Federal territory**

**Part 1**

**General**

Passport obligation	Section 3
Requirement for a residence title	Section 4
General preconditions for the granting of a residence title	Section 5
Visa	Section 6

Residence permit	Section 7
Extension of the residence permit	Section 8
Settlement permit	Section 9
Residence titles at the time of application for asylum	Section 10
Ban on entry and residence	Section 11
Area of application; subsidiary provisions	Section 12

## **Part 2**

### **Entry**

Border crossing	Section 13
Unlawful entry; exceptional visa	Section 14
Refusal of entry	Section 15
Allocation to the Länder of foreigners who have entered the Federal territory unlawfully	Section 15a

## **Part 3**

### **Residence for educational purposes**

Further education; language courses; school education	Section 16
Other educational purposes	Section 17

## **Part 4**

### **Residence for the purpose of economic activity**

Employment	Section 18
------------	------------

Settlement permit for highly qualified foreigners	Section 19
(Void)	Section 20
Self-employment	Section 21

## **Part 5**

### **Residence on humanitarian or political grounds or under international law**

Admission from abroad	Section 22
Granting of residence by the supreme Land authorities	Section 23
Granting of residence in cases of hardship	Section 23a
Granting of residence for temporary protection	Section 24
Residence on humanitarian grounds	Section 25
Duration of residence	Section 26

## **Part 6**

### **Residence for family reasons**

Principles pertaining to the subsequent immigration of dependents	Section 27
Subsequent immigration of dependents to join a German national	Section 28
Subsequent immigration of dependents to join a foreigner	Section 29
Subsequent immigration of spouses	Section 30
Independent right of residence	Section 31

Subsequent immigration of children	Section 32
Birth of a child in the Federal territory	Section 33
Children's right of residence	Section 34
Children's independent, unlimited right of residence	Section 35
Subsequent immigration of other dependents	Section 36

## **Part 7**

### **Special rights of residence**

Right of return	Section 37
Residence title for former Germans	Section 38

## **Part 8**

### **Involvement of the Federal Employment Agency**

Approval of employment for a foreigner	Section 39
Grounds for refusal	Section 40
Revocation of approval	Section 41
Authorisation to issue regulations and instructions	Section 42

## **Chapter 3**

### **Promotion of integration**

Integration course and integration programme	Section 43
Entitlement to attend an integration course	Section 44

Obligation to attend an integration course Section 44a

Integration programme Section 45

## **Chapter 4**

### **Administrative provisions**

Administrative orders Section 46

Prohibition and restriction of political activities Section 47

Obligations relating to identification papers,  
prohibition of departure Section 48

Establishment and documentation of identity Section 49

Database for found documents Section 49a

Contents of the database for found documents Section 49b

## **Chapter 5**

### **Termination of stay**

#### **Part 1**

#### **Grounds establishing the obligation to leave the Federal territory**

Obligation to leave the Federal territory Section 50

Termination of the lawfulness of residence;  
continued validity of restrictions Section 51

Revocation Section 52

Mandatory expulsion Section 53

Regular expulsion Section 54

Surveillance for reasons of internal security of foreigners who have been refused entry	Section 54a
Discretionary expulsion	Section 55
Special protection for expulsion	Section 56

## **Part 2**

### **Enforcement of the obligation to leave the Federal territory**

Removal	Section 57
Deportation	Section 58
Deportation order	Section 58a
Deportation warning	Section 59
Prohibition of deportation	Section 60
Temporary suspension of deportation	Section 60a
Geographic restrictions; departure facilities	Section 61
Custody awaiting deportation	Section 62

## **Chapter 6**

### **Liability and fees**

Obligations of transport contractors	Section 63
Return transport obligation on the part of transport contractors	Section 64
Obligations of airport operators	Section 65
Parties liable for costs; furnishing of security	Section 66
Scope of liability for costs	Section 67
Liability for living expenses	Section 68
Charges	Section 69
Limitation of actions in respect of claims	Section 70

## **Chapter 7**

### **Procedural provisions**

#### **Part 1**

##### **Areas of competence**

Competence	Section 71
Requirements for the involvement of authorities	Section 72
Other requirements for the involvement of authorities in visa procedures and in the issuance of residence titles	Section 73
Involvement of the Federal government; authority to issue instructions	Section 74

#### **Part 2**

##### **Federal Office for Migration and Refugees**

Duties	Section 75
(Void)	Section 76

#### **Part 3**

##### **Administrative procedures**

Written form; exemption from formal requirements	Section 77
Forms for residence titles, substitute identity document and certificates	Section 78
Decision on residence	Section 79



Legal capacity of minors	Section 80
Application for the residence title	Section 81
Cooperation by the foreigner	Section 82
Restriction of right of appeal	Section 83
Effects of an objection and a legal action	Section 84
Calculation of residence periods	Section 85

## **Part 4**

### **Data transfer and data protection**

Collection of personal data	Section 86
Transfer to foreigners authorities	Section 87
Transfer in case of special statutory regulations on the use of data	Section 88
Procedures applying to measures to ascertain and document a foreigner's identity	Section 89
<b>Procedural provisions for the database for found documents</b>	<b>Section 89a</b>
Transfer by foreigners authorities	Section 90
Storage and erasure of personal data	Section 91
Temporary protection register	Section 91a
Transfer of data by the Federal Office for Migration and Refugees as the National Contact Point	Section 91b

## **Chapter 8**

### **Commissioner for Migration, Refugees and Integration**

Office of the Commissioner	Section 92
Duties	Section 93
Scope of authority	Section 94

## **Chapter 9**

### **Provisions as to punishments for criminal offences and fines**

Penal provisions	Section 95
Smuggling of foreigners into the Federal territory	Section 96
Smuggling of people into the Federal territory resulting in death; smuggling for gain and as organised gangs	Section 97
Provisions as to fines	Section 98

## **Chapter 10**

### **Authorisation to issue statutory instruments; transitional and final provisions**

Authorisation to issue statutory instruments	Section 99
Linguistic adaptation	Section 100
Continued validity of previous rights of residence	Section 101
Continued validity of other measures relating to foreigners and consideration of prior periods	Section 102
Application of previous law	Section 103

Transitional provisions	Section 104
Continued validity of work authorisations	Section 105
Curtailement of fundamental rights	Section 106
City-state clause	Section 107

## **Chapter 1**

### **General provisions**

#### **Section 1 Purpose of the Act; scope**

(1) This Act serves to control and restrict the influx of foreigners into the Federal Republic of Germany. It enables and organises immigration with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market. At the same time, the Act also serves to fulfil the Federal Republic of Germany's humanitarian obligations. To this end, it regulates the entry, stay and economic activity of foreigners and promotion of the integration of foreigners. The provisions contained in other acts shall remain unaffected.

(2) This Act shall not apply to foreigners

1. 1.whose legal status is regulated by the Act on the General Freedom of movement for EU Citizens, in the absence of any legal provisions to the contrary,
2. who are not subject to German jurisdiction according to the provisions of Sections 18 to 20 of the Judicature Act,
3. who, by virtue of treaties on diplomatic and consular intercourse and on the activities of international organisations and institutions, are exempt from immigration restrictions, from the obligation to notify the foreigners authority of their stay and from the requirement for a residence title, and when reciprocity applies, insofar as this may constitute a prerequisite for such exemptions.

#### **Section 2**

##### **Definitions**

(1) A foreigner is anyone who is not German within the meaning of Article 116 (1) of the Basic Law.

(2) Economic activity is self-employment and employment within the meaning of Section 7 of Book Four of the Social Code.

(3) A foreigner's livelihood is secure when he or she is able to earn their living, including adequate health insurance coverage, without recourse to public funds. For the purposes of this definition, such funds do not include child benefits, child raising benefits and public funds which are based on contributions or which are granted in order to enable residence in the Federal territory. Contributions to the household income by family members shall be taken into account in connection with the issuance or extension of a residence permit in the context of the subsequent immigration of dependents.

(4) The space which is required to accommodate a person in need of accommodation in state-subsidised welfare housing shall constitute sufficient living space. Living space which does not comply with the statutory provisions for Germans with regard to condition and occupancy is not adequate for foreigners, either. Children up to the age of two are not included in calculation of the sufficient living space for the accommodation of families.

(5) A Schengen visa constitutes the standard visa in accordance with the provisions incorporated into Community law as the Schengen Acquis (official EC Journal no. L 239, p. 1) and the subsequently promulgated acts of law.

(6) Temporary protection within the meaning of this Act is the granting of residence in application of Council directive 2001/55/EC of 20 July 2001 on minimum standards for the granting of temporary protection in the case of the mass influx of displaced foreigners and measures to promote the balanced distribution of the burdens associated with the admission of these persons and the consequences of such admission among the member states (official EC Journal no. L 212, p. 12).

## **Section 2**

### **Entry into and residence in the Federal territory**

#### **Part 1**

#### **General**

### **Section 3**

#### **Passport obligation**

(1) Foreigners may only enter or stay in the Federal territory if they are in possession of a recognised and valid passport or passport substitute, unless they are exempt from the passport obligation by virtue of a statutory instrument.

(2) In justified isolated cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may permit exemptions from the passport obligation prior to the foreigner entering Federal territory for the purposes of crossing the border, and for a subsequent stay of up to six months.

#### **Section 4**

##### **Requirement for a residence title**

(1) In order to enter and stay in the Federal territory, foreigners shall require a residence title, in the absence of any provisions to the contrary in the law of the European Union or a statutory instrument and except where a right of residence exists as a result of the agreement to establish an association between the European Economic Community and Turkey of 12 September 1963 (Federal Law Gazette 1964 II, p. 509) (EEC/Turkey Association Agreement). The residence titles are granted in the form of a

1. visa (Section 6),
2. residence permit (Section 7) or
3. settlement permit (Section 9).

(2) A residence title shall entitle the holder to pursue an economic activity insofar as this is laid down in this Act or the residence title expressly permits pursuit of an economic activity. Every residence title must indicate whether the pursuit of an economic activity is permitted. A foreigner who is not in possession of a residence permit for the purpose of employment can only be permitted to take up employment if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up the employment concerned is permissible without the approval of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence title.

(3) Foreigners may only take up employment if the residence permit so allows, and may only be employed by employers if they possess such a residence title. This restriction shall not apply if the foreigner is permitted to pursue an economic activity without holding a residence title, by virtue of an inter-governmental agreement, a law or a statutory instrument.

(4) A residence permit shall also be required by foreigners who are employed as crew members of an ocean-going vessel which is entitled to fly the German flag.

(5) A foreigner who possesses a right of residence in accordance with the EEC/Turkey Association Agreement is obliged to furnish evidence of the existence of

said right of residence through the possession of a residence permit. Said residence permit shall be issued on application.

### **Section 5 General preconditions for the granting of a residence title**

(1) The granting of a residence title shall generally require fulfilment of the passport obligation in accordance with Section 3 and shall further presuppose

1. that the foreigner's livelihood is secure,
  - 1a. that the foreigner's identity is established, and also their nationality, if they are not entitled to return to another state,
2. that no grounds for expulsion apply and
3. insofar as the foreigner has no entitlement to the granting of a residence title, that foreigner's residence does not compromise or jeopardise the interests of the Federal Republic of Germany for any other reason.

(2) The granting of a residence permit or a settlement permit further presupposes that the foreigner

1. has entered the country with the necessary visa and
2. has already furnished the key information required for granting of the title in his or her visa application.

These requirements may be waived if the prerequisites qualifying a foreigner for the granting of a residence title are met or if special circumstances relating to the individual case concerned render a subsequent visa application procedure unreasonable.

(3) In the cases pertaining to the granting of a residence title in accordance with Section 24, 25 (1) to (3) and Section 26 (3), sub-sections 1 and 2 are to be waived; application of the said sub-sections may be waived in the other cases pertaining to the granting of a residence title in accordance with Section 2 (5).

(4) A residence title shall be refused if one of the grounds for expulsion pursuant to Section 54, nos. 5 or 5a applies. Exemptions from sentence 1 may be approved in justified individual cases, if the foreigner divulges said activities or allegiances to the competent authorities and credibly distances himself or herself from his or her actions posing a threat to security. In justified individual cases, the Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may permit exemptions from sentence 1 prior to the foreigner entering the country for the

purposes of crossing the border, and for a subsequent stay of up to six months.

## **Section 6 Visa**

(1) A foreigner may be issued

1. a Schengen visa for transit purposes or
2. a Schengen visa for stays of up to three months per six-month period (short-term stay),

if the requirements for issuance as stipulated in the Convention Implementing the Schengen Agreement and the appurtenant implementing regulations are fulfilled. In exceptional cases, the Schengen visa may be issued when the requirements for issuance as stipulated in the Convention Implementing the Schengen Agreement are not fulfilled, for reasons of international law or on humanitarian grounds or to safeguard the interests of the Federal Republic of Germany. In such cases, the geographic validity shall be restricted to the territory of the Federal Republic of Germany.

(2) The visa for short-term stays may also be issued for several stays with a validity period of up to five years, subject to the proviso that the respective stays must not exceed three months within a period of six months beginning on the date of initial entry.

(3) In special cases, a Schengen visa issued in accordance with sub-section 1, sentence 1 may be extended up to a total stay of three months within a period of six months beginning on the date of initial entry. This provision shall also apply if the visa has been issued by a diplomatic representation abroad of another state applying the Schengen agreement. A further extension of the visa by three months within the six-month period concerned shall only be possible subject to the requirements of sub-section 1, sentence 2.

(4) A visa for the Federal territory (national visa) shall be required for stays of longer duration, whereby this visa shall be issued prior to the foreigner entering the Federal territory. Issuance shall be based on the regulations applying to the residence permit and settlement permit. The duration of lawful stay with a national visa shall be offset

against the periods of possession of a residence permit or a settlement permit.

### **Section 7 Residence permit**

(1) The residence permit is a temporary residence title. It is issued for the purposes of residence stated in the following Parts of this Act. In justified cases, a residence permit may also be issued for a purpose of residence which is not covered by this Act.

(2) The residence permit shall be subject to a time limit which takes due account of the intended purpose of residence. Should a vital prerequisite for issuance, extension or the duration of validity cease to apply, subsequent shortening of the validity period shall also be possible.

### **Section 8 Extension of the residence permit**

(1) Extension of the residence permit shall be subject to the same regulations as apply to issuance.

(2) As a general rule, the residence permit shall not be extendable if the competent authority has excluded an extension in the case of a stay which is of only a temporary nature in accordance with the purpose of residence or at the time of the last extension of the residence permit.

(3) If a foreigner breaches his or her obligation to duly attend an integration course pursuant to Section 44a (1), sentence 1, no. 1, this shall be taken into account in the decision on extension of the residence permit. If the foreigner is not entitled to a residence permit, extension of the residence permit may be refused. The duration of lawful stay, the foreigner's legitimate ties to the Federal territory and the consequences for dependents of the foreigner who are lawfully resident in the Federal territory shall be taken into account in the decisions pursuant to sentences 1 and 2.

### **Section 9 Settlement permit**

(1) The settlement permit is a permanent residence title. It entitles the holder to pursue an economic activity, is not subject to any time limits or geographic restrictions and must not incorporate any subsidiary provisions. Section 47 remains unaffected.



(2) A foreigner shall be granted the settlement permit provided that

1. he or she has held a residence permit for five years,
2. his or her livelihood is secure,
3. he or she has paid compulsory or voluntary contributions into the statutory pension scheme for at least 60 months or furnishes evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company; time off for the purposes of child care or nursing at home shall be duly taken into account,
4. he or she has not been sentenced to a term of youth custody or a prison term of at least six months or a fine of at least 180 daily rates due to an intentionally committed offence,
5. he or she is permitted to be in employment, insofar as he or she is in employment,
6. he or she is in possession of the other permits which are required for the purpose of the permanent pursuit of his or her economic activity,
7. he or she has an adequate knowledge of the German language,
8. he or she possesses a basic knowledge of the legal and social system and the way of life in the Federal territory and
9. he or she possesses sufficient living space for himself or herself and the members of his or her family forming part of his or her household.

The requirements of sentence 1, nos. 7 and 8 shall be deemed to be fulfilled if an integration course has been successfully completed. These requirements shall be waived if the foreigner is unable to fulfil them on account of a physical, mental or psychological illness or handicap. The requirements of sentence 1, nos. 7 and 8 may also be waived in order to avoid hardship. The aforesaid requirements shall further be waived if the foreigner is able to communicate verbally in the German language at a basic level and has not been entitled to participate in an integration course pursuant to Section 44 (3), no. 2 or has not been obliged to participate in an integration course pursuant to Section 44a (2), no. 3. The requirements of sentence 1, nos. 2 and 3 shall also be waived if the foreigner is unable to fulfil them due to the grounds stated in sentence 3.

(3) In the case of cohabiting spouses, it shall suffice if the requirements in accordance with sub-section 2, sentence 1, nos. 3, 5 and 6 are fulfilled by one spouse. The requirement in accordance with sub-section 2, sentence 1, no. 3 shall

be waived, if the foreigner is undergoing education or training which leads to a recognised academic or vocational qualification. Sentence 1 shall apply mutatis mutandis in the cases covered by Section 26 (4).

(4) In the case of convicted foreigners, the period specified in sub-section 2, sentence 1, no. 4 shall begin on release from imprisonment. The following periods shall be taken into account with regard to the periods of possession of a residence permit which are necessary in order to qualify for issuance of a settlement permit:

1. The duration of former possession of a residence permit or settlement permit, if the foreigner was in possession of a settlement permit at the time of leaving the Federal territory, minus the duration of intermediate stays outside of the Federal territory which led to expiry of the settlement permit; a maximum of four years shall be taken into account.
2. A maximum of six months for each stay outside of the Federal territory which has not led to expiry of the residence permit.

### **Section 10 Mutual effects of residence titles and applications for asylum**

(1) In the absence of a legal entitlement, a foreigner who has filed an application for asylum may only be granted a residence title prior to legally valid completion of the asylum procedure with the approval of the supreme Land authority, and only when vital interests of the Federal Republic of Germany so require.

(2) A residence title issued or extended by the foreigners authority after the foreigner has entered the Federal territory can be extended in accordance with the provisions of this Act, irrespective of whether the foreigner has filed an application for asylum.

(3) A foreigner whose asylum application has been incontestably rejected or who has withdrawn his or her asylum application may only be granted a residence title prior to leaving the Federal territory in accordance with the provisions of Part 5. If the asylum application has been rejected in accordance with Section 30 (3) of the Asylum Procedure Act, no residence title may be issued prior to the foreigner leaving the Federal territory. Sentences 1 and 2 shall not apply in cases of entitlement to the issuance of a residence title.

### **Section 11 Ban on entry and residence**

(1) A foreigner who has been expelled, removed or deported shall not be permitted to re-enter or stay in the Federal territory. He or she shall not be granted a residence

title, even if the requirements entitling him or her to a title in accordance with this Act are fulfilled. Time limits shall generally be applied to the effects stated in sentences 1 and 2 on application. The time limit begins upon the person concerned leaving the Federal territory. No time limit shall be applied if a foreigner has been deported from the Federal territory on account of a crime against peace, a war crime or a crime against humanity, or on the basis of a deportation order pursuant to Section 58 a. The supreme Land authority may permit exemptions from sentence 5 in individual cases.

