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Asylum Act (AsylA)

of 26 June 1998 (Status as on 12 December 2008)

Please note: this translation does not yet include the amendments of 1 December 2010!

*The Federal Assembly of the Swiss Confederation,
based on Article 69^{ter} of the Federal Constitution¹,
and having considered the Dispatch of the Federal Council of 4 December 1995²,
decrees:*

Chapter 1: Principles

Art. 1 Subject matter

This Act regulates:

- a. the granting of asylum and the legal status of refugees in Switzerland;
- b. the temporary protection of persons in need of protection in Switzerland and their return.

Art. 2 Asylum

¹ In response to an application, Switzerland shall grant asylum to refugees in accordance with this Act.

² Asylum includes the protection and the legal status granted in Switzerland to persons on the basis of their refugee status. It includes the right to stay in Switzerland.

Art. 3 Definition of the term refugee

¹ Refugees are persons who in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions.

AS 1999 2262

¹ SR 101

² BBl 1996 II 1

² Serious disadvantages include a threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure. Motives for seeking asylum specific to women must be taken into account.

Art. 4 Granting temporary protection

Switzerland may grant temporary protection to persons in need of protection as long as they are exposed to a serious general danger, in particular during a war or civil war as well as in situations of general violence.

Art. 5 Ban on refoulement

¹ No person may be forced in any way to return to a country where their life, physical integrity or freedom are threatened on any of the grounds stated in Article 3 paragraph 1 or where they would be at risk of being forced to return to such a country.

² The ban on refoulement may not be invoked if there are substantial grounds for the assumption that, because the person invoking it has been convicted with full legal effect of a particularly serious felony or misdemeanour, they represent a threat to Switzerland's security or are to be considered dangerous to the public.

Art. 6³ Procedural principles

The procedures are governed by the Federal Act of 20 December 1968⁴ on Administrative Procedure (Administrative Procedure Act), the Federal Administrative Court Act of 17 June 2005⁵ and the Federal Supreme Court Act of 17 June 2005⁶, unless this Act provides otherwise.

Chapter 2: Asylum Seekers

Section 1: General Provisions

Art. 6a⁷ Competent authority

¹ The Federal Office for Migration (Federal Office) decides on granting or refusing to grant asylum as well as on deportation from Switzerland.

² The Federal Council shall identify states in which on the basis of its findings:

- a. there is protection against persecution, as safe native country or country of origin;

³ Amended in accordance with Annex no. 4 of the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (SR **173.32**).

⁴ SR **172.021**

⁵ SR **173.32**

⁶ SR **173.110**

⁷ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

- b. there is efficient protection against refoulement as defined in Article 5 paragraph 1, as safe third countries.

³ It shall periodically review decisions made in terms of paragraph 2.

Art. 7 Proof of refugee status

¹ Anyone who applies for asylum must prove or at least credibly demonstrate their refugee status.

² Refugee status is credibly demonstrated if the authority regards it as proven on the balance of probabilities.

³ Cases are not credible in particular if they are unfounded in essential points or are inherently contradictory, do not correspond to the facts or are substantially based on forged or falsified evidence.

Art. 8 Duty to cooperate

¹ Asylum seekers are obliged to cooperate in the establishment of the facts. They must in particular:

- a. reveal their identity;
- b. hand over their travel documents and identity papers at the reception centre;
- c. state at the hearing why they are seeking asylum;
- d. indicate any evidence in full and submit this without delay or, as far as this seems reasonable, endeavour to acquire such evidence within an appropriate period;
- e.⁸ cooperate in providing biometric data.

² Asylum seekers may be required to arrange for the translation of foreign-language documents into one of Switzerland's official languages.

³ Asylum seekers who reside in Switzerland are obliged make themselves available to the federal and cantonal authorities during the procedure. They must inform the cantonal or communal authority competent under cantonal legislation (the cantonal authority) of their address and any change to this immediately.

⁴ In the event of an enforceable removal ruling being issued, the persons concerned are obliged to cooperate in obtaining valid travel documents.

Art. 9 Search

¹ The competent authority may search asylum seekers who are accommodated in a reception centre or in private or collective accommodation and the possessions they

⁸ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

have with them for their travel and identity documents as well as dangerous objects, drugs and assets of dubious origin.⁹

² Asylum seekers may only be searched by members of the same sex.

Art. 10 Seizure and confiscation of documents

¹ The Federal Office shall place asylum seekers' travel documents and identity papers on file.¹⁰

² Authorities and government offices shall seize and pass on to the Federal Office travel documents, identity papers or other documents which could indicate the identity of an asylum seeker.

³ If the authority or government office seizing documents in accordance with paragraph 2 examine these with regard to their authenticity, the Federal Office must be notified of the results of this examination.

⁴ Forged and falsified documents as well as genuine documents which have been misused may be confiscated by the Federal Office or by the appellate authority or passed on to the agent.

⁵ Passports or identity papers that have been issued to refugees recognised in Switzerland by their native country must be passed on to the Federal Office.¹¹

Art. 11 Hearing of the evidence

In the event that a hearing of evidence is necessary to investigate the facts of the case, asylum seekers may not express a view on the authority's arrangement of evidence prior to the hearing.

Art. 12 Address for service

¹ Any service of documents or communication to the last known address of asylum seekers or of their agents becomes legally binding on expiry of the statutory seven-day time-limit for collection, even if the persons concerned do not learn of this until later due to a special agreement with Swiss Post or if the delivery is returned as undeliverable.

² If the asylum seeker is represented by several agents and if these do not indicate a joint address for service, the authority shall address its communications to the first agent authorised by the asylum seeker.

³ Anyone who submits an application for asylum from abroad is not obliged to indicate an address for service in Switzerland.¹²

⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹¹ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹² Inserted by Annex No. 4 of the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. **2007** (SR **173.32**).

Art. 13 Notification and statement of grounds for rulings and decisions

¹ In appropriate cases, notification may be given of rulings and decisions verbally and a summary statement of grounds provided.

² Verbal notification must be recorded in minutes that include a statement of the grounds. The asylum seekers must be given an official copy of the protocol.

³ The competent authorities may also notify persons applying for asylum at the border or at the border control in a Swiss airport (Art. 21–23) of a decision or ruling by serving them with a signed copy of the ruling or decision that has been transmitted by fax. The persons concerned must confirm in writing that they have been served with the ruling or decision; in the absence of such confirmation, the competent authority shall record the service of the ruling or decision. Article 11 paragraph 3 of the Administrative Procedure Act¹³ does not apply. Any agent shall be informed of the notification.

⁴ In other urgent cases, the Federal Office may authorise a cantonal authority, a Swiss diplomatic mission or a consular representation abroad (Swiss representation) to notify those concerned of a decision or ruling by serving them with a signed copy of the ruling or decision that has been transmitted by fax.

Art. 14¹⁴ Issues relative to the procedure for foreign nationals

¹ From filing an asylum application to departure from Switzerland in accordance with a legally enforceable removal order, following the withdrawal of an asylum application, or until the ordering of a substitute measure in the event that deportation cannot be enforced, persons seeking asylum may not initiate any procedure for the granting of a residence permit under the law on foreign nationals unless they are entitled to be issued with such a permit.

² The canton may with consent of the Federal Office grant a person for whom it is responsible in terms of this Act a residence permit if:

- a. the person concerned has been a resident for a minimum of five years in Switzerland since filing the asylum application;
- b. the place of stay of the person concerned has always been known by the authorities; and
- c. in light of their advanced stage of integration, there is a case of serious personal hardship.

³ If the canton wishes to take advantage of this opportunity, it shall inform the Federal Office without delay.

⁴ The person concerned shall only have party status during the Federal Office's consent procedure.

⁵ Pending proceedings for the granting of a residence permit become irrelevant with the filing of an asylum application.

¹³ SR 172.021

¹⁴ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2007 (AS 2006 4745 4767; BBl 2002 6845).

⁶ Residence permits remain valid and may be extended in accordance with the provisions of the law on foreign nationals.

Art. 15 Intercantonal offices

The cantons may establish intercantonal offices to fulfil the duties assigned to them in accordance with this Act, in particular for the hearing, preparation of the decision and the enforcement of any removal order.

Art. 16 Procedural language

¹ Submissions may be made to the federal authorities in any official language.

² The procedure before the Federal Office is normally conducted in the official language in which the cantonal hearing took place or in the official language spoken at the asylum seeker's place of residence.

³ ...¹⁵

Art. 17 Special procedural provisions

¹ The provision of the Administrative Procedure Act¹⁶ on legal holidays does not apply to asylum proceedings.

² The Federal Council shall issue supplementary provisions on the asylum procedure, in particular to give consideration to the special situation of women and minors in the procedure.

³ The responsible cantonal authorities shall immediately appoint an authorised representative for unaccompanied minor asylum seekers, to take care of the minor's interests for the duration:

- a. of the procedure at the airport if decisive procedural steps are carried out there;
- b. of the minor's stay in a reception centre, if, in addition to the short interview in accordance with Article 26 paragraph 2, decisive procedural steps are carried out; or
- c. of the procedure following allocation to the canton.¹⁷

⁴ The Federal Council shall regulate the access to legal advice and legal representation at reception centres and airports.¹⁸

¹⁵ Repealed by Annex No. 4 of the Federal Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (SR **173.32**).

¹⁶ SR **172.021**

¹⁷ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

¹⁸ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

Art. 17a¹⁹ Fees for services

The Federal Office may charge third parties fees and outlays for services.

Art. 17b²⁰ Fees

¹ If following the effective conclusion of their asylum and removal proceedings, a person files an application for the review of their case, the Federal Office shall charge a fee for this procedure if the application is refused or is inadmissible. If the application is partially approved, the fee shall be reduced. No compensation shall be granted.

² After the application for review has been filed, the Federal Office shall, on request, exempt the application from procedural fees, provided the appellant lacks the necessary financial resources and the application does not appear to be without prospect of success from the outset.

³ The Federal Office may require the applicant to make an advance payment equivalent to the expected procedural fees. It shall set an appropriate period for payment to be made on pain of dismissing the application. An advance payment shall be waived:

- a. if the requirements of paragraph 2 are met; or
- b. in proceedings relating to unaccompanied minors, if the application for review does not appear to be without prospect of success from the outset.

⁴ If, following the effective conclusion of their asylum and removal proceedings or following the withdrawal of their asylum application, a person again submits an application for asylum, then paragraphs 1–3 apply accordingly, unless the asylum seeker has returned to Switzerland from their native country or country of origin.

⁵ The Federal Council shall regulate the calculation of the fee and the amount of the advance payment.

Section 2: Application for Asylum and Entry**Art. 18** Application for asylum

Any statement a person makes indicating that they are seeking protection in Switzerland from persecution elsewhere shall be regarded as an application for asylum.

Art. 19 Filing an application

¹ The application for asylum must be filed at a Swiss representation, on entry at an open border crossing or at a reception centre.

¹⁹ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

²⁰ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2007 (AS 2006 4745 4767; BBl 2002 6845).

² Anyone who has been given permission to stay in Switzerland by a canton shall file the application for asylum with the authorities of the canton concerned.

³ Asylum seekers shall be informed of their rights and obligations in the asylum procedure when they file an application.

Art. 20 Application for asylum from abroad and permission to enter Switzerland

¹ The Swiss representation shall submit the application for asylum with a report to the Federal Office.

