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*[Complete edition as valid from 1 March 2020 to 2 October 2020. Only refers to the transitional regulation in Section 107, Paragraph 17 of the Residence Act, which will expire on October 02. Otherwise, the legal text of October 2, 2020 will remain valid.]*

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## **Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory<sup>1)</sup>**

### **Residence Act**

Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p. 162), most recently amended by Article 4b of the Act of 17 February 2020 (Federal Law Gazette I p. 166)

*[Complete edition as valid from 1 March 2020 to 2 October 2020. Only refers to the transitional regulation in Section 107, Paragraph 17 of the Residence Act, which will expire on October 02. Otherwise, the legal text of October 2, 2020 will remain valid.]*

<sup>1)</sup> This statute serves to transpose into national law the following directives:

1. Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, p. 34),
2. Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187 p. 45),
3. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, p. 12),
4. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence (OJ L 328, p. 17),
5. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, p. 12),
6. Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, p. 26),
7. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44),
8. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the

subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261 p. 19),

9. 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 need international protection and the content of the protection granted (OJ L 304, p. 12),

10. 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 (OJ L 375, p. 12),

11. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, p. 15).

## **Chapter 1 General provisions**

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

(1) This Act serves to manage and limit 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 Germany's humanitarian obligations. To this end, it regulates the entry, residence, economic activity and integration of foreigners. The provisions contained in other acts remain unaffected.

(2) This Act does 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 Courts Constitution Act (*Gerichtsverfassungsgesetz*),

3. who, by virtue of international treaties on diplomatic and consular communication and on the activities of international organisations and institutions, are exempt from immigration restrictions, from the obligation to notify the foreigners authority of their residence 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 as defined in Article 116 (1) of the Basic Law (*Grundgesetz*).

(2) Economic activity is self-employment, employment as defined in section 7 of Book Four of the Social Code (*Sozialgesetzbuch*) and employment as a civil servant.

(3) Foreigners have a secure subsistence if they are able to earn a living, including sufficient health insurance coverage, without recourse to public funds. Drawing the following benefits does not constitute recourse to public funds:

1. child benefits,

2. children's allowances,

3. child-raising benefits,
4. parental allowances,
5. educational and training assistance in accordance with Book Three of the Social Code, the Federal Education Assistance Act (*Bundesausbildungsförderungsgesetz*) or the Upgrading Training Assistance Act (*Aufstiegsfortbildungsförderungsgesetz*),
6. public funds based on own contributions or granted in order to enable residence in Germany and
7. payments made in accordance with the Act on Advance Maintenance Payments (*Unterhaltsvorschussgesetz*).

A foreigner who is enrolled in a statutory health insurance fund is deemed to have sufficient health insurance coverage. Other family members' contributions to household income are taken into account when issuing or renewing a temporary residence permit allowing the subsequent immigration of dependants. For the purpose of issuing a temporary residence permit in accordance with sections 16a to 16, 16 e and 16f, excluding participants in language courses not in preparation for a course of study, the subsistence of foreigners is deemed to be secure if they have funds in the amount of the monthly requirement as determined pursuant to sections 13 and 13a (1) of the Federal Education Assistance Act. For the purpose of issuing a temporary residence permit in accordance with sections 16d, 16f (1) for participants in language courses not in preparation for a course of study, and in accordance with section 17, the subsistence of foreigners is deemed to be secure if they have funds as determined in sentence 5 plus an additional 10 per cent of said funds. The Federal Ministry of the Interior announces the minimum amounts stipulated in sentence 5 in the Federal Gazette annually by 31 August for the following year.

(4) The space which is required to accommodate a person in need of accommodation in state-subsidised welfare housing constitutes sufficient living space. Living space is not sufficient if it does not comply with the statutory provisions for Germans with regard to condition and occupancy. Children up to the age of two are not counted when calculating the sufficient living space for the accommodation of families.

(5) Schengen states are states in which the following legal acts apply in their entirety:

1. Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19),
2. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1). and
3. Regulation (EC) no. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ L 243, 15.9.2009, p. 1).

(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 (OJ L 212, 7.8.2001, p. 12).

(7) Long-term residents are foreigners who have been granted the legal status of long-term resident in a member state of the European Union pursuant to Article 2 (b) of Council Directive 2003/109/EC of 25 November 2003 concerning the legal status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44), most recently amended by Directive 2011/51/EU

(OJ L 132, 19.5. 2011. p. 1), and whose status has not subsequently been revoked.

(8) The EU long-term residence permit issued by another member state of the European Union pursuant to Article 8 of Directive 2003/109/EC constitutes long-term residence status (EU).

(9) Basic knowledge of the German language corresponds to Level A1 of the Common European Framework of Reference for Languages (Recommendation no. R(98)6 of 17 March 1998 of the Committee of Ministers of the Council of Europe to Member States concerning the Common European Framework of Reference for Languages – CEFR).

(10) Elementary knowledge of the German language corresponds to Level A2 of the Common European Framework of Reference for Languages.

(11) Sufficient command of the German language corresponds to Level B1 of the Common European Framework of Reference for Languages.

(11a) Good command of the German language corresponds to Level B1 of the Common European Framework of Reference for Languages.

(12) Foreigners whose knowledge of the language corresponds to Level C1 of the Common European Framework of Reference for Languages have an advanced command of the German language.

(12a) Vocational qualification in a state-recognised or similarly regulated occupation lasting at least two years as determined by federal or state provisions constitutes quality vocational training within the meaning of this Act.

(12b) Work requiring skills, knowledge and abilities acquired in a course of study or in quality vocational training constitutes skilled employment.

(12c) The following are educational institutions within the meaning of this Act:

1. Firms providing basic or advanced occupational training,
2. Schools, universities and educational institutions providing vocational training, and other institutions providing basic or advanced further training.

(13) Beneficiaries of international protection are foreigners who enjoy international protection within the meaning of

1. 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 need international protection and the content of the protection granted (OJ, L 304, 30.9.2004 p. 12), or
2. Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12. 2011, p. 9).

(14) Insofar as Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for ascertaining which member state is responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31) concerning detention for the purpose of transfer is relevant, section 62 (3a) applies accordingly as regards the refutable presumption of the risk of the foreigner absconding within the meaning of Article 2 (n) of Regulation (EU) No 604/2013 and section 62 (3b) nos. 1 to 5 applies accordingly

as objective criteria for presuming that there is a risk of the foreigner absconding within the meaning of Article 2 (n) of Regulation (EU) No 604/2013; in all other cases, Article 28 (2) remains relevant within the scope of Regulation (EU) No 604/2013. Furthermore, indications of the risk of absconding may exist if:

1. the foreigner has left a member state prior to the conclusion of proceedings being conducted there to determine competence or to examine an application for international protection and the circumstances of apprehension in the federal territory provide concrete indications that he or she does not intend to return to the competent member state in the foreseeable future,

2. the foreigner has already filed several asylum applications in other member states under the scope of Regulation (EU) No 604/2013 and has left the other member state without waiting for the outcome of the proceedings initiated there to determine competence or to examine the application for international protection.

(5) The authority responsible for applying for detention for the purpose of transfer may detain a foreigner without a prior judicial order and place such foreigner in temporary custody, if

a) there is a strong suspicion that the conditions defined in sentence 1 or 2 apply,

b) it is not possible to obtain the judicial decision on the order for custody to secure transfer beforehand and

c) there is a well-founded suspicion that the foreigner intends to evade the order for detention for the purpose of transfer.

The foreigner is to be brought before the court without delay for a decision on ordering detention for the purpose of transfer. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) applies accordingly to the procedure for ordering detention for the purpose of transfer in accordance with Regulation (EU) No 604/2013, unless the procedure is regulated in another manner under Regulation (EU) No 604/2013.

## **Chapter 2 Entry into and residence in the federal territory**

### **Part 1 General**

#### **Section 3 Passport requirement**

(1) Foreigners may enter or stay in the federal territory only if they possess a recognised and valid passport or passport substitute, unless they are exempt from the passport requirement by virtue of a statutory instrument. For the purpose of residence in the federal territory, possession of a substitute identity document also suffices in order to meet the passport requirement (section 48 (2)).

(2) In justified individual cases, the Federal Ministry of the Interior or the body designated by it may permit exemptions from the passport requirement for the purpose of crossing the border before the foreigner enters the federal territory, and for a subsequent stay of up to six months.

#### **Section 4 Residence title requirement**

(1) In order to enter and stay in the federal territory, foreigners 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 of 12 September 1963 establishing an association between the European Economic Community and

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

1. a visa pursuant to section 6 (1), no. 1 and (3),
2. a temporary residence permit (section 7),
  - 2a. an EU Blue Card (section 18b (2))
  - 2b. an ICT Card (section 19),
  - 2c. a Mobile ICT Card (section 19b)
3. a permanent settlement permit (section 9) or
4. an EU long-term residence permit (section 9a).

The legal provisions governing temporary residence permits also apply to the EU Blue Card, the ICT Card and the Mobile ICT Card in the absence of any law or statutory instrument to the contrary.

(2) Foreigners who possess a right of residence in accordance with the EEC/Turkey Association Agreement are required to furnish evidence of a right of residence by possessing a temporary residence permit, unless they possess a permanent settlement permit or an EU long-term residence permit. Said residence permit is issued on application.

#### **Section 4a** **Access to economic activity**

(1) Foreigners holding a residence title may pursue an economic activity unless there is a law prohibiting such activity. The economic activity may be restricted by law. The pursuit of an economic activity going beyond a ban or restriction requires permission.

(2) If pursuing an employment is banned or restricted by law, pursuing an economic activity or an economic activity going beyond the restriction requires permission; such permission may be subject to the approval by the Federal Employment Agency under section 39. The Federal Employment Agency may restrict its approval. If permission does not require approval by the Federal Employment Agency, section 40 (2) or (3) applies accordingly to the denial of permission.

(3) Every residence title must indicate whether the pursuit of an economic activity is permitted and whether it is subject to any restrictions. Furthermore, residence titles must indicate any restrictions on the pursuit of employment imposed by the Federal Employment Agency. Permission is required to change a restriction indicated in a residence title. If a residence title was granted for the purpose of a specific employment, pursuing another economic activity is prohibited as long as and to the extent that the competent authority has not given its permission. Sentences 2 and 3 do not apply if there is a change in ownership owing to a transfer of business as defined in section 613a of the Civil Code (*Bürgerliches Gesetzbuch*) or if there is a change in the legal form of the business.

(4) Foreigners not holding a residence title may only carry out seasonal work if they hold a seasonal work permit and they may only pursue another economic activity if an inter-governmental agreement, a law or a statutory instrument entitles them to do so without a residence title or if the competent authority has given its permission.

(5) Foreigners may only be employed or commissioned to perform other paid work or services if they possess a residence title and if there is no relevant ban or restriction. Foreigners not holding a residence title may only be employed under the terms of subsection (4). Anyone employing a foreigner in the federal territory must

1. check whether the requirements referred to in sentence 1 or 2 are met,

2. keep a copy of the residence title, of the seasonal work permit or of the certificate confirming permission to remain pending the asylum decision or confirming suspension of deportation, in electronic or paper form for the duration of the employment, and

3. inform the competent foreigners authority within four weeks of having learnt of the fact that the employment for which a residence title was granted in line with Chapter 2 Part 4 was terminated earlier than envisaged.

Sentence 3 no. 1 also applies to those commissioning a foreigner on a sustained basis to perform paid work or services for gain.

### **Section 5 General prerequisites for granting residence titles**

(1) As a rule, a residence title is granted subject to the following conditions:

1. the foreigner's subsistence is secure;

1a. the foreigner's identity, and if he or she is not entitled to return to another state, nationality are established,

2. there is no public interest in expelling the foreigner,

3. if the foreigner is not entitled to a residence title, the foreigner's stay does not threaten or jeopardise the interests of the Federal Republic of Germany for any other reason, and

4. the passport obligation laid down in section 3 is met.

(2) Further, a temporary residence permit, EU Blue Card, ICT Card, permanent settlement permit or an EU long-term residence permit is granted on the condition that the foreigner

1. has entered the country with the necessary visa and

2. in the visa application, has already furnished the key information required for granting the title.

These requirements may be waived if the prerequisites qualifying a foreigner for the granting of a residence title are met or if special circumstances in the individual case concerned render a subsequent visa application procedure unreasonable. Sentence 2 does not apply to granting an ICT Card.

(3) Application of subsections (1) and (2) is to be waived in the cases of a residence title granted pursuant to section 24 or section 25 (1) to (3); application of subsection (1) nos. 1 to 2 and 4 and subsection (2) is to be waived in the cases of section 25 (4a) and (4b). Application of subsections (1) and (2) may be waived in the other cases of granting a residence title pursuant to Chapter 2, Part 5. Where application of subsection (1) no. 2 is waived, the foreigners authority may point out that expulsion is possible on account of certain public interests in expelling the foreigner which are the subject of criminal or other proceedings still in progress; such interests must be specified individually. Application of subsection (2) is to be waived in the event of a residence title granted pursuant to section 26 (3).

(4) A residence title is to be denied if there is a public interest in expelling the foreigner under section 54 (1) nos. 2 or 4 or a corresponding deportation order has been issued under section 58a.

### **Section 6 Visas**

(1) A foreigner may be granted the following visas in accordance with Regulation (EC) No 810/2009:

1. a visa for the purpose of transit through the territory of the Schengen states or for planned stays in this territory of up to 90 days within a 180-day period (Schengen visa),
2. an airport transit visa for the purpose of passing through the international transit area at airports.

(2) In accordance with Regulation (EC) No 810/2009, Schengen visas may be extended up to a total stay of 90 days within a 180-day period. A Schengen visa may be extended by a further 90 days within the 180-day period concerned as a national visa on the grounds stated in Article 33 of Regulation (EC) No 810/2009/EC, to safeguard the interests of the Federal Republic of Germany or for reasons of international law.

(2a) Schengen visas do not entitle holders to pursue an economic activity unless they were issued for this purpose.

(3) A visa for the federal territory (national visa) is required for longer stays; this visa is granted before the foreigner enters the federal territory. It is issued on the basis of applicable provisions for a temporary residence permit, EU Blue Card, ICT Card, permanent settlement permit or EU long-term residence permit. The duration of lawful residence with a national visa is offset against the periods of possession of a temporary residence permit, EU Blue Card, permanent settlement permit or EU long-term residence permit.

(4) An exceptional visa within the meaning of section 14 (2) is granted as a visa within the meaning of subsection (1) no. 1 or subsection (3).

### **Section 7 Temporary residence permit**

(1) The temporary residence permit (*Aufenthaltserlaubnis*) is a residence title which is limited in time. It is issued for the purposes of residence stated in the following Parts of this Act. In justified cases, a temporary residence permit may also be issued for a purpose of residence which is not covered by this Act. The residence permit defined in sentence 3 does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1).

(2) The temporary residence permit is to be subject to a time limit which takes due account of the intended purpose of residence. If a vital prerequisite for granting or extending the residence permit or for determining its duration ceases to apply, it is also possible to reduce the length of validity.

### **Section 8 Extending the temporary residence permit**

(1) Extending the temporary residence permit is subject to the same regulations as granting it.

(2) As a general rule, the temporary residence permit may not be extended if, at the time the permit was granted or last extended, the competent authority prohibited an extension for a stay having only a temporary nature in line with the purpose of residence.

(3) Before the temporary residence permit is extended, it must be ascertained whether the foreigner has fulfilled the obligation to duly attend an integration course. If a foreigner breaches the obligation to duly attend an integration course pursuant to section 44a (1), sentence 1, this is to be taken into account when deciding whether to extend the temporary residence permit. As a general rule, if the foreigner is not entitled to a temporary residence permit, extension of the temporary residence permit is to be refused in the case of repeated and gross breach of the obligations referred to in sentence 1. If the foreigner is entitled to a temporary residence permit solely on the basis of 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 deciding on this matter, due consideration is to be given to the duration of lawful stay, the

foreigner's legitimate ties to the federal territory and consequences of terminating residence for the foreigner's dependants who are lawfully resident in the federal territory. If a foreigner was or is obliged to attend an integration course pursuant to section 44a (1), sentence 1, the temporary residence permit is to be extended for at most one year, as a general rule, if the foreigner has not successfully completed the integration course or has not yet furnished evidence that that he or she has achieved integration into the community and society by other means.

(4) Subsection (3) is not to be applied to the extension of a temporary residence permit granted pursuant to section 25 (1), (2) or (3).

### **Section 9** **Permanent settlement permit**

(1) The permanent settlement permit (*Niederlassungserlaubnis*) is a residence title which is not limited in time. It may only be subject to a subsidiary provision in the cases which expressly permitted by this Act. Section 47 remains unaffected.

(2) A foreigner is to be granted a permanent settlement permit if

1. the foreigner has held a temporary residence permit for five years,
2. the foreigner's subsistence is secure,
3. the foreigner 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 are to be duly taken into account,
4. there are no reasons of public safety or order which would rule out granting such a permit, taking into account the severity or the nature of the breach of public safety or order or the threat posed by 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. the foreigner is permitted to be in employment, if he or she is an employee,
6. the foreigner possesses any other permits required for the purpose of the permanent pursuit of his or her economic activity,
7. the foreigner has a sufficient command of the German language,
8. the foreigner possesses a basic knowledge of the legal and social system and the way of life in the federal territory and
9. the foreigner has sufficient living space for himself or herself and for family members living together in the same household.

The requirements of sentence 1, nos. 7 and 8 are deemed to be fulfilled if the foreigner has successfully completed an integration course. These requirements are waived if the foreigner is unable to fulfil them on account of a physical or mental illness or disability. In all other cases, the requirements of sentence 1, nos. 7 and 8 may also be waived to prevent hardship. Further, the aforesaid requirements are waived if the foreigner is able to communicate verbally in the German language at a basic level and was not entitled to participate in an integration course pursuant to section 44 (3), no. 2 or was not obliged to participate in an integration course pursuant to section 44a (2), no. 3. The requirements of sentence 1, nos. 2 and 3 are also waived if the foreigner is unable to fulfil them for the reasons stated in sentence 3.

(3) In the case of cohabiting spouses, it suffices if one spouse fulfils the requirements of subsection (2) sentence 1 nos. 3, 5 and 6. The requirement in accordance with subsection (2), sentence 1 no. 3 is waived if the foreigner is in education or training which leads to a recognised school, vocational or higher education qualification. Sentence 1 applies accordingly in the cases

of section 26 (4).

(4) The following periods are counted towards the periods of possessing a temporary residence permit which are necessary to qualify for a permanent settlement permit:

1. The duration of former possession of a temporary residence permit or permanent settlement permit, if the foreigner possessed a permanent settlement permit when he or she left the federal territory, minus the duration of intermediate stays outside of the federal territory which led to expiry of the permanent settlement permit; a maximum of four years is counted.
2. A maximum of six months for each stay outside of the federal territory which did not lead to expiry of the temporary residence permit.
3. Half of the period of lawful stay for the purposes of study or vocational training in the federal territory.

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

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

(2) A foreigner is to be issued an EU long-term residence permit pursuant to Article 2 (b) of Directive 2003/109/EC if

1. the foreigner has been resident in the federal territory with a residence title for five years,
2. the foreigner's subsistence and the subsistence of the dependants whom the foreigner is required to support is ensured by a fixed and regular income,
3. the foreigner has a sufficient command of the German language,
4. the foreigner possesses a basic knowledge of the legal and social system and the way of life in the federal territory,
5. such a residence permit is not precluded by reasons of public safety or order, taking into account the severity or the nature of the breach of public safety or order or the danger emanating from the foreigner, and the duration of the foreigner's stay to date and the existence of ties in the federal territory and
6. the foreigner has sufficient living space for himself or herself and for family members living in the same household.

Section 9 (2), sentences 2 to 5 applies accordingly to sentence 1, nos. 3 and 4.

(3) Subsection 2 does not apply if the foreigner

1. possesses a residence title pursuant to Part 5 which was not granted on the basis of section 23 (2) or has a comparable legal status in another member state of the European Union and has not been granted international protection status in the Federal Republic of Germany or another member state of the European Union; the same applies if the foreigner has applied for such a title or such legal status, and the decision on this application is pending,
2. has applied in another member state of the European Union for international protection status or for temporary protection within the meaning of section 24 and the decision on this application is pending,

3. has 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 temporary residence permit under section 16a or section 16b or
5. is resident for another purpose of an inherently temporary nature, in particular
  - a) by virtue of a temporary residence permit under section 19c, 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 the temporary residence permit has been prohibited pursuant to section 8 (2) or
  - c) if the temporary residence permit serves to enable the foreigner to live together or to continue to live together as a family with a foreigner who is only resident in the federal territory for a purpose of an inherently temporary nature, where no independent right of residence would arise if the family unity ended.

#### **Section 9b Counting residence periods**

(1) The following periods are counted 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 10 months,
2. previous periods of residence in the federal territory with a temporary residence permit, permanent settlement permit or EU long-term residence permit, where the foreigner was in possession of a permanent settlement permit or an EU long-term residence permit at the time of leaving the federal territory and the permanent settlement permit or the EU 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 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,
5. in the case of beneficiaries of international protection the period between the date on which the application for international protection was filed and the date on which a residence title was granted on account of the fact that the foreigner was granted international protection.

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 are not counted. Periods of residence outside of the federal territory do not interrupt the period of residence pursuant to section 9a (2), sentence 1, no. 1 where the residence outside of the federal territory did not result in expiry of the

residence title; such periods are not counted 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 interrupts the period of residence pursuant to section 9a (2), sentence 1, no. 1.

(2) Periods during which the foreigner holds an EU Blue Card issued by another member state of the European Union are counted as periods required by section 9a (2), sentence 1, no. 1, provided the foreigner

1. resided in the other member state of the European Union holding an EU Blue Card for at least 18 months and
2. has resided in the federal territory for at least two years holding an EU Blue Card when filing the application.

Periods of residence outside of the European Union are not counted. However, such periods do not interrupt the period of residence pursuant to section 9a (2), sentence 1, no. 1 if they do not exceed 12 consecutive months and if they do not exceed a total of 18 months within the period laid down in section 9a (2), sentence 1, no. 1. Sentences 1 to 3 apply accordingly to the foreigner's dependants who have been granted a temporary residence permit under sections 30 or 32.

### **Section 9c Subsistence**

As a rule, foreigners have a fixed and regular income within the meaning of section 9a (2), sentence 1, no. 2 if

1. they have met their tax obligations,
2. they or their cohabiting spouses have paid contributions or made adequate provision for an old-age pension in Germany or abroad, unless they have been prevented from doing so by a physical or mental illness or disability,
3. they and their dependants living with them as a family unit are protected against the 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. their regular income comes from an economic activity which they are entitled to pursue and for which they also possess any other necessary permit.

In the case of cohabiting spouses, it suffices if one spouse if the fulfils the requirements of sentence 1, no. 4. With regard to the contributions or provisions which are necessary pursuant to sentence 1, no. 2, no higher contributions or provisions are required than the ones stipulated in section 9 (2), sentence 1, no. 3.

### **Section 10 Residence titles and applications for asylum**

(1) In the absence of a legal entitlement, a foreigner who has filed an application for asylum may be granted a residence title prior to the legally valid completion of the asylum procedure only 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 granted or extended by the foreigners authority after the foreigner has entered the federal territory may 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 the asylum application may be granted a residence title before leaving the federal territory only in

accordance with the provisions of Part 5. If the asylum application has been rejected in accordance with section 30 (3), nos. 1 to 6 of the Asylum Act (*Asylgesetz*), no residence title may be issued before the foreigner leaves the federal territory. Sentences 1 and 2 do not apply if the foreigner is entitled to a residence title; further, sentence 2 is not applied if the foreigner meets the requirements for being granted a temporary residence permit pursuant to section 25 (3).

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

(1) Entry or residence bans are to be issued for foreigners who have been expelled, removed or deported. As a result of the entry or residence ban, the foreigner is permitted neither to re-enter nor to stay in the federal territory, nor may the foreigner be granted a residence title, even if he or she is entitled to one under this Act.

(2) In the event of expulsion, the entry and residence ban is to be issued together with the expulsion order. In all other cases, the entry and residence ban is to be issued, as a general rule, together with the deportation warning or the deportation order under section 58a, the condition precedent being the deportation or removal, or at the latest at the time of deportation or removal. (2) The length of the ban on entry and residence is to be set ex officio. The clock begins to run when the foreigner leaves the country. The length of the ban may be subject to conditions to prevent a threat to public safety and order, in particular requiring the foreigner to provide proof that he or she is not subject to prosecution or is not using illegal drugs. If the condition is not met before the ban expires, the ban is automatically extended at the time it would expire under sentence 5.

(3) A discretionary decision is taken regarding the length of the time limit of the entry and residence ban. It may not exceed five years, except in cases covered by subsections (5) to (5b).

(4) The ban on entry and residence may be revoked or shortened in order to uphold the legitimate interests of the foreigner, or if it is no longer required for the purpose for which it was imposed. As a general rule, the ban on entry and residence is to be revoked if the conditions for issuing a residence title pursuant to Chapter 2 Part 5 are met. When deciding whether the time limit of a residence and entry ban is to be shortened or whether the ban issued together with an expulsion order is to be revoked altogether, it is to be taken into account whether the foreigner met the obligation to leave the country within the period set for departure, unless the foreigner was prevented through no fault of his or her own from leaving or the period allowed for departure has been exceeded by an insignificant amount of time. The time limit of the entry and residence ban may be extended on the grounds of public safety and order. Subsection (3) applies accordingly.

(5) As a general rule, the length of the entry and residence ban is not to exceed 10 years if the foreigner was expelled on the ground of a criminal conviction or if the foreigner poses a serious threat to public safety and order. In these cases, subsection (4) applies accordingly.

(5a) As a general rule, the time limit of the entry and residence ban is to be 20 years if the foreigner was expelled on the ground of a crime against peace, of a war crime or a crime against humanity or to avert a terrorist threat or a threat to the security of the Federal Republic of Germany or a terrorist threat. In these cases, subsection (4) sentences 4 and 5 applies accordingly. As a general rule, reducing the length of the entry and residence ban or revoking it altogether is prohibited. The supreme *Land* authority may permit exceptions to this rule in individual cases.

(5b) If the foreigner is deported from the federal territory on the basis of a deportation order under section 58a, a permanent entry and residence ban is to be issued as a general rule. In the cases covered by subsection (5a) or where the foreigner has been expelled on the ground of an interest in expulsion under section 54 (1) no. 1, a permanent entry and residence ban may be issued in the individual case. Subsection (5a) sentences 3 and 4 applies accordingly.

(5c) The authority which issues the expulsion order, the deportation warning or the deportation order pursuant to section 58a is also responsible for issuing the associated entry and residence ban and determining its length for the first time.

(6) A ban on entry and residence may be issued for foreigners who have not fulfilled the obligation to leave the country within the period allowed for departure, unless they were prevented from leaving through no fault of their own or have exceeded the period allowed for departure by an insignificant amount of time. Subsection (1) sentence 2, subsection (2) sentences 3 to 6, subsection (3) sentence 1 and subsection (4) sentences 1, 2 and 4 apply accordingly. The ban on entry and residence is to be limited in time when it is ordered in accordance with sentence 1. As a general rule, the first time a ban on entry and residence is ordered in accordance with sentence 1, its length is not to exceed one year. In all other cases, its length is not to exceed three years, as a general rule. No ban on entry and residence is ordered where there are grounds for temporarily suspending deportation pursuant to section 60a for which the foreigner was not responsible.

(7) The Federal Office for Migration and Refugees may issue a ban on entry and residence for a foreigner

1. whose asylum application was rejected as manifestly unfounded under section 29a (1) of the Asylum Act, who was not granted subsidiary protection, for whom the existence of the conditions for issuing a deportation ban under section 60 (5) or (7) was not established and who does not possess a residence title or

2. whose application under section 71 or section 71a of the Asylum Act repeatedly did not lead to a follow-up asylum procedure.

The ban on entry and residence takes effect when the decision on the application for asylum assumes legal validity. Subsection (1) sentence 2, subsection (2) sentences 3 to 6, subsection (3) sentence 1 and subsection (4) sentences 1, 2 and 4 apply accordingly. The ban on entry and residence is to be limited in time when it is ordered in accordance with sentence 1. As a general rule, the first time a ban on entry and residence is ordered in accordance with sentence 1, its length is not to exceed one year. In all other cases, its length is not to exceed three years, as a general rule. The competent foreigners authority decides on revoking, extending or shortening of the ban.

(8) Before the ban on entry and residence expires, the foreigner may, by way of exception, be allowed to enter the federal territory for a brief period if the foreigner's presence is required for compelling reasons or if denying permission would constitute undue hardship. The supreme *Land* authority is responsible for deciding in the cases covered covered by subsections (5a) and (5b).

(9) If a foreigner enters the federal territory in contravention of a ban on entry and residence, the running of a fixed period is suspended during the foreigner's stay in in the federal territory. The period may be extended in such cases, at the most, however, by the length of the original ban. The foreigner is to be informed of this possibility when the length of the ban is set for the first time. Subsections (3) and (4) sentence 1 apply accordingly to a ban extended in accordance with sentence 2.

## **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 contracting parties remains unaffected.

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

on temporary residence permits in cases where there is public interest in expelling the foreigner pursuant to section 54 (1) nos. 1 or 1a and where restrictions are necessary to remove the foreigner from an environment in which he or she is more likely to commit serious crimes.

(3) A foreigner must immediately leave any part of the federal territory in which he or she may be staying without the permission of the foreigners authority in breach of a geographic restriction.

(4) The residence 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 geographic area to which he or she is restricted on the basis of this Act. This permission is to be granted if an urgent public interest applies, if it is necessary for compelling reasons or if denying permission would constitute undue hardship. The foreigner needs no permission for appointments at authorities or court hearings where his or her personal appearance is necessary.

### **Section 12a Residence rule**

(1) In order to promote their lasting integration into the way of life in the Federal Republic of Germany, foreigners who have been granted asylum status, refugee status within the meaning of section 3 (1) of the Asylum Act, subsidiary protection status within the meaning of section 4 (1) of the Asylum Act or who have been granted a temporary residence permit for the first time pursuant to section 22, section 23 or section 25 (3) are required to take up their habitual residence (place of residence) in that *Land* to which they have been allocated for the purposes of their asylum procedure or in the context of their admission process for a period of three years from the time such status or temporary residence was granted. Sentence 1 does not apply where a foreigner, the foreigner's spouse, registered civil partner or a minor, unmarried child who is related to the foreigner and lives in a family household with the foreigner takes up or has taken up employment of at least 15 hours per week with full social security coverage, on account of which that person has an income amounting to at least the average monthly needs for individual persons pursuant to sections 20 and 22 of Book Two of the Social Code, or that person takes up or has taken up vocational training or is pursuing studies or is in a training relationship. The period referred to in sentence 1 may be extended by the period during which the foreigner fails to meet the obligations stipulated in sentence 1. Where the grounds set out in sentence 2 cease to exist within a period of three months, the obligation to take up residence in accordance with sentence 1 continues to apply in the *Land* to which the foreigner has moved his or her residence.

(1a) As soon as a foreigner whose habitual residence is determined by a distribution or allocation decision pursuant to Book Eight of the Social Code comes of age, subsection (1) is applied; the foreigner is required to reside in the *Land* to which he or she was allocated most recently. The period of the foreigner's residence in the allocated *Land* after being granted asylum status, refugee status within the meaning of section 3 (1) of the Asylum Act or subsidiary protection status within the meaning of section 4 (1) of the Asylum Act or after being granted a temporary residence permit for the first time pursuant to section 22, section 23 or section 25 (3) is counted towards the period stipulated in subsection (1) sentence 1.

(2) A foreigner who is subject to the obligation under subsection (1) and who is living in a reception centre or other temporary accommodation may, within six months of recognition or admission, but no later than the expiry of the period referred to in subsection (1), be required, for the purpose of providing him or her with suitable accommodation, to take up residence in a specific place if this would not interfere with the foreigner's lasting integration into the way of life in the Federal Republic of Germany. Insofar as it was not possible in an individual case to allocate suitable accommodation within six months, such allocation pursuant to sentence 1 may be made once within a further six months.

(3) In order to promote their lasting integration into the way of life in the Federal Republic of

Germany, foreigners who are subject to the obligation pursuant to subsection (1) may be required, within six months of being granted recognition or the or a temporary residence permit for the first time, but no later than the expiry of the period referred to in subsection (1), to take up residence in a specific place if this can help them

1. acquire suitable accommodation
2. acquire sufficient oral command of the German language equivalent to Level A2 of the Common European Framework of Reference for Languages and
3. take up an economic activity, taking into account the local conditions in the vocational training and labour market.

When taking decisions pursuant to sentence 1, specific local circumstances conducive to integration may also be taken into account, in particular the availability of educational and care services for minor children and juveniles.

(4) Foreigners who are subject to the obligation under subsection (1) may, in order to prevent social exclusion, also be prohibited, until the expiry of the period referred to in subsection (1), from taking up residence in a specific place, in particular if it is to be expected that they will not use German as their main language of communication there. This decision is to take into account the situation of the local vocational training and labour market.

(5) An obligation imposed or allocation made pursuant to subsections (1) to (4) is to be revoked upon application by the foreigner

1. if the foreigner furnishes proof, in the event of being required or allocated pursuant to subsections (1) to (3) to take up residence at another place, or in the event of being prohibited from taking up residence in a specific place pursuant to subsection (4), that
  - a) the foreigner or the foreigner's spouse, registered civil partner or minor, unmarried child who is related to the foreigner and lives in a family household with him or her is in employment with full social security coverage within the meaning of subsection (1) sentence 2 has an income which secures the foreigner's subsistence or a vocational training place or a place in higher education; or
  - b) the foreigner's spouse, registered civil partner or a minor, unmarried child who is related to the foreigner and previously lived in a family household with him or her resides elsewhere,
2. to prevent hardship; in particular, hardship exists where
  - a) the competent youth welfare office estimates that the local child and youth welfare benefits and measures pursuant to Book Eight of the Social Code would be negatively affected,
  - b) acceptance by another Land has been confirmed on other urgent, personal grounds or
  - c) comparable unreasonable restrictions would arise for the person concerned on other grounds.

Where the grounds for revocation set out in sentence 1 no. 1 (a) cease to exist within a period of three months of notification of revocation, the obligation to take up residence in accordance with subsection (1) sentence 1 continues to exist in the *Land* to which the foreigner has moved his her residence. In the event of revocation under sentence 1 no. 2, the foreigner is to be subject to an obligation under subsection (3) or (4), at most until the period referred to in subsection (1) expires, account having been taken of the foreigner's interests.

(6) Where dependants subsequently immigrate to rejoin a foreigner who is subject to an obligation or allocation pursuant to subsections (1) to (4), the obligation or allocation also applies to the dependants subsequently immigrating at most until the period applicable to the foreigner referred to in subsection (1) expires, unless the competent authority has ordered otherwise. Subsection (5) applies accordingly to the subsequently immigrating dependants.

(7) Subsections (1) to (6) do not apply to foreigners who were recognised or granted a temporary residence permit for the first time within the meaning of subsection (1) before 1 January 2016.

(8) Objections and actions filed against obligations pursuant to subsections (2) to (4) have no suspensory effect.

(9) With regard to foreigners who are subject to the obligation pursuant to subsection (1), the *Länder* may, by way of statutory instruments of the *Land* government or other *Land* regulations, issue regulations specifying the organisation, procedure and suitable accommodation relating to

1. their distribution within the *Land* under subsection (2),
2. the procedure for making allocations and imposing obligations under subsections (2) to (4),
3. the requirements as to suitable accommodation within the meaning of subsections (2), (3) no. 1 and subsection (5) sentence 1 no. 1 (a), as well as the form of its proof,
4. the manner of furnishing proof of employment with full social security coverage under subsection (1) sentence 2, income which secures subsistence, and of having a vocational training place or a place in higher education within the meaning of subsections (1) and (5) sentence 1 no. 1 (a),
5. the obligation to be taken up by the municipality determined as the foreigner's place of residence and the admission process.

(10) In specially justified cases, section (12) (2) sentence 2 remains unaffected as regards conditions restricting the permissible geographic area of residence.

## **Part 2 Entry**

### **Section 13 Border crossing**

(1) Entry into and exit from the federal territory is permitted only at the approved border crossing points and within the stipulated traffic hours, unless exceptions are permitted on the basis of other statutory provisions or intergovernmental agreements. When entering or leaving the federal territory, foreigners are required to carry a recognised and valid passport or passport substitute as referred to in section 3 (1) and to submit to the police control of cross-border traffic.

(2) A foreigner is deemed to have entered the federal territory only after having crossed the border and passed through the border checkpoint. Should the authorities charged with policing cross-border traffic allow a foreigner to pass through the border checkpoint 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 Act) or during preparation, safeguarding or implementation of this measure, this does not constitute entry as defined in sentence 1 as long as the said authorities remain able to monitor the foreigner's stay. In all other cases, a foreigner is deemed to have entered the federal territory when crossing the border.

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

- (1) The entry of a foreigner into the federal territory is unlawful if the foreigner
1. does not possess a passport or passport substitute as required in section 3 (1),
  2. does not possess the residence title as required in section 4,
    - 2a. does possess a visa required in section 4 upon entry, but obtained it by threat, bribery or collusion or by furnishing incorrect or incomplete information, for which reason it is revoked or annulled retrospectively, or
  3. is not permitted to enter the federal territory in accordance with section 11 (1), (6) or (7) unless the foreigner possesses a temporary entry permit as required in section 11 (8).
- (2) The authorities charged with policing cross-border traffic may issue exceptional visa and passport substitutes.

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

- (1) A foreigner wishing to enter the federal territory unlawfully will be refused entry at the border.
- (2) A foreigner may be refused entry at the border if
1. there is a public interest in expelling the foreigner,
  2. there is a well-founded suspicion that the foreigner does not intend to stay in the federal territory for the stated purpose,
    - 2a. the foreigner only possesses a Schengen visa or is exempted from the visa requirement for a short-term stay and intends to pursue an economic activity in breach of section 4a (1), sentence 2, or
  3. the foreigner 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 to have a residence title for a temporary stay in the federal territory may be refused entry if the foreigner does not fulfil the requirements of section 3 (1) and section 5 (1).
- (4) Section 60 (1) to (3), (5) and (7) to (9) applies accordingly. A foreigner who has filed an application for asylum may not be refused entry if the foreigner is permitted to stay in the federal territory in accordance with the provisions of the Asylum Act.
- (5) In order to ensure that a refusal of entry is effective where a ruling to refuse entry has been issued and cannot be enforced immediately, the foreigner concerned is, as a general rule, to be taken into custody (detention pending exit from the federal territory) by virtue of a judicial order. In all other cases, section 62 (4) applies accordingly. Subsection 1 does 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 entered the country as defined in section 13 (2) but has been refused entry, the foreigner is to be taken to the transit area of an airport or to a place of accommodation from which he or she is able to leave the federal territory 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 requires a judicial order no later than 30 days after the foreigner's arrival at the airport or, if the time of arrival is impossible to ascertain, after the competent authorities become aware of the foreigner's arrival. The judicial order is issued to ensure that the foreigner leaves the federal territory. It is permitted only where exit is to be expected within the term of the order. Subsection (5) applies accordingly.

### **Section 15a**

#### **Allocation of foreigners who have entered the federal territory unlawfully**

(1) Foreigners who enter the country unlawfully without applying for asylum and who, when their unlawful entry has been detected, cannot be placed in custody pending deportation and deported or expelled directly from custody must be allocated to the *Länder* before deciding on the suspension of deportation or issuing a residence title. They are not entitled to be allocated to a specific *Land* or a specific town or location. Allocation to the *Länder* is carried out by a central allocation agency to be appointed by the Federal Ministry of the Interior. Unless another formula for allocation has been agreed among the *Länder*, the formula for the allocation of asylum applicants applies. Each *Land* appoints up to seven authorities to request 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 is given due consideration in the allocation process.

(2) The foreigners authorities may require foreigners to present themselves to the authority requesting allocation. This does not apply when due consideration is to be given to evidence submitted in accordance with subsection (1) sentence 6. An obligation imposed in accordance with sentence 1 is not contestable. Any legal actions have no suspensive effect.

(3) The central allocation agency informs the authority which has requested allocation which reception centre is obliged to admit the foreigners concerned in accordance with sentences 2 and 3. If the *Land* whose authority has requested allocation has not filled its admission quota, the *Land's* reception centre located nearest to this authority having capacity is 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 Act and the available accommodation capacities is obliged to admit the foreigners concerned. Section 46 (4) and (5) of the Asylum Act applies accordingly.

(4) In the cases covered by subsection (3) sentence 3 the authority which has requested allocation pursuant to subsection (3) orders the foreigner to report to the reception centre designated as a result of the allocation process; in the cases covered by subsection (3) sentence 2 it may issue such an order. The foreigners authority forwards the result of the interview to the authority requesting allocation, which notifies the central allocation agency of the number of foreigners, stating the countries of origin and the results of the interview. Spouses and parents and their minor, unmarried children are registered and allocated as a group. The foreigner must stay at this reception centre until re-allocated to another location within the *Land*, but only until deportation has been suspended or a residence title has been issued; sections 12 and 61 (1) remain unaffected. The *Land* governments are authorised to regulate allocation within the *Land* by statutory instrument, unless allocation is regulated by *Land* law on the basis of this Act; section 50 (4) of the Asylum Act applies accordingly. The *Land* governments may delegate the said authorisation to other bodies of the *Land*. Orders pursuant to sentence 1 are not contestable. Any legal actions have no suspensive effect. Sentences 7 and 8 apply accordingly, 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 is deducted from the quota for the *Land* from which he is released and added to the quota for the receiving *Land*.

(6) The provisions of subsections (1) to (5) do not apply to persons who verifiably entered the federal territory prior to 1 January 2005.

### **Part 3**

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

## **Section 16**

### **Principle underlying residence for educational purposes**

Giving foreigners access to education serves to promote general education, international understanding and meeting Germany's demand for skilled labour. It also serves to promote Germany's relations in the global scientific community and international development. Access to education is organized in a manner ensuring public security interests.

### **Section 16a**

#### **Vocational training; advanced vocational training**

(1) A foreigner may be issued a temporary residence permit for the purpose of basic and advanced in-company vocational training if the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined pursuant to the Ordinance on the Employment of Foreigners (*Beschäftigungsverordnung*) or by intergovernmental agreement that such basic and advanced vocational training is permissible without the approval of the Federal Employment Agency. During a stay in accordance with sentence 1, foreigners may be issued with a temporary residence permit for another purpose only to pursue quality vocational training, employment as a skilled worker, employment in a job requiring a high degree of practical occupational skills as referred to in section 19c (2) or if they are legally entitled to it. The residence purpose of quality in-company vocational training as referred to in sentence 1 also comprises German language courses preparing participants for vocational training, in particular job-related German language training in line with the Ordinance on German Language Training (*Deutschsprachförderverordnung*).

(2) Foreigners may be issued with a temporary residence permit for the purpose of school-based vocational training, if such training leads to a state-recognised vocational qualification as determined by federal or state provisions, unless the qualification pathway is primarily tailored to nationals of one specific country. Bi- or multilateral agreements of the *Länder* with public bodies in another country governing attendance of domestic schools by foreign school pupils remain unaffected. A temporary residence permit for the purpose of school attendance may only be issued on the basis of such agreements if the supreme *Land* authority responsible for residence law has endorsed the agreement.