(2) By way of exception, the foreigner may, except in cases covered by sub-section 1, sentence 5, be granted temporary entrance into the Federal territory for a short period prior to expiry of the exclusion period stipulated in accordance with sub-section 1, sentence 3, if his or her presence is required for compelling reasons or if the refusal of permission would constitute undue hardship. Sub-section 1, sentence 6 shall apply mutatis mutandis in cases pursuant to sub-section 1, sentence 5.

## **Section 12 Area of application; subsidiary provisions**

(1) The residence title is issued for the Federal territory. Its validity in accordance with the provisions of the Convention Implementing the Schengen Agreement for residence in the territories of the parties signatory shall remain unaffected.

(2) The visa and the residence permit may be issued and extended subject to conditions. Conditions, in particular geographic restrictions, may also be imposed subsequently on visa and residence permits.

(3) A foreigner is to leave forthwith any part of the Federal territory which he or she may enter in breach of a geographic restriction without the permission of the foreigners authority.

(4) The stay of a foreigner who does not require a residence title may be made subject to time limits, geographic restrictions, conditions and requirements.

(5) The foreigners authority may permit the foreigner to leave the residence area which is restricted on the basis of this Act. This permission shall be granted if an urgent public interest applies, if it is necessary for compelling reasons or if refusing permission would constitute undue hardship. The foreigner may attend appointments with authorities or court hearings at which his or her personal appearance is necessary without permission.

## **Part 2**

### **Entry**

#### **Section 13 Border crossing**

(1) Entry into and exit from the Federal territory is permissible only at the approved border crossing points and within the stipulated traffic hours, in the absence of any exceptions which may be permissible on the basis of other statutory provisions or inter-governmental agreements. Foreigners shall be obliged to carry a recognised and valid passport or passport substitute in accordance with Section 3 (1) when entering or leaving the Federal territory and to submit to the police control of cross-border traffic.

(2) A foreigner shall be deemed to have entered the Federal territory only after having crossed the border and passed through the border check-point. Should the authorities charged with carrying out the police control of cross-border traffic allow a foreigner to pass through the border check-point for a specific temporary purpose prior to a decision on the refusal of entry (Section 15 of this Act, Sections 18, 18a of the Asylum Procedure Act) or during preparation, safeguarding and implementation of this measure, this shall not constitute entry pursuant to sentence 1 as long as the said authorities remain able to monitor the foreigner's stay. The foreigner shall otherwise be deemed to have entered the Federal territory on crossing the border.

#### **Section 14 Unlawful entry; exceptional visa**

(1) The entry of a foreigner into the Federal territory shall be unlawful if he or she

1. does not possess a required passport or passport substitute in accordance with Section 3 (1),
2. does not possess the residence title required in accordance with Section 4 or
3. is not permitted to enter the Federal territory in accordance with Section 11 (1), unless he or she possesses a temporary entry permit in accordance with Section 11 (2). 2.

(2) The authorities charged with carrying out the police control of cross-border traffic may issue exceptional visa and passport substitute documents.

#### **Section 15 Refusal of entry**

(1) A foreigner wishing to enter the Federal territory unlawfully shall be refused entry at the border.

(2) A foreigner may be refused entry at the border if

1. a reason for expulsion exists,
2. there is a well-founded suspicion that the foreigner does not intend to stay in the country for the stated purpose or
3. he or she does not fulfil the conditions for entry into the territory of the parties signatory in accordance with Article 5 of the Convention Implementing the Schengen Agreement.

(3) A foreigner who is exempted from the requirement for a residence title for the purpose of a temporary stay in the Federal territory may be refused entry if he or she does not fulfil the requirements of Section 3 (1) and Section 5 (1).

(4) Section 60 (1) to (3), (5), (8) and (9) and Section 62 shall apply mutatis mutandis. A foreigner who has filed an application for asylum may not be refused entry if he or she is permitted to stay in the Federal territory in accordance with the provisions of the Asylum Procedure Act.

## **Section 15 a**

### **Allocation to the Länder of foreigners who have entered the Federal territory unlawfully**

(1) Foreigners who enter the country illegally without applying for asylum and who, upon their illegal entry being established, cannot be placed in custody pending deportation and deported or expelled directly from custody are to be allocated to the respective Länder prior to the decision on the suspension of deportation or issuance of a residence title. They are not entitled to be allocated to a specific Land or a specific town or location. Allocation to the Länder shall be carried out by a central allocation agency to be appointed by the Federal Ministry of the Interior. In the absence of any divergent allocation basis agreed between the Länder, the allocation basis stipulated for the allocation of asylum seekers shall apply. Each Land shall appoint up to seven authorities to initiate allocation by the agency appointed in accordance with sentence 3 and to admit the allocated foreigners. If the foreigner furnishes evidence prior to allocation that a household community exists between spouses or parents and their minor children or that other compelling reasons exist which conflict with allocation to a certain place, this shall receive due consideration in the allocation process.

(2) The foreigners authorities may oblige foreigners to present themselves to the authority initiating allocation. This shall not apply when due consideration is to be accorded to submissions in accordance with sub-section 1, sentence 6. An obligation imposed in accordance with sentence 1 shall not be contestable. Any legal actions shall have no suspensory effect.

(3) The central allocation agency informs the authority which has initiated allocation as to the reception centre which is obliged to admit the foreigners concerned pursuant to sentences 2 and 3. When the Land whose authority has initiated allocation has not fulfilled its admission quota, the Land's reception centre located nearest to this authority with available admission capacity shall be obliged to admit the foreigners concerned. Otherwise, the reception centre designated by the central allocation agency on the basis of the allocation quota pursuant to Section 45 of the Asylum Procedure Act and the available accommodation capacities shall be obliged to admit the foreigners concerned. Section 46 (4) and (5) of the Asylum Procedure Act are to be applied *mutatis mutandis*.

(4) In the cases covered by sub-section 3, sentence 3, the authority which has initiated allocation pursuant to sub-section 3 shall order the foreigner to report to the reception centre designated as a result of the allocation process; in the cases covered by sub-section 3, sentence 2, the said authority may issue such an order. The foreigners authority shall forward the result of the hearing to the authority initiating allocation, which shall notify the central allocation agency of the number of foreigners, stating the countries of origin and the results of the hearing. Spouses and parents and their minor, unmarried children shall be registered and allocated as a group. The foreigner is to stay at this reception centre until re-allocated to another location within the Land, but until suspension of deportation or until issuance of a residence title at the latest; Sections 12 and 61 (1) shall remain unaffected. The Land governments shall be authorised to regulate allocation within the Land by statutory instrument, insofar as allocation is not regulated by Land law on the basis of this Act; Section 50 (4) of the Asylum Procedure Act shall apply *mutatis mutandis*. The Land governments may assign the said authorisation to other bodies of the Land. Orders pursuant to sentence 1 shall not be contestable. Any legal actions shall have no suspensory effect. Sentences 7 and 8 shall apply *mutatis mutandis*, if an allocation order is issued on the basis of a Land law or a statutory instrument pursuant to sentence 5.

(5) Following allocation, the competent authorities may permit the foreigner to take up residence in another Land. Following a permitted change of residence, the foreigner shall be deducted from the quota for the Land from which he or she is released and added to the quota for the admitting Land.

(6) The provisions of sub-sections 1 to 5 shall not apply to persons who verifiably entered the Federal territory prior to 1 January 2005.

### **Part 3**

#### **Residence for educational purposes**

##### **Section 16 Further education; language courses; school education**

(1) A foreigner may be granted a residence permit for the purpose of applying to study and studying at a state or state-recognised university or comparable educational establishment, including preparatory measures for a course of study. The period of validity should not exceed two years when the residence permit is issued for the first time in connection with preparatory measures for a course of study. For study purposes, the residence permit shall be issued for two years and shall be extendable by subsequent periods of up to two years if the purpose of the stay has not yet been achieved and is achievable within a reasonable period. The maximum permissible duration of residence for a foreigner applying for a place to study is nine months.

(2) As a general rule, no residence permit for another purpose of residence shall be granted or extended during the stay in accordance with sub-section 1, unless a legal entitlement applies. Section 9 shall not apply.

(3) The residence permit entitles the holder to take up employment totalling no more than 90 days or 180 half-days per year, and to take up spare-time student employment.

(4) After successful completion of the studies, the residence permit may be extended by up to one year for the purposes of seeking a job commensurate with this qualification, provided that it is permissible to fill the vacancy concerned with foreigners in accordance with the provisions contained in Sections 18 to 21. Section 9 shall not apply.

(5) A foreigner may be granted a residence permit to attend language courses which do not serve to prepare him or her for a course of study and, in exceptional cases, for the purpose of attending school education. Sub-section 2 shall apply *mutatis mutandis*.

## **Section 17 Other educational purposes**

A foreigner may be issued a residence permit for the purpose of basic and advanced industrial training, if the Federal Employment Agency has granted approval in accordance with Section 39 or if a statutory provision in accordance with Section 42 or an inter-governmental agreement stipulates that such basic and advanced vocational training is permissible without approval from the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence permit. Section 16 (2) shall apply *mutatis mutandis*.

### **Part 4**

## **Residence for the purpose of economic activity**

### **Section 18 Employment**

(1) The admission of foreign employees shall be geared to the requirements of the German economy, according due consideration to the situation on the labour market and the need to combat unemployment effectively. International treaties shall remain unaffected.

(2) A foreigner may be granted a residence title for the purpose of taking up employment if the Federal Employment Agency has granted approval in accordance with Section 39 or if a statutory provision in accordance with Section 42 or an inter-governmental agreement stipulates that such employment may be taken up without approval from the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the residence title.

(3) A residence permit for the purpose of taking up employment pursuant to sub-section 2 which does not require a vocational qualification may only be issued if regulated by an inter-governmental agreement or if issuance of approval for a residence permit for the said employment is permissible by virtue of a statutory instrument in accordance with Section 42.

(4) A residence title for the purpose of taking up employment pursuant to sub-section 2 which requires a vocational qualification may only be issued for employment in an occupational group which has been approved by virtue of a statutory instrument in accordance with Section 42. In justified individual cases, a residence permit may be issued for the purpose of taking up employment when there is a public interest, and in particular a regional interest or an interest relating to the economy or the labour market.



(5) A residence title in accordance with sub-section 2 and Section 19 may only be issued if a concrete job offer exists.

### **Section 19 Settlement permit for highly qualified foreigners**

(1) A highly qualified foreigner may be granted a settlement permit in special cases if the Federal Employment Agency has granted approval in accordance with Section 39 or if a statutory provision in accordance with Section 42 or an inter-governmental agreement stipulates that the settlement permit may be granted without approval from the Federal Employment Agency in line with Section 39 and there are justifiable grounds to assume that integration into the way of life which prevails in the Federal Republic of Germany and ensurance of the foreigner's subsistence without state assistance are assured. The Land government may stipulate that issuance of the settlement permit pursuant to sentence 1 requires the approval of the supreme Land authority or a body to be designated by the latter.

(2) Highly qualified persons in accordance with sub-section 1 are, in particular,

1. scientists with special technical knowledge,
2. teaching personnel in prominent positions or scientific personnel in prominent positions, or
3. specialists and executive personnel with special professional experience who receive a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme.

### **Section 20**

(v o i d)

### **Section 21 Self-employment**

(1) A foreigner may be granted a residence permit for the purpose of self-employment, if

1. an overriding economic interest or a special regional need applies,
2. the activity is expected to have positive effects on the economy and

3. personal capital on the part of the foreigner or a loan undertaking is available to realise the business idea.

The prerequisites specified in sentence 1, nos. 1 and 2 are generally met when at least 1 million euros is invested and ten jobs are created. Assessment of the prerequisites in accordance with sentence 1 shall otherwise focus in particular on the viability of the business idea forming the basis of the application, the foreigner's entrepreneurial experience, the level of capital investment, the effects on the employment and training situation and the contribution towards innovation and research. The competent bodies for the planned business location, the competent trade and industry authorities, the representative bodies for public-sector professional groups and the competent authorities regulating admission to the profession concerned shall be involved in examining the application.

(2) A residence permit for the purpose of self-employment may also be granted if special privileges apply according to agreements under international law on the basis of reciprocity.

(3) Foreigners aged over 45 shall receive a residence permit only if they possess adequate provision for old age.

(4) The period of validity of the residence permit shall be limited to a maximum of three years. By way of derogation from Section 9 (2), a settlement permit may be issued after three years, if the foreigner has successfully realised the planned activity and his or her livelihood is assured.

## **Part 5**

### **Residence under international law or on humanitarian or political grounds**

#### **Section 22 Admission from abroad**

A foreigner may be granted a residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. A residence permit shall be granted if the Federal Ministry of the Interior or the body designated by the Federal Ministry of the Interior to uphold the political interests of the Federal Republic of Germany has declared that the foreigner is to be admitted. In the case of sentence 2, the residence permit shall entitle the holder to pursue an economic activity.

## **Section 23 Granting of residence by the supreme Land authorities**

(1) The supreme Land authority may order a residence permit to be granted to foreigners from specific states or to certain groups of foreigners defined by other means, in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. The order may be issued subject to the proviso that a declaration of commitment be submitted in accordance with Section 68. In order to ensure a nationwide uniform approach, the order shall require the approval of the Federal Ministry of the Interior.

(2) When special political interests of the Federal Republic of Germany apply, the order may provide for the persons concerned to be granted a settlement permit. In such cases, a condition restricting the permissible geographic area of residence may be issued by way of derogation from Section 9 (1).

(3) The order may provide for Section 24 to be applied *mutatis mutandis*, either in part or in its entirety.

### **Section 23 a**

#### **Granting of residence in cases of hardship**

(1) By way of derogation from the prerequisites for the issuance and extension of residence titles as stipulated in this Act, the supreme Land authority may, on petition from a Hardship Commission to be established by the Land government by virtue of a statutory instrument, order a residence permit to be issued to a foreigner who is unappealably obliged to leave the Federal territory (hardship petition). According to the individual case concerned, the said order may be issued with due consideration as to whether the foreigner's subsistence is assured or a declaration of commitment is submitted in accordance with Section 68. A case of hardship will not generally be considered if the foreigner has committed an offence of considerable severity. The authority to grant residence represents the public interest only and does not constitute any rights on the part of the foreigner.

(2) The Land governments are authorised to establish a Hardship Commission in accordance with sub-section 1 by virtue of a statutory instrument, to specify the procedure, grounds for exclusion and qualified requirements pertaining to a declaration of commitment pursuant to sub-section 1, sentence 2, including conditions to be met by the party submitting such a declaration, and to assign the authority to issue orders pursuant to sub-section 1, sentence 1 to other bodies. The Hardship Commissions shall take action solely on their own initiative. No third parties

can require a Hardship Commission to take up a specific individual case or to make a specific decision. A Hardship Commission may only decide to file a hardship petition after establishing that urgent humanitarian or personal grounds justify the foreigner's continued presence in the Federal territory.

(3) If a foreigner who is dependent on social welfare and who has been issued a residence permit in accordance with sub-section 1 relocates to the area of responsibility of another institution, the social welfare institution in whose area of responsibility a foreigners authority has issued the residence permit shall be required to reimburse the costs accruing to the local social welfare institution which now bears responsibility for the foreigner concerned for a maximum period of three years from the date of issue of the residence permit. The same shall apply mutatis mutandis for the subsistence payments stipulated in Section 6 (1), sentence 1, no. 2 of Book Two of the Social Code.

#### **Section 24 Granting of residence for temporary protection**

(1) A foreigner who is granted temporary protection on the basis of a resolution by the Council of the European Union pursuant to directive 2001/55/EC and who declares his or her willingness to be admitted into the Federal territory shall be granted a residence permit for the duration of his or her temporary protection as assessed in accordance with Articles 4 and 6 of said directive.

(2) No temporary protection shall be granted if one of the conditions stipulated in Section 60 (8) applies; the residence permit shall be refused.

(3) The persons admitted on the basis of a resolution pursuant to sub-section 1 shall be allocated to the various Länder. The Länder may agree quotas for admission to grant temporary protection and for allocation. Allocation to the various Länder shall be carried out by the Federal Office for Migration and Refugees. In the absence of any divergent allocation basis agreed between the Länder, the allocation basis stipulated for the allocation of asylum seekers shall apply.

(4) The supreme Land authority or the body appointed by the same shall pass an allocation ruling. The Land governments are authorised to regulate allocation within the Länder via statutory instruments, and may assign this authorisation to other bodies via statutory instruments; Section 50 (4) of the Asylum Procedure Act shall apply mutatis mutandis. The allocation ruling shall not be contestable. Any legal actions shall have no suspensory effect.

(5) The foreigner shall have no entitlement to stay in a specific Land or a specific place. He or she shall take up his or her accommodation and ordinary residence at the place to which he or she is allocated in accordance with sub-sections 3 and 4.

(6) Self-employment must not be excluded. The pursuit of an economic activity with employee status shall be subject to Section 4 (2). 2.

(7) The foreigner shall be provided with written notification of the rights and obligations pertaining to the temporary protection in a language which he or she is able to understand.

## **Section 25 Residence on humanitarian grounds**

(1) A foreigner shall be granted a residence permit if he or she is incontestably recognised as being entitled to asylum. This provision shall not apply if the foreigner has been expelled on serious grounds relating to public safety and law and order. Residence shall be deemed to be permitted up to the time of granting of the residence permit. The residence permit entitles the holder to pursue an economic activity.

(2) A foreigner shall be granted a residence permit if the Federal Office for Migration and Refugees has incontestably established that the conditions of Section 60 (1) are met. Sub-section 1, sentences 2 to 4 shall apply mutatis mutandis.

(3) A foreigner should be granted a residence permit if the conditions for a suspension of deportation are fulfilled in accordance with Section 60 (2) (3), (5) or (7). The residence permit shall not be permitted if departure for subsequent admission to another state is possible and reasonable, the foreigner has repeatedly or grossly breached duties to cooperate or serious grounds warrant the assumption that the foreigner

- a) has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes,
- b) has committed an offence of considerable severity,
- c) is guilty of acts contrary to the objectives and principles of the United Nations, as enshrined in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or
- d) represents a risk to the general public or a risk to the security of the Federal Republic of Germany.

(4) A foreigner may be granted a residence permit for a temporary stay if his or her continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. By way of derogation from

Section 8 (1) and (2), a residence permit may be extended if departure from the Federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case concerned.

(5) By way of derogation from Section 11 (1), a foreigner who is subject to a final deportation order may be granted a residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if deportation has been suspended for 18 months. A residence permit may only be granted if the foreigner is prevented from leaving the Federal territory through no fault of his or her own. Fault on the part of the foreigner applies in particular if he or she furnishes false information, deceives the authorities with regard to his or her identity or nationality or fails to meet reasonable demands to eliminate the obstacles to departure.

