

## Translation

### Federal Ministry of the Interior

## **Residence Act of 30 July 2004 (Federal Law Gazette I, p. 1950), last amended by the Act on Implementation of Residence- and Asylum-Related Directives of the European Union of 19 August 2007 (Federal Law Gazette I, p. 1970)<sup>1</sup>**

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**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 the integration of foreigners. The provisions contained in other acts shall remain unaffected.

(2) This Act shall not apply to foreigners

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, children's allowances, child-raising benefits, parental allowances, and public funds based on own contributions or granted in order to enable residence in Germany. A foreigner who is insured under a statutory health insurance scheme shall be deemed to possess adequate health insurance coverage. Contributions to household income by family members shall be taken into account when issuing or renewing residence permits allowing the subsequent immigration of dependents. For the purposes of issuance of a residence permit pursuant to Section 16, a foreigner's livelihood shall be deemed to be secure where he or she disposes of monthly funds to the amount of the monthly requirement as determined pursuant to Sections 13 and 13a (1) of the Federal Education Assistance Act. For the purposes of issuance of a residence permit pursuant to Section 20, an amount corresponding to two thirds of the reference figure defined in accordance with Section 18 of Book Four of the Social Code shall be deemed adequate to cover the cost of living. The Federal Ministry of the Interior shall announce the minimum amounts pursuant to sentences 5 and 6 in the Federal Gazette annually by 31 December for the following year.

(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 on 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).

(7) A foreigner to whom the legal status of long-term resident has been granted in a Member State of the European Union pursuant to Article 2, letter b of Council Directive 2003/109/EC of 25 November 2003 concerning the legal status of third-country nationals who are long-term residents (Official EU Journal 2004 no. L 16, p. 44) and not subsequently revoked shall be deemed to be a long-term resident.

## **Chapter 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. For the purpose of residence in the Federal territory, possession of a substitute identity document shall also suffice in order to meet the passport obligation (Section 48 (2)).

(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 the 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 (Federal Law Gazette 1964 II, p. 509) (EEC/Turkey Association Agreement). The residence titles are granted in the form of

1. a visa (Section 6),
2. a residence permit (Section 7),
3. a settlement permit (Section 9) or
4. an EC long-term residence permit (Section 9a).

(2) A residence title shall entitle the holder to pursue an economic activity insofar as this is laid down in this Act or the permanent 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 title so allows. Foreigners may only be employed or commissioned to perform other paid work or services if they possess such a residence title. This restriction shall not apply if the foreigner is permitted by virtue of an inter-governmental agreement, a law or a statutory instrument to pursue an economic activity without requiring due authorisation via a residence title. Anyone employing a foreigner or commissioning a foreigner on a sustained basis to perform paid work or services for gain in the Federal territory must ascertain whether the conditions pursuant to sentence 2 or sentence 3 apply.

(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, unless he or she is in possession of a settlement permit or an EC long-term 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 permit shall generally 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,
3. insofar as the foreigner has no entitlement to a residence title, that the foreigner's residence does not compromise or jeopardize the interests of the Federal Republic of Germany for any other reason and

4. that the passport obligation pursuant to Section 3 is met.

(2) The granting of a residence permit, a settlement permit or an EC long-term residence 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) Application of sub-sections 1 and 2 shall be waived in the cases of issuance of a residence title pursuant to Sections 24, 25 (1) to (3) and Section 26 (3); application of sub-section 1, nos. 1 to 2 and 2 and sub-section 2 shall be waived in case of Section 25 (4a). Application of sub-sections 1 and 2 may be waived in the other cases of issuance of a residence title pursuant to Chapter 2, Part 5. Where application of sub-section 1, no. 2 is waived, the foreigners authority may point out that expulsion is possible on certain grounds forming the subject of criminal or other proceedings which are still in progress, whereby such grounds are to be specified individually.

(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 within a period of six months from the date of initial entry (short-term stays)

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, the settlement permit and the EC long-term residence permit. The duration of lawful stay with a national visa shall be offset against the periods of possession of a residence permit, settlement permit or EC long-term residence 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, this shall be taken into account in the decision on extension of the residence permit. Where no entitlement to issuance of the residence permit exists, in case of repeated and gross breach of the obligations pursuant to sentence 1 extension of the residence permit shall be refused. Where an entitlement to extension of the residence permit applies only pursuant to this Act, extension may be refused unless the foreigner furnishes evidence that he or she has achieved integration into the community and society by other means. In reaching a decision on this matter, due consideration shall be given to the duration of lawful stay, the foreigner's legitimate ties to the Federal territory and consequences of the termination of residence for dependents of the foreigner who are lawfully resident in the Federal territory.

(4) Sub-section 3 shall not be applicable to the extension of a residence permit issued pursuant to Section 25 (1), (2), (3) or (4a).

### **Section 9 Settlement permit**

(1) The settlement permit is a permanent residence title. It entitles the holder to pursue an economic activity and may only be supplemented with a subsidiary provision in those cases which are expressly permitted by this Act. 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. the granting of such a residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the Federal territory,
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.
3. Half of the period of lawful stay for the purposes of study or vocational training in the Federal territory.

### **Section 9a** **EC long-term residence permit**

(1) The EC long-term residence permit is a permanent residence title. Section 9 (1), sentences 2 and 3 shall apply accordingly. In the absence of any provisions to the contrary in this Act, the EC long-term residence permit is equivalent to the settlement permit.

(2) A foreigner shall be issued with an EC long-term residence permit pursuant to Article 2, letter b of directive 2003/109/EC provided that

1. he or she has been resident in the Federal territory with a residence title for five years,
2. his or her subsistence and the subsistence of his or her dependents who he or she is required to support is ensured by a fixed and regular income,
3. he or she has an adequate knowledge of the German language,
4. he or she possesses a basic knowledge of the legal and social system and the way of life in the Federal territory,
5. the granting of such a residence permit is not precluded by reasons of public safety or order, according due consideration to the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, with due regard to the duration of the foreigner's stay to date and the existence of ties in the Federal territory and
6. 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.

Section 9 (2), sentence 2 to 5 shall apply mutatis mutandis to sentence 1, nos. 3 and 4.

(3) Sub-section 2 shall not be applicable if the foreigner

1. possesses a residence title pursuant to Part 5 which has not been issued on the basis of Section 23 (2) or holds a comparable legal status in another Member State of the European Union,
2. has filed an application in a Member State of the European Union for the granting of refugee status or of subsidiary protection in accordance with Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) or has applied for temporary protection pursuant to Section 24 and a decision is pending on his or her application,
3. possesses a legal status in another Member State of the European Union which corresponds to that described in Section 1 (2), no. 2,
4. is resident in the Federal territory with a residence permit pursuant to Section 16 or Section 17
5. or for another purpose of an inherently temporary nature, in particular
  - a) by virtue of a residence permit pursuant to Section 18, where the time limit on the approval granted by the Federal Employment Agency is based on a maximum term of employment imposed pursuant to Section 42 (1),
  - b) if an extension to his or her residence permit has been excluded pursuant to Section 8 (2) or
  - c) if his or her residence permit serves to enable the foreigner to live together or to continue to live together as a family with a foreigner who himself/herself is only resident in the Federal territory for a purpose of an inherently temporary nature, where no independent right of residence would arise upon the family unity ending.

### **Section 9b Crediting of residence periods**

The following periods shall be credited towards the necessary periods pursuant to Section 9a (2), sentence 1, no. 1:

1. Periods of residence outside of the Federal territory during which the foreigner possessed a residence title and

- a) was resident abroad on account of having been sent to a foreign country in connection with his or her work, provided that such individual periods have not exceeded six months or a longer period stipulated by the foreigners authority pursuant to Section 51 (1), no. 7, or
  - b) the total periods do not exceed six consecutive months or, within the period stated in Section 9a (2), sentence 1, no. 1, a total of ten months,
2. previous periods of residence in the Federal territory with a residence permit, settlement permit or EC long-term residence permit, where the foreigner was in possession of a settlement permit or an EC long-term residence permit at the time of leaving the Federal territory and the settlement permit or the EC long-term residence permit has expired solely on account of residence outside of Member States of the European Union or due to acquisition of the legal status of a long-term residence in another Member State of the European Union, up to a maximum of four years,
  3. periods in which the foreigner was entitled to freedom of movement,
  4. half of any periods of lawful stay for the purposes of study or vocational training in the Federal territory.

Periods of residence pursuant to Section 9a (3), no. 5 and periods of residence in which the foreigner also met the conditions of Section 9a (3), no. 3 shall not be credited. Periods of residence outside of the Federal territory which are not credited pursuant to sentence 1 shall not interrupt the period of residence pursuant to Section 9a (2), sentence 1, no. 1 where the residence outside of the Federal territory has not resulted in expiry of the residence title; such times shall not be considered when determining the total duration of residence pursuant to Section 9a (2), sentence 1, no. 1. In all other cases, exit from the Federal territory shall interrupt the period of residence pursuant to Section 9a (2), sentence 1, no. 1.

### **Section 9c Subsistence**

Fixed and regular income within the meaning of Section 9a (2), no. 2 generally applies where

1. the foreigner has met his or her tax obligations,
2. the foreigner or his or her cohabiting spouse has paid contributions or made adequate provision for an old-age pension in Germany or abroad, provided that he or she has not been prevented from doing so by a physical, mental or psychological illness or disability,
3. the foreigner and his or her dependents living with him or her as a family unit are safeguarded from the risk of illness and the need for nursing care by statutory health insurance or an essentially equivalent form of insurance coverage which applies for an indefinite period or is extended automatically and
4. the foreigner who obtains his or her regular income from an economic activity is entitled to perform the economic activity concerned and also possesses the other permits required to this end.