(3) If the training constitutes quality vocational qualification, the temporary residence permit authorises its holder to work up to 10 hours per week in jobs which need not be related to such vocational training. As regards quality vocational training, foreigners are required to furnish proof that they have a sufficient command of the German language, if their command of the language required for the vocational training has not been tested by the educational institution and is not to be acquired in a preparatory German language course.

(4) Before the temporary residence permit for the purpose of quality vocational training is withdrawn, revoked or its period of validity reduced retrospectively pursuant to section 7 (2) sentence 2, the foreigner is to be given the opportunity, for a period of up to six months, to find a place on another training course.

### **Section 16b**

#### **Further education**

(1) For the purpose of full-time studies at a state or state-recognised university or a comparable educational institution, a foreigner is granted a temporary residence permit if he or she has been accepted by the educational institution. Residence for study purposes also extends to measures to prepare for studies and compulsory training. Measures to prepare for studies are

1. attending a language course to prepare for studies, if the foreigner has been accepted for full-time studies and the acceptance depends on the foreigner attending the preparatory language course, and

2. attending a preparatory or comparable course prior to studying, if the foreigner can prove that he or she has been accepted for the preparatory or comparable course.

Proof of knowledge of the language needed for the specific course of studies is only required if the foreigner's knowledge of the language has not been tested in the decision on acceptance and language acquisition is not the aim of the preparatory measures for the course of study.

(2) The period of validity when the temporary residence permit for study purposes is issued for the first time and for each subsequent extension is at least one year and does not, as a general rule, exceed two years. The period of validity is at least two years if the foreigner takes part in Union or multilateral programmes that comprise mobility measures or if the foreigner is covered by an agreement between two or more higher education institutions. Where the course of study takes less than two years, the temporary residence permit is granted only for the duration of the course of study. The temporary residence permit is extended if the purpose of residence has not yet been achieved and is achievable within a reasonable period of time. The host educational institution may be consulted to find out whether the purpose of residence is still achievable.

(3) The temporary residence permit entitles the holder to take up employment totalling no more than 120 days or 240 half-days per year, and to take up a student job. This does not apply in the first year of residence during a stay for the purpose of preparatory measures for a course of study, except during holidays.

(4) During a stay in accordance with subsection (1), foreigners may be issued a temporary residence permit for another purpose only to pursue quality vocational training, employment as a skilled worker, employment in a job requiring a high degree of practical occupational skills as referred to in section 19c (2) or if they are legally entitled to it. Section 9 does not apply.

(5) A foreigner may be granted a temporary residence permit, if

1. the foreigner has been accepted by a state or state-recognised or comparable educational institution

a) for full-time studies, with acceptance dependent on a condition which does not aim at attending measures to prepare for studies,

b) for full-time studies, with acceptance dependent on attending a preparatory or comparable course, but the foreigner is unable to furnish proof of being accepted for a preparatory or comparable course pursuant to subsection (1) sentence 3 no. 2 or

c) for part-time studies,

2. the foreigner has been enrolled in a preparatory language course, without having been accepted for a course of study by a state or state-recognised university or a comparable educational institution, or

3. the foreigner has been accepted for a preparatory company traineeship.

In the cases covered by sentence 1 no. 1, subsection (1) sentences 2 to 4 and subsections (2) to (4) apply accordingly. In the cases covered by sentence 1 nos. 2 and 3, subsections (2) and (4) are to be applied accordingly; the temporary residence permit allows holders to work only during holidays or as a trainee.

(6) Before the temporary residence permit under subsection (1) or (5) is withdrawn, revoked or its period of validity reduced pursuant to section 7 (2) sentence 2 for reasons which are beyond the foreigner's control, the foreigner is to be given the opportunity, for a period of up to nine months, to apply for admission to another educational institution.

(7) Foreigners who have been granted international protection status in another EU member state may be issued a temporary residence permit for study purposes if they pursued studies in another EU member state for at least two years and the requirements of section 16c (1) sentence 1 nos. 2 and 3 apply. The temporary residence permit will be granted for the part of the studies to be carried out in Germany. Subsection (3) applies accordingly. Section 9 does not apply.

(8) Subsections (1) to (4) and (6) serve to implement Directive 2016/801/EU of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132 of 21.5.2016, p. 21).

### **Section 16c** **Mobility of students**

(1) By derogation from section 4 (1), a foreigner does not require a residence title for stays for study purposes not exceeding 360 days, if the host educational institution in the federal territory has notified the Federal Office for Migration and Refugees and the competent authority of the other member state that the foreigner intends to carry out part of the studies in the federal territory, submitting the following to the Federal Office for Migration and Refugees at the same time:

1. evidence that the foreigner has a residence title for study purposes from another member state of the European Union which is valid for the duration of the planned stay and falls within the scope of Directive 2016/801/EU,
2. evidence that the foreigner wishes to carry out part of the studies at an educational institution in the federal territory, because he or she is taking part in a Union or multilateral programme that comprises mobility measures or because he or she is covered by an agreement between two or more higher education institutions.
3. evidence that the foreigner has been accepted by the host educational institution,
4. a copy of the foreigner's recognised and valid passport or passport substitute, and
5. and evidence that the foreigner's subsistence is secure.

The host educational institution must notify the Federal Office for Migration and Refugees when the foreigner applies for a residence title in the scope of Directive 2016/801/EU in another member state of the European Union. If, at the time of application, the host educational institution is not yet aware of the foreigner's intention to carry out part of the studies in the federal territory, it is to notify the Federal Office for Migration and Refugees as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1 no. 1 has been issued by a non-Schengen state, and if the foreigner enters the federal territory via a non-Schengen state, the foreigner must carry a copy of the notification and present it to the responsible authorities at their request.

(2) If the notification was made at the time referred to in subsection (1) sentence 2 and if the foreigner is not denied entry and residence in accordance with section 19f (5), the foreigner may enter the federal territory at any time during the validity of the residence title issued by another member state as referred to in subsection (1) sentence 1 no. 1 and stay there to study. If the notification was made at the time referred to in subsection (1) sentence 3 and if the foreigner was not denied entry and residence in accordance with section 19f (5), the foreigner may enter the federal territory and stay there to study. The foreigner is entitled to take up employment totalling no more than one-third of the period of residence, and to take up a student job.

(3) If a foreigner is denied entry and residence under section 19f (5), the foreigner must cease the studies immediately. The exemption from the obligation to hold a residence title which applied in accordance with subsection (1) sentence 1 ceases to exist.

(4) If, within 30 days of receipt of the notification referred to in subsection (1) sentence 1, the

foreigner has not been denied entry and residence in line with section 19f (5), the Federal Office for Migration and Refugees is to issue the foreigner with a certificate confirming the entitlement to enter and stay in the federal territory to study as part of short-term mobility.

(5) Once a foreigner has been denied entry and residence under section 19f (5) or a certificate within the meaning of subsection (5) has been issued by the Federal Office for Migration and Refugees, responsibility for further measures and decisions under residence law rests with the foreigners authority, as set out in section 71 (1). (3) The foreigner and the host educational institution are required to inform the foreigners authority of any changes to the requirements stipulated in subsection (1).

### **Section 16d** **Measures regarding the recognition of foreign professional qualifications**

(1) For the purpose of recognising professional qualifications which a foreigner has acquired abroad, a foreigner is to be granted a temporary residence permit to undertake a qualification measure and to take a subsequent examination, if a body responsible according to federal or *Länder* regulations regarding recognition of professional qualifications has determined that adaptation or compensation measures or further qualifications are necessary

1. to establish the equivalence of the professional qualification with a German professional qualification or
2. to grant authorisation to practise the profession in a regulated profession in Germany.

The granting of a temporary residence permit is subject to the following conditions:

1. the foreigner has a command of the German language necessary for the qualification measure; as a rule that is at least an elementary knowledge of the German language,
2. the qualification measure is suited to enabling recognition of the foreigner's professional qualification or access to the profession, and
3. in the case of primarily in-company training, the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined pursuant to the Ordinance on the Employment of Foreigners or by intergovernmental agreement that participating in the qualification measure is permissible without the approval of the Federal Employment Agency.

The temporary residence permit is issued for a period of up to 18 months and is extended by a maximum of six months, to add up to a maximum period of residence of two years. It authorises the holder to pursue employment which is independent of the qualification measure for up to 10 hours per week.

(2) The temporary residence permit referred to in subsection (1) entitles the holder to pursue an employment which is not restricted in terms of time and whose requirements are connected to the specialist skills needed in the later employment if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession applied for and if the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined pursuant to the Ordinance on the Employment of Foreigners that such employment is permissible without the approval of the Federal Employment Agency. Section 18 subsection (2) no. 3 applies accordingly.

(3) As a general rule, a foreigner is to be issued with a temporary residence permit for a period of two years to have the professional qualification acquired abroad recognized and the foreigner is to be allowed to do skilled work in a profession which is not regulated in Germany and for which he or she is qualified, if

1. the foreigner has a command of the German language necessary for such work, as a rule at least an elementary knowledge of the German language,

2. a body responsible according to federal or *Länder* regulations regarding recognition of professional qualifications has determined that the foreigner primarily lacks practical skills, know-how and abilities,
3. the foreigner has a concrete job offer,
4. the employer has pledged to enable the foreigner to compensate the differences identified by the competent body within this period, and
5. the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined pursuant to the Ordinance on the Employment of Foreigners or by intergovernmental agreement that such employment is permissible without the approval of the Federal Employment Agency.

(4) A foreigner may be granted a temporary residence permit for a year to have the professional qualification acquired abroad recognised and the permit may be extended by 12 months up to a maximum period of residence of three years, if the foreigner, on the basis of an agreement between the Federal Employment Agency and the employment administration of the foreigner's country have origin, has been placed into a job

1. using the procedure, selection, placement and the process to establish the equivalence of the professional qualification with a German professional qualification and to grant the authorisation to practise professions in the health and care sector regulated by federal or *Land* law, or
2. using the procedure, selection, placement and the process to establish the equivalence of the professional qualification with a German professional qualification and, where necessary, to grant the authorisation to practise other professions, taking into account the adequacy of the training structures in the country of origin

and the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined pursuant to the Ordinance on the Employment of Foreigners or by intergovernmental agreement that granting a temporary residence permit is permissible without the approval of the Federal Employment Agency. Moreover, foreigners must have the command of the German language laid down in the agreement; as a general rule that is an elementary knowledge of the German language. The temporary residence permit authorises the holder to pursue employment which is independent of the professional qualification to be recognised for up to 10 hours per week.

(5) A foreigner may be granted a temporary residence permit in order to take an examination for the recognition of a foreign professional qualification, if the foreigner has the necessary command of the German language for the examination, as a rule at least an elementary knowledge of the German language, unless the examination is intended to demonstrate a command of the German language. Subsection (1) sentence 4 does not apply.

(6) Once the maximum period of residence set out in subsections (1) (3) and (4) has expired, a temporary residence permit may be permitted for another residence purpose only under sections 16a, 16b, 18a, 18b, or 19c or where the foreigner is entitled to it. Section 20 (3) no. 4 remains unaffected.

## **Section 16e** **Study-related EU training programmes**

(1) A foreigner may be issued with a temporary residence permit for training purposes in accordance with Directive 2016/801/EU, if the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined by the Ordinance on the Employment of Foreigners or by intergovernmental agreement that such training is permissible without approval from the Federal Employment Agency, and

1. if the training programme is designed to enable the foreigner to gain knowledge, practice and experience in a professional environment,
2. if the foreigner presents a training agreement which provides for theoretical and practical training with a host entity and contains the following:
  - a) a description of the training programme, including the educational objective or learning components,
  - b) the duration of the training programme,
  - c) the conditions under which the foreigner will work and be supervised,
  - d) the working hours and
  - e) the legal relationship between the foreigner and the host entity,
3. if the foreigner provides evidence of having obtained a higher education degree within the two years preceding the date of application or of pursuing a course of study that leads to a higher education degree,
4. if the training is equivalent to the higher education degree or studies referred to in no. 3, in terms of both content and level, and
5. if the host entity has undertaken in writing to bear the costs incurred by public bodies up to six months after termination of the training agreement for
  - a) the foreigner's subsistence during an unlawful stay in the federal territory, and
  - b) deportation of the foreigner.

(2) The temporary residence permit is issued for the agreed duration of training, but not to exceed six months.

#### **Section 16f Language courses and school attendance**

(1) A foreigner may be granted a temporary residence permit to attend language courses which do not serve to prepare for a course of study or to participate in a pupil exchange scheme. A temporary residence permit for participation in a pupil exchange scheme may also be granted in cases where there is no direct exchange.

(2) As a general rule, a foreigner may be granted a temporary residence permit to attend school as of grade nine, provided it is guaranteed that the school class comprises pupils of various nationalities and that the school

1. is a state or state-recognised school with an international orientation or
2. is a school which is not or not primarily funded from public funds and prepares pupils for international qualifications, qualifications issued by other countries or state-recognised qualifications.

(3) As a general rule, while foreigners are residing in Germany to attend a language course under subsection (1) or school under subsection (2), they are to be granted a temporary residence permit for another purpose only if they are legally entitled to it. After staying in Germany to take part in a pupil exchange scheme foreign pupils may only be granted a temporary residence permit for another purpose if they are legally entitled to it. Section 9 does not apply. The temporary residence permit in accordance with subsections (1) and (2) does not entitle the holder to pursue an economic activity.

(4) Bi- or multi-lateral agreements of the *Länder* with public bodies in another country governing attendance of domestic schools by foreign pupils remain unaffected. A temporary residence permit to attend school can only be issued on the basis of such agreements if the supreme *Land* authority responsible for residence law has endorsed the agreement.

### **Section 17** **Seeking a vocational training place or a place in higher education**

(1) A foreigner may be granted a temporary residence permit to seek a training place in order to pursue quality vocational training, if

1. the foreigner is not yet 25 years of age,
2. the foreigner's subsistence is secure;
3. the foreigner has a school-leaving certificate issued by a German school abroad or a school-leaving certificate entitling the holder to access to higher education in the federal territory or in the country where the school-leaving certificate was acquired, and
4. the foreigner has a good command of the German language.

The temporary residence permit is granted for up to six months. It may only be issued anew if the foreigner, after leaving Germany, stayed abroad for at least as long as he or she stayed in the federal territory on the basis of a temporary residence permit pursuant to subsection (1).

(2) A foreigner may be issued a temporary residence permit for the purpose of applying for a course of study, if

1. the foreigner meets the educational and linguistic requirements to take up a course of study or if they are to be met within the period of residence under sentence 2, and
2. the foreigner's subsistence is secure.

The temporary residence permit is granted for up to nine months.

(3) The temporary residence permit in accordance with subsections (1) and (2) does not entitle the holder to pursue an economic activity nor to take up a student job. As a general rule, foreigners staying in Germany pursuant to subsection (1) are to be granted a temporary residence permit for another purpose of residence only in accordance with sections 18a or 18b or where they are legally entitled to it. As a general rule, foreigners staying in Germany pursuant to subsection (2) are to be granted a temporary residence permit for another purpose of residence only in accordance with sections 16a, 16b, 18a or 18b or where they are legally entitled to it.

### **Section 17a** **Recognition of foreign professional qualifications**

(1) For the purpose of recognising professional qualifications a foreigner has acquired abroad, the foreigner may be granted a temporary residence permit for up to 18 months to undertake a training measure and to take a subsequent examination, if a body responsible according to federal or *Länder* regulations on recognition of professional qualifications has determined that adaptation measures or further qualifications are necessary

1. to establish the equivalence of the professional qualification with a German professional qualification or
2. to grant authorisation to practise the profession or to issue permission to use the professional title in a regulated profession in Germany.

The training measure must be suited to enabling recognition of the foreigner's professional qualification or access to the profession. In the case of primarily in-company training, the temporary residence permit is issued subject to approval from the Federal Employment Agency in accordance with section 39 or if it has been determined by statutory instrument pursuant to

section 42 or by intergovernmental agreement that participation in the training measure 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 temporary residence permit.

(2) The temporary residence permit authorises the holder to pursue employment which is independent of the training measure for up to 10 hours per week.

(3) The temporary residence permit entitles the holder to pursue an economic activity which is not restricted in terms of time and whose requirements are closely connected to the specialist skills needed in the later employment if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession applied for or permission to use the professional title applied for, if this vacancy may be filled by foreigners in accordance with sections 18 to 20 and the Federal Employment Agency has granted approval in accordance with section 39 or if it has been determined by statutory instrument pursuant to section 42 or by intergovernmental agreement that the employment 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 temporary residence permit.

(4) Once equivalence of the professional qualification has been established, the authorisation to practise the profession has been granted or permission to use the professional title has been granted, the temporary residence permit may be extended for up to one year to allow the foreigner to seek employment commensurate with the recognised professional qualification, provided that foreigners are permitted to fill the vacancy pursuant to sections 18 to 20. During this period the temporary residence permit authorises the holder to pursue an economic activity. Section 9 does not apply.

(5) A foreigner may be granted a temporary residence permit in order to take an examination to recognise the foreign professional qualification if there is a concrete offer of a job for later employment in the profession which is to be recognised or which is covered by the authorisation to practise the profession applied for or by the permission to use the professional title applied for, if foreigners are permitted to fill the vacancy in accordance with sections 18 to 20 and the Federal Employment Agency has granted approval in accordance with section 39 or if it has been determined by statutory instrument pursuant to section 42 or by intergovernmental agreement that the employment is permissible without the consent of the Federal Employment Agency. Any restrictions imposed by the Federal Employment Agency in granting approval are to be specified in the temporary residence permit. Subsections (2) to (4) do not apply.

### **Section 17b** **Study-related EU training programmes**

(1) A foreigner may be issued with a temporary residence permit for training purposes in accordance with Directive 2016/801/EU, if the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined by statutory instrument pursuant to section 42 (1) no. 1 or by intergovernmental agreement that such training is permissible without approval from the Federal Employment Agency, and

1. if the training programme is designed to enable the foreigner to gain knowledge, practice and experience in a professional environment,
2. if the foreigner presents a training agreement which provides for theoretical and practical training with a host entity and contains the following:
  - a) a description of the training programme, including the educational objective or learning components,
  - b) the duration of the training programme,

- c) the conditions under which the foreigner will work and be supervised,
  - d) the working hours and
  - e) the legal relationship between the foreigner and the host entity,
3. if the foreigner provides evidence of having obtained a higher education degree within the two years preceding the date of application or of pursuing a course of study that leads to a higher education degree,
4. if the training is equivalent to the higher education degree or studies referred to in no. 3, in terms of both content and level, and
5. if the host entity has undertaken in writing to bear the costs incurred by public bodies up to six months after termination of the training agreement for
- a) the foreigner's subsistence during an unlawful stay in the federal territory, and
  - b) deportation of the foreigner.
- (2) The temporary residence permit is issued for the agreed duration of training, but not to exceed six months.
- (3) Where the foreigner is under 18 years of age, the persons entitled to the foreigner's care and custody must consent to the planned stay.
- (4) No temporary residence permit for training purposes in accordance with Directive 2016/801/EU is granted if any of the conditions mentioned in section 20 (6) nos. 1 to 3 and 6 to 8 are met.

#### **Part 4**

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

#### **Section 18**

#### **Principle of skilled immigration; general provisions**

- (1) The admission of foreign employees is geared to the requirements associated with making Germany an attractive place to conduct business and research, giving due consideration to the labour market situation. The opportunities given to foreign skilled workers serve to guarantee the supply of skilled workers and to strengthen the social security systems. They are intended to promote the lasting integration of skilled workers into society and the labour market, with due consideration of public security interests.
- (2) A temporary residence permit to take up employment is granted subject to the following conditions:
- 1. the foreigner has a concrete job offer,
  - 2. the Federal Employment Agency has given its approval under section 39; this does not apply if it has been determined by law, intergovernmental agreement or pursuant to the Ordinance on the Employment of Foreigners that employment is permissible without the approval of the Federal Employment Agency; in this case, the residence title may also be denied if one of the conditions stipulated in section 40 (2) or (3) exists,
  - 3. permission to practise a profession has been granted or promised, if necessary,
  - 4. the equivalence of the qualification has been established or the foreigner has a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification to the extent that this is a condition for being granted the residence title, and

5. where a foreigner who is 45 years of age or older and has been granted a residence title for the first time under sections 18a or 18b, has a salary corresponding to at least 55 per cent of the earnings ceiling of the general pension scheme, unless the foreigner can prove that he or she possesses adequate provision for old age. The requirements stipulated in sentence 1 may only be waived in justified exceptional cases where there is a public interest in employing the foreigner, in particular under regional, economic or labour market policy aspects. The Federal Ministry of the Interior, Building and Community announces the minimum salaries in the Federal Gazette annually by 31 December for the following calendar year.

(3) For the purposes of this Act, a skilled worker means a foreigner who

1. has successfully completed quality vocational training in Germany or has a foreign quality vocational qualification which is equivalent to one acquired in Germany (skilled worker with vocational training qualification), or
2. has a German university degree, a recognised foreign university degree or a foreign university degree comparable to a German one (skilled worker holding a university degree).

(4) Skilled workers under sections 18a and 18b are granted residence titles for a period of four years or for a shorter period if the employment relationship or the approval by the Federal Employment Agency is limited to a shorter period. The EU Blue Card is issued or extended so that it is valid for the duration of the employment contract plus an extra three months if the employment contract is for less than four years.

#### **Section 18a**

##### **Skilled workers with vocational training qualification**

Skilled workers with vocational training qualification may be granted a temporary residence permit to perform skilled work for which their training qualifies them.

#### **Section 18b**

##### **Skilled workers holding a university degree**

(1) Skilled workers holding a university degree may be granted a temporary residence permit to perform skilled work for which their training qualifies them.

(2) Skilled workers holding a university degree are granted an EU Blue Card without the consent of the Federal Employment Agency for employment commensurate with their qualification, if they have a salary corresponding to at least two-thirds of the annual earnings ceiling of the general pension scheme and if none of the reasons for refusal regulated in section 19f (1) and (2) exist. In derogation from sentence 1, skilled workers who hold a university degree and who practise a profession included in groups 21, 221 or 25 as defined in the Commission Recommendation of 29 October 2009 on the use of the International Classification of Occupations (ISCO-08) (OJ L 292, 10.11.2009, p. 31) are granted an EU Blue Card with consent of the Federal Employment Agency, if their salary corresponds to at least 52 per cent of the annual earnings ceiling of the general pension scheme. The Federal Ministry of the Interior announces the minimum salaries in the Federal Gazette annually by 31 December for the following calendar year. In derogation from section 4a (3) sentence 3, holders of an EU Blue Card wishing to change jobs need permission from the foreigners authority only during the two first years of employment, provided they meet the requirements for an EU Blue Card.

#### **Section 18c**

##### **Permanent settlement permit for skilled workers**

(1) Skilled workers are to be granted a permanent settlement permit without the consent of the Federal Employment Agency, if

1. they have held a residence title pursuant to sections 18a, 18b or 18d for four years,
2. have a job in compliance with the requirements stipulated in sections 18a, 18b or 18d,
3. they have paid compulsory or voluntary contributions into the statutory pension insurance scheme for at least 48 months or furnish evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company, and
4. they have a sufficient command of the German language, and
5. the requirements of section 9 (2) sentence 1 nos. 2, and 4 to 6, 8 and 9 are met; section 9 (2) sentences 2 to 4 and 6 applies accordingly.

The period stipulated in sentence 1 no. 1 is reduced to two years and the period stipulated in sentence 1 no. 3 is reduced to 24 months if the skilled worker has successfully completed vocational training or a course of study in Germany.

(2) In derogation from subsection (1) holders of an EU Blue Card are to be granted a permanent settlement permit, if they have been employed in accordance with section 18b (2) for at least 33 months and have paid mandatory or voluntary contributions to the statutory pension insurance scheme for that period, or if they furnish evidence of an entitlement to comparable benefits from an insurance or pension scheme or from an insurance company and if the requirements of section 9 (2) sentence 1 nos. 2 and 4 to 6, 8 and 9 are met and if they have basic German language skills. Section 9 (2) sentences 2 to 4 and 6 applies accordingly. The period referred to in sentence 1 is reduced to 21 months if the foreigner has a sufficient command of the German language.

(3) In special cases, a highly skilled worker holding a university degree may be granted a permanent settlement permit without the consent of the Federal Employment Agency if there is reason to assume that integration into the way of life in the Federal Republic of Germany and the foreigner's subsistence without state assistance are assured and if the requirements of section 9 (2) sentence 1 no. 4 are met. The *Land* government may stipulate that granting the permanent settlement permit pursuant to sentence 1 requires the approval of the supreme *Land* authority or a body designated by it. Highly skilled workers as referred to in sentence 1 include in particular the following persons, provided that they have several years of work experience:

1. researchers with special technical knowledge or
2. teaching personnel in prominent positions or scientific personnel in prominent positions.

### **Section 18d Research**

(1) A foreigner is granted a temporary residence permit for research purposes in accordance with Directive 2016/801/EU without the consent of the Federal Employment Agency if

1. the foreigner
  - a) has concluded an effective hosting agreement or an equivalent contract to carry out a research project with a research organisation which is recognised for the implementation of the special approval procedure for researchers in the federal territory, or
  - b) has concluded an effective hosting agreement or an equivalent contract with a research organisation which conducts research, and
2. the research organisation has undertaken in writing to bear the costs incurred by public bodies up to six months after termination of the hosting agreement for

a) the foreigner's subsistence during an unlawful stay in a member state of the European Union, and

b) deporting the foreigner.

In the cases covered by sentence 1 no. 1 (a) the temporary residence permit is to be granted within 60 days of the application being made.

(2) As a general rule, the requirement stipulated in subsection (1) no. 2 is to be waived where the activities of the research organisation 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) sentences 2 and 3 and (4) as well as section 68 (2) sentences 2 and 3 apply accordingly to the declarations furnished pursuant to subsection 1 no. 2.

(3) The research organisation may also submit the declaration pursuant to subsection (1) no. 2 to the body responsible for its recognition as a general declaration for all foreigners to whom a temporary residence permit is issued on the basis of a hosting agreement concluded with it.

(4) The temporary residence permit is issued for at least one year. If the foreigner takes part in a Union or multilateral programme that comprises mobility measures, the temporary residence permit is granted for at least two years. By way of derogation from sentences 1 and 2, where the research project is completed in a shorter period, the term of the temporary residence permit is limited to the duration of the research project; in the cases covered by sentence 2, the period is at least one year.

(5) A temporary residence permit pursuant to subsection (1) entitles the holder to take up research at the research organisation specified in the hosting agreement and to take up teaching activities. Changes to the research project during the stay do not cause this entitlement to expire.

(6) A foreigner who has international protection status in a member state of the European Union may be granted a temporary residence permit for research purposes, if the requirements of subsection (1) are met and the foreigner has stayed in this member state for at least two years after being granted protection. Subsection (5) applies accordingly.

### **Section 18e** **Short-term mobility for researchers**

(1) In derogation from section 4 (1), a foreigner does not require a residence title for stays for research purposes not exceeding 180 days in a 360-day period, if the host research organisation in the federal territory has notified the Federal Office for Migration and Refugees and the competent authority of the other member state that the foreigner intends to carry out part of the research in the federal territory, submitting the following to the Federal Office for Migration and Refugees at the same time:

1. evidence that the foreigner possesses a valid residence title for research purposes issued by another member state in accordance with Directive 2016/801/EU,
2. the hosting agreement or an equivalent contract concluded with the host research organisation in the federal territory,
3. a copy of the foreigner's recognised and valid passport or passport substitute, and
4. evidence that the foreigner's subsistence is secure.

The host research organisation is to make the notification when the foreigner applies for a residence title in the scope of Directive 2016/801/EU in another member state of the European Union. If, at the time of application, the host research organisation is not yet aware of the foreigner's intention to carry out part of the research in the federal territory, it must make the notification as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1 no. 1 has been issued by a non-Schengen state, and if the foreigner enters the

federal territory via a non-Schengen state, the foreigner must carry a copy of the notification and present it to the competent authorities at their request.

(2) If the notification was made at the time referred to in subsection (1) sentence 2, and if the foreigner has not been denied entry and residence under section 19f (5), the foreigner may enter the federal territory at any time during the validity of the residence title and stay there for research purposes. If the notification was made at the time referred to in subsection (1) sentence 3, the foreigner may enter the federal territory at any time after the notification is received and during the validity of the residence title issued by the other member state as referred to in subsection (1) sentence 1 no. 1 and stay there for research purposes.

(3) Foreigners who fulfil the requirements stipulated in subsection (1) are entitled to take up research in the host research organisation and to take up teaching activities.

(4) If a foreigner is denied entry and residence pursuant to section 19f (5), the foreigner must cease the research activities immediately. The exemption from the obligation to hold a residence title under subsection (1) sentence 1 ceases to exist.

(5) If the foreigner is not denied entry and residence in line with section 19f (5), the Federal Office for Migration and Refugees issues the foreigner with a certificate confirming the entitlement to enter and stay in the federal territory for research purposes as part of short-term mobility.

(6) Once a foreigner has been denied entry and residence under section 19f (5) or the Federal Office for Migration and Refugees has issued a certificate within the meaning of subsection (5), responsibility for further measures and decisions under residence law rests with the foreigners authority, as set out in section 71 (1). (4) The foreigner and the host research organisation are required to inform the foreigners authority of any changes to the requirements stipulated in subsection (1).

### **Section 18f**

#### **Temporary residence permit for mobile researchers**

(1) Foreigners are granted a temporary residence permit without the consent of the Federal Employment Agency for stays for research purposes which last more than 180 days but no more than one year, if

1. the foreigner holds a residence title issued by another member state in accordance with Directive 2016/801/EU for the duration of the procedure,
2. a copy of the foreigner's recognised and valid passport or passport substitute is submitted, and
3. the hosting agreement or an equivalent contract concluded with the host research organisation in the federal territory is submitted.

(2) If the application for a temporary residence permit is filed at least 30 days prior to the beginning of the stay in the federal territory and if the residence title issued by the other member state continues to be valid, the foreigner's residence and economic activity is permitted for up to 180 days in a 360-day period until the foreigners authority decides on the application.

(3) Section 18d (5) applies accordingly to the entitlement to take up research and teaching activities.

(4) The foreigner and the host research organisation are required to inform the foreigners authority of any changes to the requirements stipulated in subsection (1).

(5) The application will be rejected if it was filed at the same time as a notification under section 18e (1) sentence 1. Applications which were filed during the stay pursuant to section 18e (1), but

not in their entirety at least 30 days prior to the end of this stay, will also be rejected.

### **Section 19** **ICT Card for intra-corporate transferees**

(1) An ICT Card is a residence title for the purpose of an intra-corporate transfer of a foreigner. An intra-corporate transfer is the temporary secondment of a foreigner

1. to a national entity belonging to the undertaking by which the foreigner is employed, if the undertaking is located outside the European Union, or
2. to a national entity of another undertaking of the group of undertakings to which the undertaking located outside the European Union belongs and by which the foreigner is employed.

(2) A foreigner is granted an ICT Card if

1. the foreigner will work as a manager or specialist in the host entity,
2. the foreigner has been employed by the undertaking or group of undertakings for at least six months immediately prior to the transfer and will be employed without interruption by the undertaking or group of undertakings during the transfer period,
3. the intra-corporate transfer will exceed 90 days,
4. the foreigner provides a work contract valid for the duration of the intra-corporate transfer and, if necessary, an assignment letter stating
  - a) specific information regarding the place and kind of work, remuneration and other terms and conditions of employment during the intra-corporate transfer, as well as
  - b) evidence that the foreigner will be able to return to an entity belonging to the same undertaking or group of undertakings established outside the European Union after completing the intra-corporate transfer, and
5. the foreigner provides evidence of his or her professional qualifications.

A manager within the meaning of this Act is a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent. This position includes directing the host entity or a department or subdivision of the host entity; supervising and monitoring work of the other supervisory, professional or managerial employees; and having the authority to recommend hiring, dismissing or other personnel action. A specialist within the meaning of this Act is a person who possesses specialised knowledge essential to the host entity's areas of activity, techniques or management, a high level of qualification and appropriate professional experience.

(3) A foreigner is also to be granted an ICT Card if

1. the foreigner will work as a trainee employee in the context of an intra-corporate transfer, and
2. the conditions referred to in subsection (2) sentence 1 nos. 2 to 4 are met.

A trainee employee within the meaning of this Act is a person with a university degree completing a traineeship for career development purposes or in order to obtain training in business techniques or methods, and is paid during the transfer.

(4) The ICT Card is granted

1. for the duration of the transfer but no more than three years, for managers and specialists,
2. for the duration of the transfer but no more than one year, for trainee employees.

The maximum periods stipulated in sentence 1 may not be exceeded by extending the ICT Card.

(5) The ICT Card is not granted to foreigners who

1. owing to treaties between the European Union and its member states on the one hand and third countries on the other, enjoy rights of free movement equivalent to those of Union citizens,
2. are employed by an undertaking located in one of those third countries, or
3. are completing a training programme as part of their studies.

(6) Furthermore, the ICT Card is not granted if

1. the foreigner, in the context of the possible entry and stay in several member states of the European Union will spend more time in another member state than in the federal territory during the transfer, or
2. the application is filed within six months of the end of the foreigner's last stay in the federal territory for the purpose of an intra-corporate transfer.

(7) This provision serves to implement Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

### **Section 19a** **Short-term mobility for intra-corporate transferees**

(1) In derogation from section 4 (1), a foreigner is not required to have a residence title for stays for intra-corporate transfers not exceeding 90 days within a 180-day period, provided the host entity in the other member state has notified the Federal Office for Migration and Refugees and the competent authority of the other member state that the foreigner intends to take up employment in the federal territory, submitting the following at the same time:

1. evidence that the foreigner possesses a valid residence title issued by another member state of the European Union in accordance with Directive 2014/66/EU,
2. evidence that the national host entity belongs to the same undertaking or group of undertakings as the undertaking established outside the European Union by which the foreigner is employed,
3. a work contract or, if necessary, an assignment letter as stipulated in section 19 (2) sentence 1 no. 4, which have already been presented to the competent authorities of the other member state, and
4. a copy of the foreigner's recognised and valid passport or passport substitute,
5. evidence that permission to practise a profession has been granted or promised, if necessary.

The host entity must make the notification when the foreigner applies for a residence title in the scope of Directive 2014/66/EU in another member state of the European Union. If, at the time of application, the host entity in the other member state is not yet aware of the foreigner's intention to be transferred to an entity in the federal territory, it is to make the notification as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1 no. 1 has been issued by a non-Schengen state, and if the foreigner enters the federal territory via a non-

Schengen state, the foreigner must carry a copy of the notification and present it to the competent authorities at their request.

(2) If the notification was made at the time referred to in subsection (1) sentence 2, and if the foreigner has not been denied entry and residence under subsection (4), the foreigner may enter the federal territory at any time during the validity of the residence title issued by the other member state as referred to in subsection (1) sentence 1 no. 1 and stay there for the purpose of the intra-corporate transfer. If the notification was made at the time referred to in subsection (1) sentence 3, the foreigner may enter the federal territory at any time after the notification is received and during the validity of the residence title issued by the other member state as referred to in subsection (1) sentence 1 no. 1 and stay there for the purpose of the intra-corporate transfer.

(3) The Federal Office for Migration and Refugees denies the foreigner entry and residence if

1. the remuneration the foreigner will be granted during the intra-corporate transfer is less favourable than that granted to comparable German employees,
2. the conditions of subsection (1) sentence 1 nos. 1, 2, 4 and 5 are not met,
3. the documents presented pursuant to subsection (1) were fraudulently acquired, falsified or tampered with,
4. the foreigner has been staying in the European Union for more than three years, or, in the case of a trainee employee, for more than a year, or
5. there is a public interest in expelling the foreigner.

In the cases covered by sentence 1 nos. 1 to 4, entry and residence are to be denied no later than 20 days after the Federal Office for Migration and Refugees receives the complete information pursuant to subsection (1) sentence 1. In cases covered by sentence 1 no. 5, the foreigners authority may deny entry and residence at any time during the foreigner's stay; section 73 (3c) applies accordingly. The foreigner and the competent authority of the other member state as well as the host entity in the other member state are to be informed of the denial. Where entry and residence are denied within the allotted time, the foreigner must cease the economic activity without delay; the exemption from the obligation to hold a residence title pursuant to subsection (1) sentence 1 ceases to exist.

(4) If, within 20 days of receiving the notification referred to in subsection (1) sentence 1, the foreigner has not been denied entry and residence in accordance with subsection (3), the Federal Office for Migration and Refugees is to issue the foreigner with a certificate confirming the entitlement to enter and stay in the federal territory for the purpose of an intra-corporate transfer in the context of short-term mobility.

(5) Once a foreigner has been denied entry and residence under subsection (3) or the Federal Office for Migration and Refugees has issued a certificate within the meaning of subsection (4), responsibility for further measures and decisions under residence law rests with the foreigners authority, as set out in section 71 (1). The foreigner must inform the foreigners authority without delay if the other member state extends the residence title in accordance with subsection (1) sentence 1 no. 1.

### **Section 19b Mobile ICT Card**

(1) A Mobile ICT Card is a residence title in accordance with Directive 2014/66/EU for the purpose of an intra-corporate transfer within the meaning of section 19 (1) sentence 2, if the foreigner possesses a residence title which is valid for the duration of the application procedure and has been issued by another member state in accordance with Directive 2014/66/EU.

(2) A foreigner is granted a Mobile ICT Card if

1. the foreigner will work as manager, specialist or trainee employee in the host entity,
  2. the intra-corporate transfer will exceed 90 days,
  3. the foreigner provides a work contract valid for the duration of the transfer and, if necessary, an assignment letter stating
    - a) specific information regarding the place and kind of work, remuneration as well as other terms and conditions of employment during the transfer, and
    - b) evidence that the foreigner will be able to return to an entity belonging to the same undertaking or group of undertakings established outside the European Union after completing the transfer.
- (3) If the application for a Mobile ICT Card is filed at least 20 days prior to the beginning of the stay in the federal territory and if the residence title issued by the other member state continues to be valid, the foreigner's residence and employment are deemed permitted for up to 90 days in a 180-day period until the foreigners authority decides on the application.
- (4) The application is denied if it was filed at the same time as a notification in line with section 19a (1) sentence 1. Applications which were filed during the stay pursuant to section 19c, but not in their entirety at least 20 days prior to the end of this stay, are also denied.
- (5) No Mobile ICT Card is granted if, in the context of the intra-corporate transfer, the foreigner will stay longer in the federal territory than in other member states.
- (6) The application may be denied if
  1. the maximum duration of the intra-corporate transfer pursuant to section 19 (4) has been reached, or
  2. the ground for rejection referred to in section 19 (6) no. 2 applies.
- (7) The national host entity is required to inform the competent foreigners authority without delay, as a rule within one week, of any changes to the conditions referred to in subsection (2).

### **Section 19c Other employment purposes; civil servants**

- (1) Foreigners may be granted a temporary residence permit for employment irrespective of their qualification as a skilled worker if it is determined on the basis of the Ordinance on the Employment of Foreigners or by intergovernmental agreement that the foreigner may be admitted to pursue this employment.
- (2) A foreigner with a high degree of practical occupational skills may be granted a temporary residence permit to perform skilled work if it is determined on the basis of the Ordinance on the Employment of Foreigners that the foreigner may be admitted to pursue this employment.
- (3) In justified individual cases, a foreigner may be granted a temporary residence permit if there is a public interest, and in particular a regional, economic or labour market interest in the foreigner's employment.
- (4) Foreigners in a civil servant relationship with a German employer are granted a temporary residence permit to discharge their official duties in the federal territory without the consent of the Federal Employment Agency. The temporary residence permit is granted for three years, unless the employment is limited to a shorter period. After three years, a permanent settlement permit is granted, in derogation from section 9 (2) sentence 1 nos. 1 and 3.

**Section 19d**  
**Temporary residence permit for the purpose of employment for qualified foreigners  
whose deportation has been suspended**

(1) Foreigners whose deportation has been suspended may be granted a temporary residence permit for the purpose of employment commensurate with their vocational qualification, if the foreigner

1. has, in the federal territory,
  - a) completed vocational training in a state-recognised or similarly regulated occupation in the federal territory which requires formal training, or a course of study at a higher education institution, or
  - b) held a position of employment continuously for two years in the federal territory with a foreign higher education qualification which is recognised or otherwise comparable to a German higher education qualification and which is commensurate with that employment, or
  - c) performed skilled work continuously for three years and has not relied on public funds for his or her subsistence and that of his or her dependants or other members of the household within the year preceding the application for the temporary residence permit except for benefits to cover the necessary costs for accommodation and heating, and
2. has sufficient living space at his or her disposal,
3. has a sufficient command of the German language,
4. has not intentionally deceived the foreigners authority as to circumstances of relevance to his or her situation under residence law,
5. has not intentionally delayed or obstructed official measures to end his or her residence,
6. does not have any links to extremist or terrorist organisations and does not support such organisations and
7. has not been convicted of an offence intentionally committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, under the Residence Act or the Asylum Act, can only be committed by foreigners are to be ignored as a general principle.

(1a) Where deportation has been suspended pursuant to section 60a (2) sentence 3 in conjunction with section 60c, a temporary residence permit is to be granted for a period of two years after the foreigner has successfully concluded this vocational training for employment commensurate with the vocational qualification acquired if the conditions referred to in subsection (1) nos. 2 to 3 and 6 to 7 are met.

(1b) A temporary residence permit issued pursuant to subsection (1a) is revoked if the employment relationship on which the issuance of the temporary residence permit was based is terminated for reasons relating to the person of the foreigner or if the foreigner has been convicted of an offence committed intentionally in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, under the Residence Act or the Asylum Act, can only be committed by foreigners are ignored as a general principle.

(2) The temporary residence permit entitles the holder to take up any employment after the foreigner has been employed in a position commensurate with his or her vocational qualification for a period of two years.

(3) The temporary residence permit may be granted in derogation from section 5 (2) and section 10 (3) sentence 1.

### **Section 19e** **Participation in European voluntary service**

(1) A foreigner is granted a temporary residence permit for the purpose of participating in a European voluntary service scheme pursuant to Directive 2016/801/EU, if the Federal Employment Agency has granted approval in accordance with section 39 or it has been determined on the basis of the Ordinance on the Employment of Foreigners or by intergovernmental agreement that participation in the European voluntary service scheme is permissible without approval from the Federal Employment Agency and the foreigner provides an agreement with the host entity containing the following information:

1. a description of the voluntary service scheme,
2. the duration of the voluntary service scheme and the foreigner's hours of service,
3. the placement and supervision conditions of the voluntary service,
4. the resources available to cover the foreigner's subsistence and accommodation costs and the minimum sum of pocket money the foreigner will have at his or her disposal throughout the stay, and
5. the training the foreigner will receive, where applicable, to perform the voluntary service properly.

(2) The foreigner's residence title is granted for the agreed duration of participation in the European voluntary service scheme, but not to exceed one year.