### **Section 26 Duration of residence**

(1) The residence permit in accordance with this Part may be issued and extended in each instance for a maximum period of three years, but for no longer than six months in cases covered by Section 25 (4), sentence 1 and (5) when the foreigner has not been legally resident in the Federal territory for at least 18 months.

(2) The residence permit must not be extended if the obstacle to departure or the other grounds precluding a termination of residence have ceased to apply.

(3) A foreigner who has been in possession of a residence permit in accordance with Section 25 (1) or (2) for three years shall be granted a settlement permit if the Federal Office for Migration and Refugees has provided notification in accordance with Section 73 (2a) of the Asylum Procedure Act that the conditions for revocation or withdrawal do not apply.

(4) A foreigner who has been in possession of a residence permit in accordance with this Part for seven years may otherwise be granted a settlement permit if the conditions stipulated in Section 9 (2), sentence 1, nos. 2 to 9 are fulfilled. Section 9 (2), sentences 2 to 6 shall apply accordingly. By way of derogation from Section 55 (3) of the Asylum Procedure Act, the duration of residence pertaining to the asylum procedure preceding granting of the residence permit shall count towards this qualifying period. Section 35 may be applied *mutatis mutandis* for children who have entered Germany prior to reaching the age of 18.

**Part 6**  
**Residence for family reasons**

**Section 27 Principles pertaining to the subsequent immigration of dependents**

(1) The residence permit to enable foreigners to be joined by foreign dependents so that they can live together as a family (subsequent immigration of dependents) shall be granted and extended to protect marriage and the family in accordance with Article 6 of the Basic Law.

(2) Sub-section 3, Section 9 (3), Sections 28 to 31 and Section 51 (2) shall apply mutatis mutandis to enable the establishment and maintenance of a registered partnership in the Federal territory.

(3) Granting of the residence permit for the subsequent immigration of dependents may be refused if the person to be joined by his or her dependents is reliant on benefits in accordance with Book Two or Book Twelve of the Social Code for the maintenance of other foreign dependents or other foreign members of his or her household. Section 5 (1), no. 2 may be waived.

**Section 28 Subsequent immigration of dependents to join a German national**

(1) By way of derogation from Section 5 (1), no. 1, the residence permit shall be granted to the foreign

1. spouse of a German,
2. minor, unmarried child of a German,
3. parent of a minor, unmarried German for the purpose of care and custody

if the German's ordinary residence is in the Federal territory. By way of derogation from Section 5 (1), the residence permit may be granted to the parent of a minor, unmarried German who is not entitled to custody of said child, if the family household already exists in the Federal territory.

(2) As a rule, the foreigner shall be granted a settlement permit if he or she has been in possession of a residence permit for three years, the family household with the German continues to exist in the Federal territory, there are no grounds for expulsion and the foreigner is able to communicate verbally in the German language on a basic level. The residence permit shall otherwise be extended as long as the family household continues to exist.

(3) Sections 31 and 35 shall apply subject to the proviso that the foreigner's residence title shall be replaced by the ordinary residence of the German in the Federal territory.

(4) Section 36 shall apply mutatis mutandis to other dependents.

(5) The residence permit entitles the holder to pursue an economic activity.

### **Section 29 Subsequent immigration of dependents to join a foreigner**

(1) For the purposes of subsequent immigration to join a foreigner,

1. the foreigner must possess a settlement permit or a residence permit and
2. sufficient living space must be available.

(2) The requirements of Section 5 (1), no. 1 and sub-section 1, no. 2 may be waived in the case of the spouse and the minor, unmarried child of a foreigner who is in possession of a residence permit in accordance with Section 25 (1) or (2) or a settlement permit in accordance with Section 26 (3).

(3) The residence permit may only be granted to the spouse and the minor child of a foreigner who is in possession of a residence permit in accordance with Sections 22, 23 (1) or Section 25 (3) for reasons of international law, on humanitarian grounds or in order to safeguard political interests of the Federal Republic of Germany. The subsequent immigration of dependents shall not be granted in the cases covered by Section 25 (4) and (5).

(4) By way of derogation from Section 5 (1) and Section 27 (3), the residence permit shall be granted to the spouse and the minor child of a foreigner or the minor child of the foreigner's spouse if the foreigner has been granted temporary protection in accordance with Section 24 (1) and

1. the family household in the country of origin has been broken up as a result of the foreigner having fled said country and
2. the dependent is admitted from another member state of the European Union or is located outside of the European Union and is in need of protection.

The granting of a residence permit to other dependents of a foreigner who has been granted temporary protection pursuant to Section 24 (1) shall be subject to Section 36. Section 24 shall apply to dependents who are admitted pursuant to this sub-section.

(5) Without prejudice to Section 4 (2), sentence 3, the residence permit shall entitle



the holder to pursue an economic occupation insofar as the foreigner who is being joined by his or her dependents by way of subsequent immigration is entitled to pursue an economic activity or if marital cohabitation has lawfully existed in the Federal territory for at least two years.

### **Section 30 Subsequent immigration of spouses**

(1) A foreigner's spouse shall be granted a residence permit if the foreigner

1. possesses a settlement permit,
2. possesses a residence permit pursuant to Section 25 (1) or (2),
3. has been in possession of a residence permit for five years or
4. is in possession of a residence permit, if the marriage existed at the time of said permit being granted and the duration of the foreigner's stay is expected to exceed one year.

(2) By way of derogation from sub-section 1, no. 4, the residence permit may be granted if the foreigner possesses a residence permit.

(3) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the residence permit may be extended for as long as the marital cohabitation continues.

### **Section 31 Independent right of residence of spouses**

(1) In the event of termination of marital cohabitation, the spouse's residence permit shall be extended by one year as an independent right of residence unrelated to the purpose of the subsequent immigration of dependents if

1. marital cohabitation has lawfully existed in the Federal territory for at least two years or

2. he foreigner has died while marital cohabitation existed in the Federal territory

and the foreigner was in possession of a residence permit or a settlement permit up to this point in time, unless he or she was unable to apply for an extension in due time for reasons beyond his or her control. The residence permit entitles the holder to pursue an economic activity.

(2) The requirement stipulated in sub-section 1, no. 1 for marital cohabitation to have existed lawfully for two years in the Federal territory shall be waived if necessary to enable the spouse to continue his or her residence in order to avoid particular

hardship, unless an extension of the foreigner's residence permit is excluded. Particular hardship shall be deemed to apply if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially erode the foreigner's legitimate interests, or if the continuation of marital cohabitation is unreasonable due to the erosion of the foreigner's legitimate interests; such legitimate interests shall also include the wellbeing of a child living with the spouse in a family household. In order to avoid abuse, extension of the residence permit may be refused if the spouse is reliant on benefits in accordance with Book Two or Book Twelve of the Social Code for reasons for which he or she is responsible.

(3) By way of derogation from Section 9 (2), sentence 1, nos. 3, 5 and 6, the spouse shall also be granted a settlement permit if the spouse's subsistence is safeguarded after the termination of marital cohabitation by maintenance payments from the foreigner's own funds and the foreigner possesses a settlement permit.

(4) Without prejudice to sub-section 2, sentence 3, claiming benefits in accordance with Book Two or Book Twelve of the Social Code shall not preclude extension of the residence permit. The residence permit can thus be extended for as long as the conditions for granting of the residence permit have yet to be met.

### **Section 32 Subsequent immigration of children**

(1) The minor, unmarried child of a foreigner shall be granted a residence permit if

1. the foreigner possesses a resident permit in accordance with Section 25 (1) or (2) or a settlement permit in accordance with Section 26 (3) or
2. both parents or the parent possessing the sole right of care and custody hold a residence permit or settlement permit and the child relocates the central focus of its life together with its parents or the parent possessing the sole right of care and custody to the Federal territory.

(2) A minor, unmarried child who is 16 years of age or older shall be granted a residence permit if he or she has a command of the German language or if it appears on the basis of the child's education and way of life to date that he or she will be able to integrate into the way of life which prevails in the Federal Republic of Germany and both parents or the parent possessing the sole right of care and custody hold a residence permit or settlement permit.

(3) A minor, unmarried child of a foreigner who is under 16 years of age shall be granted a residence permit if both parents or the parent possessing the sole right of

care and custody possess a residence permit or settlement permit.

(4) A minor, unmarried child of a foreigner may otherwise be granted a residence permit if necessary in order to prevent special hardship on account of the circumstances pertaining to the individual case concerned. The child's wellbeing and the family situation are to be taken into consideration in this connection.

### **Section 33 Birth of a child in the Federal territory**

By way of derogation from Sections 5 and 29 (1), no. 2, a child who is born in the Federal territory shall be granted a residence permit as standard procedure if the mother possesses a residence permit or settlement permit. A child born in the Federal territory whose mother possesses a visa or is permitted to stay in the Federal territory without a visa at the time of the birth shall be permitted to stay in the Federal territory until such time as the visa or the period of stay without a visa expires.

### **Section 34 Children's right of residence**

(1) By way of derogation from Section 5 (1), no. 1 and Section 29 (1), no. 2, the residence permit granted to a child shall be extended as long as a parent possessing the right of care and custody holds a residence permit or settlement permit and the child lives together with the said parent in a family household, or if the child would have a right of return pursuant to Section 37 in the event of him or her leaving the Federal territory.

(2) Upon a child coming of age, the residence permit granted to the child shall become an independent right of residence which is unrelated to the purposes of the subsequent immigration of dependents. The same shall apply in the case of the granting of a settlement permit or if the residence permit is extended accordingly pursuant to Section 37.

(3) The residence permit may be extended for as long as the conditions for granting of the settlement permit have yet to be met.

### **Section 35 Children's independent, unlimited right of residence**

(1) By way of derogation from Section 9 (2), a minor foreigner who possesses a residence permit in accordance with this Part shall be granted a settlement permit if he or she has been in possession of the residence permit for five years on reaching the age of 16. The same shall apply if

1. the foreigner is of age and has been in possession of the residence permit for five years,
2. he or she possesses an adequate knowledge of German and
3. his or her livelihood is secure or he or she is undergoing education or training which leads to a recognised academic or vocational qualification.

(2) Periods in which the foreigner has attended school outside of the Federal territory shall not normally be taken into consideration with regard to the required duration of possession of a residence permit as stipulated in sub-section 1.

(3) No entitlement to the granting of a settlement permit pursuant to sub-section 1 shall apply if

1. a reason for expulsion based on the foreigner's personal conduct applies,
2. the foreigner has been sentenced to a term of youth custody or a prison term of at least six months or a fine of at least 180 daily rates in the past three years due to an intentionally committed offence, or if a youth prison sentence has been suspended, or
3. the foreigner's subsistence cannot be assured without claiming benefits in accordance with Book Two or Book Twelve of the Social Code or juvenile welfare pursuant to Book Eight of the Social Code, unless the foreigner is undergoing education or training which leads to a recognised academic or vocational qualification.

The settlement permit may be granted or the residence permit extended in the cases covered by sentence 1. If, in cases covered by sentence 1, no. 2, the foreigner is placed on probation or the youth prison sentence is suspended, the residence permit will generally be extended until the end of the probationary period.

(4) The requirements stipulated in sub-section 1, nos. 2 and 3 and sub-section 3, sentence 1, no. 3 shall be waived if the foreigner is unable to fulfil them on account of a physical, mental or psychological illness or handicap.

### **Section 36 Subsequent immigration of other dependents**

Another dependent of a foreigner may be granted a residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship. Section 30 (3) and Section 31 shall apply mutatis mutandis to adult dependents and Section 34 shall apply mutatis mutandis to minor dependents.

**Part 7**  
**Special rights of residence**

**Section 37 Right of return**

(1) A foreigner whose ordinary residence as a minor was in the Federal territory shall be granted a residence permit if

1. the foreigner lawfully resided in the Federal territory for eight years prior to his or her departure and attended a school in the Federal territory for six years,
2. the foreigner's livelihood is assured by his or her own economic activity or by a maintenance commitment into which a third party has entered for a period of five years and
3. the application for the residence permit is filed after reaching the age of 15 and prior to reaching the age of 21, and before the elapse of five years after departure.

The residence permit entitles the holder to pursue an economic activity.

(2) Deviation from the requirements stipulated in sub-section 1, nos. 1 and 3 shall be possible in order to prevent particular hardship. The requirements stipulated in sub-section 1, no. 1 may be waived if the foreigner has acquired a recognised school-leaving qualification in the Federal territory.

(3) The residence permit may be refused

1. if the foreigner was expelled or could have been expelled when he or she left the Federal territory,
2. if a reason for expulsion exists or
3. as long as the foreigner is a minor and his or her personal care in the Federal territory is not assured.

(4) Extension of the residence permit shall not be precluded by the fact that the foreigner's livelihood is no longer assured on the basis of his or her own economic activity or that the maintenance commitment no longer applies due to expiry of the five-year period.

(5) A foreigner who receives a pension from an institution in the Federal territory shall generally be granted a residence permit if he or she lawfully resided in the Federal territory for at least eight years prior to his or her departure.

## **Section 38 Residence title for former Germans**

(1) A former German

1. shall be granted a settlement permit if he or she had been ordinarily resident as a German in the Federal territory for five years when he or she lost his or her German nationality,
2. shall be granted a residence permit if he or she had been ordinarily resident in the Federal territory for at least one year when he or she lost his or her German nationality.

The application for a residence title pursuant to sentence 1 shall be filed within six months of obtaining knowledge of the loss of German nationality. Section 81 (3) shall apply mutatis mutandis.

(2) A former German who is ordinarily resident abroad may be granted a residence permit if he or she possesses an adequate knowledge of German.

(3) In special cases, the residence title pursuant to sub-section 1 or 2 may be granted by way of derogation from Section 5.

(4) The residence permit in accordance with sub-section 1 or 2 entitles the holder to pursue an economic activity. The pursuit of an economic activity is permitted within the period for filing an application specified in sub-section 1, sentence 2 and, upon an application being filed, up to the time of the foreigners authority's decision on the application.

(5) Sub-sections 1 to 4 shall apply mutatis mutandis to a foreigner who, for reasons beyond his or her control, has been treated as a German by German bodies to date.

## **Part 8**

### **Involvement of the Federal Employment Agency**

#### **Section 39 Approval of employment for a foreigner**

(1) A residence title which permits a foreigner to take up employment may only be granted with the approval of the Federal Employment Agency, in the absence of any provisions to the contrary in statutory instruments. Such approval may be granted if laid down in inter-governmental agreements, an act or a statutory instrument.

(2) The Federal Employment Agency may approve the granting of a residence permit to take up employment pursuant to Section 18 if

1. a) the employment of foreigners does not result in any adverse consequences for the labour market, in particular with regard to the employment structure, the regions and the branches of the economy, and  
b) no German workers, foreigners who possess the same legal status as German workers with regard to the right to take up employment or other foreigners who are entitled to preferential access to the labour market under the law of the European Union are available for the type of employment concerned or,
2. it has established, via investigations for individual occupational groups or for individual industries in accordance with sentence 1, no. 1, letters a and b, that filling the vacancies with foreign applicants is justifiable in terms of labour market policy and integration aspects

and the foreigner is not employed on terms less favourable than apply to comparable German workers. German workers and foreigners of equal status shall also be deemed to be available if they can only be placed with assistance from the Federal Employment Agency. The potential employer of a foreigner who requires approval in order to take up employment shall be required to furnish the Federal Employment Agency with information on pay, working hours and other terms and conditions of employment.

(3) Sub-section 2 shall also apply if approval from the Federal Employment Agency is required in order to take up employment in cases of residence for other purposes covered in Parts 3, 5, 6 or 7.

(4) The approval may stipulate the duration and form of occupational activity and restrict the employment to specific plants or regions.

(5) The Federal Employment Agency may approve the granting of a settlement permit pursuant to Section 19 if employment of the foreigner does not give rise to any adverse consequences on the labour market.

(6) The Federal Employment Agency may permit nationals of those states which have acceded to the European Union in accordance with the treaty of 16 April 2003 on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Republic of Slovakia to the European Union (Federal Law Gazette 2003 II, p. 1408) to take up employment which requires a vocational qualification subject to the conditions stipulated in sub-section 2, insofar as provisions which diverge from the statutory provisions of the European Community apply under the said treaty. Such

nationals are to be granted priority over nationals of third countries who enter the Federal territory for the purpose of employment.

### **Section 40 Grounds for refusal**

(1) Approval pursuant to Section 39 shall be refused if

1. the employment has come about on the basis of unlawful placement or recruitment or
2. 2. the foreigner intends to take up employment as a loan worker (Section 1 (1) of the Act on Temporary Employment Businesses).

(2) Approval may be refused if

1. the foreigner has culpably breached Section 404 (1) or (2) nos. 2 to 13 of Book Three of the Social Code, Section 10 or 11 of the Act to Combat Clandestine Employment or Sections 15, 15a or Section 16 (1), no. 2 of the Act on Temporary Employment Businesses or
2. important personal grounds relating to the foreigner exist.

### **Section 41 Revocation of approval**

The approval may be revoked, if the foreigner is employed on less favourable terms than comparable German workers (Section 39 (2), sentence 1) or an offence is committed pursuant to Section 40 (1) or (2).

### **Section 42 Authorisation to issue regulations and instructions**

(1) The Federal Ministry of Economics and Labour may determine the following by means of statutory instruments, with the approval of the Bundesrat:

1. Types of employment for which no approval is necessary from the Federal Employment Agency (Section 17, sentence 1, Section 18, sentence 1, Section 19 (1)),
2. occupational groups for which the employment of foreign labour can be approved in accordance with Section 18 and, where necessary, further conditions pertaining to the admission of such employees to the German labour market,
3. exceptions for nationals of certain states,



4. activities which for the purposes of enforcement of this Act are never to be regarded as employment or are not to be regarded as such under certain conditions.

(2) The Federal Ministry of Economics and Labour may determine the following by means of statutory instruments, without the approval of the Bundesrat:

1. the conditions and the procedure for the granting of approval by the Federal Employment Agency, whereby an alternative procedure for establishing priorities may also be regulated,
2. details concerning restriction of the approval on a time-, plant-, occupational and regional basis, in accordance with Section 39 (4),
3. exceptional cases in which approval may be granted by way of derogation from Section 39 (2),
4. types of employment for which no approval is required from the Federal Employment Agency in accordance with Section 4 (2), sentence 3,
5. cases in which foreigners whose deportation has been suspended may be permitted to take up employment by way of derogation from Section 4 (3), sentence 1.

(3) The Federal Ministry of Economics and Labour may issue instructions to the Federal Employment Agency on implementation of the provisions of this Act and the statutory instruments issued in connection herewith, of the provisions enacted by the European Communities on access to the labour market and of the inter-governmental agreements on the employment of workers.

### **Chapter 3**

#### **Promotion of integration**

#### **Section 43**

##### **Integration course**

(1) The integration of foreigners living lawfully in the Federal territory on a permanent basis into the economic, cultural and social life of the Federal Republic of Germany shall be promoted.