(4) In the case of cohabiting spouses, it shall suffice if the requirements in accordance with sentence 1, no. 4 are fulfilled by one spouse. With regard to the contributions or provisions which are necessary pursuant to sentence 1, no. 2, no higher contributions or provisions shall be required than are provided for in Section 9 (2), sentence 1, no. 3.

## **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 issuance of a residence title; sentence 2 shall further not apply where the foreigner meets the requirements for issuance of a residence permit pursuant to Section 25 (3).

## **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 58a. 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,
- 2a. he or she only possesses a Schengen visa or is exempted from the visa requirement for a short-term stay and intends to pursue an economic activity counter to Section 4 (3), sentence 1 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 Schengen Borders Code.

(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) and (7) to (9) 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.

(5) In order to ensure that a foreigner who has been refused entry does not enter the Federal territory, the foreigner concerned may be taken into custody (detention pending exit from the Federal territory) by virtue of a judicial order where a ruling to refuse entry has been issued and cannot be enforced immediately. Section 62 (3) shall otherwise apply mutatis mutandis. Sub-section 1 shall not apply in cases in which the judge declines to issue a corresponding judicial order or to extend the period of detention.

(6) Where the foreigner has reached the Federal territory by air and has not effected entry pursuant to Section 13 (2) but has been refused entry, he or she shall be taken to the transit area of an airport or to a place of accommodation from which his or her exit from the Federal territory is possible if detention pending exit from the Federal territory is not applied for. The foreigner's stay in the transit area of an airport or in accommodation pursuant to sentence 1 shall require a judicial order no later than 30 days after arrival at the airport or, should the time of arrival not be ascertainable, after the competent authorities obtain knowledge of the foreigner's arrival. The judicial order shall be issued to ensure the foreigner's due exit from the Federal territory. It shall be admissible only where exit is to be expected within the term of the order. Sub-section 5 shall apply mutatis mutandis.

## **Section 15a**

### **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) The foreigners authority forwards the result of the hearing to the authority initiating allocation, which notifies 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 studying at a state or state-recognised university or a comparable educational establishment. Residence for study purposes shall also extend to language courses in preparation for studies and attendance of a preparatory course prior to studying (preparatory measures for courses of study). The residence permit for study purposes may only be issued where the foreigner has been admitted by the educational establishment concerned; conditional admission is sufficient. Proof of a knowledge of the language in which the course of studies is to be conducted shall not be required where the foreigner's knowledge of the language has already been taken into account in the decision on admission or is to be acquired by means of preparatory measures for the course of study. The period of validity when the residence permit for study purposes is issued for the first time and for each subsequent extension shall be at least one year and should not exceed two years during courses of study and preparatory measures for courses of study; it may be extended where the purpose of residence has not yet been achieved and is achievable within a reasonable period of time.

(1a) A foreigner may also be issued a residence permit for the purpose of applying for a study place. The maximum permissible duration of residence for a foreigner applying for a place to study shall be 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. This shall not apply in the first year of residence during a stay for the purpose of preparatory measures for a course of study, except during holiday time and in the case of residence pursuant to sub-section 1a.

(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, 19 and 21. Sub-section 3 shall apply mutatis mutandis. 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.

(6) A foreigner to whom another Member State of the European Union has issued a residence title for study purposes which falls within the ambit of Council directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (Official EU Journal no. L 375, p. 12) shall be granted a residence permit for the same purpose where he or she

1. wishes to carry out part of his or her studies at an educational establishment in the Federal territory because he or she is obliged under the terms of reference for the course of studies to carry out part of his or her studies at an educational establishment of another Member State of the European Union or
2. fulfils the conditions pursuant to sub-section 1 and wishes to continue in the Federal territory part of a course of study commenced in another Member State or to supplement such a course of study in the Federal territory and
  - a) is participating in an exchange programme between the Member States of the European Union or in an exchange programme of the European Union or
  - b) has been admitted for a course of study for a period of at least two years in the other Member State of the European Union.

A foreigner who applies for a residence title pursuant to sentence 1, no. 2 is to submit to the competent authority documentation on his or her academic education to date and on the intended course of studies in Germany which verifies that the studies in the Federal territory shall constitute a continuation or supplementation of the studies completed to date. Section 9 shall not apply.

(7) Where the foreigner is under 18 years of age, the persons entitled to care and custody of the foreigner must consent to the planned stay.

## **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** **Research**

(1) A foreigner shall be granted a residence permit for research purposes where

1. he or she has concluded an effective admission agreement for the purpose of carrying out a research project with a research establishment which is recognised for implementation of the special admission procedure for researchers in the Federal territory pursuant to Council directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (Official EU Journal no. L 289, p. 15) and
2. the recognised research establishment has undertaken in writing to bear the costs accruing to public bodies up to six months after termination of the admission agreement for

- a) the foreigner's subsistence during an unlawful stay in a Member State of the European Union and
- b) deportation of the foreigner.

(2) The requirement pursuant to sub-section 1, no. 2 should be waived where the activities of the research establishment are financed primarily from public funds. The requirement may be waived where there is a special public interest in the research project. Section 66 (5), Section 67 (3) and Section 68 (2), sentence 2 and 3 and (4) shall be applicable *mutatis mutandis* to the declarations furnished pursuant to sub-section 1, no. 2.

(3) The research establishment may also submit the declaration pursuant to sub-section 1, no. 2 to the body responsible for its recognition as a general declaration for all foreigners to whom a residence permit is issued on the basis of an admission agreement concluded with the establishment concerned.

(4) The residence permit shall be issued for a period of at least one year. By way of derogation from sentence 1, where the research project is completed in a shorter period the term of the residence permit shall be limited to the duration of the research project.

(5) Foreigners who hold a residence title from another Member State of the European Union for research purposes pursuant to directive 2005/71/EC shall be granted a residence permit or a visa for the purpose of carrying out parts of the research project in the Federal territory. The residence permit shall be issued for a stay of more than three months only if the conditions pursuant to sub-section 1 are met. (4) Section 9 shall not apply.

(6) A residence permit pursuant to sub-sections 1 and 5, sentence 2 shall entitle the holder to pursue an economic activity pertaining to the research project specified in the admission agreement and to pursue teaching activities. A foreigner who meets the conditions pursuant to sub-section 5, sentence 1 may also pursue an economic activity pursuant to sentence 1 without a residence title for a period of three months within a twelve-month period.

(7) Sub-sections 1 and 5 shall not apply for foreigners

1. who are resident in a Member State of the European Union because they have filed an application for the granting of refugee status or of subsidiary protection within the meaning of directive 2004/83/EC,
2. who are resident in a Member State of the European Union under the terms of an arrangement to provide temporary protection,
3. whose deportation has been suspended in a Member State of the European Union on actual or legal grounds,
4. whose research activities form part of doctoral studies or
5. who are dispatched by a research establishment in another Member State of the European Union to a German research establishment as an employee.

## **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 500 000

euros are invested and five 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 should be issued with 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 where the foreigner has successfully realised the planned activity and the subsistence of the foreigner and the dependents living with him or her as a family unit and whom he is required to support is ensured by adequate income.

(5) By way of derogation from sub-section 1, a foreigner may be granted a residence permit for the purpose of self-employment. A required permit to practice the profession must have been issued or confirmation must have been provided that such permit will be issued. Sub-section 1, sentence 4, shall apply mutatis mutandis. Sub-section 4 shall not apply.

(6) A foreigner who is to be or has been granted a residence permit for another purpose may be permitted to pursue self-employment while retaining the aforesaid purpose of residence where the permits required under other provisions have been issued or an undertaking has been provided that such permits will be issued.

## **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; admission when special political interests apply**

(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) In order to safeguard special political interests of the Federal Republic of Germany, in consultation with the supreme Land authorities the Federal Ministry of the Interior may order

foreigners from specific states or certain categories of foreigners defined by other means to be granted approval for admission by the Federal Office for Migration and Refugees. No preliminary proceedings shall take place pursuant to Section 68 of the Code of Administrative Court Procedure. The foreigners concerned shall be issued with a residence permit or settlement permit, in accordance with the approval for admission. The settlement permit may be issued subject to a condition restricting the permissible place of residence. The residence permit entitles the holder to pursue an economic activity.

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

### **Section 23a**

#### **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 enforceably required 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 the conditions stipulated in Section 3 (2) of the Asylum Procedure Act or Section 60 (8), sentence 1 apply; the residence permit shall be refused.

(3) The foreigners 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).

(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 where the Federal Office for Migration and Refugees has incontestably granted refugee status (Section 3 (4) of the Asylum Procedure Act). Sub-section 1, sentences 2 to 4 shall apply *mutatis mutandis*.

(3) A foreigner should be granted a residence permit where a deportation ban applies pursuant to Section 60 (2), (3), (5) or (7). The residence permit shall not be granted 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) 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) 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 who is non-enforceably required to leave the Federal territory 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.

(4a) By way of derogation from Section 11 (1), a foreigner who has been the victim of a criminal

offence pursuant to Sections 232, 233 or 233a of the Criminal Code may also be granted a residence permit for a temporary stay, even if he or she is enforceably required to leave the Federal territory. The residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers his or her temporary presence in the Federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his or her information,
2. he or she has broken off contact to the persons accused of having committed the criminal offence and
3. he or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence.