### **Section 19f** **Reasons to deny residence titles referred to in sections 16b, 16c, 16e, 16f, 17, 18b (2), 18d, 18e, 18f and 19e**

(1) No residence title referred to in section 16b (1) and (5), sections 16e, 17 (2), section 18b (2) and sections 18d and 19e is granted to foreigners

1. who are resident in a member state of the European Union because they have filed an application for recognition of refugee status or subsidiary protection within the meaning of Directive 2004/83/EC or for recognition of international protection status within the meaning of Directive 2011/95/EU, or who enjoy international protection within the meaning of Directive 2011/95/EU in a member state,
2. who reside in a member state of the European Union under the terms of an arrangement to provide temporary protection or who have filed an application for temporary protection status in another member state,
3. whose deportation has been suspended in a member state of the European Union on grounds of fact or law,
4. who hold an EU long-term residence permit or a residence title issued by another member state of the European Union on the basis of Directive 2003/109/EC,
5. who, owing to treaties between the European Union and its member states on the one hand and third countries on the other, enjoy rights of free movement equivalent to those of Union citizens.

(2) In addition to the grounds for exclusion mentioned in subsection (1), no EU Blue Card as referred to in section 18b (2) is granted to foreigners

1. who possess a residence title pursuant to Part 5 which was not granted on the basis of section 23 (2) or (4) or has a comparable legal status in another member state of the European Union; the same applies if the foreigners have applied for such a title or such legal status, and the decision on this application is pending,

2. whose entry into a member state of the European Union is subject to obligations arising from international treaties to facilitate the entry and temporary residence of specific categories of natural persons engaged in trade- or investment-related activities,

3. who have been admitted to a member state of the European Union as seasonal workers,

4. who come under Directive 96/71/EC of the European Parliament and the Council concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997, p. 1) in the version of Directive 2018/957/EU of the European Parliament and the Council of 28 June 2018 amending Directive 96/71/EC of the European Parliament and the Council concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16) for the duration of their transfer to Germany.

(3) In addition to the grounds for exclusion referred to in subsection (1) no residence permit as referred to in sections 16b, 16e, 17 (2), 18d and 19e is granted to foreigners who have an EU Blue Card pursuant to section 18b (2) or a residence title issued by another member state of the European Union on the basis of Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009, p. 17). Furthermore, no temporary residence permit under section 18d is granted if the research activities constitute part of full-time doctoral studies.

(4) A temporary residence permit pursuant to sections 16b, 16e, 16f, 17, 18d, 18f and 19e may be denied if

1. the host entity was established for the main purpose of facilitating the entry and residence of foreigners for purposes referred to in the relevant provisions,
2. insolvency proceedings have been instituted against the host entity's assets aiming to wind up the entity and its business,
3. the host entity and its business have been wound up in insolvency proceedings,
4. the institution of insolvency proceedings against the entity's assets has been refused for lack of assets, and its business has been wound up,
5. the host entity does not pursue any economic activity, or
6. there is proof or concrete indications that the foreigner would reside for purposes other than those for which he or she is applying for the temporary residence permit.

(5) The Federal Office for Migration and Refugees denies the foreigner entry and residence pursuant to sections 16c or 18e if

1. the requirements stipulated in section 16c (1) or section 18e (1) are not met,
2. the documents presented pursuant to section 16c (1) or section 18e (1) were fraudulently acquired, or falsified, or tampered with,
3. one of the reasons for denial referred to in subsection (4) exists or
4. there is a public interest in expelling the foreigner.

Entry and residence pursuant to sentence 1 nos. 1 and 2 are to be denied no later than 30 days

after the Federal Office for Migration and Refugees has received the complete notification pursuant to section 16c (1) sentence 1 or section 18e (1) sentence 1. In cases covered by sentence 1 no. 4, the foreigners authority may deny entry and residence at any time during the foreigner's stay; section 73 (3c) applies accordingly. The foreigner and the competent authority of the other member state as well as the notifying entity are to be informed of the denial in writing.

## **Section 20**

### **Skilled workers seeking employment**

(1) Skilled workers with vocational training qualification may be granted a temporary residence permit for up to six months to seek employment for which their training qualifies them, if they have a command of the German language commensurate with the work they seek to perform.

Sentence 1 applies to foreigners already residing in the federal territory only if they possessed a residence title for the purpose of employment or pursuant to section 16e immediately before they were granted a temporary residence permit pursuant to sentence 1. The Federal Ministry of Labour and Social Affairs may determine, by means of statutory instruments, occupations for which skilled workers may not be granted a temporary residence permit pursuant to sentence 1. The temporary residence permit only entitles skilled workers to pursue probationary employment of up to 10 hours per week for which their training qualifies them.

(2) Skilled workers holding a university degree may be granted a temporary residence permit for up to six months to look for work for which their training qualifies them. Subsection (1) sentences 2 and 4 applies accordingly.

(3) In order to look for a job for which their training qualifies them

1. foreigners are granted a temporary residence permit for up to 18 months, if they successfully completed a course of study in the federal territory as part of a stay under sections 16b or 16c,

2. foreigners are granted a temporary residence permit for up to nine months, if they finished their research activities as part of a stay under sections 18d or 18f,

3. foreigners may be granted a temporary residence permit for up to 12 months, if they successfully completed quality vocational training in the federal territory as part of a stay under section 16a, or

4. foreigners may be granted a temporary residence permit for up to 12 months once equivalence of the vocational qualification has been established or the authorisation to practise the profession in the federal territory has been granted as part of a stay under section 16d,

provided foreigners are permitted to fill the vacancy in accordance with sections 18a, 18b, 18d, 19c and 21.

(4) The temporary residence permit is granted pursuant to subsections (1) to (3) on the condition that the foreigner's subsistence is secured. The temporary residence permit may not be extended beyond the maximum period mentioned in subsections (1) to (3). A temporary residence permit pursuant to subsections (1) and (2) may only be issued anew if the foreigner, after leaving Germany, stayed abroad for at least as long as he or she stayed in the federal territory on the basis of a temporary residence permit pursuant to subsections (1) or (2). Section 9 does not apply.

## **Section 20a**

### **Short-term mobility for researchers**

(1) In derogation from section 4 (1), a foreigner is not required to have a residence title for stays for research purposes not exceeding 180 days within a 360-day period, if the host research organisation in the federal territory has notified the Federal Office for Migration and Refugees that

the foreigner intends to carry out part of the research activities in the federal territory, submitting the following at the same time:

1. evidence that the foreigner possesses a valid residence title for research purposes issued by another member state in accordance with Directive 2016/801/EU,
2. the hosting agreement or an equivalent contract concluded with the host research organisation in the federal territory,
3. a copy of the foreigner's recognised and valid passport or passport substitute, and
4. evidence that the foreigner's subsistence is secure.

The host research organisation is to make the notification when the foreigner applies for a residence title in the scope of Directive 2016/801/EU in another member state of the European Union. If, at the time of application, the host research organisation is not yet aware of the foreigner's intention to carry out part of the research in the federal territory, it must make the notification as soon as it becomes aware of this intention. If the residence title pursuant to sentence 1 no. 1 has been issued by a non-Schengen state, and if the foreigner enters the federal territory via a non-Schengen state, the foreigner must carry a copy of the notification and present it to the competent authorities at their request.

(2) If the notification was made at the time referred to in subsection (1) sentence 2 and if the foreigner has not been denied entry and residence in line with section 20c (3), the foreigner may enter the federal territory at any time during the validity of the residence title and stay there for research purposes. If the notification was made at the time referred to in subsection (1) sentence 3, the foreigner may enter the federal territory at any time after the notification is received and during the validity of the residence title issued by the other member state as referred to in subsection (1) sentence 1 no. 1 and stay there for research purposes.

(3) Foreigners who fulfil the requirements stipulated in subsection (1) are entitled to take up research in the host research organisation and to take up teaching activities.

(4) The foreigner and the host research organisation are required to inform the competent foreigners authority of any changes to the requirements stipulated in subsection (1).

(5) If a foreigner is denied entry and residence pursuant to section 20c (3), he or she must cease the research activities immediately. The exemption from the obligation to hold a residence title under subsection (1) sentence 1 ceases to exist.

(6) If the foreigner is not denied entry and residence in line with section 20c (3), the Federal Office for Migration and Refugees issues the foreigner with a certificate confirming the entitlement to enter and stay in the federal territory for research purposes as part of short-term mobility.

### **Section 20b** **Temporary residence permit for mobile researchers**

(1) A foreigner is granted a temporary residence permit for stays for research purposes which last more than 180 days but no more than one year, if

1. the foreigner holds a residence title issued by another member state in accordance with Directive 2016/801/EU for the duration of the procedure,
2. a copy of the foreigner's recognised and valid passport or passport substitute is submitted, and
3. the hosting agreement or an equivalent contract concluded with the host research organisation in the federal territory is submitted.

(2) If the application for a temporary residence permit is filed at least 30 days prior to the

beginning of the stay in the federal territory and if the residence title issued by the other member state continues to be valid, the foreigner's residence and employment is permitted for up to 180 days in a 360-day period until the foreigners authority decides on the application.

(3) Section 20 (5) applies accordingly to the entitlement to take up research and teaching activities.

(4) The foreigner and the host research organisation are required to inform the foreigners authority of any changes to the requirements stipulated in subsection (1).

(5) Section 20 (7) governs the extension of the temporary residence permit following the completion of the research activities.

(6) The application is denied if it was filed at the same time as a notification in line with section 20a (1) sentence 1. Applications which were filed during the stay pursuant to section 20a (1), but not in their entirety at least 30 days prior to the end of this stay, are also denied.

### **Section 20c**

#### **Grounds for rejection in the case of researchers, students, pupils, trainees, participants in language courses and European voluntary service**

(1) A temporary residence permit pursuant to sections 16, 16b, 17b, 18d, 20 or 20b is not granted if the the host entity was established for the main purpose of facilitating the entry and residence of foreigners for the purposes mentioned in the relevant provisions.

(2) A temporary residence permit pursuant to sections 16, 16b, 17b, 18d, 20 or 20b may be denied if

1. insolvency proceedings have been instituted against the host entity's assets aiming to wind up the entity and its business,
2. the host entity and its business have been wound up in insolvency proceedings,
3. the institution of insolvency proceedings against the entity's assets has been refused for lack of assets, and its business has been wound up,
4. the host entity does not pursue any economic activity, or
5. there is proof or concrete indications that the foreigner would reside for purposes other than those for which he or she is applying for the temporary residence permit.

(3) The foreigners authority denies the foreigner entry and residence pursuant to sections 16a or 20a if

1. the requirements stipulated in section 16a (1) or section 20a (1) are not met,
2. insolvency proceedings have been instituted against the host entity's assets aiming to wind up the entity and its business,
3. the host entity and its business have been wound up in insolvency proceedings,
4. the institution of insolvency proceedings against the entity's assets has been refused for lack of assets, and its business has been wound up,
5. the host entity does not pursue any economic activity,
6. the documents presented pursuant to section 16a (1) or section 20a (1) were fraudulently acquired, or falsified, or tampered with,

7. the host entity was established or operates for the main purpose of facilitating the entry and residence of foreigners for purposes referred to in section 16a or section 20a,

8. there is proof or concrete indications that the foreigner uses or will use the stay for purposes other than those stated in the notification pursuant to section 16a (1) or section 20a (1), or

9. there is a public interest in expelling the foreigner; section 73 (2) and (3) is to be applied accordingly.

Entry and residence pursuant to sentence 1, nos. 1 to 8 is to be denied no later than 30 days after the Federal Office for Migration and Refugees has received the complete notification pursuant to section 16a (1) sentence 1 or section 20a (1) sentence 1. In cases covered by sentence 1 no. 9, entry and residence may be denied at any time during the foreigner's stay. The foreigner and the competent authority of the other member state as well as the notifying entity are to be informed of the denial in writing.

## **Section 21 Self-employment**

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

1. an economic interest or a 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.

Assessment of the conditions in sentence 1 focuses in particular on the viability of the business idea on which the application is based, the foreigner's entrepreneurial experience, the level of capital investment, the effects on the employment and training situation and the contribution to innovation and research. The competent bodies for the planned business location, the competent trade and industry authorities, the representative bodies for public-sector occupational groups and the competent authorities regulating admission to the occupation concerned are to be involved in examining the application.

(2) A temporary 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.

(2a) A foreigner who has successfully completed studies at a state or state-recognised university or a comparable educational institution in the federal territory or who holds a temporary residence permit as a researcher or scientist in accordance with sections 18c or 19c may be issued a temporary residence permit for self-employment purposes in derogation from subsection (1). The envisaged self-employment must demonstrate a connection to the knowledge acquired during the higher education studies or the research or scientific activities.

(3) As a general rule, foreigners older than 45 are to be granted a temporary residence permit only if they possess adequate provision for old age.

(4) The period of validity of the temporary residence permit is limited to a maximum of three years. In derogation from section 9 (2), a permanent settlement permit may be issued after three years, if the foreigner has successfully carried out the planned activity and adequate income ensures the subsistence of the foreigner and the dependants living with him or her as a family unit and whom he or she is required to support, and if the requirements of section 9 (2) sentence 1 no. 4 are met.

(5) In derogation from subsection (1), a foreigner may be granted a temporary residence permit

for the purpose of self-employment. A required permit to pursue such employment must have been issued or confirmation must have been provided that such permit will be issued. Subsection (1) sentence 3 applies accordingly. Subsection (4) does not apply.

(6) A foreigner who will be or has been granted a temporary residence permit for another purpose may be permitted to pursue self-employment while retaining the aforesaid purpose of residence, if the permits required pursuant to other provisions have been issued or the authorities have indicated 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 temporary residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. A temporary residence permit is to be granted if the Federal Ministry of the Interior or the body designated by it has declared, so as to uphold the political interests of the Federal Republic of Germany, that the foreigner is to be admitted.

#### **Section 23**

##### **Granting of residence by the supreme *Land* authorities; admission when special political interests apply; resettling persons seeking protection**

(1) The supreme *Land* authority may order a temporary 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 requires the approval of the Federal Ministry of the Interior. The residence permit does not entitle the holder to pursue an economic activity; the order may stipulate that the temporary residence permit to be granted allows such activity or that such activity may be permitted under section 4a (1).

(2) In order to safeguard special political interests of the Federal Republic of Germany, the Federal Ministry of the Interior may, in consultation with the supreme *Land* authorities, order the Federal Office for Migration and Refugees to grant foreigners from specific states or certain categories of foreigners defined by other means approval for admission. No preliminary proceedings take place pursuant to section 68 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*). The foreigners concerned are to be granted a temporary residence permit or permanent settlement permit, in accordance with the approval for admission. The permanent settlement permit may be issued subject to a restriction on the permissible place of residence.

(3) The order may provide for section 24 to be applied accordingly, either in part or in full.

(4) In consultation with the supreme *Land* authorities, the Federal Ministry of the Interior may, within the context of resettling persons seeking protection, order the Federal Office for Migration and Refugees to grant approval for admission to certain persons seeking protection who have been selected for resettlement (resettlement refugees). Subsection (2) sentences 2 to 4 and section 24 (3) to (5) apply accordingly.

#### **Section 23a**

##### **Granting residence in case of hardship**

(1) In derogation from the prerequisites for granting and extending residence titles as stipulated in

this Act as well as in sections 10 and 11, the supreme *Land* authority may, on petition from a hardship commission established by the *Land* government by virtue of a statutory instrument, order a temporary 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 ensured 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 a serious offence or if a concrete date has already been set for the foreigner's removal. 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 subsection (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 subsection (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 subsection (1) sentence 1 to other bodies. The hardship commissions take action solely on their own initiative. No third parties may require a hardship commission to take up a specific individual case or to make a specific decision. A hardship commission may decide to file a hardship petition only 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 temporary residence permit in accordance with subsection (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 temporary residence permit is required to reimburse the costs incurred by the local social welfare institution which now bears responsibility for the foreigner concerned for a maximum of three years from the date the temporary residence permit was issued. The same applies accordingly to 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 decision by the Council of the European Union pursuant to Directive 2001/55/EC and who declares the willingness to be admitted into the federal territory is granted a temporary residence permit for the duration of the temporary protection as assessed in accordance with Articles 4 and 6 of said directive.

(2) No temporary protection is granted if the conditions stipulated in section 3 (2) of the Asylum Act or section 60 (8) sentence 1 apply; the temporary residence permit is to be denied.

(3) The foreigners referred to in subsection (1) are allocated to the various *Länder*. The *Länder* may agree quotas for admission to grant temporary protection and for allocation. Allocation to the various *Länder* is carried out by the Federal Office for Migration and Refugees. Unless another formula for allocation has been agreed among the *Länder*, the formula for the allocation of asylum applicants applies.

(4) The supreme *Land* authority or the body appointed by it issues an allocation decision. The *Land* governments are authorised to regulate allocation within the *Länder* via statutory instruments, and may assign this authority to other bodies via statutory instruments; section 50 (4) of the Asylum Act applies accordingly. The allocation decision is not contestable. Any legal actions have no suspensive effect.

(5) The foreigner has no entitlement to stay in a specific *Land* or a specific place. The foreigner must take up accommodation and habitual residence at the place to which he or she is allocated in accordance with subsections (3) and (4).

(6) Self-employment may not be excluded. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (2).

(7) The foreigner is 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 is granted a temporary residence permit if he or she is recognised as being entitled to asylum. This does not apply if the foreigner has been expelled on the ground of a particularly serious public interest in expulsion in accordance with section 54 (1). Residence is deemed to be permitted up to the time the temporary residence permit is issued.

(2) A foreigner is to be granted a temporary residence permit if the Federal Office for Migration and Refugees has granted him or her refugee status within the meaning of section 3 (1) of the Asylum Act or subsidiary protection status within the meaning of section 4 (1) of the Asylum Act. Subsection (1) sentences 2 to 3 applies accordingly.

(3) As a general rule, a foreigner is to be granted a temporary residence permit if a deportation ban applies pursuant to section 60 (5) or (7). The temporary residence permit is not granted if departure for subsequent admission to another state is possible and reasonable or the foreigner has repeatedly or grossly breached the obligation to cooperate. Further, it is not granted where there is serious reason to believe that the foreigner

1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes,
2. has committed a serious criminal offence,
3. 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
4. represents a threat to the general public or a threat to the security of the Federal Republic of Germany.

(4) A foreigner who is not enforceably required to leave the federal territory may be granted a temporary residence permit for a temporary stay if the foreigner's continued presence in the federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. In derogation from section 8 (1) and (2), a temporary residence permit may be extended if departure from the federal territory would constitute exceptional hardship for the foreigner due to special circumstances in the individual case concerned. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1).

(4a) As a general rule, a foreigner who has been the victim of a criminal offence under sections 232 to 233a of the Criminal Code (*Strafgesetzbuch*) is also to be granted a temporary residence permit for a temporary stay, even if the foreigner is enforceably required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers the foreigner's 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 the foreigner's information,
2. the foreigner has broken off contact to the persons accused of having committed the criminal offence and

3. the foreigner has declared the willingness to testify as a witness in the criminal proceedings relating to the offence.

After the criminal proceedings have ended, the temporary residence permit is to be extended as a rule if humanitarian or personal reasons or public interests require the foreigner's further presence in the federal territory. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1).

(4b) A foreigner who has been the victim of a criminal offence pursuant to sections 10 (1) or 11 (1) no. 3 of the Act to Combat Clandestine Employment (*Schwarzarbeitsbekämpfungsgesetz*) or pursuant to section 15a of the Act on Temporary Employment Businesses (*Arbeitnehmerüberlassungsgesetz*) may also be granted a temporary residence permit for a temporary stay, even if the foreigner is enforceably required to leave the federal territory. The temporary residence permit may only be issued if

1. the public prosecutor's office or the criminal court considers the temporary presence of the foreigner 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 the foreigner's information and

2. the foreigner has declared the willingness to testify as a witness in the criminal proceedings relating to the offence.

The temporary residence permit may be extended if the remuneration owed to the foreigner by the employer has not yet been paid in full, and it would represent particular hardship for the foreigner to pursue his or her claim from abroad. The temporary residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1).

(5) A foreigner who is enforceably required to leave the federal territory may be granted a temporary residence permit if departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. As a general rule, the temporary residence permit is to be granted if deportation has been suspended for 18 months. A temporary 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 25a**

#### **Granting residence in the case of well-integrated juveniles and young adults**

(1) As a general rule, a juvenile aged 14 to 18 or a young adult aged 18 - 21 whose deportation has been suspended is to be granted a temporary residence permit if

1. the foreigner has resided in the federal territory for four years without interruption either by virtue of holding a temporary residence or permanent settlement permit, by virtue of his or her deportation having been suspended or by holding permission to remain pending the asylum decision,

2. the foreigner has successfully attended school in the federal territory for, as a rule, four years or has acquired a recognised vocational or school-leaving qualification,

3. the application for the temporary residence permit is filed before the foreigner reaches the age of 21,

4. it appears, on the basis of the foreigner's education and way of life to date, that the foreigner will be able to integrate into the way of life in the Federal Republic of Germany and

5. there is no concrete evidence to suggest that the foreigner is not committed to the free democratic basic order of the Federal Republic of Germany.

For as long as the foreigner attends school, vocational training or higher education, claiming public benefits for the purpose of ensuring his or her subsistence does not preclude the granting of the temporary residence permit. A temporary residence permit is to be denied if deportation has been suspended on the basis of false information furnished by the foreigner or on the grounds of deception by the foreigner as to his or her identity or nationality.

(2) The parents or parent having the right of care and custody of a foreign minor who holds a temporary residence permit in accordance with subsection (1) may be granted a temporary residence permit if

1. deportation has not been prevented or delayed on the grounds of false information or deceit with regard to identity or nationality or due to a failure to meet reasonable demands to eliminate obstacles to departure and

2. subsistence is ensured independently by means of an economic activity.

The minor children of a foreigner who holds a temporary residence permit pursuant to sentence 1 may be granted temporary residence permits if they live with the foreigner as a family unit. As a general rule, a spouse or civil partner who is living with the beneficiary referred to in subsection (1) as a family unit is to be granted a temporary residence permit if the conditions of sentence 1 are met. Section 31 applies accordingly. As a general rule, a minor, unmarried child who is living with the beneficiary referred to in subsection (1) as a family unit is to be granted a temporary residence permit.

(3) No temporary residence permit pursuant to subsection (2) may be granted if the foreigner has been convicted of an offence intentionally committed in the federal territory; fines totalling up to 50 daily rates or up to 90 daily rates in the case of offences which, pursuant to this Act or the Asylum Act, can only be committed by foreigners, are ignored as a general principle.

(4) The temporary residence permit may be granted in derogation from section 10 (3) sentence 2.

### **Section 25b** **Granting residence in the case of permanent integration**

(1) In derogation from section 5 (1) no. 1 and (2), a foreigner whose deportation has been suspended is as a rule to be granted a temporary residence permit if the foreigner has become permanently integrated into the way of life in the Federal Republic of Germany. As a rule, this is subject to the condition that the foreigner

1. has resided in the federal territory for at least eight years or, if the foreigner is living with a minor, unmarried child as a family unit, for at least six years without interruption because his or her deportation having been suspended, on the basis of permission to remain pending the asylum decision or by holding a temporary residence or permanent settlement permit,

2. is committed to the free democratic basic order of the Federal Republic of Germany and possesses a basic knowledge of the legal and social system and the way of life which prevails in the federal territory,

3. ensures his or her subsistence primarily by pursuing an economic activity or it is to be expected, when considering the foreigner's previous educational, training, income and family situation, that the foreigner will be able to ensure his or her subsistence within the meaning of section 2 (3); receiving housing benefits is not detrimental thereto,

4. possesses an elementary oral command of the German language equivalent to Level A2 of the Common European Framework of Reference for Languages and

5. can furnish proof that his or her school-age children are actually attending school.

Temporarily receiving social benefits is not generally detrimental to securing subsistence in the case of

1. students attending a state or state-recognised higher education institution and apprentices undergoing training in a recognised trade or in a government-sponsored pre-vocational training measure,
2. families with minor children who temporarily rely on supplementary social benefits,
3. single parents of minor children who, pursuant to section 10 (1) no. 3 of Book Two of the Social Code, cannot reasonably be expected to take up employment or
4. foreigners caring for close relatives in need of long-term care.

(2) A temporary residence permit pursuant to subsection (1) is to be denied where

1. the foreigner prevents or delays the termination of his or her residence by intentionally providing false information, by deceit regarding his or her identity or nationality, or non-compliance with reasonable requirements to cooperate in eliminating any obstacles to the departure or
2. there is a public interest in expelling the foreigner within the meaning of section 54 (1) or (2) nos.1 and 2.

(3) The conditions of subsection (1) sentence 2, nos. 3 and 4 are waived if the foreigner is unable to fulfil them due to a physical or mental illness or disability or old age.

(4) As a general rule, a spouse, civil partner and minor, unmarried children living with the beneficiary referred to in subsection (1) as a family unit are to be granted a temporary residence permit under the conditions set out in subsection (1) sentence 2 nos. 2 to 5. Subsections (2), (3) and 5 apply. Section 31 applies accordingly.

(5) In derogation from section 26 (1) sentence 1, the temporary residence permit is to be granted and extended for no more than two years. It may be granted in derogation from section 10 (3) sentence 2. Section 25a remains unaffected.

(6) As a general rule, a foreigner, his or her spouse or civil partner and minor, unmarried children living with the foreigner as a family unit who have held a card documenting suspended deportation under section 60d for 30 months, are to be granted a temporary residence permit in accordance with subsection (1) in derogation from the time limit referred to in subsection (1) sentence 2 no. 1, if the requirements of section 60d are met and the foreigner has an elementary oral command of the German language; if the foreigner had the possibility to attend an integration course, the temporary residence permit is granted on the further condition that the foreigner, the spouse or civil partner also have an elementary written command of the German language.

## **Section 26**

### **Duration of residence**

(1) The temporary residence permit in accordance with this Part may be issued and extended in each instance for a maximum of three years, but for no longer than six months in cases covered by section 25 (4), sentence 1 and (5) if the foreigner has not been legally resident in the federal territory for at least 18 months. The temporary residence permit is issued for three years to persons granted asylum status and foreigners granted refugee status within the meaning of section 3 (1) of the Asylum Act. The temporary residence permit is issued for one year to persons granted subsidiary protection status within the meaning of section 4 (1) of the Asylum Act; it may be extended for an additional two years. Foreigners who meet the requirements in section 25 (3) are issued with a temporary residence permit for at least one year. Temporary residence permits

pursuant to section 25 (4a) sentence 1 and (4b) are issued and extended for one year in each instance, temporary residence permits pursuant to section 25 (4a) sentence 3 for two years in each instance; a longer period of validity is permissible in substantiated individual cases.

(2) The temporary residence permit may 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 a temporary residence permit in accordance with section 25 (1) or (2) sentence 1 first alternative is to be granted a permanent settlement permit if

1. the foreigner has possessed a temporary residence permit for five years; in derogation from section 55 (3) of the Asylum Act, the period of residence during the asylum procedure which preceded the issuance of the temporary residence permit is counted towards the period in which the foreigner is required to possess a temporary residence permit in order to be issued with a permanent settlement permit,

2. the Federal Office for Migration and Refugees has not provided the notification in accordance with section 73 (2a) of the Asylum Act that the requirements for revocation or withdrawal are met; if the temporary residence permit was granted after a decision by the Federal Office which became incontestable in 2015, 2016 or 2016, the Federal Office must have provided the notification that the requirements for revocation or withdrawal are not met,

3. the foreigner's subsistence is for the most part ensured,

4. the foreigner has an elementary command of the German language and

5. the conditions of section 9 (2) sentence 1 nos. 4 to 6, 8 and 9 are met.

Section 9 (2) sentences 2 to 6, section 9 (3) sentence 1 and section 9 (4) apply accordingly; the condition set out in sentence 1 no. 3 is also waived if the foreigner has reached the statutory retirement age under section 35 sentence 2 or section 235 (2) of Book Six of the Social Code. In derogation from sentences 1 and 2, a foreigner who holds a temporary residence permit in accordance with section 25 (1) or (2) sentence 1 first alternative is to be granted a permanent settlement permit if

1. the foreigner has possessed the temporary residence permit for three years; in derogation from section 55 (3) of the Asylum Act, the period of residence during the asylum procedure which preceded the issuance of the temporary residence permit is counted towards the period in which the foreigner is required to possess a temporary residence permit in order to be issued with a permanent settlement permit,

2. the Federal Office for Migration and Refugees has not provided the notification in accordance with section 73 (2a) of the Asylum Act that the requirements for revocation or withdrawal are met; if the temporary residence permit was granted after a decision by the Federal Office which became incontestable in 2015, 2016 or 2016, the Federal Office must have provided the notification that the requirements for revocation or withdrawal are not met,

3. the foreigner has an advanced command of the German language,

4. the foreigner's subsistence is for the most part ensured and

5. the conditions of section 9 (2) sentence 1 nos. 4 to 6, 8 and 9 are met.

Section 9 (3) sentence 1 and section 9 (4) apply accordingly in the cases referred to in sentence 3. Section 35 may be applied accordingly to children who entered Germany before reaching the age of 18. Sentences 1 to 5 also apply to foreigners who possess a temporary residence permit issued pursuant to section 23 (4), unless the conditions for its withdrawal are met.

(4) In all other cases, a foreigner who possesses a temporary residence permit in accordance with this Part may be granted a permanent settlement permit if the conditions stipulated in section 9 (2) sentence 1 are met. Section 9 (2) sentences 2 to 6 applies accordingly. In derogation from section 55 (3) of the Asylum Act, the duration of residence during the asylum procedure before the temporary residence permit was granted counts towards this qualifying period. Section 35 may be applied accordingly to children who entered Germany before reaching the age of 18.

## **Part 6**

### **Residence for family reasons**

#### **Section 27**

#### **Subsequent immigration of dependants**

(1) The temporary residence permit to enable foreign dependants to rejoin foreigners in the federal territory so that they can live together as a family (subsequent immigration of dependants) is granted and extended to protect marriage and the family in accordance with Article 6 of the Basic Law.

(1a) The subsequent immigration of dependants is not permitted

1. if it is established that the marriage has been entered into or kinship established solely for the purpose of enabling the persons immigrating subsequently 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) Subsections (1a) and (3), section 9 (3), section 9c sentence 2, sections 28 to 31, 36a, section 51 (2) and (10) sentence 2 apply accordingly to establish and maintain a civil partnership in the federal territory.

(3) The temporary residence permit for the subsequent immigration of dependants may be denied if the person to be joined by the dependants relies on benefits under Book Two or Book Twelve of the Social Code to support other dependants or other members of the household. Section 5 (1) no. 2 may be waived.

(3a) The temporary residence permit for the subsequent immigration of dependants is to be denied if the person to be joined by the dependants

1. threatens the free democratic basic order or the security of the Federal Republic of Germany; this is assumed to be the case where there is reason to believe that the foreigner is or has been a member of an organisation which supports terrorism, or the foreigner supports or has supported such an organisation, or is, as referred to in section 89a (1) of the Criminal Code, preparing or has prepared a serious violent offence endangering the state as described in section 89a (2) of the Criminal Code,

2. was one of the leaders of an organisation which was incontestably banned because its purposes or its activity contravenes criminal law or it is directed against the constitutional order or the concept of international understanding,

3. is involved in violent activities in the pursuit of political or religious objectives or calls publicly for the use of violence or threatens the use of violence or

4. incites others to hatred against segments of the population; this will be assumed to be the case where the foreigner exerts a targeted and permanent influence on other persons in order to incite or increase hatred against members of certain ethnic groups or religions, or he or she publicly, in a meeting or by disseminating writings in a manner which is suited to disturbing public safety and law and order,

a) incites others to take arbitrary measures against segments of the population,

b) maliciously disparages segments of the population, thereby attacking the human dignity of others or

c) endorses or promotes crimes against peace, against humanity, war crimes or acts of terrorism of comparable severity,

(4) The temporary residence permit for the subsequent immigration of dependants may not have a longer period of validity than the temporary residence permit held by the foreigner whom the dependants concerned are joining in the federal territory. It is to be issued for this period if the foreigner to be joined in the federal territory by the dependants immigrating subsequently holds a temporary residence permit pursuant to sections 18d, 18f or 38a, an EU Blue Card, an ICT Card or a Mobile ICT Card, or is entitled to stay in the federal territory in accordance with section 18e. In all other cases, the temporary residence permit is to be issued for an initial period of at least one year.

(5) (repealed)

### **Section 28**

#### **Subsequent immigration of dependants to join a German national**

(1) The temporary residence permit is to 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 habitual residence is in the federal territory. In derogation from section 5 (1) no. 1 it is to be granted in the cases covered by sentence 1 nos. 2 and 3. In derogation from section 5 (1), no. 1, it is to be granted as a general rule in the cases covered by sentence 1 no. 1. In derogation from section 5 (1) no. 1, the temporary residence permit may be granted to the parent of a minor, unmarried German who does not possess the right of care and 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 subsection (2) sentence 1 applies accordingly in the cases covered by sentence 1 no. 1.

(2) As a rule, the foreigner is to be granted a permanent settlement permit if he or she has possessed a temporary residence permit for three years, the family unit with the German continues to exist in the federal territory, there is no public interest in expelling the foreigner and the foreigner has a sufficient command of the German language. Section 9 (2) sentences 2 to 5 applies accordingly. In all other cases, the temporary residence permit is extended as long as the family unit continues to exist.

(3) Sections 31 and 34 apply subject to the proviso that the foreigner's residence title is replaced by the habitual residence of the German in the federal territory. The temporary residence permit granted to a parent of a minor, unmarried German for the purpose of care and custody is to be extended also after the child has come of age as long as the child lives with the foreigner in a family household and is in education or training which leads to a recognised school, vocational or higher education qualification.

(4) Section 36 applies accordingly to other dependants.

(5) (repealed)

### **Section 29**

#### **Subsequent immigration of dependants to join a foreigner**

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

1. the foreigner must hold a permanent settlement permit, an EU long-term residence permit, a temporary residence permit, an EU Blue Card, an ICT Card or a Mobile ICT Card, or he or she must be entitled to stay in the federal territory in accordance with section 18e and

2. sufficient living space must be available.

(2) The requirements of section 5 (1) no. 1 and subsection (1) no. 2 may be waived in the case of the spouse and the minor, unmarried child of a foreigner who possesses a temporary residence permit in accordance with section 23 (4), section 25 (1) or (2), a permanent settlement permit in accordance with section 26 (3) or a permanent settlement permit in accordance with section 26 (4) after being granted a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative. In the cases covered by sentence 1, these conditions are to be waived where

1. the application for a residence title required in connection with the subsequent immigration of dependants is filed within three months of final recognition as a person entitled to asylum or final granting of refugee status or subsidiary protection or after the issuance of a temporary residence permit in accordance with section 23 (4) and

2. it is not possible for the foreigner and his or her dependants 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 dependants have special ties.

The time limit stated in sentence 2 no. 1 is also met if the foreigner files the application on time.

(3) The temporary residence permit may only be granted to the spouse and the minor child of a foreigner who possesses a temporary residence permit in accordance with sections 22, 23 (1) or (2) or section 25 (3) or (4a) sentence 1, section 25a (1) or section 25b (1) for reasons of international law, on humanitarian grounds or in order to safeguard political interests of the Federal Republic of Germany. Section 26 (4) applies accordingly. The subsequent immigration of dependants is not permitted in the cases covered by section 25 (4), (4b) and (5), section 25a (2), section 25b (4), section 104a (1) sentence 1 and section 104b.

(4) In derogation from section 5 (1) and section 27 (3), the temporary residence permit is to 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 dependant 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 temporary residence permit to other dependants of a foreigner who has been granted temporary protection pursuant to section 24 (1) is subject to section 36. Section 24 applies to dependants who are admitted in accordance with this subsection.

(5) (repealed)

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

(1) A foreigner's spouse is to be granted a temporary residence permit if

1. both spouses are at least 18 years of age,

2. the spouse is able to communicate in the German language at least on a basic level and

### 3. the foreigner

- a) possesses a permanent settlement permit,
- b) possesses an EU long-term residence permit,
- c) possesses a temporary residence permit in accordance with sections 18d, 18f or sections 25 (1) or (2) sentence 1 first alternative.
- d) has held a temporary residence permit for two years which is not subject to a subsidiary provision pursuant to section 8 (2) or the subsequent issuance of a permanent settlement permit has not been ruled out by a rule of law; this does not apply to a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative,
- e) possesses a temporary residence permit in accordance with section 7 (1) sentence 3 or Parts 3, 4, 5 or 6 or sections 37 or 38, if the marriage existed at the time said permit was granted, and the foreigner's stay in the federal territory is expected to exceed one year; this does not apply to a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative,
- f) possesses a temporary 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, or
- g) possesses an EU Blue Card, an ICT Card or a Mobile ICT Card.

Sentence 1 nos. 1 and 2 has no bearing on issuance of the temporary residence permit if the requirements of sentence 1, no. 3 (f) are met. Sentence 1 no. 2 has no bearing on issuance of the temporary residence permit if

1. the foreigner holds a residence title pursuant to section 23 (4), section 25 (1) or (2), section 26 (3) or possesses a permanent settlement permit in accordance with section 26 (4) after being granted a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative 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 or mental 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,
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,
5. the foreigner possesses an EU Blue Card, an ICT Card or a Mobile ICT Card or a temporary residence permit pursuant to sections 18d or 18f,
6. the particular circumstances of the case mean that the spouse is unable or cannot reasonably be expected to undertake efforts to acquire a basic command of the German language before entering the country.
7. the foreigner possesses a residence title pursuant to sections 18c (3) and section 21 and the marriage already existed when the foreigner established his or her main ordinary residence in the federal territory, or

8. the foreigner held a temporary residence permit pursuant to section 18d immediately before a permanent settlement permit or an EU long-term residence permit was issued.

(2) In derogation from subsection (1) sentence 1 no. 1, the temporary residence permit may be issued to avoid particular hardship. If the foreigner holds a temporary residence permit, the other conditions stipulated in subsection (1) sentence 1 no. 3 (e) may be waived; the same applies if the foreigner holds a national visa.

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

(4) If a foreigner is married to several spouses at the same time and lives together with one spouse in the federal territory, no other spouse will be granted a temporary residence permit pursuant to subsection (1) or subsection (3).

(5) If the foreigner is entitled to stay in the federal territory in accordance with section 18e, the spouse does not need a residence title if it has been established that the spouse resided in the other member state of the European Union lawfully as the foreigner's dependant. The requirements stipulated in section 18e (1) sentence 1 nos. 1, 3 and 4, and the grounds for denial pursuant to section 19f apply accordingly to the spouse.

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

(1) If marital cohabitation ends, the spouse's temporary residence permit is extended by one year as an independent right of residence unrelated to the purpose of the subsequent immigration of dependants if

1. marital cohabitation has lawfully existed in the federal territory for at least three years  
or

2. the foreigner has died during marital cohabitation in the federal territory

and the foreigner possessed a temporary residence permit, permanent settlement permit or EU long-term residence permit up to that time, unless the foreigner was unable to apply for an extension in time for reasons beyond his or her control. Sentence 1 does not apply if the foreigner's temporary residence permit may not be extended or if the foreigner may not be granted a temporary residence permit or EU 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 temporary residence permit pursuant to section 8 (2).

(2) The requirement stipulated in subsection (1) sentence 1 no. 1 for marital cohabitation to have existed lawfully for three years in the federal territory is to 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 temporary residence permit is not permitted. Particular hardship is deemed to apply especially if the marriage is not valid or has been suspended under German law because the spouse was a minor when he or she married, if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially harm the foreigner's legitimate interests, or if continuing marital cohabitation is unreasonable due to the harm to the foreigner's legitimate interests; in particular this is to be assumed if the spouse is the victim of domestic violence. Such legitimate interests also include the well-being of a child living with the spouse as part of a family unit. In order to avoid abuse, extension of the temporary residence permit may be denied if the spouse relies on benefits under Book Two or Book Twelve of the Social Code for reasons for which he or she is responsible.

(3) In derogation from section 9 (2) sentence 1 nos. 3, 5 and 6 the spouse is also to be granted a permanent settlement permit if the spouse's subsistence is ensured after the termination of marital cohabitation by maintenance payments from the foreigner's own funds and the foreigner

possesses a permanent settlement permit or an EU long-term residence permit.

(4) Without prejudice to subsection (2) sentence 4, claiming benefits under Book Two or Book Twelve of the Social Code does not preclude extension of the temporary residence permit. The temporary residence permit may thus be extended as long as the conditions for granting the permanent settlement permit or EU long-term residence permit have not been met.

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

(1) The minor, unmarried child of a foreigner is to be granted a temporary residence permit if the parents or the parent having the sole right of care and custody hold one of the following residence titles:

1. a temporary residence permit in accordance with section 7 (1) sentence 3 or Parts 3 or 4,
2. a temporary residence permit in accordance with section 25 (1) or (2) sentence 1 first alternative,
3. a temporary residence permit in accordance with sections 28, 30, 31, 36 or 36a,
4. a temporary residence permit in accordance with the other provisions, with the exception of a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative,
5. an EU Blue Card, an ICT Card, a Mobile ICT Card,
6. a permanent settlement permit or
7. an EU long-term residence permit.

(2) If the minor, unmarried child is aged 16 or over and if he or she does not relocate the main ordinary residence to Germany together with his or her parents or the parent possessing the sole right of care and custody, subsection (1) only applies if the child speaks German or if it appears, on the basis of his or her education and way of life to date, that he or she will be able to integrate into the way of life in the Federal Republic of Germany. Sentence 1 does not apply if

1. the foreigner possesses a temporary residence permit in accordance with section 23 (4), section 25 (1) or (2), a permanent settlement permit in accordance with section 26 (3) or possesses a permanent settlement permit in accordance with section 26 (4) after being granted a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative, or
2. the foreigner or his or her spouse living together as a family possesses a permanent settlement permit pursuant to section 18c (3), an EU Blue Card, an ICT Card or a Mobile ICT Card or a temporary residence permit pursuant to sections 18d or 18f.

(3) As a general rule, where parents share the right of care and custody, a temporary residence permit pursuant to subsections (1) or (2) is also to be granted for the purpose of joining just one parent, if the other parent has consented to the child's residence in Germany or if a competent authority has reached a legally binding decision to this effect.

(4) In all other cases, a minor, unmarried child of a foreigner may be granted a temporary residence permit if necessary to prevent special hardship on account of the circumstances in the individual case concerned. The child's well-being and the family situation are to be taken into consideration. Section 36a applies to minor, unmarried children of foreigners who possess a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative

(5) If the foreigner is entitled to stay in the federal territory pursuant to section 18e, the minor unmarried child does not need a residence title if it has been established that the child stayed in the other member state of the European Union lawfully as the foreigner's dependant. The requirements stipulated in section 18e (1) sentence 1 nos. 1, 3 and 4, and the grounds for rejection pursuant to section 19f apply accordingly to the minor child.