(2) Integration efforts by foreigners are supported by a basic package of measures to promote integration (integration course). The integration course covers measures to acquaint foreigners with the language, legal system and culture in Germany and Germany's history. These measures are intended to acquaint foreigners with the way

of life in the Federal territory to such an extent as to enable them to act independently in all aspects of daily life, without the assistance or mediation of third parties.

(3) The integration course comprises a basic and advanced language course of identical duration to provide an adequate knowledge of the language and an orientation course to impart a knowledge of the legal system, culture and history in Germany. Successful attendance is documented by a certificate confirming that the final test has been passed, to be issued by the body responsible for carrying out the course. The integration course is coordinated and carried out by the Federal Office for Migration and Refugees, which may enlist the services of private or public organisations to this end. Reasonable costs are to be charged for attending the integration course, according due consideration to the ability to pay. The person who is obliged to ensure the foreigner's subsistence shall also be obliged to pay such a charge.

(4) The Federal Government is authorised to regulate further details of the integration course, in particular the basic structure, the duration, the contents and implementation of the courses, the criteria relating to the selection and approval of organisations carrying out the courses and the requirements and general conditions pertaining to attendance and proper organisation of the courses, including arrangement for the payment of costs and the necessary transmission of data between the bodies involved, via a statutory instrument without the approval of the Bundesrat.

(5) The Federal Government shall submit a progress report on implementation and financing of the integration courses to the German Bundestag on 1 July 2007.

#### **Section 44 Entitlement to attend an integration course**

(1) A foreigner who is resident in the Federal territory on a permanent basis shall be entitled to attend an integration course

1. on receiving a residence permit for the first time
  - a) for employment purposes (Sections 18, 21),
  - b) for the purpose of subsequent immigration by dependents (Sections 28, 29, 30, 32, 36),
  - c) on humanitarian grounds pursuant to Section 25 (1) or (2) or
2. on receiving a settlement permit pursuant to Section 23 (2).

Permanent residence is generally to be assumed if the foreigner receives a residence permit of over one year's duration or has held a residence permit for more than 18 months, unless the stay is of a temporary nature.

(2) The attendance entitlement pursuant to sub-section 1 shall lapse two years after granting of the residence title establishing the entitlement or upon said title lapsing.

(3) The entitlement to attend an integration course shall not apply

1. to children, juveniles and young adults who take up school education or continue their previous school education in the Federal Republic of Germany,
2. when the need for integration is discernibly minimal or
3. when the foreigner already possesses an adequate knowledge of the German language. The entitlement to attend an orientation course shall remain unaffected in cases covered by this proviso.

(4) A foreigner who does not possess or no longer possesses an attendance entitlement may be allowed to attend, according to the available number of places on the course concerned.

#### **Section 44a Obligation to attend an integration course**

(1) A foreigner shall be obliged to attend an integration course, if

1. he or she is entitled to attend in accordance with Section 44 and is unable to communicate verbally in the German language at a basic level or
2. the foreigners authority requests him or her to attend an integration course on the basis of the availability of places on a course located within a reasonable distance and he or she
  - a) receives benefits in accordance with Book Two of the Social Code and the body approving the benefits has proposed attendance or
  - b) has special integration needs.

In cases covered by sentence 1, no. 1, the foreigners authority shall ascertain whether the foreigner is obliged to attend on issuing the residence title.

(2) The obligation to attend an integration course shall not apply to foreigners

1. who are undergoing vocational training or any other form of training or education in the Federal territory,

2. who furnish evidence of attendance of comparable education measures in the Federal territory or
3. for whom attendance on a sustained basis is unfeasible or unreasonable.

(3) If a foreigner fails to meet his or her attendance obligation pursuant to sub-section 1 for reasons for which he or she is responsible, prior to extending his or her residence permit the competent foreigners authority shall inform the foreigner of the consequences of his or her breach of the obligation and of the failure to attend the integration course (Section 8 (3), Section 9 (2), nos. 7 and 8 of this Act, Section 10 (3) of the Nationality Act). For as long as a foreigner fails to meet his or her obligation to attend an integration course in accordance with sub-section 1, sentence 1, no. 2, letter a for reasons for which he or she is responsible, the body approving the foreigner's benefits may reduce the benefits by ten per cent for the period of non-attendance, after being duly informed by the foreigners authority. In case of non-compliance with the obligation to attend, the prospective charge to cover costs may also be levied in advance in a single sum by issuing an official notice of fees.

## **Section 45**

### **Integration programme**

The integration course may be complemented by further integration measures, in particular migration advisory services. The Federal Ministry of the Interior or the body appointed by the said Ministry shall develop a nationwide integration programme which, in particular, shall identify the existing integration measures for foreigners and repatriates of German ancestry which are available from the Federal government, Länder, local government authorities and private organisations and put forward recommendations on the further development of the integration measures. The Länder, local government authorities, the commissioners of the Federal government, Länder and local government authorities for issues relating to foreigners and the Federal Government Commissioner for Matters Relating to Repatriates shall be involved in the development of the nationwide integration programme and in compiling informational materials on existing integration measures. Religious communities, trade unions, employers' associations, voluntary welfare organisations and other social interest groups should also be involved.

## **Chapter 4**

### **Administrative provisions**

#### **Section 46 Administrative orders**

(1) The foreigners authority may undertake measures to facilitate the departure of a foreigner who is required to leave the Federal territory unappealably; in particular, it may oblige the foreigner to take up his or her residence at a place of its designation.

(2) A foreigner may be prohibited from leaving the Federal territory in appropriate application of Section 10 (1) and (2) of the Passport Act. A foreigner can otherwise be prohibited from leaving the Federal territory only if he or she intends to enter another state without being in possession of the necessary documents and permits. The prohibition of departure shall be lifted as soon as the reason for its imposition ceases to apply.

### **Section 47 Prohibition and restriction of political activities**

(1) Foreigners may pursue political activities within the bounds of the prevailing general statutory provisions. A foreigner's political activities may be restricted or prohibited if they

1. impair or endanger the development of informed political opinion in the Federal Republic of Germany, the peaceful co-existence of Germans and foreigners or of different groups of foreigners in the Federal territory, public safety and law and order or any other substantial interests of the Federal Republic of Germany,
2. may be counter to the interests of the Federal Republic of Germany in the field of foreign policy or to the obligations of the Federal Republic of Germany under international law,
3. contravene the laws of the Federal Republic of Germany, particularly in connection with the use of violence,
4. are intended to promote parties, other organisations, establishments or activities outside of the Federal territory whose aims or means are incompatible with the fundamental values of a system of government which respects human dignity.

(2) A foreigner's political activities shall be prohibited if they

1. endanger the free and democratic constitutional system or the security of the Federal Republic of Germany or contravene the codified standards of international law,
2. publicly support, advocate or incite to the use of violence as a means of enforcing political, religious or other interests or are capable of inciting such violence or

3. support organisations, political movements or groups within or outside of the Federal territory which have initiated, advocated or threatened attacks on persons or objects in the Federal territory or attacks on Germans or German establishments outside of the Federal territory.

### **Section 48 Obligations relating to identification papers, prohibition of departure**

(1) On request, a foreigner shall be obliged to present and surrender his or her passport, passport substitute or substitute identity document and his or her residence title or a document confirming suspension of deportation to the authorities entrusted with implementing this Act and to leave such documents with the said authorities for a temporary period, insofar as this is necessary in order to implement or safeguard measures in accordance with this Act.

(2) In the case of a foreigner who neither possesses a passport nor can reasonably be expected to obtain one, it shall be sufficient for the purposes of the obligations relating to identification papers to carry the document confirming a residence title or the suspension of deportation, provided that such document contains the foreigner's personal details and a photograph and is marked to indicate that it is an substitute identity document.

(3) If the foreigner does not possess a valid passport or passport substitute, he or she shall be obliged to cooperate in efforts to obtain the identity paper and to present and surrender to and leave with the authorities entrusted with implementing this Act all such documents and other papers as may be of importance in establishing his or her identity and nationality and in establishing a possibility of returning him or her to another state and duly enforcing such a return. If the foreigner fails to meet his obligation in accordance with sentence 1 and if actual indications exist that he or she is in possession of such documents, he or she and the objects on his or her person may be searched. The foreigner shall be required to tolerate this measure.

### **Section 49 Establishment and documentation of identity**

(1) On request, every foreigner shall be obliged to furnish the authorities entrusted with implementing the law concerning foreigners with information on his or her age, identity and nationality and to submit such declarations in connection with the procurement of return travel documents as are required by the diplomatic mission of the state whose nationality he or she possesses or putatively possesses and are in line with German law.

(2) In case of doubt regarding the foreigner's identity, age or nationality, the measures necessary in order to establish his or her identity, age or nationality shall be undertaken

1. if the foreigner is to be granted entry or a residence title or
2. if necessary in order to implement other measures in accordance with this Act.

(2a) The foreigner's identity is to be verified by photographing and fingerprinting when allocation is carried out in accordance with Section 15a.

(3) The necessary measures should be undertaken in order to establish and document the foreigner's identity

1. if the foreigner intends to enter or has entered the Federal territory with a forged passport or falsified passport or passport substitute;
2. if other indications give rise to the suspicion that the foreigner is intending to re-enter the Federal territory unlawfully, following refused entry or the termination of a stay in the Federal territory;
3. in the case of foreigners who are required to leave the Federal territory unappealably, insofar as removal or deportation come into consideration;
4. if the foreigner is to be refused entry and returned to a safe third country, or if he or she is to be removed to such country as specified in Section 26a (2) of the Asylum Procedure Act;
5. in the case of a visa application for a stay of more than three months by nationals of states with which difficulties exist regarding the return of applicants, and in the cases stipulated in Section 73 (4);
6. when temporary protection is granted in accordance with Section 24 and in the cases covered by Sections 23 and 29 (3);
7. if a reason for refusal pursuant to Section 5 (4) has been established.

(4) For the purposes of sub-sections 2 to 3, measures shall include the taking of photographs and finger-prints, the taking of measurements and similar measures. These measures shall be permissible for foreigners who are aged 14 or over. These measures shall only be permissible for the purpose of establishing the foreigner's identity if the identity cannot be established by other means, in particular via inquiries to other authorities, or if the identity cannot be established in time by such other means or if such other means would involve substantial difficulties.

(5) In order to determine the foreigner's state of origin or region of origin, the foreigner's spoken word may be recorded on audio and data media. Such recordings may only be made if the foreigner is duly informed beforehand.

(6) The identity of a foreigner aged 14 or over who is intercepted in conjunction with unlawful entry from a third state and not refused entry shall be documented by taking prints of all ten fingers.

(7) The identity of a foreigner aged 14 or over who is residing in the Federal territory without the necessary residence title shall be documented by taking prints of all ten fingers if there are indications that he or she has filed an application for asylum in a member state of the European Communities.

(8) The foreigner shall be required to tolerate the measures pursuant to sub-sections 2 to 7.

#### **Section 49a Database for found documents**

(1) The Federal Office of Administration shall keep a database in which information shall be stored on identification papers issued by foreign public bodies and belonging to nationals of the states specified in Annex I to regulation (EC) no. 539/2001 (Official EU Journal no. L 81, p. 1) which are found in Germany (database for found documents). Such storage shall serve to establish a foreigner's identity or nationality and to enable the subsequent return of foreigners.

(2) Upon a public body coming into possession of a found document pursuant to sub-section 1, said body shall forward the document to the Federal Office of Administration forthwith after a period of seven days has elapsed, unless

1. it obtains knowledge of a notice of loss submitted by the holder or
2. it determines beyond doubt the holder's place of residence in Germany or
3. the found document is required for the purposes of criminal proceedings or as evidence in other proceedings.

In cases covered by sentence 1, no. 3 the public body shall transfer the items of information stipulated in Section 49b, nos. 1 to 3 which are contained in the found document to the Federal Office of Administration for entry in the database for found documents.

#### **Section 49b Contents of the database for found documents**

Only the following data shall be stored in the file pursuant to Section 49a (1):

1. Information on the holder of the found document
  - a) Surname, maiden name, first name, spelling of the names according to German law,



- b) date and place of birth,
  - c) sex,
  - d) nationality,
  - e) height,
  - f) eye colour,
  - g) photograph,
  - h) finger prints
2. Information on the found document:
- a) type and number,
  - b) issuing state,
  - c) place and date of issue,
  - d) duration of validity
3. Other information:
- a) Name of the body submitting the document,
  - b) information on retention or return
4. Photocopy of all pages of the found document,
5. Photocopies of documents verifying return of the document to the issuing state.

## **Chapter 5**

### **Termination of stay**

#### **Part 1**

#### **Grounds establishing the obligation to leave the Federal territory**

#### **Section 50 Requirement to leave the Federal territory**

(1) A foreigner shall be obliged to leave the Federal territory if he or she does not possess or no longer possesses a necessary residence title and a right of residence does not exist or no longer exists under the EEC/Turkey Association Agreement.

(2) The foreigner shall be required to leave the Federal territory forthwith or, if a period has been allowed for departure, by the end of this period. The period allowed for departure shall end no later than six months after the date on which the obligation to leave the Federal territory becomes unappealable. It may be extended in special cases of hardship.

(3) The period allowed for departure shall be interrupted if the obligation to leave or of the notification announcing deportation ceases to be enforceable.

(4) The foreigner can meet his or her obligation to leave the Federal territory by entering another member state of the European Communities only if his or her entry into and residence in such state is permitted.

(5) A foreigner who is required to leave the Federal territory and who intends to change his or her address or to leave the district covered by the foreigners authority for more than three days shall be required to notify the foreigners authority accordingly beforehand.

(6) The passport or passport substitute of a foreigner who is required to leave the Federal territory should be taken into custody until the time of his or her departure.

(7) For the purpose of terminating his or her residence, a foreigner may be included in the police's investigative materials relating to wanted persons in order to determine his or her whereabouts and to apprehend him or her, if his or her whereabouts are not known. A foreigner who has been expelled, refused entry, or deported may be reported for the purposes of refusal of entry and, in the event of his or her arrival in the Federal territory, for the purposes of his or her apprehension. Section 66 of the Asylum Procedure Act shall apply mutatis mutandis to foreigners who have been allocated in accordance with Section 15a.

### **Section 51 Termination of the lawfulness of residence; continued validity of restrictions**

(1) The residence title shall expire in the following cases:

1. upon expiry of its period of validity,
2. upon the occurrence of an invalidating condition,
3. upon withdrawal of the residence title,
4. upon revocation of the residence title,
5. upon expulsion of the foreigner,
- 5a. announcement of a deportation order pursuant to Section 58a,
6. if the foreigner leaves the Federal territory for a reason which is not of a temporary nature,
7. if the foreigner leaves the Federal territory and fails to re-enter the Federal territory within six months or within a longer period set by the foreigners authority,

8. if a foreigner files an application for asylum following the granting of a residence title pursuant to Sections 22, 23 or 25 (3) to (5);

a visa issued for several entries or with a period of validity in excess of three months shall not expire in accordance with numbers 6 and 7 above.

(2) The settlement permit of a foreigner who has lawfully resided in the Federal territory for at least 15 years and the settlement permit of his or her cohabiting spouse shall not expire in accordance with sub-section 1, nos. 6 and 7, if the aforementioned persons' subsistence is assured. The settlement permit of a foreigner cohabiting with a German as his or her spouse shall not expire in accordance with sub-section 1, nos. 6 and 7. On request, the foreigners authority at the place in which the foreigner was last ordinarily resident shall issue a certificate confirming the continued validity of the settlement permit.

(3) The residence title shall not expire in accordance with sub-section 1, no. 7, if the specified period is exceeded solely on account of the foreigner carrying out compulsory military service in his or her native country and the foreigner re-enters the Federal territory within three months of discharge from said military service.

(4) A longer period will generally be granted pursuant to sub-section 1, no. 7 if the foreigner intends to leave the Federal territory for reasons of a temporary nature and is in possession of a settlement permit, or if the stay outside of the Federal territory serves the interests of the Federal Republic of Germany.

(5) The exemption from the requirement for the residence title shall not apply if the foreigner is expelled, removed or deported; Section 11 (1) shall apply *mutatis mutandis*.

(6) Geographic and other restrictions and conditions under this Act and other acts shall remain in force after expiry of the residence title until such time as they are lifted or the foreigner meets his obligation to leave the Federal territory pursuant to Section 50 (1) to (4).

(7) Upon a person entitled to asylum or a foreigner whose compliance with the conditions pursuant to Section 60 (1) has been incontestably confirmed by the Federal Office for Migration and Refugees leaving the Federal territory, the residence title shall not expire as long as he or she is in possession of a valid travel document for refugees issued by a German authority. The foreigner shall have no entitlement to the renewed issuance of a residence title on the basis of his recognition as a person entitled to asylum or the incontestable confirmation by the Federal Office for Migration and Refugees that the conditions pursuant to Section 60 (1) are met, if he

or she has left the Federal territory and the competence for issuing a travel document has passed to another state.

### **Section 52 Revocation**

(1) Save in the cases covered by sub-section 2, a foreigner's residence title can only be revoked if

1. he or she no longer possesses a valid passport or passport substitute,
2. he or she changes or loses his or her nationality,
3. he or she has not yet entered the Federal territory or
4. his or her recognition as a person entitled to asylum or his or her refugee status lapses or becomes null and void.

In the cases covered by sentence 1, no. 4, the residence title of the dependents living in the foreigner's family household may also be revoked, if these have no independent entitlement to the residence title.

(2) A visa and a residence permit which have been granted for the purpose of employment shall be revoked if the Federal Employment Agency revokes the approval of employment pursuant to Section 41. In the case of sentence 1, a visa and a residence permit which have not been granted for the purpose of employment shall be revoked to the extent to which they permit the employment concerned.

### **Section 53 Mandatory expulsion**

A foreigner shall be expelled, if he or she

1. has been unappealably sentenced to a prison term or a term of youth custody of at least three years for one or more intentionally committed offences or to several prison terms or terms of youth custody for intentionally committed offences totalling at least three years within a five-year period or preventive detention has been ordered in connection with the most recent unappealable conviction,
2. has been unappealably sentenced to at least two years' youth custody or to a prison term for an intentionally committed offence under the Narcotics Act, for a breach of the peace under the conditions specified in Section 125a, sentence 2 of the Penal Code or for a breach of the peace committed at a prohibited public gathering or a prohibited procession pursuant to Section 125 of the Penal Code and the sentence has not been suspended on probation, or

3. has unappealably received a custodial sentence for smuggling in foreigners pursuant to Section 96 or Section 97 and the sentence has not been suspended on probation.