(5) By way of derogation from Section 11 (1), a foreigner who is enforceably required to leave the Federal territory 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. The residence permit shall be issued for three years in the cases covered by Section 25 (1) and (2) and for at least one year in the cases covered by Section 25 (3). The residence permit pursuant to Section 25 (4a) shall be issued for six months in each instance and extended; a longer period of validity is permissible in substantiated cases.

(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 *mutatis mutandis*. 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.

(1a) The subsequent immigration of dependents shall not be permitted

1. if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the subsequently immigrating persons to enter and stay in the Federal territory or
2. if there are concrete indications that one of the spouses has been forced into marriage.

(2) Sub-sections 1a and 3, Section 9 (3), Section 9c, sentence 2, 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 dependents or other members of his or her household. Section 5 (1), no. 2 may be waived.

(4) The period of validity of a residence permit for the purpose of the subsequent immigration of dependents must not exceed the period of validity of the residence permit held by the foreigner whom the dependents concerned are joining in the Federal territory. It shall be issued for this period if the foreigner who is to be joined in the Federal territory by the subsequently immigrating dependents holds a residence permit pursuant to Section 20 or Section 38a. The period of validity of the residence permit must not exceed that of the dependent's passport or passport substitute, however. The residence permit is otherwise to be issued for an initial period of at least one year.

**Section 28**

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

(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), no. 1, it shall be granted in the cases covered by sentence 1, nos. 2 and 3. By way of derogation from Section 5 (1), no. 1, it should be granted as a general rule in the cases covered by sentence 1, no. 1. By way of derogation from Section 5 (1), no. 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 unit already exists in the Federal territory. Section 30 (1), sentence 1, nos. 1 and 2, sentence 3 and (2), sentence 1 shall apply mutatis mutandis in the cases covered by sentence 1, no. 1.

(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 unity 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 unity 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, EC long-term residence permit or 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). In the cases covered by sentence 1, these conditions shall be waived where

1. the application for issuance of a residence title which is required in connection with the subsequent immigration of dependents is filed within three months of final recognition as a person entitled to asylum or final granting of refuge status and
2. it is not possible for a foreigner and his or her dependents to live together as a family unit in a state which is not a Member State of the European Union and to which the foreigner or his or her dependents have special ties.

The deadline stated in sentence 2, no. 1 shall also be deemed to be met on the foreigner filing the application in good time.

(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. Section 26 (4) shall apply mutatis mutandis. The subsequent immigration of dependents shall not be granted in the cases covered by Section 25 (4) to (5), Section 104a (1), sentence 1 and Section 104b.

(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 unit 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) The residence permit shall entitle the holder to pursue an economic activity,

1. where the foreigner whom the subsequently immigrating dependents are joining is entitled to pursue an economic activity or
2. where marital cohabitation has lawfully existed in the Federal territory for at least two years and the residence permit of the foreigner whom the subsequently immigrating dependents are joining is not subject to a subsidiary provision pursuant to Section 8 (2) or extension of his or



her residence is not excluded by law or by an ordinance.

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

- (1) A foreigner's spouse shall be granted a residence permit if
1. both spouses are at least 18 years of age,
  2. the spouse is able to communicate in the German language on a basic level at least and
  3. the foreigner
    - a) possesses a settlement permit,
    - b) possesses an EC long-term residence permit,
    - c) possesses a residence permit pursuant to Section 20 or Section 25 (1) or (2),
    - d) has held a residence permit for two years and the residence permit is not subject to a subsidiary provision pursuant to Section 8 (2) or the subsequent issuance of a settlement permit has not been ruled out by virtue of a rule of law,
    - e) 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 in the Federal territory is expected to exceed one year or
    - f) possesses a residence permit pursuant to Section 38a and the marriage already existed in the Member State of the European Union in which the foreigner has the status of a long-term resident.

Sentence 1, nos. 1 and 2 shall have no bearing on issuance of the residence permit where

1. the foreigner is in possession of a residence title pursuant to Sections 19 to 21 and the marriage already existed at the time when he or she established their main ordinary residence in the Federal territory,
2. the foreigner held a residence permit pursuant to Section 20 directly prior to issuance of a settlement permit or an EC long-term residence permit or
3. the conditions specified in sentence 1, no. 3, letter f apply.

Sentence 1, no. 2 shall have no bearing on issuance of the residence permit where

1. the foreigner holds a residence title pursuant to Section 25 (1) or (2) or Section 26 (3) and the marriage already existed at the time when the foreigner established his or her main ordinary residence in the Federal territory,
2. the spouse is unable to provide evidence of a basic knowledge of German on account of a physical, mental or psychological illness,
3. the spouse's need for integration is discernibly minimal within the meaning of a statutory instrument issued pursuant to Section 43 (4) or the spouse would, for other reasons, not be eligible for an integration course pursuant to Section 44 after entering the Federal territory or
4. by virtue of his or her nationality, the foreigner may enter and stay in the Federal territory without requiring a visa for a period of residence which does not constitute a short stay.

(2) By way of derogation from sub-section 1, sentence 1, no. 1, the residence permit may be issued to avoid particular hardship. Where the foreigner holds a residence permit, the other conditions stipulated in sub-section 1, sentence 1, no. 3, letter d may be waived.

(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.

(4) Where a foreigner is simultaneously married to several spouses and lives together with one spouse in the Federal territory, no other spouse shall be granted a residence permit pursuant to sub-section 1 or sub-section 3.

### **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. the foreigner has died while marital cohabitation existed in the Federal territory

and the foreigner was in possession of a residence permit, settlement permit or EC long-term residence 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. Sentence 1 shall not be applicable if no extension of the foreigner's residence permit is permissible or if it is not permissible to issue the foreigner with a residence permit or EC long-term residence permit because this is precluded by a rule of law on account of the purpose of residence or by a subsidiary provision attaching to the residence permit pursuant to Section 8 (2). The residence permit entitles the holder to pursue an economic activity.

(2) The requirement stipulated in sub-section 1, sentence 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 as part of a family unit. 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 or an EC long-term residence 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 a limited period for as long as the conditions for granting of the residence permit or EC long-term 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, settlement permit or EC long-term residence 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, settlement permit or EC long-term residence permit.

(2a) The minor, unmarried child of a foreigner who holds a residence permit pursuant to Section 38a shall be granted a residence permit if family unity already existed in the Member State of the European Union in which the foreigner possesses the status of a long-term resident. The same shall apply if the foreigner held a residence permit pursuant to Section 38a directly prior to issuance of a settlement permit or an EC long-term residence 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, settlement permit or EC long-term residence 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 may be granted a residence permit ex officio if one parent possesses a residence permit, settlement permit or EC long-term residence permit. Where both parents or the parent possessing sole right of care and custody hold a residence permit, a settlement permit or an EC long-term residence permit at the time of birth, the child born in the Federal territory shall be granted a residence permit ex officio. A child born in the Federal territory whose mother or father 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 lawful 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, settlement permit or EC long-term residence permit and the child lives together with the said parent as part of a family unit, 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 and an EC long-term residence 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 and the EC long-term residence 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 of at least six months or a prison term of at least three months or a fine of at least 90 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, sentence 2, 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 parents and other dependents**

(1) By way of derogation from Section 5 (1), no. 1 and Section 29, (1), no. 2, a residence permit shall be issued to the parents of a minor foreigner who holds a residence permit pursuant to Section 25 (1) or (2) or a residence permit pursuant to Section 26 (3), if no parent entitled to legal custody is resident in the Federal territory.

(2) Other dependents 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, sentence 1, nos. 1 and 3 shall be possible in order to prevent particular hardship. The requirements stipulated in sub-section 1, sentence 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.

### **Section 38a**

#### **Residence permit for persons who possess the status of long-term residents in other Member States of the European Union**

(1) A foreigner who has the status of a long-term resident in another Member State of the European Union shall be granted a residence permit if he or she wishes to stay in the Federal territory for a period in excess of three months. Section 8 (2) shall not apply.

(2) Sub-section 1 shall not be applicable to foreigners who

1. are dispatched by a service provider in connection with the cross-border provision of services
2. intend to provide any other form of cross-border services or
3. wish to work in the Federal territory as seasonal workers or to take up employment as cross-frontier workers.

(3) The residence title pursuant to sub-section 1 shall entitle the holder to pursue an economic activity only if the conditions stated in Section 18 (2), Sections 19, 20 or 21 are met. Where the residence title pursuant to sub-section 1 is issued for study purposes or for other educational purposes, Sections 16 and 17 shall apply mutatis mutandis. In the cases covered by Section 17, the residence title shall be issued without the approval of the Federal Employment Agency.

(4) A residence permit issued pursuant to sub-section 1 may be provided with a subsidiary provision pursuant to Section 39 (4) for no longer than twelve months. In the case of issuance of the residence permit pursuant to sub-section 1, the period stated in sentence 1 shall begin upon the holder being permitted to take up employment for the first time. On expiry of this period, the residence permit shall entitle the holder to pursue an economic activity.

### **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) or in accordance with the treaty of 25 April 2005 on the accession of the Republic of Bulgaria and Romania to the European Union (Federal Law Gazette 2006 II, p. 1146) 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 treaties. 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. 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 Labour and Social Affairs 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 Labour and Social Affairs 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 (5), 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 Labour and Social Affairs 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**

### **Integration**

#### **Section 43**

##### **Integration course**

(1) Foreigners living lawfully in the Federal territory on a permanent basis are provided with support in integrating into the economic, cultural and social life of the Federal Republic of Germany and are expected to undertake commensurate integration efforts in return.

(2) Integration efforts by foreigners are supported by a basic package of measures to promote integration (integration course). The aim of the integration course is to successfully impart the German language, legal system, culture and history to foreigners. In this way, it is 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. 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 proper and successful participation in the courses and the appurtenant certification, 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),
  - d) as a long-term resident pursuant to Section 38a or
2. on receiving a residence title 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.