² The Federal Office shall authorise asylum seekers entry in order to clarify the facts of the case, provided they cannot reasonably be expected to remain in their country of residence or host country or to travel to another country.

³ The Federal Department of Justice and Police (Department) may authorise Swiss representations to grant entry to asylum seekers who establish that there is an immediate threat to their life or physical integrity, or to their freedom on any of the grounds in Article 3 paragraph 1.

Art. 21²¹ Application for asylum made at the border, following detention in the vicinity of the border, on illegal entry or within Switzerland

¹ Persons who request asylum at the border or following their detention for illegal entry in the vicinity of the border or within Switzerland shall normally be assigned by the competent authorities to a reception centre.

² The Federal Office shall verify its competence to carry out the asylum procedure, taking account of the provisions of the Dublin Association Agreements.

³ The Dublin Association Agreements are listed in Annex 1.

Art. 22²² Procedure at the airport

¹ In the case of persons who apply for asylum at a Swiss airport, the competent authority shall record their personal details and take their fingerprints and photographs. It may record additional biometric data and summarily ask asylum seekers about their itinerary and the reasons for leaving their country.²³

^{1bis} The Federal Office shall verify its competence to carry out the asylum procedure, taking account of the provisions of the Dublin Association Agreements.²⁴

²¹ Amended in accordance with Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937).

²² Amended in accordance with No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

²³ Amended in accordance with Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937).

²⁴ Inserted by Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS 2008 5407 5405 Art. 2 let. c; BBl 2007 7937).

^{1ter} It shall authorise entry if Switzerland is competent to carry out the asylum procedure in accordance with Council Regulation (EC) No. 343/2003 of 18 February 2003²⁵ and the asylum seeker:

- a. appears to be at risk for any of the grounds stated in Article 3 paragraph 1 or under threat of inhumane treatment in the country from which they have directly arrived; or
- b. establishes that the country from which they have directly arrived would force them, in violation of the ban on refoulement, to return to a country in which they appear to be at risk.²⁶

² If, on the basis of the measures in accordance with paragraph 1 and the verification in accordance with paragraph 1^{bis}, it is not immediately possible to determine whether the requirements for an entry permit in accordance with Article 1^{ter} are fulfilled, entry shall be temporarily denied.²⁷

^{2bis} In order to avoid cases of hardship, the Federal Council may specify the additional cases in which entry will be authorised.²⁸

³ If the Federal Office denies entry to asylum seekers, it shall provide them with a place of stay and appropriate accommodation.

⁴ The asylum seeker must be informed about the decision on denial of entry and on the allocation of a place of stay within two days of filing the application and be notified of their rights of appeal. Prior to this, the asylum seeker shall be granted a hearing in accordance with the law, and also be given the opportunity to have a legal representative.

⁵ Asylum seekers may be held at the airport or exceptionally at another location for a maximum of 60 days. On the issue of a legally enforceable removal order, asylum seekers may be transferred to a prison specifically for deportees.

⁶ The Federal Office may thereafter allocate asylum seekers to a canton. In all other cases, the further procedure at the airport is regulated by Articles 23, 29, 30, 36 and 37.

²⁵ Verordnung (EG) Nr. 343/2003 des Rates vom 18. Febr. 2003 zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen in einem Mitgliedstaat gestellten Asylantrags zuständig ist; ABl. L 50 vom 25.2.2003, S. 1.

²⁶ Inserted by Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

²⁷ Amended in accordance with Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

²⁸ Inserted by Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

Art. 23²⁹ Decisions at the airport

¹ If the Federal Office does not grant entry into Switzerland, it may:

- a. reject the application for asylum in accordance with Articles 40 and 41; or
- b. dismiss the application for asylum in accordance with Articles 32–35a.

² Notification must be given of the decision within 20 days of the application being filed. If the procedure lasts longer, the Federal Office shall allocate the asylum seeker to a canton.

Art. 24³⁰**Section 3: Procedure at First Instance****Art. 25³¹****Art. 26** Reception centres

¹ The Confederation shall set up reception centres, which shall be run by the Federal Office.

² The reception centre shall record the asylum seekers' personal details and shall normally take their fingerprints and photographs. It may collect additional biometric data and summarily ask asylum seekers about their itinerary and the reasons for leaving their country.³²

^{2bis} If, in the course of proceedings under immigration or criminal law, evidence comes to light that a foreign national who is allegedly a minor has already reached the age of majority, the reception centre shall arrange the preparation of an expert report on the minor's age.³³

³ The Department shall issue provisions to ensure a rapid procedure that is operated efficiently.

Art. 27 Allocation to the cantons

¹ The cantons shall come to an agreement on the allocation of asylum seekers.

²⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

³⁰ Repealed by Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), with effect from 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

³¹ Repealed by No. I of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

³² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

³³ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

² If the cantons cannot reach an agreement, the Federal Council shall, after hearing them, set out the criteria for allocation in an ordinance.

³ The Federal Office shall allocate asylum seekers to the cantons (cantons of allocation).³⁴ In doing so, it shall take account of the interests of the cantons and the asylum seekers that are worthy of protection. Asylum seekers may only contest the decision on allocation if it violates the principle of family unity.

⁴ Persons whose application for asylum was dismissed at the reception centre (Art. 32–34) shall not be allocated to a canton. Exempted therefrom are in particular persons:

- a. who have filed an appeal which has not, however, been decided within a reasonable time from filing of the application for asylum;
- b. who are being prosecuted for or have already been convicted of a felony or misdemeanour committed in Switzerland; or
- c. in respect of whom the execution of a removal order is expected.³⁵

Art. 28 Allocation of a place of stay and accommodation

¹ The Federal Office or the cantonal authorities may allocate asylum seekers to a place of stay.

² They may allocate asylum seekers accommodation, and in particular accommodate them as a group. The cantons shall ensure that this procedure is operated efficiently; they may lay down provisions and take measures.³⁶

Art. 29 Hearing on the grounds for asylum

¹ The Federal Office shall interview asylum seekers on their grounds for asylum:

- a. in the reception centres; or
- b. in the canton, within 20 days after the decision on allocation.³⁷

^{1bis} If necessary, it shall call in an interpreter.³⁸

² The asylum seekers may be accompanied by a representative and an interpreter of their choice who are not themselves asylum seekers.

³ Minutes shall be taken of the hearing. They shall be signed by those participating in the hearing, with the exception of the representative of the charitable organisations.

³⁴ Amended in accordance with No. I 2 of the Federal Act of 19 Dec. 2003 on the 2003 Relief Programme, in force since 1 April 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

³⁵ Inserted by No. I 2 of the Federal Act of 19 Dec. 2003 on the 2003 Budgetary Relief Programme, in force since 1 April 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

³⁶ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

³⁷ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

³⁸ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁴ The Federal Office may entrust the cantonal authorities with the conduct of the hearing if this leads to a considerable acceleration of the procedure. The hearing shall be conducted according to paragraphs 1–3.³⁹

Art. 30 Representation of the charitable organisations

¹ Authorised charitable organisations shall send a representative to the hearing on the grounds for asylum in accordance with Article 29, provided the asylum seeker does not object.

² The Federal Council shall regulate the requirements for the authorisation the attendance of the charitable organisations. The Department is responsible for authorisation. The charitable organisations are responsible for the coordination of their presence at the hearing.

³ The authorities shall notify the charitable organisations of the dates of hearings in good time. If the representative of the charitable organisations does not respond to the invitation, the hearings shall nevertheless have full legal effect.

⁴ The representative of the charitable organisations shall observe the hearing, but does not have party rights. They shall confirm their participation with their signature and are subject to the duty of confidentiality towards third parties. The representative may suggest that questions be asked aimed at clarifying the facts of the case, suggest further clarification and raise objections to the minutes.

Art. 31 Preparation of decisions by the cantons

The Department may with the consent of the cantons determine that cantonal officials prepare the decisions under the supervision of the Federal Office and on its behalf in accordance with Articles 32–35 as well as 38–40.

Art. 32 Grounds for dismissing the application

¹ Applications that do not fulfil the requirements of Article 18 shall be dismissed.

² Applications for asylum shall be dismissed if asylum seekers:

- a.⁴⁰ fail to hand over travel documents or identity papers to the authorities within 48 hours of filing the application;
- b. deceive authorities as to their identity and this deception is established as a result of the procedures to establish identity or of other evidence;
- c. culpably and seriously violate their duty to cooperate in any other manner;
- d. ...⁴¹

³⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁴⁰ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

⁴¹ Repealed by No. I of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

- e.⁴² have already passed through the asylum procedure unsuccessfully in Switzerland or have returned to their native country or country of origin while the asylum procedure was pending, unless there are indications that, in the intervening period, events have occurred that justify their refugee status or that are relevant to their being granted temporary protection;
 - f.⁴³ have been denied asylum in a state of the European Union (EU) or of the European Economic Area (EEA), unless the hearing provides indications that, in the intervening period, events have occurred that justify their refugee status or that are relevant to their being granted temporary protection.
- ³ Paragraph 2 letter a does not apply if:
- a. asylum seekers can credibly demonstrate that they are justifiably unable to provide travel or identity papers within 48 hours of filing the application;
 - b. on the basis of the hearing and based on the Articles 3 and 7, refugee status is established; or
 - c. it is proven at the hearing that additional investigations are necessary to establish refugee status or an obstacle to the enforcement of a removal order.⁴⁴

Art. 33 Dismissal due to improper filing of an asylum application

¹ The asylum application of a person staying illegally in Switzerland shall be dismissed if it is manifestly aimed at avoiding the imminent enforcement of a removal or expulsion order.

² Such a purpose is to be assumed if the application is filed in a close temporal relationship with an arrest, criminal proceedings, or the execution of a sentence or the issue of a removal order.

³ Paragraph 1 is not applicable, if:

- a. an earlier filing of the application was not possible or could not reasonably be expected; or
- b. there are indications of persecution.

Art. 34⁴⁵ Dismissal of an asylum application due to safety from persecution abroad

¹ Applications by asylum seekers from countries that are safe in accordance with Article 6a paragraph 2 letter a shall be dismissed unless there are indications of persecution.

⁴² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁴³ Amended in accordance with No. I 2 of the Federal Act of 19 Dec. 2003 on the 2003 Budgetary Relief Programme, in force since 1 April 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

⁴⁴ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

⁴⁵ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

² Applications for asylum are normally dismissed if asylum seekers:

- a. can return to a safe third country in accordance with Article 6a paragraph 2 letter b where they had previously been resident;
- b. can return to a third country where they had previously been resident and which offers in the individual case effective protection against refoulement in accordance with Article 5 paragraph 1;
- c. can continue travelling to a third country for which they have a visa and where they can seek protection;
- d. can travel to a third country that has jurisdiction under an international agreement to carry out the asylum and removal procedures;
- e. can continue travelling to a third country where close friends or relatives live.

³ Paragraph 2 letters a, b, c, and e do not apply if:⁴⁶

- a. close friends or relatives of the persons seeking asylum live in Switzerland;
- b. the asylum seekers manifestly fulfil the requirements of refugee status in terms of Article 3;
- c. there are indications that the third country does not provide effective protection against refoulement in accordance with Article 5 paragraph 1.

Art. 35 Dismissal of an asylum application after repeal of temporary protection

If temporary protection is repealed and no indications of persecution are established at the hearing given to the person concerned, an application for asylum shall be dismissed.

Art. 35a⁴⁷ Abandonment and dismissal of an asylum application after reopening the procedure

¹ The asylum procedure shall be resumed if a person whose application for asylum had been abandoned once again files an application.