### **Section 54 Regular expulsion**

A foreigner will generally be expelled if

1. he or she has been unappealably sentenced to at least two years' youth custody or to a prison term for one or more intentionally committed offences and the sentence has not been suspended on probation,
2. he or she is unappealably convicted of smuggling in foreigners pursuant to Section 96,
3. he or she cultivates, produces, imports, carries through the Federal territory, exports, sells, puts into circulation by any other means or traffics in narcotics without authorisation and in contravention of the provisions of the Narcotics Act, or if he or she aids or abets such acts,
4. he or she participates as a perpetrator of or accessory to acts of violence against persons or property which are committed concertedly from within a crowd in a manner which endangers public safety at a prohibited or disbanded public gathering or in a prohibited or disbanded procession,
5. facts justifiably lead to the conclusion that a foreigner belongs to or has belonged to an organisation which supports terrorism or supports or has supported such an organisation; expulsion may only be based on membership or supportive acts in the past insofar as they form the basis for a currently prevailing danger,
- 5a. he or she endangers the free democratic basic order or the security of the Federal Republic of Germany, participates in acts of violence or publicly incites to violence in pursuit of political objectives or threatens the use of violence,
6. he or she, in the course of an interview which serves to clarify reservations regarding entry or continued residence, fails to reveal previous stays in Germany or other states to the German diplomatic mission abroad or to the foreigners authority or furnishes false or incomplete information on key points regarding links with persons or organisations who or which are suspected of supporting international terrorism; expulsion on this basis shall only be permissible if the foreigner is expressly informed prior to the interview of the security-related

purpose of the interview and the legal consequences of furnishing false or incomplete information; or

7. he or she belonged to the leadership of an organisation which has been unappealably banned because its purpose or activities are in breach of the criminal laws or he or she opposes the constitutional order or the concepts of international understanding.

## **Section 54 a**

### **Surveillance of expelled foreigners for reasons of internal security**

(1) A foreigner against whom an unappealable expulsion order pursuant to Section 54, no. 5, 5a or an unappealable deportation order pursuant to Section 58a exists shall be obliged to report to the police office which is responsible for his or her place of residence at least once a week, unless the foreigners authority stipulates otherwise. If a foreigner is obliged to leave the Federal territory unappealably for reasons other than the grounds for expulsion stated in sentence 1, an obligation to report to the police authorities corresponding to sentence 1 may be imposed if necessary in order to avert a danger to public safety and law and order.

(2) His or her residence shall be restricted to the district of the foreigners authority concerned, unless the foreigners authority stipulates otherwise.

(3) He or she may be obliged to live in a different place of residence or in certain types of accommodation outside of the district of the foreigners authority concerned, if this appears expedient in order to hinder or to prevent activities which have led to the foreigner's expulsion and to facilitate monitoring of compliance with provisions under the law governing organisations and associations or other statutory conditions and obligations.

(4) In order to hinder or prevent activities which have led to the foreigner's expulsion, the foreigner may also be obliged to refrain from using certain means of communication or communication services, insofar as means of communication remain at his or her disposal and restrictions are necessary in order to avert serious risks to internal security or to the life and limb of third parties.

(5) The obligations in accordance with sub-sections 1 to 4 shall be suspended if the foreigner is in custody. An order in accordance with sub-sections 3 and 4 shall be immediately enforceable.

## **Section 55 Discretionary expulsion**

(1) A foreigner may be expelled if his or her stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany.

(2) A foreigner may be expelled in accordance with sub-section 1 in particular if he or she

1. has furnished false or incomplete information in procedures under the terms of this Act or to obtain a standard visa in accordance with the Convention Implementing the Schengen Agreement for the purpose of obtaining a residence title or, notwithstanding a prevailing legal obligation, has failed to cooperate in measures undertaken by the authorities responsible for implementing this Act in Germany and abroad, whereby expulsion on this basis shall only be permissible if the foreigner is expressly informed prior to the interview of the legal consequences of furnishing false or incomplete information,
2. has committed a breach of legal provisions, court rulings or official orders, excepting isolated or minor breaches, or has committed an offence outside of the Federal territory which is to be regarded as an intentionally committed offence in the Federal territory,
3. contravenes a legal provision or official decree pertaining to the practice of prostitution,
4. uses heroin, cocaine or a comparably dangerous narcotic and is not prepared to undergo a course of rehabilitation treatment or evades such treatment,
5. endangers public health through his or her behaviour or is homeless for a prolonged period,
6. claims social welfare for himself/herself, his or her dependents or other persons belonging to his or her household,
7. receives an educational allowance for persons outside of his or her own family or an allowance for young adults in accordance with Book Eight of the Social Code; this shall not apply for a minor whose parents or parent possessing the sole right of care and custody is lawfully resident in the Federal territory, or
8. a) publicly, at a meeting or by disseminating literature, endorses or promotes a crime against peace, a war crime, a crime against humanity or terrorist acts of comparable importance in a manner conducive to disturbing public safety and order or

b) incites hate against sections of the population or calls for violence or arbitrary measures against the same in a manner conducive to disturbing public safety and order or attacks the human dignity of others by insulting, maliciously disparaging or slandering sections of the population.

(3) In reaching the decision on expulsion, due consideration shall be accorded to

1. the duration of lawful residence and the foreigner's legitimate personal, economic and other ties in the Federal territory,
2. the consequences of the expulsion for the foreigner's dependents or partner who is/are lawfully resident in the Federal territory and who lives/live with the foreigner in a family household or cohabits with the foreigner as his or her partner in life,
3. the conditions specified in Section 60 (2), sentence 3 for the suspension of deportation.

## **Section 56 Special protection from expulsion**

(1) A foreigner who

1. possesses a settlement permit and has lawfully resided in the Federal territory for at least five years,
2. possesses a residence permit, was born in the Federal territory or entered the Federal territory as a minor and has been lawfully resident in the Federal territory for at least five years,
3. possesses a residence permit, has lawfully resided in the Federal territory for at least five years and cohabits with a foreigner as specified in numbers 1 and 2 as a spouse or in a registered partnership,
4. cohabits with a German dependent or partner in life in a family household or a registered partnership,
5. is recognised as a person entitled to asylum, enjoys the legal status of a refugee in the Federal territory or possesses a travel document issued by an authority of the Federal Republic of Germany under the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559),

shall enjoy special protection from expulsion. He or she shall only be expelled on serious grounds pertaining to public security and law and order. Serious grounds pertaining to public security and law and order generally apply in cases covered by Section 53 and Section 54, nos. 5, 5a and 7. If the conditions specified in Section 53



apply, the foreigner shall generally be expelled. If the conditions specified in Section 54 apply, a discretionary decision shall be reached on his or her expulsion.

(2) In the cases covered by Sections 53 and 54, a discretionary decision shall be reached on the expulsion of an adolescent who has grown up in the Federal territory and possesses a settlement permit, and on the expulsion of a minor who possesses a residence permit or settlement permit. If the parents or the parent possessing the sole right of care and custody are/is lawfully resident in the Federal territory, the minor shall be expelled in the cases covered by Section 53 only; a discretionary decision shall be reached on his or her expulsion.

(3) A foreigner who possesses a residence permit in accordance with Section 24 or Section 29 (4) can only be expelled under the conditions stipulated in Section 24 (2).

(4) A foreigner who has filed an application for asylum may only be expelled on condition that the asylum procedure is unappealably completed without recognition of the foreigner concerned as a person entitled to asylum or without any obstacle precluding deportation being established pursuant to Section 60 (1). This condition shall be waived if

1. a case applies, the facts and circumstances of which justify expulsion pursuant to sub-section 1 or
2. a deportation warning under the provisions of the Asylum Procedure Act has become enforceable.

## **Part 2**

### **Enforcement of the obligation to leave the Federal territory**

#### **Section 57 Removal**

(1) A foreigner who has entered the Federal territory unlawfully shall be removed within six months of crossing the border. By way of derogation from this provision, removal shall be permissible as long as another state is obliged to admit the foreigner under the terms of an inter-governmental admission agreement.

(2) A foreigner who is required to leave the Federal territory and who is returned or refused entry by another state shall be removed forthwith to a state which he or she is permitted to enter, unless the obligation to leave the Federal territory is not yet unappealable.

(3) Section 60 (1) to (5), (8), (9) and Section 62 shall apply mutatis mutandis.

## **Section 58 Deportation**

(1) The foreigner shall be deported if the obligation to leave the Federal territory is unappealable and voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary on grounds of public security and law and order.

(2) The obligation to leave the Federal territory shall be unappealable if the foreigner

1. has entered the Federal territory unlawfully,
2. has not yet applied for initial granting of the necessary residence title or has not yet applied for an extension after expiry of the period of validity and the residence is not deemed to be permitted pursuant to Section 81 (3), or the residence title is not deemed to remain in force pursuant to Section 81 (4),
3. becomes obliged to leave the Federal territory by virtue of a ruling on his or her return by another member state of the European Union pursuant to Article 3 of Council directive 2001/40/EC of 28 May 2001 regarding the mutual recognition of rulings on the return of third-state nationals (official EC Journal no. L 149, pp. 34 to 36), provided that the ruling concerned is recognised by the competent authority,

and no period has been allowed for departure or a granted period has expired. The obligation to leave the Federal territory shall otherwise become unappealable only upon refusal of the residence title or another administrative act via which the foreigner becomes obliged to leave pursuant to Section 50 (1) becoming unappealable.

(3) Supervision of deportation is necessary in particular if the foreigner

1. is in detention or another form of public custody by virtue of a judicial order,
2. has failed to leave the Federal territory within the period granted for departure,
3. has been expelled pursuant to Section 53 or Section 54,
4. is destitute,
5. does not possess a passport or passport substitute,
6. has furnished the foreigners authority with incorrect information or refused to furnish information with intent to deceive or
7. has indicated that he or she will not meet his or her obligation to leave the Federal territory.

## **Section 58 a**

### **Deportation order**

(1) The supreme Land authority may issue a deportation order against a foreigner without prior expulsion on the basis of a prognosis based on facts, in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat. The deportation order shall be immediately enforceable; no notice of intention to deport shall be necessary.

(2) The Federal Ministry of the Interior may assume responsibility if a special interest on the part of the Federation applies. The supreme Land authority is to be notified accordingly. Deportation orders issued by the Federation shall be enforced by the Federal Border Police.

(3) A deportation order may not be enforced if the conditions pertaining to a deportation ban pursuant to Section 60 (1) to (8) apply. Section 59 (2) and (3) shall apply mutatis mutandis. Assessment in this context shall be carried out by the authority deciding on the deportation order, whereby this authority shall not be bound to findings reached in this connection in other proceedings.

(4) Following announcement of the deportation order, the foreigner is to be afforded an opportunity to establish contact with a legal adviser of his or her choice forthwith, unless he or she has secured the services of a lawyer beforehand; the foreigner is to be informed of this entitlement, of the legal consequences of the deportation order and the available legal remedies. An application for temporary relief pursuant to the Code of Administrative Courts Procedure shall be filed within seven days of announcement of the deportation order. Deportation may not be enforced until expiry of the period in accordance with sentence 2 and, if an application for temporary relief is filed in good time, until the time of the court's decision on said application.

## **Section 59 Deportation warning**

(1) Notice of intention to deport a foreigner should be served in writing, specifying a period allowed for departure.

(2) The notice of intention to deport should specify the state to which the foreigner is to be deported and shall inform the foreigner that he or she may also be deported to another state which he or she is permitted to enter or which is obliged to admit him or her.

(3) The existence of deportation bans shall not preclude issuance of the notice of intention to deport. The state to which the foreigner must not be deported shall be specified in the notice of intention to deport. If the administrative court establishes the existence of a deportation ban, the validity of the notice of intention to deport shall remain otherwise unaffected.

(4) Upon the notice of intention to deport becoming unappealable, the foreigners authority shall, for the purpose of further decisions on deportation or the suspension of deportation, ignore any circumstances which represent an obstacle to deportation to the state specified in the notice of intention to deport and which occurred prior to the notice of intention to deport becoming unappealable; any other circumstances cited by the foreigner which represent an obstacle to deportation, or to deportation to the specified state, may be ignored. The provisions enabling the foreigner to assert the validity of the circumstances referred to in sentence 1 through a court of law by means of a legal action or the temporary relief procedure pursuant to the Code of Administrative Procedure shall remain unaffected.

### **Section 60 Prohibition of deportation**

(1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), a foreigner may not be deported to a state in which his or her life or liberty is under threat on account of his or her race, religion, nationality, membership of a certain social group or political convictions. This shall also apply to foreigners who enjoy the legal status of foreign refugees in the Federal territory or are recognised as foreign refugees outside of the Federal territory within the meaning of the Convention relating to the Status of Refugees. When a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group. Persecution within the meaning of sentence 1 may emanate from

- a) the state,
- b) parties or organisation which control the state or substantial parts of the national territory, or
- c) non-state parties, if the parties stated under letters a and b, including international organisations, are demonstrably unable or unwilling to offer protection from the persecution, irrespective of whether a power exercising state rule exists in the country, unless an alternative means of escape is available within the state concerned.

If the foreigner cites an obstacle to deportation pursuant to this sub-section, the Federal Office for Migration and Refugees shall establish whether the necessary conditions apply in an asylum procedure according to the provisions of the Asylum Procedure Act, except in cases covered by sentence 2. The ruling of the Federal Office shall only be appealable subject to the provisions of the Asylum Procedure Act.

(2) A foreigner may not be deported to a state in which a concrete danger exists of the said foreigner being subjected to torture.

(3) A foreigner may not be deported to a state in which he or she is wanted for an offence and a danger of the foreigner receiving the death penalty applies. In such cases, the provisions on deportation shall be applied accordingly.

(4) If a formal request for extradition or a request for arrest combined with a notification of intent to file a request for extradition has been received from another state, deportation of the foreigner to this state shall be permissible only with the approval of the authority which is responsible for approving extradition pursuant to Section 74 of the Act on International Mutual Assistance in Criminal Matters.

(5) A foreigner may not be deported if deportation is inadmissible under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 II, p. 685).

(6) The general danger that a foreigner may face prosecution and punishment in another state and, in the absence of any provisions to the contrary in sub-section 2 to 5, the concrete danger of lawful punishment under the legal system of another state shall not preclude deportation.

(7) A foreigner should not be deported to another state in which a substantial concrete danger to his or her life and limb or liberty applies. Dangers in this state to which the population or the segment of the population to which the foreigner belongs are generally exposed shall receive due consideration in decisions pursuant to Section 60a (1), sentence 1.

(8) Sub-section 1 shall not apply if, for serious reasons, the foreigner is to be regarded as a risk to the security of the Federal Republic of Germany or constitutes a risk to the general public because he or she has been unappealably sentenced to a prison term of at least three years for a crime or a particularly serious offence. The same shall apply if, for serious reasons, there are justifiable grounds to assume that the foreigner has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes, or that he or she

committed a serious non-political crime outside of the territory of the Federal Republic of Germany prior to being admitted as a refugee or that he or she has committed acts in contravention of the objectives and principles of the United Nations.

(9) In the cases covered by sub-section 8, a foreigner who has filed an application for asylum may, by way of derogation from the provisions of the Asylum Procedure Act, be served notice of intention to deport and duly deported.

(10) If a foreigner to whom the conditions stipulated in sub-section 1 apply is to be deported, notice of intention to deport must be served and a reasonable period must be allowed for departure. Those states to which the foreigner must not be deported shall be specified in the notice of intention to deport.

## **Section 60 a**

### **Temporary suspension of deportation**

(1) For reasons of international law or on humanitarian grounds or to safeguard the political interests of the Federal Republic of Germany, the supreme Land authority may order the deportation of foreigners from specific states or of categories of foreigners defined by any other means to be suspended in general or with regard to deportation to specific states for a maximum of six months. Section 23 (1) shall apply to a period in excess of six months.

(2) The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no residence permit is granted.

(3) Suspension of deportation shall not affect the foreigner's obligation to leave the Federal territory.

(4) The foreigner is to be issued with a certificate confirming the suspension of deportation.

(5) The suspension of deportation shall lapse upon the foreigner leaving the Federal territory. The suspension shall be revoked upon the circumstances preventing deportation ceasing to apply. The foreigner shall be deported forthwith upon the suspension lapsing, without any renewed notice of intention to deport specifying a deadline, unless the suspension is renewed. If deportation has been suspended for more than one year, prior notice of at least one month shall be served in case of intended deportation on the basis of lapse due to expiry of the period of validity or revocation; such notice shall be repeated, if the suspension has been renewed for more than one year.

## **Section 61 Geographic restrictions; departure facilities**

(1) The stay of a foreigner who is unappealably obliged to leave the Federal territory shall be restricted in geographic terms to the territory of the Land concerned. Further conditions and requirements may be imposed.

(2) The Länder may establish departure facilities for foreigners who are unappealably obliged to leave the Federal territory. At such departure facilities, the willingness to leave the Federal territory voluntarily should be promoted through support and counselling and accessibility for authorities and courts and implementation of the departure procedure should be ensured.

## **Section 62 Custody awaiting deportation**

(1) A foreigner shall be placed in custody by judicial order to enable the preparation of deportation, if a decision on deportation cannot be reached immediately and deportation would be complicated substantially or frustrated without such detainment (custody to prepare deportation). The duration of custody to prepare deportation should not exceed six weeks. In case of expulsion, no new judicial order shall be required for the continuation of custody up to expiry of the ordered term of custody.

(2) A foreigner shall be placed in custody by judicial order for the purpose of safeguarding deportation (detention pending deportation) if

1. the foreigner is unappealably obliged to leave the Federal territory on account of his or her having entered the territory unlawfully,
  - 1a. a deportation order has been issued pursuant to Section 58a but is not immediately enforceable,
2. the period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached,
3. he or she has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible
4. he or she has evaded deportation by any other means or
5. a well-founded suspicion exists that he or she intends to evade deportation.

The foreigner may be placed in detention pending deportation for a maximum of two weeks, if the period allowed for departure has expired and it has been established that deportation can be enforced. By way of exception, the order for detention pending deportation pursuant to sentence 1, no. 1 may be waived if the foreigner credibly asserts that he or she does not intend to evade deportation. Detention pending deportation shall not be permissible if it is established that it will not be possible to carry out deportation within the next three months for reasons for which the foreigner is not responsible.

(3) Detention pending deportation may be ordered for up to six months. In cases in which the foreigner frustrates his or her deportation, it may be extended by a maximum of twelve months. A period of custody to prepare deportation shall count towards the overall duration of detention pending deportation.

## **Chapter 6**

### **Liability and fees**

#### **Section 63 Obligations of transport contractors**

(1) A transport contractor may only transport foreigners into the Federal territory if they are in possession of a required passport and a required residence title.

(2) The Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may, in consultation with the Federal Ministry of Transport, Building and Housing, prohibit a transport contractor from transporting foreigners into the Federal territory in contravention of sub-section 1 and threaten a fine in case of violation. Any objections or legal actions shall have no suspensory effect; this shall also apply with regard to the imposition of a fine.

(3) The fine against the transport contractor shall be no less than 1 000 euros and no more than 5 000 euros for each foreigner whom he transports in contravention of a ruling pursuant to sub-section 2.

(4) The Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may agree arrangements for implementation of the obligation specified in sub-section 1 with transport contractors.

#### **Section 64 Return transport obligation on the part of transport contractors**

(1) If a foreigner is refused entry, the transport contractor who transported him or her to the border shall be required to remove him or her from the Federal territory forthwith.