In cases covered by sentence 1, no. 3, the entitlement to attend an orientation course shall remain unaffected 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. This provision shall apply mutatis mutandis to German nationals who do not possess an adequate knowledge of the German language and have special integration needs.

#### **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

- a) is unable to communicate at a basic level in the German language or
  - b) does not possess an adequate knowledge of the German language at the time of issuance of a residence title pursuant to Section 23 (2), Section 28 (1), sentence 1, no. 1 or Section 30 or
2. he or she receives benefits in accordance with Book Two of the Social Code and an integration agreement pursuant to Book Two of the Social Code provides for participation in an integration course or
  3. he or she has special integration needs and the foreigners authority requires him to participate in an integration course.

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. In the cases covered by sentence 1, no. 2 the foreigner shall also be obliged to attend if the institution providing basic security for job seekers requires him or her to attend. In the cases covered by sentence 1, nos. 1 and 3, where benefits are received in accordance with Book Two of the Social Code for the measures pursuant to Section 15 of Book Two of the Social Code the institution providing basic security for job seekers should, as a general rule, follow the obligation imposed by the foreigners authority. Where, in individual cases, the institution providing basic security for job seekers reaches a divergent decision, it is to notify the foreigners authority accordingly, which shall then revoke the obligation. The obligation shall be revoked where it is unreasonable to expect a foreigner to attend a part-time course in addition to pursuing an economic activity.

(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.

(2a) Foreigners who hold a residence permit pursuant to Section 38a shall be exempted from the obligation to attend an orientation course if they are able to prove that they have already attended integration measures in another Member State of the European Union in order to attain their legal status as a long-term resident.

(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 or fails to pass the final test, prior to extending his or her residence permit the competent foreigners authority shall inform the foreigner of the possible consequences of his or her actions (Section 8 (3), Section 9 (2), sentence 1, nos. 7 and 8 of this Act, Section 10 (3) of the Nationality Act). The foreigners authority may apply means of administrative coercion in order to enjoin the foreigner to meet his or her obligation to attend. 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 should be complemented by additional integration measures organised by the Federation and the Länder, in particular social education and migration-specific counselling 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 enforceably required to leave the Federal territory; 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**

(1) On request, a foreigner shall be obliged to present and surrender

1. his or her passport, passport substitute or substitute identity document and
2. his or her residence title or a document confirming suspension of deportation

to the authorities entrusted with implementing the law on foreigners 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 a 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.

(4) Where the passport obligation (Section 3 (1)) is waived pursuant to Section 5 (3), a substitute identity document shall be issued. Sub-section 3 shall remain unaffected.

**Section 49**  
**Verification, establishment and documentation of identity**

(1) Subject to the conditions stipulated in Section 48 (1), the authorities entrusted with implementing this Act may read out the biometric and other data stored on the electronic storage medium of a document pursuant to Section 48 (1), no. 1, obtain the required biometric data from the holder of the document and compare the biometric data. All other authorities to which data are transmitted from the Central Aliens Register pursuant to Sections 15 to 20 of the Act on the Central Aliens Register and the registration authorities shall also be authorised to undertake measures pursuant to sentence 1, insofar as they are permitted to verify the authenticity of the document or the holder's identity. Biometric data within the meaning of sentence 1 shall comprise only the fingerprints, the photograph and the iris images.

(2) 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.

(3) 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 his or her deportation is to be suspended or
2. if necessary in order to implement other measures in accordance with this Act.

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

(5) 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 enforceably required to leave the Federal territory, 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 an application for a national visa;
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.

(6) Measures within the meaning of sub-sections 3 to 5, with the exception of sub-section 5, no. 5, are the taking of photographs and fingerprints, the taking of measurements and similar measures, including bodily intrusions undertaken by a doctor in accordance with prevailing medical standards in order to establish the foreigner's age, provided that no ill effect on the latter's health is to be feared. The measures shall be permissible on foreigners aged 14 or over; any doubts as to whether the foreigner has reached 14 years of age shall be to the detriment of the foreigner. 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.

(6a) Measures within the meaning of sub-section 5, no. 5 are the taking of photographs and fingerprints.

(7) 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.

(8) 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.

(9) 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.

(10) The foreigner shall be required to tolerate the measures pursuant to sub-sections 1 and 3 to 8.

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

(1) The Federal Office of Administration shall keep a database in which information shall be stored on identity documents issued by foreign public bodies and belonging to nationals of the states specified in Enclosure 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) fingerprints
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.

(2a) If the foreigners authority has concrete grounds to suspect that the foreigner has been the victim of a criminal offence as specified in Section 25 (4a), sentence 1, it shall set a deadline for leaving the country which will allow the foreigner sufficient time to decide whether he or she is prepared to testify pursuant to Section 25 (4a), sentence 2, no. 3. A period of at least one month shall be allowed for departure. The foreigners authority may refrain from setting a deadline for leaving the country pursuant to sentence 1 or may annul or reduce the period allowed for departure, if

1. the foreigner's stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany or
2. the foreigner has voluntarily re-established contact with the persons pursuant to Section 25 (4a), sentence 2, no. 2 after being duly informed pursuant to sentence 4.

The foreigners authority or a body authorised by the latter shall inform the foreigner as to the prevailing arrangements, programmes and measures for victims of criminal offences stated in Section 25 (4a), sentence 1.

(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 and no grounds for expulsion apply pursuant to Section 54, nos. 5 to 7 or Section 55 (2), nos. 8 to 11. The settlement permit of a foreigner cohabiting with a German as his or her spouse shall not expire pursuant to sub-section 1, nos. 6 and 7 if no grounds for expulsion apply pursuant to Section 54, nos. 5 to 7 or Section 55 (2), nos. 8 to 11. 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 or the suspension of deportation 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 whom the Federal Office for Migration and Refugees has incontestably granted refugee status 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 by virtue of having been incontestably granted refugee status by the Federal Office for Migration and Refugees, if he or she has left the Federal territory and the competence for issuing a travel document has passed to another state.

(8) Prior to revocation of a residence permit pursuant to Section 38a (1), prior to the expulsion of a foreigner who holds such a residence permit and prior to issuing a deportation order against a foreigner pursuant to Section 58a, the competent authority in the proceedings pursuant to Section 91c (3) shall, through the Federal Office for Migration and Refugees, afford the Member State of the European Union in which the foreigner holds the legal status of a long-term resident an opportunity to submit an opinion, if deportation to an area in which this legal status cannot be acquired is under consideration. Upon the opinion being received from the other Member State in good time, it shall be considered by the competent authority.



(9) The EC long-term residence permit shall expire only if

1. issuance thereof is revoked on account of fraudulent misrepresentation, threats or bribery,
2. the foreigner is expelled or is served with a deportation order pursuant Section 58a,
3. the foreigner is resident for a period of twelve consecutive months outside of the area in which the legal status of a long-term resident can be acquired,
4. the foreigner remains outside of the Federal territory for a period of six years or
5. the foreigner acquires the legal status of a long-term resident in another Member State of the European Union.

Sub-sections 2 to 4 shall apply mutatis mutandis to the cases specified in sentence 1, nos. 3 and 4.

## **Section 52 Revocation**

(1) Save in the cases covered by sub-sections 2 to 7, 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,
4. his or her recognition as a person entitled to asylum or his or her refugee status lapses or becomes null and void or
5. the foreigners authority establishes, after issuance of a residence permit pursuant to Section 25 (3), sentence 1, that
  - a) the conditions pursuant to Section 60 (2), (3), (5) or (7) are not met or are no longer met,
  - b) the foreigner fulfils one of the grounds for exclusion pursuant to Section 25 (3), sentence 2, letters a to d or,
  - c) in the cases covered by Section 42, sentence 1 of the Asylum Procedure Act, the assessment is revoked or becomes null and void.

In the cases covered by sentence 1, nos. 4 and 5, the residence title of the dependents living together with the foreigner as a family unit 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.

(3) A residence permit issued for study purposes pursuant to Section 16 (1) may be revoked, if

1. the foreigner pursues an economic activity without the necessary permit,
2. the foreigner fails to make adequate progress with his or her studies, with due regard to the average duration of study for the course of study at the higher education establishment concerned and taking into account his or her individual situation, or
3. the foreigner no longer meets the conditions under which he or she could be granted a residence permit pursuant to Section 16 (1) or (6).

(4) A residence permit issued pursuant to Section 20 may be revoked, if

1. the research establishment with which the foreigner has concluded an admission agreement loses its recognised status, where the foreigner has been involved in an action which has led to the loss of such status,
2. the foreigner no longer conducts research or is no longer permitted to conduct research at the research establishment or
3. the foreigner no longer meets the conditions under which he or she could be granted a residence permit pursuant to Section 20 or under which it would be permissible to conclude an admission agreement with him or her.

(5) A residence permit pursuant to Section 25 (4a), sentence 2 should be revoked, if

1. the foreigner was not or is no longer prepared to testify in the criminal proceedings,
2. the information referred to in Section 25 (4a), sentence 2, no. 1 which the foreigner has provided is considered by the public prosecutor's office or the criminal court to be in all reasonable probability false,
3. the foreigner has voluntarily re-established contact with the persons pursuant to Section 25 (4a), sentence 2, no. 2,
4. the criminal proceedings in which the foreigner was to testify as a witness have been dismissed or
5. the foreigner no longer meets the conditions for issuance of a residence title pursuant to Section 25a (4a) on account of other circumstances.