### **Section 33**

#### **Children born in the federal territory**

In derogation from sections 5 and 29 (1) no. 2, a child who is born in the federal territory may be granted a temporary residence permit ex officio if one parent possesses a temporary residence permit, permanent settlement permit or EU long-term residence permit. Where both parents or the parent possessing sole right of care and custody hold a temporary residence permit, a permanent settlement permit or an EU long-term residence permit at the time of their child's birth, the child born in the federal territory is granted a temporary 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 child's birth is permitted to stay in the federal territory until the visa or the lawful period of stay without a visa expires.

### **Section 34**

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

(1) In derogation from section 5 (1) no. 1 and section 29 (1) no. 2, the temporary residence permit granted to a child is to be extended as long as a parent possessing the right of care and custody holds a temporary residence permit, permanent settlement permit or EU 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 if he or she left the federal territory.

(2) When a child comes of age, the temporary residence permit granted to the child becomes an independent right of residence which is unrelated to the purpose of the subsequent immigration of dependants. The same applies to the granting of a permanent settlement permit and an EU long-term residence permit or if the temporary residence permit is extended accordingly under section 37.

(3) The temporary residence permit may be extended as long as the conditions for granting the permanent settlement permit and the EU long-term residence permit have not yet been met.

### **Section 35**

#### **Children's independent, permanent right of residence**

(1) In derogation from section 9 (2), a foreign minor who possesses a temporary residence permit in accordance with this Part is to be granted a permanent settlement permit if he or she has been in possession of the temporary residence permit for five years on reaching the age of 16. The same applies if

1. the foreigner is of age and has been in possession of the temporary residence permit for five years,
2. the foreigner has a sufficient command of the German language, and
3. the foreigner's subsistence is ensured or he or she is in education or training which leads to a recognised school, vocational or higher education qualification.

(2) Periods in which the foreigner attended school outside of the federal territory are not normally counted towards the required duration of possession of a temporary residence permit as stipulated in subsection (1).

(3) No entitlement to a permanent settlement permit pursuant to subsection (1) applies if

1. there is a public interest in expelling the foreigner which is based on the foreigner's personal conduct,
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 term of youth custody has been suspended or
3. the foreigner's subsistence cannot be ensured without claiming benefits under Book Two or Book Twelve of the Social Code or juvenile welfare under Book Eight of the Social Code, unless the foreigner is in education or training which leads to a recognised school or vocational qualification.

The permanent settlement permit may be granted or the temporary residence permit extended in the cases covered by sentence 1. As a rule, if, in cases covered by sentence 1 no. 2, the foreigner is placed on probation or the term of youth custody is suspended, the temporary residence permit is extended until the end of the probationary period.

(4) The requirements stipulated in subsection (1) sentence 2 nos. 2 and 3 and subsection (3) sentence 1 no. 3 are to be waived if the foreigner is unable to fulfil them on account of a physical or mental illness or disability.

### **Section 36**

#### **Subsequent immigration of parents and other family members**

(1) In derogation from section 5 (1) no. 1 and section 29 (1) no. 2, a temporary residence permit is to be issued to the parents of a minor foreigner who possesses a temporary residence permit pursuant to section 23 (4), section 25 (1) or (2) sentence 1 first alternative, a permanent settlement permit pursuant to section 26 (3) or a permanent settlement permit under section 26 (4) after being granted a temporary residence permit pursuant to section 25 (2) sentence 1 second alternative, if no parent possessing the right of care and custody is resident in the federal territory.

(2) Other family members of a foreigner may be granted a temporary residence permit for the purpose of subsequent immigration to join the foreigner if necessary in order to avoid unusual hardship. Section 30 (3) and section 31 apply accordingly to adult family members and section 34 applies accordingly to minor family members.

### **Section 36a**

#### **Subsequent immigration to join persons granted subsidiary protection status**

(1) The spouse or minor, unmarried child of a foreigner holding a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative may be granted a temporary residence permit on humanitarian grounds. The same applies to the parents of a foreign minor holding a temporary residence permit in accordance with section 25 (2) sentence 1 second alternative, if no parent possessing the right of care and custody is resident in the federal territory; section 5 (1) no. 1 and section 29 (1) no. 2 do not apply. The above-mentioned groups of persons have no entitlement to subsequent immigration of dependants. Sections 22, 23 remain unaffected.

(2) Humanitarian grounds within the meaning of this provision exist, in particular, where

1. it has not been possible for a long time for a foreigner and his or her dependants to live together as a family unit,
2. a minor, unmarried child is affected,
3. life, limb or liberty of the spouse, the minor, unmarried child or the parents of a foreign minor are at serious risk in the state of residence, or

4. the foreigner, the spouse or the minor, unmarried child or a parent of a minor foreigner is seriously ill, in need of care because his or her autonomy or capabilities are impaired or because he or she has a severe disability. A qualified medical certificate must be submitted to substantiate the illness, need for care or the disability, unless there are other indications that the family member abroad is ill, in need of care or disabled.

Every month, 1,000 national visas may be granted for temporary residence permits in accordance with subsection (1) sentences 1 and 2. Special attention is to be paid to the well-being of children. Where humanitarian grounds exist, special attention is to be paid to integration aspects.

(3) As a general rule, no temporary residence permit is to be granted under subsection (1) sentences 1 or 2 if

1. in the case of a temporary residence permit in accordance with subsection (1) sentence 1 first alternative, the spouses were not married before fleeing their home country,
2. the foreigner who is to be joined by his or her dependant,
  - a) has been incontestably sentenced to a prison term of at least one year for one or more intentionally committed offences,
  - b) has been incontestably sentenced to a prison term or a term of youth custody for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of harm to life or limb, or with guile, or if it constitutes an offence under section 177 of the Criminal Code; this also applies if the foreigner has committed serial offences against property even if the perpetrator did not use violence, threats or guile,
  - c) has been incontestably sentenced to youth custody for at least one year for one or more intentionally committed offences and enforcement of the penalty has not been suspended on probation, or
  - d) has been incontestably convicted of one or more intentionally committed offences as defined in section 29 (1) sentence 1 no. 1 of the Narcotics Act (*Betäubungsmittelgesetz*),
3. it is not to be expected that the foreigner who is to be joined by dependants will have his or her temporary residence permit extended nor that he or she will be granted another residence title, or
4. the foreigner who is to be joined by dependants has applied for a border certificate.

(4) Section 30 (1) sentence 1 no. 1, (2) sentence 1 and (4) and section 32 (3) apply accordingly.

(5) Section 27 (3) sentence 2 and section 29 (2) sentence 2 no. 1 do not apply.

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

### **Section 37** **Right of return**

(1) A foreigner whose lawful habitual residence as a minor was in the federal territory is to be granted a temporary residence permit if

1. the foreigner lawfully resided in the federal territory for eight years prior to his or her departure and attended school in the federal territory for six years,

2. the foreigner's subsistence is ensured 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 temporary residence permit is filed after the foreigner has reached the age of 15 and before he or she has reached the age of 21, and within five years of departure from the federal territory.

(2) Derogation from the requirements stipulated in subsection (1) sentence 1 nos. 1 and 3 is possible to prevent particular hardship. The requirements stipulated in subsection (1) sentence 1 no. 1 may be waived if the foreigner has acquired a recognised school-leaving qualification in the federal territory.

(2a) Derogation from the requirements stipulated in subsection (1) sentence 1 nos. 1 to 3 is possible if the foreigner has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he or she files the application for a temporary residence permit no more than three months after the coercive situation has ended and within five years of departure from the federal territory, and it appears, on the basis of the foreigner's education and way of life to date, that he or she will be able to become integrated into the way of life in the Federal Republic of Germany. As a general rule, if the foreigner fulfils the requirements of subsection (1) sentence 1 no. 1, the foreigner is to be granted a temporary residence permit if he or she has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany, and he or she files the application for a temporary residence permit no more than three months after the coercive situation has ended and within 10 years of departure from the federal territory. Subsection (2) remains unaffected.

(3) The temporary residence permit may be denied

1. if the foreigner was expelled or could have been expelled when he or she left the federal territory,
2. if there is a public interest in expelling the foreigner or
3. as long as the foreigner is a minor and his or her personal care in the federal territory is not assured.

(4) The fact that the foreigner's subsistence is no longer ensured on the basis of his or her own economic activity or that the maintenance commitment no longer applies because the five-year period has expired does not preclude extension of the temporary residence permit.

(5) A foreigner who receives a pension from an institution in the federal territory will generally be granted a temporary residence permit if the foreigner 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) Former Germans

1. are to be granted a permanent settlement permit if they had been ordinarily resident as Germans in the federal territory for five years when losing their German nationality,
2. are to be granted a temporary residence permit if they had been ordinarily resident in the federal territory for at least one year when losing their German nationality.

The application for a residence title pursuant to sentence 1 must be filed within six months of becoming aware of the loss of German nationality. Section 81 (3) applies accordingly.

(2) Former Germans who are habitually resident abroad may be granted a temporary residence permit if they possess a sufficient command of the German language.

(3) In special cases, the residence title pursuant to subsection (1) or (2) may be granted in derogation from section 5.

(4) The pursuit of an economic activity is permitted within the period for filing an application specified in subsection (1) sentence 2 and, if an application is filed, until the foreigners authority decides on the application.

(5) Subsections (1) to (4) apply accordingly to foreigners who, for reasons beyond their control, have been treated as Germans by German bodies to date.

### **Section 38a**

#### **Residence permit for long-term residents in other member states of the European Union**

(1) Foreigners who have the status of long-term residents in another member state of the European Union are granted a temporary residence permit if they wish to stay in the federal territory for more than 90 days. Section 8 (2) does not apply.

(2) Subsection (1) does not apply 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-border workers.

(3) The temporary residence permit entitles its holder to take up employment if the Federal Employment Agency has granted approval in accordance with section 39 (3); approval will be granted subject to a labour-market test. The temporary residence permit entitles its holder to take up self-employment, if the requirements referred to in section 21 are met. Where the residence title pursuant to subsection (1) is issued for study purposes or for other educational purposes, sections 16a and 16b apply accordingly. In the cases covered by section 16a, the residence title is issued without the approval of the Federal Employment Agency.

(4) A temporary residence permit issued pursuant to subsection (1) may be subject to a subsidiary provision pursuant to section 34 of the Ordinance on the Employment of Foreigners for no longer than 12 months. If the temporary residence permit is issued pursuant to subsection (1), the period referred to in sentence 1 begins when the holder is permitted to take up employment for the first time. After this period has elapsed, the temporary residence permit entitles 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 temporary residence permit to take up employment is granted subject to approval from the Federal Employment Agency, unless approval is not required by law, on the basis of the Ordinance on the Employment of Foreigners or an inter-governmental agreement. Approval may be granted if it is determined by law, on the basis of the Ordinance on the Employment of Foreigners or an inter-governmental agreement.

(2) The Federal Employment Agency may give its approval to the employment of foreigners as skilled workers in accordance with sections 18a or 18b, if

1. the skilled workers are not employed under less favourable terms than German nationals employed in an equivalent position,
2. the skilled workers
  - a) will perform skilled work for which their training qualifies them under sections 18a or 18b (1), or
  - b) will pursue employment commensurate with their qualification under section 18b (2) sentence 2,
3. there is a national employment relationship, and
4. any further requirements of the Ordinance on the Employment of Foreigners regarding the employment are met.

Approval is granted without labour-market tests within the meaning of subsection (3) no. 3 unless the Ordinance on the Employment of Foreigners determines otherwise.

(3) The Federal Employment Agency may give its approval to the employment of foreigners irrespective of their qualification as a skilled worker, if

1. the foreigners are not employed under less favourable terms than German nationals employed in an equivalent position,
2. the requirements for approval stipulated in sections 19, 19b, 19c (3) or section 19d (1) no. 1 or in the Ordinance on the Employment of Foreigners and which concern the employment are met, and
3. no German workers, foreigners having 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 (labour-market test), provided this test is required by the Ordinance on the Employment of Foreigners or by law.

(4) To receive approval, the employer must furnish the Federal Employment Agency with information on pay, working hours and other terms and conditions of employment. Employers who employ or used to employ a foreigner must provide the information referred to in sentence 1 within a month of a request from the Federal Employment Agency.

(5) Subsections (1), (3) and (4) also apply if approval from the Federal Employment Agency is required for employment in case of residence for other purposes covered in Parts 3, 5 or 7.

(6) Subsection (3) applies accordingly to the granting of a seasonal work permit. In all other cases, the legal provisions governing the approval by the Federal Employment Agency apply to the work permit in the absence of any law or statutory instrument to the contrary. The Federal Employment Agency may determine demand-oriented admission figures with regard to approving a residence title for seasonal work and a seasonal work permit.

#### **Section 40** **Grounds for denial**

(1) Approval pursuant to section 39 is to be denied 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 temporary worker (section 1 (1) of the Act on Temporary Employment Businesses).

(2) Approval may be denied if

1. the foreigner has culpably violated section 404 (1) or (2) nos. 2 to 13 of Book Three of the Social Code, sections 10, 10a or 11 of the Act to Combat Clandestine Employment or sections 15, 15a or 16 (1) no. 2 of the Act on Temporary Employment Businesses,

2. important personal grounds relating to the foreigner exist, or

3. if the future employer or his or her representative as authorised by statutes or law has been subject to an incontestable fine within the past five years for a breach of section 404 (1) or (2) no. 3 of Book Three of the Social Code, or if they have been subject to an incontestable fine or convicted to a term of imprisonment for a breach of sections 10, 10a or 11 of the Act to Combat Clandestine Employment or of sections 15, 15a or 16 (1) no. 2 of the Act on Temporary Employment Businesses; this applies accordingly to the host entity in the case of an intra-corporate transfer pursuant to section 19 or 19b.

(3) Further, approval may be denied if

1. the employer or the host entity has failed to meet legal obligations regarding social security, taxation, labour rights or working conditions,

2. insolvency proceedings have been instituted against the employer's or host entity's assets aiming to wind up the employer or the entity and its business,

3. the employer or the host entity have been wound up in insolvency proceedings,

4. the institution of insolvency proceedings against the employer's or host entity's assets has been refused for lack of assets, and its business has been wound up,

5. the employer or the host entity does not pursue any economic activity,

6. the presence of the foreigner is aimed at or results in affecting labour management disputes or negotiations, or

7. the business or the host entity were established for the main purpose of facilitating the entry and residence of foreigners for the purpose of employment; the same applies if the employment relationship was established mainly for this purpose.

#### **Section 41**

#### **Revocation of approval and withdrawal of the work permit**

The approval may be revoked and the seasonal work permit withdrawn if the foreigner is employed on less favourable terms than comparable German nationals or the conditions stipulated in section 40 are met.

#### **Section 42**

#### **Authorisation to issue statutory instruments and instructions**

(1) The Federal Ministry of Labour and Social Affairs may determine the following by means of statutory instruments (Ordinance on the Employment of Foreigners), with the approval of the Bundesrat:

1. occupations in which foreigners may be employed with or without approval by the Federal Employment Agency under section 4a (2) sentence 1, section 16a (1) sentence 1, sections 16d, 16e (1) sentence 1, sections 19, 19b, 19c (1) and (2) and section 19e, and the requirements which need to be met,

2. occupations and conditions for which the Federal Employment Agency may grant approval for skilled work under section 19c (2), irrespective of the foreigner's qualification as a skilled worker, and
3. any further requirements relating to the performance of skilled work under sections 18a and 18b,
4. exceptions for nationals of certain states,
5. activities which for the purposes of enforcement of this Act are never, or only under certain conditions, to be regarded as employment.

(2) The Federal Ministry of Labour and Social Affairs may determine the following on the basis of the Ordinance on the Employment of Foreigners without the approval of the Bundesrat:

1. the conditions and the procedure for granting approval by the Federal Employment Agency; an alternative procedure for labour-market tests may be regulated as well,
2. details concerning restriction of the approval on a time-, plant-, occupational and regional basis,
3. cases covered by section 39 (2) and (3) where approval requires a labour-market test, for instance for the employment of skilled workers in geographic areas of the Federal Employment Agency to be determined and in certain occupations,
4. cases where foreigners who possess a temporary suspension of deportation or other foreigners who do not possess a residence title may be allowed to pursue employment under section 4a (4),
5. the requirements and procedures for granting a seasonal work permit to nationals of states listed in Annex II to Regulation (EC) No 539/2001 of the Council of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1),
6. occupations in which nationals of specific states are to be denied an EU Blue Card, because there is a lack of qualified workers in these occupations in the country of origin.

(3) The Federal Ministry of Labour and Social Affairs may issue instructions to the Federal Employment Agency on implementing the provisions of this Act and the statutory instruments issued in connection with it, the provisions enacted by the European Union on access to the labour market and the intergovernmental 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 receive 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) A basic package of measures to promote integration (integration course) supports integration efforts by foreigners. The integration course is intended to successfully teach the German language and knowledge of Germany's legal system, culture and history to foreigners. In this way, foreigners are supposed to become acquainted 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 sufficient command of the language and an orientation course to impart 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. As a general rule, reasonable fees 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 is also 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 content and implementation of the courses, the criteria for selecting and approving course providers, the requirements and general conditions for proper and successful participation in the courses and for certifying such participation, including arrangements for the payment of costs and data processing in accordance with section 88a (1) and (1a), via a statutory instrument not requiring the approval of the Bundesrat. This excludes the examination and certification requirements of the final examinations, which are defined by the Federal Ministry of the Interior via statutory instruments not requiring Bundesrat approval.

(5) (repealed)

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

(1) A foreigner residing in the federal territory on a permanent basis is entitled to one-time enrolment in an integration course

1. upon receiving a temporary residence permit for the first time

- a) for the purpose of gainful employment (sections 18a to 18d, 19c and 21),
- b) for the purpose of subsequent immigration by dependants (sections 28, 29, 30, 32, 36, 36a),
- c) on humanitarian grounds pursuant to section 25 (1), (2), (4a) sentence 3 or section 25b,
- d) as a long-term resident pursuant to section 38a or

2. upon receiving a residence title under section 23 (2) or (4).

Permanent residence is generally assumed if the foreigner is granted a temporary residence permit valid for at least one year or has held a temporary residence permit for more than 18 months, unless the stay is of a temporary nature.

(2) The entitlement pursuant to subsection (1) lapses one year after the residence title establishing the entitlement was granted or when that title expires. This does not apply if the foreigner was unable to register for an integration course within that period for reasons beyond his or her control.

(3) The entitlement to take an integration course does not apply

1. to children, juveniles and adults who start or continue school education in the Federal Republic of Germany,
2. when the need for integration is discernibly minimal or
3. when the foreigner already possesses a sufficient command of the German language.

In cases covered by sentence 1 no. 3, the entitlement to take an orientation course remains unaffected.

(4) A foreigner who is not, or is no longer, entitled to take an integration course may be allowed to

do so if space is available in the course concerned. This provision applies accordingly to German nationals who do not have a sufficient command of the German language and have special integration needs, as well as to foreigners

1. who have permission to remain pending the asylum decision and
  - a) who have a good chance of being permitted to remain lawfully and permanently or
  - b) who entered the federal territory before 1 August 2019, have stayed in the federal territory for at least three months on the basis of permission to remain pending the asylum decision, do not come from a safe country of origin as referred to in section 29 of the Asylum Act, are registered as persons seeking training or work or as unemployed with the Federal Employment Agency or are employed or in vocational training within the meaning of section 57 (1) of Book Three of the Social Code or are receiving support in measures referred to in Subdivision 2, Division 3, Chapter 3 or section 130 (1) sentence 2 of Book Three of the Social Code, or meet the requirements of section 11 (4) sentences 2 and 3 of Book Twelve of the Social Code, or
2. whose deportation has been suspended under section 60a (2) sentence 3, or
3. who hold a temporary residence permit pursuant to section 25 (5).

It is assumed that asylum applicants from a safe country of origin under section 29a of the Asylum Act will not be permitted to remain lawfully and permanently.

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

(1) Foreigners are required to take an integration course if

1. they are entitled to attend under section 44 and
  - a) they are unable to communicate at least at a basic level in the German language or
  - b) they do not have a sufficient command of the German language at the time a residence title is issued under section 23 (2), section 28 (1) sentence 1 no. 1, section 30 or section 36a (1) sentence 1 first alternative 1 or
2. they are receiving 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. they have special integration needs and the foreigners authority requires them to participate in an integration course, or
4. they belong to the group of persons referred to in section 44 (4) sentence 2 nos. 1 to 3, are receiving benefits under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) and the competent benefit authority asks them to participate in an integration course

In cases covered by sentence 1 no. 1, the foreigners authority ascertains when issuing the residence title whether the foreigner is required to participate. In the cases covered by sentence 1 no. 2 foreigners are also required to participate if the institution providing basic security for job seekers requires them to do so. In the cases covered by sentence 1 nos. 1 and 3, where foreigners are receiving benefits in accordance with Book Two of the Social Code for measures pursuant to section 15 of Book Two of the Social Code, the institution providing basic security for job seekers is, as a general rule, to follow the obligation imposed by the foreigners authority. Where, in individual cases, the institution providing basic security for job seekers decides

otherwise, it is to notify the foreigners authority accordingly, which will then revoke the obligation. The obligation is to be revoked where it is unreasonable to expect a foreigner to attend a part-time course in addition to pursuing an economic activity. Further, when issuing a residence title pursuant to section 25 (1) or (2), the foreigners authorities may require a foreigner to take an integration course if he or she only has a basic command of the German language.

(1a) Unless it is withdrawn or revoked, the obligation to take an integration course pursuant to subsection (1) sentence 1 no. 1 expires only if the foreigner has duly participated in the integration course.

(2) The obligation to take an integration course does not apply to foreigners

1. who are in vocational training or any other form of training or education in the federal territory,
2. who furnish evidence of attending comparable education measures in the federal territory or
3. for whom attendance on a long-term basis is not feasible or reasonable.

(2a) Foreigners having a temporary residence permit pursuant to section 38a are exempt from the obligation to take an orientation course if they prove that they have already participated in integration measures in another member state of the European Union in order to attain their legal status as a long-term resident.

(3) Foreigners who fail to meet the obligation for reasons for which they are responsible or who fail to pass the final examination will be informed by the competent foreigners authority, before it extends the temporary residence permit, of the possible consequences of their actions (section 8 (3), section 9 (2) sentence 1 nos. 7 and 8, section 9a (2) sentence 1 nos. 3 and 4 of this Act, section 10 (3) of the Nationality Act (*Staatsangehörigkeitsgesetz*). The foreigners authority may take administrative enforcement measures to enjoin the foreigner to meet the obligation to take an integration course. If the obligation to take an integration course is not met, 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**

As a general rule, the integration course is to be flanked by additional integration measures organised by the Federation and the *Länder*, in particular social education and migration-specific advising services. The Federal Ministry of the Interior or the body appointed by it is developing a nationwide integration programme which identifies, in particular, the existing integration measures for foreigners and ethnic German resettlers which are available from the Federation, *Länder*, local authorities and private organisations, and makes recommendations on the further development of the integration measures. The *Länder*, local authorities, the federal, *Land* and municipal foreigners commissioners and the Federal Government Commissioner for Matters Related to Ethnic German Resettlers are involved in developing the nationwide integration programme and in compiling informational materials on existing integration measures. As a rule, religious communities, trade unions, employers' associations, voluntary welfare organisations and other social interest groups are also to be involved.

### **Section 45a Job-related language training; authorisation to issue statutory instruments**

(1) Integration in the labour market may be promoted by means of job-related German language training courses. As a rule, these courses build on the general language training provided in the integration courses. Job-related language training is coordinated and carried out by the Federal Office for Migration and Refugees. The Federal Office for Migration and Refugees enlists private

or public institutions to run the job-related language training courses.

(2) Foreigners are required to take a job-related language training course if they are receiving benefits pursuant to Book Two of the Social Code and participation in the course is included in an integration agreement pursuant to Book Two of the Social Code. Labour market integration benefits pursuant to Book Two of the Social Code and active job promotion benefits under Book Three of the Social Code remain unaffected. Foreigners who are permitted to stay in Germany pending the asylum decision in accordance with the Asylum Act may participate in job-related language training on the condition that they

- a) have a good chance of being permitted to remain lawfully and permanently or
- b) entered the federal territory before 1 August 2019, have resided in the federal territory for at least three months with permission to remain pending the asylum decision, do not come from a safe country of origin as referred to in section 29 of the Asylum Act, are registered as seeking training or work or as unemployed with the Federal Employment Agency or are employed or in vocational training within the meaning of section 57 (1) of Book Three of the Social Code or are receiving support in measures referred to in Subdivision 2, Division 3, Chapter 3 or section 130 (1) sentence 2 of Book Three of the Social Code, or meet the requirements of section 11 (4) sentences 2 and 3 of Book Twelve of the Social Code.

It is assumed that asylum applicants from a safe country of origin under section 29a of the Asylum Act will not be permitted to remain lawfully and permanently.

(3) The Federal Ministry of Labour and Social Affairs is authorised, by way of a statutory instrument not requiring the approval of the Bundesrat, and in agreement with the Federal Ministry of the Interior, to regulate further details of the job-related language training, in particular the basic structure, the target groups, the duration, the content and implementation of the courses, the criteria for selecting and approving course providers, and the requirements and general conditions related to access to and proper and successful participation in the courses, including the final certificates and arrangements for the payment of costs, and the processing of data in accordance with section 88a (3).

#### **Chapter 4 Administrative provisions**

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

(1) The foreigners authority may take 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 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 (*Passgesetz*). In all other cases, foreigners may be prohibited from leaving the federal territory only if they intend to enter another state without possessing the necessary documents and permits. The departure ban is to 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 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 order or any other substantial interests of the Federal Republic of Germany,

2. may be counter to the foreign policy interests of the Federal Republic of Germany or its obligations 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 are 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 the use of violence as a means of promoting 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 47a** **Obligation to cooperate; checking photographs**

Foreigners are required, when requested by the authority entrusted with checking persons' identity, to present their passport, passport substitute or substitute identity document and enable the authority to check their faces against the photograph in the document. The same applies to the certificate confirming permission to remain pending the asylum decision pursuant to section 63 (1) sentence 1 of the Asylum Act. Foreigners holding an arrival certificate as referred to in section 63a (1) sentence 1 of the Asylum Act or one of the documents referred to in section 48 (1) no. 2 are required to present, upon request, the arrival certificate or document to the authority entrusted with checking the information stated therein and enable the authority to check their faces against the photograph in the document.

#### **Section 48** **Obligations related to identification papers**

(1) On request, foreigners are required to present and surrender

1. their passport, passport substitute or substitute identity document and

2. their residence title or a document confirming suspension of deportation

to the authorities entrusted with enforcing the law on foreigners and to leave such documents with these authorities temporarily, where necessary in order to implement or ensure measures under this Act. On request, German nationals who also possess a foreign nationality are required to present and surrender their passport or passport substitute to the authorities entrusted with enforcing the law on foreigners and to leave the documents with these authorities temporarily if

1. they were denied a German passport under section 7 (1) of the Passport Act, the German passport was withdrawn under section 8 of the Passport Act or if they are subject to an order under section 6 (7) of the Act on Identity Cards (*Personalausweisgesetz*), if there are indications that they intend to leave the federal territory, or

2. the requirements for prohibiting them from leaving the country in accordance with section 10 (1) of the Passport Act are met and and presenting, handing over and temporarily leaving the foreign passport or passport substitute with the authorities is necessary to carry out or ensure the departure ban.

(2) To meet the obligation to have and present identification papers, it is sufficient for a foreigner who neither possesses a passport or passport substitute nor can reasonably be expected to obtain one to carry the certificate confirming a residence title or the suspension of deportation, if this document contains the foreigner's personal details and a photograph and is marked to indicate that it is a substitute identity document.

(3) Foreigners who do not possess a valid passport or passport substitute are required to cooperate in efforts to obtain the identity paper and to present, hand over and leave with the authorities entrusted with enforcing this Act all such documents, other papers and data carriers as may be of importance in establishing their identity and nationality and in establishing and enforcing a possibility of removing them to another state. If the foreigner fails to meet this obligation and there is reason to believe that he or she is in possession of such documents or data carriers, the foreigner and the objects on his or her person may be searched. The foreigner must tolerate this measure.

(3a) Analysis of data carriers is permissible only as far as necessary to establish the foreigner's identity and nationality and to establish and enforce the possibility of removing him or her to another state in accordance with subsection (3) and the purpose of the measure cannot be achieved by more lenient means. Where there is reason to believe that analysing data carriers would provide only insights into the core area of private life, the measure is not permissible. The foreigner must provide the access data required for the permissible analysis of data carriers. The data carriers may be analysed only by employees who are qualified to hold judicial office. Insights into the core area of private life which are acquired in the course of analysing data carriers may not be utilised. Records thereof are to be deleted immediately. A written record is to be made of the fact of their acquisition and deletion.

(4) Where the passport requirement (section 3 (1)) is waived pursuant to section 5 (3) or section 33, a substitute identity document is issued. Subsection (3) remains unaffected.

#### **Section 48a** **Collection of access data**

(1) If the foreigner does not provide the access data needed to analyse devices used for telecommunications purposes, the commercial providers of telecommunication services or those involved in the provision of such services may be required, where the statutory conditions for processing the data are met, to provide information about the data used to protect access to devices or to storage devices located in these devices or separate from them (section 113 (1) sentence 2 of the Telecommunications Act (*Telekommunikationsgesetz*)).

(2) The foreigner is to be informed about the request for information in advance.

(3) On the basis of a request for information pursuant to subsection (1), the commercial providers of telecommunication services or those involved in the provision of such services must immediately transmit the data necessary to provide the information. Section 23 (1) of the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*) applies accordingly to compensation paid to service providers.

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

(1) Subject to the conditions stipulated in section 48 (1), the authorities entrusted with enforcing this Act may retrieve the biometric and other data stored on the electronic storage and processing

medium of a document in accordance with section 48 (1) nos. 1 and 2, 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 Register of Foreigners under sections 15 to 20 of the Act on the Central Register of Foreigners (*Gesetz über das Ausländerzentralregister*) and the registration authorities are also authorised to take 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 comprise only the fingerprints and the photograph.

(2) On request, every foreigner is required to furnish the authorities entrusted with enforcing the law on foreigners with information as to his or her age, identity and nationality and to submit such declarations in connection with procuring return travel documents as 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 to establish the foreigner's identity, age or nationality are to be taken

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 to implement other measures in accordance with this Act.

(4) The foreigner's identity is to be verified by means of identification measures when allocation is carried out in accordance with section 15a.

(5) As a general rule, the necessary measures are to be taken to establish and document the foreigner's identity

1. if the foreigner intends to enter or has entered the federal territory with a forged or falsified passport or passport substitute;
2. if there are other reasons to believe that the foreigner intends to re-enter the federal territory unlawfully, following refusal of entry or the termination of residence 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 removed as specified in section 26a (2) of the Asylum Act;
5. if the foreigner has applied for a national visa;
6. in the case of foreigners who have been proposed for an admission procedure under section 23, for temporary protection under section 24 or for redistribution on the basis of measures under Article 78 (3) of the Treaty on the Functioning of the European Union and have been included in the examination of cases for granting approval for admission by the Federal Office for Migration and Refugees, and in the cases covered by section 29 (3);
7. if a reason for refusal pursuant to section 5 (4) has been established.

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

foreigner. These measures are only 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 subsection (5) no. 5 are the taking of photographs and fingerprints.

(7) In order to determine the foreigner's country 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 informed beforehand.

(8) The identity of a foreigner who is apprehended in conjunction with unlawful entry and is not refused entry is to be documented by means of identification measures. In accordance with sentence 1, only photographs and prints of all 10 fingers may be taken. The identity of a foreigner under the age of 14 is to be documented under the conditions of sentence 1 only by taking a photograph.

(9) The identity of a foreigner who is residing in the federal territory without the required residence title is to be documented by means of identification measures. In accordance with sentence 1, only photographs and prints of all 10 fingers may be taken. The identity of a foreigner under the age of 14 is to be documented under the conditions of sentence 1 only by taking a photograph.

(10) The foreigner must tolerate the measures taken pursuant to subsections (1) and (3) to (9).

## **Chapter 5 Termination of stay**

### **Part 1 Grounds establishing the obligation to leave the federal territory**

#### **Section 50 Obligation to leave the federal territory**

(1) Foreigners are required to leave the federal territory if they do not or no longer possess the necessary residence title and no right of residence exists or no longer exists under the EEC/Turkey Association Agreement.

(2) Such foreigners must leave the federal territory without delay or, if a period has been allowed for departure, by the end of this period.

(2a) (repealed)

(3) Foreigners may meet the requirement to leave the federal territory by entering another member state of the European Union or another Schengen state only if they are permitted to enter and stay there. If this is the case, a foreigner who is required to leave the federal territory is to be ordered to proceed to the territory of that state without delay.

(4) A foreigner who is required to leave the federal territory and who intends to move to another address or to leave the district covered by the foreigners authority for more than three days is required to notify the foreigners authority accordingly beforehand.

(5) As a general rule, the passport or passport substitute of a foreigner who is required to leave the federal territory is to be taken into custody until the foreigner's departure.

(6) For the purpose of terminating a foreigner's stay, the police may use their search tools for wanted persons to find and apprehend the foreigner, if his or her whereabouts are unknown. If a foreigner is subject to a ban on entry and residence pursuant to section 11, an alert may be

issued for the purpose of refusing entry and, if the foreigner is found in the federal territory, of apprehending him or her. Section 66 of the Asylum Act applies accordingly to foreigners who have been allocated in accordance with section 15a.

### **Section 51** **Termination of lawful residence; continued validity of restrictions**

(1) The residence title expires in the following cases:

1. when its period of validity expires,
2. if an invalidating condition occurs,
3. if the residence title is withdrawn,
4. if the residence title is revoked,
5. when the foreigner is expelled,
- 5a. when a deportation order pursuant to section 58a is announced,
6. if the foreigner leaves the federal territory for a reason which is not temporary in nature,
7. if the foreigner leaves the federal territory and does not 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 after a residence title pursuant to sections 22, 23 or 25 (3) to (5) has been granted;

a visa issued for multiple entries or valid for more than 90 days does not expire pursuant to no. 6 or 7.

(1a) The validity of an ICT Card issued in accordance with section 19 does not expire pursuant to subsection (1) nos. 6 and 7, if the foreigner makes use of the possibility provided in Directive 2014/66/EU to carry out part of the intra-corporate transfer in another member state of the European Union. The validity of a temporary residence permit issued in accordance with section 16b or 18d does not expire pursuant to subsection (1) nos. 6 and 7, if the foreigner makes use of the possibility envisaged in Directive 2016/801/EU to carry out part of the studies or research project in another member state of the European Union.

(2) The permanent settlement permit of a foreigner who has lawfully resided in the federal territory for at least 15 years, and the permanent settlement permit of his or her cohabiting spouse do not expire pursuant to subsection (1) nos. 6 and 7 if their subsistence is secure and there is no public interest in expelling the foreigner pursuant to section 54 (1) nos. 2 to 5 or (2) nos. 5 to 7. The permanent settlement permit of a foreigner cohabiting with a German spouse does not expire pursuant to subsection (1) nos. 6 and 7 if there is no public interest in expelling the foreigner pursuant to section 54 (1) nos. 2 to 5 or (2) nos. 5 to 7. On request, the foreigners authority at the place of the foreigner's last habitual residence issues a certificate confirming the continued validity of the permanent settlement permit.

(3) The residence title does not expire pursuant to subsection (1) no. 7 if the specified period is exceeded solely because of compulsory military service in the foreigner's native country and the foreigner re-enters the federal territory within three months of discharge from said military service.

(4) As a rule, a longer period is granted in accordance with subsection (1) no. 7 if the foreigner intends to leave the federal territory for reasons of a temporary nature and possesses a permanent settlement permit, or if the stay outside of the federal territory serves the interests of the Federal Republic of Germany. In derogation from subsection (1) nos. 6 and 7, a foreigner's residence title does not expire if the foreigner meets the requirements of section 37 (1) sentence

1 no. 1, if the foreigner was unlawfully forced into marriage by means of violence or threat of serious harm and was prevented from returning to Germany, and re-enters the federal territory no more than three months after the coercive situation ended and no later than 10 years after leaving the federal territory.

(5) The exemption from the requirement to have a residence title does not apply if the foreigner is expelled, removed or deported; section 11 (2) to (5) applies accordingly.

(6) Geographic and other restrictions and conditions under this Act and other acts remain in force after the residence title expires or deportation is suspended until they are lifted or the foreigner meets the obligation to leave the federal territory.

(7) If a person entitled to asylum or a foreigner whom the Federal Office for Migration and Refugees has incontestably granted refugee status leaves the federal territory, the residence title does not expire as long as the person concerned possesses a valid travel document for refugees issued by a German authority. The foreigner is not entitled to the renewed issuance of a residence title on the basis of 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 authority to issue a travel document for refugees has passed to another state.

(8) Before a temporary residence permit pursuant to section 38a (1) is suspended, before a foreigner who holds such a temporary residence permit is expelled and before a deportation order is issued pursuant to section 58a, the competent authority in the proceedings pursuant to section 91c (2) gives, through the Federal Office for Migration and Refugees, the member state of the European Union in which the foreigner has 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. If the opinion of the other member state is received in sufficient time, it will be taken into consideration by the competent authority.

(8a) Insofar as the authorities of other Schengen states must be notified of decisions in accordance with Article 34 of Regulation (EC) No 810/2009 taken by the foreigners authorities, notification will be via the Federal Office for Migration and Refugees. The authorities charged with policing cross-border traffic will notify the authorities of other Schengen states immediately of their decisions in accordance with Article 34 of Regulation (EC) No 810/2009.

(9) The EU long-term residence permit expires only if

1. revoked on account of fraudulent misrepresentation, threats or bribery,
2. the foreigner is expelled or is issued with a deportation order under section 58a,
3. the foreigner resides for 12 consecutive months outside of the area in which the legal status of a long-term resident can be acquired; this period is 24 consecutive months for a foreigner who previously possessed an EU Blue Card and for his or her dependants who previously possessed a temporary residence permit pursuant to sections 30, 32, 33 or 36.
4. the foreigner remains outside of the federal territory for six years or
5. the foreigner acquires the legal status of a long-term resident in another member state of the European Union.

Subsections (2) to (4) apply accordingly to the cases referred to in sentence 1 nos. 3 and 4.

(10) In derogation from subsection (1) no. 7, the period for the EU Blue Card and the temporary residence permits pursuant to sections 30, 32, 33 or 36 issued to dependants of EU Blue Card holders is 12 months. The same applies to the permanent settlement permit of a foreigner who has resided lawfully in the federal territory for at least 15 years and to the permanent settlement permit of a spouse cohabiting with the foreigner if they are 60 years of age or older.

## **Section 52 Revocation**

(1) Except in the cases covered by subsections (2) to (6), a foreigner's residence title pursuant to section 4 (1) sentence 2 no. 1 second alternative nos. 2, 2a, 2b, 2c, 3 and 4 may only be revoked if

1. the foreigner no longer possesses a valid passport or passport substitute,
2. the foreigner changes or loses his or her nationality,
3. the foreigner has not yet entered the federal territory,
4. the foreigner's recognition as a person entitled to asylum or his or her status as a refugee or as a person entitled to subsidiary protection lapses or becomes null and void, or
5. the foreigners authority establishes, after granting a temporary residence permit pursuant to section 25 (3) sentence 1, that
  - a) the conditions of section 60 (5) or (7) are not or no longer met,
  - b) the foreigner fulfils one of the grounds for exclusion given in section 25 (3) sentence 2 nos. 1 to 4, or,
  - c) in the cases covered by section 42 sentence 1 of the Asylum Act, the decision is revoked or becomes null and void.

In the cases covered by sentence 1 nos. 4 and 5, the residence title of dependants living together with the foreigner as a family unit may also be revoked if these dependants have no independent entitlement to the residence title.

(2) A national visa, a temporary residence permit or an EU Blue Card granted for the purpose of employment are to be revoked if the Federal Employment Agency revokes its approval of employment pursuant to section 41. In the case of sentence 1, a national visa or a temporary residence permit not granted for the purpose of employment is to be revoked to the extent to which they permit employment.

(2a) An ICT Card issued pursuant to section 19, a Mobile ICT Card issued pursuant to section 19b or a residence title allowing the subsequent immigration of dependants joining holders of an ICT Card or a Mobile ICT Card may be revoked if the foreigner

1. no longer meets the conditions for being granted such a card or title, or
2. has violated the provisions of another member state of the European Union on the mobility of intra-corporate transferees in the scope of Directive 2014/66/EU.

If the ICT Card or the Mobile ICT card is revoked, the residence title granted to the dependant is to be revoked at the same time, unless the dependant has an independent entitlement to a residence title.

(3) A temporary residence permit issued for study purposes under section 16b (1), (5) or (7) 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, taking into account the average length of the course of study at the higher education institution concerned and the foreigner's individual situation, or
3. the foreigner no longer meets the conditions for being granted a temporary residence permit under section 16b (1), (5) or (7).

The educational institution may be consulted to verify the conditions stipulated in sentence 1 no. 2.

(4) A temporary residence permit issued under section 18d or 18f may be revoked if

1. the research organisation with which the foreigner has concluded a hosting 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 organisation, or
3. the foreigner no longer meets the conditions for being granted a temporary residence permit under section 18d or 18f or allowing a hosting agreement to be concluded with him or her.

(4a) A temporary residence permit issued under section 16e or 19e may be revoked if the foreigner no longer meets the conditions for being granted a temporary residence permit.

(5) As a general rule, a temporary residence permit pursuant to section 25 (4a) sentence 1 or (4b) sentence 1 is to be revoked if

1. the foreigner was not or is no longer prepared to testify in the criminal proceedings,
2. the public prosecutor's office or the criminal court considers the information provided by the foreigner referred to in section 25 (4a) sentence 2 no. 1 or (4b) sentence 2 no.1 to be in all reasonable probability false or
3. the foreigner no longer meets the conditions for being granted a residence title under section 25 (4a) or (4b) on account of other circumstances.

As a general rule, a temporary residence permit pursuant to section 25 (4a) sentence 1 is to be revoked also if the foreigner has voluntarily re-established contact with the persons referred to in section 25 (4a) sentence 2 no. 2.

(6) As a general rule, a temporary residence permit pursuant to section 38a is to 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) (repealed)

### **Section 53 Expulsion**

(1) Foreigners whose stay endangers public safety and order, the free democratic basic order or other significant interests of the Federal Republic of Germany will be expelled if, after weighing the interest in their departure against their individual interest in remaining in the federal territory, taking into account all the circumstances of the particular case, there is an overriding public interest in the foreigners' departure.

(2) When weighing the interests referred to in subsection (1) and taking into account the circumstances of the individual case, consideration is to be given in particular to the length of the foreigner's stay, his or her personal, economic and other ties in the federal territory and in the country of origin or in another state prepared to receive the foreigner, the consequences of expulsion for the foreigner's dependants and civil partner, and whether the foreigner has abided by the law.

(3) Foreigners who possess a right of residence under the EEC/Turkey Association Agreement or an EU long-term residence permit may be expelled only if the personal conduct of the person

concerned currently represents a serious threat to public safety and order which affects a fundamental interest of society, and expulsion is essential to protect that interest.

(3a) A foreigner who is recognised as a person entitled to asylum, who has 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), may be expelled only if there are serious grounds for regarding the foreigner as a threat to the security of the Federal Republic of Germany, as a terrorist threat or as a threat to the general public because he or she has been incontestably sentenced to a prison term for a serious crime.