(2) The obligation pursuant to sub-section 1 shall apply for a period of three years with regard to foreigners who are transported into the Federal territory without a required passport or a required residence title and who are not refused entry because they cite political persecution or the circumstances referred to in Section 60 (2), (3) or (5). The obligation shall expire if the foreigner is granted a residence title under the terms of this Act.

(3) On request from the authorities charged with carrying out the police control of cross-border traffic, the transport contractor shall be required to transport the foreigner to the state which issued the travel document or from which he or she was transported, or to another state in which his or her admission is ensured.

### **Section 65 Obligations of airport operators**

The operator of a commercial airport shall be obliged to provide suitable accommodation on the airport premises for foreigners who are not in possession of a required passport or a required visa until the decision on admission is enforced by the border police.

### **Section 66 Parties liable for costs; furnishing of security**

(1) Costs arising in connection with the enforcement of a geographic restriction, refusal of entry, removal or deportation are to be borne by the foreigner.

(2) In addition to the foreigner, parties who have provided the foreigners authority or the diplomatic mission abroad with an undertaking that they shall bear the costs of the foreigner's departure shall also be liable for the costs specified in sub-section 1.

(3) In the cases covered by Section 64 (1) and (2), the transport contractor shall, in addition to the foreigner, be liable for the costs pertaining to return transportation of the foreigner and for the costs which arise from the time of the foreigner's arrival at the border crossing point to enforcement of the decision on admission. A transport contractor who culpably contravenes a ruling pursuant to Section 63 (2) shall, in addition to the foreigner, be liable for any other costs arising from refused entry in cases covered by Section 64 (1) or from deportation in cases covered by Section 64 (2).

(4) A party who has employed the foreigner shall be liable for the costs or deportation or removal, if the foreigner was not permitted to pursue the economic activity under the provisions of this Act. Anyone committing a punishable offence pursuant to

Section 96 shall be liable in the same manner. The foreigner shall be liable for such costs only to the extent to which they cannot be recovered from the other liable party.

(5) The party liable for costs may be required to furnish security. The order for security to be furnished by the foreigner or the party liable for costs pursuant to sub-section 4, sentences 1 and 2 may be enforced by the authority which has issued the order without a prior writ of execution and without allowing a period for payment, if recovery of the costs would otherwise be at risk. By way of security for the costs relating to the foreigner's departure from the Federal territory, return air tickets and other travel vouchers which are in the possession of a foreigner who is to be refused entry, removed, expelled or deported or who is permitted to enter and stay in the Federal territory solely for the purpose of filing an application for asylum may be confiscated.

### **Section 67 Scope of liability for costs**

(1) The costs relating to deportation, removal, refused entry and the enforcement of a geographic restriction cover

1. transport costs and other travel costs for the foreigner within the Federal territory and up to the destination outside of the Federal territory,
2. the administrative costs arising in connection with preparation and enforcement of the measure, including the costs of custody awaiting deportation, translation and interpreting costs and the expenditure on accommodation, food and other provisions for the foreigner and
3. all costs arising from necessary official escorts for the foreigner, including personnel costs.

(2) The costs for which the transport contractor shall be liable pursuant to Section 66

(3), sentence 1 cover

1. the costs specified in sub-section 1, no. 1,
2. the administrative costs and expenditure on accommodation, food and other provisions for the foreigner and translation and interpreting costs which arise up to the time of enforcement of the decision on admission and
3. the costs specified in sub-section 1, no. 3, unless the transport contractor himself provides the necessary escort for the foreigner.

(3) The costs specified in sub-sections 1 and 2 shall be charged by the competent authority pursuant to Section 71 by means of a payment order to the amount of the

actually incurred costs. The general principles for the calculation of public-sector personnel costs shall apply with regard to calculation of the personnel costs.

### **Section 68 Liability for living expenses**

(1) Anyone who has provided the foreigners authority or a diplomatic mission abroad with a declaration of commitment to bear a foreigner's living expenses shall be required to reimburse all public funds which are expended to cover the foreigner's living expenses, including the provision of living space, medical care in case of illness and any required nursing care, and including any such expenditure which is based on a legal entitlement of the foreigner. Expenses which are based on the payment of contributions shall not require reimbursement.

(2) The declaration of commitment pursuant to sub-section 1, sentence 1 must be furnished in writing. It shall be enforceable in accordance with the Administrative Enforcement Act. The public body which has expended the public funds shall be entitled to the reimbursement.

(3) The diplomatic mission abroad shall notify the foreigners authority forthwith of a declaration of commitment pursuant to sub-section 1, sentence 1.

(4) On obtaining knowledge of the expenditure of public funds which are to be reimbursed pursuant to sub-section 1, the foreigners authority shall notify forthwith the public body which is entitled to the reimbursement as to the declaration of commitment pursuant to sub-section 1, sentence 1, and shall furnish said body with all the information which is necessary for the purposes of asserting and enforcing the reimbursement claim. The recipient may only use the data for the purposes of reimbursement of the public funds expended for the foreigner and the refusal of further payments.

### **Section 69 Charges**

(1) Fees and expenses shall be charged for official acts performed under this Act and for statutory instruments issued in enforcement of this Act. Sentence 1 shall not apply for official acts by the Federal Employment Agency pursuant to Sections 39 to 42. Section 287 of Book Three of the Social Code shall remain unaffected.

(2) The Federal Government shall, with the approval of the Bundesrat, determine by statutory instrument the cases which are subject to a fee, the scales of fees, and exemptions and reduced fees, particularly in cases of need. The Administrative Costs Act shall apply insofar as the present Act does not contain any divergent provisions.

(3) The fees which are fixed in the statutory instrument must not exceed the following maximum rates:

1. for issuance of a residence permit: 80 euros,
2. for issuance of a settlement permit: 200 euros,
3. for the extension of a residence permit: 40 euros,
4. for issuance of a national visa and of a passport substitute and substitute identity document: 30 euros,
5. for issuance of a Schengen visa: 210 euros,
6. for issuance of a Schengen collective visa: 50 euros and 6 euros per person,
7. for other official acts: 30 euros,
8. for official acts performed for the benefit of minors: half the fee allocated for the official act concerned.

(4) A surcharge of no more than 25 euros may be imposed for issuance of a national visa and a passport substitute at the border. A surcharge of no more than 30 euros may be imposed for an official act undertaken outside of normal office hours on request from the applicant. Surcharges may also be imposed for official acts which are performed for a national whose home country imposes fees in excess of those stipulated in sub-section 2 on Germans for corresponding official acts. Sentences 2 and 3 shall not apply to the issuance or extension of a Schengen visa. In setting surcharges, the maximum rates stipulated in sub-section 3 may be exceeded.

(5) The statutory instrument pursuant to sub-section 2 may provide for a processing fee to be charged for applications for official acts which are subject to fees. The processing fee for the application for a settlement permit must not exceed half the fee which is chargeable for issuance of the settlement permit. This fee shall be offset against the fee for the official act. The fee shall not be repaid if the application is withdrawn and/or the official act which is applied for is refused.

(6) The statutory instrument pursuant to sub-section 2 may provide for fees to be charged for the filing of an objection, whereby the following maximum rates shall apply to such fees:

1. for an objection to the refusal of an application for the performance of an official act which is subject to a fee: half the fee set for this act,
2. for an objection to any other official act: 55 euros.

If the objection is successful, the fee shall be deducted from the fee for the official act to be performed and the remainder shall be repaid.

### **Section 70 Limitation of actions in respect of claims**

(1) The claims for the costs specified in Section 67 (1) and (2) shall become statute-barred six years after they become due for payment.

(2) In addition to the cases covered by Section 20 (3) of the Administrative Costs Act, the limitation period for claims pursuant to Sections 66 and 69 shall also be interrupted for as long as the party liable for costs is not resident in the Federal territory or for as long as his or her residence in the Federal territory cannot be ascertained because he or she has failed to meet the statutory registration or notification obligation.

## **Chapter 7**

### **Procedural provisions**

#### **Part 1**

#### **Areas of competence**

### **Section 71 Competence**

(1) The foreigners authorities shall be competent for residence- and passport- related measures and rulings in accordance with this Act and in accordance with provisions relating to foreigners which are contained in other acts. The Land government or the body appointed by the Land government may determine that only one or several specific foreigners authorities are competent.

(2) Outside of Germany, the diplomatic missions authorised by the Federal Foreign Office shall be responsible for matters relating to passports and visas.

(3) The authorities charged with carrying out the police control of cross-border traffic shall be responsible for

1. removal, refusal of entry at the border and the return of foreigners from and to other states and, where necessary for the purposes of preparation and safeguarding of these measures, for effecting arrest and applying for custody,
2. granting a visa and issuing a passport substitute pursuant to Section 14 (2) and enforcing Section 63 (3), 3,
3. revoking a visa

- a) a) in case of refusal of entry or removal,
  - b) b) on request from the diplomatic mission abroad which has issued the visa or
  - c) on request from the foreigners authority which has approved issuance of the visa, insofar as this approval was required for said issuance,
4. prohibiting departure and implementing the measures pursuant to Section 66 (5) at the border,
  5. verifying at the border whether transport contractors and other third parties have observed the provisions of this Act and the ordinances and orders enacted on the basis of this Act,
  6. other measures and rulings under the law relating to foreigners which prove necessary at the border and for which the authorities possess authorisation from the Federal Ministry of the Interior or for which they are authorised by the said Ministry in the individual case concerned and
  7. procuring return travel documents for foreigners from individual states by way of official assistance.

(4) The foreigners authorities, the authorities charged with carrying out the police control of cross-border traffic and, where necessary in discharging their duties pursuant to sub-section 5, the police forces of the Länder shall be responsible for the necessary measures pursuant to Sections 48 and 49. In the cases covered by Section 49 (2a), the authorities initiating allocation pursuant to Section 15a shall also be responsible. The diplomatic missions abroad authorised by the Federal Foreign Office shall be competent in the cases covered by Section 49 (3) no. 5.

(5) The police forces of the Länder shall also be responsible for carrying out removal, for enforcing the obligation to leave the Federal territory pursuant to Section 12 (3), for implementing deportation and, where necessary for the purposes of preparation and safeguarding of these measures, for effecting arrest and applying for custody.

(6) The Federal Ministry of the Interior or the body appointed by the said Ministry shall decide in consultation with the Federal Foreign Office on the recognition of passports and substitute passport papers (Section 3 (1)).

## **Section 72 Requirements for the involvement of authorities**

(1) Permission to enter the Federal territory (Section 11 (2)) may only be granted with the consent of the foreigners authority which is competent for the intended place of

residence. The foreigners authority which has deported or expelled the foreigner is generally to be involved.

(2) The foreigners authority shall decide whether deportation to a specific state is prohibited pursuant to Section 60 (7) only after involving the Federal Office for Migration and Refugees.

(3) Geographic restrictions, requirements and conditions, time limits pursuant to Section 11 (1), sentence 3, orders pursuant to Section 47 and other measures against a foreigner who is not in possession of a required residence title may only be amended or lifted by a different foreigners authority in consultation with the foreigners authority which ordered the measures. Sentence 1 shall not apply if the foreigner's residence is restricted to the region for which the other foreigners authority is competent in accordance with the provisions of the Asylum Procedure Act.

(4) A foreigner against whom legal proceedings are instituted by a public authority or preliminary investigations are instituted under criminal law may only be expelled or deported in consultation with the competent public prosecutor's office. A foreigner who qualifies as requiring protection within the meaning of the Act to Harmonise Protection for Witnesses may only be expelled or deported in consultation with the Office for the Protection of Witnesses.

(5) Section 45 of Book Eight of the Social Code shall not apply for departure facilities and facilities which serve as temporary accommodation for foreigners who are granted a residence permit for reasons of international law or on humanitarian or political grounds.

### **Section 73 Other requirements for the involvement of authorities in visa procedures and in the issuance of residence titles**

(1) The information collected in a visa procedure by the German diplomatic mission abroad on the person applying for a visa and the inviting party may be transferred via the Federal Foreign Office to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Office of Criminal Police and the Customs Criminological Office for the purpose of ascertaining any grounds for refusal pursuant to Section 5 (4). The authorities involved shall transfer information on grounds for refusal pursuant to Section 5 (4) to the competent diplomatic mission abroad via the Federal Foreign Office. The procedure pursuant to Section 21 of the Central Aliens Register Act shall remain unaffected. In cases covered by Section 14 (2), the respective authorities charged with carrying out the police control of cross-border traffic may transfer the

data collected in the visa application procedure to the authorities stated in sentence 1.

(2) Prior to issuing or extending any other residence title, the foreigners authorities may transfer the personal data stored at their facilities on the person concerned to the Federal Intelligence Service, the Military Counter-Intelligence Service, the Customs Criminological Office, the Land Office for the Protection of the Constitution, the Land Office of Criminal Police or the competent police authorities for the purpose of ascertaining any grounds for refusal pursuant to Section 5 (4) or in order to investigate any security reservations. Prior to issuing a settlement permit, the stored personal data shall be transferred to the security authorities and intelligence services stated in sentence 1, should this be expedient in order to ascertain any grounds for refusal pursuant to Section 5 (4) or to investigate any security reservations.

(3) The security authorities and intelligence services stated in sub-sections 1 and 2 shall notify the inquiring body forthwith as to whether any grounds for refusal pursuant to Section 5 (4) or security reservations pursuant to sub-section 2 apply. They may store and use the data transferred with the inquiry if necessary in discharging their statutory duties. Transfer provisions in accordance with other acts shall remain unaffected.

(4) The Federal Ministry of the Interior shall determine via a general statutory instrument in consultation with the Federal Foreign Office and with due regard to the prevailing security situation in which cases the authorisation pursuant to sub-section 1 shall be used with regard to nationals of particular states and persons belonging to groups defined by any other means.

#### **Section 74 Involvement of the Federal government; authority to issue instructions**

(1) A visa may be granted to safeguard political interests of the Federal government subject to the proviso that extension of the visa and the issuance of another residence title after expiry of the visa and the lifting and amendment of requirements, conditions and other restrictions pertaining to the visa may only be undertaken in consultation with or subject to the consent of the Federal Ministry of the Interior or the body appointed by said Ministry.

(2) The Federal government may issue individual instructions on implementation of this Act and the statutory instruments enacted on the basis of this Act if

1. the security of the Federal Republic of Germany or any other substantial interests of the Federal Republic of Germany so require,



2. measures undertaken by one Land in connection with the law on foreigners impair substantial interests of another Land,
3. a foreigners authority intends to expel a foreigner who is exempted from the requirement for a residence permit by virtue of his or her belonging to a consular or diplomatic mission.

## **Part 2**

### **Federal Office for Migration and Refugees**

#### **Section 75 Duties**

Notwithstanding its duties in accordance with other acts, the Federal Office for Migration and Refugees shall have the following duties:

1. Coordination of the information on the residence for the purpose of pursuing an economic activity between the foreigners authorities, the Federal Employment Agency and the German diplomatic missions abroad authorised for matters pertaining to passports and visas by the Federal Foreign Office;
2. a) Development of the basic structure and contents of the integration course pursuant to Section 43 (3),  
b) implementation of the same and  
c) measures pursuant to Section 9 (5) of the Federal Expellees Act;
3. Expert supporting work for the Federal government in the field of the promotion of integration and the production of informational materials on integration measures offered by the Federal government, Land governments and local government authorities for foreigners and repatriates of German ancestry;
4. Scientific research on migration issues (accompanying research) with the aim of obtaining analytical conclusions for use in controlling immigration;
5. Cooperation with the administrative authorities of the members states of the European Union as the National Contact Point pursuant to directive 2001/55/EC;
6. Keeping the register pursuant to Section 91a;
7. Granting payment of the funds approved under the schemes to promote voluntary return;
8. allocation of the persons admitted pursuant to Section 23 (2) to the respective Länder.

9. The provision of migration advisory services pursuant to Section 45, sentence 1, unless such services are provided by other bodies; it may enlist the services of private or public institutions to this end.

## **Section 76**

(v o i d)

### **Part 3**

#### **Administrative procedures**

##### **Section 77 Written form; exemption from formal requirements**

(1) The administrative act via which a passport substitute, an substitute identity document or a residence title is refused or subjected to geographic or time restrictions, conditions and requirements must be in written form; the same applies to expulsion and the suspension of deportation. The same also applies to restrictions of the stay pursuant to Section 12 (4), the orders pursuant to Sections 47 and 54a and the revocation of administrative acts in accordance with this Act.

(2) Refusal and restriction of a visa and of a passport substitute prior to the foreigner entering the Federal territory shall not require any statement of grounds or information on available legal remedies; refusal at the border shall not require written form.

##### **Section 78 Forms for residence titles, substitute identity document and certificates**

(1) The residence title shall be issued according to a standard form, containing a serial number and a zone for automatic reading. The standard form contains the following items of information:

1. Surname and first name of the holder,
2. duration of validity,
3. place and date of issue,
4. type of residence title,
5. issuing authority,

6. serial number of the appurtenant passport or passport substitute,
7. comments.

(2) If the residence title is issued as an independent document, the following additional items of information shall be provided:

1. Date and place of birth,
2. nationality,
3. sex,
4. comments,
5. holder's address.

(3) In addition to the holder's photograph and personal signature, the residence title may also contain other biometric features of the holder's fingers, hands or face. The photograph, the signature and the additional biometric features may also be incorporated into the residence title following encoding by means of security processes. The personal details stated in sub-sections 1 and 2 may also be incorporated into the residence title following encoding by means of security processes.

(4) The zone for automatic reading contains the following items of information:

1. family name and first name,
2. date of birth,
3. sex,
4. nationality,
5. type of residence title,
6. serial number of the form,
7. issuing state,
8. duration of validity,
9. check digits.

(5) Public bodies may store, transfer and use the data contained in the zone for automatic reading in discharging their mandatory duties.

(6) The substitute identity document contains a serial number and a zone for automatic reading. In addition to the name of the issuing authority, the place and date

of issue, the period / duration of validity, the first name and surname of the holder, residence status and incidental provisions, the standard form may also provide the following items of information on the holder's identity:

1. Date and place of birth,
2. nationality,
3. sex,
4. height,
5. colour of eyes,
6. holder's address,
7. photograph,
8. personal signature,
9. additional biometric features of fingers, hands or face,
10. note that the personal details are based on information furnished by the foreigner.

The photograph, the signature and the additional biometric features may also be incorporated into the substitute identity document following encoding by means of security processes. Sub-sections 4 and 5 shall apply mutatis mutandis.

(7) The certificates pursuant to Section 60a (4) and Section 81 (5) shall be issued according to a standard form which contains a serial number and may be provided with a zone for automatic reading. The certificate may otherwise contain only those data items specified in sub-section 6 and a note to the effect that the foreigner does not satisfy the passport obligation with the certificate alone. Sub-sections 4 and 5 shall apply mutatis mutandis.