² The application for asylum shall be dismissed in accordance with paragraph 1 unless there are indications that justify refugee status or that are relevant to their being granted temporary protection.

⁴⁶ Amended in accordance with Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

⁴⁷ Inserted by No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Art. 36⁴⁸ Procedure prior to a decision to dismiss an application

¹ A hearing in accordance with Articles 29 and 30 shall be conducted in cases under:

- a.⁴⁹ Articles 32 paragraphs 1 and 2 letters a and f, 33 and 34 paragraphs 1 and 2 letters a, b, c, and e;
- b. Article 32 paragraph 2 letter e if the asylum seeker has returned to Switzerland from their native country or country of origin;
- c. Article 35a paragraph 2 if in the previous procedure no hearing took place or if the person concerned when making use of their right to be heard submits new evidence and there are indications that justify refugee status, or that are relevant to their being granted temporary protection.

² In the other cases under Articles 32, 34 paragraph 2 letter d and 35a, the asylum seekers shall be granted the right to be heard.⁵⁰

Art. 37⁵¹ Procedural deadlines in the first instance

¹ Decisions to dismiss an application must normally be made and summarily substantiated within ten working days of the application being filed.

² Decisions in accordance with Articles 38–40 must normally be made within 20 working days of the application being filed.

³ If further investigations in accordance with Article 41 are required, the decision must normally be made within three months of the application being filed.

Art. 38 Granting asylum without further investigations

If asylum seekers as a result of the hearing can prove or credibly demonstrate their refugee status and there no grounds in terms of Articles 52–54 for denying them asylum, they shall be granted asylum without further investigations.

Art. 39 Granting temporary protection without further investigations

If, as a result of the questioning at the reception centre or at the hearing, it is obvious that asylum seekers belong to a group of persons in need of protection in accordance with Article 66, they shall be granted temporary protection without further investigations.

⁴⁸ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁴⁹ Amended in accordance with Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

⁵⁰ Amended in accordance with Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

⁵¹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Art. 40 Rejection without further investigations

¹ If, as a result of the hearing, it is obvious that asylum seekers are unable to prove or credibly demonstrate their refugee status and there are no grounds preventing their removal, the application shall be rejected without further investigations.

² The decision must at least be summarily substantiated.⁵²

Art. 41 Further investigations

¹ If the application cannot be decided on in accordance with Articles 38–40, the Federal Office shall conduct additional investigations. It may obtain information from the Swiss representations. It may also conduct additional hearings for the asylum seekers or have the cantonal authority ask them supplementary questions. The procedure is regulated by Articles 29 and 30.

² In the case of asylum seekers who are abroad during the procedure, the Federal Office shall clarify the circumstances of the case through the mediation of the responsible Swiss representation.

³ The Federal Council may enter into agreements with third countries and international organisations on cooperation in the investigation of the circumstances. It may in particular enter into agreements on the mutual exchange of information to establish an asylum seeker's reasons for flight from their native country or their country of origin, their itinerary and the third countries in which they have stayed.⁵³

Section 4: Status of Asylum Seekers during the Procedure**Art. 42**⁵⁴ Stay during the asylum procedure

Anyone who applies for asylum in Switzerland may stay in Switzerland until the conclusion of the procedure.

Art. 43 Authorisation to engage in gainful employment

¹ For the first three months after filing an application for asylum, asylum seekers may not engage in any gainful employment. If asylum is denied at the first instance within this period, the Canton may refuse the authorisation to engage in gainful employment for a further three months.

^{1bis} The additional requirements for authorisation to engage in gainful employment are governed by the Federal Act of 16 December 2005⁵⁵ on Foreign Nationals (FNA).⁵⁶

⁵² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁵³ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁵⁴ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁵⁵ SR **142.20**

² If an application for asylum is finally rejected, the authorisation to engage in gainful employment expires on expiry of the deadline specified for departure, even if an extraordinary legal remedy or a legal recourse has been applied for and the enforcement of removal has been suspended. If the Federal Office extends the departure deadline as part of the ordinary procedure, gainful employment may continue to be authorised.

³ The Department may, in agreement with the Federal Department of Economic Affairs, authorise the cantons to extend permits for certain categories of persons to pursue gainful employment beyond the expiry the departure deadline, provided special circumstances justify this.

^{3bis} The Federal Council may issue a temporary ban on employment for certain groups of asylum seekers.⁵⁷

⁴ Asylum seekers who are entitled to pursue gainful employment in accordance with the immigration provisions or who participate in charitable occupational programmes are not subject to the ban on employment.

Section 5: Enforcement of Removal Orders and Alternative Measures⁵⁸

Art. 44 Removal and temporary admission

¹ If the Federal Office rejects or dismisses the application for asylum, it shall normally order and enforce removal from Switzerland; however, in doing so it shall take account of the principle of family unity.

² If the enforcement of the removal order is not admissible, unreasonable or impossible, the Federal Office shall regulate the conditions of stay in accordance with the statutory provisions of the FNA on temporary admission^{59,60}

³⁻⁵ ...⁶¹

⁵⁶ Inserted by Annex No. II 1 of the Federal Act of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (SR **142.20**).

⁵⁷ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁵⁸ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁵⁹ SR **142.20**

⁶⁰ Amended in accordance with Annex No. II 1 of the Federal Act of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (SR **142.20**).

⁶¹ Repealed by No. I of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

Art. 44a⁶²**Art. 45** Content of the removal order

¹ The removal order shall indicate:

- a. the obligation of the asylum seeker to leave Switzerland;
- b. the time by which the asylum seeker must have left Switzerland; where temporary admission has been granted, the departure date is determined when the decision is made to revoke temporary admission;
- c. the coercive measures that apply in the event of non-compliance;
- d. if applicable, the designation of the states to which the asylum seeker may not be returned;
- e. if applicable, the ordering of an alternative measure instead of enforcing the removal order;
- f. the designation of the canton responsible for the enforcement of the removal order or the alternative measure.

² ...⁶³

Art. 46 Enforcement by the cantons

¹ The canton of allocation is obliged to enforce the deportation order.⁶⁴

^{1bis} In the case of persons who in accordance with Article 27 paragraph 4 have not been allocated to a canton, the canton responsible for enforcing the removal order is the canton specified in the removal order in accordance with Article 45 paragraph 1 letter f. In designating the canton that is responsible for enforcing the removal order, the key for the allocation of asylum seekers to the cantons applies by analogy.⁶⁵

² If enforcement proves impossible, the canton shall apply to the Federal Office for temporary admission to be granted.

Art. 47 Measures where the place of stay is unknown

If asylum seekers subject to a removal order avoid enforcement of the order by concealing their place of stay, the canton or the Federal Office may arrange for their registration in the police system for tracing missing persons.

⁶² Inserted by No. 12 of the Federal Act of 19 Dec. 2003 on the 2003 Budgetary Relief Programme (AS **2004** 1633; BBl **2003** 5615). Repealed by No. 1 of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁶³ Repealed by No. 12 of the Federal Act of 19 Dec. 2003 on the 2003 Budgetary Relief Programme, with effect from 1 April 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

⁶⁴ Amended in accordance with No. 12 of the Federal Act of 19 Dec. 2003 on the 2003 Budgetary Relief Programme, in force since 1 April 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

⁶⁵ Inserted by No. 12 of the Federal Act of 19 Dec. 2003 on the 2003 Budgetary Relief Programme, in force since 1 April 2004 (AS **2004** 1633 1647; BBl **2003** 5615).

Art. 48 Cantonal cooperation

If asylum seekers are not located in the canton responsible for the enforcing the removal order, the canton of stay shall provide administrative assistance on request. Administrative assistance includes in particular delivering the person concerned to the competent canton or deporting them directly.

Chapter 3: Granting of Asylum and Legal Status of Refugees**Section 1: Granting of Asylum****Art. 49** Principle

Asylum is granted to persons if they have refugee status and there are no grounds for denying asylum.

Art. 50 Country of second asylum

Refugees who have been admitted as such to another state may be granted asylum if they have resided in Switzerland in a law-abiding manner and without interruption for a minimum of two years.

Art. 51 Family asylum

¹ Spouses or registered partners of refugees and their minor children shall be recognised as refugees and granted asylum provided there are no special circumstances that preclude this.⁶⁶

² Other close relatives of refugees living in Switzerland may be included as members of the family granted asylum if there are special grounds in favour of family reunification.

³ Children born in Switzerland to refugee parents shall be recognised as refugees, provided if there are no special circumstances that preclude this.⁶⁷

⁴ If the persons entitled under paragraphs 1 and 2 were separated during flight and are now abroad, their entry must be authorised on request.

⁵ ...⁶⁸

Art. 52 Admission to a third country

¹ ...⁶⁹

⁶⁶ Amended in accordance with No. 3 of the Registered Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (SR **211.231**).

⁶⁷ Amended in accordance with No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁶⁸ Repealed by No. 1 of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

⁶⁹ Repealed by No. 1 of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

² A person who is abroad may be refused asylum if they can reasonably be expected to apply to another state for admission.

Art. 53 Unworthiness of refugee status

Refugees shall not be granted asylum if they are unworthy of it due to serious misconduct or if they have violated or endanger Switzerland's internal or external security.

Art. 54 Subjective post-flight grounds

Refugees shall not be granted asylum if they became refugees in accordance with Article 3 only by leaving their native country or country of origin or due to their conduct after their departure.

Art. 55 Exceptional situations

¹ In times of increased international tension, in the event of the outbreak of an armed conflict in which Switzerland is not involved, or in the event of an exceptionally large influx of asylum seekers in times of peace, Switzerland shall grant asylum to refugees as long as the circumstances permit.

² The Federal Council shall take the required measures. It may, in derogation from the law, restrict the requirements for granting asylum and the legal status of the refugees and issue special procedural provisions. It shall submit a report on this to the Federal Assembly immediately.

³ If Switzerland's capacity to permanently accommodate refugees is exceeded, asylum may only be granted temporarily until those admitted are able to go elsewhere.

⁴ If it becomes apparent that a considerable number of refugees are coming to Switzerland, the Federal Council shall seek rapid and effective international cooperation with a view to their reallocation to other countries.

Section 2: Asylum for Groups

Art. 56 Decision

¹ A Federal Council decision is required for asylum to be granted to large groups of refugees. The Department shall decide in the case of smaller groups of refugees.

² The Federal Office shall determine who belongs to such a group.

Art. 57 Allocation and initial integration

¹ For the allocation of the refugees to the cantons, Article 27 applies.

² The Confederation may in the interests of initial integration temporarily allocate groups of refugees to accommodation and, in particular house them in an initial integration centre.

Section 3: Legal Status of Refugees

Art. 58 Principle

The legal status of refugees in Switzerland is governed by the law applicable to foreign nationals, unless special provisions, in particular of this Act and of the Convention of 28 July 1951⁷⁰ relating to the Status of Refugees, apply.

Art. 59 Effect

Persons to whom Switzerland has granted asylum or who have been temporarily admitted as refugees are deemed in their relations with all federal and cantonal authorities to be refugees within the meaning of this Act and the Convention of 28 July 1951⁷¹ relating to the Status of Refugees.

Art. 60⁷² Regulation of stay

¹ Persons to whom asylum has been granted have the right to a residence permit in the canton in which they legally stay.

