

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 16c, 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 B2 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.

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.