### **Section 79 Decision on residence**

(1) A decision shall be reached on the residence of foreigners on the basis of the circumstances which are known in the Federal territory and accessible knowledge. The foreigners authority shall decide whether the conditions specified in Section 60 (2) to (7) apply on the basis of the knowledge in its possession and the knowledge which is accessible in the Federal territory and, where necessary in individual cases, the knowledge accessible to the authorities of the Federal Government outside of the Federal territory.

(2) If a foreigner who has applied for issuance or extension of a residence title is under investigation on suspicion of having committed a criminal or administrative offence, the decision on the residence title shall be suspended until the attendant proceedings are completed and, in the case of a conviction, until the sentence becomes unappealable, unless it is possible to reach a decision on the residence title without considering the outcome of the proceedings.

### **Section 80 Legal capacity of minors**

(1) A foreigner who is 16 years of age or older shall be capable of performing procedural actions pursuant to this Act, provided that he or she would not be legally incapacitated in accordance with the German Civil Code or, on attaining majority, would not require supervision and prior approval in this matter.

(2) A minor's lack of legal capacity shall not preclude his or her refusal of entry or removal. The same shall apply to the notice of intention to deport and subsequent deportation to the country of origin, if his or her legal representative is not resident in the Federal territory or the latter's whereabouts in the Federal territory are unknown.

(3) In application of this Act, the provisions of the German Civil Code shall determine whether a foreigner is to be regarded as a minor or an adult. The legal capacity and the capacity to undertake other acts in the law of a foreigner who is of age under the law of his home country shall remain unaffected.

(4) The legal representatives of a foreigner under the age of 16 and any other persons attending to the foreigner in the Federal territory in place of the legal representatives shall be obliged to file the necessary applications on behalf of the foreigner for issuance and extension of the residence title and issuance and extension of the passport, passport substitute and substitute identity document.

### **Section 81 Application for the residence title**

(1) In the absence of any provisions to the contrary, a residence title shall only be issued subject to an application being filed.

(2) A residence title which may be obtained after entering the Federal territory in accordance with the statutory instrument pursuant to Section 99 (1), no. 2 shall be applied for immediately after entry or within the period stipulated in the statutory instrument. The application for a child born in the Federal territory who is not officially to be granted a residence title shall be filed within six months of birth.

(3) If a foreigner who is legally resident in the Federal territory and does not possess a residence title applies for issuance of a residence title, his or her residence shall be deemed to be permitted up to the time of the decision by the foreigners authority. If the application is filed late, deportation shall be deemed to be suspended from the time of application up to the time of the decision by the foreigners authority.

(4) If a foreigner applies for an extension of his or her residence title or issuance of a different residence title, the previous residence title shall be deemed to remain in force from the time of its expiry until the time of the decision by the foreigners authority.

(5) The foreigner shall be issued a certificate confirming the effect of his or her application (provisional residence document).

## **Section 82 Cooperation by the foreigner**

(1) The foreigner shall be obliged to put forward his or her interests and any circumstances in his or her favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his or her personal situation, other required certificates and permits and other required documents which he or she is able to furnish. The foreigners authority may set him or her a reasonable deadline for this purpose. Circumstances put forward and documents furnished after expiry of said deadline may be ignored.

(2) Sub-section 1 shall be applied mutatis mutandis in an objection procedure.

(3) The foreigner shall be notified of his or her duties pursuant to sub-section 1 and of his essential rights and duties under this Act, in particular the obligations arising from Sections 44a, 48, 49 and 81 and the possibility of filing an application pursuant to Section 11 (1), sentence 3. If a time limit is set, he or she shall be notified of the consequences of failure to observe the set deadline.

(4) Where necessary for the purposes of preparing and implementing measures under this Act and in accordance with provisions relating to foreigners in other acts, an order may be issued requiring a foreigner to report personally to the competent authority and to the diplomatic missions of the state whose nationality he putatively possesses and requiring a medical examination to be carried out in order to ascertain whether the foreigner is fit to travel. If a foreigner fails to comply with an order pursuant to sentence 1, the order may be compulsorily enforced. Section 40 (1) and (2), Sections 41, 42 (1), sentences 1 and 3 of the Federal Border Police Act shall apply mutatis mutandis.

### **Section 83 Restriction of right of appeal**

(1) The refusal of a visa for tourist purposes and of a visa and a passport substitute at the border shall not be subject to appeal. Upon being refused a visa and a passport substitute at the border, the foreigner shall be informed of the possibility of filing an application with the competent diplomatic mission abroad.

(2) The refusal to suspend deportation shall not be contestable.

### **Section 84 Effects of an objection and a legal action**

(1) An objection or legal action against

1. the refusal of an application for issuance or extension of a residence title,
2. a condition imposed pursuant to Section 61 (1) requiring the foreigner to take up residence at a departure facility and
3. the amendment or rescission of a subsidiary provision concerning the pursuit of employment

shall have no suspensory effect.

(2) Notwithstanding their suspensory effect, an objection or legal action shall not affect the operative effect of an expulsion or any other administrative act which terminates the lawfulness of the residence. For purposes pertaining to admission or the pursuit of an economic activity, the residence title shall be deemed to remain in force until expiry of the deadline for raising an objection or instituting legal action, during judicial proceedings concerning a permissible application for the institution or restoration of suspensory effect or for as long as the submitted legal remedy has suspensory effect. The lawfulness of the residence shall not be interrupted if the administrative act is revoked by an official decision or by an unappealable court ruling.

### **Section 85 Calculation of residence periods**

Interruptions of the lawfulness of residence of up to one year may be ignored.

## **Part 4**

### **Data transfer and data protection**

## **Section 86 Collection of personal data**

The authorities charged with implementing this Act may collect personal data for the purposes of implementing this Act and provisions relating to foreigners contained in other acts, insofar as this is necessary in discharging their duties under this Act and in accordance with provisions relating to foreigners contained in other acts. Data within the meaning of Section 3 (9) of the Federal Data Protection Act and corresponding provisions contained in the data protection acts of the Länder may be collected insofar as this is necessary in individual cases in discharging assigned duties.

## **Section 87 Transfer to foreigners authorities**

(1) On request, public bodies shall notify circumstances of which they obtain knowledge to the bodies specified in Section 86, sentence 1, insofar as this is necessary for the purposes stated in said Section.

(2) Public bodies shall notify the competent foreigners authority forthwith, if they obtain knowledge of

1. the whereabouts of a foreigner who does not possess a required residence title and whose deportation has not been suspended,
2. a breach of a geographic restriction or
3. any other grounds for expulsion;

in the cases covered by numbers 1 and 2 and in case of any other actions punishable under this act, the competent police authority may be notified instead of the foreigners authority, if one of the measures specified in Section 71 (5) is possible; the police authority shall notify the foreigners authority forthwith.

(3) The Federal Government Commissioner for Migration, Refugees and Integration shall be obliged to provide notifications pursuant to sub-sections 1 and 2 regarding a foreigner belonging to this category of persons only if such notification does not compromise the commissioner in discharging his or her own duties. The Land governments may determine by legal instrument that Foreigners' commissioners of the respective Länder and of local government authorities are obliged to provide notifications relating to a foreigner who is lawfully resident in the Land or local government district concerned or who resided lawfully in the Land or local government district up to the time of issuance of an administrative act terminating the lawfulness of the residence subject to sentence 1 only.



(4) The bodies responsible for instituting and implementing criminal or fine proceedings shall notify the competent foreigners authority forthwith of the institution of such proceedings and of due settlement of the proceedings at the public prosecutor's office, in court or at the administrative authority which is competent for prosecuting the administrative offence and imposing due punishment, stating the relevant statutory provisions. Sentence 1 shall apply mutatis mutandis for the institution of extradition proceedings against a foreigner. Sentence 1 shall not apply for proceedings instituted for an administrative offence which is punishable by a fine of up to one thousand euros. The Office for the Protection of Witnesses shall notify the competent foreigners authority forthwith of the beginning and end of witness protection for a foreigner.

### **Section 88 Transfer in case of special statutory regulations on the use of data**

(1) Personal data and other information shall not be transferred pursuant to Section 87, if such transfer is precluded by special statutory regulations.

(2) Personal data which are made accessible to a public body by a doctor or by other persons stated in Section 203 (1), nos. 1, 2, 4 to 6 and sub-section (3) of the German Penal Code may be transferred by said public body,

1. if the foreigner constitutes a risk to public health and special protective measures to eliminate the risk are not possible or fail to be observed by the foreigner or
2. if the data are required in order to ascertain whether the conditions specified in Section 55 (2) no. 4 apply.

(3) Personal data which are subject to tax secrecy under Section 30 of the Tax Code may be transferred if the foreigner has contravened a provision of tax law, including customs law and monopolies law or a provision of foreign trade and payments law, or has breached import, export or transit bans or bans on the introduction of goods into customs territory and criminal investigations have been instituted or a fine of at least five hundred euros has been imposed for such contravention or breach. In cases covered by sentence 1, the authorities charged with carrying out the police control of cross-border traffic may also be notified, if a ban on the foreigner leaving the Federal territory is to be issued pursuant to Section 46 (2).

(4) Sub-sections 1 to 3 shall apply mutatis mutandis to transfer by the authorities charged with implementing this Act and by private bodies.

## **Section 89 Procedures applying to measures to document and establish a foreigner's identity**

(1) The Federal Office of Criminal Police shall provide official assistance in assessing the documents obtained pursuant to Section 49. The documents obtained pursuant to Section 49 (2) to (3) shall be kept separate from other identification material. The voice recordings pursuant to Section 49 (5) shall be kept by the authority carrying out the recordings.

(2) Use of the documents obtained pursuant to Section 49 shall also be permissible for the purposes of ascertaining the foreigner's identity or allocating evidence in the course of criminal prosecution and measures undertaken by the police to avert dangers. Said documents may be transferred to the authorities responsible for these measures, to the extent and for the duration necessary.

(3) The documents obtained pursuant to Section 49 (2) to (3) or (5) shall be destroyed by all authorities in whose safekeeping they are located, if

1. the foreigner has been issued with a valid passport or passport substitute and granted a residence title by the foreigners authority,
2. a period of ten years has elapsed since the foreigner's last departure from the Federal territory or attempted unlawful entry,
3. a period of three years has elapsed since refusal of entry or removal in cases covered by Section 49 (3), nos. 3 and 4 or
4. a period of ten years has elapsed since application for the visa in cases covered by Section 49 (3), no. 5 and since the voice recording in the case of Section 49 (5).

(4) Sub-section 3 shall not apply if and for as long as the documents are required in connection with criminal proceedings or to avert a danger to public safety or law and order. A record of the destruction shall be drawn up.

## **Section 89a Procedural provisions for the database for found documents**

(1) On request from the authority collecting the data concerned, the Federal Office of Administration shall check the data collected pursuant to Section 49 on a foreigner against the data contained in the database for found documents, in order to establish a foreigner's identity or nationality by reference to a found document, should doubts exist in this respect.

(2) In order to enable the data to be counter-checked in this manner, the body requesting the check shall transfer the appurtenant photograph or finger prints and other items of information stipulated in Section 49b, no. 1 to the Federal Office of Administration.

(3) If the transferred data on the foreigner correspond to the stored data on the holder of a found document, the data pursuant to Section 49b shall be transferred to the requesting body.

(4) Where the Federal Office of Administration is unable to clearly establish a foreigner's identity, it shall transfer the information stored on similar persons in the database for found documents to the requesting body, if it is to be expected that the latter's knowledge will enable the foreigner's identity to be established by reference to one of the found documents. The requesting body is to erase forthwith all information which cannot be attributed to the foreigner and to destroy appurtenant records.

(5) The information shall be transferred via remote data transmission. Automatic retrieval of the data is permissible in accordance with Section 10 (2) to (4) of the Federal Data Protection Act.

(6) On request, the Federal Office of Administration shall check the data stored in the database for found documents against the data transferred by

1. the Federal Office for Migration and Refugees for the purposes of establishing the identity or nationality of a foreigner in an asylum procedure, and
2. an authority responsible for criminal prosecution or police measures to avert dangers for the purposes of establishing a foreigner's identity or attributing evidence.

Sub-sections 2 and 5 shall apply *mutatis mutandis*.

(7) The data pursuant to Section 49b shall be erased ten years after the initial storage of data pertaining to the document concerned. If the purpose of storage ceases to apply prior to this period elapsing, the data shall be erased forthwith.

(8) The bodies concerned are to undertake state-of-the-art measures to ensure data protection and data security which, in particular, guarantee the confidentiality and integrity of the data; when generally accessible networks are used, state-of-the-art encryption methods shall be applied.

## **Section 90 Transfer by foreigners authorities**

(1) In individual cases in which there are concrete indications of

1. foreigners taking up employment or pursuing an economic activity without the necessary residence title pursuant to Section 4,
2. breaches of the obligation to cooperate pursuant to Section 60 (1), sentence 1, no. 2 of Book One of the Social Code with regard to a department of the Federal Employment Agency, a statutory health insurance, nursing insurance, accident insurance or pension insurance agency, an institution providing basic security for job seekers or a social welfare agency, or contravention of the obligation to report pursuant to Section 8a of the Act on Benefits for Asylum Seekers,
3. the breaches specified in Section 6 (3), nos. 1 to 4 of the Act to Combat Clandestine Employment,

the authorities charged with implementing this Act shall notify the authorities responsible for prosecuting the breaches according to numbers 1 to 3 and imposing due punishment, the institutions providing basic security for job seekers or the social welfare agencies and the competent authorities pursuant to Section 10 of the Act on Benefits for Asylum Seekers.

(2) In prosecuting and imposing punishments for breaches of this Act, the authorities charged with implementing this Act shall cooperate in particular with the other authorities specified in Section 2 (2) of the Act to Combat Clandestine Employment.

(3) The authorities charged with implementing this Act shall notify the competent authorities under Section 10 of the Act on Benefits for Asylum Seekers of circumstances and measures under this Act, a knowledge of which is necessary for the purposes of benefits under the Act on Benefits for Asylum Seekers, the information which they receive on the issuance of approval for employment to persons eligible for benefits under the Act on Benefits for Asylum Seekers and information relating to the expiry, revocation or withdrawal of issued approvals.

## **Section 91 Storage and erasure of personal data**

(1) The data relating to expulsion and deportation shall be erased ten years after expiry of the limitation period specified in Section 11 (1), sentence 3. They are to be erased prior to this if they contain information which may no longer be used against the foreigner in accordance with other statutory provisions.

(2) Notifications pursuant to Section 87 (1) which are immaterial to an impending decision under the law relating to foreigners and which are unlikely to be of relevance to a later decision under the law relating to foreigners shall be destroyed forthwith.

(3) Section 20 (5) of the Federal Data Protection Act and corresponding provisions in the data protection acts of the Länder shall not apply.

## **Section 91 a**

### **Temporary protection register**

(1) The Federal Office for Migration and Refugees shall keep a register of foreigners in accordance with Section 24 (1) who have applied for a visa or a residence permit and of their dependents within the meaning of Article 15 (1) of directive 2001/55/EC for the purposes of granting residence, allocating admitted foreigners to places of residence in the Federal territory, relocating the place of residence of admitted foreigners to other member states of the European Union, the reunification of families and the promotion of voluntary return.

(2) The following items of information shall be stored in the register:

1. On the foreigner:

- a) The personal details (surname, maiden name, first name, date and place of birth, sex, nationalities, last place of residence in country of origin, region of origin and voluntary information furnished on religion),
- b) information on occupation and vocational training,
- c) date of receipt of the foreigner's application for a visa or a residence permit, the authority responsible for processing the application, and information regarding the decision on the application or the state of progress in the application procedure,
- d) details pertaining to the foreigner's identity and travel documents (type, number, issuing authority, date of issue and period of validity),
- e) the Central Aliens Register number and the visa file number,
- f) country of destination and date of leaving the country of origin,

2. the personal details in accordance with number 1, letter a, with the exception of the voluntary information on the religion of the foreigner's dependents in accordance with sub-section 1,

3. details of documents confirming marriage, unmarried partnership or kinship.

(3) The foreigners authorities and the diplomatic missions abroad shall be obliged to transfer the data stated in sub-section 2 to the registration authority forthwith when an application has been filed

1. for a residence permit pursuant to Section 24 (1) or

2. for a visa to secure temporary protection in the Federal territory.

(4) Sections 8 and 9 of the Act on the Central Aliens Register shall apply mutatis mutandis.

(5) On request, the data may be transferred to the foreigners authorities, diplomatic missions abroad and other organisational units of the Federal Office for Migration and Refugees, including the National Contact Point established at the Federal Office for Migration and Refugees in accordance with Article 27 (1) of directive 2001/55/EC for the purposes of discharging their duties under the law regarding foreigners and asylum in connection with the granting of residence, allocating admitted foreigners to places of residence in the Federal territory, relocating the place of residence of admitted foreigners to other member states of the European Union, the reunification of families and the promotion of voluntary return.

(6) The registration authority is to produce records of data transmissions in accordance with sub-section 5. Section 13 of the Act on the Central Aliens Register shall apply mutatis mutandis.

(7) Data transmission pursuant to sub-sections 3 and 5 shall be effected in writing, in electronic form or via automated procedures. Section 22 (2) to (4), of the Act on the Central Aliens Register shall apply accordingly.

(8) The data are to be erased no later than two years after the termination of temporary protection for the foreigner. Sections 34 (1) and (2) and Section 37 of the Act on the Central Aliens Register shall apply mutatis mutandis with regard to notification of the data subject and invalidation of the data.

## **Section 91 b**

### **Transfer of data by the Federal Office for Migration and Refugees as the National Contact Point**

In its capacity as the National Contact Point in accordance with Article 27 (1) of directive 2001/55/EC, the Federal Office for Migration and Refugees may transfer the data contained in the register pursuant to Section 91 a to the following bodies for the purposes of relocation of the place of residence of admitted foreigners to other member states of the European Union or the reunification of families:

1. National Contact Points of other member states of the European Union,
2. bodies and institutions of the European Communities,
3. other foreign, supranational or intergovernmental bodies, provided that an appropriate level of data security pursuant to Section 4b (3) of the Federal Data Protection Act is ensured at such bodies.

## **Chapter 8**

### **Commissioner for Migration, Refugees and Integration**

#### **Section 92 Office of the Commissioner**

(1) The Federal Government shall appoint a Commissioner for Migration, Refugees and Integration.

(2) The Commissioner's office shall be established at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and may be held by a member of the German Bundestag. The Commissioner may also hold an office under the Act governing the Legal Status of Parliamentary State Secretaries, without this requiring special approval (Section 5 (2), sentence 2 of the Act governing Federal Ministers, Section 7 of the Act governing the Legal Status of Parliamentary State Secretaries). In this case, discharge of the Commissioner's duties shall remain unaffected by the legal status in accordance with the Act governing the Legal Status of Parliamentary State Secretaries.

(3) The personnel and material resources required in order to perform the duties of the office shall be provided. The budget allocation shall be shown in a separate section of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth's individual plan 17.

(4) Save in the case of dismissal, the office tenure shall end upon a new Bundestag convening.