² After a lawful period of stay of five years in Switzerland, persons to whom asylum has been granted have the right to a permanent residence permit, unless they:

- a. have been sentenced to a long-term custodial sentence in Switzerland or abroad or if a criminal measure in accordance with Articles 61 or 64 of the Criminal Code⁷³ has been ordered against them; or
- b. have seriously or repeatedly violated or endangered public security and order in Switzerland or abroad or endangered internal or external security.

Art. 61 Gainful employment

Persons to whom Switzerland has granted asylum or whom Switzerland has temporarily admitted as refugees shall be permitted to engage in gainful employment and to change job or profession.

⁷⁰ SR **0.142.30**

⁷¹ SR **0.142.30**

⁷² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁷³ SR **311.0**

Art. 62 Medical examinations

Persons to whom Switzerland has granted asylum shall be permitted to sit federal medical examinations; the Federal Department of Home Affairs shall determine the requirements.

Section 4: Termination of Asylum**Art. 63** Revocation

¹ The Federal Office shall revoke asylum or deprive a person of refugee status:

- a. if the foreign national concerned has fraudulently obtained asylum or refugee status by providing false information or by concealing essential facts;
- b. if any of the grounds stated in Article 1 letter C numbers 1–6 of the Convention of 28 July 1951⁷⁴ relating to the Status of Refugees apply.

² The Federal Office shall revoke asylum if a refugee has violated or represents a threat to Switzerland's internal or external security, or has committed a particularly serious criminal offence.

³ The revocation of asylum or the deprivation of refugee status applies in relation to all federal and cantonal authorities.

⁴ The revocation of asylum or the deprivation of refugee status does not extend to the spouse, the registered partner or the children of the person concerned.⁷⁵

Art. 64 Expiry

¹ Asylum in Switzerland shall expire if:

- a. the refugee has lived more than three years abroad;
- b. the refugee has been granted asylum or permission to stay permanently in another country;
- c. the refugee renounces their refugee status;
- d. an order for administrative or judicial expulsion has been executed.

² The Federal Office may extend the deadline in accordance with paragraph 1 letter a under special circumstances.

³ Refugee status and asylum shall expire if the foreign national acquires Swiss nationality in accordance with Article 1 number C letter 3 of the Convention of 28 July 1951⁷⁶ relating to the Status of Refugees.⁷⁷

⁷⁴ SR **0.142.30**

⁷⁵ Amended in accordance with Annex No. 3 of the Registered Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (SR **211.231**).

⁷⁶ SR **0.142.30**

⁷⁷ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Art. 65 Expulsion

Refugees may be expelled only if they endanger Switzerland's internal or external security or have seriously violated public order, subject to Article 5.

**Chapter 4:
Granting Temporary Protection and the Legal Status of
Persons in Need of Protection****Section 1: General Provisions****Art. 66** Policy decision of the Federal Council

¹ The Federal Council shall decide whether and according to which criteria Switzerland will grant temporary protection to groups of persons in need of protection in accordance with Article 4.

² Before doing so, it shall consult representatives of the cantons, the charitable organisations and if need be additional non-governmental organisations as well as the Office of the United Nations High Commissioner for Refugees.

Art. 67 Foreign policy measures

¹ The granting of temporary protection as well as measures and assistance in the native country or country of origin or in the region of origin of the persons in need of protection should complement one another as far as possible.

² The Confederation shall work with the native country or country of origin, other host countries and international organisations to create the conditions for the safe return of the persons in need of protection.

Section 2: Procedure**Art. 68** Persons in need of protection abroad

¹ The Federal Office shall define the group of persons in need of protection in detail and decide who will be granted temporary protection in Switzerland. In doing so, it shall take account of the principle of family unity.

² The decision on granting temporary protection may only be contested on the grounds that it violates the principle of family unity.

³ Article 20 applies by analogy to individual applications filed abroad.

Art. 69 Persons in need of protection at the border or in Switzerland

¹ Articles 18 and 19 and 21–24 apply by analogy to applications filed at the border or in Switzerland by persons in need of protection.

² If there is no obvious persecution in terms of Article 3, the Federal Office shall, following questioning at the reception centre in accordance with Article 26, determine who belongs to a group of persons in need of protection and who will be granted temporary protection in Switzerland. There is no appeal against the decision on whether to grant temporary protection.

³ If a person is granted temporary protection, the procedure for any application for recognition as a refugee shall be suspended.

⁴ If the Federal Office intends to refuse temporary protection, it shall continue the procedure for recognition as a refugee or the removal procedure immediately.

Art. 70 Resumption of the procedure for recognition as a refugee

Persons in need of protection who have filed an application for recognition as a refugee may request the resumption of the procedure for recognition as a refugee at the earliest five years following the decision to suspend the procedure in accordance with Article 69 paragraph 3. On the resumption of this procedure, temporary protection shall be revoked.

Art. 71 Granting temporary protection to families

¹ Spouses, registered partners of persons in need of protection and their minor children shall be granted temporary protection if:⁷⁸

- a. they apply for protection together and there are no grounds for rejection in terms of Article 73;
- b. the family was separated by events such as those cited in Article 4, wishes to be reunited in Switzerland and there are no special circumstances that preclude this.

² Children born in Switzerland to persons in need of protection shall also be granted temporary protection.

³ If the persons entitled to protection are abroad, their entry must be authorised.

⁴ The Federal Council shall regulate the requirements for family reunion in Switzerland in other cases.

Art. 72 Procedure

In addition, the provisions of Sections 1 and 3 of Chapter 2 apply by analogy to the procedure in accordance with Articles 68, 69 and 71⁷⁹.

⁷⁸ Amended in accordance with Annex No. 3 of the Registered Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (SR **211.231**).

⁷⁹ Amended by the drafting committee of the Federal Assembly [Art. 33 Parliamentary Procedure Act – AS **1974** 1051].

Art. 73 Grounds for rejection

Temporary protection shall not be granted if the person in need of protection has committed an act falling within the terms of Article 53 or has violated or is a serious threat to public security.

Section 3: Legal Status**Art. 74** Regulation of stay

¹ Persons in need of protection shall reside in the canton to which they have been allocated.

² If the federal council has not yet revoked temporary protection within five years, the persons in need of protection shall receive from this canton a residence permit limited until the revocation of temporary protection.

³ Ten years after the granting of temporary protection, the canton may grant persons in need of protection a permanent residence permit.

Art. 75 Authorisation to engage in gainful employment

¹ For the first three months after entry into Switzerland, persons in need of protection may not engage in gainful employment. Thereafter, the requirements for authorisation to engage in gainful employment are governed by the FNA^{80,81}

² The Federal Council may stipulate more favourable conditions for gainful employment.

³ Work permits already issued shall remain valid.

⁴ Persons in need of protection who are entitled to pursue gainful employment in accordance with provisions laid down by the immigration authorities or who participate in charitable occupational programmes are not subject to the ban on working.

**Section 4:
Termination of the Temporary Protection and Return****Art. 76** Withdrawal of temporary protection and removal

¹ After consultation with representatives of the cantons, the charitable organisations and, if required, other non-governmental organisations, the Office of the United High Commissioner for Refugees as well as with international organisations, the Federal Council shall determine when the temporary protection for certain groups of persons in need of protection will be withdrawn; it shall make the decision in a general ruling.

⁸⁰ SR 142.20

⁸¹ Amended of the second sentence in accordance with Annex No. II 1 of the Federal Act of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (SR 142.20).

² The Federal Office shall grant the persons affected by the decision in accordance with paragraph 1 the right to a hearing.

³ If as a result of the hearing, indications of persecution are revealed, a further hearing shall take place in accordance with Articles 29 and 30. If there are no indications of persecution, the Federal Office shall decide in accordance with Article 35.

⁴ If, having been granted the right to a hearing, the person concerned does not express his or her views, the Federal Office shall issue a removal order. For the enforcement of the removal order, Articles 10 paragraph 4 and 46–48 of this Act as well as Article 71 of the FNA⁸² apply by analogy.⁸³

Art. 77 Return

The Confederation shall support international efforts to organise the return of persons in need of protection.

Art. 78 Revocation

¹ The Federal Office may revoke temporary protection if:

- a. it has been fraudulently obtained by providing false information or by concealing essential facts;
- b. the person in need of protection has violated or endangered Switzerland's internal or external security or is guilty of serious misconduct;
- c. since being granted temporary protection, the person in need of protection has resided repeatedly or for an extended period of time in their native country or country of origin;
- d. the person in need of protection has a legal right of residence in a third country where they may return.

² Temporary protection shall not be revoked if the person in need of protection travels to their native country or country of origin with the consent of the competent authorities.

³ The revocation of temporary protection does not extend to the spouse, the registered partner and the children, unless it is shown they are not in need of protection.⁸⁴

⁴ If it is intended to revoke temporary protection, a hearing shall normally take place in accordance with Articles 29 and 30.

⁸² SR **142.20**

⁸³ Amended in accordance with Annex No. II 1 of the Federal Act of 16 Dec. 2005 of the Federal Act of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (SR **142.20**).

⁸⁴ Amended in accordance with No. 3 of the Registered Partnership Act of 18 June 2004, in force since 1 Jan. 2007 (SR **211.231**).

Art. 79⁸⁵ Expiry

Temporary protection expires if the person in need of protection transfers the focus of their living conditions abroad, renounces temporary protection or has received a permanent residence permit in accordance with the FNA⁸⁶.

Chapter 5: Social Assistance and Emergency Aid⁸⁷**Section 1:****Payment of Social Benefits, Emergency Aid and Child Allowances⁸⁸****Art. 80⁸⁹** Responsibility

¹ The cantons of allocation shall provide social assistance or emergency aid for persons staying in Switzerland on the basis of this Act. Persons who have not been allocated to a canton shall be granted emergency aid by the canton that has been designated responsible for enforcing removal. The cantons may delegate the fulfilment of this task entirely or in part to third parties, and in particular to the charitable organisations authorised in accordance with Article 30 paragraph 2.

² As long as these persons are staying in a reception centre or in an integration centre for groups of refugees, the Confederation shall provide social assistance. It may delegate all or part of this task to third parties.

Art. 81⁹⁰ Right to social benefits or to emergency aid

Persons who are staying in Switzerland on the basis of this Act and who are unable to maintain themselves from their own resources shall receive the necessary social benefits unless third parties are required to support them on the basis of a statutory or contractual obligation, or may request emergency aid.

Art. 82⁹¹ Social benefits and emergency aid

¹ The payment of social benefits and emergency aid is regulated by cantonal law. Persons subject to a definitive removal decision for which a departure deadline has been fixed may be excluded from receiving social assistance.

⁸⁵ Amended in accordance with Annex No. II 1 of the Federal Act of 16 Dec. 2005 of the Federal Act of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (SR **142.20**).

⁸⁶ SR **142.20**

⁸⁷ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

⁸⁸ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

⁸⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

⁹⁰ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

⁹¹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006 4745**, **2007 5573**; BBl **2002 6845**).

² If the enforcement of removal is deferred for the duration of an extraordinary appeal, persons whose asylum application has been rejected shall receive emergency aid on request.

³ For asylum seekers and persons in need of protection who do not hold a residence permit, support shall be provided in the form of non-cash benefits wherever possible. The amount of support may differ from that given to the local population. The granting of emergency aid benefits and its duration must be justified.

⁴ Emergency aid must be provided in the form of non-cash benefits or daily cash allowances at the locations indicated by the cantons. The physical payment of benefits may be limited to working days.

