

## 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.