(3b) A foreigner who has the legal status of a person entitled to subsidiary protection as defined in section 4 (1) of the Asylum Act may be expelled only if he or she has committed a serious crime or represents a threat to the general public or to the security of the Federal Republic of Germany.

(4) A foreigner who has filed an application for asylum may be expelled only on the condition that the asylum procedure has been concluded by incontestable decision without granting the foreigner recognition as a person entitled to asylum or without recognising his or her entitlement to international protection (section 1 (1) no. 2 of the Asylum Act). The condition will be waived if

1. there are facts justifying expulsion under subsection (3) or
2. a deportation warning issued in accordance with the Asylum Act has become enforceable.

#### **Section 54 Interest in expulsion**

(1) The public interest in expelling the foreigner (*Ausweisungsinteresse*) within the meaning of section 53 (1) is especially serious where the foreigner

1. has been incontestably sentenced to a prison term or a term of youth custody of at least two years for one or more intentionally committed offences, or preventive detention has been ordered in connection with the most recent incontestable conviction,

1a. has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences

- a) against life,
- b) against physical integrity,
- c) against sexual self-determination as referred to in sections 174, 176 to 178, 181a, 184b, 184d and 184e, each in conjunction with section 184b of the Criminal Code,
- d) against property, insofar as the law provides for an increased minimum sentence or the offences were committed as a series, or
- e) for resisting or attacking law enforcement officers,

1b. has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more offences as referred to in section 263 of the Criminal Code to the detriment of a social welfare institution or social insurance institution pursuant to the Social Code or pursuant to the Narcotics Act (*Gesetz über den Verkehr mit Betäubungsmitteln*),

2. threatens the free democratic basic order or the security of the Federal Republic of Germany; this is assumed to be the case where there is reason to believe that the foreigner is or has been a member of an organisation which supports terrorism, or the

foreigner supports or has supported such an organisation, or is, as referred to in section 89a (2) of the Criminal Code, preparing or has prepared a serious violent offence endangering the state as described in section 89a (1) of the Criminal Code, unless the foreigner recognisably and credibly distances himself or herself from the activity which threatens the state,

3. was one of the leaders of an organisation which was incontestably banned because its purpose or its activity contravenes criminal law or is directed against the constitutional order or the concept of international understanding,

4. is involved in violent activities in the pursuit of political or religious objectives or calls publicly for the use of violence or threatens the use of violence, or

5. incites others to hatred against segments of the population; this is assumed to be the case where the foreigner exerts a targeted and lasting influence on other persons in order to incite or increase hatred against members of certain ethnic groups or religions, or he or she publicly, in a meeting or by disseminating writings in a manner which is suited to disturbing public safety and law and order,

a) incites others to undertake arbitrary measures against segments of the population,

b) maliciously disparages segments of the population, thereby attacking the human dignity of others, or

c) endorses or promotes crimes against peace, against humanity, war crimes or acts of terrorism of comparable severity,

unless the foreigner recognisably and credibly distances himself or herself from these actions.

(2) The public interest in expelling the foreigner within the meaning of section 53 (1) is serious where the foreigner

1. has been incontestably sentenced to a prison term of at least six months for one or more intentionally committed offences,

2. has been incontestably sentenced to youth custody for at least one year for one or more intentionally committed offences, and enforcement of the penalty has not been suspended on probation,

3. has committed or attempted to commit, as a perpetrator or participant, the offence under section 29 (1) sentence 1 no. 1 of the Narcotics Act,

4. uses heroin, cocaine or a comparably dangerous narcotic drug and is not prepared to undergo the necessary treatment for rehabilitation, or evades such treatment,

5. 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,

6. forces or attempts to force another person into marriage, or repeatedly commits acts which violate section 11 (2) sentences 1 and 2 of the Civil Status Act (Personenstandsgesetz) and constitute a serious violation of this provision; such acts constitute a serious violation if they involve a person under the age of 16,

7. fails, in the course of an interview to clarify reservations against entry or continued residence, to inform the German diplomatic mission abroad or the foreigners authority of previous stays in Germany or other states, or intentionally furnishes no, false or incomplete information on key points regarding links to persons or organisations suspected of supporting terrorism or threatening the free democratic basic order or

security of the Federal Republic of Germany; expulsion on this basis is permitted only if the foreigner is expressly informed before the interview of the security-related purpose of the interview and the legal consequences of refusing to furnish information or of furnishing false or incomplete information,

8. in the course of an administrative procedure conducted by the authorities of a Schengen state, in Germany or abroad,

a) has furnished false or incomplete information in order to obtain a German residence title, a Schengen visa, an airport transit visa, a passport substitute, eligibility for exemption from the passport requirement or the suspension of deportation or,

b) despite a legal obligation, has failed to cooperate in measures taken by the authorities responsible for implementing this Act or the Convention Implementing the Schengen Agreement, provided that the foreigner was informed beforehand of the legal consequences of such action or

9. has committed a more than isolated or minor breach of legal provisions, court rulings or orders, or has committed an offence outside of the federal territory which is to be regarded in the federal territory as an intentionally committed serious offence.

#### **Section 55 Interest in remaining**

(1) The individual interest in remaining in the federal territory (*Bleibeinteresse*) within the meaning of section 53 (1) is particularly serious where the foreigner

1. possesses a permanent settlement permit and has lawfully resided in the federal territory for at least five years,
2. possesses a temporary residence permit and was born in the federal territory or entered the federal territory as a minor and has lawfully resided in the federal territory for at least five years,
3. possesses a temporary residence permit, has lawfully resided in the federal territory for at least five years and cohabits with a foreigner as described in nos. 1 and 2 as a spouse or in a registered civil partnership,
4. cohabits with a German dependant or civil partner in a family unit or a registered civil partnership, exercises rights of care and custody for a minor, unmarried German or exercises a right of access to that minor,
5. possesses a temporary residence permit pursuant to section 23 (4), sections 24, 25 (4a) sentence 3, or pursuant to section 29 (2) or (4).

(2) The individual interest in remaining within the meaning of section 53 (1) is serious in particular where

1. the foreigner is a minor and possesses a temporary residence permit,
2. the foreigner possesses a temporary residence permit and has resided in the federal territory for at least five years,
3. the foreigner exercises rights of care and custody for an unmarried minor residing lawfully in the federal territory or exercises a right of access to that minor,
4. the foreigner is a minor whose parents or parent having rights of care and custody reside or resides lawfully in the federal territory,

5. consideration is to be given to the interests or the well-being of a child or
6. the foreigner possesses a temporary residence permit pursuant to section 25 (4a) sentence 1.

(3) Residence on the basis of section 81 (3) sentence 1 and (4) sentence 1 will be considered lawful residence within the meaning of subsections (1) and (2) only if the application for issuing or extending the residence title was granted.

### **Section 56** **Monitoring for internal security reasons foreigners required to leave the federal territory**

(1) A foreigner subject to an expulsion order on the ground of a public interest in expelling the foreigner pursuant to section 54 (1) nos. 2 to 5 or a deportation order pursuant to section 58a is obliged to report at least once a week to the police station which is responsible for the foreigner's place of residence, unless the foreigners authority stipulates otherwise. An obligation to report to the police in line with sentence 1 may be imposed if the foreigner

1. is enforceably required to leave the federal territory and there is a public interest in expelling the foreigner as referred to in sentence 1, or
2. is enforceably required to leave the federal territory for reasons other than the interests in expulsion referred to in sentence 1, and if the order to report to the police is necessary to avert a threat to public safety and order.

(2) The foreigner's residence is to be restricted to the district of the foreigners authority concerned, unless the foreigners authority stipulates otherwise.

(3) The foreigner may be required to move to a different place of residence or to certain accommodations outside the district of the foreigners authority concerned, if this appears advisable

1. to hinder or prevent the activities which led to the expulsion order and to facilitate monitoring of compliance with requirements and obligations under the law governing organisations and associations or other law, or
2. to prevent the repetition of serious crimes which have led to an expulsion order pursuant to section 54 (1) no. 1.

(4) In order to hinder or prevent activities which have led to an expulsion order pursuant to section 54 (1) nos. 2 to 5, to an order pursuant to subsection 1 sentence 2 no. 1 or to a deportation order pursuant to section 58a, the foreigner may also be obliged to refrain from contacting specific persons or persons in a specific group, to refrain from keeping company with them, from employing them, training or housing them and to refrain from using certain means of communication or communication services, insofar as means of communication remain at the foreigner's disposal and the restrictions are necessary to prevent a serious threat to internal security or to the life and limb of others. To prevent the repetition of serious crimes which have led to an expulsion order pursuant to section 54 (1) no. 1, restrictions as referred to in sentence 1 may be ordered insofar as these are necessary to prevent a serious threat to internal security or to the life and limb of others.

(5) The obligations pursuant to subsections (1) to (4) are suspended if the foreigner is in custody. An order pursuant to subsections (3) and (4) is immediately enforceable.

### **Section 56a** **Electronic location monitoring; authorisation to issue statutory instruments**

(1) To prevent a serious threat to internal security or to the life and limb of others, foreigners who are subject to geographic restrictions pursuant to section 56 (2) and (3) or to contact bans pursuant to section 56 (4) may be required, by a judicial order,

1. to carry the technical devices necessary to permanently monitor their location at all times, keep the devices ready for service, and
2. not to interfere with their ability to function.

(2) This order is to be issued for no longer than three months. It may be extended by no more than three months at a time, if the prerequisites continue to exist. If the prerequisites for the order cease to exist, the measure is to be stopped immediately.

(3) The foreigners authority collects and stores, with the help of the technical devices the foreigner carries and in an automated manner, data on

1. the foreigner's location and
2. any interference with the collecting of data.

As far as technically possible, it is to be ensured that no location data are collected in the foreigner's home which go beyond the fact that the foreigner is present or not. The *Land* governments may determine by a statutory instrument that a body other than the foreigners authority collects and stores the data referred to in sentence 1. The authorisation in sentence 3 may be transferred, by a statutory instrument, from the *Land* governments to the supreme *Land* authorities responsible for enforcing this Act.

(4) Without the consent of the person concerned, the data may only be processed to the extent necessary to

1. establish violations of geographic restrictions pursuant to section 56 (2) and (3) or of contact bans pursuant to section 56 (4),
2. prosecute an administrative offence pursuant to section 98 (3) no. 5a or a criminal offence pursuant to section 95 (1) no. 6a,
3. establish violations of an enforceable court order pursuant to subsection (1) and to prosecute a criminal offence pursuant to section 95 (2) no. 1a,
4. prevent a current serious threat to the life, limb or liberty of a third person,
5. prosecute serious crimes against the life and limb of a third person or crimes as referred to in sections 89a or 129a of the Criminal Code, or
6. maintain the functionality of the technical devices.

(5) To comply with the purpose limitation pursuant to subsection (4), data are to be processed in an automated manner and are to be protected against unauthorised disclosure without prejudice to Articles 24, 25 and 32 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1; L 314, 22.11.2016, p. 72; L 127, 23.5.2018, p. 2) as amended. The data stored pursuant to subsection (3) sentence 1 are to be deleted no later than two months after their collection, insofar as they are not used for the purposes stated in subsection (4). Any retrieval of data is to be logged. The log data are to be deleted after 12 months. If location data are collected in the home of the person concerned which go beyond the fact that the person is present or not, they may not be processed and are to be deleted immediately after having been noted. The fact that they were taken note of and deleted is to be documented. This record may be used only for the purpose of data protection monitoring. It is to be deleted when the data protection monitoring is completed.

(6) To carry out the measure in subsection (1), the competent authority within the meaning of subsection (3) is to

1. receive and assess incoming system alerts concerning violations as defined in subsection (4) no. 1,
2. transmit data on the location of the person concerned to the competent authorities, insofar as this is necessary to enforce measures pursuant to subsection (4) no. 1,
3. transmit data on the location of the person concerned to the competent administrative fine authority to prosecute administrative offences pursuant to section 98 (3) no. 5a, or to the competent law enforcement authority to prosecute offences pursuant to section 95 (1) no. 6a or (2) no. 1a,
4. transmit data on the location of the person concerned to the competent police authority insofar as this is necessary to avert a current serious threat within the meaning of subsection (4) no. 4,
5. transmit data on the location of the person concerned to the competent police or law enforcement authorities if necessary to prevent or prosecute a criminal offence referred to in subsection (4) no. 5,
6. find out the cause of an alert; to this end, the competent body may contact and question the person concerned, make him or her aware of the violation and inform him or her how to stop it,
7. initiate an inspection of the technical devices kept by the person concerned as to whether they are working or have been tampered with, and the measures to address any functional impairments, in particular the exchange of technical devices or parts thereof,
8. respond to enquiries by the person concerned regarding the handling of the technical devices.

(7) The application for ordering a measure pursuant to subsection (1) must state

1. the person against whom the measure is directed, including name and address,
2. type, scope and duration of the measure,
3. information as to whether the person against whom the measure is directed is subject to a geographic restriction pursuant to section 56 (2) and (3) or a contact ban pursuant to section 56 (4),
4. the facts of the case, and
5. the reasons for the measure.

(8) The order is to be issued in writing. It must include

1. the person against whom the measure is directed, including name and address,
2. type, scope and duration of the measure, and
3. the main reasons for the measure.

(9) The local court in whose district the competent authority within the meaning of subsection (3) is located is responsible for judicial orders pursuant to subsection (1). The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction apply to the procedure accordingly.

(10) Section 56 (5) sentence 1 applies accordingly.

## **Part 2**

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

#### **Section 57**

##### **Removal**

(1) A foreigner who is apprehended in conjunction with unlawful entry into the federal territory across a border within the meaning of Article 2 no. 2 of Regulation (EU) 2016/399 (external border) is, as a general rule, to be removed from the federal territory.

(2) A foreigner who is enforceably required to leave the federal territory, who will be readmitted by another member state of the European Union or Norway or Switzerland under the terms of an intergovernmental admission agreement applicable on 13 January 2009 is, as a general rule, to be removed to that state; the same applies if the foreigner is apprehended by the border authority near the border in close chronological proximity to unlawful entry into the federal territory and there are indications that another state is responsible for conducting an asylum procedure according to legislation of the European Union or an international treaty, and an admission or readmission process is initiated.

(3) Section 58 (1b), section 59 (8), section 60 (1) to (5) and (7) to (9) and sections 62 and 62a apply accordingly.

#### **Section 58**

##### **Deportation**

(1) Foreigners are to be deported if the obligation to leave the federal territory is enforceable, no period has been allowed for departure or such a period has expired, and voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary on grounds of public security and order. If one of the conditions stipulated in section 59 (1) sentence 2 becomes applicable within the period allowed for departure, the foreigner is, as a rule, to be deported before the period expires.

(1a) Before deporting unaccompanied foreign minors, the authority must ensure that, in the state to which they are to be returned, they will be handed over to a family member, to a person having the right of care and custody or to an appropriate reception centre.

(1b) Foreigners holding an EU long-term residence permit or having a corresponding legal status in another member state of the European Union and who are eligible for international protection in another member state of the European Union may only be deported to the state granting protection, except in the cases covered by section 60 (8) sentence 1. Section 60 (2), (3), (5) and (7) remains unaffected.

(2) The obligation to leave the federal territory is enforceable if the foreigner

1. has entered the federal territory unlawfully,
2. has not yet applied for the necessary residence title for the first time or for its extension or has submitted an application, but the foreigner's residence is not deemed to be permitted pursuant to section 81 (3) or the residence title is not deemed to remain valid pursuant to section 81 (4), or
3. is required to leave the federal territory by virtue of a return decision reached by another member state of the European Union in accordance with Article 3 of Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, p. 34), if the decision concerned is recognised by the competent authority.

In all other cases, the obligation to leave the federal territory becomes enforceable only when the denial of the residence title or another administrative act requiring the foreigner to leave pursuant

to section 50 (1) takes effect.

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

1. is, by judicial order, in detention or another form of public custody,
2. has failed to leave the federal territory within the period allowed for departure,
3. has been expelled on the ground of a particularly serious public interest in expulsion as referred to in section 54 (1) in conjunction with section 53,
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 the obligation to leave the federal territory.

(4) The authority carrying out the deportation is authorised to take the foreigner to the airport or to a border crossing point for the purpose of deportation and to detain the foreigner temporarily for this purpose. Such detention is to be limited to the extent necessary to carry out the deportation.

(5) The authority carrying out the deportation may, to the extent necessary to carry out the deportation, enter the home of the foreigner to be deported for the purpose of apprehending the foreigner if there are facts indicating that the foreigner is present. The home comprises residential and secondary premises, working and business premises, production sites and other fenced-in property.

(6) The authority carrying out the deportation may, to the extent necessary to carry out the deportation, search the home of the foreigner to be deported for the purpose of apprehending the foreigner. Searches of other persons' homes are permitted only for the purpose of apprehending the foreigner to be deported if there are facts indicating that the foreigner is present on the premises to be searched. Subsection (5) sentence 2 applies accordingly.

(7) At night, the home may be entered or searched only if there are facts indicating that it would otherwise be impossible to apprehend the foreigner for the purpose of deportation. Organising the deportation does not constitute a fact as referred to in sentence 1.

(8) Searches under subsection (6) may only be ordered by a judge or, in case of danger in delay, by the authority carrying out the deportation. After entering the home in accordance with subsection (5), the fact that the foreigner was not found there cannot be used to justify the assumption of danger in delay.

(9) The occupant of the premises to be searched may be present during the search. If the occupant is absent, the occupant's representative or adult family member, another member of the household or a neighbour is to be present, if possible. In the cases of subsection (6) sentence 2, the occupant or representative in the occupant's absence is to be informed in advance of the purpose of the search. A record of the search is to be made. This record must include the responsible police station, the reason for the search, the time and place of the search and, if no court order was issued, the facts justifying the assumption of danger in delay. The home's occupant or the occupant's representative is to be given a copy of the record upon request. If, under the special circumstances of the case, it is impossible to make a record or to provide a copy of the record, or if doing so would jeopardise the purpose of the search, the home's occupant or the occupant's representative is to be given written confirmation of the search including the responsible police station and the time and place of the search.

(10) More detailed provisions of the *Länder* concerning the content of subsections (5) to (9)

remain unaffected.

### **Section 58a Deportation order**

(1) The supreme *Land* authority may issue a deportation order for a foreigner without a prior expulsion order based on the assessment of facts, in order to avert a special threat to the security of the Federal Republic of Germany or a terrorist threat. The deportation order is immediately enforceable; no deportation warning is necessary.

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

(3) A deportation order may not be enforced if the conditions for a deportation ban pursuant to section 60 (1) to (8) are met. Section 59 (2) and (3) applies accordingly. Assessment in this context is carried out by the authority deciding on the deportation order; this authority is not bound by findings reached in this connection in other proceedings.

(4) After the deportation order has been announced, foreigners are to be given an opportunity to contact a legal adviser of their choice without delay, unless they have secured the services of a lawyer beforehand; foreigners are 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 Court Procedure (*Verwaltungsgerichtsordnung*) must be filed within seven days of announcement of the deportation order. Deportation may not be enforced until the period referred to in sentence 2 has expired and, if an application for temporary relief is filed in time, until the court has decided on said application.

### **Section 59 Deportation warning**

(1) Notice of intention to deport a foreigner (deportation warning) is to be given specifying a reasonable period of between seven and 30 days for voluntary departure. By way of exception, a shorter period may be set or such a period may be waived altogether if, in individual cases, it is vital to safeguard overriding public interests, in particular where

1. a well-founded suspicion exists that the foreigner intends to evade deportation,
2. the foreigner poses a serious threat to public safety or law and order.

Under the conditions in sentence 2, warning the foreigner of intention to deport may also be waived if

1. the residence title pursuant to section 51 (1) nos. 3 to 5 has expired or
2. the foreigner has already been informed in accordance with the requirements of section 77 that he or she is required to leave the federal territory.

Taking account of the particular circumstances of each case, the period allowed for departure may be extended as appropriate or a longer period may be set. Section 60a (2) remains unaffected. If the obligation to leave or the deportation warning ceases to be enforceable, the period allowed for departure is to be interrupted and begins to run again when the obligation or notice becomes enforceable once more. It is not necessary to set a new time limit. When the period allowed for voluntary departure expires, the foreigner is not to be informed of the date of the deportation.

(2) As a rule, the deportation warning is to specify the state to which the foreigner is to be deported and is to 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. Entities and territorial authorities as referred to in annexes I and II of Regulation (EU) 2018/1806 of the European

Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39) are deemed the equivalent of states.

(3) The existence of deportation bans and grounds for the temporary suspension of deportation does not preclude issuing the deportation warning. The state to which the foreigner may not be deported is to be specified in the deportation warning. If the administrative court establishes the existence of a deportation ban, the lawfulness of the deportation warning otherwise remains unaffected.

(4) Once the deportation warning is no longer subject to appeal, the foreigners authority is not to take into account in further decisions any circumstances constituting an obstacle to deportation to the state specified in the deportation warning and which occurred before the deportation warning was no longer subject to appeal; any other circumstances cited by the foreigner constituting 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 Court Procedure remain unaffected.

(5) It is not necessary to set a deadline in cases covered by section 58 (3) no. 1; the foreigner will be deported directly from detention or public custody. As a general rule, an impending deportation is to be announced at least one week beforehand.

(6) The foreigner is to be issued a certificate confirming that a period for departure has been set pursuant to subsection (1).

(7) If the foreigners authority has concrete grounds to suspect that the foreigner was the victim of a criminal offence as referred to in section 25 (4a) sentence 1 or section 25 (4b) sentence 1, in derogation from subsection (1) sentence 1, the foreigners authority sets a period for departure which will allow the foreigner sufficient time to decide whether he or she is prepared to testify in accordance with section 25 (4a) sentence 2 no. 3 or section 25 (4b) sentence 2 no. 2. A period of at least three months will be allowed for departure. The foreigners authority may refrain from setting a period for departure pursuant to sentence 1 or may annul or reduce the period for departure, if

1. the foreigner's stay is detrimental to public safety and order or other substantial interests of the Federal Republic of Germany or

2. the foreigner has voluntarily re-established contact with the persons referred to in section 25 (4a) sentence 2 no. 2 after being duly informed pursuant to sentence 4.

The foreigners authority or a body authorised by it informs the foreigner of the applicable arrangements, programmes and measures for victims of criminal offences referred to in section 25 (4a) sentence 1.

(8) Before being deported, foreigners who were employed without the entitlement to pursue an economic activity required under section 4a (5) are to be informed of their rights pursuant to Article 6 (2) and Article 13 of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

## **Section 60 Deportation bans**

(1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), foreigners may not be deported to a state in which their life or liberty is threatened on account of their race, religion, nationality, membership of a certain social group or political convictions. This also applies to persons who are entitled to asylum and to foreigners

who have been incontestably granted refugee status or who have 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. If a foreigner invokes the ban on deportation pursuant to this subsection, the Federal Office for Migration and Refugees is to 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 may only be contestable subject to the provisions of the Asylum Act.

(2) Foreigners may not be deported to a state where they face serious harm as referred to in section 4 (1) of the Asylum Act. Subsection (1) sentences 3 and 4 applies accordingly.

(3) If a foreigner may not be deported to a state in which he or she is wanted for a criminal offence and there is a danger that the death penalty will be imposed or enforced, the provisions on extradition apply 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, the foreigner may be deported to this state prior to the decision on extradition only with the approval of the authority responsible for approving extradition under section 74 of the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*).

(5) A foreigner may not be deported if deportation is prohibited 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 risk that a foreigner may face prosecution and punishment in another state and, unless otherwise stipulated in subsections (2) to (5), the concrete threat of lawful punishment under the legal system of another state does not preclude deportation.

(7) As a rule, foreigners are not to be deported to another state in which they face a substantial concrete threat to life and limb or liberty. Section 60a (2c) sentences 2 and 3 applies accordingly. A substantial concrete threat for health reasons only exists in the case of life-threatening or serious illness which would significantly worsen if the foreigner is deported. It is not necessary for medical care in the state of destination to be equivalent to medical care in the Federal Republic of Germany. Sufficient medical care generally also exists where it is guaranteed only in part of the state of destination. Threats as referred to in sentence 1 to which the population or the segment of the population to which the foreigner belongs are generally exposed are to be taken into account in orders pursuant to section 60a (1) sentence 1.

(8) Subsection (1) does not apply if, for serious reasons, the foreigner is to be regarded as a threat to the security of the Federal Republic of Germany or constitutes a threat to the general public because he or she has been incontestably sentenced to a prison term of at least three years for a crime or a particularly serious offence. The same applies if the foreigner meets the conditions stipulated in section 3 (2) of the Asylum Act. Application of subsection (1) may be waived if the foreigner represents a threat to the general public because he or she has been incontestably sentenced to a prison term or a term of youth custody of at least one year for one or more intentionally committed offences against life, physical integrity, sexual self-determination or property or for resisting enforcement officers if the criminal offence was committed using violence, using a threat of harm to life or limb, or with guile, or if it constitutes an offence pursuant to section 177 of the Criminal Code.

(9) In the cases covered by subsection (8), a foreigner who has filed an application for asylum may, in derogation from the provisions of the Asylum Act, be notified of intention to deport and duly deported. Subsections (2) to (7) remain unaffected.

(10) If a foreigner to whom the conditions in subsection (1) apply is to be deported, a deportation

warning must be sent and a reasonable period must be allowed for departure. Those states to which the foreigner may not be deported are to be specified in the deportation warning.

(11) (repealed)

### **Section 60a** **Temporary suspension of deportation (Duldung)**

(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 three months. Section 23 (1) applies to a period in excess of six months.

(2) The deportation of a foreigner is to be suspended for as long as deportation is impossible in fact or in law and no temporary residence permit is granted. The deportation of a foreigner is also to 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 information from the foreigner. Foreigners may be granted a temporary suspension of deportation if their continued presence in the federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. Where the recording of the acknowledgement of paternity or the mother's consent to carry out a procedure pursuant to section 85a is suspended, the deportation of the foreigner acknowledging paternity, of the foreign mother or the foreign child is to be suspended until the procedure pursuant to section 85a has been concluded by means of an enforceable decision.

(2a) The deportation of a foreigner is to be suspended for one week where his or her removal or deportation has failed, custody awaiting 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 (OJ L 321, 6.12.2003, p. 26). Suspension pursuant to sentence 1 may not be extended. The foreigner is to be allowed to enter the federal territory.

(2b) For as long as a foreigner who holds a temporary residence permit pursuant to section 25a (1) is a minor, the deportation of his or her parents or of one parent having the sole right of care and custody as well as of those minor children who live as a family unit with the parents or the parent having the sole right of care and custody is, as a rule, to be suspended.

(2c) It is assumed that the deportation is not precluded on health grounds. The foreigner must provide credible evidence of an illness which might interfere with deportation by submitting a qualified medical certificate. As a rule, this medical certificate is to document in particular the factual circumstances on which the professional assessment was based, the method of establishing the facts, the specialist medical assessment of the illness (diagnosis), the severity of the illness, its Latin name or classification according to ICD 10 and the medical assessment of the probable consequences of the situation resulting from the illness. Medications needed to treat the illness must be listed along with their active ingredients under the names used in international practice.

(2d) The foreigner is required to submit the medical certificate referred to in subsection 2c immediately to the competent authority. If the foreigner fails to submit such a medical certificate immediately, the competent authority need not take into account the foreigner's submissions regarding his or her illness, unless the foreigner was prevented, through no fault of his or her own, from obtaining such a certificate or there is other factual evidence for the existence of a life-threatening or serious illness which would be significantly worsened by deportation. If the foreigner submits a certificate and the authority then orders a medical examination, the authority is entitled not to take the reported illness into account if the foreigner does not comply with the

order without sufficient reason. The foreigner is to be informed of the obligations and the legal consequences of any breach of these obligations pursuant to this subsection.

(3) Suspension of deportation does 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 lapses when the foreigner leaves the federal territory. The suspension is revoked when the circumstances preventing deportation cease to apply. The foreigner is deported without delay when the suspension lapses, without any renewed deportation warning specifying a deadline, unless the suspension is renewed. If deportation has been suspended for more than one year, the foreigner is to be notified at least one month in advance of the intention to deport resulting from revocation of suspension; such notice is to be repeated if the suspension has been renewed for more than one year. Sentence 4 does not apply if the foreigner brought about the obstacle to deportation by intentionally furnishing false information or by own deceit concerning his or her identity or nationality or if he or she fails to meet reasonable requirements to cooperate in removing obstacles to deportation.

(6) Foreigners whose deportation has been suspended may not be permitted to pursue an economic activity if

1. they entered the country to obtain benefits under the Act on Benefits for Asylum Applicants,
2. measures to terminate their stay cannot be carried out for reasons for which they are responsible, or
3. they are nationals of a safe country of origin according to section 29a of the Asylum Act and an asylum application which they filed after 31 August 2015 has been denied or withdrawn, unless the application was withdrawn based on advising from the Federal Office for Migration and Refugees as referred to in section 24 (1) of the Asylum Act, or no asylum application was filed.

Foreigners are in particular responsible for reasons referred to in sentence 1 no. 2 if they themselves have brought about the obstacle to deportation by their own deceit concerning their identity or nationality or by furnishing false information. Sentence 1 no. 3 does not apply to unaccompanied foreign minors whose asylum applications have been withdrawn or for whom no application for asylum was made if the application was withdrawn or no application was made in the best interests of the child.

### **Section 60b**

#### **Temporary suspension of deportation for persons whose identity is not verified**

(1) A temporary suspension of deportation as referred to in section 60a is granted as a temporary suspension of deportation for persons whose identity is not verified to foreigners who are enforceably required to leave the federal territory, if they cannot be deported for reasons for which they themselves are responsible, because they brought about the obstacle to deportation by deceit concerning their identity or nationality or by furnishing false information or by failing to undertake reasonable efforts to acquire a passport or passport substitute as required by subsection (2) sentence 1 and subsection (3) sentence 1. Such foreigners are to be issued with a certificate confirming the suspension of deportation under section 60a (4) with the additional wording "for persons whose identity is not verified".

(2) If foreigners who are enforceably required to leave the federal territory have no valid passport or passport substitute, they are required without prejudice to section 3 to undertake all efforts reasonable in view of the circumstances of the individual case to acquire a passport or passport substitute. This does not apply to foreigners from the time they have filed an application for asylum (section 13 of the Asylum Act) or made a request for asylum (section 18 of the Asylum

Act) until the asylum application has been rejected with final and binding effect, or to foreigners to whom a deportation ban under section 60 (5) or (7) applies, unless the deportation ban under section 60 (7) is based solely on health reasons.

(3) As referred to in subsection (2) sentence 1, as a rule it is reasonable to expect the foreigner to

1. cooperate in the issuing or extension of the passport or passport substitute in compliance with the provisions of German passport law, in particular sections 6 and 15 of the Passport Act (*Passgesetz*) in the applicable version, and accept the processing of an application by the authorities of the foreigner's country of origin according to the law of the country of origin, as long as this does not result in unreasonable hardship;
2. appear in person at the authorities of the country of origin, participate in interviews, provide photos as requested and provide fingerprints, information or explanations as required by the legal and administrative practice of the country of origin, and take all other actions required by the legal and administrative practice there, as long as these are not unreasonable;
3. provide a statement to the authorities of the country of origin declaring that the foreigner will voluntarily leave the federal territory as required by German law, if issuing the travel document depends on making such a statement;
4. declare the intention to complete compulsory military service, if issuing the travel document depends on such a statement, as long as completing compulsory military service is not unreasonable for compelling reasons, and to fulfil other reasonable civic duties;
5. pay the regular fees set by the country of origin for issuing official passports and passport substitutes, as long as the foreigner can reasonably be expected to do so; and
6. re-apply for a passport or passport substitute as far as reasonable and undertake the efforts referred to in nos. 1 to 5 again if there is a good chance that the authorities of the country of origin will issue the passport or passport substitute due to a change in the law or circumstances and if the foreigners authority requires the foreigner to undertake these efforts again.

The foreigner is to be informed of these obligations. They will be regarded as met when the foreigner presents plausible evidence that he or she has undertaken the efforts referred to in sentence 1. If the foreigners authority informs the foreigner that the statements and evidence to substantiate that he or she has undertaken one or more efforts referred to in sentence 1 do not suffice, the foreigners authority may set a deadline for the foreigner to solemnly declare in lieu of an oath that he or she has undertaken the efforts referred to in sentence 1. The foreigners authority is the competent authority as referred to in section 156 of the Criminal Code.

(4) If the foreigner has not undertaken the reasonable efforts referred to in subsection (2) sentence 1 and subsection (3) sentence 1, he or she may undertake them at any later time. In this case, the obligation to cooperate will be regarded as met and the foreigner will be issued with a certificate confirming the suspension of deportation under section 60a (4) without the additional wording "for persons whose identity is not verified". Subsection (5) sentence 1 remains unaffected.

(5) The length of time during which the certificate contained the additional wording "for persons whose identity is not verified" will not be counted towards the future suspension of deportation for persons in vocational training or employment (*Vorduldungszeiten*). Foreigners holding certificates containing the additional wording "for persons whose identity is not verified" are not allowed to pursue an economic activity. They are subject to a residence restriction as referred to in section 61 (1d).

(6) Section 84 (1) sentence 1 no. 3 and (2) sentences 1 and 3 applies accordingly.

**Section 60c**  
**Temporary suspension of deportation for the purpose of training**  
**(Ausbildungsduldung)**

(1) Temporary suspension of deportation as referred to in section 60a (2) sentence 3 is to be granted if the foreigner in Germany

1. is an asylum applicant who

a) has started quality vocational training in a state-recognised or similarly regulated occupation, or

b) has started training as an assistant or helper in a state-recognised or similarly regulated occupation which may lead to quality vocational training in a state-recognised or similarly regulated occupation in which the Federal Employment Agency has determined that a labour shortage exists, and has been granted a training place,

and would like to continue this training after the application for asylum has been denied, or

2. has been granted a temporary suspension of deportation under section 60a and starts training as referred to in no. 1.

In cases of obvious fraud, temporary suspension of deportation for the purpose of training may be denied. In the case of sentence 1, an employment permit is to be granted.

(2) Temporary suspension of deportation for the purpose of training is not granted if

1. any of the conditions listed in section 60a (6) apply,

2. in the case of subsection (1) sentence 1 no. 2, the foreigner has not yet possessed a temporary suspension of deportation for three months at the time of applying,

3. the foreigner's identity was not verified

a) before applying for a temporary suspension of deportation for the purpose of training, if the foreigner entered the federal territory by 31 December 2016; or,

b) before applying for a temporary suspension of deportation for the purpose of training, but no later than 30 June 2020, if the foreigner entered the federal territory after 1 January 2017 and before 1 January 2020; or

c) during the first six months after entry, if the foreigner entered the federal territory after 31 December 2019;

the foreigner will be deemed to have met the deadline if he or she took all necessary and reasonable measures to verify his or her identity within the time periods given in (a) to (c), but his or her identity was unable to be verified until after these periods for reasons beyond the foreigner's control,

4. any of the conditions listed in section 19d (1) no. 6 or 7 applies, or the foreigner is subject to an expulsion order or a deportation order pursuant to section 58a, or

5. in the case of subsection (1) sentence 1 no. 2, at the time of application concrete measures to terminate residence are imminent which are close enough to the termination of residence in terms of content and timing; such concrete measures to terminate residence are imminent if

- a) a medical examination to determine the ability to travel has been carried out,
- b) the foreigner has applied for government funds to assist with voluntary departure,
- c) the process of booking transport for the deportation has been initiated,
- d) similar concrete preparations to deport the foreigner have been initiated, unless it is foreseeable from the outset that such measures will be unsuccessful, or
- e) the process for determining the member state responsible in accordance with Article 20 (1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 has been initiated.

(3) An application for temporary suspension of deportation for the purpose of training may be made no earlier than seven months before the vocational training begins. A temporary suspension of deportation for the purpose of training as referred to in subsection (1) sentence 1 no. 2 will be granted no earlier than six months before the vocational training begins. It will be granted if, at the time the temporary suspension of deportation for the purpose of training was applied for, the training contract had already been entered in the list of vocational training relationships at the responsible body, or such entry had been applied for, or, if such entry is not necessary, the training contract was concluded with the educational institution or a state or state-recognised educational institution has approved the training contract. The temporary suspension of deportation for the purpose of training is granted for the duration of vocational training as specified in the training contract.

(4) The temporary suspension of deportation for the purpose of training expires if any of the conditions listed in subsection (2) no. 4 occurs or if the training ends earlier than planned or is discontinued.

(5) If the training ends earlier than planned or is discontinued, the educational institution is required to notify the competent foreigners authority immediately, generally within two weeks, in written or electronic form. The notification is to include the facts to be notified and when they arose, as well as the foreigner's surnames, given names and nationality.

(6) If the training relationship ends earlier than planned or is discontinued, the foreigner is to be granted a one-time suspension of deportation for six months for the purpose of seeking another training place in order to begin vocational training in accordance with subsection (1). Suspension of deportation is granted for six months for the purpose of seeking employment commensurate with the acquired vocational qualification if, after successfully completing the vocational training for which the suspension of deportation was granted, the foreigner is not kept on in the training enterprise; the suspension of deportation granted to enable the foreigner to seek employment may not be extended for this purpose.

(7) Temporary suspension of deportation as referred to in subsection (1) sentence 1 may be granted without regard to subsection (2) no. 3 if the foreigner has taken the necessary and reasonable measures to verify his or her identity.

(8) In all other cases, section 60a remains unaffected.

#### **Section 60d** **Temporary suspension of deportation for the purpose of employment** **(*Beschäftigungsduldung*)**

(1) As a general rule, the deportation of foreigners required to leave the federal territory and their spouses or civil partners who entered the federal territory before 1 August 2018 is to be temporarily suspended under section 60a (2) sentence 3 for 30 months if

1. their identities have been verified

a) by the time they apply for a temporary suspension of deportation for the purpose of employment, if they entered the federal territory by 31 December 2016 and were in employment as referred to in subsection (1) no. 3 on 1 January 2020, or

b) by 30 June 2020, if they entered the federal territory by 31 December 2016 and were not in employment as referred to in subsection (1) no. 3 on 1 January 2020, or

c) by 30 June 2020, if they entered the federal territory between 1 January 2017 and 1 August 2018;

the deadline will be deemed to have been met if the foreigner and his or her spouse or civil partner took all necessary and reasonable measures to verify their identity within the time periods given in (a) to (c), but their identity was unable to be verified until after these periods for reasons beyond their control,

2. the foreigner required to leave the federal territory has possessed a temporary suspension of deportation for at least 12 months,

3. the foreigner required to leave the federal territory has been in employment with full social security coverage for at least 18 months with contract working hours of at least 35 hours per week or at least 20 hours per week in the case of single parents,

4. the employment of the foreigner required to leave the federal territory has ensured his or her subsistence for the past 12 months before he or she applied for temporary suspension of deportation for the purpose of employment,

5. the employment of the foreigner required to leave the federal territory ensures his or her subsistence,

6. the foreigner has an elementary oral command of the German language,

7. the foreigner required to leave the federal territory and his or her spouse or civil partner have not been convicted of an offence intentionally committed in the federal territory; convictions as referred to in section 32 (2) no. 5 (a) of the Act on the Central Criminal Register (*Bundeszentralregistergesetz*) for offences which, under the Residence Act or the Asylum Act, can only be committed by foreigners are to be ignored as a general principle,

8. the foreigner required to leave the federal territory and his or her spouse or civil partner have no links to extremist or terrorist organisations and do not support such organisations,

9. the foreigner is not subject to an expulsion order or deportation order pursuant to section 58a,

10. the school attendance of minor, unmarried school-aged children living with the foreigner as a family unit has been verified, none of the cases listed in section 54 (2) nos. 1 to 2 applies and the children have not been incontestably convicted of intentionally committing an offence listed in section 29 (1) sentence 1 no. 1 of the Narcotics Act, and

11. the foreigner required to leave the federal territory and his or her spouse or civil partner, if required to take an integration course, have successfully completed the integration course or discontinued it for reasons beyond their control.

(2) The minor, unmarried children living with the foreigner as a family unit are to be granted a

temporary suspension of deportation for the same length of time.

(3) The temporary suspension of deportation granted pursuant to subsection (1) is to be revoked if any of the conditions listed in subsection (1) nos. 1 to 10 is no longer met. In the case of subsection (1) nos. 3 and 4, brief interruptions beyond the foreigner's control are not taken into account. If the employment relationship is terminated, the employer is required to inform the responsible foreigners authority, within two weeks of becoming aware of the termination, in written or electronic form of the date of termination, the surname, first name and nationality of the foreigner. Section 82 (6) applies accordingly.

(4) Temporary suspension of deportation as referred to in subsection (1) may be granted without regard to subsection (1) no. 1 if the foreigner has taken the necessary and reasonable measures to verify his or her identity.

(5) In all other cases, section 60a remains unaffected.

### **Section 61** **Geographic restrictions, residence restriction, departure facilities**

(1) The stay of a foreigner who is enforceably required to leave the federal territory is restricted in geographic terms to the territory of the *Land* concerned. The geographic restriction referred to in sentence 1 may be waived if the foreigner is entitled to take up employment without a labour-market test pursuant to section 39 (2) sentence 1 no. 1 or if necessary to attend school, to participate in basic and advanced vocational training or to study at a state or state-recognised university or a comparable educational institution. The same applies if this serves to preserve the family unit.

(1a) In cases covered by section 60a (2a), residence is restricted to the administrative district of the most recently responsible foreigners authority. The foreigner must proceed to such location without delay after entering the federal territory. If it is impossible to determine which foreigners authority is responsible, section 15a applies accordingly.

(1b) A geographic restriction in accordance with subsections (1) and (1a) expires if the foreigner has resided in the federal territory for three months without interruption either with a temporary residence permit or permanent settlement permit, with a temporary suspension of deportation or with permission to remain pending the asylum decision.

(1c) Notwithstanding subsections (1) to (1b), a geographic restriction for the stay of a foreigner who is enforceably required to leave the federal territory may be ordered if

1. the foreigner has been incontestably convicted of a criminal offence, with the exception of those offences which can only be committed by foreigners,
2. facts justify the conclusion that the foreigner has violated the provisions of the Narcotics Act or
3. concrete measures to terminate the foreigner's stay are imminent.

As a general rule, a geographic restriction to the district of the foreigners authority is to be ordered if the foreigner brought about the obstacle to deportation by intentionally furnishing false information or by own deceit concerning his or her identity or nationality, or if he or she fails to meet reasonable requirements to cooperate in removing obstacles to deportation.

(1d) A foreigner who is enforceably required to leave the federal territory and whose subsistence is not ensured is required to take up habitual residence at a specific place (residence restriction). Unless the foreigners authority has ordered otherwise, this is the place where the foreigner was residing when the decision to temporarily suspend deportation was taken. The foreigners authority may amend the residence restriction ex officio or at the foreigner's request; the household community of family members or other humanitarian grounds of comparable

importance are to be taken into account. The foreigner may temporarily leave the place determined in the residence restriction without permission.

(1e) Conditions may be imposed to secure and enforce the enforceable obligation to leave the country if concrete measures to terminate residence are imminent. In particular, foreigners may be required to report to the foreigners authority responsible for their place of residence once a week or less often.