(6) A residence permit pursuant to Section 38a should be revoked if the foreigner loses his or her legal status as a long-term resident in another Member State of the European Union.

(7) The Schengen visa of a foreigner residing with this visa in the Federal territory shall be revoked, if

1. the foreigner pursues an economic activity without the permit which is required pursuant to Section 4 (3) or
2. there are justifiable grounds to assume that the foreigner intends to pursue an economic activity without the permit which is required pursuant to Section 4 (3).

Where the visa was not issued by a German diplomatic mission abroad, the authority revoking the visa shall notify the issuing state through the Federal Office for Migration and Refugees.

### **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 he or she belongs to or has belonged to an organisation which support terrorism or supports or has supported such an organisation; expulsion may only be based on membership or supportive acts in the past insofar as the 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 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 54a**

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

- (1) A foreigner against whom an enforceable expulsion order pursuant to Section 54, no. 5, 5a or an enforceable 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 enforceably required to leave the Federal territory 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, either in Germany or abroad,

1. a) has furnished false or incomplete information in order to obtain a German residence title, a Schengen visa, a passport substitute, eligibility for exemption from the passport obligation or the suspension of deportation or,  
b) notwithstanding a legal obligation, has failed to cooperate in measures undertaken by the authorities responsible for implementing this Act or the Convention Implementing the Schengen Agreement

in administrative proceedings conducted by authorities of a state applying the Convention Implementing the Schengen Agreement,

provided that the foreigner was informed beforehand of the legal consequences of such action,

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,
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,
9. specifically and continuously brings his or her influence to bear on a child or a young person in order to instil or intensify a hate of persons belonging to other ethnic groups or religions,

10. prevents another person from participating in life in the Federal Republic of Germany on an economic, cultural or social level by reprehensible means, in particular through the use or threat of violence or
  11. coerces or attempts to coerce another person into entering into marriage.
- (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 as part of a family unit 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,
  - 1a. possesses an EC long-term residence permit,
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 to 2 as a spouse or in a registered partnership,
4. cohabits with a German dependent or partner in life in a family unit 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. Sentence 1 shall not be applicable where the adolescent has been unappealably convicted of wilfully committing a series of serious offences, of committing severe criminal offences or of committing a particularly severe criminal offence.

(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 a deportation ban 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 should 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 enforceable.

(3) Section 60 (1) to (5) (7) to (9) and Section 62 shall apply mutatis mutandis.

### **Section 58** **Deportation**

(1) The foreigner shall be deported if the requirement to leave the Federal territory is enforceable 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 requirement to leave the Federal territory shall be enforceable 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 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 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 reached by another member state of the European Union (official EC Journal no. L 149, p. 34), 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 requirement to leave the Federal territory shall otherwise become enforceable only upon refusal of the residence title or another administrative act via which the foreigner becomes required to leave pursuant to Section 50 (1) becoming enforceable.

(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 58a** **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 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.

(5) No deadline shall require to be set in cases covered by Section 58 (3), no. 1; the foreigner shall be deported directly from detention or public custody. An impending deportation should be announced at least one week beforehand.

## **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 persons who are entitled to asylum and to foreigners who have been incontestably granted refugee status or who enjoy the legal status of foreign refugees on other grounds in the Federal territory or who have been granted foreign refugee status outside of the Federal territory in accordance with 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 organisations 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. Article 4 (4) and Articles 7 to 10 of Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) shall additionally be applied in establishing whether a case of persecution pursuant to sentence 1 applies. Where the foreigner cites the ban on deportation pursuant to this sub-section, the Federal Office for Migration and Refugees shall establish in an asylum procedure whether the conditions stated in sentence 1 apply and the foreigner is to be granted refugee status, except in cases covered by sentence 2. The decision by 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 or inhumane or degrading treatment or punishment.

(3) A foreigner may not be deported to a state in which he or she is wanted for an offence and a danger of imposition or enforcement of the death penalty exists. 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. A foreigner shall not be deported to another state in which he or she will be exposed, as a member of the civilian population, to a substantial individual danger to life or limb as a result of an international or internal armed conflict. Dangers pursuant to sentence 1 or sentence 2 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 the foreigner meets the conditions stipulated in Section 3 (2) of the Asylum Procedure Act.

(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.

(11) Article 4 (4), Article 5 (1) and (2) and Articles 6 to 8 of Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) shall apply in establishing whether bans on deportation apply pursuant to sub-sections 2, 3 and 7, sentence 2.

### **Section 60a** **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. The deportation of a foreigner shall also be suspended if the public prosecutor's office or the criminal court considers his or her temporary presence in the Federal territory to be appropriate in connection with criminal proceedings relating to a criminal offence, because it would be more difficult to investigate the facts of the case without his or her information. A foreigner may be granted a temporary suspension of deportation if his or her continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests.

(2a) The deportation of a foreigner shall be suspended for one week where his or her removal or deportation has failed, custody pending deportation is not ordered and the Federal Republic of Germany is obliged to readmit the foreigner by virtue of a legal provision, in particular Article 6 (1) of Council directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (Official EU Journal no. L 321, p. 26). Suspension pursuant to sentence 1 shall not be extendable. Entry of the foreigner into the Federal territory shall be permitted.

(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 by way of 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 enforceably required 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. The geographic restriction pursuant to sentence 1 may be waived if the foreigner is entitled to take up employment without screening pursuant to Section 39 (2), sentence 1, no. 1.

(1a) In cases covered by Section 60a (2a), residence shall be restricted to the administrative district of the most recently responsible foreigners authority. The foreigner must proceed to such location forthwith after entering the Federal territory. Where such an authority is not ascertainable, Section 15a shall apply *mutatis mutandis*.

(2) The Länder may establish departure facilities for foreigners who are enforceably required 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 enforceably required 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. Where deportation has failed due to reasons for which the foreigner is responsible, the order pursuant to sentence 1 shall remain unaffected until expiry of the period stipulated in the order.

(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.

(4) The authority responsible for the detention application may detain a foreigner without a prior judicial order and place such foreigner in temporary custody where

1. there is a strong suspicion that the conditions pursuant to sub-section 2, sentence 1 apply,
2. the judicial decision on the order for detention pending deportation is not obtainable beforehand and
3. there is a well-founded suspicion that the foreigner intends to evade the order for detention pending deportation.

The foreigner shall be brought before the court forthwith for a decision on the order for 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 Urban Affairs, 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. The fine may be fixed and enforced by the Federal Ministry of the Interior or a body designated by the said ministry.

(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, passport substitute 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), (5) or (7). 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,
- 2a. for issuance of an EC long-term residence 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: 100 euros,
5. for issuance of a Schengen visa: 210 euros,
6. for issuance of a Schengen collective visa: 60 euros and 1 euro per person,
- 6a. for recognition of a research establishment for the purpose of concluding admission agreements pursuant to Section 20: 200 euros,
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 or an EC long-term residence permit must not exceed half the fee which is chargeable for issuance of the respective 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 Ministry of Foreign Affairs 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, the imposition of time limits on the effects of removals which they carry out pursuant to Section 11 (1) and (2) 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 suspending deportation pursuant to Section 60a (2a),
  3. revoking a visa
    - a) in case of refusal of entry or removal,
    - 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,
  7. procuring return travel documents for foreigners from individual states by way of official assistance,
  8. issuing notes and certificates for which provision is made in legislation of the European Union confirming the date and place of entry via the external border of a Member State which applies the Schengen acquis in full; this shall not preclude the competence of the foreigners authorities of other bodies designated by the Länder.
- (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 (2) to (9). In cases covered by Section 49 (4), the authorities initiating allocation pursuant to Section 15a shall also be responsible. The diplomatic missions abroad authorised by the Ministry of Foreign Affairs shall be competent in the cases covered by Section 49 (5) 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 Ministry of Foreign Affairs on the recognition of passports and substitute passport papers (Section 3 (1)). 1); the decisions shall take the form of general orders and may be announced in the electronic Federal Gazette.

### **Section 71a** **Jurisdiction and notification**

(1) In the cases covered by Section 98 (2a) and (3), no. 1, the administrative authorities within the meaning of Section 36 (1), no. 1 of the Administrative Offences Act shall be the customs administration authorities. These cooperate with the authorities stated in Section 2 (2) of the Act to Combat Clandestine Employment in prosecuting offences and imposing punishments.

(2) The customs administration authorities shall notify the Central Trade and Industry Register as to non-appealable orders imposing administrative fines pursuant to Section 98 (2a) and (3), no. 1 which are to be entered in the register. This shall apply only to fines in excess of 200 euros.

(3) Courts of law, prosecuting authorities and penal authorities should furnish the customs administration authorities with findings from other proceedings which they consider necessary in prosecuting administrative offences pursuant to Section 98 (2a) and (3), no. 1, except where it is apparent to the body furnishing such information that the legitimate interests of the data subject or other parties involved in the proceedings in the exclusion of such information prevail. Due consideration is to be accorded to how well substantiated the findings to be communicated are.

### **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 authority which has expelled, removed or deported 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 (2) to (5) or (7) and whether a residence title is to be refused pursuant to Section 25 (3), sentence 2, letters a to d 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 authority in consultation with the 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 or whose deportation is suspended.

(6) The competent public prosecutor's office for the criminal proceedings referred to in Section 25 (4a) or the criminal court concerned with such proceedings shall be involved prior to reaching a decision on the issuance, extension or revocation of a residence title pursuant to Section 25 (4a) and prior to setting, annulling or reducing a deadline for leaving the country pursuant to Section 50 (2a), except in cases covered by Section 87 (5), no. 1. Where the competent public prosecutor's office is not yet known to the foreigners authority, it shall involve the police authority responsible for the place of residence prior to reaching a decision on setting, annulling or reducing a deadline for leaving the country pursuant to Section 50 (2a).