⁵ The special situation of refugees and persons in need of protection who have a right to a residence permit must be taken into account in determining the level of support; in particular professional, social and cultural integration shall be facilitated.

Art. 82a⁹² Health insurance for asylum seekers and persons in need of protection without a residence permit

¹ Health insurance for asylum seekers and persons in need of protection without a residence permit must be arranged in accordance with the provisions of the Federal Act of 18 March 1994⁹³ on Health Insurance (HIA), subject to the following provisions.

² The cantons may limit the choice of insurers for asylum seekers and persons in need of protection without a residence permit and may specify one or more insurers who offer a special form of insurance in accordance with Article 41 paragraph 4 HIA.

³ They may limit the choice of service providers for asylum seekers and persons in need of protection without a residence permit in accordance with Articles 36–40 HIA. They may do this before designating an insurer in terms of paragraph 2.

⁴ They may limit the choice for asylum seekers and persons in need of protection without a residence permit designate to one or more insurers who offer insurance with a limited selection of service providers in terms of Article 41 paragraph 4 HIA.

⁵ The Federal Council shall regulate the details of the limitation of the choice of the service providers.

⁶ The cantons and the insurers may agree to dispense with cost sharing in accordance with Article 64 paragraph 2 HIA.

⁷ As long as asylum seekers and persons in need of protection without a residence permit are reliant solely or partly on social assistance, their right to premium reductions in accordance with Article 65 HIA shall be suspended. This right shall revive respectively when the asylum seekers are recognised as refugees, the persons in need

⁹² Inserted by No. II of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4823, 2007 5575; BBl 2002 6845).

⁹³ SR 832.10

of protection are entitled to a residence permit, or the persons are no longer in receipt of social assistance.

Art. 83 Restrictions of social benefits⁹⁴

¹ The competent offices may completely or partially refuse, reduce or withdraw social benefits if the beneficiary:

- a. has obtained them or attempted to obtain them by providing untrue or incomplete information;
- b. refuses to give the competent office information about their financial circumstances, or fails to authorise the office to obtain this information;
- c. does not report important changes in their circumstances;
- d. obviously neglects to improve their situation, in particular by refusing to accept reasonable work or accommodation allocated to them;
- e. without consulting the competent office, terminates an employment contract or lease or is responsible for its termination and thereby exacerbates their situation;
- f. uses social benefits improperly;
- g. fails to comply with the instructions of the competent office despite the threat of the withdrawal of social benefits.

² Social benefits unlawfully received must be paid back in full. The amount due for repayment may in particular be deducted from future social benefits. The canton shall implement the claim for repayment. Article 85 paragraph 3 applies.⁹⁵

Art. 83a⁹⁶ Requirements for the payment of emergency aid

The person concerned must cooperate in the enforcement of a definitive removal order that is lawful, reasonable and feasible as well as in the determination of whether the requirements for emergency aid are fulfilled.

Art. 84⁹⁷ Child allowances

Child allowances for asylum seekers' children living abroad shall be withheld during asylum procedures. They shall be paid when the asylum seeker is recognised as a refugee or temporarily admitted in accordance with Article 83 paragraphs 3 and 4 of the FNA⁹⁸.

⁹⁴ Expression in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845). This amendment has been made throughout the text.

⁹⁵ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

⁹⁶ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

⁹⁷ Amended in accordance with No. IV 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

⁹⁸ SR 142.20

Section 2: Duty to Reimburse and Special Charge⁹⁹

Art. 85 Duty to reimburse

¹ As far as it is reasonable, social assistance¹⁰⁰, departure and enforcement costs as well as the costs of the appeal procedure must be reimbursed.

² The Confederation shall enforce the claim for reimbursement. The Department may delegate this task to the cantons.

³ The right to reimbursement prescribes one year after the competent authority has been informed, but in any case 10 years after its creation. No interest is charged on reimbursement claims.¹⁰¹

⁴ The Federal Council shall regulate the details and the exceptions to the duty to reimburse.¹⁰²

Art. 86¹⁰³ Special charge

¹ Asylum seekers and persons in need of protection without a residence permit who are gainfully employed must reimburse the costs mentioned in Article 85 paragraph 1 (special charge). The special charge serves to cover the overall costs generated by all these gainfully employed persons and their dependents. The cantonal authority shall make authorisation to engage in a gainful economic activity subject to a corresponding condition.

² The special charge may not amount to more than 10 per cent of the earned income of the person concerned. It shall be deducted directly from the earned income of the person concerned by the employer and transferred to the Confederation.

³ The duty to pay a special charge applies for a maximum of ten years from the first time the person concerned accepts gainful employment.

⁴ The Federal Council shall regulate the details. In particular, it shall determine the rate of the special charge and shall issue regulations on the payment and collection procedures. It may in particular refrain from imposing the duty to pay a special charge in the case of persons whose earned income is especially low.

⁵ The Confederation may delegate incidental tasks in connection with the collection of the special charge to third parties.

⁹⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰⁰ Expression in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰¹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰³ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Art. 87¹⁰⁴ Confiscation of assets

¹ Asylum seekers and persons in need of protection without a residence permit must disclose their assets that are not derived from their earned income.

² The competent authorities may confiscate such assets for the purposes of reimbursing the costs mentioned in Article 85 paragraph 1 if the asylum seekers or persons in need of protection without a residence permit:

- a. cannot prove that the assets derive from earned income or compensation for loss of earned income or from public social benefits;
- b. cannot prove the origin of the assets; or
- c. can prove the origin of the assets, but these exceed the amount determined by the Federal Council.

³ The Federal Council shall determine the extent to which the confiscated assets may be used to pay the special charge.

⁴ If there is no longer a duty to pay the special charge, assets may no longer be confiscated.

⁵ Confiscated assets shall be reimbursed in full on request if the asylum seeker or person in need of protection leaves the country under supervision within seven months of filing the application for asylum or the application for temporary protection.

Chapter 6: Federal Subsidies**Art. 88¹⁰⁵** Flat-rate compensatory payments

¹ The Confederation shall compensate the cantons for the costs of implementing this Act by means of flat-rate payments. The cantons do not receive the subsidies in accordance with Articles 91–93.

² The flat-rate payments made in respect of persons seeking asylum and in need of protection without a residence permit shall cover, in particular, the costs of social assistance and of mandatory health insurance and also contain a contribution towards the supervision costs.

³ The flat-rate payments made in respect of refugees and persons in need of protection with a residence permit shall cover, in particular, the costs of social assistance and also contain a contribution towards the supervision and administrative costs.

⁴ The non-recurring flat-rate payments made in respect of persons subject to a definitive removal decision for which a departure deadline has been set are compensation for providing social assistance or emergency aid.

¹⁰⁴ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰⁵ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁵ The non-recurring flat-rate payments made in respect of persons subject to a definitive decision to dismiss their asylum application are compensation for the provision of emergency aid as well as for enforcement of the removal order.

Art. 89¹⁰⁶ Determination of the flat-rate payments

¹ The Federal Council shall determine the level of the flat-rate payments based on the probable expenditures on cost-effective solutions.

² It shall determine the structure and the duration of the flat-rate payments as well as the necessary requirements. It may in particular:

- a. determine the flat-rate payments on the basis of residence status and the duration of residence;
- b. adjust the flat-rate payments to take account of the cost differences between the cantons.

³ The Federal Office may make the disbursement of individual components of the flat-rate payments subject to the achievement of socio-political goals.

⁴ The flat-rate payments shall be periodically adjusted in line with inflation and reviewed if necessary.

Art. 90 Funding of collective accommodation

¹ The Confederation may finance, in full or in part, the construction, conversion and furnishing of collective accommodation in which the authorities place persons residing in Switzerland on the basis of this Act.

² The Federal Council shall regulate the procedure, determine the details on ownership and ensure the accommodation is used for its intended purpose.

³ It shall determine the extent to which the amount spent on direct funding by the Confederation on accommodation is charged against the flat-rate payment.

Art. 91 Further subsidies

¹ and ²...¹⁰⁷

^{2bis} The Confederation shall pay the cantons a flat-rate subsidy towards the administrative costs incurred in respect of persons seeking asylum and persons in need of protection without a residence permit.¹⁰⁸

³ It may pay subsidies to facilities for traumatised persons residing in Switzerland on the basis of this Act.

¹⁰⁶ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰⁷ Repealed by No. I of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁰⁸ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

⁴ It may pay financial subsidies for the social, professional and cultural integration of refugees, persons in need of protection with a residence permit and temporarily admitted persons; these subsidies shall normally be granted only if the cantons, communes or third parties contribute appropriately to the costs. The coordination and the funding of the project activities may be delegated to third parties by means of a performance mandate.¹⁰⁹

⁵ ...¹¹⁰

⁶ The Confederation shall reimburse the cantons for staff costs which arise in connection with the preparation of decisions in accordance with Article 31.

⁷ It may in terms of the international cooperation in accordance with Article 113 provide subsidies to the bodies funding internationally oriented projects or to internationally active organisations.

⁸ The Federal Council shall regulate the requirements and the payment and the accounting procedures for the contributions.

Art. 92 Entry and departure costs

¹ The Confederation may bear the costs for the entry and departure of refugees and persons in need of protection.

² If the persons concerned are destitute, it shall bear the costs for the departure of asylum seekers, of persons whose application for asylum was rejected, whose application for asylum was dismissed or who withdrew their application for asylum, and of persons who were removed following the revocation of temporary protection.¹¹¹

³ It may make provide subsidies towards expenditure incurred by the cantons that is directly connected with the organisation of departure.

⁴ The Federal Council shall regulate the requirements and the payment and accounting procedure for the contributions. If possible it shall determine flat-rate payments.

Art. 93¹¹² Return assistance and prevention of irregular migration

¹ The Confederation shall provide return assistance. For this purpose, it may provide for the following measures:

- a. the full or partial funding of return counselling services;
- b. the full or partial funding of projects in Switzerland to preserve the ability of those concerned to return;

¹⁰⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹¹⁰ Repealed by No. I of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹¹¹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹¹² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

- c. the full or partial funding of programmes in the native country, country of origin or a third country to facilitate the return, repatriation and reintegration (programmes abroad);
- d. the granting of financial support in individual cases to facilitate the reintegration of returnees or provide them with temporary medical care in their native country, country of origin or third country.

² Programmes abroad may also pursue the goal of contributing to the prevention of irregular migration. Irregular migration prevention programmes are those that contribute in the short term to limiting the risk of primary or secondary migration to Switzerland.

³ For the purpose of implementing return assistance, the Confederation may work with international organisations and set up a coordination office.

⁴ The Federal Council shall regulate the requirements and the payment and the accounting procedure for the subsidies.

Art. 94 Contributions to charitable organisations

¹ The Confederation may make contributions to the administrative costs of an umbrella organisation for the approved charitable organisations.

² The approved charitable organisations shall be compensated by means of a flat rate payment for their participation in the hearings in accordance with Article 30.

³ The Federal Council shall determine the level of the contributions in accordance with paragraph 1 and the flat-rate payment in accordance with paragraph 2.

Art. 95¹¹³ Supervision

¹ The Confederation shall verify that federal subsidies are used in accordance with the legislation on subsidies, that they are effective and that accounts on federal subsidies are properly maintained. It may also delegate this task to a third party and call in the cantonal audit offices for support.

² Anyone who receives federal subsidies is obliged to disclose the details of their organisation as well as the data and key figures in relation to income and expenditure in the field of asylum.