(1f) Further conditions and requirements may be imposed.

(2) The *Länder* may establish departure facilities for foreigners who are enforceably required to leave the federal territory. As a general rule, support and counselling are to be provided at such departure facilities to promote foreigners' willingness to leave the federal territory voluntarily, and access for authorities and courts and implementation of the departure procedure is to be ensured.

## **Section 62** **Custody awaiting deportation**

(1) Custody awaiting deportation is not permitted if the purpose of the custody can be achieved by other, less severe means. Custody is to be limited to the shortest possible duration. Minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child.

(2) Foreigners are to be taken into custody by judicial order to enable the preparation of expulsion or a deportation order pursuant to section 58a, if a decision on expulsion or the deportation order pursuant to section 58a cannot be reached immediately and deportation would be much more difficult or impossible without such detention (custody to prepare deportation). As a rule, the duration of custody to prepare deportation is not to exceed six weeks. In case of expulsion, no new judicial order is required to continue custody until the ordered term of custody expires.

(3) Foreigners are to be taken into custody by judicial order for the purpose of safeguarding deportation (custody to secure deportation) if

1. there is a risk of absconding,
2. the foreigner is enforceably required to leave the federal territory on account of having entered the territory unlawfully,
3. a deportation order has been issued pursuant to section 58a but is not immediately enforceable.

By way of exception, the order for custody to secure deportation pursuant to sentence 1 no. 2 may be waived for foreigners who credibly assert that they do not intend to evade deportation. Custody to secure deportation is not permitted if it is clear that it will not be possible to carry out deportation within the next three months for reasons beyond the foreigner's control. In derogation from sentence 3, foreigners posing a significant threat to the life and limb of others or to significant legally protected internal security interests may be taken into custody to secure deportation even if they cannot be deported within the next three months.

(3a) Risk of absconding as referred to in subsection (3) sentence 1 no. 1 is assumed unless proven otherwise if

1. the foreigner has deceived the authorities responsible for enforcing this law regarding his or her identity or in a way relevant for an obstacle precluding deportation and around the same time as the deportation, in particular by suppressing or destroying identity or travel documents or claiming a false identity, and has not corrected the information him- or herself,

2. without being excused, the foreigner fails to appear for an interview or a medical examination pursuant to section 82 (4) sentence 1 at the place specified by the foreigners authority, if the foreigner was informed when notified of the appointment that he or she could be taken into custody for failure to appear,
3. 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 where he or she can be reached,
4. the foreigner is in the federal territory in violation of section 11 (1) sentence 2 and has no permission to enter pursuant to section 11 (8),
5. the foreigner has evaded deportation in the past, or
6. the foreigner has expressly declared that he or she intends to evade deportation.

(3b) The following may constitute concrete evidence of a risk of absconding within the meaning of subsection (3) sentence 1 no. 1:

1. the foreigner has deceived the authorities responsible for enforcing this law regarding his or her identity in a way relevant for an obstacle precluding deportation, in particular by suppressing or destroying identity or travel documents or claiming a false identity, and has not corrected the information him- or herself,
2. the foreigner has paid considerable sums of money, in particular to third parties, for activities referred to in section 96, and these sums are so considerable given the circumstances that it can be concluded that the foreigner will prevent deportation to ensure that the expense was not in vain,
3. the foreigner constitutes a significant threat to the life and limb of others or to significant legally protected internal security interests,
4. the foreigner has repeatedly been incontestably sentenced to at least one prison term for intentionally committed criminal offences,
5. the foreigner has failed to meet the obligation specified in section 60b (3) sentence 1 nos. 1, 2 and 6 to acquire a passport or passport substitute or has refused or failed to cooperate as required by law in ways other than those listed in subsection (3a) no. 2, in particular the obligation to cooperate pursuant to section 48 (3) sentence 1 and was informed in advance of the possibility of being taken into custody for failing to meet the obligation to acquire a passport or passport substitute as required by section 60b (3) sentence 1 nos. 1, 2 and 6 or for refusing or failing to cooperate,
6. after the period allowed for departure has expired, the foreigner has repeatedly violated an obligation specified in section 61 (1) sentence 1, subsection (1a), (1c) sentence 1 no. 3 or sentence 2, or has failed to comply with an obligation to secure and enforce the obligation to leave the country pursuant to section 61 (1e),
7. the foreigner entered the country lawfully, was subsequently required to leave the federal territory and has eluded the authorities by not having a main place of residence.

(4) Custody to secure deportation may be ordered for up to six months. It may be extended by a maximum of 12 months in cases in which the foreigner hinders his or her deportation. It may also be extended by a maximum of 12 months where custody has been ordered on the basis of subsection (3) sentence 1 no. 3, and where the transmission of the necessary documents by the third country obligated or willing to admit the foreigner is delayed. Custody to secure deportation may not last longer than 18 months. A period of custody to prepare deportation counts towards the overall length of custody to secure deportation.

(4a) Where deportation has failed, the order remains unaffected until the period allowed for deportation has expired, insofar as the conditions for the detention order remain unchanged.

(5) The authority responsible for applying for detention may detain a foreigner without a prior judicial order and place such foreigner in temporary custody if

1. there is a strong suspicion that the conditions pursuant to subsection (3) sentence 1 apply,
2. it is not possible to obtain the judicial decision on the order for custody to secure deportation beforehand and
3. there is a well-founded suspicion that the foreigner intends to evade the order for custody to secure deportation.

The foreigner is to be brought before the court without delay for a decision on the order for custody to secure deportation.

(6) Foreigners may be taken into custody by judicial order for a maximum of 14 days for the purpose of deportation in order to enforce an order pursuant to section 82 (4) sentence 1 to appear in person at the diplomatic representations or before authorised officials of the state whose nationality they putatively possess or to enable a medical examination to determine their fitness to travel if they have, without being excused, failed to appear in person at the responsible authority in violation of

1. an order to do so for the first time or
2. an order pursuant to section 82 (4) sentence 1 to appear in person at the responsible authority

and were informed in advance of the possibility of being taken into custody (custody to enforce cooperation). It is not possible to extend the length of custody to enforce cooperation. A period of custody to enforce cooperation counts towards the overall duration of custody to secure deportation. Section 62a (1) applies accordingly.

#### **Section 62a Enforcement of custody awaiting deportation**

(1) Detainees awaiting deportation are to be accommodated separately from prisoners serving sentences for criminal offences. If several members of a family are detained, they are to be accommodated separately from other detainees awaiting deportation. They are to be guaranteed an appropriate degree of privacy.

(2) Detainees awaiting deportation are permitted to contact legal representatives, family members, the competent consular authorities and the relevant aid and support organisations.

(3) In the case of minors in custody awaiting deportation, the needs of persons their age are to be taken into account in accordance with Article 17 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98). Particular attention is to be paid to the situation of vulnerable persons.

(4) Upon application, staff of relevant aid and assistance organisations are, as a general rule, to be permitted to visit detainees awaiting deportation.

(5) Detainees awaiting deportation are to be informed of their rights and obligations and the rules applied in the facility.

#### **Section 62b Custody to secure departure**

(1) Notwithstanding the conditions applicable to custody to secure deportation pursuant to section 62 (3), in particular the existence of a risk of absconding, foreigners may be placed in custody for no more than 10 days by judicial order for the purpose of ensuring that the deportation can be carried out if

1. the period allowed for departure has expired, unless the foreigner was prevented from leaving through no fault of his or her own or the period allowed for departure has been exceeded by an insignificant amount of time,
2. it is clear that the deportation can be carried out within this period, and
3. the foreigner has displayed behaviour which makes it reasonable to expect that he or she will make the deportation more difficult or impossible. This is the case if the foreigner
  - a) has violated the statutory obligation to cooperate,
  - b) has deceived the authorities as to his or her identity or nationality,
  - c) was convicted of a criminal offence intentionally committed in the federal territory, not counting fines totalling up to 50 day fines, or
  - d) has exceeded the period allowed for departure by more than 30 days.

No custody to secure departure is to be ordered if the foreigner credibly asserts or it is obvious that he or she does not intend to evade deportation.

(2) Custody to secure departure is enforced in the transit area of an airport or in accommodation from which the foreigner's subsequent departure is possible in reasonable proximity to a border crossing point.

(3) Section 62 (1) and (4a) and section 62a apply accordingly.

(4) The authority responsible for the application pursuant to subsection (1) may detain a foreigner without a prior judicial order and place such foreigner in temporary custody if

1. there is a strong suspicion that the conditions pursuant to subsection (1) sentence 1 apply,
2. it is not possible to obtain the judicial decision on the order for custody to secure departure referred to in subsection (1) beforehand and
3. there is a well-founded suspicion that the foreigner intends to evade the order for custody to secure departure.

The foreigner is to be brought before the court without delay for a decision on the order for custody to secure departure.

## **Chapter 6 Liability and fees**

### **Section 63 Obligations of transport carriers**

(1) A transport carrier may only transport foreigners into the federal territory if they possess the necessary passport and the necessary residence title.

(2) The Federal Ministry of the Interior or a body designated by it may, in agreement with the Federal Ministry of Transport and Digital Infrastructure, prohibit a transport carrier from transporting foreigners into the federal territory in violation of subsection (1) and may threaten a fine in case of violation. Any objections or legal actions have no suspensive effect; the same also applies to the imposition of a fine.

(3) The fine imposed on the transport carrier is to be no less than 1,000 euros and no more than 5,000 euros for each foreigner transported in contravention of an order pursuant to subsection (2). The fine may be set and enforced by the Federal Ministry of the Interior or a body designated by it.

(4) The Federal Ministry of the Interior or a body designated by it may agree with transport carriers on arrangements for implementing the obligation specified in subsection (1).

#### **Section 64** **Return transport obligation of transport carriers**

(1) If foreigners are refused entry, the carrier which transported them to the border is required to remove them from the federal territory without delay.

(2) The obligation pursuant to subsection (1) applies for a period of three years with regard to foreigners transported into the federal territory without the necessary passport, passport substitute or the necessary residence title who are not refused entry because they claim political persecution, persecution within the meaning of section 3 (1) of the Asylum Act or the risk of suffering serious harm within the meaning of section 4 (1) of the Asylum Act, or the circumstances referred to in section 60 (2), (3), (5) or (7). The obligation expires if the foreigner is granted a residence title under the terms of this Act.

(3) On request from the authorities charged with policing cross-border traffic, the carrier is required to transport the foreigners to the state which issued the travel document or from which they were transported, or to another state in which their admission is ensured.

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

Operators of commercial airports are obliged to provide suitable accommodation on the airport premises for foreigners who do not possess the necessary passport or the necessary visa until the decision on admission is enforced by the border police.

#### **Section 66** **Parties liable for costs; 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 a declaration of commitment to bear the costs of the foreigner's departure are also liable for the costs referred to in subsection (1).

(3) In the cases covered by section 64 (1) and (2), the transport carrier, in addition to the foreigner, is liable for the costs of the foreigner's return transportation and for the costs which arise from the time the foreigner arrives at the border crossing point until the decision on entry is enforced. A transport carrier who culpably contravenes an order pursuant to section 63 (2) is, in addition to the foreigner, 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) The following are liable for the costs of deportation or removal:

1. anyone who has employed a foreigner who was not permitted to pursue the economic activity under the provisions of this Act,
2. a contractor for whom an employer has performed services as a direct sub-contractor and the contractor was aware or should have been aware, if he or she had exercised due

diligence, that the employer hired a foreigner to perform the service who was not permitted to pursue the economic activity under the provisions of this Act,

3. a prime contractor or intermediate contractor without a direct contractual relationship to the employer who is aware of the employment of a foreigner who was not permitted to pursue the economic activity under the provisions of this Act,

4. anyone who commits a punishable offence pursuant to section 96,

5. the foreigner in question, to the extent that such costs cannot be recovered from the other liable parties.

The persons listed in sentence 1 nos. 1 to 4 are liable as joint and several debtors within the meaning of section 421 of the Civil Code.

(4a) Liability pursuant to subsection (4) no. 1 is to be waived if the employer has fulfilled his or her obligations pursuant to section 4a (5) and the notification obligation pursuant to section 28a of Book Four of the Social Code in conjunction with sections 6, 7 and 13 of the Data Collection and Transfer Ordinance (*Datenerfassungs- und -übermittlungsverordnung*) or pursuant to section 18 of the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*), unless the employer was aware that the foreigner's residence title or the certificate confirming permission to remain pending the asylum decision or confirming suspension of deportation was forged.

(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 subsection (4) sentences 1 and 2 may be enforced by the authority which 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 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, refusal of entry and to enforcing a geographic restriction include

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 related to preparing and enforcing the measure, including the costs of custody awaiting deportation, translation and interpreting costs and the expenditure on accommodation, food and other provision 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 carrier is liable pursuant to section 66 (3) sentence 1 include

1. the costs specified in subsection (1) no. 1,
2. the administrative costs and expenditure on accommodation, food and other provision for the foreigner and translation and interpreting costs which arise up to the time the decision on entry is enforced, and
3. the costs specified in subsection (1) no. 3, unless the carrier provides the necessary escort for the foreigner.

(3) The costs specified in subsections (1) and (2) are charged by the competent authority

pursuant to section 71 by means of a payment order in the amount of the costs actually incurred. The general principles for calculating public-sector personnel costs apply to calculating 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 is required for a period of five years to reimburse all public funds 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. Expenditures based on the payment of contributions are not to be reimbursed. The period referred to in sentence 1 begins with the foreigner's entry which the declaration of commitment made possible. The declaration of commitment does not expire before the period of five years from the foreigner's entry has elapsed if a residence title is granted pursuant to Part 5 of Chapter 2 or if recognition is given pursuant to section 3 or section 4 of the Asylum Act.

(2) The declaration of commitment referred to in subsection (1) sentence 1 is to be furnished in writing. It is enforceable in accordance with the Administrative Enforcement Act (*Verwaltungsvollstreckungsgesetz*). The public body which has expended the public funds is entitled to the reimbursement.

(3) The diplomatic mission abroad is to notify the foreigners authority immediately of a declaration of commitment as referred to in subsection (1) sentence 1.

(4) When it becomes aware of the expenditure of public funds to be reimbursed pursuant to subsection (1), the foreigners authority notifies the public body entitled to the reimbursement immediately as to the declaration of commitment pursuant to subsection (1) sentence 1, and furnishes that body with all the information necessary to assert and enforce the reimbursement claim. The recipient may only use the data for the purpose of reimbursing the public funds expended for the foreigner and refusing further benefits.

### **Section 68a** **Transitional provision regarding declarations of commitment**

Section 68 (1) sentences 1 to 3 also applies to declarations of commitment made before 6 August 2016, with the proviso that a period of three years takes the place of the period of five years. If the period referred to in sentence 1 has already expired on 6 August 2016, the commitment to reimburse public funds ends on 31 August 2016.

### **Section 69** **Fees**

(1) Fees and expenses are charged for individually attributable public services rendered under this Act and the statutory instruments issued to enforce this Act. Fees may also be set orally. Sentence 1 does not apply to individually attributable public services rendered by the Federal Employment Agency under sections 39 to 42. Section 287 of Book Three of the Social Code remains unaffected. Furthermore, sentence 1 does not apply to the notification procedure in connection with the short-term mobility of students under section 16c, intra-corporate transferees under section 19a or of researchers under section 18e.

(2) As a general rule, the fee is to cover the costs related to the individually attributable public service of all those involved in the service. The fee is to include the expenses regularly related to the service. The fees are to be calculated based on the costs which are eligible, according to business principles, for inclusion in the accounts as indirect and overhead costs, especially personnel and material costs and imputed costs. Overhead costs also include the costs of legal and technical supervision. The fees referred to in sentences 1 to 4 are calculated based on the

costs arising for the *Länder* and the Federation in the context of the service in question.

(3) The Federal Government determines, via statutory instrument with the approval of the Bundesrat, the cases which are subject to a fee, the scales of fees, and exemptions and reduced fees, particularly in cases of need. Section 3 (1) nos. 1 and 4, (2) and (4) to (6), sections 4 to 7 nos. 1 to 10, sections 8, 9 (3), sections 10 to 12 (1) sentence 1, and (3) as well as sections 13 to 21 of the Act on Fees and Expenses for Federal Services (*Bundesgebührengesetz*) of 7 August 2013 (Federal Law Gazette I, p. 3154) apply as amended, unless this Act provides otherwise.

(4) In derogation from section 4 (1) of the Act on Fees and Expenses for Federal Services, the fees to be charged by the diplomatic missions abroad may be charged at the time of application. With regard to the fees to be charged by the diplomatic missions abroad, the Federal Foreign Office determines whether the fees will be charged in euros, in local currency or in a third currency. The fee may be rounded to the next highest unit, depending on the general availability of units in the selected currency.

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

1. for issuing a temporary residence permit: 140 euros,
  - 1a. for issuing an EU Blue Card: 140 euros,
  - 1b. for issuing an ICT Card: 140 euros,
  - 1c. for issuing a Mobile ICT Card: 100 euros,
2. for issuing a permanent settlement permit: 200 euros,
  - 2a. for issuing an EU long-term residence permit: 200 euros,
3. for extending a temporary residence permit, an EU Blue Card or an ICT Card: 100 euros,
  - 3a. for extending a Mobile ICT Card: 80 euros,
4. for issuing a national visa and a passport substitute and substitute identity document: 100 euros,
5. for recognising a research organisation for the purpose of concluding hosting agreements or an equivalent contract pursuant to section 18d: 220 euros,
6. for other individually attributable public services: 80 euros,
7. for other individually attributable public services rendered for the benefit of minors: half the fee determined for the public service,
8. for issuing a new document pursuant to section 78 (1) which has become necessary due to a change in the information under section 78 (1) sentence 3, or due to the expiry of the technical period of validity for the use of the card, the loss of the document or the loss of the technical functionality of the document: 70 euros,
9. for suspending, reducing or extending time limits attached to a ban on entry and residence: 200 euros.

(6) A surcharge of no more than 25 euros may be imposed to issue a national visa and a passport substitute at the border. A surcharge of no more than 30 euros may be imposed for an individually attributable public service rendered outside of normal office hours at the request of the applicant. Surcharges may also be imposed for individually attributable public services rendered for a national whose home country imposes fees in excess of those stipulated in subsection (3) on Germans for equivalent services. Sentences 2 and 3 do not apply to issuing or extending a

Schengen visa. In setting surcharges, the maximum rates stipulated in subsection (5) may be exceeded.

(7) The statutory instrument pursuant to subsection (3) may provide for a processing fee to be charged for applications for individually attributable public services which are subject to fees. The fee for processing an application for a permanent settlement permit or an EU long-term residence permit may not exceed half the fee charged for issuing the permit. This fee is to be offset against the fee for the individually attributable public service. The fee will not be refunded if the application is withdrawn or if the individually attributable public service which is applied for is denied.

(8) The statutory instrument pursuant to subsection (3) may provide for fees to be charged to file an objection; the following maximum rates apply to such fees:

1. to object to the denial of an application for an individually attributable public service which is subject to a fee: half the fee set for the service,
2. to object to another individually attributable public service: 55 euros.

If the objection is successful, the fee is to be deducted from the fee for the individually attributable public service to be performed and the remainder is to be refunded.

## **Section 70**

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

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

(2) The limitation period for claims pursuant to sections 66 and 69 is also interrupted for as long as the party liable for costs is not resident in the federal territory or for as long as that party's residence in the federal territory cannot be ascertained because he or she has failed to meet a statutory registration or notification obligation.

## **Chapter 7**

### **Procedural provisions**

### **Part 1**

#### **Areas of competence**

### **Section 71**

#### **Competence**

(1) The foreigners authorities are responsible for residence- and passport-related measures and decisions pursuant to this Act and pursuant to provisions relating to foreigners in other acts. The *Land* government or the body appointed by it may determine that only one or several specific foreigners authorities are responsible. Pursuant to sentence 2, the competent bodies of the *Länder* in question may arrange for the foreigners authorities of a *Land* to be assigned tasks for the districts of foreigners authorities of various *Länder*. Each *Land* is to designate a central body responsible for enforcing deportations. As a rule, each *Land* is to establish at least one central foreigners authority responsible for visa applications pursuant to section 6 for purposes in accordance with sections 16a, 16d, 17 (1), sections 18a, 18b, 18c (3), sections 18d, 18f, 19, 19b, 19c and 20 and for visa applications of spouses or minor, unmarried children for the subsequent immigration of dependants submitted at the same time.

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

(3) The authorities charged with policing cross-border traffic are responsible for

1. removal and refusal of entry at the border, including the transfer of third-country nationals on the basis of Regulation (EU) No 604/2013 if the foreigner is intercepted by the border authority in the vicinity of the border and in close chronological proximity to an unlawful entry into the federal territory,
    - 1a. deportations at the border, insofar as the foreigner has been apprehended during or following unlawful entry into the federal territory across a border within the meaning of Article 2 no. 1 of Regulation (EU) 2016/399 (internal border),
    - 1b. deportations at the border, insofar as the foreigner has already entered the federal territory unlawfully, has subsequently proceeded to another border area or to an airport, airfield, landing site or maritime or inland port, whether approved or not as a border crossing point, where he or she has then been apprehended,
    - 1c. imposition of time limits on the effects of deportations and removals which they carry out pursuant to section 11 (2), (4) and (8),
    - 1d. removal of foreigners from and to other countries; this is also the responsibility of the bodies determined in subsection (1) and (5),
    - 1e. applying for custody and effecting arrest where necessary to carry out the measures listed in nos. 1 to 1d,
  2. granting visas and issuing passport substitutes pursuant to section 14 (2), and suspending deportation pursuant to section 60a (2a),
  3. withdrawing and revoking national visas, as well as decisions pursuant to Article 34 of Regulation (EC) No 810/2009
    - a) in case of refusal of entry, removal or deportation, provided that the requirements of nos. 1a or 1b are met,
    - b) at the request of the diplomatic mission abroad which issued the visa or
    - c) at the request of the foreigners authority which approved issuing the visa, if its approval was required,
  4. prohibiting departure and implementing the measures pursuant to section 66 (5) at the border,
  5. verifying at the border whether transport carriers 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 decisions under the law on foreigners which prove necessary at the border and which they are authorised by the Federal Ministry of the Interior to take in general or in the individual case concerned,
  7. acquiring return travel documents for foreigners in individual cases by means of administrative assistance,
  8. issuing notes and certificates provided for 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 does not preclude the competence of the foreigners authorities or other bodies designated by the *Länder*.
- (4) The foreigners authorities, the *Länder* police authorities and, in carrying out their legally mandated duties, the Federal Police and other authorities charged with policing cross-border traffic are responsible for the measures necessary under sections 48, 48a and 49 (2) to (9). The authorities initiating allocation pursuant to section 15a are also responsible in cases covered by section 49 (4). The diplomatic missions abroad authorised by the Federal Foreign Office are also

responsible in the cases covered by section 49 (5) nos. 5 and 6. In the cases covered by section 49 (8) and (9), the reception centres referred to in section 44 of the Asylum Act and the branch offices of the Federal Office for Migration and Refugees are also authorised by way of administrative assistance to carry out measures to identify foreign children or juveniles who entered the federal territory unaccompanied; as a rule, these measures are to be carried out in the presence of the youth welfare office, after it has been informed to take the child or young person temporarily into care, and in a child-appropriate manner.

(5) The police forces of the *Länder* are also responsible for removal, for enforcing the obligation to leave the federal territory pursuant to section 12 (3), for deportation and, where necessary to prepare and safeguard these measures, for arrests and for applying for custody.

(6) The Federal Ministry of the Interior or the body appointed by it decides in consultation with the Federal Foreign Office on the recognition of passports and passport substitutes (section 3 (1)); the decisions take the form of general orders and may be announced in the Federal Gazette.

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

(1) In the cases covered by section 98 (2a) no. 1 and (3) no. 1, the administrative authorities within the meaning of section 36 (1) no. 1 of the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten*) are the customs administration authorities. They cooperate with the authorities referred to in section 2 (4) of the Act to Combat Clandestine Employment in prosecuting offences and imposing punishments.

(2) The customs administration authorities notify the Central Trade and Industry Register as to incontestable orders imposing administrative fines pursuant to section 98 (2a) no. 1 and (3) no. 1 which are to be entered in the register. This applies only to fines of more than 200 euros.

(3) As a rule, courts of law, prosecuting authorities and penal authorities are to furnish the customs administration authorities with findings from other proceedings which they consider necessary in prosecuting administrative offences under section 98 (2a) no. 1 and (3) no. 1, unless 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 excluding such information prevail. Due consideration must be accorded to how well substantiated the findings to be communicated are.

### **Section 72** **Obligation to consult**

(1) Permission to enter the federal territory (section 11 (8)) may only be granted with the consent of the foreigners authority responsible for the intended place of residence. As a rule, the authority which has expelled, removed or deported the foreigner must be consulted.

(2) The foreigners authority decides whether deportation to a specific state is prohibited pursuant to section 60 (5) or (7) and whether grounds for exclusion exist pursuant to section 25 (3) sentence 3 nos. 1 to 4 only after consulting the Federal Office for Migration and Refugees.

(3) Geographic restrictions, requirements and conditions, time limits pursuant to section 11 (2) sentence 1, orders pursuant to section 47 and other measures concerning a foreigner who does not possess a required residence title may be amended or removed by a different authority only in agreement with the authority which ordered the measures. Sentence 1 does not apply if the foreigner's residence is restricted to the region for which the other foreigners authority is responsible in accordance with the Asylum Act.

(3a) A residence restriction under section 12a (5) may be removed only with the consent of the foreigners authority responsible for the place where the foreigner plans to reside. Consent is to be given if the conditions of section 12a (5) are met; reasons are to be given for any refusal. Consent

is deemed to have been given if the foreigners authority at the place where the foreigner plans to reside does not respond to the contrary within four weeks of receiving the request. Compliance with obligations under law on registration does not establish jurisdiction of a foreigners authority.

(4) A foreigner against whom legal proceedings are instituted by a public authority or preliminary investigations are instituted under criminal law may be expelled or deported only in agreement 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 (*Zeugenschutz-Harmonisierungsgesetz*) may be expelled or deported only in agreement with the Office for the Protection of Witnesses. The consent of the public prosecutor's office pursuant to sentence 1 is not required if there is only minimal interest in the prosecution. This is the case where public charges were preferred or a preliminary investigation initiated for a criminal offence pursuant to section 95 of this Act or pursuant to section 9 of the Act on the General Freedom of Movement of EU Citizens (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern*) or offences pursuant to the Criminal Code involving a minimal level of wrongdoing. Offences involving a minimal level of wrongdoing are those under section 113 (1), section 115 of the Criminal Code (insofar as that provision provides for the application of section 113 (1) of the Criminal Code), sections 123, 166, 167, 169, 185, 223, 240 (1), sections 242, 246, 248b, 263 (1), (2) and (4), sections 265a, 267 (1) and (2), section 271 (1), (2) and (4), sections 273, 274, 276 (1), sections 279, 281, 303 of the Criminal Code, section 21 of the Road Traffic Act (*Straßenverkehrsgesetz*) in the version published on 5 March 2003 (Federal Law Gazette I, p. 310, 919), last amended by Article 1 of the Act of 8 April 2019 (Federal Law Gazette I, p. 430), as amended, and section 6 of the Compulsory Insurance Act (*Pflichtversicherungsgesetz*) of 5 April 1965 (Federal Law Gazette I, p. 213), last amended by Article 1 of the Ordinance of 6 February 2017 (Federal Law Gazette I, p. 147), as amended, unless these criminal laws are violated repeatedly or criminal charges are filed.

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

(6) The public prosecutor's office responsible for the criminal proceedings referred to in section 25 (4a) or (4b) or the criminal court concerned with such proceedings is to be consulted before reaching a decision on issuing, extending or revoking a residence title pursuant to section 25 (4a) or (4b) and before setting, annulling or reducing a period allowed for leaving the country pursuant to section 59 (7), except in cases covered by section 87 (5) no. 1. If the foreigners authority does not yet know which public prosecutor's office is responsible, the foreigners authority consults the police authority responsible for the place of residence before reaching a decision on setting, annulling or reducing a period allowed for leaving the country pursuant to section 59 (7).

(7) To determine whether the conditions of sections 16a, 16d, 16e, 18a, 18b, 18c (3) and sections 19 to 19c are met, the foreigners authority, the Federal Office for Migration and Refugees and the diplomatic mission abroad may consult the Federal Employment Agency even if its consent is not required.

## **Section 72a**

### **Security check of visa application data**

(1) Data collected during the visa application process by a German diplomatic mission abroad on the visa applicant, the inviting party, persons guaranteeing that the foreigner's subsistence will be ensured by making a declaration of commitment or by other means, or on other reference persons in Germany are transmitted to the Federal Office of Administration for a security check. The same applies to data pursuant to sentence 1 which the diplomatic mission abroad of another Schengen state responsible under Article 8 (2) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1) has transmitted to a German diplomatic mission abroad for a decision on a visa application. Data are not transmitted pursuant to sentence 1 or sentence 2 if

the data are transmitted pursuant to section 73 (1) sentence 1.

(2) The data referred to in subsection (1) sentences 1 and 2 are checked in a special organisational unit of the Federal Office of Administration in an automated procedure against data stored in the file referred to in section 1 (1) of the Act on Setting up a Counter-Terrorism Database (*Antiterrordateigesetz*) regarding persons when there is reason to believe that they

1. are members or supporters of a terrorist organisation as referred to in section 129a of the Criminal Code acting at an international level or of a terrorist organisation as referred to in section 129a in conjunction with section 129b (1) sentence 1 of the Criminal Code acting in the Federal Republic of Germany or
2. are members of a group which supports such an organisation or intentionally supports such a group in the knowledge of the activities of the group which support terrorism or
3. unlawfully use violence as a means of enforcing international political or religious interests or support or prepare such use of violence or intentionally incite others to use violence by means of their activities, in particular through advocating such use of violence, or
4. are in contact with the persons referred to in no. 1 or no. 3 not only fleetingly or by chance and it is expected that they will yield further information which may help in solving or combating international terrorism insofar as there is reason to believe that they are aware of the planning or commission of one of the criminal offences referred to in no. 1 or the use, support for or preparation of unlawful violence within the meaning of no. 3.

After the authority which stored the data on persons referred to in sentence 1 in the Counter-Terrorism Database has labelled these data, the Federal Criminal Police Office transfers the data to the special organisational unit at the Federal Office of Administration for the check against data referred to in subsection (1) sentences 1 and 2, and the data are stored there. Suitable technical and organisational measures as required by Articles 24, 25 and 32 of Regulation (EU) 2016/679 are to be taken to prevent unauthorised access to the content of the data sets.

(3) In the event of a hit, in order to ascertain the grounds for denial pursuant to section 5 (4) or to investigate other security reservations against issuing a visa, the data referred to in subsection (1) sentences 1 and 2 are transmitted to the authorities which stored the data on this person in the Counter-Terrorism Database. These authorities immediately notify the competent German diplomatic mission abroad via the Federal Office of Administration if there are grounds to deny the visa pursuant to section 5 (4) or there are other security reservations against issuing a visa.

(4) The data referred to in subsection (1) sentences 1 and 2, which have been stored with the special organisational unit in the Federal Office of Administration, are deleted immediately after carrying out the check pursuant to subsection (2) sentence 1; if the check produced a hit, only the visa file reference is stored. This is deleted as soon as the special organisational unit in the Federal Office of Administration has established that the German diplomatic mission abroad is not to be notified pursuant to subsection (3) sentence 2, or when the notification has been made.

(5) The authorities referred to in subsection (3) sentence 1 may process the data transmitted to them as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data pursuant to other acts remain unaffected.

(6) In the event of a hit, the Federal Office of Administration ensures that the time of the security check, the particulars which enable the determination of the checked data sets, the result of the check, the forwarding of the data set and the processing of the data set for the purpose of data protection monitoring are logged. The log data are to be secured by means of suitable measures to prevent unauthorised access and are to be destroyed at the end of the calendar year which follows the year of their generation, unless they are needed for a monitoring procedure which has already been initiated.

(7) The Federal Office of Administration is to undertake state-of-the-art technical and organisational measures in accordance with Articles 24, 25 and 32 of Regulation (EU) 2016/679 to ensure data protection and data security which, in particular, safeguard the confidentiality and integrity of the data stored in the special organisational unit and transmitted.

(8) Responsibility under data protection law for ensuring that the conditions of subsection (2) sentence 1 are met lies with the authority which entered the data in the Counter-Terrorism Database. Responsibility under data protection law for the security check lies with the Federal Office of Administration. The Federal Criminal Police Office is responsible under data protection law for ensuring that the transmitted data reflect the current status of the Counter-Terrorism Database.

(9) The data referred to in subsection (2) sentence 2 are to be corrected if they are corrected in the Counter-Terrorism Database. They are deleted if the conditions for their storage pursuant to subsection (2) sentence 1 are no longer met or the data are deleted in the Counter-Terrorism Database. Section 11 (4) of the Act on Setting up a Counter-Terrorism Database applies accordingly to examining whether the conditions permitting storage of the data pursuant to subsection (2) sentence 2 continue to be met.

### **Section 73**

#### **Other consultation requirements in visa procedures, in public register and asylum procedures and in issuing residence titles**

(1) Data on the visa applicant, the inviting party, on persons guaranteeing that the foreigner's subsistence will be ensured by making a declaration of commitment or by other means and on other reference persons in Germany which is collected during 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 may be transmitted via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office, the Federal Police and the Customs Criminological Office in order to ascertain any grounds for denial pursuant to section 5 (4), section 27 (3a) or to investigate any other security reservations. The procedure pursuant to section 21 of the Act on the Central Register of Foreigners remains unaffected. In cases covered by section 14 (2), the authorities charged with policing cross-border traffic may transmit the data collected in the visa application procedure to the authorities referred to in sentence 1.

(1a) Data collected or stored to document, establish and verify a person's identity pursuant to section 16 (1) sentence 1, of the Asylum Act and section 49 concerning persons within the meaning of section 2 (1a) and (2) no. 1 of the Act on the Central Register of Foreigners may be transmitted via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office, the Federal Police and the Customs Criminological Office in order to ascertain any grounds for denying a visa pursuant to section 3 (2), section 4 (2) of the Asylum Act, section 60 (8) sentence 1, and section 5 (4) or to investigate any other security reservations. The data referred to in sentence 1 may be transmitted via the Federal Office of Administration to the security authorities and intelligence services listed in sentence 1 to ascertain the grounds for denial referred to in sentence 1 or to investigate any other security reservations and to determine whether the conditions for revocation or withdrawal pursuant to sections 73 to 73b of the Asylum Act are met. Data to document, establish and verify identity

1. collected pursuant to section 16 (1) sentence 1 of the Asylum Act or section 49 (5) no. 5, subsections (8) and (9) or transmitted under Article 21 of Regulation (EU) No 604/2013 from another member state to the Federal Republic of Germany concerning persons whom another member state has asked the Federal Republic of Germany to take charge of or take back under Regulation (EU) No 604/2013,

2. collected pursuant to section 49 (5) no. 6 on persons proposed for admission procedures under section 23 or for temporary protection under section 24 and have been included in the examination of cases for granting approval for admission by the Federal Office for Migration and Refugees, or

3. collected pursuant to section 49 (5) no. 6 or transmitted by another member state to the Federal Republic of Germany on persons to be allocated in the federal territory on the basis of measures under Article 78 (3) of the Treaty on the Functioning of the European Union (TFEU) and included in the examination of cases for granting approval for admission by the Federal Office for Migration and Refugees

may be transmitted via the Federal Office of Administration to the security authorities and intelligence services listed in sentence 1 to ascertain grounds for denial or to investigate any other security reservations. Together with the data referred to in sentence 1, the data referred to in section 3 (1) nos. 1 and 3 of the Act on the Central Register of Foreigners, information on moving to or from Germany and on status under residence law, and data referred to in section 3 (2) nos. 6 and 9 of the Act on the Central Register of Foreigners on persons referred to in sentence 1 may be transmitted to the Federal Criminal Police Office to discharge their statutory duties. A check against other data sets at the Federal Office of Administration is also permitted for the purposes referred to in sentences 1 to 3.

(2) Before issuing or extending a residence title, temporarily suspending deportation or permitting residence pending the asylum decision, the foreigners authorities may transmit the personal data stored at their facilities on the persons concerned via the Federal Office of Administration to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office, the Federal Police, the Customs Criminological Office, the *Land* Office for the Protection of the Constitution, the *Land* Office of Criminal Police or the competent police authorities in order to ascertain any grounds for denial pursuant to section 5 (4) or in order to investigate any other security reservations. The Federal Office for the Protection of the Constitution may provide technical support for the transmission of data to the *Land* offices for the protection of the Constitution.

(3) The security authorities and intelligence services referred to in subsections (1) and (2) immediately notify the Federal Office of Administration as to whether grounds for denial pursuant to section 5 (4) or any other security reservations apply; the Federal Office for the Protection of the Constitution may provide technical support for the transmission of information from the *Land* offices for the protection of the Constitution regarding enquiries from the foreigners authorities pursuant to subsection (2). The German diplomatic missions abroad and foreigners authorities immediately inform the security authorities and intelligence services referred to in sentence 1 of the length of validity of the residence titles which have been issued or extended; if the authorities referred to in sentence 1 become aware of grounds for denial pursuant to section 5 (4) or other security reservations during the period of validity of the residence title, they immediately notify the competent foreigners authority or the competent diplomatic mission abroad. The authorities referred to in sentence 1 may process the data transmitted to them as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data under other acts remain unaffected.

(3a) The security authorities and intelligence services referred to in subsection (1a) immediately notify the Federal Office of Administration of any grounds for denial pursuant to section 3 (2), section 4 (2) of the Asylum Act, section 60 (8) sentence 1 or section 5 (4) or of other security reservations. The Federal Office of Administration promptly makes this information available to the authorities responsible for the asylum procedure and for decisions on residence matters. The further transmission of data between the authorities referred to in sentence 1 and the authorities responsible for the asylum procedure and for decisions on residence matters which is required as a result of the transmission pursuant to subsection (1a) and sentences 1 and 2 may be effected via the Federal Office of Administration. The authorities referred to in sentence 1 may process the data transmitted to them as far as necessary to discharge their statutory duties. The Federal

Office of Administration stores the transmitted data for as long as necessary for the purposes of the security check. The Federal Criminal Police Office immediately checks whether the data transmitted pursuant to subsection (1a) sentence 4 on the person in question match the personal data stored at the Federal Criminal Police Office on a person who is the subject of an alert. If this is not the case, the Federal Criminal Police Office is to delete immediately the data transmitted pursuant to subsection (1a) sentence 4 on the person in question. Results of checks pursuant to subsection (1a) sentence 5 intended to verify, establish or document identity may be transmitted to the authorities responsible for registration and the asylum procedure, the authorities responsible for decisions on residence matters and to the Federal Police, the Federal Criminal Police and the competent police authorities. Provisions regulating the transmission of data under other acts remain unaffected.

(3b) The security authorities and intelligence services referred to in subsection (1) immediately notify the Federal Office of Administration as to whether grounds for denial pursuant to section 27 (3a) exist. If the authorities referred to in sentence 1 become aware of grounds for denial pursuant to section 27 (3a) during the length of validity of the residence title referred to in subsection (3) sentence 2, they immediately notify the competent foreigners authority or the competent diplomatic mission abroad. The authorities referred to in sentence 1 may process the data transmitted to them as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data under other acts remain unaffected.

(3c) In the case of mobility as referred to in sections 16c, 18e and 19a, the Federal Office for Migration and Refugees may transmit personal data it has stored on the persons in question to the security authorities referred to in subsection (2) via the Federal Office of Administration to determine whether a public interest in expulsion as referred to in section 54 (1) nos. 2 and 4 exists and to investigate any other security reservations. The security authorities referred to in subsection (2) immediately notify the Federal Office of Administration if a public interest in expulsion as referred to in section 54 (1) nos. 2 or 4 or any other security reservations exist. The authorities referred to in sentence 1 may store and use the data transmitted as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data under other acts remain unaffected.

(4) The Federal Ministry of the Interior, Building and Community determines via general administrative provisions with due regard to the current security situation in which cases the authorisation pursuant to subsections (1) and (1a) are used with regard to nationals of particular states and persons belonging to groups defined by any other means. In the cases covered by subsection (1), this is done in agreement with the Federal Foreign Office.

### **Section 73a** **Notification of the issuance of visas**

(1) Notifications from other Schengen states of visas issued in accordance with Article 31 of Regulation (EC) No 810/2009 may be transmitted via the competent body to the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Office to check whether the grounds stated in section 5 (4) or any other security reservations preclude the entry into and residence in the federal territory of a visa holder. Notifications from German diplomatic missions abroad concerning visas issued without prior transmission of data pursuant to section 73 (1) may be transmitted via the competent body to the authorities listed in sentence 1 for the purpose stated in sentence 1; data on persons other than the holder of the visa are not transmitted. Section 73 (3) sentences 3 and 4 applies accordingly.

(2) The Federal Ministry of the Interior determines via a general administrative provision in consultation with the Federal Foreign Office and with due regard to the current security situation in which cases the authorisation pursuant to subsection (1) is used with regard to nationals of particular states and persons belonging to groups defined by any other means.

### **Section 73b**

#### **Background check of persons and organisations involved in visa procedures**

(1) The Federal Foreign Office carries out background checks to determine any security reservations concerning persons who are or are to be entrusted with discharging one or more tasks in the visa procedure, in particular recording biometric identifiers, and who are not seconded members of the Foreign Service (persons concerned). At regular intervals and as occasion demands, the Federal Foreign Office conducts repeat background checks of the persons referred to in sentence 1. The background check is carried out after the person concerned has provided written consent.

(2) To conduct the background check, the German diplomatic mission abroad collects the surname, given names, name at birth and other names, sex, date and place of birth, nationality, place of residence and particulars of the identity document (in particular type of document and document number) of the person concerned and transmits these data via the Federal Foreign Office to the federal law enforcement agencies and offices for the protection of the constitution, to the Federal Intelligence Service, the Military Counter-Intelligence Service, the Federal Criminal Police Office and the Customs Criminological Service to ascertain any security reservations. The security authorities and intelligence services referred to in sentence 1 immediately notify the Federal Foreign Office of any security reservations.

(3) The security authorities and intelligence services referred to in subsection (2) may process the transmitted data for other purposes in accordance with legislation applicable to them as far as necessary to discharge their statutory duties. Provisions regulating the transmission of data under other acts remain unaffected.

(4) The persons concerned may not begin their activity in the visa procedure before the background check has been completed and has revealed no indications of possible unreliability.

(5) If the person concerned is employed by a legal entity, in particular an external service provider, the Federal Foreign Office also conducts a background check of the legal entity on the basis of the company name, designation, the legal entity's entry in the Commercial Register and full address (local branch and main office). The Federal Foreign Office also conducts a background check of the owner and the managing director of the legal entity in the country in which the cooperation is planned. Subsection (1) sentences 2 and 3 and subsections (2) to (4) apply accordingly.

### **Section 73c**

#### **Cooperation with external service providers**

In national visa application procedures under Chapter 2 Parts 3 and 4, the German diplomatic missions abroad may cooperate with an external service provider in accordance with Article 43 of Regulation (EC) No 810/2009.