#### **Section 93 Duties**

The Commissioner shall have the following duties:

1. To promote the integration of migrants who are permanently resident in the Federal territory and, in particular, to support the Federal Government in developing its integration policy, also with regard to aspects of employment policy and social policy, and to provide ideas for the further development of integration policy in the European context;
2. to develop the necessary conditions for the most harmonious possible co-existence between foreigners and Germans and between different groups of foreigners, to promote mutual understanding and to counteract xenophobia;
3. to counteract unequal treatment with regard to foreigners;

4. to help ensure that the interests of the foreigners resident in the Federal territory receive due consideration;
5. to provide information on the legal possibilities for naturalisation;
6. to safeguard the rights of freedom of movement of EU citizens and to submit proposals on further arrangements to safeguard such rights;
7. to encourage and support initiatives to integrate migrants who are resident in the Federal territory on a permanent basis, including such initiatives at the level of the Länder and local authorities and among social groups;
8. to monitor immigration into the Federal territory and into the European Union and the develop of immigration into other states;
9. to cooperate in the areas of the duties specified in numbers 1 to 8 with the bodies of the local authorities, of the Länder, of other member states of the European Union and of the European Union itself which have the same or similar remits to the Commissioner;
10. to inform the public in the areas of duties specified in numbers 1 to 9.

#### **Section 94 Scope of authority**

(1) The Commissioner shall be involved at the earliest possible juncture in law-making projects of the Federal Government or individual federal ministries and in other matters relating to his or her remit. The Commissioner may submit proposals and forward opinions to the Federal Government. The federal ministries shall support the Commissioner in discharging his or her duties.

(2) The Commissioner shall submit a report on the situation of foreigners in Germany to the German Bundestag every two years.

(3) If the Commissioner possesses adequate information indicating that public bodies of the Federal Government are committing breaches within the meaning of Section 93, no. 3 or are failing to protect the rights of foreigners in any other way, he or she may require a statement. The Commissioner may attach his or her own assessment to this statement and forward the statement to the public body and the latter's superior authority. The public bodies of the Federal Government shall be obliged to furnish information and to answer questions. The public bodies shall transfer personal data only if the data subject himself or herself has approached the Commissioner to request that the latter take action in relation to the public body on the data subject's behalf, or if the foreigner's consent is proven by any other means.



## Chapter 9

### Provisions as to punishments for criminal offences and fines

#### Section 95 Penal provisions

(1) Any person who

1. resides in the Federal territory in contravention of Section 3 (1),
2. resides in the Federal territory without a necessary residence title pursuant to Section 4 (1), sentence 1, in unappealably obliged to leave the Federal territory and whose deportation has not been suspended,
3. enters the Federal territory in contravention of Section 14 (1), nos. 1 or 2,
4. contravenes an enforceable order pursuant to Section 46 (2), sentence 1 or 2 or Section 47 (1), sentence 2 or sub-section 2,
5. fails to furnish an item of information or furnishes incorrect or incomplete information in contravention of Section 49 (1), insofar as the offence is not punishable pursuant to sub-section 2, no. 2,
- 5a. fails repeatedly to meet an obligation to report to the authorities in contravention of Section 54a, repeatedly contravenes geographic restrictions or other conditions imposed on their stay or fails to meet the obligation to take up residence in a designated facility despite having been notified repeatedly as to the legal consequences, or uses certain means of communication in contravention of Section 54a (2),
6. fails to tolerate a measure specified in Section 49 (8) in contravention of said Section,
7. repeatedly breaches a geographic restriction pursuant to Section 61 (1) or
8. belongs to an organisation or group in the Federal territory which consists primarily of foreigners and whose existence, aims or activities are concealed from the authorities in order to avert the prohibition of said organisation or group

shall be punishable by up to one year's imprisonment or a fine.

(2) Anyone who

1. a) enters the Federal territory or

b) resides in said territory

in contravention of Section 11 (1), sentence 1 or

2. furnishes or uses false or incomplete information in order to procure a residence title for themselves or for another or who knowingly uses a residence title procured in this manner for the purposes of deceit in legal matters

shall be punishable by up to three years' imprisonment or a fine.

(3) An attempt to commit an offence shall be punishable in the cases covered by sub-section 1, no. 3 and sub-section 2, no. 1, letter a.

(4) Objects which are related to an offence pursuant to sub-section 2, no. 2 may be confiscated.

(5) Article 31 (1) of the Convention relating to the Status of Refugees shall remain unaffected.

### **Section 96 Smuggling of foreigners into the Federal territory**

(1) Anyone who incites another person to commit any of the acts specified in Section 95 (1), nos. shall be punishable by up to five years' imprisonment or a fine. 1, 2 or 3 or aids another person in committing such an act and

1. receives a pecuniary advantage or the promise of a pecuniary advantage in return or

2. acts in such a manner repeatedly or for the benefit of several foreigners

(2) Anyone who, in the cases covered by sub-section 1, shall be punishable by a prison sentence of between six months and ten years.

1. acts for gain,

2. acts as a member of a band which has come together for the purpose of committing such offences on a continuous basis,

3. carries a firearm, if the offence concerns an act pursuant to Section 95 (1), no. 3 or (2) no. 1, letter a,
4. carries another type of weapon in order to use said weapon in connection with the offence, if the offence concerns an act pursuant to Section 95 (1), no. 3 or (2) no. 1, letter a, or
5. subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of sustaining severe damage to their health

(3) An attempt to commit such offences shall be punishable.

(4) Sub-section 1, no. 1, sub-section 2, no. 1 and sub-section 3 shall be applicable to contraventions of statutory provisions on the entry of foreigners into the European territory of a state party to the Convention Implementing the Schengen Agreement and the residence of foreigners in such territory, if

1. such contraventions correspond to the acts specified in Section 95 (1), nos. 2 or 3 or Section 2, no. 1 and
2. the offender supports a foreigner who is not a national of a member state of the European Union or of another state party to the Convention on the European Economic Area.

(5) Section 73d of the Penal Code shall be applicable in the cases covered by sub-section 2, no. 1, also in conjunction with sub-section 4, and in cases covered by sub-section 2, nos. 2 to 5.

### **Section 97 Smuggling of foreigners into the Federal territory resulting in death; smuggling for gain and as organised bands**

(1) Anyone causing the death of the smuggled person in the cases covered by Section 96 (1), also in conjunction with Section 96 (4), shall be punishable by imprisonment for a term of no less than three years.

(2) Anyone acting for gain as a member of a band which has come together for the purpose of committing such offences on a continuous basis in the cases covered by Section 96 (1), also in conjunction with Section 96 (4), shall be punishable by imprisonment for a term of between one and ten years.

(3) Less serious cases pursuant to sub-section 1 shall be punishable by imprisonment for a term of between one year and ten years, less serious cases pursuant to sub-section 2 shall be punishable by imprisonment for a term of between six months and ten years.

(4) Section 73d of the Penal Code shall be applicable.

### **Section 98 Provisions as to fines**

(1) Anyone who negligently commits an act specified in Section 95 (1), nos. 1 or 2 or (2), no. 1, letter b shall be deemed to have committed an administrative offence.

(2) Anyone who

1. fails to furnish evidence in contravention of Section 4 (5), sentence 1,
2. fails to submit to the police control of cross-border traffic in contravention of Section 13 (1), sentence 2 or,
3. in contravention of Section 48 (1) or (3), sentence 1, fails to submit a document or paper specified therein, fails to submit such a document or paper in time or fails to surrender the same in time or fails to leave the same with the competent authorities or to do so in time

shall be deemed to have committed an administrative offence.

(3) Anyone who intentionally or negligently

1. contravenes an enforceable condition pursuant to Section 12 (2), sentence 2 or (4) or a geographic restriction pursuant to Section 54a (2) or 61 (1), sentence 1,
2. enters or leaves the Federal territory outside of an approved border crossing point or outside of the stipulated traffic hours or fails to carry a passport or passport substitute with them in contravention of Section 13 (1),
3. contravenes an enforceable order pursuant to Section 46 (1), Section 54a, sub-section 1, sentence 2 or sub-section 3 or Section 61 (1), sentence 2,
- 3a. fails to provide notification, provides incorrect notification or fails to provide notification in good time in contravention of Section 54a (1), sentence 1,
4. fails to file one of the applications stipulated in Section 80 (4) in contravention of the said Section or
5. or contravenes a statutory instrument pursuant to Section 98 (1), nos. 7 or 10, insofar as such statutory instrument refers to this provision as to fines for a specific offence

shall be deemed to have committed an administrative offence.

(4) An attempt to commit an administrative offence may be punishable in the cases covered by sub-section 2, no. 2 and sub-section 3, no. 2.

(5) The administrative offence may be punished by a fine of up to five thousand euros in the cases covered by sub-section 2, no. 2, by a fine of up to three thousand euros in the cases covered by sub-sections 1 and 2, no. 1 and 3 and sub-section 3, no. 2, and by a fine of up to one thousand euros in the other cases.

(6) Article 31 (1) of the Convention relating to the Status of Refugees shall remain unaffected.

## **Chapter 10**

### **Authorisation to issue statutory instruments; transitional and final provisions**

#### **Section 99 Authorisation to issue statutory instruments**

- (1) The Federal Ministry of the Interior shall be authorised, via statutory instruments with the approval of the Bundesrat,
1. to provide for exemptions to the requirements for a residence title in order to facilitate the stay of foreigners, to regulate the procedure for the granting of exemptions and for the continued validity and further granting of residence titles under this Act upon a ground for exemption arising and to restrict exemptions for the purpose of controlling economic activity by foreigners in the Federal territory,
  2. to determine that the residence title may be obtained prior to entry into the Federal territory from the foreigners authority or after entry,
  3. to determine in which cases the approval of the foreigners authority shall be required for the granting of a visa, in order to ensure the involvement of other authorities concerned,
  4. to exempt foreigners who enter the Federal territory in connection with rescue operations and the provision of assistance in case of disasters from the passport obligation,
  5. to introduce or approve other official German identification papers as passport substitutes,
  6. to issue general approval for official identification papers which have not been issued by German authorities to be used as passport substitutes,
  7. to determine that foreigners who are exempted from the requirement for a residence title and foreigners who enter the Federal territory with a visa shall be required to furnish the foreigners authority or another authority with due notification of their residence upon effecting entry or after effecting entry, in order to safeguard the interests of the Federal Republic of Germany,

8. to stipulate, in the interests of enabling or facilitating travel, that foreigners' existing entitlement to re-enter the Federal territory can be confirmed in a passport substitute,
9. to stipulate the conditions according to which an substitute identity document may be issued and for how long such an substitute identity document shall be valid,
10. to regulate the obligations concerning identification papers of foreigners residing in the Federal territory with regard to the issuance and extension, loss and relocation, presentation and surrender of a passport, passport substitute and identification paper substitute, the entries concerning entry into, exit from and interception in the Federal territory and decisions by the competent authorities in such documents,
11. to stipulate details pertaining to the register pursuant to Section 91a and to the conditions and the procedure for data transfer,
12. to stipulate how the place of residence of foreigners who have been granted temporary protection in accordance with Section 24 (1) can be relocated to another member state of the European Union,
13. to determine the design of and issuance arrangements for the forms to be used in implementation of this Act and the recording and incorporation of features in encoded form pursuant to Section 78 (3) in accordance with the provisions of Community law and pursuant to Section 78 (6) and (7),
14. to determine that the
  - a) registration authorities,
  - b) authorities concerned with matters of nationality and certifying authorities pursuant to Section 15 of the Federal Expellees Act,
  - c) authorities concerned with passports and identity cards,
  - d) social welfare and youth welfare offices,
  - e) judicial, police and regulatory authorities,
  - f) Federal Employment Agency,
  - g) tax offices and main customs offices,
  - h) trading standards authorities,
  - i) diplomatic missions abroad and
  - j) institutions providing basic security for job seekers

shall be required to furnish the foreigners authorities with personal data on foreigners, information on official acts and other measures relating to foreigners and other information on foreigners without prior request; the statutory instrument

shall define the type and scope of data, the measures and the other items of information which are to be transferred; data may only be provided in so far as is necessary in order for the foreigners authorities to discharge their duties under this Act or in accordance with provisions relating to foreigners in other acts.

(2) The Federal Ministry of the Interior shall further be authorised to determine, via statutory instrument with the approval of the Bundesrat, that

1. every foreigners authority shall keep a file on foreigners who are or have been resident in their regions, who have filed an application with the authority or have provided the authority with notification of entry and residence and for or against whom the authority has undertaken a measure or taken a decision under the law pertaining to foreigners,
2. the diplomatic missions abroad shall keep a file on granted visas and
3. the authorities charged with implementing this Act shall keep any other file which is necessary in discharging their duties.

The data to be recorded pursuant to sentence 1, nos. 1 and 2 shall cover the foreigner's personal data, including his or her nationality and address, information relating to the passport, measures undertaken in accordance with the law pertaining to foreigners, entry in the Central Aliens Register and former addresses of the foreigner, the competent foreigners authority and the furnishing of records to another foreigners authority. The foreigners authorities' authorisation to store further personal data shall be determined by the data protection provisions of the respective Länder.

(3) The Federal Ministry of the Interior may issue and amend statutory instruments pursuant to sub-section 1, nos. 1 and 2 without the approval of the Bundesrat, insofar as this is necessary in order to fulfil an inter-governmental agreement or to safeguard public interests. A statutory instrument pursuant to sentence 1 shall expire no later than three months after coming into force. Its period of validity may be extended via statutory instrument with the approval of the Bundesrat.

## **Section 100**

### **Linguistic adaptation**

The Federal Ministry of the Interior may, via statutory instrument without the approval of the Bundesrat, replace the terms employed for persons in this Act with non-gender-specific or masculine and feminine terms, provided that this is possible without altering the contents of the provisions and is linguistically correct, and may undertake the subsequently necessary linguistic adaptations. The Federal Ministry of

the Interior may publish the wording of this Act in the Federal Law Gazette after issuing a statutory instrument pursuant to sentence 1.

### **Section 101 Continued validity of previous rights of residence**

(1) A right of unlimited residence or permanent residence permit issued prior to 1 January 2005 shall remain valid as a settlement permit in accordance with the purpose of residence and the circumstances forming the basis for its issuance. A permanent residence permit which has been granted pursuant to Section 1 (3) of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes of 22 July 1980 (Federal Law Gazette I, p. 1057) or in corresponding application of the aforesaid act and a subsequently issued right of unlimited residence shall remain valid as a settlement permit pursuant to Section 23 (2).

(2) The other residence authorisations shall remain valid as residence permits in accordance with the purpose of residence and the circumstances forming the basis for their issuance.

### **Section 102 Continued validity of other measures under the law relating to foreigners and consideration of prior periods**

(1) Other measures undertaken prior to 1 January 2005 in accordance with the law pertaining to foreigners, in particular time limits and geographic restrictions, conditions and requirements, prohibitions and restrictions of political activities, expulsions, notices of intention to deport and deportations, including their legal consequences, limiting periods as to their effects and beneficial measures, the recognition of passports and passport substitute papers, exemptions from the passport obligation, rulings on costs and fees, shall remain valid. Measures and agreements in connection with the furnishing of security shall also remain valid, even if they relate in part or in their entirety to periods after this Act comes into force. The same shall apply to the effects by force of law resulting from the filing of applications pursuant to Section 69 of the Foreigners Act.

(2) The period of possession of a residence title for exceptional purposes or of a temporary suspension of deportation prior to 01.01.05 shall count towards the qualifying period for the issuance of a settlement permit pursuant to Section 26 (4).



### **Section 103 Application of previous law**

Sections 2a and 2b of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes in the version valid until 1 January 2005 shall continue to apply for persons who enjoy the status pursuant to articles 2 to 34 of the Convention relating to the Status of Refugees in accordance with Section 1 of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes of 22 July 1980 (Federal Law Gazette I, p. 1057). Section 52 (1), sentence 1, no. 4 shall apply *mutatis mutandis* in such cases.

### **Section 104 Transitional provisions**

(1) Decisions on applications filed prior to 1 January 2005 for the granting of an permanent residence permit or a right of unlimited residence shall be taken in accordance with the law applying up to this time. Section 101 (1) shall apply *mutatis mutandis*.

(2) In the case of foreigners who are in possession of a residence permit or a residence title for exceptional circumstances prior to 1 January 2005, for the purposes of the decision on the granting of a settlement permit it shall be sufficient with regard to such foreigners' knowledge of the language if they are able to communicate verbally in the German language at a basic level. Section 9 (2), sentence 1, nos. 3 and 8 shall not apply.

(3) In the case of foreigners who are lawfully resident in Germany prior to 1 January 2005, Section 20 of the Foreigners Act shall apply in its most recently amended version with regard to the subsequent immigration of children born prior to this date, unless this Residence Act grants a more favourable legal status.

(4) The major, unmarried child of a foreigner whose compliance with the requirements of Section 51 (1) of the Foreigners Act has been incontestably established prior to this Act coming into force shall be granted a residence permit in appropriate application of Section 25 (2), if the child was a minor at the time of the foreigner's applying for asylum, he or she has been resident in the Federal territory at least since compliance with the requirements pursuant to Section 51 (1) of the Foreigners Act was incontestably established and his or her integration is to be expected. Granting of the residence permit may be refused if the child has been

sentenced to a term of youth custody or imprisonment of at least six months or to a fine of at least 180 daily rates in the past three years for an intentionally committed offence.

(5) Foreigners who have been recognised between 1 January 2004 and 31 December 2004 as being entitled to asylum or who have been found to meet the requirements pursuant to Section 51 (1) of the Foreigners Act in the said period or who have been issued a permanent residence permit pursuant to Section 1 of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes of 22 July 1980 (Federal Law Gazette I, p. 1057) in the said period or in corresponding application of the aforesaid Act shall be entitled to attend an integration course once free of charge in accordance with Section 44 (1), unless they have begun to attend a German language course prior to 1 January 2005.

### **Section 105 Continued validity of work authorisations**

(1) A work permit issued prior to this Act coming into force shall remain valid until its period of validity expires. If a residence title is granted under this Act, the work permit shall be deemed to constitute approval of employment from the Federal Employment Agency. The conditions contained in the work permit shall be adopted into the residence title.

(2) A permission to work granted prior to this Act coming into force shall be deemed to constitute unqualified approval of employment from the Federal Employment Agency.

### **Section 106 Curtailment of fundamental rights**

(1) The fundamental rights of physical integrity (Article 2 (2), sentence 1 of the Basic Law) and freedom of the person (Article 2 (2), sentence 2 of the Basic Law) shall be curtailed under the terms of this Act.

(2) The procedure in connection with the deprivation of liberty shall be determined by the law on judicial proceedings regarding the deprivation of liberty. If a decision requires to be reached on the duration of custody awaiting deportation, the local court of first instance may assign the proceedings by virtue of an unappealable ruling to the court in whose district the foreigner is being held in custody awaiting deportation.

### **Section 107 City-state clause**

The senates of the Lands of Berlin, Bremen and Hamburg shall be authorised to adapt the provisions of this Act regarding the competence of authorities to the special administrative structures of their Länder.