³ The Federal Audit Office, the Federal Office and the cantonal audit offices shall monitor financial activities in accordance with their regulations. They shall determine the suitable course of action, coordinate their activities and keep each other informed about their findings.

¹¹³ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Chapter 7: Processing of Personal Data

Section 1: Principles¹¹⁴

Art. 96¹¹⁵ Processing of personal data

Provided they require the data for the fulfilment of their legal duties, the Federal Office, the appeal authorities and private organisations entrusted with duties under this Act may process or have processed the personal data of persons seeking asylum or in need of protection and their dependants, and in particular sensitive data or personality profiles as defined in Article 3 letters c and d of the Federal Act of 19 June 1992¹¹⁶ on Data Protection.

Art. 97 Disclosure of personal data to the native country or country of origin

¹ Personal data of asylum seekers, recognised refugees and persons in need of protection may not be disclosed to their native country or country of origin if the person concerned or their dependants would be endangered as a result. No information may be disclosed regarding an application for asylum.¹¹⁷

² The authority responsible for the organising departure may contact the native country or the country of origin to acquire the travel documents required for the enforcement of the removal order if the refugee status has been refused in the first instance.¹¹⁸

³ For the enforcement of removal to the native country or the country of origin, the authorities responsible for organising exit may disclose the following data to the foreign authority:

- a. personal details (name, first name, aliases, date of birth, place of birth, gender, nationality, last address in the native country or the country of origin) of the person concerned and, as far as necessary for their identification, of dependants;
- b. information about the passport or other identity papers;
- c. fingerprints, photographs and further biometric data if necessary;
- d. further data from documents that help identify a person;

¹¹⁴ Inserted by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR **362**; AS **2008** 5405 Art. 1 let. a).

¹¹⁵ Amended in accordance with Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR **362**; AS **2008** 5405 Art. 1 let. a).

¹¹⁶ SR **235.1**

¹¹⁷ Amended in accordance with No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

¹¹⁸ Amended in accordance with No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2007 (AS **2006** 4745 4767; BBl **2002** 6845).

- e. information on the state of health, insofar as this is in the interest of the person concerned;
- f. the data required to guarantee the returnee's entry to the destination country and to ensure the security of the accompanying persons;
- g. information on criminal proceedings in the specific cases where this is required for the readmission procedure and to safeguard public security and order in the native country, and the person concerned will not be endangered thereby; Article 2 of the Mutual Assistance Act of 20 March 1981¹¹⁹ applies by analogy.¹²⁰

Art. 98 Disclosure of personal data to third countries and international organisations

¹ In order to implement this Act, the Federal Office and the appeal authorities may disclose personal data to foreign authorities and international organisations entrusted with corresponding tasks if the state or the international organisation concerned guarantees an equivalent level of protection of the data transmitted.

² The following personal data may be disclosed:

- a. personal details (name, first name, alias names, date of birth, place of birth, gender, nationality, last address in the native country or the country of origin) of the person concerned and, as far as necessary for their identification, of dependants;
- b. information about the passport or other identity papers;
- c. fingerprints, photographs and further biometric data if necessary;
- d. further data from documents that help identify a person;
- e. information on the state of health, insofar as this is in the interest of the person concerned;
- f. the data required to guarantee the returnee's entry to the destination country and to ensure the security of the accompanying persons;
- g. information on the place of stay and travel routes;
- h. information on permission to stay and visas granted;
- i. information on an application for asylum (place and date the filing, status of the procedure, summary details of the content of a decision made).¹²¹

¹¹⁹ SR 351.1

¹²⁰ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

¹²¹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS 2006 4745, 2007 5573; BBl 2002 6845).

Art. 98a¹²² Cooperation with the prosecution authorities

The Federal Office or the Federal Administrative Court shall transmit to the responsible prosecution authorities information and evidence on asylum seekers where there are serious grounds for suspicion that they have committed a felony under international law, in particular a felony against peace, a war crime, a crime against humanity, genocide or torture.

Art. 98b¹²³ Biometric data

¹ The competent authorities may process biometric data for the purpose of establishing the identity of asylum seekers and persons in need of protection.

^{1bis} The Federal Office may delegate the processing of biometric data to third parties. It shall verify the compliance by the third parties with the regulations on data protection and information security.¹²⁴

² The Federal Council shall determine what biometric data is collected and regulate access to the data.

Art. 99 Taking and evaluating fingerprints

¹ Fingerprints of all fingers as well as photographs shall be taken of asylum seekers and persons in need of protection. The Federal Council may provide for exceptions in the case of minors under the age of 14.¹²⁵

² The fingerprints and photographs shall be stored without the corresponding personal details in database managed by the Federal Office of Police and the Federal Office.¹²⁶

³ The new fingerprints shall be compared with the fingerprint database managed by the Federal Office of Police.¹²⁷

⁴ If the Federal Office of Police determines a match with existing fingerprints, it shall inform the Federal Office, the cantonal police authorities concerned and the Frontier Guards Corps and provide them with the personal details of the person concerned (name, first name, aliases, date of birth, sex, reference number, personal number, nationality, process control number and canton of allocation). Where there

¹²² Inserted by No. 13 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Amendment of Legislation in accordance with the Provisions on the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599, **2007** 5573; BBl **2006** 7759).

¹²³ Inserted by No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹²⁴ Inserted by Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

¹²⁵ Amended in accordance with Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004, in force since 12 Dec. 2008 (SR **362**; AS **2008** 5405; BBl **2004** 5965).

¹²⁶ Amended in accordance with No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹²⁷ Amended in accordance with No. 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

is a police report, the date, place and reason for taking the fingerprints contained therein shall also be provided in code form.¹²⁸

⁵ The Federal Office shall use this information to:

- a. check the identity of the person concerned;
- b. check whether the person concerned has already applied for asylum before;
- c. check whether there is data that confirms or refutes the statements made by the person concerned;
- d. check whether there is data that call into question the eligibility of the person concerned to be granted asylum;
- e. facilitate administrative assistance between the Federal Office and the police authorities.

⁶ The personal data transmitted in accordance with paragraph 4 may not be disclosed abroad without the consent of the owner of the data collection. Article 6 paragraph 1 of the Federal Act of 19 June 1992¹²⁹ on Data Protection applies by analogy.

⁷ The data shall be erased:

- a. if asylum is granted;
- b. at the latest ten years after final rejection, withdrawal or abandonment of the application for asylum or after a decision to dismiss the application;
- c.¹³⁰ in the case of persons in need of protection, at the latest ten years after the lifting of the temporary protection.

Art. 100¹³¹ Information system

¹ The appeal authorities shall maintain an information system to record appeals that have been filed, for the conduct of audits and to compile statistics.

² These information systems may contain personal data and personality profiles especially worthy of protection if this is necessary for the fulfilment of the statutory task.

^{2bis} Incorrect data must be corrected by the authorities. If the incorrect data is attributed to a person's violation of the duty to cooperate, this person may be billed for the costs for the correction.¹³²

¹²⁸ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹²⁹ SR **235.1**

¹³⁰ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹³¹ Amended in accordance with Art. 18 No. 2 of the Federal Act of 20 June 2003 on the Information System on Asylum and Foreign Nationals, in force since 29 May 2006 (SR **142.51**).

¹³² Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Art. 101¹³³ Personal data filing and documentation system

The Federal Office in cooperation with the appeal authorities of the Confederation and the competent authorities of the cantons may manage an automatic personal data filing and documentation system.

Art. 102 Information and documentation system

¹ The Federal Office shall manage an automated information and documentation system in cooperation with the Federal Administrative Court. The system shall contain factual information and documentation from the sphere of responsibilities of the Federal Office and the Federal Administrative Court stored in various databases. If required, personal data contained in the texts may also be stored, in particular personal details, as well as particularly sensitive personal data and personality profiles.¹³⁴

² Only employees of the Federal Office and the Federal Administrative Court shall have access to databases containing particularly sensitive personal data and personality profiles.¹³⁵

³ Databases containing predominantly factual information drawn from public sources may be made accessible to external users on request by means of a retrieval procedure.

⁴ The Federal Council shall regulate the details, and in particular access to the system and the protection of the personal data collected therein.

Art. 102a¹³⁶ Statistics on recipients of social assistance

For the taxation of the financial compensatory payments to the cantons, the Federal Statistical Office shall periodically transmit anonymised and aggregated data on the persons seeking asylum who draw benefits from public social assistance to the Federal Office.

¹³³ Amended in accordance with Art. 18 No. 2 of the Federal Act of 20 June 2003 on the Information System on Asylum and Foreign Nationals, in force since 29 May 2006 (SR **142.51**).

¹³⁴ Amended in accordance with No. 4 of the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (SR **173.32**).

¹³⁵ Amended in accordance with No. 4 of the Federal Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (SR **173.32**).

¹³⁶ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Section 2:¹³⁷**Data Processing under the Dublin Association Agreements****Art. 102a^{bis}** Eurodac

¹ Within the framework of the application of the Dublin Association Agreements ¹³⁸ the Federal Office is responsible for dealings with the Central Unit of the Eurodac System.

² It shall transmit the following data to the Central Unit:

- a. the place and date of the application in Switzerland;
- b. the sex of the applicant;
- c. the fingerprints taken in accordance with Article 99 paragraph 1;
- d. the Swiss code number for the fingerprints;
- e. the date on which the fingerprints were taken;
- f. the date on which the data was transmitted to the Central Unit.

³ The transmitted data shall be stored in the Eurodac database and compared with the data already stored in this database. The result of the comparison shall be communicated to the Federal Office.

⁴ The data shall be automatically erased by the Central Unit ten years after the fingerprints were taken. If a person whose data has been transmitted by Switzerland to the Eurodac database is granted citizenship of a state bound by one of the Dublin Association Agreements before the expiry of this period, the Federal Office, as soon as it has been notified of this fact, shall request the Central Unit to erase the data immediately.

Art. 102b Disclosure of personal data to a state bound by one of the Dublin Association Agreements

The disclosure of personal data to the competent authorities of states that are bound by one of the Dublin Association Agreements shall be regarded as equivalent to the disclosure of personal data between federal bodies.

¹³⁷ Inserted by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR **362**; AS **2008 5405** Art. 1 let. a).

¹³⁸ Agreement of 26 Oct. 2004 between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (SR **0.142.392.68**); Prot. of 28 Febr. 2008 between the Swiss Confederation, the European Community and the Principality of Liechtenstein to the Agreement concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (SR **0.142.393.141**); Agreement of 17 Dez. 2004 between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway on the implementation, application and development of the Schengen Acquis and on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in Switzerland, Iceland or Norway (SR **0.360.598.1**).

Art. 102c Disclosure of personal data to a state not bound by any of the Dublin Association Agreements

¹ Personal data may be disclosed to third countries only if they guarantee an adequate standard of data protection.

² If a third country fails to guarantee an adequate standard of data protection, personal data may be disclosed to this country in individual cases if:

- a. the person concerned gives their unequivocal consent; if the personal data or personality profiles are particularly sensitive, consent must be given expressly;
- b. the disclosure is required to protect the life or physical integrity of the person concerned; or
- c. the disclosure is required to safeguard overriding public interests or to establish, exercise or enforce legal rights in court.

³ In addition to the cases mentioned in paragraph 2, personal data may also be disclosed if in specific cases adequate guarantees ensure appropriate protection of the person concerned.

⁴ The Federal Council shall determine the extent of the guarantees required and the modalities for providing the guarantees.