### **Section 74**

#### **Consulting the Federation; authority to issue instructions**

(1) A visa may be granted to safeguard political interests of the Federation subject to the proviso that extending the visa and issuing another residence title after the visa expires and lifting and amending requirements, conditions and other restrictions pertaining to the visa may only be undertaken in consultation or agreement with the Federal Ministry of the Interior or the body appointed by it.

(2) The Federal Government may issue individual instructions on implementing 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 harm substantial interests of another *Land*,
3. a foreigners authority intends to expel a foreigner who is exempted from the requirement for a temporary residence permit by virtue of 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 are carried out on the basis of intergovernmental agreements and legislation of the European Union. The central authority pursuant to Article 4 (5) of Directive 2003/110/EC is the Federal Police authority specified in the statutory instrument pursuant to section 58 (1) of the Act on the Federal Police. The foreigner in transit must tolerate the necessary measures in connection with the transit journey.

**Part 2  
Federal Office for Migration and Refugees**

**Section 75  
Duties**

Without prejudice to its duties in accordance with other acts, the Federal Office for Migration and Refugees has the following duties:

1. coordinating the information on residence for the purpose of pursuing an economic activity between the foreigners authorities, the Federal Employment Agency and the German diplomatic missions abroad authorised by the Federal Foreign Office to deal with matters pertaining to passports and visas;
2.
  - a) developing the basic structure and content of the integration course pursuant to section 43 (3) and job-related language training pursuant to section 45a,
  - b) implementing the same and
  - c) measures pursuant to section 9 (5) of the Federal Expellees Act;
3. providing expert support for the Federal Government in the field of promoting integration and producing informational materials on integration measures offered by the Federal Government, *Land* governments and local government authorities for foreigners and ethnic German resettlers;
4. conducting scientific research on migration issues (accompanying research) with the aim of obtaining analytical conclusions for use in controlling immigration;
  - 4a. conducting scientific research on integration issues;
5. cooperating 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, Article 22 (1) of Directive 2009/50/EC, Article 26 of Directive 2014/66/EU and Article 37 of Directive 2016/801/EU, and for notifications pursuant to section 51 (8a);

- 5a. examining notifications submitted pursuant to section 16c (1), section 18e (1) and section 19a (1) and issuing certificates pursuant to section 16c (4), section 18e (5) and section 19a (4) or denying entry and residence;
6. keeping the register pursuant to section 91a;
7. coordinating the programmes and taking part in projects to promote voluntary returns, and paying out funds approved under those schemes;
8. carrying out the admission process pursuant to section 23 (2) and (4) and the allocation of foreigners admitted pursuant to section 23 and section 22 sentence 2 to the *Länder*;
9. providing migration advising 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. recognising research organisations in order to conclude hosting agreements pursuant to section 18d; in this connection, the Federal Office for Migration and Refugees is assisted by the Advisory Board for Migration of Researchers;
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 must be considered owing to a risk to public security;
12. imposing bans on entry and residence pursuant to section 11 (1) in the case of a deportation warning pursuant to sections 34, 35 of the Asylum Act or a deportation order pursuant to section 34a of the Asylum Act, and imposing bans on entry and residence and setting time limits on such bans pursuant to section 11 (7);
13. without prejudice to section 71 (3) no. 7, procuring return travel documents for foreigners by way of official assistance.

**Section 76  
(repealed)**

**Part 3  
Administrative procedures**

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

(1) The following administrative acts must be made in writing and (excepting no. 5) require the statement of reasons:

1. the administrative act
  - a) denying a passport substitute, a substitute identity document or a residence title or subjecting the same to geographic or time restrictions or to conditions and requirements, or
  - b) denying the amendment or rescission of a subsidiary provision attaching to the residence title, and
2. expulsion orders,
3. deportation orders in accordance with section 58a (1) sentence 1,
4. deportation warnings,

5. suspensions of deportation,
6. geographic residence restrictions in accordance with section 12 (4),
7. orders under sections 47 and 56,
8. the withdrawal and the revocation of administrative acts in accordance with this Act and
9. the imposition of a time limit on a ban on entry and residence under section 11.

An administrative act denying a residence title or invalidating a residence title is to be accompanied by an explanation, as are decisions on applications for time limits to be applied in accordance with section 11 (1) sentence 3. The explanation informs the foreigner as to the legal remedy available in order to challenge the administrative act, the body with which the corresponding appeal is to be lodged and the deadline to be observed; in other cases the deportation warning is to be included with the aforementioned explanation.

(1a) In connection with the issuance of an ICT Card or a Mobile ICT Card, the host entity or host undertaking are to be notified of the following in writing:

1. the refusal to extend an ICT Card or a Mobile ICT Card,
2. the withdrawal or revocation of an ICT Card or a Mobile ICT Card,
3. the refusal to extend a residence title allowing the subsequent immigration of dependants to join holders of an ICT Card or a Mobile ICT Card, or
4. the withdrawal or revocation of a residence title allowing the subsequent immigration of dependants to join holders of an ICT Card or a Mobile ICT Card.

The notification under sentence 1 nos. 1 and 2 must include the reasons for the decision.

(2) Denial and restriction of a visa and passport substitute before the foreigner enters the federal territory does not require any statement of reasons or information on available legal remedies; refusal at the border does not require written form. Formal requirements for the denial of Schengen visas are determined by Regulation (EC) No 810/2009.

(3) Upon application, foreigners are to be provided with a translation of the operative part of the administrative act denying or invalidating the residence title or by means of which a decision is taken to impose a time limit in accordance with section 11 and of the information on available legal remedies, free of charge and in a language which the foreigner understands or which it can be reasonably assumed he or she understands. If another reason exists for the obligation to leave the federal territory, sentence 1 applies accordingly to the deportation warning and the information on available legal remedies which is to be included with this in accordance with subsection (1) sentence 3. The translation may be provided in oral or written form. The foreigner is not entitled to a translation if he or she has entered the federal territory unlawfully or has been expelled on the grounds of a criminal conviction. In the cases referred to in sentence 4, the foreigner is given a standard form containing explanations, which are made available in at least five of the most commonly spoken or understood languages. Sentences 1 to 3 do not apply if the foreigner has not yet entered or has already left the federal territory.

## **Section 78**

### **Documents with an electronic storage and processing medium**

(1) Residence titles pursuant to section 4 (1) sentence 2 nos. 2 to 4 are issued as stand-alone documents with an electronic storage and processing medium. Upon application, temporary residence permits to be issued in accordance with the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons of 21 June 1999 (OJ L 114, 30.4.2002, p. 6) are issued as documents with an electronic storage and processing medium. Documents referred to in

sentences 1 and 2 contain the following visibly displayed items of information:

1. surname and given names,
2. doctoral degree,
3. photograph,
4. date and place of birth;
5. address,
6. start and duration of validity,
7. place of issue,
8. type of residence title or right of residence and its legal basis,
9. issuing authority,
10. serial number of the appurtenant passport or passport substitute,
11. duration of validity of the appurtenant passport or passport substitute,
12. comments,
13. signature,
14. serial number,
15. nationality,
16. sex,
17. height and eye colour,
18. card access number.

Subject to the conditions stipulated in section 48 (2) or (4), a document under sentence 1 may be marked to indicate that it is a substitute identity document and that the personal details contained therein are based on the information furnished by the holder. The signature of the applicant as required by sentence 3 no. 13 must be submitted if he or she is 10 years of age or older at the time of applying for the document.

(2) A document with an electronic storage and processing medium under subsection (1) contains a machine-readable zone. It may contain only the following visibly displayed information:

1. the abbreviations
  - a) "AR" for residence titles of the type referred to in section 4 (1) nos. 2 to 4,
  - b) "AS" for residence titles of the type referred to in section 28 sentence 2 of the Ordinance Governing Residence (*Aufenthaltsverordnung*),
2. the abbreviation "D" for the Federal Republic of Germany,
3. the serial number of the residence title which consists of the code number of the foreigners authority and a randomly assigned residence title number and which may contain both numerals and letters,
4. the date of birth,
5. the abbreviation "F" for females and "M" for males,

6. the duration of validity of the residence title or, in the case of a permanent right of residence, the technical period of validity for the use of the card,
7. the abbreviation of the nationality,
8. the surname,
9. the given name or names,
10. the check digits and
11. empty spaces.

The serial number and the check digits may not include any information about the holder or indications of such information. Each document is assigned a new serial number.

(3) The electronic storage and processing medium included in the document referred to in subsection (1) contains the following data:

1. the data stipulated in subsection (1) sentence 3 nos. 1 to 5 and the unique municipality code used in the official list of municipalities,
2. the data of the machine-readable zone referred to in subsection (2) sentence 2,
3. subsidiary provisions,
4. two fingerprints, the designation of the fingers used and information on the quality of the prints and
5. name at birth.

Suitable technical and organisational measures as required by Articles 24, 25 and 32 of Regulation (EU) 2016/679 are to be taken to secure the data against unauthorised modification, deletion and retrieval. Fingerprints are taken of persons who are six years of age and older.

(4) The electronic storage and processing medium of a document referred to in subsection (1) may be designed as a qualified electronic signature creation device pursuant to Article 3 no. 23 of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73). Certification in accordance with Article 30 of Regulation (EU) No 910/2014 is carried out by the Federal Office for Information Security. The provisions of the Trusted Services Act (*Vertrauensdienstegesetz*) remain unaffected.

(5) The electronic storage and processing medium of a document referred to in subsection (1) may also be used for the additional function of an electronic proof of identity. In this respect, section 2 (3) to (7), (10) and (12), section 4 (3), section 7 (4) and (5), section 10 (1), (2) sentence 1, (3) to (5), (6) sentence 1, (7), (8) sentence 1, and (9), section 11 (1) to (5) and (7), section 12 (2) sentence 2, sections 13, 16, 18, 18a, 19 (1), (3) to (6), sections 19a, 20 (2) and (3), sections 21, 21a, 21b, 27 (2) and (3), section 32 (1) nos. 5 and 6 with the exception of section 19 (2) stated there, nos. 6a to 8, (2) and (3) and section 33 nos. 1, 2 and 4 of the Act on Identity Cards apply accordingly with the proviso that the foreigners authority takes the place of the identity card authority. In addition to the data listed in section 18 (3) sentence 2 of the Act on Identity Cards, the subsidiary provisions stored in accordance with subsection 3 no. 3 and the abbreviation for the holder's nationality may also be transmitted within the scope of the electronic proof of identity function subject to the requirements of section 18 (4) of the Act on Identity Cards. Subsection (2) sentence 3 applies accordingly with regard to the blocking code and to the blocking characteristics.

(6) The authorities charged with implementing this Act or entrusted with sovereign powers to check identities may process the data contained in the machine-readable zone to discharge their statutory duties.

(7) Public bodies may process the data stored in the electronic storage and processing medium of a document under subsection (1) with the exception of biometric data, as far as necessary to discharge their respective statutory duties. Both the address stored in the electronic storage and processing medium and the address to be displayed under subsection (1) sentence 3 no. 5 may be changed by the foreigners authorities and other authorities designated by *Land* law.

(8) In the absence of any legal provisions to the contrary, personal data from documents as referred to in subsection (1) may be processed with the help of technical means only by way of the electronic proof of identity as referred to in subsection (5). The same applies to the processing of personal data with the help of a document referred to in subsection (1).

### **Section 78a**

#### **Forms for residence titles in exceptional cases, substitute identity card document and certificates**

(1) In derogation from section 78, residence titles as referred to in section 4 (1) sentence 2 nos. 2 to 4 may be issued according to a standard form if

1. the residence title is to be granted for the purpose of extending the stay by one month or,
2. issuing a residence title is necessary to avert exceptional hardship.

The standard form contains the following items of information:

1. surname and given names of the holder,
2. duration of validity,
3. place and date of issue,
4. type of residence title or right of residence,
5. issuing authority,
6. serial number of the appurtenant passport or passport substitute,
7. comments,
8. a photograph.

The standard form must indicate that the document has been issued in exceptional circumstances.

(2) Forms as referred to in subsection (1) sentence 1 contain a machine-readable zone with the following information:

1. surname and given names,
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,

10. empty spaces.

(3) Public bodies may process the data contained in the machine-readable zone under subsection (2) to discharge their statutory duties.

(4) The standard form for the substitute identity document contains a serial number and a machine-readable zone. In addition to the name of the issuing authority, the place and date of issue, the period or duration of validity, the given names and surname of the holder, residence status and subsidiary 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. eye colour,
6. address,
7. photograph,
8. personal signature,
9. two fingerprints,
10. note to the effect that the personal details are based on information furnished by the foreigner.

If fingerprints are recorded in accordance with sentence 2 no. 9, they must be incorporated into the substitute identity document on the electronic storage and processing medium following encoding by means of security processes as required by Articles 24, 25 and 32 of Regulation (EU) 2016/679. The same applies where photographs are incorporated in electronic form. Subsections (2) and (3) apply accordingly. Section 78 (1) sentence 4 remains unaffected.

(5) The certificates referred to in section 60a (4) and section 81 (5) are issued according to a standard form which contains a serial number and the Central Foreigners Register number and may be provided with a machine-readable zone. In all other cases, the certificate may contain only those data items specified in subsection (4) and a note to the effect that the certificate alone does not satisfy the foreigner's passport requirement. Subsections (2) and (3) apply accordingly.

## **Section 79**

### **Decision on residence**

(1) A decision on the residence of foreigners is reached on the basis of the circumstances which are known in the federal territory and accessible information. The foreigners authority decides whether the conditions specified in section 60 (5) and (7) apply on the basis of the knowledge in its possession and the knowledge accessible in the federal territory and, where necessary in individual cases, the knowledge accessible to the authorities of the Federation outside of the federal territory.

(2) If a foreigner who is under investigation on suspicion of having committed a criminal or administrative offence applies for issuance or extension of a residence title, the decision on the residence title is suspended until the attendant proceedings are completed and, in the case of a court ruling, until it is no longer subject to appeal, unless it is possible to reach a decision on the residence title without considering the outcome of the proceedings.

(3) In cases where a family member applies for a residence title in accordance with section 36a

(1) to join a foreigner

1. against whom criminal or administrative proceedings were instituted on account of one of the offences listed in section 27 (3a),
2. against whom criminal proceedings were instituted on account of one or several criminal offences listed in section 36a (3) no. 2, or
3. in the case of whom a revocation procedure under section 73b (1) sentence 1 of the Asylum Act or a withdrawal procedure under section 73b (3) of the Asylum Act was instituted,

the decision on the residence title under section 36a (1) is suspended until the attendant proceedings are completed and, in the case of a court ruling, until it is no longer subject to appeal, unless it is possible to reach a decision on the residence title under section 36a (1) without considering the outcome of the proceedings. In cases covered by sentence 1 no. 3, if subsidiary protection status is revoked or withdrawn, the proceedings to decide on revoking the foreigner's residence title in accordance with section 52 (1) sentence 1 no. 4 is relevant.

(4) If a foreigner who is under investigation on suspicion of having committed a criminal offence applies for issuance or extension of a temporary suspension of deportation for the purpose of employment, the decision on the temporary suspension of deportation for the purpose of employment is suspended until the attendant proceedings are completed and, in the case of a court ruling, until it is no longer subject to appeal, unless it is possible to reach a decision on the temporary suspension of deportation for the purpose of employment without considering the outcome of the proceedings.

(5) If a foreigner against whom legal proceedings are instituted by a public authority applies for a temporary suspension of deportation for the purpose of training, the decision on the temporary suspension of deportation for the purpose of training is suspended until the attendant proceedings are completed and, in the case of a court ruling, until it is no longer subject to appeal, unless it is possible to reach a decision on the temporary suspension of deportation for the purpose of training without considering the outcome of the proceedings.

## **Section 80** **Legal capacity**

(1) A foreigner who is of age is capable of performing procedural actions pursuant to this Act, provided that he or she would not be legally incapacitated according to the Civil Code or would not require supervision and prior approval in this matter.

(2) A minor's lack of legal capacity does not keep him or her from being denied entry or removed. The same applies 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 applying this Act, the provisions of the Civil Code determine whether a foreigner is regarded as a minor or an adult. If a foreigner is of age under the law of his or her home country, the foreigner's legal capacity and capacity to contract remain unaffected.

(4) The legal representatives of a minor foreigner and any other persons attending to the foreigner in the federal territory in place of the legal representatives are required to file the necessary applications on behalf of the foreigner for issuing and extending the residence title and issuing and extending the passport, passport substitute and substitute identity document.

(5) Where the foreigner is under 18 years of age, the persons entitled to the foreigner's care and custody must consent to any planned stay in accordance with Chapter 2 Parts 3 and 4.

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

- (1) In the absence of any provisions to the contrary, a residence title is issued to a foreigner only upon application by said foreigner.
- (2) A residence title which may be obtained after entering the federal territory in accordance with the statutory instrument under section 99 (1) no. 2 must 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 to be granted a residence title ex officio is to 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 a residence title, his or her residence is deemed to be permitted up to the time of the decision by the foreigners authority. If the application is filed too late, deportation is 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 for a different residence title before his or her current residence title expires, the current residence title is deemed to remain in force from the time it expires until the time of the decision by the foreigners authority. This does not apply to visas issued in accordance with section 6 (1). If the application to issue or extend a residence title was filed too late, the foreigners authority may order that the previous residence title remains valid in order to avoid undue hardship.
- (5) The foreigner is to be issued with a certificate confirming the effect of the application (provisional residence document).
- (6) If the application for a temporary residence permit allowing the subsequent immigration of dependants wishing to join the holder of an ICT Card or a Mobile ICT Card is filed at the same time as the application for an ICT Card or a Mobile ICT Card, the application for the temporary residence permit allowing the subsequent immigration of dependants is decided upon at the same time as the application for an ICT Card or Mobile ICT Card.

### **Section 81a Fast-track procedure for skilled workers**

- (1) On behalf of a foreigner wishing to enter the country for one of the purposes of residence listed in sections 16a, 16d, 18a, 18b and 18c (3), employers may apply for a fast-track procedure.
- (2) To this end, the employer and the competent foreigners authority conclude an agreement comprising the following in particular:
1. contact details of the foreigner, employer and authority
  2. the fact that the foreigner has authorised the employer to act on his or her behalf
  3. the fact that the competent foreigners authority has been authorised by the employer to initiate and carry out the procedure to establish the equivalence of the vocational qualification the foreigner acquired abroad,
  4. the fact that the employer must take steps to make the foreigner comply with his or her obligation to cooperate as set out in section 82 (1) sentence 1,
  5. documents to be submitted,
  6. description of the process, including the parties involved and deadlines to be kept,
  7. the employer's obligation to cooperate under section 4a (5) sentence 3 no. 3, and

8. consequences of failure to comply with the agreement.

(3) As part of the fast-track procedure for skilled workers it is the responsibility of the competent foreigners authority to

1. advise the employer as regards the procedure and the documents to be submitted,
2. initiate with the competent body the procedure for establishing the equivalence of the vocational qualification acquired abroad or for assessing the foreign higher education certificate, where necessary, indicating that this is part of the fast-track procedure for skilled workers; if the aim is to employ the foreigner in a regulated profession in Germany, the authorisation to practise the profession must be obtained,
3. in cases where a procedure under no. 2 was initiated, send the employer without delay any notifications by the competent bodies stating that they have received the relevant documents and that these are complete; if the competent body needs more documents and if the employer has received an assessment by the competent body, the employer is to be invited within three working days of receipt in order to be handed the assessment and discuss any further steps to be taken,
4. obtain, where necessary, the consent of the Federal Employment Agency, indicating that this is part of the fast-track procedure for skilled workers,
5. inform the competent diplomatic mission abroad that the foreigner is about to apply for a visa, and
6. agree in advance to granting the visa without delay, provided the necessary requirements are met, which includes the determination of the equivalence or the comparability of the vocational qualification and the consent of the Federal Employment Agency.

If the competent authority issues a notification determining that the vocational qualification abroad is not equivalent but that equivalence can be achieved by taking part in a qualification measure, the procedure described in section 81a may be continued, the aim being the entry for the purpose under section 16d.

(4) This procedure also covers the subsequent immigration of spouses or minor, unmarried children whose visa applications are submitted around the same time.

(5) Subsections (1) to (4) also apply to other qualified employees.

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

(1) The foreigner is required 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 the foreigner is able to furnish. The foreigners authority may set the foreigner a reasonable deadline for this purpose. It sets him or her such a deadline when postponing the processing of an application for a residence title on account of lacking or incomplete information and specifies the information to be furnished subsequently. Circumstances put forward and documents furnished after said deadline has expired may be ignored. Foreigners who have applied for an ICT Card under section 19b are required to inform the competent foreigners authority of any changes that occur during the application procedure and affect the conditions for granting an ICT Card.

(2) Subsection (1) applies accordingly in an objection procedure.

(3) As a rule, foreigners are to be notified of the obligations arising from subsection (1) and of

their main rights and duties arising from this Act, in particular the obligations arising from sections 44a, 48, 49 and 81. If a time limit is set, the foreigner is to be informed of the consequences of failure to observe the set deadline.

(4) Where necessary to prepare and implement 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 in person to the competent authority and to the diplomatic missions or authorised officials of the state whose nationality he or she putatively possesses and requiring a medical examination to determine whether the foreigner is fit to travel. If a foreigner fails to comply with an order pursuant to sentence 1, the order may be enforced using direct force. Section 40 (1) and (2), sections 41, 42 (1) sentences 1 and 3 of the Act on the Federal Police apply accordingly.

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

1. submit a current photograph in accordance with a statutory instrument enacted pursuant to section 99 (1) nos. 13 and 13a or to cooperate in the taking of such a photograph and

2. cooperate in the taking of his or her fingerprints in accordance with a statutory instrument enacted pursuant to section 99 (1) nos. 13 and 13a.

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.

(6) Foreigners who hold a temporary residence permit under Chapter 2 Parts 3 or 4 and whose vocational training or economic activity for which the residence title was granted ends earlier than planned must inform the competent foreigners authority within two weeks of becoming aware of the termination. The foreigner is to be informed of the obligation under sentence 1 when the residence title is issued.

### **Section 83 Limits on the right of appeal**

(1) The denial of a national visa and a passport substitute at the border is not subject to appeal. Upon being denied a national visa and a passport substitute at the border, the foreigner is informed of the possibility of filing an application with the competent diplomatic mission abroad.

(2) The refusal to suspend deportation is not contestable.

(3) The ordering of and imposition of a time limit on a ban on entry and residence by the Federal Office for Migration and Refugees is not contestable.

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

(1) An objection or legal action against

1. the denial of an application to issue or extend a residence title,

- 1a. measures under section 49,

2. a condition imposed in accordance with section 61 (1e) requiring the foreigner to take up residence at a departure facility,

- 2a. conditions imposed to secure and enforce the enforceable obligation to leave the country under section 61 (1e),

3. the amendment or rescission of a subsidiary provision concerning the pursuit of an economic activity,
  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) sentence 1 of the Asylum Act,
  5. revocation or withdrawal of the recognition of research organisations for the purpose of concluding hosting agreements under section 18d,
  6. denials of departure under section 46 (2) sentence 1,
  7. the imposition of a time limit on a ban on entry and residence under section 11,
  8. the ordering of a ban on entry and residence under section 11 (6), and
  9. the determination under section 85a (1) sentence 2,
- have no suspensive effect.

An action filed against the ordering of a ban on entry and residence under section 11 (7) has no suspensive effect.

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

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

Interruptions of lawful residence of up to one year may be ignored.

### **Section 85a Proceedings in case of specific indications of wrongful acknowledgement of paternity**

(1) If an administrative authority recording the acknowledgement or a registry clerk informs the foreigners authority that there are specific indications that paternity has been wrongfully acknowledged within the meaning of section 1597a (1) of the Civil Code, the foreigners authority examines whether such wrongful acknowledgement exists. If it is established that paternity was wrongfully acknowledged, the foreigners authority determines this through a written or electronic administrative act. If it is established that paternity was not wrongfully acknowledged, the foreigners authority discontinues the proceedings.

(2) As a rule, persons are assumed to have wrongfully acknowledged paternity if

1. the acknowledging party declares that the acknowledgement serves a specific purpose within the meaning of section 1597a (1) of the Civil Code,
2. the mother declares that the acknowledgement serves a specific purpose within the meaning of section 1597a (1) of the Civil Code,
3. the party acknowledging paternity has acknowledged paternity, in several instances, of children from different foreign mothers and in each case has created the legal prerequisites for the permitted entry or the permitted residence of the child or of the mother by so acknowledging paternity, also in those cases in which the child has acquired German nationality by the acknowledgement,

4. the party acknowledging paternity or the mother has been granted or promised a material benefit in return for acknowledging paternity or for approving the acknowledgement,

and it is not to be expected that the legal prerequisites for the permitted entry or the permitted residence of the child, of the acknowledging party or the mother will be met without the acknowledgement of paternity or the mother's approval of the acknowledgement. This also applies if the legal prerequisites for the permitted entry or the permitted residence of the child are to be met by the child's acquisition of German nationality under section 4 (1) or (3) sentence 1 of the Nationality Act.

(3) If the determination pursuant to subsection (1) sentence 2 is incontestable, the foreigners authority furnishes the administrative authority recording acknowledgements or the registry clerk and the registry office with a certified copy for their information, indicating that the determination has become incontestable. If the authority discontinues the proceedings, it informs the administrative authority recording acknowledgements, the parties concerned and the registry office in written or electronic form.

(4) The German diplomatic missions abroad are responsible for measures and determinations taken or made under subsections (1) and (3) abroad.

#### **Part 4 Data protection**

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

The authorities charged with implementing this Act may collect personal data for the purpose of implementing this Act and provisions relating to foreigners contained in other acts, where this is necessary to discharge their duties under this Act and in accordance with provisions relating to foreigners in other acts. Personal data which may not be processed under Article 9 (1) of Regulation (EU) 2016/679 may be collected to the extent necessary in the individual case for the authorities to discharge their tasks.

#### **Section 86a Collection of personal data to promote voluntary departure and reintegration**

(1) The foreigners authorities and all other public or private bodies which carry out publicly funded measures to promote return and reintegration or conduct such measures as commissioned by public sector bodies or receive the necessary application collect personal data to the extent that the data are necessary to carry out measures to promote return and reintegration, coordinate programmes by the Federal Office for Migration and Refugees to promote voluntary returns, to make sure that the funds are used properly and to claim their repayment if this is not the case. The following data are collected:

1. surname, name at birth, given names, spelling of the names according to German law, marital status, date of birth, place and district of birth, sex, nationalities,
2. information regarding the country of destination
3. information regarding the type of funding, and
4. information about whether the person left voluntarily or whether he or she was deported.

Information about the scope of funding and the reasons for it must also be collected.

(2) To be able to assess the effectiveness of promoting departure, the foreigners authorities and the authorities in charge of border police tasks collect information proving that the person concerned left the country and information regarding the state of departure and that of

destination.

### **Section 87** **Transfer of data and information to foreigners authorities**

(1) On request, public bodies with the exception of schools and other educational and care establishments for young people inform the bodies specified in section 86 sentence 1 of circumstances of which they become aware, as far as necessary for the purposes referred to in that section.

(2) Public bodies within the meaning of subsection (1) are to notify the competent foreigners authority immediately if, in discharging their duties, they become aware 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,
- 2a. foreigners drawing or applying for social benefits for themselves, their family members or other household members in the cases covered by section 7 (1) sentence 2 no. 2 or sentence 4 of Book Two of the Social Code or in the cases covered by section 23 (3) sentence 1 nos. 2, 3 or 4, sentences 3, 6 or 7 of Book Twelve of the Social Code, or
3. any other grounds for expulsion;
4. (repealed)

in the cases covered by nos. 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 immediately notifies the foreigners authority. As a rule, public bodies are to notify the competent foreigners authority immediately if, in discharging their duties, they become aware of special integration needs within the meaning of a statutory instrument enacted under section 43 (4). In addition to the cases regulated in sentence 1, the bodies responsible for benefits under Book Two or Book Twelve of the Social Code are required to notify the foreigners authority if a foreigner holding a temporary residence permit under Chapter 2 Parts 3 or 4 applies for such benefits for him- or herself or for family members. The diplomatic missions abroad transmit to the competent foreigners authority personal data on a foreigner which is suitable for establishing the latter's identity or nationality, should they become aware that such data may be of current significance in enforcing the foreigner's enforceable obligation to leave the federal territory.

(3) The Federal Government Commissioner for Migration, Refugees and Integration is required to provide notifications under subsections (1) and (2) regarding a foreigner belonging to this category of persons only if such notification does not threaten the Commissioner's ability to discharge his or her own duties. The *Land* governments may determine by statutory instrument that foreigners commissioners of the *Land* and of local government authorities are required to provide notifications pursuant to subsections (1) and (2) 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 an administrative act was issued terminating the lawfulness of the residence subject to sentence 1 only.

(4) The bodies responsible for initiating and implementing criminal or administrative fine proceedings are to notify the competent foreigners authority immediately that such criminal proceedings have been initiated and that the criminal or fine proceedings have been settled at the public prosecutor's office, in court or at the administrative authority competent for prosecuting the administrative offence and imposing due punishment, stating the relevant statutory provisions. Sentence 1 applies accordingly to initiating extradition proceedings against a foreigner. Sentence 1 does not apply to proceedings for an administrative offence which is punishable by a fine of up to 1,000 euros, nor to proceedings for an offence within the meaning of section 24 of the Road

Traffic Act or for an offence committed negligently within the meaning of section 24a of the Road Traffic Act. The Office for the Protection of Witnesses notifies the competent foreigners authority immediately of the beginning and end of witness protection for a foreigner.

(5) The bodies to be consulted in accordance with 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 (4b) or the shortening or annulment of a deadline for leaving the country granted pursuant to section 59 (7) and

2. ex officio of the competent body or of any transfer of competence, where involvement in criminal proceedings pursuant to section 72 (6) has taken place or notification has been effected pursuant to no. 1.

(6) Public or private bodies which carry out publicly funded measures to promote return and reintegration or conduct such measures as commissioned by public sector bodies or receive the necessary application must transmit data collected under section 86a (1) to the competent foreigners authority to the extent necessary for the purposes listed in section 86a.

### **Section 88**

#### **Transfer of data and information in the case of special statutory regulations on the processing of data**

(1) Personal data and other information are not transmitted under section 87, if such transmission conflicts with special statutory regulations on the processing of data.

(2) Personal data made accessible to a public body by a doctor or by other persons referred to in section 203 (1) nos. 1, 2, 4 to 7 and subsection (4) of the Criminal Code may be transmitted by said public body

1. if necessary to avert serious threats to the life and limb of the foreigner or of others, or 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 54 (2) no. 4 apply.

(3) Personal data subject to tax secrecy under section 30 of the German Fiscal Code (*Abgabenordnung*) may be transmitted if the foreigner has violated a provision of tax law, including customs law and monopolies law or a provision of foreign trade and payments law, or has violated import, export or transit bans or bans on the introduction of goods into customs territory, and criminal investigations have been initiated or a fine of at least 500 euros has been imposed for such violation. In cases covered by sentence 1, the authorities charged with policing cross-border traffic may also be notified if a departure ban is to be issued under section 46 (2).

(4) Subsections (1) to (3) apply accordingly to transmission by the authorities charged with implementing this Act and by private bodies.

### **Section 88a**

#### **Processing data in connection with integration measures**

(1) In conducting integration courses, the foreigners authority, the Federal Employment Agency, the institution providing basic security for job seekers, institutions providing services under the Asylum Seekers Benefits Act, the Federal Office of Administration and private and public institutions authorised to conduct integration courses are permitted to transmit data relating to participants to the Federal Office for Migration and Refugees, in particular data confirming entitlement to attend, permission to attend pursuant to section 44 (4) and registration for and

attendance of an integration course as far as necessary to grant permission or entitlement to attend the integration course, to verify proper participation, to verify the fulfilment of the obligation to attend in accordance with section 44a (1) sentence 1, to certify successful participation or to invoice and conduct integration courses. The private and public institutions authorised to conduct integration courses may inform the competent foreigners authority, the Federal Employment Agency, the competent institution providing basic security for job seekers or the competent institution providing services under the Asylum Seekers Benefits Act of the failure by a foreigner obliged to participate in an integration course under section 44a (1) sentence 1 to duly attend an integration course. On request, the Federal Office for Migration and Refugees may transmit the data transmitted pursuant to sentence 1 to foreigners authorities, the Federal Employment Agency, institutions providing basic security for job seekers or institutions providing services under the Asylum Seekers Benefits Act and nationality authorities as far as necessary to grant permission or entitlement to attend an integration course, to verify the fulfilment of the obligation to attend, to extend a temporary residence permit, to grant a permanent settlement permit or an EU long-term residence permit, to supervise the integration agreement or conduct the naturalisation procedure. In other respects, the processing of personal data by the Federal Office for Migration and Refugees is permissible only to conduct and invoice integration courses and to conduct a scientific research project in accordance with section 75 no. 4a under the conditions set out in section 8 (7) and (8) of the Ordinance on Integration Courses (*Integrationskursverordnung*).

(1a) Subsection (1) applies accordingly to the processing of data resulting from the asylum procedure conducted at the Federal Office for Migration and Refugees as far as necessary to take a decision on whether to admit a foreigner to an integration course. This also applies accordingly to the processing of data taken from the Central Register of Foreigners in order to ascertain the conditions under section 44 (4) sentence 2 in the context of deciding whether to admit a foreigner to an integration course.

(2) If the Federal Office for Migration and Refugees enlists the services of private or public institutions to provide migration advisory services pursuant to section 75 no. 9, these institutions are permitted to transmit to the Federal Office for Migration and Refugees aggregated data on the advisory services provided.

(3) When conducting job-related language training courses in accordance with section 45a, the foreigners authority, the Federal Employment Agency, the institution providing basic security for job-seekers, the Federal Office of Administration and the private and public institutions conducting the courses are permitted to transmit to the Federal Office for Migration and Refugees data relating to course participants concerning registration, length of attendance and the manner in which the course was concluded as far as necessary to grant admission to the course, ascertain and verify fulfilment of the obligation to duly attend, and to conduct and invoice the course. On request, the Federal Office for Migration and Refugees may transmit the data transferred in accordance with sentence 1 to foreigners authorities, the Federal Employment Agency, institutions providing basic security for job-seekers and nationality authorities as far as necessary to grant permission or entitlement to attend an integration course, verify fulfilment of the obligation to duly attend, grant a permanent settlement permit or an EU long-term residence permit, supervise the integration agreement or conduct the naturalisation procedure. The private and public institutions authorised to conduct the job-related language training may inform the competent foreigners authority, the Federal Employment Agency or the competent institution providing basic security for job-seekers of a foreigner's failure to duly attend.

## **Section 89**

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

(1) The Federal Criminal Police Office provides official assistance in assessing the data which are collected under section 49 by the authorities entrusted with implementing this Act and which are transferred under section 73. It may also use the identification data it has stored in the discharge of its duties. The data collected under section 49 (3) to (5) and (8) and (9) are stored separately from other identification data. The data referred to in section 49 (7) are kept by the authority

creating the records.

(1a) When providing official assistance under subsection (1) sentence 1, the Federal Criminal Police Office may, in order to establish the identity of the person concerned, also transmit the identification data referred to in subsection (1) sentence 1 to the public bodies of third countries which are responsible for examining the identity of persons, excepting the public bodies of the person's country of origin and those of third states where he or she has reason to fear persecution or serious harm. The Federal Criminal Police Office is responsible for the lawfulness of the transmission. The Federal Criminal Police Office is to record the transmission and the reason for it. The body receiving personal data is to be notified that the data may be processed only for the purpose for which they were transmitted. Furthermore, the receiving body is to be informed of the date on which the data are to be deleted at the Federal Criminal Police Office. Personal data are not transmitted if there is reason to believe that,

1. taking into account the type of data and the way they were collected, the legitimate interests of the person concerned, above all his or her interest in receiving protection from persecution, override the general interest in the transmission, or
2. the transmission of the data would conflict with the person's basic rights, the Convention Relating to the Status of Refugees of 28 July 1951 or the Convention on the Protection of Human Rights and Fundamental Freedoms, particularly because processing the transmitted data in the receiving state threatens to violate fundamental principles of the rule of law or human rights.

(2) Processing the data obtained under section 49 (3) to (5) or (7) to (9) is also permitted to establish the foreigner's identity or attribute evidence in the course of criminal prosecution or measures taken by the police to avert threats. These data may be transmitted or made available to the authorities responsible for these measures, to the extent and for the duration necessary.

(3) The data collected under section 49 (1) are deleted by all authorities immediately after completing the authenticity of the document or the identity of the holder has been checked. The data collected under section 49 (3) to (5), (7), (8) or (9) are deleted 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. 10 years have elapsed since the foreigner's last departure from the federal territory, the attempted unlawful entry or the termination of an unlawful stay,
3. three years have elapsed since refusal of entry or removal in cases covered by section 49 (5) nos. 3 and 4 or
4. 10 years have 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).

Deletion of the data is to be documented.

(4) Subsection (3) does not apply if and for as long as the data are required in connection with criminal proceedings or to avert a threat to public safety or law and order.

## **Section 90**

### **Transmission of information 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 under section 4,

2. violations of the obligation to cooperate under 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, long-term care insurance, accident insurance or pension insurance agency, an institution providing basic security for job seekers or a social welfare agency, or violations of the obligation to report under section 8a of the Asylum Seekers Benefits Act,

3. the violations specified in section 6 (4) nos. 1 to 4 , 7, 12 and 13 of the Act to Combat Clandestine Employment,

the authorities charged with implementing this Act notify the authorities responsible for prosecuting and punishing the violations according to nos. 1 to 3, the institutions providing basic security for job seekers or the social welfare agencies and the competent authorities specified in section 10 of the Asylum Seekers Benefits Act.

(2) In prosecuting and punishing violations of this Act, the authorities charged with implementing this Act cooperate in particular with the other authorities specified in section 2 (4) of the Act to Combat Clandestine Employment.

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

(4) The foreigners authorities immediately notify the bodies to be involved in accordance with section 72 (6) when

1. a residence title under section 25 (4a) or (4b) is issued or denied,
2. a period allowed for departure under section 59 (7) is set, reduced or annulled, and
3. competence is transferred from the foreigners authority to another foreigners authority; this obligation applies to the foreigners authority to which competence has been transferred.

(5) Upon request, the foreigners authority informs the court bailiff of a person's place of residence for the purposes referred to in section 755 of the Code of Civil Procedure.

(7) In order to carry out enforcement proceedings, the foreigners authority informs the executing authority at its request of the judgment debtor's place of residence. The foreigners authority may communicate the place of residence only if the executing authority is unable to obtain the information from the registration office and indicates this in its request filed with the foreigners authority.

### **Section 90a**

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

(1) The foreigners authorities immediately notify the competent registration authorities when they obtain information indicating that the data stored in the register on foreigners who are obliged to register with the authorities are incorrect or incomplete. They 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 permanently left the federal territory.

The foreigners authority informs the competent registration authority when it has granted a foreigner a settlement permit or an EU long-term residence permit.

(2) As a rule, notifications under subsection (1) are to contain the following information on the foreigner who is obliged to register with the authorities:

1. surname, name at birth and given names,
2. date, place and state of birth,
3. nationalities,
4. most recent address in Germany and
5. date of departure and state of destination, and
6. the Central Foreigners Register number in cases covered by and subject to section 10 (4) sentence 2 no. 4 of the Act on the Central Register of Foreigners, so as to allow a clear identification of the person concerned.

#### **Section 90b**

##### **Comparing data between foreigners authorities and registration authorities**

Foreigners authorities and registration authorities which share the same geographic area of competence exchange the data specified in section 90a (2) annually for the purpose of data maintenance. The receiving authority checks the transmitted data against its own stored data; automated checking is permitted. The transmitted data may only be used for data checking and data maintenance, after which they are deleted immediately; furnished data carriers are returned or destroyed immediately.

#### **Section 90c**

##### **Data transfer in visa procedures via the Federal Foreign Office**

(1) Data are transmitted in the course of visa procedures from German diplomatic missions abroad to the authorities involved in the visa procedure and then back again to the German diplomatic missions abroad by means of an automated process via a technical device for supporting the visa procedure operated by the Federal Foreign Office. The technical device ensures the complete, correct and punctual transmission of data referred to in sentence 1. To this end the data referred to in sentence 1 are stored in the technical device.

(2) Personal data may be collected, processed or used in the technical device only as far as necessary for the purpose stated in subsection (1) sentences 1 and 2.

(3) The data stored under subsection (1) sentence 3 must be deleted immediately when the data are no longer needed for the purpose stated in subsection (1) sentences 1 and 2, and at the latest following issuance or denial of a visa or withdrawal of the visa application.

#### **Section 91**

##### **Storage and deletion of personal data**

(1) The data relating to expulsion, removal and deportation are to be deleted 10 years after the time limit specified in section 11 (1) sentence 2 expires. They must be deleted prior to this if they contain information which may no longer be used against the foreigner in accordance with other statutory provisions.

(2) Notifications under section 87 (1) which are immaterial to an impending decision under the law on foreigners and which are unlikely to be of relevance to a later decision under the law on foreigners are to be destroyed immediately.

#### **Section 91a**

##### **Temporary protection register**

(1) The Federal Office for Migration and Refugees keeps a register of foreigners in accordance with section 24 (1) who have applied for a visa or a temporary residence permit and of their dependants 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 admitted foreigners to other member states of the European Union, reunifying families and promoting voluntary return.

(2) The following information is 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 temporary residence permit, the authority responsible for processing the application, and information regarding the decision on the application or the status of the application procedure,
- d) details of the identity and travel document,
- e) the Central Foreigners 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 no. 1 (a), with the exception of voluntary information on the religion of the foreigner's dependants in accordance with subsection (1),

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

(3) The foreigners authorities and the diplomatic missions abroad are required to transfer the data stated in subsection (2) to the registration authority immediately when an application has been filed

- 1. for a temporary residence permit under 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 Register of Foreigners apply accordingly.

(5) On request, the data may be transmitted 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 purpose of discharging their duties under the law on foreigners and asylum in connection with granting residence, allocating admitted foreigners to places of residence in the federal territory, relocating admitted foreigners to other member states of the European Union, reunifying families and promoting voluntary return.

(6) The registration authority must produce records of data transmissions in accordance with subsection (5). Section 13 of the Act on the Central Register of Foreigners applies accordingly.

(7) Data transmission pursuant to subsections (3) and (5) is effected in writing, in electronic form or via an automated procedure. Section 22 (2) to (4) of the Act on the Central Register of Foreigners applies accordingly.

(8) The data are to be deleted 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 Register of Foreigners applies accordingly with regard to notification of the data subject and restrictions on the processing of the data.

**Section 91b**  
**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 transmit the data contained in the register pursuant to section 91a to the following bodies for the purpose of relocating admitted foreigners to other member states of the European Union or reunifying families:

1. National Contact Points of other member states of the European Union,
2. bodies and institutions of the European Union,
3. other foreign, supranational or intergovernmental bodies, subject to the provisions of Chapter V of Regulation (EU) 2016/679 and other general data protection provisions.