### **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 Ministry of Foreign Affairs 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).

*[as of 1 February 2009]*

*(1) Data collected in the course of the visa procedure by a German diplomatic mission abroad or by the diplomatic mission abroad of another Schengen state which is responsible for taking receipt of the visa application on the person applying for a visa, on the inviting party and on persons guaranteeing that the foreigner's subsistence will be ensured by way of a declaration of commitment or by other means or on other reference persons in Germany may be transferred via the competent body responsible 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 purposes of ascertaining any grounds for refusal pursuant to Section 5 (4) or investigating any other security reservations.*

The authorities involved shall transfer information on grounds for refusal pursuant to Section 5 (4) to the competent diplomatic mission abroad via the Ministry of Foreign Affairs. 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.

*[as of 1 May 2008]*

*(2) Prior to issuing or extending a residence title, temporarily suspending deportation or permitting residence, the foreigners authorities may transfer the personal data stored at their facilities on the persons concerned via the Federal Office of Administration 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 other 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 grounds for refusal pursuant to Section 5 (4) or any other security reservations apply. Should the authorities stated in sentence 1 obtain knowledge of grounds for refusal pursuant to Section 5 (4) or other security reservations during the period of validity of the residence title, they shall duly notify the competent foreigners authority or the competent diplomatic mission abroad forthwith. The authorities stated in sentence 1 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 Ministry of Foreign Affairs 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 1a**

### **Transit**

#### **Section 74a**

##### **Transit of foreigners**

Foreign states may return foreigners to another state from their territory via the Federal territory or readmit foreigners into their territory from another state via the Federal territory, subject to the permission of the competent authorities (transit operations). Transit operations shall be carried out on the basis of inter-governmental agreements and legislation of the European Community. The central authority pursuant to Article 4 (5) of directive 2003/110/EC is the Federal Police Central Bureau. The foreigner in transit is to tolerate the necessary measures in connection with his or her transit journey.

**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 Ministry of Foreign Affairs;
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 Member States of the European Union as the National Contact Point and competent authority pursuant to Article 27 of directive 2001/55/EC, Article 25 of directive 2003/109/EC and Article 8 (3) of directive 2004/114/EC, and for communications pursuant to Section 52 (7), sentence 2;
6. Keeping the register pursuant to Section 91a;
7. Granting payment of the funds approved under the schemes to promote voluntary return;
8. Carrying out the admission process pursuant to Section 23 (2) and the allocation of foreigners admitted pursuant to Section 23 and Section 22, sentence 2 to the 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;
10. Recognition of research establishments for the purpose of concluding admission agreements pursuant to Section 20; in this connection, the Federal Office for Migration and Refugees shall be supported by a consultative council on research migration;
11. Coordinating the transfer of information and evaluating findings of the federal authorities, in particular of the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution, on foreigners for whom measures under the law on foreigners, asylum or nationality are to be considered owing to a risk to public security.

**§ 76**  
**( r e v o k e d )**

**Part 3**  
**Administrative procedures**

**Section 77**

**Written form; exemption from formal requirements**

(1) The administrative act via which a passport substitute, a 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. An administrative act refusing a residence permit, a settlement permit or an EC long-term residence permit shall be supplemented by explanatory notes informing the foreigner as to the legal remedy which is available in order to challenge the administrative act, the body with which the corresponding appeal is to be lodged and the deadline which is to be observed.

(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, identification card substitute 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 be issued to a foreigner only upon the foreigner concerned filing a corresponding application

(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. It shall set him or her such a deadline when postponing the processing of an application for issuance of a residence title on account of lacking or incomplete information and shall specify the information which subsequently requires to be furnished. 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 or authorised officials 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 Act on the Federal Police shall apply mutatis mutandis.

(5) On request, the foreigner for whom a document is to be issued according to a standard form in accordance with this Act, the Asylum Procedure Act or the provisions enacted to implement this Act is to

1. submit a current photograph in accordance with a statutory instrument enacted pursuant to Section 99 (1), no. 13 or to cooperate in the taking of such a photograph and
2. cooperate in the taking of his or her fingerprints.

The photograph and the fingerprints may be incorporated into documents pursuant to sentence 1 and processed and used by the competent authorities to document and subsequently establish the foreigner's identity.

## **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), sentence 1 requiring the foreigner to take up residence at a departure facility,
  3. the amendment or rescission of a subsidiary provision concerning the pursuit of employment
  4. revocation of the foreigner's residence title pursuant to Section 52 (1), sentence 1, no. 4 in the cases covered by Section 75 (2) of the Asylum Procedure Act,
  5. revocation or withdrawal of the recognition of research establishments for the purpose of concluding admission agreements pursuant to Section 20 and
  6. the revocation of a Schengen visa pursuant to Section 52 (7)
- 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 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. Public bodies should notify the competent foreigners authority forthwith if, in discharging their duties, they obtain knowledge of special integration needs within the meaning of a statutory instrument enacted pursuant to Section 43 (4). The diplomatic missions abroad shall transfer to the competent foreigners authority personal data on a foreigner which is suitable for the purposes of establishing the latter's identity and nationality, should they acquire knowledge of the fact that such data may be of current significance in enforcing the foreigner's enforceable requirement to leave the Federal territory.

(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.

(5) The bodies to be involved pursuant to Section 72 (6) are to notify the foreigners authorities

1. ex officio of any circumstances justifying the revocation of a residence title issued pursuant to Section 25 (4a) or the shortening or annulment of a deadline for leaving the country granted pursuant to Section 50 (2a) and
2. ex officio of the competent body or of any transfer of competence, where a case of involvement pursuant to Section 72 (6) has taken place or notification has been effected pursuant to no. 1.

## **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 investigate, establish and document a foreigner's identity**

(1) Federal Office of Criminal Police shall provide official assistance in assessing the data which are collected pursuant to Section 49 by the authorities entrusted with implementing this Act and which are transferred pursuant to Section 73. The data collected pursuant to Section 49 (3) to (5) shall be stored separately from other identification data. The data pursuant to Section 49 (7) shall be kept by the authority carrying out the recordings.

(2) Use of the documents obtained pursuant to Section 49 (3) to (5) or (7) 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 or furnished to the authorities responsible for these measures, to the extent and for the duration necessary.

(3) The data collected pursuant to Section 49 (1) shall be erased by all authorities directly after completing the process of verifying the authenticity of the document or the identity of the holder. The data collected pursuant to Section 49 (3) to (5) or (7) shall be erased by all authorities storing such data 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 (5), nos. 3 and 4 or
4. a period of ten years has elapsed since application for the visa in cases covered by Section 49 (5), no. 5 and since the voice recording in the case of Section 49 (7).

Erasure of the data shall be documented.

(4) Sub-section 3 shall not apply if and for as long as the data are required in connection with criminal proceedings or to avert a danger to public safety or law and order.

### **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 shall be transferred to the requesting body in accordance with Section 49b.

(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) The Federal Office of Administration shall check the data stored in the database for found documents against the data transferred by

1. an authority responsible for establishing the identity or nationality of a foreigner pursuant to Section 16 (2) of the Asylum Procedure Act 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

upon request from the said authorities. 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.

(4) The foreigners authorities shall notify the bodies to be involved pursuant to Section 72 (6) forthwith of

1. the issuance or refusal of a residence title pursuant to Section 25 (4a),
2. the setting, reduction or annulment of a period allowed for departure pursuant to Section 50 (2a) or
3. the transfer of competence from the foreigners authorities to another foreigners authority; this obligation applies to the foreigners authority to which competence has been transferred.

### **Section 90a**

#### **Notifications by the foreigners authorities to the registration authorities**

(1) The foreigners authorities shall notify the competent registration authorities forthwith upon obtaining information indicating that the data stored in the register on foreigners who are obliged to register with the authorities are incorrect or incomplete. They shall notify the registration authorities in particular when a foreigner who is obliged to register with the authorities

1. is resident in the Federal territory and has not registered with the authorities,
2. has left the Federal territory on a permanent basis.

(2) The notifications pursuant to sub-section 1 should contain the following information on the foreigner who is obliged to register with the authorities:

1. Surname, name at birth and first name,
2. date, place and state of birth,
3. nationalities,
4. most recent address in Germany and
5. date of exit from the Federal territory.

### **Section 90b**

#### **Data matching between foreigners authorities and registration authorities**

Foreigners authorities and registration authorities which share the same geographic area of competence shall exchange the data specified in Section 90a (2) annually for the purpose of data maintenance. The receiving authority shall match the transferred data with its own stored data; automated matching shall be permissible. The transferred data may only be used for the purposes of carrying out data matching and data maintenance, after which it shall be erased forthwith; furnished data carriers shall be returned or destroyed forthwith.

### **Section 91**

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

(1) The data relating to expulsion, removal 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 91a** **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 - with the exception of former names and the home address in Germany -, the last place of residence in the country of origin, the region of origin and information furnished voluntarily on the foreigner's 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 of the identity and travel document,
- 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 shall 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.

**Section 91c**  
**Intra-Community information in implementation of directive 2003/109/EC**

(1) In its capacity as the National Contact Point pursuant to Article 25 of directive 2003/109/EC, the Federal Office for Migration and Refugees shall notify the competent authority of another Member State of the European Union in which the foreigner concerned possesses the status of a long-term resident as to the contents and date of a decision on the issuance or extension of a residence permit pursuant to Section 38a (1) or on the issuance of an EC long-term residence permit. The authority which has reached the decision shall transfer the data necessary to this end to the Federal Office for Migration and Refugees without delay. The data required for notifications pursuant to sentence 1 may be transferred to the National Contact Point by means of an automated process, using the Central Aliens Register number.