Art. 102d Duty to provide information on obtaining personal data

¹ If personal data is gathered, the person concerned must be informed. The duty to provide information does not apply if the person concerned has already been informed.

² The person concerned must as a minimum be informed as to:

- a. the proprietor of the data collection;
- b. the purpose of the data processing;
- c. the categories of the recipient if a disclosure of personal data is planned;
- d. the right to information in accordance with Article 102e;
- e. the consequences of refusing to provide the requested data.

³ If the data is not obtained from the person concerned, then this person must be informed at the latest at the beginning of the data storage or the first time the data is disclosed to a third party, unless this is not possible or only possible with unreasonable expense or the storage or disclosure of the data is expressly envisaged by law.

Art. 102e Right to information

The right to information is governed by Article 8 DPA.¹³⁹ The proprietor of the data collection shall also furnish information on the details available on the origin of the data.

¹³⁹ SR 235.1

Art. 102f Limitation of the duty to provide and right to receive information

¹ Article 9 paragraphs 1, 2 and 4 DPA¹⁴⁰ apply to limitations on the duty to provide information and on the right to information.

² If the information has been refused, limited or postponed, it must be provided without delay when the grounds for refusing to provide, limiting or postponing the provision of information cease to apply, unless this is not possible or only possible with unreasonable expense.

Art. 102g Right of appeal of the Federal Data Protection Commissioner

The Federal Data Protection Commissioner may appeal against a decision issued in accordance with Article 27 paragraph 5 DPA¹⁴¹ as well as against a decision of the appeal authority.

Chapter 8: Legal Protection**Section 1: Appeal Proceedings at Cantonal Level****Art. 103**

¹ The cantons shall provide at least one appellate authority where appeals may be filed against rulings of cantonal authorities based on this Act and its implementing provisions.

² Appeals against decisions by cantonal courts of the last instance are governed by the general provisions on the administration of federal justice, unless otherwise provided in this Act.

Section 2: Appeal Proceedings at Federal Level**Art. 104**¹⁴²**Art. 105**¹⁴³ Appeals against rulings of the Federal Office

Appeals may be filed against the rulings of the Federal Office in accordance with the Federal Administrative Court Act of 17 June 2005¹⁴⁴.

¹⁴⁰ SR 235.1

¹⁴¹ SR 235.1

¹⁴² Repealed by Annex no. 4 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (SR 173.32).

¹⁴³ Amended in accordance with No. I 3 to No. IV of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Enactments to the Provisions of the Supreme Court Act and the Administrative Court Act, in force since 1 Jan. 2008 (AS 2006 5599, 2007 5573; BBl 2006 7759).

¹⁴⁴ SR 173.32

Art. 106¹⁴⁵ Grounds for appeal

¹ An appeal may be filed on the following grounds:

- a. the violation of federal law, including the abuse and exceeding of discretionary powers;
- b. incorrect and incomplete determination of the legally relevant circumstances;
- c. unreasonableness.

² Article 27 paragraph 3 and Article 68 paragraph 2 remain reserved.

Art. 107 Contestable interim rulings

¹ Interim rulings issued in application of Article 10 paragraphs 1–3 and 18–48 of this Act as well as Article 71 FNA¹⁴⁶ may only be contested by appeal against the final ruling. The contesting of rulings remains reserved in accordance with Article 27 paragraph 3.¹⁴⁷

² The following are also independently contestable, provided they may cause permanent prejudice:

- a. precautionary measures;
- b. rulings by which proceedings are suspended, other than rulings in accordance with Article 69 paragraph 3.

³ ...¹⁴⁸

Art. 107a¹⁴⁹ Dublin procedure

No suspensive effect may be granted to appeals against decisions to dismiss applications made by asylum seekers who are able to travel to another state that is responsible under an international treaty for the conduct of the asylum or removal procedure. If there are justified indications of a violation of rights guaranteed by the Convention of 4 November 1950¹⁵⁰ on the Protection of Human Rights and Fundamental Freedoms by that state, suspensive effect may be granted.

¹⁴⁵ Amended in accordance with No. I 2 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Adaptation of Enactments to the Provisions of the Supreme Court Act and the Administrative Court Act (AS **2006** 5599; BBl **2006** 7759).

¹⁴⁶ SR **142.20**

¹⁴⁷ Amended in accordance with Annex no. II 1 of the Federal Act of 16 Dec. 2005 on Foreign Nationals, in force since 1 Jan. 2008 (SR **142.20**).

¹⁴⁸ Repealed by No. I of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁴⁹ Inserted by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR **362**;

AS **2008** 5405 Art. 1 let. a).
¹⁵⁰ SR **0.101**

Art. 108¹⁵¹ Time limits for appeals

¹ An appeal must be filed within 30 days, and the appeal against interim rulings within ten days of notification of the ruling.

² For appeals against decisions to dismiss an application and decisions in accordance with Article 23 paragraph 1, the period is five working days.

³ Denial of entry in accordance with Article 22 paragraph 2 may be contested until notification of the ruling in accordance with Article 23 paragraph 1.

⁴ A review of the legality and the appropriateness of the allocation of a place of stay at the airport or at another appropriate place in accordance with Article 22 paragraphs 3 and 4 and of detention in accordance with Article 76 paragraph 1 letter b number 5 FNA¹⁵² may be requested by means of appeal at any time.

⁵ Written legal submissions made by fax are legally binding if they reach the Federal Administrative Court within the notice period and are supplemented by filing the signed original subsequently in accordance with Article 52 paragraphs 2 and 3 of the Federal Act of 20 December 1968¹⁵³ on Administrative Procedure.¹⁵⁴

Art. 108a¹⁵⁵**Art. 109**¹⁵⁶ Time limits for decisions

¹ The Federal Administrative Court shall normally decide within six weeks on appeals against rulings in accordance with Articles 32–35a and 40 paragraph 1.

² If an exchange of written submissions is dispensed with and no further legal proceedings are required, the Federal Administrative Court shall decide on appeals against decisions in accordance with Articles 23 paragraph 1 and 32–35a within five working days.

³ The Federal Administrative Court shall normally decide on appeals against decisions in accordance with Article 22 paragraphs 2–4 and Article 76 paragraph 1 letter b number 5 FNA¹⁵⁷ without delay on the basis of the files.

¹⁵¹ Amended in accordance with No. I and IV 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁵² SR **142.20**

¹⁵³ SR **172.021**

¹⁵⁴ Amended in accordance with No. I 3 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Amendment of Legislation in accordance with the Provisions on the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599, **2007** 5573; BBl **2006** 7759).

¹⁵⁵ Inserted by No. I 2 of the Federal Act of 19 Dec. 2003 on the 2003 Relief Programme (AS **2004** 1633; BBl **2003** 5615). Repealed by No. 1 of the Federal Act of 16 Dec. 2005, with effect from 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁵⁶ Amended in accordance with No. I 3 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Amendment of Legislation in accordance with the Provisions on the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599, **2007** 5573; BBl **2006** 7759).

¹⁵⁷ SR **142.20**

⁴ The Federal Administrative Court shall normally decide on appeals against substantive decisions that require further investigation in accordance with Article 41 within two months.

Art. 110 Procedural time limits

¹ The additional period allowed for the amendment of the appeal amounts to seven days, and in the case of appeals against decisions to dismiss an application and decisions in accordance with Article 23 paragraph 1, three days.¹⁵⁸

² The time limit for furnishing evidence is seven days if the evidence must be obtained in Switzerland, and 30 days for evidence that must be obtained abroad. Expert reports must be produced within 30 days.

³ The time limit may be extended if the appellant or their representative is prevented from acting within this time limit, in particular due to illness or accident.

⁴ The deadline for proceedings is at the most two working days in the case of proceedings relating to:

- a. the denial of entry into Switzerland and the allocation of a place of stay at the airport in accordance with Article 22 paragraphs 2–4;
- b. a detention order in accordance with Article 76 paragraph 1 letter b number 5 FNA^{159, 160}

Art. 111¹⁶¹ Competence of a single judge

¹ The following cases may be heard by a single judge:

- a. the dismissal of appeals due to irrelevance;
- b. summary dismissal of manifestly unlawful appeals;
- c. the decision relative to the preliminary denial of entry at the airport and the allocation of a place of stay at the airport;
- d. a detention order in accordance with Article 76 paragraph 1 letter b number 5 FNA¹⁶²;
- e. with consent of a second judge: appeals that are clearly with or without justification.

¹⁵⁸ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁵⁹ SR **142.20**

¹⁶⁰ Amended in accordance with No. I 3 and II of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Amendment of Legislation in accordance with the Provisions on the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599, **2007** 5573; BBl **2006** 7759).

¹⁶¹ Amended in accordance with No. I and IV 1 of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁶² SR **142.20**

Art. 111a¹⁶³ Procedure and decision

¹ The Federal Administrative Court may dispense with an exchange of written submissions.¹⁶⁴

² Appeal decisions in accordance with Article 111 need only be summarily substantiated.

Art. 112¹⁶⁵ Effect of extraordinary legal remedies

The filing of extraordinary legal remedies does not preclude enforcement, unless the authority responsible for handling the case decides otherwise.

Chapter 9: International Cooperation and Advisory Commission

Art. 113 International cooperation

The Confederation shall participate in the harmonisation of European refugee policy at international level as well as in the resolution of refugee problems abroad. It shall support the activities of international charitable organisations. It shall in particular work with the United Nations High Commissioner for Refugees.

Art. 114 Advisory commission

The Federal Council shall appoint an advisory commission for refugee matters.

¹⁶³ Inserted by No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁶⁴ Amended in accordance with No. I 3 of the Ordinance of the Federal Assembly of 20 Dec. 2006 on the Amendment of Legislation in accordance with the Provisions on the Federal Supreme Court Act and the Federal Administrative Court Act, in force since 1 Jan. 2008 (AS **2006** 5599, **2007** 5573; BBl **2006** 7759).

¹⁶⁵ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

Chapter 10: Criminal Provisions¹⁶⁶

Section 1: Criminal Provisions relative to Chapter 5 Section 2¹⁶⁷

Art. 115 Misdemeanours

Anyone who commits any of the following acts shall be liable to a monetary penalty of up to 180 daily penalty units, unless the act constitutes a felony or misdemeanour that carries a higher penalty under the Criminal Code¹⁶⁸:

- a. obtaining, on the basis of this Act, for themselves or for another by providing false or incomplete information or in another way a pecuniary advantage that is not theirs by right;
- b.¹⁶⁹ completely or partly evading the duty to pay the special charge in accordance with Article 86 by providing false or incomplete information or in another way;
- c.¹⁷⁰ as an employer, deducting the special charge from the salary of an employee but not using it for the planned purpose.

Art. 116 Contraventions

Anyone who commits any of the following acts shall be liable to a fine, unless the act constitutes an offence under Article 115:

- a. violating the obligation to provide information by knowingly providing false information or refusing to provide information;
- b. resisting a check instructed by the competent authority or rendering this impossible in another way.

Art. 116a¹⁷¹ Disciplinary fine

¹ Anyone who violates the payment regulations mentioned in Article 86 paragraph 4 may, if previously issued with a warning, be issued with a disciplinary fine of up to

¹⁶⁶ Amended in accordance with Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR **362**; AS **2008** 5405 Art. 1 let. a).

¹⁶⁷ Inserted by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR **362**; AS **2008** 5405 Art. 1 let. a).