**Section 91c**  
**Intra-Community information to implement Directive 2003/109/EC**

(1) In its capacity as the National Contact Point within the meaning of Article 25 of Directive 2003/109/EC, the Federal Office for Migration and Refugees notifies 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 content and date of a decision on issuing or extending a temporary residence permit under section 38a (1) or on issuing an EU long-term residence permit. The authority which has reached the decision transmits the necessary data to the Federal Office for Migration and Refugees without delay. The data required for notifications under sentence 1 may be transmitted to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(1a) Requests from the foreigners authorities for information as to whether a foreigner continues to have international protection status within the meaning of section 2 (13) in another member state is forwarded by the Federal Office for Migration and Refugees ex officio to the competent bodies of the EU member state concerned. To do so, the competent foreigners authority transmits the necessary information to the Federal Office for Migration and Refugees. The Federal Office for Migration and Refugees forwards the replies to the competent foreigners authority.

(2) In the procedure under section 51 (8), the Federal Office for Migration and Refugees forwards 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 for the intended measure as stated by the foreigners authority. To do so, the foreigners authority transmits the necessary information to the Federal Office for Migration and Refugees. The Federal Office for Migration and Refugees forwards 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 notifies the competent authority of another member state of the European Union ex officio that a foreigner who possesses long-term resident status in said member state has been informed 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 that such a measure has been carried out, or a corresponding deportation order under section 58a has been issued or carried out. The notification states the primary reason for terminating the

foreigner's stay. The notification takes place as soon as the German authority ordering the measure concerned in accordance with section 71 informs the Federal Office for Migration and Refugees of the intended or effected measure. To this end, the authorities referred to in sentence 3 furnish the necessary information to the Federal Office for Migration and Refugees without delay.

(4) In the case of notifications under subsections (1) to (3), the foreigner's personal details are transmitted for identification purposes. Where dependants who are living with the long-term resident as a family unit are also involved in cases covered by subsection (3), their personal details are also transmitted.

(5) The Federal Office for Migration and Refugees forwards inquiries from bodies of other member states of the European Union in connection with the consultation envisaged in Article 22 (3) (2) of Directive 2003/109/EC to the competent foreigners authorities. The competent foreigners authority furnishes the Federal Office for Migration and Refugees with the following information of which it is aware:

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 in favour of or opposed to 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.

Otherwise, the competent foreigners authority provides notification that it is not aware of any pertinent information. The Federal Office for Migration and Refugees forwards this information ex officio to the competent body of the inquiring member state of the European Union.

(5a) The Federal Office for Migration and Refugees informs the competent authorities of the other member states of the European Union within one month of receiving the inquiry whether a foreigner continues to have international protection status in the Federal Republic of Germany.

(5b) If the long-term resident's EU residence permit issued by another member state of the European Union to a beneficiary of international protection indicates that the person concerned has been granted international protection by said state, and if the responsibility for such international protection within the meaning of section 2 (13) has been transferred to Germany in line with the relevant legal provisions before the beneficiary of international protection was granted an EU long-term residence permit pursuant to section 9a, the Federal Office for Migration and Refugees asks the competent authority of the other member state to change the indication in the long-term resident's residence permit accordingly.

(5c) If a person with long-term resident status in another EU member state is granted international protection in Germany within the meaning of section 2 (13) before he or she is granted an EU long-term residence permit pursuant to section 9a, the Federal Office for Migration and Refugees asks the competent authority of the other member state to indicate in the EU long-term residence permit that Germany has granted this person international protection.

(6) The Federal Office for Migration and Refugees notifies the competent foreigners authority ex officio of the content of notifications from other member states of the European Union

1. according to which the other member state of the European Union intends to carry out or is carrying out measures to terminate the residence of a foreigner who holds an EU long-term residence permit,

2. according to which a foreigner who holds an EU long-term residence permit has acquired long-term resident status in another member state of the European Union or has been granted a residence title or had his or her residence title extended in another member state of the European Union.

**Section 91d**  
**Information to implement Directive 2016/801/EU**

(1) The Federal Office for Migration and Refugees receives applications under section 18f and forwards them to the competent foreigners authority. It informs the applicant of the competent foreigners authority.

(2) On request, the Federal Office for Migration and Refugees furnishes 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 requirements for the foreigner's mobility stipulated in Articles 28 to 31 of Directive 2016/801/EU are met. This information comprises

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 Register of Foreigners 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, at the request of the Federal Office for Migration and Refugees, the foreigners authorities and the diplomatic missions abroad transmit to the Federal Office the data required to provide the information.

(3) 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 to verify compliance with the requirements for mobility pursuant to sections 16c and 18e or to issue a temporary residence permit pursuant to section 18f or a corresponding visa. To this end, they may transmit

1. the foreigner's personal details,
2. information on the foreigner's identity and travel documents and on his or her residence title issued in another member state of the European Union, and
3. information on the subject of the application for the residence title and on where such application was filed

and, where pertinent, specify the desired information in precise terms. The Federal Office for Migration and Refugees forwards information which it receives to the competent foreigners authorities and diplomatic missions abroad. The data transmitted 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.

(4) The Federal Office for Migration and Refugees notifies the competent authority of another member state of the European Union in which the foreigner concerned possesses a residence title under Directive 2016/801/EU as to the contents and date of a decision on

1. denying, in accordance with section 16c (1) and 18 (1), mobility notified pursuant to section 19f (5), and

2. granting a temporary residence permit under section 18f.

When a foreigners authority has reached the decision, it transmits the necessary data to the Federal Office for Migration and Refugees without delay. The foreigners authorities may transfer the data from the Central Register of Foreigners required for notifications under sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(5) Where a residence title is revoked or withdrawn or not extended under section 16b (1), sections 16e, 18d or 19e or if it expires after the period under section 7 (2) sentence 2 has been reduced, the Federal Office for Migration and Refugees informs the competent authorities of the other member state without delay, provided the foreigner is staying there under the scope of Directive 2016/801/EU and the Federal Office for Migration and Refugees is aware of this fact. The foreigners authority which has reached the decision transmits the necessary data to the Federal Office for Migration and Refugees without delay. The foreigners authorities may transfer the data from the Central Register of Foreigners required for notifications under sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number. The Federal Office for Migration and Refugees notifies the competent foreigners authority without delay of any case where it has been informed by the competent authority of another member state that a residence title held by a foreigner who is residing in the federal territory under sections 16c, 18e or 18f and which comes under the scope of Directive 2016/801 (EU) has expired or been revoked, withdrawn or not extended.

#### **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 91g,

1. personal details are defined as names, in particular surname, name at birth, given 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 are defined as the type, number, issuing authority, date of issue and period of validity.

#### **Section 91f**

#### **Information to implement Directive 2009/50/EC within the European Union**

(1) In its capacity as the National Contact Point within the meaning of Article 22 (1) of Directive 2009/50/EC, the Federal Office for Migration and Refugees notifies the competent authority of another member state of the European Union in which the foreigner concerned possesses an EU Blue Card of the content and date of any decision taken with regard to issuing an EU Blue Card. The authority which has reached the decision transmits the necessary data to the National Contact Point. The foreigners authority may transfer the data from the Central Register of Foreigners required for notifications under sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number.

(2) The Federal Office for Migration and Refugees annually transmits to the competent bodies of the European Union

1. the data to be communicated under Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) no. 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23) with regard to the issuance of EU Blue Cards, and
2. a list of occupations for which a level of pay has been determined under section 18b (2) sentence 2 in implementation of Article 5 (5) of Directive 2009/50/EC.

**Section 91g**  
**Information to implement Directive 2014/66/EU**

(1) The Federal Office for Migration and Refugees receives applications pursuant to section 19b and forwards them to the competent foreigners authority. It informs the applicant of the competent foreigners authority.

(2) On request, the Federal Office for Migration and Refugees furnishes 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 requirements for the foreigner's mobility under Directive 2014/66/EU are met. This information comprises

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 Register of Foreigners 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, at the request of the Federal Office for Migration and Refugees, the foreigners authorities and the diplomatic missions abroad transmit to the Federal Office the data required to provide the information.

(3) 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 mobility requirements under section 19a or to issue a Mobile ICT Card. To this end, they may transmit

1. the foreigner's personal details,
2. information on the foreigner's identity and travel documents and on his or her residence title issued in another member state of the European Union, and
3. information on the subject of the application for the residence title and on where such application was filed

and, where pertinent, specify the desired information in precise terms. The Federal Office for Migration and Refugees forwards information which it receives to the competent foreigners authorities and diplomatic missions abroad. The foreigners authorities and diplomatic missions abroad may use the data transmitted in the information furnished by the competent bodies of other member states of the European Union for this purpose.

(4) The Federal Office for Migration and Refugees notifies the competent authority of another member state of the European Union in which the foreigner concerned possesses an ICT Card as to the content and date of a decision on

1. denying, under section 19a (1), mobility notified under section 19a (4), and
2. issuing a Mobile ICT Card under section 19b.

Where an ICT Card under section 19 is revoked or withdrawn or not extended or if it expires after the period is reduced in accordance with section 7 (2) sentence 2 is reduced, the Federal Office for Migration and Refugees immediately informs the competent authority of the other member state where the foreigner has made use of the possibility envisaged in Directive 2014/66/EU to

carry out part of the intra-corporate transfer in another member state of the European Union, provided the foreigners authority is aware of this. The authority which has reached the decision transmits the necessary data to the Federal Office for Migration and Refugees without delay. The foreigners authorities may transfer the data from the Central Register of Foreigners required for notifications under sentence 1 to the National Contact Point by means of an automated process, using the Central Foreigners Register number. The Federal Office for Migration and Refugees notifies the competent foreigners authority without delay of any case where it has been informed by the competent authority of another member state that a residence title held by a foreigner who is residing in the federal territory under sections 19a or 19b and which comes under the scope of Directive 2014/66 (EU) has expired or been revoked, withdrawn, or not extended.

(5) The Federal Office for Migration and Refugees annually transmits to the competent bodies of the European Union

1. the number
  - a) of ICT Cards issued for the first time,
  - b) of Mobile ICT Cards issued for the first time, and
  - c) of notifications under section 19a (1),
2. the nationality of the foreigner in every individual case, and
3. the period of validity or the duration of the planned stay in every individual case.

## **Chapter 8 Commissioner for Migration, Refugees and Integration**

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

- (1) The Federal Government appoints a Commissioner for Migration, Refugees and Integration.
- (2) The Commissioner's office is 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 (*Gesetz über die Rechtsverhältnisse der Parlamentarischen Staatssekretäre*), without requiring special approval (section 5 (2) sentence 2 of the Act governing Federal Ministers (*Bundesministergesetz*), section 7 of the Act governing the Legal Status of Parliamentary State Secretaries). In this case, discharge of the Commissioner's duties remains 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 to perform the duties of the office are to be provided. The budget allocation is to be shown in a separate section of the individual plan of the supreme federal authority under subsection (2) sentence 1.
- (4) Except in the case of dismissal, the office tenure ends when a new Bundestag is convened.

### **Section 93 Duties**

The Commissioner has 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 labour market 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 co-existence possible between foreigners and Germans and between different groups of foreigners, to promote mutual understanding and to counteract xenophobia;
3. to counteract unequal treatment of 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 permanently resident in the federal territory, including such initiatives at the level of the *Länder* and local authorities and among social groups;
8. to monitor immigration to the federal territory and to the European Union and the development of immigration to other states;
9. to cooperate in the areas of the duties specified in nos. 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 as the Commissioner;
10. to inform the public in the areas of duties specified in nos. 1 to 9.

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

(1) The Commissioner is 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 support the Commissioner in discharging his or her duties.

(2) The Commissioner for Migration, Refugees and Integration submits a report to the German Bundestag at least every two years.

(3) If the Commissioner possesses adequate information indicating that federal public bodies 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 that body's superior authority. The federal bodies are required to furnish information and to answer questions. The public bodies transfer personal data only if the data subject him- or herself has approached the Commissioner to request that he or she 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 Punishment of criminal offences and fines**

##### **Section 95 Penal provisions**

(1) The following persons are punishable with up to one year's imprisonment or a fine: anyone who

1. resides in the federal territory in contravention of section 3 (1) in conjunction with section 48 (2),

2. resides in the federal territory without a necessary residence title as required by section 4 (1) sentence 1, if
  - a) he or she is enforceably required to leave the federal territory,
  - b) he or she has not been granted a period for departure or this has expired and
  - c) his or her 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 under section 46 (2) sentences 1 or 2 or section 47 (1) sentence 2 or subsection (2),
5. fails to furnish an item of information or furnishes incorrect or incomplete information in contravention of section 49 (2), where the offence is not punishable under subsection (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 56, repeatedly contravenes geographic restrictions or other conditions imposed on their stay, 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 or does not abide by specific contact bans in contravention of section 56 (4),
7. repeatedly breaches a geographic restriction under section 61 (1) or (1c) 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.

(1a) The same punishment is applicable to anyone who intentionally 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 under 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) no. 1.

(2) The following persons are punishable with up to three years' imprisonment or a fine: anyone who

1. in contravention of section 11 (1) or of an enforceable order under section 11 (6) sentence 1 or (7) sentence 1,
  - a) enters the federal territory or
  - b) resides in said territory or
- 1a. contravenes an enforceable court order pursuant to section 56a (1), thereby preventing the competent authority referred to in section 56a (3) from continuously locating him or her, 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 to prevent the expiry or subsequent restriction of a residence title or the suspension of deportation, or who knowingly uses a document procured in this manner for the purpose of deceit in legal matters.

(3) An attempt to commit an offence is punishable in the cases covered by subsection (1) no. 3 and subsections (1a) and (2) no. 1 (a).

(4) Objects related to an offence under subsection (2) no. 2 may be confiscated.

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

(6) In the cases covered by subsection (1) nos. 2 and 3, an act carried out without the necessary residence title will 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.

(7) In the cases covered by subsection (2) no. 1a, the offence will only be prosecuted upon an application made by the competent body referred to therein.

### **Section 96 Smuggling foreigners into the federal territory**

(1) The following is punishable with a prison sentence of three months to five years, in less serious cases with a prison sentence of up to five years or a fine: anyone who

1. incites another person to commit or assists that person in committing an act referred to in section 95 (1) no. 3 or (2) no. 1 (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 or assists that person in committing an act referred to in section 95 (1) no. 1 or no. 2 (1a) or (2) no. 1 (b) or no. 2 and receives a pecuniary advantage or the promise of a pecuniary advantage in return.

(2) In the cases covered by subsection (1), the following is punishable with a prison sentence of between six months and 10 years: anyone who

1. acts for gain,

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

3. carries a firearm, if the offence concerns an act referred to in section 95 (1) no. 3 or (2) no. 1 (a),

4. carries another type of weapon in order to use said weapon in connection with the offence, if the offence concerns an act referred to in section 95 (1) no. 3 or (2) no. 1 (a),  
or

5. subjects the smuggled persons to potentially fatal, inhumane or humiliating treatment or a risk of serious harm to their health.

The same punishment is applicable to anyone who, in the cases covered by subsection (1) no. 1 (a), acts in favour of a minor unmarried foreigner who enters the federal territory unaccompanied by a person having the right of care and custody or by a third person who has taken charge or care of him or her.

(3) The attempt is punishable.

(4) Subsection 1 no. 1 (a) no. 2, subsection (2) sentence 1 nos. 1, 2 and 5 and subsection (3) are to be applied to contraventions of statutory provisions on the entry of foreigners into the territory of the member states of the European Union or of a Schengen state 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 subsection (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 74a of the Criminal Code applies.

#### **Section 97**

#### **Smuggling foreigners into the federal territory resulting in death; smuggling for gain and as organised gangs**

(1) Anyone causing the death of the smuggled person in the cases covered by section 96 (1), also in conjunction with section 96 (4), is punishable with a prison sentence of no less than three years.

(2) Anyone acting for gain as a member of a gang which has come together for the purpose of committing such offences on a continuing basis in the cases covered by section 96 (1), also in conjunction with section 96 (4), is punishable with a prison sentence of between one and 10 years.

(3) Less serious cases covered by subsection (1) are punishable with a prison sentence of between one year and 10 years, less serious cases covered by subsection (2) are punishable with a prison sentence of between six months and 10 years.

(4) Section 74a of the Criminal Code applies.

#### **Section 97a**

#### **Obligation of secrecy**

Information concerning the specific planning of a deportation measure, in particular information under section 59 (1) sentence 8, constitutes a secret or item of information as referred to in section 353b (1) or (2) of the Criminal Code. The same applies to information on the specific planning, and in particular the date, of orders as referred to in section 82 (4) sentence 1.

#### **Section 98**

#### **Fines**

(1) Anyone who negligently commits an act specified in section 95 (1) no. 1 or 2 or (2) no. 1 (b) is deemed to have committed an administrative offence.

(2) Anyone is deemed to have committed an administrative offence who

1. fails to furnish evidence in contravention of section 4 (2) sentence 1,
2. fails to submit to the policing of cross-border traffic in contravention of section 13 (1) sentence 2,
  - 2a. in contravention of section 47a sentence 1, also in conjunction with sentence 2, or in contravention of section 47a sentence 3, fails to submit, on time or at all, a document referred to therein, or to allow, on time or at all, his or her face to be checked against the photograph,
3. in contravention of section 48 (1) or (3) sentence 1, fails to submit, on time or at all, a document or paper or a data carrier referred to therein, or fails to surrender the same on time or at all, or fails to leave, on time or at all, the same with the competent authorities, or

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

5. in violation of section 82 (6) sentence 1, fails to provide notification on time or at all.

(2a) Anyone is deemed to have committed an administrative offence who intentionally or recklessly

1. in contravention of section 4a (5) sentence 1, commissions a foreigner on a sustained basis to perform paid work or services for gain,

2. fails to provide notification, provides incorrect notification or fails to provide notification on time in contravention of section 4a (5) sentence 3 no. 3 or section 19a (1) sentences 2 or 3,

3. fails to provide notification or provides incorrect or incomplete notification or fails to provide notification on time in contravention of section 19b (7), or

in contravention of section 60c (5) sentence 1 or section 60d (3) sentences 3 and 4, fails to provide notification, or to provide it correctly, completely, in the prescribed manner or on time.

(2b) (repealed)

(3) Anyone is deemed to have committed an administrative offence who intentionally or negligently

1. pursues a self-employed activity in contravention of section 4a (4),

2. contravenes an enforceable condition imposed in accordance with section 12 (2) sentence 2 or (4),

2a. in contravention of section 12a (1) sentence 1 does not take up residence in the Land in which he or she is obliged to take up residence or does not do so for the prescribed length of time,

2b. contravenes an enforceable order imposed in accordance with section 12a (2), (3) or (4) sentence 1 or section 61 (1c),

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 him or her in contravention of section 13 (1),

4. contravenes an enforceable order pursuant to section 46 (1), section 56 (1) sentence 2 or (3) or Section 61 (1e),

5. fails to provide notification, provides incorrect notification or fails to provide notification on time in contravention of section 56 (1) sentence 1,

5a. contravenes a geographic restriction under section 56 (2) or section 61 (1) sentence 1,

5b. in contravention of section 60b (1) sentence 2 fails to undertake all reasonable efforts to acquire a recognised and valid passport or passport substitute,

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 under section 99 (1) no. 3a (d) nos. 7, 10 or (13a) sentence 1 (j), insofar as such statutory instrument refers to this provision as to fines for a specific offence.

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

(5) The administrative offence may be punishable in the cases covered by subsection (2a) no. 1, by a fine of up to 500,000 euros, in the cases covered by subsection (2a) nos. 2, 3 and 4 by a fine of up to 30,000 euros, in the cases covered by subsection (2) no. 2 and subsection (3) nos. 1 and 5b by a fine of up to 5,000 euros, in the cases covered by subsections (1) and (2) nos. 1, 2a and 3 and subsection (3) no. 3 by a fine of up to 3,000 euros and in the other cases by a fine of up to 1,000 euros.

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

## **Chapter 9a** **Legal consequences of unlawful employment**

### **Section 98a** **Remuneration**

(1) An employer is required to pay the agreed remuneration to a foreigner whom he or she has employed and who lacks the authorisation for employment required pursuant to section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required under section 4a (5). For the purpose of remuneration, it is assumed that the foreigner has been employed by the employer for three months.

(2) The agreed remuneration is considered to be the usual remuneration unless the employer agreed a lower or higher remuneration with the foreigner on a permissible basis.

(3) A contractor who has commissioned another contractor to perform work or render services is liable for fulfilling the obligation of the latter contractor under subsection (1) in the same way as a surety which has waived the defence of unexhausted remedies.

(4) Subsection (3) applies accordingly to the prime contractor and all intermediate contractors without a direct contractual relationship to the employer unless the prime contractor or the intermediate contractor was not aware that the employer employed foreigners who lack the authorisation for employment required pursuant to section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to section 4 (5).

(5) The liability under subsections (3) and (4) does not apply if the contractor provides evidence that he or she was able to assume on the basis of due diligence that the employer did not employ any foreigner who lacks the authorisation for employment required pursuant to section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to section 4 (5).

(6) A foreigner who has been employed within the scope of application of this Act without the authorisation for employment required under section 284 (1) of Book Three of the Social Code or the authorisation to pursue an economic activity required pursuant to section 4a (5) may institute legal proceedings for fulfilment of payment obligations under subsections (3) and (4) also before a German court for labour matters.

(7) The provisions of the Posted Workers Act remain unaffected.

### **Section 98b** **Exclusion from subsidies**

(1) The competent authority may deny applications for subsidies in full or in part in line with section 264 of the Criminal Code if the applicant or his or her representative authorised by statutes or law

1. has been subject to an incontestable fine of at least 2,500 euros under section 404 (2) no.3 of Book Three of the Social Code or

2. has been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under sections 10, 10a or 11 of the Act to Combat Clandestine Employment.

Denials under sentence 1 may be issued up to five years after the incontestable imposition of the fine or prison sentence depending on the severity of the offence for which the fine or prison sentence was imposed.

(2) Subsection 1 does not apply if

1. a legal entitlement to the subsidy applied for exists,

2. the applicant is a natural person and the employment which caused the offence pursuant to subsection (1) sentence 1 was for his or her private purposes or

3. the offence referred to in subsection (1) sentence 1 consisted in the unlawful employment of an EU citizen.

### **Section 98c** **Exclusion from the award of public contracts**

(1) Public contracting entities under section 99 of the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) may exclude a candidate or tenderer from competing for a supply, construction or service contract if the candidate or tenderer or his or her representative authorised by statutes or law

1. has been subject to an incontestable fine of at least 2,500 euros under section 404 (2) no.3 of Book Three of the Social Code or

2. has been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under sections 10, 10a or 11 of the Act to Combat Clandestine Employment.

Until there is proof of restoration of reliability, the candidate or tenderer may be excluded under sentence 1 for up to five years after the incontestable imposition of the fine or prison sentence depending on the severity of the offence for which the fine or prison sentence was imposed.

(2) Subsection (1) does not apply if the offence pursuant to subsection (1) sentence 1 consisted in the unlawful employment of an EU citizen.

(3) Section 21 (2) to (5) of the Posted Workers Act applies accordingly where a public contracting entity makes use of the possibility referred to in subsection (1).

## **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 is 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 is 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 18d, in particular
  - a) to regulate the procedure relating to the recognition of research organisations, the attendant conditions and the duration of recognition, the revocation of recognition of a research organisation and the content of and conditions pertaining to the conclusion of hosting agreements pursuant to section 18d (1) sentence 1 no. 1,
  - b) to provide for the authority which is responsible for granting recognition to publish the addresses of the recognised research organisations, referring in such publications to declarations under section 18d (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 organisations which might provide grounds for revoking the recognition of said organisations,
  - d) to require recognised research organisations to provide due notification, should the conditions pertaining to recognition or conditions pertaining to concluded hosting 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 that office in connection with the recognition of research organisations and monitor and evaluate the application of section 18d,
  - f) to set the dates on which the processing of applications for the recognition of research organisations is to begin,
- 3b. to define self-employed activities for which a permit pursuant to section 4a (1) sentence 1 is never required or is not required under certain conditions,
4. to exempt those foreigners from the passport requirement who enter the federal territory in connection with rescue operations and the provision of assistance in case of disasters,
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 are required to furnish the foreigners authority or another authority with due notification of their residence when entering or thereafter, in order to safeguard the interests of the Federal Republic of Germany,
8. to stipulate, in the interests of enabling or facilitating travel, that foreigners' existing entitlement to re-enter the federal territory can be confirmed in a passport substitute,

9. to stipulate the conditions according to which an substitute identity document may be issued and for how long such an substitute identity document is 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 substitute identity document, 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 transmission,

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 78a (4) and (5),

13a. to set out rules pertaining to travel documents for foreigners, travel documents for refugees and travel documents for stateless persons with an electronic storage and processing medium in accordance with Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by member states (OJ L 385, 29.12.2004, p. 1) and Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by member states (OJ L 142, 6.6.2009, p. 1) and to define details regarding the preparation of documents with an electronic storage and processing medium pursuant to section 78 in accordance with Council Regulation (EC) No 1030/2002 of 13.6.2002 laying down a uniform format for temporary residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1) in the applicable versions and, in this respect, to stipulate the following pertaining to travel documents and documents pursuant to section 78:

a) the procedure and the technical requirements for the recording and quality assurance of the photograph and of the fingerprints and protection against unauthorised access to the data stored in the electronic storage and processing medium,

b) age limits for the collection of fingerprints and exemptions from the obligation to submit fingerprints and photographs,

c) the order in which the fingerprints are to be stored in cases where an index finger is missing, the quality of the fingerprint is inadequate, or where the fingertip is damaged,

d) the form and the details of the procedure relating to the transfer of all application data from the foreigners authorities to the producer of the documents and to the temporary storage of the application data at the foreigners authority and the producer's facilities,

e) the storage of the fingerprints and the photograph at the foreigners authority until the document is handed over,

f) the right of the document holder to inspect the data stored in the electronic storage medium,

- g) the requirements pertaining to the technical systems and components to be employed to record the photograph and fingerprints electronically, to ensure the quality thereof and to transfer the application data from the foreigners authority to the producer of the documents, as well as the procedure to check compliance with these requirements,
- h) details regarding the processing of the fingerprint data and of the digital photograph,
- i) details regarding the serial number and the machine-readable personal data page,
- j) the obligations of foreigners residing in the federal territory with regard to the issuance and extension, loss and recovery, presentation and surrender of documents pursuant to section 78 and applications for new documents pursuant to section 78.

Further, the Federal Ministry of the Interior is authorised, via statutory instruments with the approval of the Bundesrat, to stipulate details of the procedure to check compliance with the requirements under section 34 no. 4 of the Act on Identity Cards and details pertaining to the electronic proof of identity under sections 34 nos. 5 to 7 of the Act on Identity Cards.

14. to determine that the

- a) registration authorities,
- b) authorities concerned with matters of nationality and certifying authorities under section 15 of the Federal Expellees Act,
- c) authorities concerned with passports and identity cards,
- d) social welfare and youth welfare offices,
- e) judicial, police and regulatory authorities,
- f) Federal Employment Agency,
- g) tax offices and main customs offices,
- h) trading standards authorities,
- i) diplomatic missions abroad and
- j) institutions providing basic security for job seekers

are 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 defines the type and scope of data, the measures and the other items of information to be transferred; data may only be provided where necessary for the foreigners authorities to discharge their duties under this Act or in accordance with provisions relating to foreigners in other acts,

15. to set out rules pertaining to the electronic transfer of data for specialised purposes between the authorities charged with implementing this Act, concerning the following:

- a) the technical principles of the structure of the standard used,
- b) the data transfer procedure and

c) the authorities participating in the electronic transfer of data relating to foreigners,

16. the establishment of regulations to assure the quality of photographs and fingerprint data collected under section 49 (6), (8) and (9).

(2) Further, the Federal Ministry of the Interior is authorised to determine, via statutory instrument with the approval of the Bundesrat, that

1. every foreigners authority keeps a file system 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 taken a measure or a decision under the law on foreigners,

2. every diplomatic mission abroad may keep a file system on visas applied for, granted, refused, recalled, annulled, revoked and rescinded as well as on visa applications withdrawn, and the diplomatic missions abroad may share with each other the data stored therein, and

3. the authorities charged with implementing this Act keep any other file system which is necessary in discharging their duties.

The data to be recorded under sentence 1 no. 1 cover the foreigner's personal data, including nationality and address, information relating to the passport, measures taken in accordance with the law on foreigners, entry in the Central Register of Foreigners and former addresses of the foreigner, the competent foreigners authority and the furnishing of records to another foreigners authority. Information relating to the use of a document under section 78 (1) pertaining to the electronic proof of identity including its activation and deactivation as well as its blocking and unblocking are also recorded. The foreigners authorities' authorisation to store further personal data is determined by Regulation (EU) 2016/679 and the data protection provisions of the respective *Länder*.

(3) The Federal Ministry of the Interior is authorised to appoint the competent body in accordance with section 73 (1) and Section 73a (1) without the approval of the Bundesrat, by statutory instrument issued in agreement with the Federal Foreign Office.

(3a) The Federal Ministry of the Interior is authorised, by statutory instrument issued in agreement with the Federal Foreign Office without the approval of the Bundesrat, to stipulate, in accordance with Article 3 (2) of Regulation (EC) 810/2009, the states whose nationals must be in possession of an airport transit visa to pass through the international transit areas of German airports.

(4) The Federal Ministry of the Interior may issue and amend statutory instruments in accordance with subsection (1) nos. 1 and 2 without the approval of the Bundesrat as far as necessary to fulfil an intergovernmental agreement or to safeguard public interests. A statutory instrument pursuant to sentence 1 expires no later than three months after entering into force. Its period of validity may be extended via statutory instrument with the approval of the Bundesrat.

(5) The Federal Ministry of the Interior, Building and Community is authorised to determine, by statutory instrument concerning the fast-track procedure for skilled workers under section 81a,

1. details regarding the procedure to be carried out by the foreigners authorities, with approval of the Bundesrat,

2. details regarding the procedure to be carried out by the diplomatic missions abroad, in agreement with the Federal Foreign Office but not requiring approval by the Bundesrat.

(6) The Federal Government is authorised, via statutory instrument requiring the approval of the Bundesrat, to determine states whose nationals are denied specific or all residence titles under Chapter 3 Parts 3 and 4, if there is a considerable increase in the number of said nationals whose

applications for asylum in connection with Chapter 2 Parts 3 and 4 have been rejected as manifestly unfounded.

### **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 content 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 (*Aufenthaltsberechtigung*) or unlimited residence permit (*unbefristete Aufenthaltserlaubnis*) issued prior to 1 January 2005 remains valid as a permanent settlement permit in accordance with the purpose of residence and the circumstances forming the basis for its issuance. An unlimited residence permit (*unbefristete Aufenthaltserlaubnis*) granted pursuant to section 1 (3) of the Act on Measures in Aid of Refugees Admitted under Humanitarian Relief Programmes (*Gesetz über Maßnahmen für im Rahmen humanitärer Hilfsaktionen aufgenommene Flüchtlinge*) 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 (*Aufenthaltsberechtigung*) remain valid as a permanent settlement permit pursuant to section 23 (2).

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

(3) A residence title to which the annotation "EC long-term residence permit" (*Daueraufenthalt-EG*) was appended prior to 28 August 2007 retains its validity as an EU long-term residence permit.

(4) A residence title under Chapter 2 Parts 3 and 4 which was issued before 1 March 2020 retains its validity as do the subsidiary provisions attached to it in accordance with the background and residence purpose for which it was issued.

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

(1) Other measures taken before 1 January 2005 in accordance with the law on foreigners, in particular time limits and geographic restrictions, conditions and requirements, prohibitions and restrictions of political activities, expulsions, deportation warnings and deportations, including their legal consequences, periods limiting their effects and beneficial measures, the recognition of passports and passport substitutes, exemptions from the passport requirement, rulings on costs and fees, remain valid. Measures and agreements in connection with furnishing security also remain valid, even if they relate in part or in full to periods after this Act enters into force. The same applies to the effects by force of law resulting from the filing of applications pursuant to section 69 of the Foreigners Act (*Ausländergesetz*).

(2) The period of possession of a residence title for exceptional purposes (*Aufenthaltsbefugnis*) or of a temporary suspension of deportation prior to 1 January 2005 counts towards the qualifying period for issuing a permanent 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 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 applies accordingly in such cases.

### **Section 104** **Transitional provisions**

(1) Decisions on applications filed prior to 1 January 2005 for an unlimited residence permit or a right of unlimited residence are to be taken in accordance with the law applicable until that time. Section 101 (1) applies accordingly.

(2) In the case of foreigners in possession of a temporary residence permit or a residence title for exceptional circumstances prior to 1 January 2005, for the purposes of the decision on granting a permanent settlement permit or an EU long-term residence permit it is sufficient with regard to their 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 do not apply.

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

(4) (repealed)

(5) The provisions concerning the subsequent immigration of dependants, an individual interest in remaining, participation in integration courses and the consolidation of residence on the ground of section 23 (4) also apply accordingly to foreigners who were granted a residence title in accordance with section 23 (2) before the end of 31 July 2015 in the context of the programme for the permanent settlement of those seeking protection.

(6) Section 23 (2) in the version valid until 24 May 2007 continues to apply in such cases in which the order issued by the supreme *Land* authority on the basis of the version applicable until 24 May 2007 provides for issuing a permanent settlement permit where special political interests of the Federal Republic of Germany prevail. Section 23 (2) sentence 5 and section 44 (1) no. 2 apply accordingly to the affected foreigners and the dependants relocating their residence to the federal territory with the former.

(7) A permanent settlement permit may also be issued to spouses, civil partners 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 temporary residence permit pursuant to section 35 (2) of the Foreigners Act prior to 1 January 2005, if 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 temporary residence permit pursuant to section 35 (2) of the Foreigners Act was permissible.

(8) Section 28 (2) in the version applicable until 5 September 2013 continues to apply to such dependants of German nationals who already held a residence title under section 28 (1) on 5 September 2013.

(9) Foreigners who possess a temporary residence permit pursuant to section 25 (3), because the Federal Office or the foreigners authority has established that deportation bans exist in line with

section 60 (2), (3) or (7) sentence 2, in the version valid before 1 December 2013, are deemed to be entitled to subsidiary protection as referred to in section 4 (1) of the Asylum Act, and are ex officio issued with a temporary residence permit pursuant to section 25 (2) sentence 1 second alternative, unless the Federal Office has informed the foreigners authority that grounds exist for refusing the person concerned such status in line with section 25 (3) sentence 2 (a) to (d) in the version valid before 1 December 2013. The periods of possession of a temporary residence permit pursuant to section 25 (3) sentence 1 in the version valid before 1 December 2013 are equal to the periods of possession of a temporary residence permit pursuant to section 25 (2) sentence 1 second alternative. Section 73b of the Asylum Act applies accordingly.

(10) As from 1 February 2016, section 73b (4) applies to persons concerned in accordance with section 73b (1) who pursue their activities as non-seconded employees of the Federal Foreign Office in a diplomatic mission abroad.

(11) The period referred to in section 29 (2) sentence 2 no. 1 begins to run upon the entry into force of this Act for foreigners who were incontestably granted subsidiary protection pursuant to Directive 2011/95/EU or Directive 2004/38/EC between 1 January 2011 and 31 July 2015.

(12) In the case of a deportation warning under sections 34 and 35 of the Asylum Act or a deportation order pursuant to section 34a of the Asylum Act issued prior to 1 August 2015, responsibility for ordering a ban on entry and residence under section 11 lies with the foreigners authorities.

(13) The provisions of Chapter 2 Part 6 in the version valid until 31 July 2018 continue to apply to the subsequent immigration of dependants to join a foreigner who was granted a temporary residence permit by 17 March 2016 under section 25 (2) sentence 1 second alternative, if the application for the first-time issuance of a temporary residence permit for the purpose of subsequent immigration of dependants was filed by 31 July 2018. Section 27 (3a) applies accordingly.

(14) (repealed)

(15) If temporary suspension of deportation was granted under section 60a (2) sentence 4 in the version valid until 31 December 2019, section 19d (1) nos. 4 and 5 does not apply if the foreigner has taken the necessary and reasonable measures to verify his or her identity when the application for a temporary residence permit was filed under section 19d.

(16) Section 60a (6) in the version valid until 31 December 2019 continues to apply to the jobs which foreigners possessing a temporary suspension of deportation were allowed to perform until that date.

(17) Section 60c (1) sentence 1 no. 2 with reference to the possession of a temporary suspension of deportation and (2) no. 2 does not apply to temporary suspension of deportation under section 60a (2) sentence 3 in conjunction with section 60c, if the foreigner entered the federal territory by 31 December 2016 and started vocational training before 2 October 2020.

#### **Section 104a**

##### **Regulations governing old cases**

(1) In derogation from section 5 (1), no. 1 and subsection (2), a foreigner whose deportation has been suspended is to be granted a temporary residence permit as a general rule where the foreigner has continuously resided in the federal territory for at least eight years on 1 July 2007, or, if the foreigner lives together with one or more minor, unmarried children as a family unit, where he or she has continuously resided in the federal territory for at least six years on the said date, by virtue of his or her deportation having been suspended, being permitted to remain pending the asylum decision or on account of a temporary residence or permanent settlement permit having been issued on humanitarian grounds and he or she

1. has sufficient living space at his or her disposal,
2. has an elementary oral command of the 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 intentionally deceived the foreigners authority as to circumstances relevant to his or her situation under residence law and has not intentionally 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 intentionally committed in the federal territory; 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 Act, can only be committed by foreigners are to be ignored as a general principle.

Where foreigners ensure their subsistence independently by means of an economic activity, the temporary residence permit is granted pursuant to section 23 (1) sentence 1. In all other cases, it is issued in accordance with sentence 1; it applies as a residence title under Chapter 2 Part 5; sections 9 and 26 (4) do 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 is waived if the foreigner is unable to meet it on account of a physical or mental illness or disability or on grounds of old age.

(2) An adult unmarried child whose deportation has been suspended, who is 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 the foreigner lives together with one or more minor, unmarried children as a family unit, where the child 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, being permitted to remain pending the asylum decision or on account of a temporary residence or permanent settlement permit having been issued on humanitarian grounds, may be granted a temporary 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 in the Federal Republic of Germany. The same applies 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, being permitted to remain pending the asylum decision or on account of a temporary residence or permanent settlement 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 in the Federal Republic of Germany.

(3) If a family member living as part of a family household has committed offences pursuant to subsection (1) sentence 1 no. 6, this leads to denial of the temporary residence permit for other family members according to this provision. Sentence 1 does not apply to the spouse of a foreigner who has committed offences within the meaning of subsection (1) sentence 1 no. 6 where the spouse otherwise meets the requirements of subsection (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 temporary residence permit may be issued subject to the condition that the foreigner attend an integration interview or that an integration agreement be concluded.

(5) The temporary residence permit is issued with a period of validity until 31 December 2009. As a general rule, it is to be extended by two further years as a temporary residence permit under section 23 (1) sentence 1 if the foreigner's subsistence was ensured up to 31 December 2009

primarily because the foreigner pursued an economic activity or if the foreigner has permanently ensured his or her subsistence at least since 1 April 2009. In both cases, there must be reason to believe that the foreigner's subsistence will be for the most part ensured in the future. In the case of subsection (1) sentence 4 the temporary residence permit is issued with an initial period of validity until 1 July 2008 and is extended only if the foreigner furnishes proof that he or she meets the conditions of subsection (1) sentence 1 no. 2 by the aforesaid date at the latest. Section 81 (4) does not apply.

(6) With regard to extension of the temporary residence permit, derogation from subsection (5) is possible in order to avoid cases of hardship. This provision applies in the case of

1. apprentices undergoing training in a recognised trade or in 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 Book Two of the Social Code,
4. persons who are unable to work but whose subsistence 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 paid contributions,
5. persons who are 65 years of age or older on 31 December 2009, if they have no family in their country of origin but do have dependants (children or grandchildren) who are permanently resident in the federal territory or German nationals and if it is thus ensured that no social benefits will be claimed for such persons.

(7) The *Länder* may order a temporary residence permit in accordance with subsections (1) and (2) to be denied to nationals of certain states on grounds of national security for the Federal Republic of Germany. In order to ensure a nationwide uniform approach, the order requires the approval of the Federal Ministry of the Interior.

#### **Section 104b**

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

In derogation from section 5 (1) no. 1, subsection (2) and section 10 (3) sentence 1, a minor, unmarried child may be granted a temporary residence permit in his or her own right pursuant to section 23 (1) sentence 1 if the child's parents or the parent possessing the sole right of care and custody are not granted a temporary residence permit or an extension of the same pursuant to section 104a and are leaving the federal territory, provided

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 an advanced 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 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**

#### **Transitional arrangements for the temporary suspension of deportation for persons whose identity is not verified**

(1) As regards foreigners whose deportation has been suspended, the foreigners authority does not decide on issuing a certificate confirming the suspension of deportation under section 60a (4) with the additional wording “*for persons whose identity is not verified*” until it examines whether to extend the suspension of deportation or grant the suspension of deportation for another reason.

(2) Until 1 July 2020, section 60b does not apply to foreigners whose deportation has been suspended and who are in a training or employment relationship.

(3) Section 60b does not apply to foreigners who hold a temporary suspension of deportation for the purpose of training or employment or who have applied for it and meet the necessary requirements.

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

No derogation by way of *Land* law is permissible from the provisions set out in section 4 (2) sentence 2, section 15a (4), sentences 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 61 (1d), section 72 (2), section 73 (2), (3) sentences 1 and 2, sections 78, 78a, section 79 (2), section 81 (5), section 82 (1) sentence 3, (3), section 87 (1) and (2) sentences 1 and 2, (4) sentences 1, 2 and 4, (5), section 89 (1) sentences 2 and 3, (3) and (4), 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, section 99 (1) to (4) and section 104a (7) sentence 2, and from the provisions set out in section 43 (4) and section 99 (1) to (4) pertaining to the administrative procedure.

### **Section 105b** **Transitional provision for residence titles issued according to a standard form**

Residence titles pursuant to section 4 (1) sentence 2 nos. 2 to 4, which were issued by the end of 31 August 2011 according to a standard form in accordance with section 78 of this Act, in the version valid until that date, are issued as a stand-alone document with an electronic storage and processing medium pursuant to section 78 when a new residence title is issued or by the end of 31 August 2021 at the latest. This notwithstanding, holders of a residence title under section 4 (1) sentence 2 nos. 2 to 4 may apply for a stand-alone document with an electronic storage and processing medium in accordance with section 78 if they can demonstrate a legitimate interest in the issuance of a new document.

### **Section 105c** **Transition of measures to monitor for internal security purposes foreigners subject to expulsion orders**

After 1 January 2016, measures and obligations under section 54a (1) to (4) in the version applicable until 31 December 2015 which were introduced or which applied before 1 January 2016 are regarded as measures and obligations within the meaning of section 56 in the version applicable as from 1 January 2016.

### **Section 106** **Curtailement 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) are curtailed under the terms of this Act.

(2) The procedure in connection with the deprivation of liberty is determined by Book Seven of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction. If it is necessary to make a decision 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 incontestable 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 *Länder* of Berlin, Bremen and Hamburg are authorised to adapt the provisions of this Act regarding the competence of authorities to the special administrative structures of their *Länder*.