(2) In the procedure pursuant to Section 51 (9) the Federal Office for Migration and Refugees shall forward inquiries ex officio to the competent bodies of the Member State of the European Union concerned, stating the intended measure and the key factual and legal grounds stated by the foreigners authority in substantiation of the intended measure. The foreigners authority shall transfer the necessary information to the Federal Office for Migration and Refugees to this end. The Federal Office for Migration and Refugees shall forward to the competent foreigners authority the answers received from bodies of other Member States of the European Union in this connection.

(3) The Federal Office for Migration and Refugees shall notify the competent authority of another Member State of the European Union ex officio where a foreigner who possesses long-term resident status in said Member State has been served notice of intention to deport or remove him or her

1. to the Member State of the European Union in which the foreigner holds long-term resident status or
2. to a territory outside of the European Union

or such a measure has been carried out, or where a corresponding deportation order pursuant to Section 58a has been issued or carried out. The notification shall state the primary reason for terminating the foreigner's stay. The notification shall take place as soon as the German authority ordering the measure concerned pursuant to Section 71 informs the Federal Office for Migration and Refugees of the intended or effected measure. To this end, the authorities stated in sentence 3 shall furnish the necessary information to the Federal Office for Migration and Refugees without delay.

(4) In the case of notifications pursuant to sub-sections 1 to 3, the foreigner's personal details shall be transferred for identification purposes. Where dependents who are living with the long-term resident as a family unit on a long-term basis are also involved in cases covered by sub-section 3, their personal details shall also be transferred.

(5) The Federal Office for Migration and Refugees shall forward inquiries from bodies of other Member States of the European Union in connection with the involvement pursuant to Article 22 (3), subparagraph 2 of directive 2003/109/EC to the competent foreigners authorities. The competent foreigners authority shall furnish the Federal Office for Migration and Refugees with the following information of which it has due knowledge:

1. Personal details of the foreigner with long-term resident status concerned,
2. residence- and asylum-related decisions which have been reached for or against the said foreigner,
3. interests which favour or militate against the foreigner's return to the Federal territory or a third country or
4. any other circumstances which it is to be assumed may be of relevance to the inquiring Member State's decision on residence matters.

The competent foreigners authority shall otherwise provide notification that it has no knowledge of any pertinent information. The Federal Office for Migration and Refugees shall forward this information ex officio to the competent body of the inquiring Member State of the European Union.

(6) The Federal Office for Migration and Refugees shall notify the respectively competent foreigners authority ex officio of the contents of notifications from other Member States of the European Union

1. according to which the other Member State of the European Union is intending to carry out or is carrying out residence-terminating measures against a foreigner who holds an EC long-term residence permit,
2. according to which a foreigner who holds an EC long-term residence permit has acquired long-term resident status in another Member State of the European Union or has been issued a residence title or had his or her residence title extended in another Member State of the European Union.

### **Section 91d**

#### **Intra-Community information in implementation of directive 2004/114/EC**

(1) On request, the Federal Office for Migration and Refugees shall furnish the competent authority of another Member State of the European Union with the necessary information in order to enable the competent authorities of the other Member State of the European Union to verify whether the conditions pertaining to issuance of a residence permit pursuant to Article 8 of directive 2004/114/EC apply. This information shall comprise

1. the foreigner's personal details and information on his or her identity and travel documents,
2. information on the foreigner's present and former residence status in Germany,
3. information on completed criminal investigations or such investigations which are known to the foreigners authority,
4. other data concerning the foreigner which are stored in the Central Aliens Register or which originate from the foreigner's file or the visa file and which have been requested by the other Member State of the European Union.

To this end, on request from the Federal Office for Migration and Refugees the foreigners authorities and the diplomatic missions abroad shall transfer to the Federal Office the necessary data in order to enable the said Federal Office to duly provide the information to the requesting competent authorities of the other Member State.

(2) The diplomatic missions abroad and the foreigners authorities may address requests for information to competent bodies of other Member States of the European Union through the Federal Office for Migration and Refugees, where this is necessary in order to verify compliance with the conditions for issuance of a residence permit pursuant to Section 16 (6) or of a corresponding visa. To this end, they may transfer

1. the foreigner's personal details,
2. information on the foreigner's identity and travel documents and on his or her residence title which has been issued in another Member State of the European Union and
3. information on the subject of the application for issuance of the residence title and on the place where such application was filed

and, where pertinent, specify the contents of the desired information in precise terms. The Federal Office for Migration and Refugees shall forward information which it receives to the competent foreigners authorities and diplomatic missions abroad. The data which are transferred in the information furnished by the competent bodies of other Member States of the European Union may be used by the foreigners authorities and diplomatic missions abroad for this purpose.

**Section 91e**  
**Common provisions for the register for the purposes of temporary protection**  
**and intra-Community data transfer**

For the purposes of Sections 91a to 91d,

1. personal details shall be defined as names, in particular surname, name at birth, first names and former names, date of birth, place of birth, sex, nationalities and home address in Germany,
2. details of the identity and travel document shall be defined as the type, number, issuing body, date of issue and period of validity.

**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 one of the supreme Federal authorities 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 individual plan of the supreme Federal authority pursuant to sub-section 2, sentence 1.

(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 development 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, Länder, other member states of the European Union and 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, is enforceably required 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 (2), insofar as the offence is not punishable pursuant to sub-section 2, no. 2,
6. fails to tolerate a measure specified in Section 49 (10) in contravention of said Section,
- 6a. 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),
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 with up to one year's imprisonment or a fine.

(1a) The same punishment shall be applicable to anyone who wilfully commits an act specified in Section 404 (2), no. 4 of Book Three of the Social Code or in Section 98 (3), no. 1, who requires a residence title pursuant to Section 4 (1), sentence 1 in order to reside in the Federal territory and only possesses a residence title in the form of a Schengen visa pursuant to Section 6 (1).

(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 or a suspension of deportation for themselves or for another or who knowingly uses a document

procured in this manner for the purposes of deceit in legal matters

shall be punishable with 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-sections 1a and 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.

(6) In the cases covered by sub-section 1, nos. 2 and 3, an act without the necessary residence title shall be deemed equivalent to an act carried out on the basis of a residence title obtained by threat, bribery or collusion or by furnishing incorrect or incomplete information.

## **Section 96**

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

(1) Anyone who

1. incites another person to commit an act pursuant to Section 95 (1), no. 3 or (2), no. 1, letter a and
  - a) receives a pecuniary advantage or the promise of a pecuniary advantage in return or
  - b) acts in such a manner repeatedly or for the benefit of several foreigners or
2. incites another person to commit an act pursuant to Section 95 (1), no. 1 or no. 2, (1a) or (2), no. 1, letter b or no. 2 and receives a pecuniary advantage or the promise of a pecuniary advantage in return

shall be punishable with a prison sentence of up to five years or a fine.

(2) Anyone who, in the cases covered by sub-section 1,

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

shall be punishable with a prison sentence of between six months and ten years.

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

(4) Sub-section 1, no. 1, letter a, no. 2, sub-section 2, nos. 1, 2 and 5 and sub-section 3 shall be applicable to contraventions of statutory provisions on the entry of foreigners into the territory of the Member States of the European Union and the territory of the Republic of Iceland and of the Kingdom of Norway and on the residence of foreigners in such territories, where

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,
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 or
4. acts in contravention of an enforceable order pursuant to Section 44a (1), sentence 1, no. 3, sentence 2 or 3

shall be deemed to have committed an administrative offence.

(2a) Anyone who, in contravention of Section 4 (3), sentence 2, intentionally or negligently commissions a foreigner on a sustained basis to perform paid work or services for gain shall be deemed to have committed an administrative offence.

(3) Anyone who intentionally or negligently

1. pursues a self-employed activity in contravention of Section 4 (3), sentence 1,
2. 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,
3. 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),
4. contravenes an enforceable order pursuant to Section 46 (1), Section 54a (1), sentence 2 or (3) or Section 61 (1), sentence 2,
5. fails to provide notification, provides incorrect notification or fails to provide notification in good

time in contravention of Section 54a (1), sentence 1,

6. fails to file one of the applications stipulated in Section 80 (4) in contravention of the said Section or
7. contravenes a statutory instrument pursuant to Section 99 (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. 3.

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

(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,
- 3a. to define detailed aspects of the procedure relating to the issuance of residence titles to researchers pursuant to Section 20, in particular
  - a) to regulate the procedure relating to the recognition of research establishments, the attendant conditions and the duration of recognition, the revocation of recognition of a research establishment and the contents of and conditions pertaining to the conclusion of admission agreements pursuant to Section 20 (1), no. 1,
  - b) to provide for the authority which is responsible for granting recognition to publish the addresses of the recognised research establishments, referring in such publications to declarations pursuant to Section 20 (3),
  - c) to oblige foreigners authorities and diplomatic missions abroad to notify the authority responsible for granting recognition as to any findings on recognised research establishments which might provide grounds for the revocation of the said establishments' recognition,
  - d) to oblige recognised research establishments to provide due notification, should the conditions pertaining to recognition or conditions pertaining to concluded admission

agreements cease to apply or in the event of changes to any other significant circumstances,

- e) to establish a consultative council on research migration at the Federal Office for Migration and Refugees which will support the Ministry in connection with the recognition of research establishments and monitor and evaluate the application of Section 20,
  - f) to set the dates on which the processing of applications for the recognition of research establishments is to begin,
- 3b. to define self-employed activities for which a permit pursuant to Section 4 (3), sentence 1 is never required or is not required under certain conditions,
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 identification card substitute may be issued and for how long such an identification card substitute 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 define details regarding the requirements pertaining to photographs and fingerprints and to 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 identification papers,
    - 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 and refused visas and may mutually exchange the data stored therein 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, no. 1 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 shall be authorised to appoint the competent body pursuant to Section 73 (1) without the approval of the Bundesrat, by way of a statutory instrument issued in consultation with the Ministry of Foreign Affairs.