¹⁶⁸ Amended in accordance with Art. 333 of the Criminal Code (SR **311.0**) in the version contained in the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS **2006** 3459)

¹⁶⁹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁷⁰ Amended by the drafting committee of the Federal Assembly (Art. 58 para. 1 ParlG - SR **171.10**). Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

¹⁷¹ Amended in accordance with No. I of the Federal Act of 16 Dec. 2005, in force since 1 Jan. 2008 (AS **2006** 4745, **2007** 5573; BBl **2002** 6845).

1,000 francs. In the event of the repetition of the offence within two years, a disciplinary fine of up to 5,000 francs may be imposed.

² The Federal Office is responsible for issuing disciplinary fines.

Art. 117 Misdemeanours and contraventions in business operations

In the event that a misdemeanour or contravention is committed in the course of business of a legal entity, a partnership or a sole proprietorship or in the course of business of a public law corporation or institution, Articles 6 and 7 of the Federal Act of 22 March 1974¹⁷² on Administrative Criminal Law apply.

Section 2:¹⁷³ Criminal Provisions relative to Chapter 7 Section 2

Art. 117a Improper processing of personal data

Anyone who processes personal data stored in Eurodac for a purpose other than to establish which state is responsible for examining an application for asylum made by a citizen of a third country in a state subject to the Dublin Association Agreements shall be liable to a fine.

Section 3: Prosecution¹⁷⁴

Art. 118 ...¹⁷⁵

Prosecution is the responsibility of the cantons.

¹⁷² SR 313.0

¹⁷³ Inserted by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR 362; AS 2008 5405 Art. 1 let. a).

¹⁷⁴ Inserted by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, in force since 12 Dec. 2008 (SR 362; AS 2008 5405 Art. 1 let. a).

¹⁷⁵ Repealed by Art. 3 No. 2 of the Federal Decree of 17 Dec. 2004 on the Approval and the Implementation of the Bilateral Agreements between Switzerland and the EU on Association with Schengen and Dublin, with effect from 12 Dec. 2008 (SR 362; AS 2008 5405 Art. 1 let. a).

Chapter 11: Final Provisions

Art. 119 Implementation

The Federal Council shall be responsible for implementation. It shall issue the implementing provisions.

Art. 120 Repeal of existing legislation

The following are repealed:

- a. the Asylum Act of 5 October 1979¹⁷⁶;
- b. the Federal Decree of 16 December 1994¹⁷⁷ on Economy Measures in the Sphere of Asylum and Foreign Nationals.

Art. 121 Transitional provisions

¹ The new law applies to proceedings pending on the commencement of this Act.

² Pending proceedings on the granting of a residence permit by the immigration authorities in accordance with the prior Article 17 paragraph 2 shall become irrelevant.

³ The Appeals Commission and the Department shall retain jurisdiction over any appeals pending before them on the commencement of this Act, subject to paragraph 2 above.

⁴ On the commencement of this Act, the provisions of Chapter 4 shall apply to groups of foreign nationals temporarily admitted in accordance with the current Article 14a paragraph 5 of the Federal Act on the Residence and Permanent Settlement of Foreign Nationals¹⁷⁸. The length of stay of persons temporarily admitted in groups shall be taken into account when calculating the time limits in accordance with Article 74 paragraphs 2 and 3.

⁵ The previous law shall apply for up to two years after the commencement of this Act in relation to the payment of social benefits to refugees with a residence permit.

¹⁷⁶ [AS 1980 1718, 1986 2062, 1987 1674, 1990 938 1587 Art. 3, 1994 1634 No. I 8.1 2876, 1995 146 No. II 1126 No. II 1 4356, 1997 2372 2394, 1998 1582]

¹⁷⁷ [AS 1994 2876]

¹⁷⁸ [BS 1 121; AS 1949 221, 1987 1665, 1988 332, 1990 1587 Art. 3 para. 2, 1991 362 No. II 11 1034 No. III, 1995 146, 1999 1111, 2000 1891 No. IV 2, 2002 685 No. I 1 701 No. I 1 3988 Annex no. 3, 2003 4557 Annex no. II 2, 2004 1633 No. I 1 4655 No. I 1, 2005 5685 Annex no. 2, 2006 979 Art. 2 No. I 1931 Art. 18 No. I 2197 Annex no. 3 3459 Annex no. I 4745 Annex no. 1, 2007 359 Annex no. 1. AS 2007 5437 Annex no. I]. See: the Federal Act of 16 Dec. 2005 on Foreign Nationals (SR 142.20).

Art. 122 Relationship with the Federal Decree of 26 June 1998¹⁷⁹
on Emergency Measures in the Sphere of Asylum and Foreign Nationals

If a referendum is sought on the Federal Decree of 26 June 1998 on Emergency Measures in the Sphere of Asylum and Foreign Nationals and it is rejected in a popular vote, the provisions listed below shall be deleted:

- a. Article 8 paragraph 4 (duty to cooperate in the acquisition of valid travel documents),
- b. Article 32 paragraph 2 letter a (dismissal of the application in the event of failure to submit travel documents or identity papers),
- c. Article 33 (dismissal of the application in the event of improper filing of an asylum application),
- d. Article 32 paragraph 2 letter b (dismissal of the application in the event of identity fraud); in this case, the content of Article 16 paragraph 1 letter b shall be inserted in the version in accordance with Number I of the Federal Decree of 22 June 1990¹⁸⁰ on Asylum Procedures instead of the deleted provision of Article 32 paragraph 2 letter b; and
- e. Article 45 paragraph 2 (immediate implementation of decisions to dismiss applications); in this case, the content of Article 17a paragraph 2 shall be inserted in the version in accordance with Number II of the Federal Act of 18 March 1994¹⁸¹ on Coercive Measures under the Law on Foreign Nationals instead of the deleted provision of Article 45 paragraph 2 after the adjustment of the article references.

Art. 123 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 October 1999¹⁸²

Final Provisions to the Amendment of 19 December 2003¹⁸³

¹ The previous law in accordance with Article 37 applies to the time limit for processing applications for asylum that are submitted before the commencement of this amendment to the Act.

¹⁷⁹ AS **1998** 1582 No. III. In the light of the adoption of this Federal Decree in the popular vote of 13 June 1999, this Article is irrelevant.

¹⁸⁰ AS **1990** 938

¹⁸¹ AS **1995** 146 151

¹⁸² Federal Council Decree of 11 Aug. 1999 (AS **1999** 2298; BBl **1996** II 1).

¹⁸³ AS **2004** 1633; BBl **2003** 5615

² Article 50 of the Federal Administrative Procedure Act applies to time limits for filing appeals against decisions to dismiss an application in the first instance in accordance with Articles 32–34 that are issued before the commencement of this amendment to the Act¹⁸⁴.

³ The previous law in accordance with Article 109 applies to appeals against decisions to dismiss an application in accordance with Articles 32–34 that are submitted before the commencement of this amendment to the Act.

⁴ Articles 44a and 88 paragraph 1^{bis} also apply to decisions to dismiss an application in accordance with Articles 32–34 that became valid before the commencement of this Act. The cantons shall, however, receive support for nine months at the most after the commencement of this amendment to the Act in accordance with Article 88 paragraph 1, provided the Federal Office for Refugees supported the cantons in the implementation of the deportation until the commencement of this amendment to the Act.

Transitional Provisions to the Amendment of 16 December 2005¹⁸⁵

¹ The new law applies to the procedures pending on commencement of this amendment to the Act.

² If there are grounds for a final account before the commencement of this amendment to the Act in accordance with Article 87 in the version of 26 June 1998¹⁸⁶, the settlement and the balancing of the account shall be carried out in accordance with current legislation.

³ The Federal Council shall regulate the settlement procedures; it determines to what extent and how long persons who were gainfully employed before the commencement of this amendment to the Act and for whom there was no intermediate or final account in accordance with paragraph 2 at the in the time of the commencement of this amendment to the Act must pay a special charge and to which extent and how long their assets are distrained.

⁴ The Confederation shall make a single flat-rate payment of 15,000 francs to the cantons for each person for whom the decision to grant asylum or the deportation decision became valid before the commencement of this amendment to the Act, provided these persons have not yet left Switzerland.

¹⁸⁴ SR 172.021

¹⁸⁵ AS 2006 4745, 2007 5573; BBl 2002 6845, para. 1 in force since 1 Jan. 2007 and paras. 2–4 in force since 1 Jan. 2008.

¹⁸⁶ AS 1999 2262

*Annex I*¹⁸⁷
(Art. 21 para. 3)

Dublin Association Agreements

The Dublin Association Agreements comprise:

- a. the Agreement of 26 October 2004¹⁸⁸ between the Swiss Confederation and the European Community on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in a member state or in Switzerland (DAA);
- b. the Agreement of 17 December 2004¹⁸⁹ between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway on the implementation, application and development of the Schengen Acquis and on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in Switzerland, Iceland or Norway;
- c. the Protocol of 28 February 2008¹⁹⁰ between the Swiss Confederation, the European Community and the Principality of Liechtenstein to the Agreement between the Swiss Confederation and the European Community on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in a member state or in Switzerland;
- d. the Protocol of 28 February 2008¹⁹¹ between the Swiss Confederation, the European Community and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the Swiss Confederation and the European Community on the criteria and procedure for determining the State responsible for examining an application for asylum lodged in a member state or in Switzerland.

¹⁸⁷ Inserted by Annex No. 1 of the Federal Act of 13 June 2008 (Amendments in implementation of the Schengen and Dublin Association Agreements), in force since 12 Dec. 2008 (AS **2008** 5407 5405 Art. 2 let. c; BBl **2007** 7937).

¹⁸⁸ SR **0.142.392.68**

¹⁸⁹ SR **0.360.598.1**

¹⁹⁰ SR **0.142.393.141**

¹⁹¹ SR **0.142.395.141**; not yet published.

Amendment of Current Legislation

1. The Federal Act of 26 March 1931¹⁹³ on the Residence and Permanent Settlement of Foreign Nationals is amended as follows:

Art. 14a para. 2–6

2⁴bis ...

⁵ *Repealed*

⁶ ...

Art. 14b para. 2^{bis}–4

2bis ...

³ *Repealed*

⁴ ...

Art. 14c

...

Art. 20 para. 1 let. b

...

2. The Social Responsibility Act of 24 June 1977¹⁹⁴ is amended as follows:

Art. 1 para. 3

...

¹⁹² Originally Annex 1.

¹⁹³ [BS 1 121; AS 1949 221, 1987 1665, 1988 332, 1990 1587 Art. 3 para. 2, 1991 362 No. II 11 1034 No. III, 1995 146, 1999 1111, 2000 1891 No. IV 2, 2002 685 No. I 1 701 No. I 1 3988 Annex no. 3, 2003 4557 Annex no. II 2, 2004 1633 No. I 1 4655 No. I 1, 2005 5685 Annex no. 2, 2006 979 Art. 2 No. 1 1931 Art. 18 No. 1 2197 Annex no. 3 3459 Annex no. 1 4745 Annex no. 1, 2007 359 Annex no. 1. AS 2007 5437 Annex no. I].

¹⁹⁴ SR 851.1. The following amendment is inserted in the said Federal Act.

3. The Federal Decree of 27 April 1972¹⁹⁵ relating to the Approval of the Convention on the Legal Status of Stateless Persons is amended as follows:

Only Article para. 3

...

¹⁹⁵ SR **855.1**. The following amendment is inserted in the said Federal Act.