(4) 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 unlimited 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.
- (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.
- (3) A residence title which to which the annotation "EC long-term residence permit" was appended prior to [insert: date on which this Act enters into force pursuant to Article 10 (1)] shall retain its validity as an EC long-term residence permit.

## **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 1 January 2005 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 unlimited 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.

(6) Section 23 (2) in the version valid until 24 May 2007 shall continue to apply in such cases in which the order issued by the supreme Land authority on the basis of the version applying until 24 May 2007 provides for issuance of a settlement permit where special political interests of the Federal Republic of Germany prevail. Section 23 (2), sentence 5 and Section 44 (1), no. 2 shall be applied *mutatis mutandis* to the affected foreigners and the dependents relocating their residence to the Federal territory with the former.

(7) A settlement permit may also be issued to spouses, partners in life and minor, unmarried children of a foreigner who were in possession of a residence title for exceptional circumstances pursuant to Section 31 (1) of the Foreigners Act or a residence permit pursuant to Section 35 (2) of the Foreigners Act prior to 1 January 2005, where the conditions of Section 26 (4) are met and they continue to meet the conditions according to which issuance of a residence title for exceptional circumstances pursuant to Section 31 of the Foreigners Act or of a residence permit pursuant to Section 35 (2) of the Foreigners Act was permissible.

#### **Section 104a** **Regulations governing old cases**

(1) By way of derogation from Section 5 (1), no. 1 and (2), a foreigner whose deportation has been suspended should be granted a residence permit where he or she has been continuously resident in the Federal territory for at least eight years on 1 July 2007, or, if he or she lives together with one or several minor, unmarried children as a family unit, where he or she has been continuously resident in the Federal territory for at least six years on the said date, by virtue of his or her deportation having been suspended, his or her residence being permitted or a residence permit having been issued on humanitarian grounds and he or she

1. has sufficient living space at his or her disposal,
2. has an adequate knowledge of the spoken German language corresponding to level A2 of the

Common European Framework of Reference for Languages,

3. furnishes proof that any children of school age actually attend school,
4. has not wilfully deceived the foreigners authority as to circumstances of relevance to his or her situation under residence law and has not wilfully delayed or obstructed official measures to end his or her residence,
5. does not have any links to extremist or terrorist organisations and does not support such organisations and
6. has not been convicted of an offence wilfully committed in the Federal territory, whereby fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, in accordance with the Residence Act or the Asylum Procedure Act, can only be committed by foreigners shall be ignored as a general principle.

Where the foreigner ensures his or her subsistence independently by means of an economic activity, the residence permit shall be granted pursuant to Section 23 (1), sentence 1. It shall otherwise be issued pursuant to sentence 1; it shall apply as a residence title pursuant to Chapter 2, Part 5; Sections 9 and 26 (4) shall not apply. The requirement stated in sentence 1, no. 2 may be waived until 1 July 2008. The requirement stated in sentence 1, no. 2 shall be waived if the foreigner is unable to meet it on account of a physical, mental or psychological illness or handicap or on grounds of old age.

(2) An unmarried child of full age whose deportation has been suspended, said child being the child of a foreigner whose deportation has been suspended and who has been continuously resident in the Federal territory for at least eight years on 1 July 2007, or, if he or she lives together with one or several minor, unmarried children as a family unit, where he or she has been continuously resident in the Federal territory for at least six years on the said date, by virtue of his or her deportation having been suspended, his or her residence being permitted or a residence permit having been issued on humanitarian grounds, may be granted a residence permit pursuant to Section 23 (1), sentence 1 where said child was a minor at the time of entering the Federal territory and where it appears, on the basis of the child's education and way of life to date, that he or she is capable of integrating into the way of life which prevails in the Federal Republic of Germany. The same shall apply to a foreigner who has been continuously resident in the Federal territory for at least six years as an unaccompanied minor by virtue of his or her deportation having been suspended, his or her residence being permitted or a residence permit having been issued on humanitarian grounds, where it appears, on the basis of the child's education and way of life to date, that he or she is capable of integrating into the way of life which prevails in the Federal Republic of Germany.

(3) If a family member living as part of a family household has committed offences pursuant to sub-section 1, sentence 1, no. 6, this shall lead to refusal of the residence permit for other family members according to this provision. Sentence 1 shall not apply to the spouse of a foreigner who has committed offences within the meaning of sub-section 1, sentence 1, no. 6 where the spouse otherwise meets the requirements of sub-section 1 and it is necessary to enable the continued stay of the spouse in order to avoid special hardship. Where, in exceptional cases, children are separated from their parents, their care and welfare in Germany must be ensured.

(4) The residence permit may be issued subject to the condition that the foreigner attend an integration interview or that an integration agreement be concluded. The residence permit entitles the holder to pursue an economic activity.

(5) The residence permit shall be issued with a period of validity until 31 December 2009. It shall be extended by two further years as a residence permit pursuant to Section 23 (1), sentence 1 if the foreigner's subsistence was ensured up to 31 December 2009 primarily by the foreigner on his or her own through the pursuit of an economic activity or if the foreigner has ensured his or her subsistence on his or her own on a non-temporary basis since 1 April 2009 at least. In both cases,

facts must be available to justify the assumption that the foreigner's subsistence will be for the most part ensured in the future. In the case of sub-section 1, sentence 4 the residence permit shall be issued with an initial period of validity extending only until 1 July 2008 and shall be extended only if the foreigner furnishes proof that he or she meets the conditions of sub-section 1, sentence 1, no. 2 by the aforesaid date at the latest. Section 81 (4) shall not apply.

(6) With regard to extension of the residence permit, derogation from sub-section 5 shall be possible in order to avoid cases of hardship. This provision shall apply in the case of

1. apprentices undergoing training in a recognised trade or on government-sponsored pre-vocational training measures,
2. families with children who are only temporarily reliant on supplementary social benefits,
3. single parents who are temporarily reliant on social benefits and who cannot reasonably be expected to take up employment pursuant to Section 10 (1), no. 3 of Social Code Book II,
4. persons who are unable to work but whose maintenance and any necessary care is secured on a long-term basis by any other means without recourse to any public benefits, except where the benefits are based on contributions which have been paid in,
5. persons who are 65 years of age or older on 31 December 2009, when they have no family in their country of origin but do have dependents (children or grandchildren) who are permanently resident in the federal territory or German nationals and when it is thus ensured that no social benefits will be claimed for such persons.

(7) The Länder may order a residence permit pursuant to sub-sections 1 and 2 to be refused to nationals of certain states on grounds of national security for the Federal Republic of Germany. In order to ensure a nationwide uniform approach, such an order shall require the approval of the Federal Ministry of the Interior.

#### **Section 104b** **Right of residence for integrated children of foreigners whose deportation has been suspended**

By way of derogation from Section 5 (1), no. 1, (2) and Section 10 (3), sentence 1, a minor, unmarried child may be granted a residence permit in his or her own right pursuant to Section 23 (1), sentence 1 in the event of the said child's parents or the parent possessing the sole right of care and custody not being granted a residence permit or an extension of the same pursuant to Section 104a and leaving the federal territory, where

1. the child has reached the age of 14 on 1 July 2007,
2. the child has been lawfully resident in Germany or resident in Germany by virtue of suspended deportation for at least six years,
3. the child has a command of the German language,
4. on the basis of the child's education and way of life to date, he or she has integrated into the prevailing way of life in the Federal Republic of Germany and it is ensured that the child will remain integrated in this way of life in the future and
5. care and custody of the child are ensured.

#### **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 105a** **Provisions as to the administrative procedure**

No derogations by way of Land law shall be permissible from the provisions set out in Section 4 (2), sentence 2 und 4, (5) sentence 2, Section 5 (3) sentence 3, Section 15a (4) sentence 2 and 3, Section 23 (1) sentence 3, Section 23a (1) sentence 1, (2) sentence 2, Section 43 (4), Section 44a (1) sentence 2, (3) sentence 1, Section 49a (2), Section 72 (1) to (4), Section 73 (2) sentence 2, (3) sentence 1 and 2, Section 78 (2) to (7), Section 79 (2), Section 81 (5), Section 82 (1) sentence 3, (3), Section 87 (1), (2) sentence 1 and 2, (4) sentence 1, 2 and 4, (5), Section 89 (1) sentence 2 and 3, (3) and 4, Section 89a (2), (4) sentence 2, (8), Sections 90, 90a, 90b, 91 (1) and (2), Section 91a (3), (4) and (7), Section 91c (1) sentence 2, (2) sentence 2, (3) sentence 4 and (4) sentence 2, Sections 99 and 104a (7) sentence 2, and from the provisions set out in Section 43 (4) and Section 99 pertaining to the administrative procedure.

*[as of 1 May 2008]*

*In Section 105a, the reference "Section 73 (2), sentence 2" shall be replaced by the reference "Section 73 (2)".*

### **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 or detention pending exit from the Federal territory, 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 or in detention pending exit from the Federal territory.

### **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.